

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICTOR JAPSAY Y ESCALADA, ACCUSED-APPELLANT.

G.R. No. 97918. September 18, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is an appeal from the decision of the Regional Trial Court Branch 44 of Negros Occidental, Bacolod City dated October 18, 1990 which convicted the appellant of murder, the dispositive portion of which reads:

"WHEREFORE, the court finds the accused, Victor Japsay y Escalada, guilty of the crime of murder penalized under Art. 248 of the Revised Penal Code and hereby sentences him to suffer an imprisonment of reclusion perpetua, to indemnify the heirs of deceased Wilmar Vivas the sum of P30,000.00 on account of his death, the sum of P150,000.00 for loss of earning capacity and the sum of P10,000.00 as moral damages.

"SO ORDERED." (p. 8, Decision; p. 269, Rollo)

The facts of the case, based mainly on the testimony of eyewitness Rosemarie Talde, are briefly summarized as follows:

In the early evening of October 25, 1988, Wilmar -Vivas arrived at the J & S Tsibugan and Snack Bar situated at corner San Sebastian and Gatuslao Streets, Bacolod City. Upon seeing Rosemarie, Wilmar ordered one (1) bottle of beer then they stayed together in one table. Because he was curious about the place, Rosemarie accompanied him to the second floor where there was a sing-a-long. Later, at around 9:30 o'clock in the evening, she left Wilmar briefly to attend to the other customers but they did not order. Suddenly, on her way back to Wilmar's table, she saw the appellant pointing a gun at Wilmar then heard the appellant say: "Tindog dira kay tiruhon ta ka, indi ka magtindog?" ("Stand up there, I will shoot you, you will not stand up?"). Because Wilmar did not react, she passed by the appellant and proceeded to Wilmar. Then holding Wilmar on his right shoulder, she tried to convince him to go downstairs. As Wilmar stood up from his chair, she looked at the appellant who was still pointing his gun at Wilmar. Then, as they were about to step down the stairs, she heard a shot and saw the explosion coming from the appellant's gun. Simultaneously, Wilmar uttered "ah" and then fell down. Two waiters helped her bring Wilmar down the stairs but they were unable to carry him outside because of his heavy weight. Rosemarie went outside to shout for help and then she collapsed. When she regained consciousness, she remembered what happened to Wilmar but as she was about to stand up, she saw the appellant and his companion board a vehicle and leave. Rosemarie went back inside the snack bar and together with her friends, they brought Wilmar to the hospital but he was pronounced dead on arrival (Rollo, pp. 66-67).

The medico legal officer who autopsied the body of the victim found that the cause of Wilmar's death was shock and hemorrhage due to gunshot wound (Tsn, August 17, 1989, p. 6). The police investigator subsequently recovered the appellant's clutch bag with five (5) live bullets in it and an empty shell of a .38 caliber gun at the scene of the crime (Tsn. December 13, 1989, p. 115).

Charged with murder, the appellant admitted responsibility for shooting the victim Wilmar but claimed that the

shooting was purely accidental. His version of the incident, corroborated by the testimony of his companion, Larry Pura, is as follows: that as sales representative of Nestle Company, Inc., he was charged with the collection of sales, thus, he travelled everyday and was exposed to insurgents; that because of the nature of his job, he was drafted to be a civilian intelligence agent and was given a firearm by the Philippine Constabulary; that in the evening of October 25, 1988, he and his companion, Larry Pura, settled to eat at J & S Tsibugan and Snack Bar; that while they were eating and drinking beer, he remembered that he left his clutch bag containing his collections in the car; that he requested Larry to get the same and the latter complied; that Larry noticed the appellant's gun and lifted it up from the bag; that he impulsively grabbed the gun from Larry and it suddenly exploded; that he did not know that Wilmar was hit; that he and Larry decided to leave the place because the other customers scampered away; but that before going home, he surrendered the gun to his lawyer and relayed the incident to him (Rollo, pp. 68-69).

