

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SOTERO CRUZ Y SAN ANDRES, ACCUSED.

G.R. No. 94375. September 04, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

The accused-appellant, Sotero Cruz y San Andres, was charged before the Regional Trial Court, National Capital Region at Pasig, Metro Manila, Branch 164, with the crime of murder committed as follows:

“That, on or about the 12th day of May, 1989, in the municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, treachery and evident premeditation, taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said handgun one Gerardo Lim y Escanilla @ Gerry on the left eyebrow, as a result of which said Gerardo Lim y Escanilla sustained mortal wounds which caused his immediate death.

“Contrary to law.” (Rollo, p. 10)

Upon arraignment, the accused entered the plea of not guilty to the offense charged. After trial on the merits, the lower court rendered its judgment on June 22, 1990, the dispositive portion of which states:

“ACCORDINGLY, the Court finds the accused SOTERO CRUZ y SAN ANDRES GUILTY beyond reasonable doubt of the crime of Murder as charged for the killing of Gerardo Lim; and therefore, hereby imposes upon him the penalty of reclusion perpetua, there being no mitigating or generic aggravating circumstances (People vs. Millora, G.R. Nos. 38968-70, February 9, 1989) present; and to pay the amount of P30,000.00 to the heirs of the victim as compensatory damages as well as to pay the costs.

“SO ORDERED.” (Rollo, p. 18)

Thus, this present recourse with the following assignment of errors:

“ARGUMENTS

First Assignment of Error

THE LOWER COURT ERRED IN NOT FINDING THAT THE KILLING OF GERARDO LIM WAS ACCIDENTAL (WITH NO INTENT TO KILL) WHEN THE GUN, THAT THE ACCUSED WAS HANDING WENT OFF.

Second Assignment of Error

THE TRIAL COURT ERRED WHEN IT FOUND THAT TREACHERY WAS IN ATTENDANCE IN THE KILLING OF GERARDO LIM.” (Rollo, pp. 38 and 52)

The antecedent facts of this case are narrated by the Solicitor General in his brief, to wit:

“Aside from being ‘compadres’ for having stood as sponsors in the baptism of the son of a certain Nestor Lacuestas, appellant was also a driver of one of the two tricycles of victim Gerardo Lim. Every time appellant had financial problems, he would ask the help of the victim and would get angry if the latter could not help him. When the victim sold the tricycle he was driving, appellant resented it and bore a grudge against the former (pp. 3-4, 8-9, tsn, May 3, 1991; pp. 2-3, tsn, June 5, 1990).

“At about 4:00 o’clock in the afternoon of May 12, 1989, the victim and a co-tricycle driver were conversing along Banaag Street, Pineda, Pasig, Metro Manila waiting for passengers. Suddenly, appellant appeared and approached the victim. Upon nearing the victim, appellant angrily uttered, “Pare, walang presidente-presidente sa akin,” as he simultaneously drew out a gun from the front portion of his waist and shot the victim with it point blank, hitting the upper left eyebrow of the latter which caused him to fall on the ground (pp. 3-5, 8, tsn, May 9, 1990; pp. 3-4, tsn, May 23, 1990).

“Thereafter, appellant, who was still holding the gun, boarded one of the parked tricycles and directed its driver to conduct him to the place where people wait for ‘bancas’ to ferry them across the Pasig river (p. 4, tsn, May 23, 1990).

“Meanwhile, the victim was brought to the Rizal Medical Center where he expired from the gunshot wounds he sustained (Exhibits ‘A’ and ‘B’). Dr. Dario L. Gajardo of the PC-INP Crime Laboratory Services, upon request from the Eastern Police District of the Metropolitan Police Force (Exhibit ‘E’), conducted an autopsy on the victim’s cadaver. Dr. Gajardo issued Medico-Legal Report No. 0375-89 (Exhibit ‘G’), wherein he recorded his findings, stating therein the cause of death of the victim as cardio-respiratory arrest due to shock and hemorrhage secondary to gunshot wound in the head (pp. 4-5, tsn; May 3, 1990; pp. 11-13, tsn, May 9, 1990).

