

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TEMISTOCLES CASTOR Y TRANGUIA, ACCUSED-APPELLANT.

G.R. No. 93664. December 11, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

In the evening of 17 May 1986 at Cherryville Subdivision, Barangay Nagkaisang Nayon, Novaliches, Quezon City, Sotero Roy y Barnuevo was stabbed. Sustaining the following injuries:

"x x x Wound, incised, 3.0 cm., dorsal surface, hand, left; 12.0 cm., anterior aspect, chest, left.

Wounds, STAB:

- 1) 2.0 cm. elliptical (sic), edges clean cut, median aspect, chest, along the anterior median line, on level with the 2nd intercostal space, oriented obliquely, with sharp left upper extremity and blunt right lower extremity, directed backward slightly upward, and to the left, involving among others, the skin and soft tissues, fracturing the sternum, into the thoracic cavity, perforating the aorta, with an approximate depth of 11.5 cm.
- 2) 2.0 cm., elliptical, edges clean cut, median aspect chest, left side, 1.0 cm. from the anterior median line, level of the 4th intercostal space, oriented horizontally with blunt medial and sharp lateral extremity, directed backward upward, and medially, involving among others, the skin and underlying soft tissues into the thoracic cavity, penetrating the heart, with an approximate depth of 12.0 cm.
- 3) 2.5 cm. elliptical, edges clean cut, infrascapular region, left, 12.0 cm. from the posterior median line, oriented almost vertically, with sharp upper and blunt lower extremity, directed forward, upward, and laterally, involving the skin and underlying muscular soft tissues only, with an approximate depth of 8.5 cm.
- 4) 1.8 cm., elliptical, edges clean cut, lower medial region of the back, left side, 3.0 cm. from the posterior median line, oriented horizontally, with sharp lateral and blunt medial extremity, directed forward, upward and laterally, involving the skin and underlying muscular soft tissues only, with an approximate depth of 4.0 cm."[1]

he died on the spot. The cause of death was "Hemorrhage, secondary to stab wounds chest and back."[2]

The police authorities conducted an investigation and thereafter took down the sworn statements of witnesses. In due time, an information charging the accused-appellant and one Luis Canalan y Bacatano with the crime of Murder was filed in the Regional Trial Court (RTC) of Quezon City. Docketed as Criminal Case No. Q-43760, it was raffled off to Branch 98 of the said court. After both accused pleaded not guilty on arraignment, trial on the merits ensued with the prosecution presenting Robert Mingoa, Armando Baldemoro, Pio Ang, Pfc. Dante Laguelles and Dr. Rodolfo Lisondra as its witnesses. The two accused took the witness stand in their defense.

Before a decision could be rendered, a fire gutted the building which housed the court; the records of this case were among the items destroyed in the said fire.

In its Order of 30 September 1988, the trial court directed the prosecutor assigned to the case to reconstitute the records thereof.[3] The motion to reconstitute the information was subsequently filed on 18 May 1989.[4] Attached thereto is the reconstituted Information which reads:

"The undersigned Assistant City Prosecutor accuses TEMISTOCLES CASTOR Y TRANGUIA, LUIS CANALAR (sic) Y BACATANO of the crime of MURDER (Art. 248, RPC), committed as follows:

"That on or about the 17th day of May, 1986 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together, confederating with and mutually helping each other, did then and there, wilfully, unlawfully and feloniously with intent to kill, with evident premeditation, treachery and taking advantage of superior strength, assault, attack and employ personal violence upon the person of SOTERO ROY Y BARNUEVO, by then and there stabbing him several times with kitchen knives, hitting him on different parts of his body, thus inflicting upon him multiple stab wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said SOTERO ROY Y BARNUEVO, in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."[5]

In its Order of 18 May 1989,[6] the trial court admitted the reconstituted Information and ordered the re-taking of the testimonies of witnesses considering that the transcripts of stenographic notes in the case were also burned during the aforesaid fire.

