

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO WENCESLAO, DANILO WENCESLAO AND OSCAR WENCESLAO, ACCUSED-APPELLANTS. EDGARDO WENCESLAO, APPELLANT.

G.R. No. 95583. August 12, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by Edgardo Wenceslao from the decision of the Regional Trial Court, NCJR, in Crim. Case No. 85-38400, convicting him of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, to pay P309,000.00 to Francisco Gatmaitan, as indemnity for the death of Arturo Gatmaitan without subsidiary imprisonment in case of insolvency and to pay the costs. As for the brothers Oscar and Danilo, the case against them was archived for being at-large and the trial court never obtained jurisdiction over them.

On August 2, 1985, appellant together with his two brothers, Danilo Wenceslao y Lara and Oscar Wenceslao y Lara were charged with the crime of murder in an Information which reads, to wit:

"That on or about March 16, 1985, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another and with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one ARTURO GATMAITAN Y GUTIERREZ, by then and there shooting the latter with the use of a shotgun ("sumpak") and .38 caliber firearm, hitting the latter on the right chest and nape, thereby inflicting upon the said Arturo Gatmaitan y Gutierrez, gunshot wounds which were the direct and immediate cause of his death.

CONTRARY TO LAW."[1]

Plaintiff-appellee's version of the incident as summarized by the People in its brief is as follows:

"Danilo Villegas testified that at about 12:00 noon of March 16, 1985, he and Alvino Reano went to the house of Arturo to ask his help in securing a passport. At Arturo's house, they were told by Arturo's wife that he had just left for Coral Street. They followed Arturo to Coral Street passing by Angustia Street.

Moments later, about 15 meters away, they saw Arturo being held by appellant on his left hand and by Oscar on his right hand while Danilo was right in front of Arturo.

While they were 15 meters behind the back of the three men, they recognized Arturo as he tried to struggle to free himself from the hold of the two brothers. Thereafter, they heard a gunshot from a 'sumpak' which Danilo was holding in front of and pointed at Arturo. Arturo fell to the ground face downward and appellant shot Arturo twice with a revolver. The Wenceslao brothers then fled towards Canal dela Reina. They also then left the scene of the crime. Villegas told Francisco what he saw when he went to the wake of Arturo the next day (Decision, pp. 3-4).

Francisco, father of the victim, testified that at about 12:00 noon on March 16, 1985, he was on his way home for lunch with his family when he noticed that there were plenty of people. When he inquired, he was told that

his son Arturo was shot and that he was already brought to the Mary Johnston Hospital. He rushed to the hospital and he found his son dying at the emergency area surrounded by doctors and nurses who were trying to help him. He asked his son if he could still talk and his son whispered 'opo'. When he asked him who shot him, he whispered 'Wenceslao' and when asked who among them, Arturo whispered that he was shot by a 'sumpak' by Danny and appellant shot him with a .38 caliber revolver while he was being held by Oscar. Since his son was already very weak, he directed him not to talk anymore. He said he knew the Wenceslao brothers very well because he had always lived in Tondo. His son died at around 12:50 p.m. of that same date (tsn, August 9, 1988, pp. 2-3).

He further declared that he spent a total of more than P209,000.00 for the hospital, wake, funeral, attorney's fees and other incidental expenses, including P125,000.00 for the education of the sons of the victim. He also asked for P100,000.00 as moral damages (ibid).

On even date, Cpl. Galicano Sarmiento, a homicide investigator at the Western Police District, received a report of a shooting incident at Coral Street. The victim was brought to the Mary Johnston Hospital so he immediately went to the said hospital. Arriving there at around 2:00 p.m., he found the victim Arturo Gatmaitan already dead. He also saw Ex-Councilor Francisco Gatmaitan, father of the victim in the hospital, who named the three Wenceslao brothers as the suspects (tsn, June 18, 1986, pp. 4-6)."[2]

On the other hand, appellant's version is diametrically opposed to that of the prosecution.

Edgardo Wenceslao, one of the accused, testified that at around 12:00 noon of March 16, 1985 while he was in front of a store at Coral Street, he noticed the people nearby to be restless. When he turned around, he saw Arturo Gatmaitan and one Fernando approaching him with the former holding a drawn handgun and the latter with a long gun. The two were cursing him, saying 'Putang ina mo Gardo, tapos na.' He panicked and wanted to run away but since he had no way to go, he was left with no choice but to face the two. When Fernando pointed his long gun at his direction he grabbed the same and pointed it away from him and immediately the gun fired hitting the deceased Arturo Gatmaitan. At that moment, the gun he was grappling with broke leaving the barrel with him. Scared, he immediately fled bringing the gun barrel with him, which he later threw away.

Appellant further testified that no bad blood existed between him and the deceased, though he knew that the latter was hunting him as he suspected appellant of allegedly making advances on his mistress, which appellant denied. He likewise denied that his brothers, Oscar and Danny were with him when the incident in question occurred.

Appellant's testimony was corroborated by defense witnesses Victorio Cruz and Emilia Peña.

