

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO AGUILUZ, ALIAS "ROCK-ROCK," ACCUSED-APPELLANT.

G.R. No. 91662. March 11, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Mario Aguiluz, alias "Rock-Rock," was charged on January 20, 1989 in Criminal Case No. DH-078-89 of the Regional Trial Court of Dinalupihan, Bataan, Branch 5, with the crime of murder, in an information which reads as follows:

"That on or about December 4, 1988, at nighttime purposely sought to better accomplish his criminal design, at Brgy. Daang Bago, Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon RICARDO CRUZ Y GUEVARRA by then and there hitting him with a lead pipe on his head and on different parts of his body, thereby inflicting upon the said RICARDO CRUZ Y GUEVARRA mortal injuries which were the direct and immediate cause of his death thereafter, to the damage and prejudice of the heirs of the said Ricardo Cruz y Guevarra.

CONTRARY TO LAW." [1]

When arraigned, accused, assisted by counsel, entered a plea of not guilty. In the pre-trial stage, both prosecution and defense failed to agree on certain proposed admissions respectively sought by them, hence trial on the merits ensued.

We give credit to the succinct factual presentation of the case by the prosecution which, in our examination of the evidence on record, we find to be correct and which we accordingly reproduce hereunder:

"On December 4, 1988, at about 8:00 o'clock in the evening, while the victim Ricardo Cruz was driving his owner-type jeep along Barangay Daang Bago, Dinalupihan, Bataan, together with Genaro Ballan, a truck helper in his business who was seated in the front seat beside him, a passenger jeep suddenly approached them and bumped their vehicle (pp. 10-14, tsn, March 8, 1989).

"The victim stopped his engine, went down and looked at the front portion of his jeep. Appellant suddenly came and, from behind the victim, hit the latter with a lead pipe on the back right portion of his head above the right ear (pp. 14-20, tsn, id.). Appellant came from the passenger jeep which bumped the victim's vehicle (pp. 17-18, tsn, id.). His companions who were with him in the passenger jeep were Mario Garcia, Jr., Bernabe delos Reyes, Restituto Cabiling and another whom eyewitness Ballan could not identify (pp. 26--29, tsn, id.). The companions of appellant were positioned behind him at the time that appellant landed the fatal blow on the victim's head (pp. 22-23, tsn, id.).

"When the victim was hit on the head with a lead pipe, he fell down (p. 22, tsn, id.). Appellant and his companions then ran away and left their passenger jeep at the place where it bumped the victim's vehicle (id.). Ballan clearly saw the entire criminal incident and positively identified appellant as the perpetrator thereof because he was positioned only two (2) meters away from them (p. 20, tsn, id.).

"Thereafter, Ballan lifted the fallen victim, boarded him in a jeep and brought him to the Dinalupihan District Hospital (id.). The victim died of massive hemorrhage in the brain as a result of the lacerated wound on his head and the depressed fracture on his skull (Exhibit 'C')."[2]

On the other hand, appellant gives his own version as follows:

"It appears that at about 8:00 o'clock in the evening of December 4, 1988, the passenger jeep being driven by Bernabe delos Reyes, with the accused Mario Aguiluz and Restituto Cabiling both seated in the front seat with Bernabe, was on its way out of the squatters' area of Daang Bago, Dinalupihan, Bataan and about to cross the national highway, on their way to corner Daang Bago, Dinalupihan, Bataan, to San Pablo, Lubao, and Guagua, Pampanga and when they were about to take a left turn from the middle of the highway, all of a sudden, the owner-driven jeep, owned and then being driven by the deceased Ricardo Cruz y Guevarra, where allegedly prosecution witness Genaro Ballan was riding, bumped the left middle portion of the passenger jeepney. Cruz and Ballan were allegedly then on their way to Orani, Bataan coming from Lubao, Pampanga.

"By reason of the sudden hard impact caused by the bumping of the front of the owner-driven jeep to the left middle part of the passenger jeep Ricardo Cruz y Guevarra fell from the jeep.

"Ricardo Cruz was thereafter immediately brought by Ballan to the Dinalupihan District Hospital at Dinalupihan, Bataan, and was attended to and examined by Dra. Priscila Chavez Ignacio who found Cruz to be positive of alcoholic breath. 'You can just smell the patient that he took some alcoholic drinks'. (pp. 57-58. t.s.n., Sept. 6, 1989).