On 3 August 1989, the accused were re-arraigned. On said occasion, they reiterated their plea of not guilty.[7] Thereupon, all the witnesses who had earlier testified, with the exception of Dr. Lisondra, were presented anew.[8]

Accused-appellant relied on the defense of alibi. He claims that he was in Caloocan City at the time Sotero Roy was attacked and killed.

On 3 May 1990, the trial court promulgated its decision[9] convicting the accused-appellant but acquitting his co-accused Luis Canalan. The dispositive portion of the decision reads:

"WHEREFORE, premises above-considered, the Court finds accused TEMISTOCLES CASTOR Y TRANGUIA, GUILTY, beyond reasonable doubt of the crime of Murder penalized under Article 248 of the Revised Penal Code as charged in the information and hereby sentences him to the (sic) penalty of reclusion perpetua. Accused is further ordered to indemnify the heirs of Sotero Roy y Barnuevo in the sum of P30,000.00 as moral damages and to pay the costs.

For lack of sufficient evidence against accused LUIS B. CANALAN, he is hereby acquitted. He is hereby ordered released from confinement at the New Bilibid Prison, Muntinlupa, Metro Manila unless his further detention is warranted for some other lawful cause.

SO ORDERED."

[10]

The trial court gave full faith to the version of the prosecution and discredited the accused-appellant's defense of alibi as the latter and his companion Palping were positively identified by witness Roberto Mingoa as the perpetrators of the crime.

The prosecution's version of the killing is faithfully summarized in the Appellee's Brief[11] as follows:

"Pio Ang operated a junk shop at Cherryville Subdivision, Novaliches, Quezon City. Among his employees were Temistocles Castor and Sotero Roy who, together with his wife, Edmunda, was (sic) allowed to stay inside the compound of the junk shop. Aside from Sotero and his wife, Robert Mingoa and Jimmy Hao,

brothers of Pio Ang, also lived in a house inside the compound (TSN, August 24, 1989, pp. 12-13, 18, 20; TSN, August 22, 1989, pp. 6-8).

On May 1, 1986, Sotero alias Vietcong and Castor quarreled over an allegation that Castor had an amorous relation with Sotero's wife, Edmunda. Before the two (2) could exchange blows, however, they were pacified by their co-workers. But before leaving, Castor threatened Sotero that if he had an opportunity, he would kill him (TSN, August 24, 1989, pp. 9-10).

Two weeks after the said incident, particularly on May 17, 1986, about (sic) 8:00 o'clock in the evening, Castor made good his threat. Together with a companion named Palping, Castor stabbed Sotero near the gate inside the junk shop compound. Despite the wounds inflicted on him, Sotero was able to run away from his attackers towards the house being occupied by Robert Mingo and Jimmy Hao, about ten (10) meters from the gate. But he was followed inside the house by Castor and Palping who continued their attack until Sotero slumped on the floor, mortally wounded (TSN, August 22, 1989, pp. 3-4, 11).

Unknown to Castor and his companion, the whole incident was witnessed by Robert Mingo who was then standing a few meters from the gate. Mingo was about to leave for his friend's house when he saw Castor and his companions stab Sotero near the gate. Afraid that the attackers might turn against him, Mingo ran towards his house where the victim ran to, and went directly inside his room and locked himself in. While in his room, Mingo heard a commotion inside the house and, peeping through a partially opened window, saw Castor and Palping once again stab Sotero. Thereafter, Sotero finally slumped on the floor. Mingo clearly witnessed the incident as the place where the incident took place was lighted (Ibid, pp. 3-5, 11-12).

Patrolmen Dante Laguelles and Salvacion of the Station Investigation Division, Quezon City Police, rushed to the scene of the crime following a call from Pio Ang. They found at the scene the lifeless body of Sotero, drenched in blood. They took pictures of the victim, searched the place for any instrument used in perpetrating the crime, and questioned witnesses. Temistocles Castor and Luis Canalan, who surfaced as the prime suspects in the killing, were subsequently arrested in Mandaluyong, Metro Manila and Plaridel, Bulacan, respectively (TSN, October 25, 1989, pp. 4-6)."[12]

On 11 May 1990, accused-appellant filed his Notice of Appeal.[13] We accepted the same on 16 July 1990.[14]

In his Brief,[15] accused-appellant faults the trial court:

"I

X X X IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION EYE-WITNESS ROBERT MINGOA DESPITE THE PRESENCE OF CIRCUMSTANCES AFFECTING HIS CREDIBILITY.