On the appeal, accused-appellant Edgardo Wenceslao assigns four errors of the court a quo in convicting him:

"I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES WHICH ARE REplete WITH MATERIAL INCONSISTENCIES.

II

THE TRIAL COURT ERRED IN NOT DECLARING THAT THE FATAL INJURY SUSTAINED BY THE VICTIM WAS ACCIDENTAL AND INFLICTED IN SELF-DEFENSE.

III

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT WHEN THE EVIDENCE AGAINST HIM WAS NOT PROVEN BEYOND REASONABLE DOUBT.

IV

ASSUMING ARGUENDO THAT THE INJURY SUSTAINED BY THE VICTIM WAS NOT ACCIDENTAL AND THAT ACCUSED-APPELLANT WAS NOT JUSTIFIED IN INFLICTING THE INJURY SUSTAINED BY THE VICTIM, THE TRIAL COURT, NONETHELESS, ERRED IN CONVICTING HIM OF MURDER."[3]

We vote to affirm accused-appellant's conviction.

I

Because of the totally conflicting versions of both the prosecution and the defense, much weight in the resolution of this appeal has been given to the eloquent testimony of the medico-legal expert, Dr. Nieto Salvador of the NBI, on the nature and location of the gunshot wounds on the body of the deceased.

At the start, appellant failed to establish any improper motive on the part of the prosecution eyewitnesses as to why they would give false testimony against him if not to tell the truth. Plaintiff's witness Danilo Villegas testified that at high noon, while he was 15 meters away from Arturo Gatmaitan, he saw Danilo Wenceslao shoot Arturo with a "sumpak" while Oscar and Edgardo were holding him by the arms and as the deceased fell down, appellant Edgardo Wenceslao shot him with a .38 cal. gun at the back of his head.[4] Appellant's allegation that Villegas could not have identified the three Wenceslao brothers is clearly preposterous.

Plaintiff's other witness, Francisco Gatmaitan, father of the deceased victim, testified that his son -- who was having difficulty talking at that time -- whispered to him at the emergency room of the Mary Johnston Hospital in Tondo that Danny and Edgar Wenceslao shot him with a "sumpak" and with a .38 cal. revolver, respectively[5], while Oscar held his hands. Forty minutes later his son passed away,[6] thus bringing his son's last words within the ambit of a "dying declaration." The deceased made the declaration under the consciousness of an impending death.[7]

Appellant's witnesses, Victoria Cruz and Emilia Peña, are both friends of the accused-appellant and his mother. Victoria Cruz' mother being the childhood friend of Wenceslao's mother[8] while Emilia Peña, is a seamstress of Edgardo's mother.[9]

Victoria Cruz corroborated Edgardo Wenceslao's testimony that as the "thin dark companion" of the deceased was about to hit the appellant with the "leadpipe" that he was holding, a shot rang out hitting the deceased. Emilia Peña testified that after the second shot, she stood up to see Edgardo running away.

The nature, type and location of the wounds sustained by the deceased, as testified to by Dr. Nieto Salvador, Medico-Legal Officer of the NBI, shed light on whose version is more credible, that of the appellant or of the prosecution, thus:

"COURT:

Q - Were you able to determine Doctor, which of the two wounds – that is the pellet wound or the handgun or shotgun wound had been inflicted first?

A - No sir, I have no way of determining which of these two wounds was inflicted first. I have no way of showing that, Your Honor.

Q - Your opinion that the victim was already lying down, face downward, when the gunshot was inflicted or when he was fired upon by the handgun, does that not indicate that the pellets were inflicted first which brought down the victim?

A - If you are going to think it over, we can at least make the conclusion similar to that Your Honor, but I would not say categorically that that is the sequence of the gunshot wound that the victim sustained, sir.

Q - Considering the location of the pellet wounds on the chest and as you said in your opinion that the gunshot wound was inflicted while the victim was lying down, face downward, would it not be impossible to inflict the pellet wounds if it was later on?

A - Yes, Your Honor.

Q - Therefore, you agree on the possibility that the pellet wounds were inflicted first?

A - Most probably, Your Honor.

Q - The gunshot wound by itself would not be fatal wound?

A - No, Your Honor, if you are going to consider it as only the gunshot wound, it is not a fatal gunshot wound.

Q - On the other hand the pellet wounds even without the gunshot wound would be fatal?

A - Fatal, Your Honor.

Q - As you have said death would be sudden?

A - I did not say immediate, Your Honor, I said relatively immediate because of the hemorrhage or actually severe hemorrhage that occurred following the shotgun wound that the victim sustained.

COURT:

No further questions?"[10]

The autopsy report showed the physical impossibility of appellant's version of the incident --- that he got hold of the barrel of the "sumpak" as the companion of the deceased was aiming it at him; that while grappling for the possession of the gun it went off hitting the deceased; and that as the latter was falling, an incredible thing happened: the deceased shot himself at the back of the head with the handgun he was supposedly holding.