After trial, the trial court convicted the appellant as charged. The trial court found that the shooting was not by mere accident as it was intentionally and treacherously perpetrated by the appellant.

In this appeal, the appellant assails the credibility of Rosemarie's testimony, arguing: (1) that it is very unnatural that she put herself in danger of being killed just to save a new acquaintance; and (2) that it is highly incredible that Wilmar remained passive although he was held at gunpoint and threatened to be killed.

We are not persuaded.

There is no standard form of behavior when one is confronted with a shocking incident. (People v. Amoncio, G.R. No. 49069, June 22, 1983, 122 SCRA 686 [1983]; People v. Radomes, G.R. No. 68421, March 20, 1986, 141 SCRA 548 [1986]; People v. Catubig, G.R. No. 89732, January 31, 1992).

At any rate, it is difficult to ascertain the degree of friendship existing between Rosemarie and Wilmar as would enable us to determine how exactly she would react during the incident. On the other hand, Wilmar's passive behavior immediately before the incident was sufficiently explained by Rosemarie in the following manner:

"WITNESS : ROSEMARIE TALDE

ATTY. HILADO : What was the position of Wilmar Vivas at the time when Victor Japsay was pointing a gun at him?

WITNESS : He was sitting in the table and placing his two (2) hands under his chin.

x x x x x

ATTY. PANDAN : You said that you saw Victor Japsay pointing his gun at Wilmar Vivas at a distance of three (3) meters, what was Wilmar Vivas doing at that time?

WITNES : He just kept quiet, and did not make any move.

x x x x x

ATTY. PANDAN : Did he tell you anything?

WITNESS : He did not say anything.

ATTY. PANDAN : You did not likewise ask him?

WITNESS : No, sir.

x x x x x

ATTY. PANDAN : Do you wish to tell this Honorable Court that Wilmar Vivas did not mind the gun pointed at him?

WITNESS : Maybe he did not mind because he did not expect that he will be shot." (TSN, pp. 22, 71, 79, September 19, 1989, Tupas).

The defense of accident miserably fails. The trial court found that the appellant committed the crime in the manner testified to by Rosemarie. Thus, said the court:

"x x x [T]he manner by which the late Wilmar Vivas was unexpectedly and abruptly shot and gunned down by the accused Victor Japsay as to clearly quali(f)y the killing in this case to Murder was likewise established by the prosecution's witness Rosemarie Talde and considering the position of the late Wilmar Vivas in relation to the accused Victor Japsay (Exh. 'E', 'E-1', to 'E-5') and the distance between them of approximately two (2) to two and a half (2 1/2) meters at the time that the accused fired his gun at the victim, hitting him at the left chest, the late Wilmar Vivas was surely in no position to have possibly been able to defend himself from the treacherous assault on his person." (p. 7, Decision; (p. 268, Rollo)

Indeed, treachery qualified the crime to murder. The unarmed victim did not expect that he would really be killed for he must have dismissed the appellant's warning as coming from a drunken man with whom he had no quarrel anyway. On the other hand, the herein appellant gunned down the victim at close range while the latter was about to step down the stairs following Rosemarie's bid to avoid trouble. Clearly, at that particular time, the victim was not in a position to defend himself as he was totally unprepared for the appellant's deadly attack (People v. Pueblos, G.R. No. 32859, February 24, 1984, 127 SCRA 746, 753 [1984]).

Rosemarie is a disinterested witness. The appellant has not shown any motive sufficient to impel her to perjure herself. There was no reason for Rosemarie to incriminate the appellant except to tell the truth as she had witnessed the incident (People v. Ballinas, G.R. No. 93300, October 4, 1991).

WHEREFORE, the decision appealed from is hereby AFFIRMED, save that the amount of indemnity for death payable by the appellant Victor Japsay to the heirs of the victim is hereby INCREASED to P50,000.00 conformably with recent jurisprudence.

SO ORDERED.

Padilla, (Acting Chairman), Grino-Aquino, and Bellosillo, JJ., concur.
Cruz, J., (Chairman), on leave.

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