"That somebody who accompanied the patient (Ricardo Cruz) told Dra. Priscila Chavez Ignacio that Cruz figured in a vehicular accident (p. 57, supra)."[3]

After weighing the evidence adduced, both testimonial and documentary, the court a quo found accused guilty of the crime of murder as charged, and sentenced him "to suffer imprisonment with the maximum penalty provided by law for said crime of Reclusion Perpetua, and, for same accused to indemnify the widow of the late Ricardo Cruz, Mrs. Yolanda Cruz, the amount of P60,615.55 for actual and compensatory damages, plus the amount of P30,000.00 for the death of her late husband, Ricardo Cruz, plus the amount of P30,000.00 by way of moral damages, plus P1,000.00 for every Court appearance in the hearing of this case paid to lawyers, Attys. Restituto Luz and Avelino Morales by same widow of the victim in this crime." [4] Dissatisfied, the defense has taken this appeal.

Once again, as in most criminal cases, the issue is reduced to one essentially of credibility, a weighing of the evidence of the prosecution against that of the defense through an assessment of their respective merits. In this respect, it is firmly settled that the findings of the trial court are given weight and the highest degree of respect by the appellate court, [5] and may be disregarded only where substantial errors have been committed or determinative facts have been overlooked and which otherwise would have dictated a different conclusion or verdict. In the instant case, it does not appear to the Court that the trial court committed any error in extending superior credit to evidence adduced by the People.

The prosecution's cause is replete with facts established by overwhelming evidence which the defense failed to refute. Prosecution eyewitness Genaro Ballan, on whose testimony the People principally built this case, was observed and declared by the court below to have testified in a straightforward manner, untainted by bias or partiality, much less by hostility or hatred towards appellant. As said court specifically noted in its decision, although Ballan had only reached the educational attainment of Grade Three, and despite the rigid and thorough cross-examination by the defense, he firmly and adamantly stood pat on what he personally knew about the case. [6] This prompted the court to invoke the rule that the testimony of one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict. [7]

His testimony that the victim was hit on the upper right side of his head just above the right ear is confirmed by the findings of Drs. Sergio Alteza, Desiderio Moraleda and Priscila Chavez Ignacio, the physicians who attended to the victim after the incident. The medical and autopsy findings on the injury of the victim revealed that he sustained a lacerated wound on the right parietal temporal area of his head right above his right ear and, upon X-ray examination, he was found to have a depressed fracture on the same area in his skull where he exhibited symptoms of severe brain injury.[8]

On the other hand, the testimony of the defense witnesses, aside from being improbable, are full of inconsistencies and postulations of facts which depart from common human experience. We will not clutter this opinion with the many inconsistencies and improbabilities of their testimonies, as correctly catalogued by the lower court, but we will just dwell on the main points of their prevarications.

Bernabe de los Reyes testified that the victim fell from the jeep, forehead first, due to the impact of the collision.[9] This is belied by the categorical testimony of Dr. Alteza to the effect that the deceased suffered no other wound, bruise or anything of the sort other than the only wound on the right parietal temporal area of his head above his right ear. He also opined that the probable cause of the lacerated wound was a forcible impact from a blunt instrument or object, for lacerated wounds are only produced, according to him, by a blunt instrument like a lead pipe ("tubo").[10] On his part, Dr. Moraleda, another medico-legal officer, corroborated said finding and declared that the cement pavement is not a blunt instrument but a blunt surface.[11]

What further undermines the version of De los Reyes is the fact that his two companions at the time of the incident, Restituto Cabiling and appellant Mario Aguiluz himself, testified that they never saw Ricardo Cruz fall from his owner-type jeep upon or after the collision.[12] The trial court accordingly found the testimony of De los Reyes incredible, considering that these three persons were admittedly sitting together and alongside each other in the front seat of the passenger jeepney at the time of the collision with the victim's owner-type jeep.[13] Moreover, even if De los Reyes might have blocked the view of his two companions who were just seated beside him on the front seat, the spectacle of Ricardo Cruz being forcefully and bodily thrown out of his jeep would have easily attracted the attention of Cabiling and Aguiluz who were facing and, in all probability, looking in the direction of that jeep.