II

X X X IN REJECTING OUTRIGHT THE DEFENSE OF ALIBI.

III

X X X IN NOT ACQUITTING ACCUSED-APPELLANT WHEN EVIDENCE AGAINST HIM IS NOT SUFFICIENT TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."[16]

Anent the first assigned error, accused-appellant seeks to convince this Court of the unreliability of the testimony of Robert Mingo because of its inherent inconsistencies -- especially with respect to the place where the stabbing took place. While initially, Mingo testified that the stabbing occurred near the gate, he later claimed that it took place inside the house. The accused-appellant also capitalized on Mingo's inability to give the complete names of the victim and the latter's co-employees.

As to the second error, accused-appellant maintains that alibi is the only defense available to him; he could not claim any other credible defense, like self-defense, in the absence of any fact that "could lend evidence (sic) to such defense." [17] He further stresses that the Court should not harbor a mental prejudice against an accused who invokes the defense of alibi.

As regards the last assigned error, accused-appellant insists that his guilt has not been established beyond reasonable doubt; and even assuming, for the sake of argument, that he was responsible for the death of Sotero Roy, he can only be held liable for homicide since no qualifying circumstances were proven by the prosecution. The threat uttered on 1 May 1986 was made in the heat of a quarrel; there was no evidence to show that he intended to make good the same. On the contrary, both he and the victim continued to work together, thus indicating that he did not cling to his determination.

This appeal is unmeritorious.

The inconsistencies in the testimony of Robert Mingoa involve minor or inconsequential, if not trivial, matters.

One of the more well-entrenched rules in our criminal justice system is that inconsistencies on minor, trivial or inconsequential matters do not affect the credibility of a witness; [18] on the contrary, they may be considered as badges of veracity [19] or manifestations of the truthfulness on material points in the testimony. [20] They may likewise show the sincerity of the witness and the absence of connivance between witnesses to make their testimony tally in every respect, [21] and heighten the witness' credibility. [22]

It is clear that the alleged inconsistency regarding the place where the incident took place results from a misappreciation of the totality of the testimony of Robert Mingoa. The latter did not say that the attack on the victim commenced and ended in the house. On the contrary, he categorically declared that the victim was initially stabbed near its gate. It was after this first attack that the latter rushed towards the house. The assailants then followed him and continued their attack inside the house. Moreover, there is absolutely no evidence to indicate any ulterior or improper motive which would have caused Robert Mingoa to testify against the accused except to see to it that justice be done. This absence of improper motive further enhanced his credibility. [23] Finally, Mingoa's failure to state the complete names of the victim and the latter's co-employees has no bearing whatsoever on the case and is entirely irrelevant.

The trial court correctly discredited accused-appellant's defense of alibi. We have held that this defense can be availed of only when there is no clear evidence of the presence and participation of an accused in the crime charged, and it is impossible for him to be physically present at the crime scene at the time it was committed. [24] Otherwise stated, it cannot prevail over a positive identification of the accused, [25] and will not be appreciated where it was not impossible for the latter to have been present at the time of the commission of the crime. [26] In the instant case, accused-appellant and his companion Palping were positively identified by Robert Mingoa as the perpetrators of the crime. For this reason alone, the defense of alibi is worthless. Moreover, the accused-appellant was allegedly in Caloocan City when the victim was attacked and killed in Novaliches, Quezon City. The former did not show that it was physically impossible for him to have been in Novaliches at that particular time by reason of the distance between these two places. This Court takes judicial notice of the proximity of Caloocan City to Novaliches, Quezon City and concludes that it was not impossible for the accused-appellant to have been present at the scene of the crime at the time of the killing.

