

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHN GABRIEL GAMBOA, DEFENDANT-APPELLANT.

G.R. No. 91374. February 25, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.

Essential in the success of the prosecution of an offense is the proof of the identity of the offender. This is usually attained through the testimony of eyewitnesses during, before, or even after the commission of the offense. In the absence of such primary evidence the prosecution generally falls back on such other evidence as the ballistic examination of the murder weapon, a handwriting expert, the extrajudicial confession or similar resources. Otherwise, circumstantial evidence is resorted to which consists in the piercing together of tiny bits of evidence with a view towards ascertaining the accused as the person responsible for the commission of the offense.

In the case now before this Court the defendant-appellant John Gabriel Gamboa was charged with the crime of murder together with Miguel Celdran in the Regional Trial Court of Cebu. After arraignment but during the trial, the case against Celdran was dismissed. Thereafter, a decision was rendered on August 30, 1989, finding Gamboa guilty of the crime of murder as penalized under Article 248 of the Revised Penal Code and imposing upon him the penalty of reclusion perpetua. He was also ordered to indemnify the heirs of the deceased in the amount of P30,000.00, with costs against him. The fatal weapon, a shotgun, was ordered forfeited in favor of the government.[3]

The defendant-appellant interposed this appeal from said judgment alleging that the trial court committed the following errors:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES CRISTINA SOLEDAD, ENRICO ACRE AND MARIO GASCON.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT HAD BEEN POSITIVELY IDENTIFIED AS THE ASSAILANT OF THE VICTIM RENE IMPAS.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE ACCUSED-APPELLANT HAD CONFESSED TO OR ADMITTED THE KILLING.

IV

THE TRIAL COURT ERRED IN NOT REJECTING THE ALLEGED MURDER WEAPON (EXHIBIT "A") AS INADMISSIBLE EVIDENCE.

V

THE TRIAL COURT ERRED IN HOLDING THAT EXHIBIT "A" WAS THE ACTUAL MURDER WEAPON.

VI

THE TRIAL COURT ERRED IN NOT REJECTING THE PARAFFIN TEST RESULTS AS INADMISSIBLE EVIDENCE.

VII

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT."^[2]

At around 1:15 o'clock in the morning of August 21, 1988, Cristina Soledad, common-law wife of Rene Impas, was conversing with the latter inside a bedroom in Rene's house located at John Avenue, Cebu City. Suddenly someone kicked open the door and Soledad saw the appellant and Celdran. From a standing position the appellant fired his shotgun at Rene. Rene was hit on the right side of the chest so he slid slightly, his head leaning on the wall. The appellant fired a second shot hitting the victim on the abdomen. The victim fell face upward on the bed and died immediately.

Soledad shouted for help. Rico Acre, a tenant in the same house, responded. He entered the room as the appellant went out of the house. The former fired a third time.

Acre noticed the victim having difficulty in breathing, so he ran out of the house and shouted for help. Mario Gascon, a neighbor, came and together with Acre they lifted the victim and loaded him in the car of the victim's father, police Major Impas, which was parked in front of the house.

As Gascon stepped out of his house to extend assistance, he saw the appellant and another person running towards a yellow car. The appellant was still holding the shotgun then. Soledad, together with Acre, Gascon and Maj. Impas, who was living in the house nearest to the victim's house, boarded the latter's car and brought the victim to the Southern Island Hospital, Cebu City.

The medico legal report of Dr. Jesus Cerna of the PC-INP, Cebu showed that the victim suffered the following gunshot wounds:

" ' Shot gun wounds:

'(1) ENTRANCE, ovaloid, 2.0 x 1.8 cm., with 5 stray pellets wounds of entrance around, in an area of the chest, right, 5.5 x 5.0 cm., edges inverted, chest right anterior aspect, 6.0 cm. from the anterior median line and 128.0 cm. above right heel; directed backward, downward and medially, involving skin and the underlying soft tissues, into thoracic cavity, lacerating extensively the lungs, upper and lower lobes, right extensively and the ascending orta, and finally a plastic wad was embedded and recovered from the upper lobe of right lung and three (3) pellets were recovered from the soft tissue of the back, thoracic region, left, 5.0 cm. from the posterior median line and 127.0 cm. above left heel.