As stated by the Solicitor General: "The angle and entry characteristics of the neck wound indicate that it could not have been self-inflicted even by a contortionist."[11]

The court a quo is likewise of the same opinion. The shooting incident could not be accidental nor inflicted in self-defense. Said the Court:

"On the other hand, the defense version of the incident is too unnatural, and too improbable to be believed at all. The 'sumpak' is a long gun. In fact, its barrel, which is an iron pipe actually, can be, as in fact was mistaken for a long lead pipe. In Edgardo's own testimony, he claimed that he was able to hold tight on the long barrel of the sumpak that Ferdinand was pointing at him, and as it fired, it was then that the barrel was turned to Arturo, and Arturo was hit.

The Court cannot imagine, much less visualize, how the long barrel of the sumpak could be turned towards Arturo as to hit him when it fired. Edgardo himself testified that because of the force with which he wrestled for the sumpak, the barrel was detached and was left in his hand, which he threw away when he became scared holding it, while the body of the gun was left with Ferdinand. If the gun was that (sic) dismembered, how can it still be fired, as to hit Arturo accidentally?

If the above version of an accidental shooting is hard to believe, so is the defense version of the handgun shot even more for Ripley's. For the defense submits that after Arturo was already shot with a shotgun, seven 00 gauge pellets hitting him resulting in massive bleeding and death according to Dr. Nieto Salvador, then how

can the victim in that condition have the physical strength to draw a handgun, fire it, and accidentally to his head? Just unbelievable. Incredible. Especially if the wound of entrance as certified to in the autopsy report is to be considered, because the wound is at the back of the head, exiting in front, at the neck, which is the precise trajectory of the bullet when the victim was shot by someone standing, while he was lying face downward after falling down, which is how the prosecution's evidence describes how Edgardo shot Arturo with a handgun after Arturo was hit first with the sumpak gunshot and then fell face downward."[12]

The prosecution's evidence shows that appellants Oscar, Danilo and Edgardo consciously adopted a method, means and form of attack to ensure that the victim was not in a position to defend himself, that is, with Oscar and Edgardo holding Arturo by the hands while Danilo shot him with a "sumpak" and right thereafter, with Edgardo shooting him behind the head with a .38 caliber revolver. This qualifies the killing to treachery.[13]

Even without direct evidence of their criminal conspiracy, the same may be inferred from their joint and simultaneous acts toward a common purpose.[14] Thus, it is of no moment that Edgardo did not fire the fatal shot. He is still liable for the murder of Arturo Gatmaitan.

Evident premeditation, however, was not proven by the prosecution. When there is no direct evidence of the planning and preparation to kill or when the plan was conceived, evident premeditation cannot be considered.[15] The information that Edgardo Wenceslao heard that Arturo was "hunting" him because of competition over a girl -- Arturo's mistress -- is not sufficient to prove evident premeditation.

II

Exhibit "L"[16] is a typewritten list of the actual damages being claimed by the father of the deceased. However, no proof of the actual damages amounting to P209,000.00 was ever presented in court. In *Dichoso vs. Court of Appeals*,[17] We held that:

"Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with reasonable degree of certainty. A court cannot rely on speculation, conjecture or guesswork as to the fact and amount of damages, but must depend upon competent proof that they have suffered and on evidence of the actual amount thereof (*Dee Hua Liong Electrical Corporation v. Reyes*, 145 SCRA 713, November 25, 1986.)"

Since the actual amounts stated in Exhibit "L" were not proven, the same cannot be granted.

As to the award of moral damages in the amount of P100,000.00, We reduce the same to P50,000.00 since these damages, incapable of pecuniary estimation, while recoverable if they are the proximate result of defendant's wrongful act or omission, are not intended to enrich the complainant at the expense of the defendant[18] and the same must not be palpably and scandalously excessive so as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court.[19]

WHEREFORE, the assailed judgment is hereby affirmed with the modification that the accused-appellant is sentenced to pay an indemnity to the heirs of the deceased Arturo Gatmaitan in the amount of P50,000.00 in consonance with the latest Supreme Court pronouncements, to pay further the amount of P50,000.00 as moral damages and to pay the costs. All other awards by the Court a quo are hereby deleted.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

[1] p. 14, Rollo.

- [2] pp. 73-77, Rollo.
- [3] p. 36, Rollo.
- [4] TSN, November 18, 1987, pp. 5-6.
- [5] TSN, August 9, 1988, p. 2.
- [6] TSN, August 9, 1988, p. 31.
- [7] People vs. Alegarbas, G.R. No. 77686, May 4, 1989.
- [8] TSN, November 16, 1988, p. 3.
- [9] TSN, November 20, 1988, p. 3.
- [10] TSN, March 15, 1988, pp. 22-24.
- [11] p. 85, Record.
- [12] pp. 22-23, Rollo.
- [13] People vs. Bragaes, G.R. No. 62359, November 14, 1991.
- [14] Supra.
- [15] People vs. Caraig, G.R. No. 91162, October 3, 1991.
- [16] p. 198, Rollo.

[17] 192 SCRA 169, 176.

- [18] Ayala Integrated Steel Manufacturing Co., Inc. vs. Court of Appeals, 200 SCRA 111.
- [19] Filinvest Credit Corp. vs. Intermediate Appellate Court, 166 SCRA 155.

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