All the protestations of innocence by the accused-appellant are belied by his flight. He did not report for work the day after the incident. Furthermore, he left his residence, which was at his place of work in Novaliches, and moved to Caloocan City in the evening of 17 May 1986 where he stayed for one week with Palping. Thereafter, he transferred to Mandaluyong where he remained until his arrest. [27] He offered no acceptable explanation as to

why he so suddenly left his employment -- his only source of livelihood -- and why he had to move from one place to another. It has long been settled that the flight of the accused is competent evidence against him as having a tendency to establish his guilt;[28] unexplained flight is a circumstance from which an inference of guilt may be drawn, for the wicked flee even when no man pursueth; but the righteous are as bold as a lion.[29]

We are unable to agree with accused-appellant's proposition that no qualifying circumstance attended the commission of the crime.

The reconstituted Information alleges three qualifying circumstances, namely evident premeditation, treachery and the accused's taking advantage of superior strength. The evidence for the prosecution established beyond reasonable doubt, through the testimony of Armando Baldemoro, that on 1 May 1986, the victim and the accused-appellant quarreled over the latter's alleged amorous relation with the former's wife, Edmunda. Before the two could come to blows, co-workers intervened and pacified them. However, before leaving, accused-appellant threatened Sotero, saying that given the opportunity, he would kill the latter.[30] The killing occurred sixteen (16) days later. At that time, accused-appellant purposely brought along Palping; together, they attacked the victim.

These facts unerringly show that the qualifying circumstance of evident premeditation[31] attended the killing of the victim. To properly appreciate this circumstance, it is necessary to show (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that he had clung to his determination; and (c) a sufficient lapse of time between the determination and the execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[32] Sixteen (16) days afforded accused-appellant more than enough time to reflect upon the consequences of his act. Anent the second requisite, the accused-appellant showed that he had clung to his resolution by entering into a conspiracy with Palping to eliminate Sotero Roy so he could have Edmunda all to himself.

As regards the allegation of abuse of superior strength, which is a relative circumstance, We find that the same was not adequately proven. Mere superiority in number is not enough; there must exist proof of deliberate intent to take advantage of superior strength.[33] Treachery was not likewise established. There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[34] In the instant case, Robert Mingo, the lone eyewitness, was not able to observe the commencement of the assault; he could, therefore, not testify on how it all began and developed. In *United States vs. Perdon*[35] and *United States vs. Pangilion*,[36] this Court ruled that where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the victim began and developed, treachery cannot be appreciated to qualify the killing. Thus, it cannot be considered where the lone eyewitness did not see the commencement of the assault.[37] In the instant case, the victim sustained two (2) stab wounds in his chest and two (2) stab wounds in his back. The chest wounds could have very well resulted from an initial frontal attack on the victim; thus, it is possible that the latter could have even offered some resistance by parrying the thrusts of the assailants. This is evidenced by the "[W]ound incised, 3.0 cm. ... anterior aspect, chest, left." [38] The possibility of this initial frontal attack and the absence of any proof that the same was unexpected and sudden sustain a rejection of the qualifying circumstance of treachery.

With evident premeditation having been sufficiently established, the killing of the victim, Sotero Roy, would amount to Murder, penalized under Article 248 of the Revised Penal Code by reclusion temporal in its maximum period to death. Since neither aggravating nor mitigating circumstances were proven, the penalty, pursuant to Article 64(1) of the Revised Penal Code, should be imposed in its medium period. Considering Section 19(1), Article III of the 1987 Constitution which prohibits the imposition of the death penalty, and the rule enunciated in

People vs. Muñoz,[39] the trial court correctly imposed the penalty of reclusion perpetua. The indemnity should, however, be increased to P50,000.00 in view of the present policy of this Court.

WHEREFORE, except as to the indemnity which is hereby increased from P30,000.00 to P50,000.00, the appealed decision of Branch 98 of the Regional Trial Court of Quezon City in Criminal Case No. Q-43760, dated 30 April 1990 and promulgated on 3 May 1990, is hereby AFFIRMED in all respects.

Costs de officio.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Autopsy Report of Dr. Rodolfo Lisondra, NBI Medico-Legal Officer (Exhibit "F").

[2] Id.

[3] Reconstituted Original Records, 3.