Again, if the deceased indeed fell from his jeep, as the defense alleges, he should have fallen on the left side of the jeep and he would have suffered injuries or bruises on the left side of his head or body. But, as aforesaid, the deceased suffered no other injury aside from the one on the right side of his head.[14]

The truth of the matter is, as established by witness Ballan and found by the lower court, appellant Mario Aguiluz rushed toward the victim from behind as the latter was examining the front portion of his vehicle. Appellant then hit the deceased Ricardo Cruz on the right side of the head with a lead pipe, causing the latter to fall on the cement pavement. What could have prompted appellant to attack the deceased, as concluded by the trial court, was his resentment or anger which was consequently directed to the cause of the collision and impelled by what said court calls the "false courage due to his having dr(u)nk four (4) bottles of beer." [15] This Court takes judicial notice of the fact that generally a person under the influence of liquor, even if not to the point of intoxication as in this case, is prone to be impulsive, irascible, or combative and less inhibited in his reaction to whatever offends him.

De los Reyes also alleged that due to the violent impact of the collision, the steering wheel of the owner-type jeep was detached and fell on the seat of the driver.[16] Again, this is exposed as an outright falsehood. Photographs do not lie, and it glaringly appears in the picture [17] taken shortly after the time of the collision that the steering wheel of the jeep driven by the deceased was not detached and it never fell on any seat. Furthermore, since Ricardo Cruz was then driving the jeep and necessarily manning the steering wheel, he would naturally have

been forcibly pushed forward and a part of his chest, stomach or fore-head then facing the steering wheel and windshield of the jeep would have sustained contusions or lacerations as a consequence. However, as declared by Ballan and noted with approval by the trial court, the impact of the collision of the two vehicles was not so strong.[18]

The defense also asserts that the victim's death was merely accidental. If this were so, we agree with the trial court that De los Reyes did not have to pretend that he was never the driver of the passenger jeep at the time that an investigation of the incident was being conducted, nor did he have to hide in a store near the place of the incident. It is a curious fact why, after the incident, appellant and his companions abandoned their vehicle at and fled from the scene of the crime. An innocent person, in the normal course of events, would not have done so but would have readily come forward to present himself to an investigator and explain or demonstrate that he was not at fault. It may be trite, but we need merely recall the oft-repeated dictum that "the wicked flee even when no man pursueth, whereas the righteous are as brave as the lion." [19]

Further bolstering the case for the prosecution is the fact that appellant was positively identified by witness Ballan. The latter could not have been mistaken in identifying the former because Ballan had known him even prior to the incident.[20] There was also no proof of any ill-motive on the part of Ballan. Accordingly, such identification should be given weight since witnesses would not falsely impute to the accused a serious criminal offense if it is not the untarnished truth.[21] Moreover, motive becomes relevant, and its absence may assume determinative significance, only when the accused has not been positively identified, and proof thereof becomes essential only when the evidence of the commission of a crime is purely circumstantial or is inconclusive. This Court has time and again ruled that lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely established.[22]

The defense also belabors the delay of Ballan in informing the police authorities about the incident.[23] This does not, however, adversely affect the credibility of said witness. The failure of a witness to immediately report to the police authorities the crime he had witnessed should not be taken against him. It is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. The natural reticence of most people to get involved in a criminal case is of judicial notice.[24]

In sum, it is well settled that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.[25] Under the foregoing disquisition, we cannot subscribe to the evidence presented by the defense and, instead, we uphold the convincing evidence of the prosecution as found and duly assayed by the court below.

Nevertheless, appellant cannot be convicted of murder as charged. We entertain serious doubts, under the proven facts, as to whether he acted with alevosia when he attacked the victim. It will be recalled that right after the collision, the victim went to examine the front part of his jeep for damages it may have sustained. Appellant, on his part, forthwith alighted from the passenger jeepney, immediately went behind the victim and dealt the latter a blow with a lead pipe. As a rule, a sudden attack by the assailant, whether frontally or from behind, is treachery if such mode of attack was coolly and deliberately adopted by him,[26] his purpose being to deprive the victim of a chance to either fight or retreat.[27] The rule does not apply, however, where the sudden attack was not preconceived and intended as the means but was triggered by the sudden infuriation on the part of the accused because of an act of the victim,[28] or where their meeting was purely accidental.[29] It appears, therefore, that these two exceptive doctrines apply to the acts and to the benefit of appellant.