“Dr. Gajardo also prepared a human body sketch (Exhibit ‘H’), indicating the injuries sustained by the victim. He explained that the presence of tattooing on wound No. 3 was caused by unburned gun powder residue - meaning that the distance between the tip of the gun from the skin of the victim could only be about seven (7) to nine (9) inches. He also identified a plastic bag (Exhibit ‘J’) containing a slug (Exhibit ‘K’), which was allegedly found lodged in the victim’s brain (pp. 13-19, tsn, May 9, 1990).” (Rollo, pp. 6-8 [Brief for Plaintiff-Appelle, pp. 3--6]).

We affirm.

The accused-appellant maintains that the shooting of the victim was accidental. He claims that he was having a drinking spree in his house; that upon being informed of the illness of his son, he wanted to borrow money from his drinking companions but they did not have any; that instead, one of his drinking companions handed him a gun in order that he could pawn it; that he went to the “paradahan” (queue) of tricycles because he wanted to pawn the handgun to his fellow tricycle drivers to buy medicine for his sick and convulsing child; that he saw the victim, his compadre, whom he always approached whenever he has problems, financially or otherwise; that he approached the victim and handed the handgun to the latter to pawn the same; that as he was handing the gun, the gun went off and hit the victim; and that as it fired, he blacked out because of shock and could not remember what happened next (TSN, June 5, 1990, pp. 44-47).

We are not persuaded. The established rule is that the appellate courts will generally not disturb the factual findings of the trial court as the latter is in a better position to decide the same, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial (*People v. De Mesa*, No. 87216, July 28, 1990, 188 SCRA 48, 52). In the case at bar, the records clearly reveal that the killing of the victim was no accident. The prosecution witnesses, who were at the crime scene, positively declared that the appellant shot the victim, thus:

Teodulo Nacion

Fiscal:

“Q. Mr. Witness, do you know a person by the name of Gerardo Lim?

“A. Yes, Sir.

“Q. How did you come to know him?

“A. Because he is also a co-tricycle driver of mine, Sir.

“Q. How about a person by the name of Sotero Cruz. Do you know a person by that name?

“A. Yes, Sir.

“Q. How did you come to know a person by that name Sotero Cruz?

“A. He is also a tricycle driver, Sir, like us.

“Q. If you will again see this Sotero Cruz, would you be able to identify him?

“A. Yes, Sir.

“Q. Please, look around the courtroom and point to the person of the accused Sotero Cruz?

“A. He is the third person seated on the extreme end of the bench. (Witness pointing to a person in white t-shirt and denim pants and who when asked gave his name as Sotero Cruz, accused in this case).

“Q. Can you tell the Honorable Court where were you on May 12, 1989?

“A. At the time, Sir, I was plying my route.

“Q. And at around 4:00 p.m. of May 12, 1989 on what place were you?

“A. At the time, Sir, I was in a queue among these tricycles.

“Q. Where is this place were you usually ply your tricycle route to get passengers?

“A. Along Banaag Street, Sir, in Pineda.

“COURT:

“Q. Where is Pineda?

“A. Pasig, Sir.

“FISCAL:

“Q. Do you know where Gerardo Lim at the time?

“A. At the time, Sir, Gerardo Lim approached me and talked with me.

“Q. While you were talking with Gerardo Lim, do you know where Sotero Cruz is?

“A. At the time that we were conversing and that refers to Gerardo Lim, Sotero Cruz suddenly arrived.

“Q. When Sotero Cruz suddenly arrived, what happened next if there be any?

“A. The two of them talked first, Sir.

“Q. When they talked to each other, to whom are you referring to that Sotero Cruz talked to?

“A. I was referring to Gerry, Sir. That at the time Gerry Lim and I were conversing, he arrived and afterwards

he talked with Gerardo Lim.

“Q. Where were you when they were talking with each other?

“A. I was right there at the place, Sir. The three of us were there in the place.