[4] Id., 33.

[5] Reconstituted Original Records, 34-35.

[6] Id., 37.

[7] Id., 65.

[8] Complying with this Court's Resolution of 2 September 1992 (Rollo, 65), both the appellant and the Office of the Solicitor General manifested that the testimony of Dr. Lisondra may be dispensed with (Id., 67; 70). The appellant offered no objection to the latter's autopsy report (Exhibit "F") and certificate of post-mortem examination (Exhibit "G").

[9] Reconstituted Original Records, 160; Rollo, 32-36.

[10] Id., 159-160; Id., 39-40.

[11] Id., 59 et seq.

[12] Appellee's Brief, 3-6.

[13] Reconstituted Original Records, 165; Rollo, 43.

[14] Id., 45.

[15] Id., 52, et seq.

[16] Appellant's Brief, 1.

[17] Appellant's Brief, 9.

[18] People vs. Genoguin, 56 SCRA 181 [1974]; People vs. Pajenado, 69 SCRA 172 [1976]; People vs. Mahinay, 80 SCRA 273 [1977]; People vs. Molo, 88 SCRA 22 [1979]; People vs. de la Cruz, 91 SCRA 525 [1979]; People vs. Celestino, 96 SCRA 489 [1980].

[19] People vs. Tumulip, 60 SCRA 303 [1974]; People vs. Balmaceda, 87 SCRA 94 [1978].

- [20] People vs. Manzanares, 177 SCRA 427 [1989]; People vs. Barba, 203 SCRA 436 [1991].
- [21] People vs. Pielago, 140 SCRA 418 [1985]; People vs. Noguerras, 181 SCRA 19 [1990].
- [22] People vs. Castañeda, 93 SCRA 56 [1979].
- [23] People vs. Valera, 90 SCRA 400 [1979].
- [24] People vs. Tanchico, 93 SCRA 575 [1979].
- [25] People vs. Abletes, 58 SCRA 241 [1974]; People vs. Salazar, 58 SCRA 467 [1974]; People vs. Jamero, 75 SCRA 137 [1977]; People vs. Gonzaga, 77 SCRA 140 [1977]; People vs. Damaso, 86 SCRA 370 [1978]; People vs. Pasco, 181 SCRA 233 [1990]; People vs. Obando, 182 SCRA 95 [1990]; People vs. Mercado, 97 SCRA 232 [1980].
- [26] People vs. Ignacio, 60 SCRA 11 [1974]; People vs. Lingao, 75 SCRA 130 [1977]; People vs. Lopez, 80 SCRA 18 [1977]; People vs. Dueño, 90 SCRA 23 [1979].
- [27] TSN, 27 March 1990, 4, 13, 14.
- [28] U.S. vs. Alegado, 25 Phil. 510 [1913].
- [29] U.S. vs. Sarikala, 37 Phil. 486 [1918]; see also, People vs. Garcia, G.R. No. 69581, 21 May 1992.
- [30] TSN, 24 August 1990, 9.
- [31] Article 14 (13), Revised Penal Code.
- [32] U.S. vs. Gil, 13 Phil. 530 [1909]; People vs. Torejas, 43 SCRA 158 [1972]; People vs. Ardisa, 55 SCRA 245 [1974]; People vs. Cardenas, 56 SCRA 631 [1974]; People vs. Manzano 58 SCRA 250 [1974]; People vs. Lacao, 60 SCRA 89 [1974]; People vs. Beralde, 91 SCRA 125 [1979]; People vs. Clamor, 198 SCRA 642 [1991]; People vs. Nabayra, 203 SCRA 75 [1991]; People vs. Barba, 203 SCRA 436 [1991].
- [33] People vs. Martinez, 96 SCRA 714 [1980].
- [34] Article 14(16), Revised Penal Code.
- [35] 4 Phil. 141 [1905].
- [36] 34 Phil. 786 [1916].
- [37] People vs. Cananowa, 92 SCRA 427 [1979]; People vs. Narit, 197 SCRA 334 [1991].
- [38] Exh. "F".

[39] 170 SCRA 107 [1989].

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