Furthermore, there is another consideration, evidently overlooked by the trial court and the contending parties

themselves, which seriously militates against a conviction for murder in this case. The information, which we have purposely quoted in full, does not allege the qualifying circumstance of treachery nor do the particulars of the indictment as formulated constitute the same, and there is no other circumstance alleged which could qualify the killing to murder. Obviously, neither can treachery be considered even as an aggravating circumstance since, as already discussed, the acts of the accused do not constitute alevosia. We, therefore, reject the inexplicable holding of the trial court that there was "an aggravating circumstance attendant to the same for the reason that accused did hit the victim from behind with a fatal blow by the use of a lead pipe (tubo) on his head, x x x." [30]

One aggravating circumstance is in fact alleged, that is, nighttime, but again there is no proof that the same was purposely sought or taken advantage of by appellant, or that the same facilitated his commission of the crime. Thus, whether we adopt the subjective or objective tests laid down by decisional rules, nocturnity cannot be considered against appellant. [31] His liability, therefore, is for the felony of homicide, without any modifying circumstance.

WHEREFORE, the judgment of the court a quo in Criminal Case No. DH-078-89 is hereby ANNULLED and SET ASIDE, and another is hereby RENDERED finding accused-appellant guilty of homicide and imposing on him an indeterminate sentence of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum. Appellant is further sentenced to pay a death indemnity of P50,000.00 in line with current jurisprudential policy, P60,615.55 as and for compensatory damages, P30,000.00 by way of moral damages and P10,000.00 as attorney's fees.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Nocon, JJ., concur.

[1] Original Record, 1.

[2] Brief for the Appellee, 3-4; Rollo, 115-116.

[3] Brief for the Appellant, 5-6; *ibid.*, 68-69.

[4] Original Record, 269; per Executive Judge Jose T. Bartolome.

[5] *People vs. Caraig*, G.R. No. 91162, October 3, 1991.

[6] Original Record, 268.

[7] *People vs. Orzame*, 17 SCRA 161 (1961).

[8] Original Record, 253.

[9] TSN, September 20, 1989, 14.

[10] TSN, May 25, 1989, 11, 20.

[11] *Ibid.*, 52.

[12] TSN, September 27, 1989, 45; TSN, November 3, 1989, 49.

[13] Original Record, 264.

[14] TSN, May 25, 1989, 20.

[15] Original Record, 267.

- [16] TSN, September 6, 1989, 20.
- [17] Exhibit 13 and sub-markings.
- [18] Original Record, 265.
- [19] U.S. vs. Sarikala, 37 Phil. 486 (1918).
- [20] TSN, March 8, 1989, 27.
- [21] People vs. Caraig, *supra*.
- [22] People vs. Ballinas, G.R. No. 93300, October 4, 1991, citing People vs. Traya, 147 SCRA 381 (1987).
- [23] Brief for the Appellant, 14; Rollo, 47.
- [24] People vs. Caraig, *supra*; People vs. Punzalan, et al., 153 SCRA 1 (1987).
- [25] People vs. Nabayra, G.R. No. 96368-69, October 17, 1991.
- [26] People vs. Young, 83 Phil. 702 (1949); People vs. Resurreccion, et al., 94 SCRA 96 (1979); People vs. Ruiz, 110 SCRA 155 (1981).
- [27] People vs. Lanseta, et al., 95 SCRA 166 (1980); People vs. Talay, et al., 101 SCRA 332 (1980).
- [28] People vs. Delgado, et al., 77 Phil. 11 (1946).
- [29] People vs. Bernal, 128 SCRA 606 (1984).
- [30] Original Record, 268-269.
- [31] People vs. Undong, 66 SCRA 386 (1975); People vs. Garcia, et al., 94 SCRA 14 (1979); People vs. Palon, 127 SCRA 529 (1984).

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