“Q. What happened when you have seen Gerardo and the accused here talking with each other?

“A. After that, Sir, I saw Bong Cruz suddenly drew out a gun and I heard a shot.

“Q. What happened next after you have heard the shots were fired?

“A. I saw Gerry already in the act of falling.

“Q. How many shots were actually fired?

“A. Only one, Sir.

“Q. And what happened next after you have seen Gerry actually falling down?

“A. After I saw Gerry fall on the street, I was stunned and I stood there motionless.

“Q. With regards to this Bong Cruz and the accused Sotero Cruz how are they related to each other?

“A. They are one and the same person, Sir. That is only his alias.

“Q. When you testified a while ago you are always referring to Gerry. With regards to Gerry and the victim here Gerardo Lim how are they related to each other?

“A. I have known this person as Gerardo Lim during all the time that we were driving our tricycles. He was also a driver of a tricycle like me. It was only from his wife that I came to know that his real name was Gerardo Lim.

“Q. By the way, you saw Gerry or Gerardo fall to the ground. Can you tell the Honorable Court what was the cause why he fell to the ground?

“A. Because he was shot, Sir.

“Q. And who shot Gerry or Gerardo Lim?

“A. Bong Cruz, Sir.

“Q. To what part of the body was shot at by Bong Cruz or Sotero Cruz?

“A. Gerry or Gerardo Lim was hit here, Sir.

(Witness pointing to an upper portion of his eyebrow).

“Q. What is the relative position of Gerry and Sotero when the shot was fired. Where they facing with each other?

“A. Yes, Sir, they were facing each other.

“Q. How far were you when the shot was fired?

“A. The three of us were almost side by side, Sir.

“Q. To what direction were you facing before the shot was fired?

“A. At the time, Sir, I was right there in front of them. I was counting off some money (at this juncture witness

glanced up and said) then I heard the shot.

“Q. Did you happen to see the type of the gun used by Bong on that date?

“A. A short gun, Sir. ‘Debola’.

“Q. After the shot was fired and Gerry slumped or fall to the ground, do you know what Bong or Sotero did after the fire was shot?

“A. He left, Sir.

“Q. And what did you do after Sotero Cruz left the place?

“A. You see, Sir, because of this incident, the shooting incident that happened and which I witnessed as I mentioned earlier, I stood there motionless. I was in state of shock. As a matter of fact, I was trembling all over.

“Q. Mr. Witness, you said you were around when Sotero Cruz and Gerry were conversing with each other. Did you happen to hear what they were conversing at the time prior to the firing of the gun by Sotero?

“A. I did not know, Sir, the details of their conversation. All that I heard was that after Bong got angry he uttered these words: ‘Walang presidente-presidente sa akin.’ I don’t care whether you are a president or not.

“x x x.” (TSN, May 9, 1990, pp. 13-17).

Antonio Eusebio

Fiscal:

“Q. And while you were at that place on May 12, 1989, do you recall if anything unusual occurred?

“A. There was, Sir.

“Q. What was this unusual incident all about?

“A. About the shooting of Gerardo Lim, Sir.

“Q. Where were you when Gerry Lim was shot at?

“A. At the time, Sir, I was in a queue of tricycles waiting for passengers.

“Q. And who shot Gerardo Lim?

“A. Sotero Cruz, Sir.

“Q. If you will again see this Sotero Cruz, could you still identify him?

“A. Yes, Sir.

“Q. If he is in the courtroom, please kindly point to the person of Sotero Cruz?

“A. He is the man, Sir, in white t-shirt with the word ‘Honda’. (Witness pointing to a man seated on the second bench of the courtroom and who when asked gave his name as Sotero Cruz, accused in this case).

“Q. Can you tell the Honorable Court how Sotero Cruz shot Gerry Lim?

“A. I saw Teodulo Nacion and Gerry Lim talking to each other, Sir. Then Sotero Cruz suddenly approached him, meaning Gerardo Lim (and at this juncture witness raised his right arm as if holding to something) and then shot Gerardo Lim. Gerardo Lim was hit on a portion of his forehead near his left side and I saw Gerardo Lim fall on the ground.