'2. ENTRANCE, (pellets wounds) six in numbers, of varying sizes, ranging from 0.6 x 0.5 cm. to 0.5 x 0.4 cm., edges inverted, dispersed in an area of the abdomen, anterior aspect, right, 5.0 x 4.5 cm.) 7.5 cm. from the

anterior median line and 108.0 cm. above right heel, directed backward, upward and laterally involving skin and the underlying soft tissues, into a thoracic abdominal cavity, lacerating extensively portion of small and large intestine, liver, and finally 4 pellets wound were embedded and recovered from the soft tissues back, left thoracic abdominal region, 10.0 cm. from the posterior median line and 107.0 cm. above left heel, (one exited).

'(3) ENTRANCE, ovaloid, 9.0 x 3.0 cm. irregular in shape, edges inverted, hand, posterior aspect, right; directed forward, upward, thru and thru.

Heart: auricular and ventricular chambers, filled with dark-red liquid and clotted blood, with normal myocardium.

'Gastro-intestinal tract and other visceral organs pale.

Stomach, empty.

Hemothorax, approximately 1500 cm.

Hemoperitoneum, approximately 1000 cc.

CAUSE OF DEATH:

Shot wounds, chest, abdomen and hand, right."[3]

Under the first assigned error, the appellant raises the issue relating to the credibility of the prosecution witnesses in that their testimonies are full of inconsistencies which elicit doubt as to their truthfulness.

In the case of Soledad, the latter allegedly testified that the appellant shot the victim twice, while the victim's father testified that he heard three successive shots. There is no inconsistency here. It was established that the appellant shot the victim twice while inside the house and fired the third shot when he was already outside the house. This accounts for the three shots heard by Major Impas.

The appellant also stated that Soledad testified on direct examination that when the victim was hit by the first shot his body leaned on the wall but on cross examination, she said that the victim was lying flat on the bed after the first shot. Whether the victim was leaning on the wall or lying down after the first shot is of no material consequence. The fact remains that Soledad saw the appellant shoot the victim twice with a shotgun.

Another alleged contradiction is that Soledad said she knew Acre to be a cousin of the victim but Acre himself denied such relationship. Again such inconsistency, if it is indeed an inconsistency at all, is on a minor matter.

The appellant states that while Acre testified that at the time of the shooting he could clearly be seen from the victim's room, Soledad never mentioned having seen Acre at or near the door of the victim's room. It is also indicated that while Acre said that appellant made some remarks to him in a loud voice before the shooting, Soledad on the other hand testified that she did not hear any statement from the appellant before the shooting.

Suffice it to state that at the time of the shooting, the appellant and Celdran were standing at the door, effectively blocking the view outside the room, hence Soledad did not see Acre. Moreover, at the time Soledad's attention at that moment was focused on her common-law husband who was shot twice and who fell on the bed. She was a witness to a startling occurrence. It is not improbable that because of shock she did not hear any remarks made by the appellant outside the room.

The appellant makes much capital of the fact that Acre did not reveal the identity of the appellant to the victim's father when they were together in the car on the way to the hospital. This is understandable considering that Soledad had already revealed the appellant's identity to Major Impas when they boarded the car. There was no need for Acre to give the same information to the victim's father.

In the case of Modesto Gascon, it is contended that he could not have seen the appellant running away from the scene of the shooting since even before Gascon went down from his house, the appellant was already running towards the get-away car and so it was allegedly impossible for Gascon to identify the appellant.

On cross-examination, Gascon stated that after hearing gunshots he ran out of his house to ascertain where the shots came from. He ran to the corner or to the "second bend" outside the house of the victim's father and he saw the appellant at the "second bend." Gascon ran into the appellant while running to the house of the victim. He was only four to five arms-length away when he saw the appellant, thus his positive identification of the appellant.

Another alleged discrepancy is between the version of Major Impas that the appellant and his companion were running towards the car and that of Gascon's testimony that the appellant was back-tracking towards the car. The record discloses that what Major Impas meant to convey was that he saw the appellant

and his companion fleeing from the scene of the crime to their get-away car while the description of Gascon that the appellant was "back-tracking" towards the car was a description of how the appellant fled from the victim's house to the car, to make sure that they were not being followed.

The alleged contradiction between Gascon's affidavit,[4] wherein he mentioned that he saw the appellant and another person running towards the car, and his testimony on cross-examination that he only saw the appellant, is of no material consequence considering that the appellant has been positively identified as the assailant. Moreover, as it is generally pointed out, an affidavit taken ex-parte almost always cannot be relied upon as oftentimes it is inaccurate.[5]

By and large, the Court is not persuaded that the appellant's claim of contradictions and inconsistencies on the part of the prosecution witnesses puts into serious doubt their credibility. Different persons who witnessed an incident from different angles and situations could not be expected to give uniform details of what they saw and heard. Such minor discrepancies and inconsistencies are to be expected because of the human differences in perception. Such contradicting statements are on minor details, as hereinabove discussed, and rather than affect the credibility of the witnesses, the same are badges of candor.

