

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDMUNDO LUCERO Y GACETA, ACCUSED-APPELLANT.

G.R. Nos. 102407-08. March 26, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Four criminal informations were filed against accused-appellant Edmundo Lucero before the Regional Trial Court of Quezon City, Branch 88. In Criminal Case No. Q-89-5349, accused-appellant was charged with murder for the death of Fernando Jabol, while in Criminal Cases Nos. Q-89-5350, Q-89-5351 and Q-89-5352, respectively, he was charged with Frustrated Murder.

The facts, as found by the trial court, are summarized as follows:

At around 4:00 o'clock in the afternoon of July 11, 1989, brothers Fernando and Joel Jabol, Alex Tano and Ferdinand Alvero, together with others, were in the house of Domingo Lipas located in Kalayaan, Gao, Quezon City. They were seated at a table drinking rum. It was the birthday of Domingo's daughter, Eva Lipas. Suddenly, accused-appellant barged into the house and, from two and a half to three meters away, fired six shots using his .38 caliber revolver.

The first shot was aimed at Fernando Jabol and hit him on the waist and right thigh. The second shot hit Alex Tano in the abdomen. Joel Jabol raised both his arms in surrender, and the third shot hit his right ribcage. The fourth shot was again aimed at Fernando, while the fifth hit Ferdinand Alvero below his right eye. The sixth shot was fired in the air. All the victims jumped out of the window and proceeded to the East Avenue Medical Center for treatment.

It appeared that accused-appellant was the victims' barrio mate in Malagicay, Abuyog, Leyte, and that he shot them because he suspected them of stealing the engine of his banca in Leyte.[1]

At the East Avenue Medical Center, Fernando Jabol was pronounced dead on arrival, due to gunshot wounds.[2]

Patrolman Rolando Maniquiz of the Quezon City Police Force, who was assigned to conduct the investigation, went to the East Avenue Medical Center to interview the victims, but they were hesitant to talk. He then proceeded to the scene of the crime where he learned from a witness that accused-appellant was the gunman. He went back to the hospital, where Ferdinand Alvero finally narrated to him everything that happened. Further investigation disclosed that accused-appellant was in Balibago, Angeles City. On July 13, 1989, the Quezon City police, in coordination with the Angeles City Police, arrested accused-appellant on Oak Street, Balibago, Angeles City.

Accused-appellant was brought to the Quezon City police station, where he was positively identified by all three victims as their assailant. Pat. Maniquiz also discovered that accused-appellant was an escapee from the Davao Penal Colony.[3]

After the inquest proceedings, four criminal informations were filed against accused-appellant, who pleaded not guilty to all the charges.[4] The cases were consolidated and tried jointly.

In his defense, accused-appellant alleged that on July 6, 1989, he moved in with his girlfriend, Ana Olvida, at 24 Bulacan Street, Mountain Dew, Balibago, Angeles City. He was arrested in the evening of July 13, 1989, while he was sleeping in the said house. He denied that his boat engine was stolen. He knew the victims because they were his friends and barrio mates in Malagicay, Abuyog, Leyte. He admitted having escaped from the Davao Penal Colony, where he was serving sentence for robbery-holdup, but alleged that he was innocent of the crime for which he was convicted.[5]

Ana Olvida corroborated accused-appellant's testimony. She testified that they have been live-in partners since 1987. Every day at 4:00 o'clock in the afternoon, accused-appellant would take her to the Flying Machine Bar, where she worked as cashier, and would fetch her at 4:00 o'clock in the morning. She averred that accused-appellant did not leave the house on July 11, 1989.[6]

On November 13, 1990, the trial court promulgated its judgment as follows:

WHEREFORE, premises considered, the Court finds and so holds accused EDMUNDO LUCERO y GACETA Guilty beyond reasonable doubt of the crime of MURDER committed against Fernando Jabol y Tolentino in Criminal Case No. 89-5349 penalized under Art. 248 of the Revised Penal Code and hereby sentences him to suffer a penalty of Reclusion Perpetua; to pay compensation to the heirs of Fernando Jabol in the amount of P30,000.00 and to pay the cost.

This Court also finds accused EDMUNDO LUCERO y GACETA Guilty beyond reasonable doubt of the crime of FRUSTRATED MURDER committed against Joel Jabol y. Tolentino in Criminal Case No. Q-89-5350 and therefore hereby sentences him to suffer a penalty of imprisonment from Ten (10) Years and One (1) Day of Prison Mayor as minimum to Seventeen (17) Years and Four (4) Months of Reclusion Temporal as maximum and to pay the cost.

Complainant Alex Tano y Lucero and Ferdinand Alvero y Visda in Criminal Case No. Q-89-5351 and Crim. Case No. Q-89-5352 respectively failed to appear during the hearing of these cases. No evidence was presented showing the culpability of the accused. Therefore, in Criminal Case No. Q-89-5351 and Q-89-5352, accused EDMUNDO LUCERO y GACETA is ACQUITTED for lack of evidence.