“Q. With what weapon did Sotero Cruz shot Gerardo, if you know?

“A. A small black gun, Sir.

“Q. And how many shots were fired?

“A. I only heard one shot, Sir.

“Q. How far were you from Gerardo Lim and Sotero Cruz when you heard the first shot?

“A. In my estimate, Sir, my distance from them could be around three meters, Sir.

“Q. And before the shots were fired, do you know what happened between Gerardo Lim and Sotero Cruz, if there be any?

“A. I do not know, Sir.

“Q. And after Sotero Cruz fired the gun, what happened next if there be any?

“A. Nothing more that I know of, Sir.

“Q. What did Sotero Cruz do if there be any after the shots were fired?

“A. After that, Sir, he approached me at the place where my tricycle was, boarded it and directed me to conduct him to the place where people boarding the banca have to stay or to wait. ‘Sakayan ng banca’.” (pp. 34-35, TSN, May 23, 1990, underscoring supplied).

The aforequoted categorical declarations were not rebutted by any contrary convincing evidence. Appellant’s claim of friendship or of being a “compadre” to the victim will not save the day for him. Friendship or even relationship is not a deterrent to the commission of a crime (People v. Bilog, G.R. No. 76529, July 19, 1990, 187 SCRA 556, 564). Besides, We find no evidence that would show that the aforesaid witnesses were prompted by any improper motives or ill?feelings to testify against the appellant. Consequently, the trial court did not err in giving full credence to their testimonies.

We likewise approve of the Solicitor General’s observation that “if the shooting of the victim were accidental, appellant would have come to his aid and taken him to a hospital, instead of abandoning him and escaping. Besides, if appellant’s version were true, how come none of his drinking companions, or members of his family for that matter, was presented as a witness to corroborate his testimony?” Indeed, appellant’s flight from the scene of the crime sealed his fate. In People v. Balansi (G.R. No. 77284, July 19, 1990, 187 SCRA 566, 572-573). We held that “... flight is a silent admission of guilt. As aptly put: ‘The righteous is brave as a lion, but the wicked man fleeth.’”

Further, We do not believe that the appellant’s intention to see the victim was only to pawn the gun so he could buy medicines for his sick child. The trial court’s ruling in this regard is in order. We quote:

“Moreover, a handgun is not an ordinary item of commerce. Even the accused knows that it is a government controlled item and to a certain extent, banned for ordinary use. No person who owns a handgun legitimately will offer it to somebody for the latter to pawn or provisionally dispose of. Much less will a person accept such a controlled item as guarantee to a loan that he is granting because he knows that its mere possession without governmental authority would subject him to criminal prosecution that meets severe punishment.” (p. 17, Rollo)

Lastly, appellant disclaims the trial court’s finding of treachery. He avers that if treachery was in his mind, he would not have approached the victim while talking with Teodoro Nacion as the latter who was just beside them could have pushed him or grabbed the gun; and that such frontal attack did not insure the execution of killing the

victim without risk to himself.

Appellant's argument has no merit. The victim was unarmed. Both the victim and Teodulo Nacion did not have the least suspicion of the appellant's design to shoot the former. In contrast, the appellant had a gun. The victim therefore had no chance to defend himself against the latter's frontal attack. In *People v. Damo* (L-60370, April 17, 1984, 128 SCRA 665, 669), We ruled that treachery is present in the commission of a crime when executed suddenly and unexpectedly even if made face to face. The trial court therefore correctly appreciated the aggravating circumstance of treachery to qualify the killing of the victim as murder.

In its judgment of conviction, the trial court ordered an indemnification of P30,000.00 to the heirs of the victim. Conformably with the recent court rulings, this amount should now be increased to P50,000.00.

ACCORDINGLY, the judgment appealed from is hereby **AFFIRMED** subject to the modification as above-indicated.

SO ORDERED.

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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