Nevertheless, under the second assigned error, the appellant alleges that his identification by the prosecution witnesses cannot be relied upon considering that they did not immediately inform the police investigators of the identity of the assailant upon their arrival. Although it may be true that the eyewitnesses did not immediately identify the appellant as the assailant to the responding policemen, it is also a matter of fact that Major Impas informed Cpl. Petallar while they were on the way to the Southern Islands Hospital, where the victim was brought, that the assailant is the appellant.[6] The second instance was when Soledad went to the mobile patrol division and revealed to Cpl. Petallar that the appellant was the one who shot her common-law husband.[7]

It is quite understandable when the witnesses do not immediately report the identity of the offender after a startling occurrence more especially when they are related to the victim as they just had a traumatic experience. More so as in the case of Major Impas who is the victim's father and Soledad, his common-law wife. Nevertheless, a delay of about a few hours before the identification of the offender by the prosecution witnesses does not thereby affect their credibility.

The inadmissibility of the alleged verbal confession of the appellant is raised on the ground that he was maltreated as a result of which he suffered twenty-seven injuries in the form of contusions, lacerations and abrasions. It does not appear, however, that the prosecution proposed to rely on this alleged confession of the appellant, or that the trial court considered the same at all in the resolution of the case. If it were to be considered at all, it would be worthless because of the undeniable fact that the appellant was not only arrested without a warrant and entry into

his house was effected without a search warrant, but worse, he was maltreated since his arrest so much so that he suffered multiple injuries. The police investigators responsible for this manhandling should be investigated and held to account. Such involuntary confession cannot help the case of the prosecution. It is a stain in the record of the law enforcement agents who handled the case.

Under the fifth assigned error, the appellant questions the admissibility of the shotgun as the alleged murder weapon. He says it was not found in his possession but his house was searched and the shotgun was confiscated without a search warrant.

He also alleges that the three (3) empty shells that were submitted for the ballistics examination were not recovered from the scene of the crime and their production is a frameup by the police. Again, the Court observes that the police investigators confiscated the shotgun from the premises of the residence of the appellant without a search warrant. Such violation of the constitutional rights of a person should be investigated and inquired into.

Nevertheless, the Court is not persuaded that the police investigators in this case would willingly allow themselves to be instruments to frame the appellant for so serious a crime as murder. It appears that the three empty shells were actually recovered from the vicinity of the scene of the crime. The ballistics examination shows that it was fired from the very shotgun of the appellant. This evidence corroborates the theory of the prosecution, very strongly, that the appellant was the assailant of the victim.

Even if the Court disregards the shotgun as having been illegally secured as well as the results of its ballistic examination in relation to the empty shells, still there is adequate evidence in the record to justify a verdict of conviction. Indeed, the Court did not even consider it necessary to inquire into the motive of the appellant in the light of his positive identification by the prosecution witnesses.

As to the paraffin test to which the appellant was subjected to he raises the question, under the sixth assigned error, that it was not conducted in the presence of his lawyer. This right is afforded to any person under investigation for the commission of an offense whose confession or admission may not be taken unless he is informed of his right to remain silent and to have competent and independent counsel of his own choice.[8] His right against self-incrimination is not violated by the taking of the paraffin test of his hands. This constitutional right extends only to testimonial compulsion and not when the body of the accused is proposed to be examined as in this case.[9] Indeed, the paraffin test proved positively that he just recently fired a gun. Again, this kind of evidence buttresses the case of the prosecution.

WHEREFORE, the decision appealed from is AFFIRMED with the sole modification that the indemnity to the heirs of the offended party is increased to P50,000.00, with costs against the appellant. Let a copy of this decision be furnished the Chairman of the Philippine National Police for his information and appropriate action on the actuations of the law enforcement agents hereinabove discussed.

SO ORDERED.

Narvasa, Cruz, Grino-Aquino, and Medialdea, JJ., concur.

[1] Pages 41 to 52, rollo.

[2] Pages 66 to 67, rollo.

[3] Exhibit "G", page 407, records.

[4] Exhibit F.

[5] *People vs. Avanzado, Sr.*, 158 SCRA 427 (1988).

[6] Page 10, TSN, February 21, 1989.

[7] Exhibits C, D, and F.

[8] Section 12(1) and (3), Article III, Constitution.

[9] *Stonehill vs. Diokno*, 20 SCRA 383 (1967).

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