SO ORDERED.[7]

Accused-appellant filed a Notice of Appeal,[8] to which the trial court gave due course.[9]

Subsequently, counsel de parte entered his appearance for accused-appellant and filed a Motion for New Trial,[10] arguing that contrary to the constitutional requirement, accused-appellant was not assisted by competent and independent counsel during his investigation. On January 8, 1991, the trial court denied the Motion for New Trial on the ground that it has lost jurisdiction over the case after accused-appellant filed his notice of appeal.[11] The Motion for Reconsideration was likewise denied on February 7, 1991.[12]

The appeal was filed directly with this Court, considering the imposition of the penalty of reclusion perpetua. Accused-appellant, through counsel de parte, filed the Brief for Accused-Appellant,[13] while the Solicitor General, on behalf of the prosecution, filed the Brief for Appellee.[14]

Subsequently, accused-appellant, through the Public Attorney, informed the Court that he could not file his Reply Brief because the records of the case do not contain the transcript of the testimony of Joel Jabol, the only eyewitness who testified for the prosecution. Thus, this Court directed that the trial court retake the testimony of said witness.[15] However, Joel Jabol failed to appear at the hearings set by the trial court. On May 31, 1999,

counsel for accused-appellant filed a Manifestation that he was dispensing with the filing of the Reply Brief.[16] He also prayed that the testimony of Joel Jabol be disregarded since the same is probably fictitious and non-existent.

It appears from the records of the trial court that the testimony of Joel Jabol was completed on September 28, 1989,[17] which means that either he was cross-examined by the defense or the latter was given an opportunity to cross-examine him. In fact, the factual findings of the trial court were based largely on the testimony of Joel Jabol.[18] In the absence of any showing that the same were reached arbitrarily or without sufficient basis, this Court accords the highest respect to the findings of fact by the trial court.[19]

In his Brief, accused-appellant raises the following assignments of error:

FIRST ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT FINDING THAT THE EVIDENCE OF PROSECUTION TRANSGRESSED THE CONSTITUTIONAL DUE PROCESS CLAUSE.

SECOND ASSIGNMENT OF ERROR

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT.[20]

Accused-appellant argues that during his custodial investigation, he was not assisted by competent and responsible counsel, invoking Article III, Section 12 (1) of the Constitution, which provides:

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Reading further, the consequence of a violation of the foregoing constitutional guarantee can be found in the ensuing subparagraph (3) of the same Article III, Section 12, to wit:

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

The argument is specious. Assuming arguendo that the above constitutional proscription was not observed, no confession or admission was taken from accused-appellant. To be sure, his conviction was not based on his own statements which, as he claims, were allegedly without the benefit of counsel. In fact, it does not appear that he even gave a statement. His conviction was anchored on the separate and independent testimonies of Joel Jabol and Pat. Rolando Maniquiz.

Accused-appellant takes exception to the trial court's admission of the prosecution's documentary exhibits which, he contends, are inadmissible under the rules on evidence. Specifically, he enumerates the Certification of the Inmates Prison Record Office that he escaped from the Davao Penal Colony, marked as Exhibit "B"; the Arrest and Booking Report pertaining to accused-appellant's arrest for the murder of Police Corporal Romulo Abad, marked as Exhibit "C"; and the Autopsy Request, marked as Exhibit "D". He argues that these exhibits are irrelevant and hearsay, considering that the persons who executed the documents were not presented in court. Further, he alleges that some questions propounded to him on cross-examination referred to matters not covered during his direct examination.

Accused-appellant's contentions may be correct. It is true that evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules.[21] On the other hand, hearsay testimony or evidence is inadmissible and, whether objected to or not, has no probative value and cannot be given credence.[22] Likewise,

a witness may only be cross-examined as to any matters stated in the direct examination, or connected therewith.[23] However, these principles do not come into play in this case, because the documents now being objected to, or the testimony elicited from him during the cross-examination, were not considered by the trial court in rendering the judgment of conviction. Hence, accused-appellant's protestations on this score have no bearing whatsoever to his appeal.

Similarly, accused-appellant's contention on the credibility of Joel Jabol must fail. According to him, since Joel Jabol was drinking rum when the incident occurred, his version of the events must not be given credence. First of all, there was no positive showing that he was in such a state of inebriation at that time as to distort his memory of the events. More importantly, his ability to accurately recall the incident was tested by the trial court. In this connection, it bears stressing that this Court will not disturb the findings of the trial court on matters relating to the credibility of witnesses. The evaluation of testimonial evidence by trial courts is accorded great respect precisely because of its chance to observe first-hand the demeanor of the witnesses, a matter which is important in determining whether what has been testified to may be taken to be the truth or falsehood. Absent any showing that certain facts of substance and significance have been plainly overlooked or that the trial court's findings are clearly arbitrary, the conclusions reached by the trial court must be respected and the judgment rendered affirmed.[24]

An appeal in a criminal case throws the whole case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision on the basis of grounds other than those that the parties raised as errors.[25] Thus, although the following issues are not assailed by accused-appellant, we deem it prudent to pass upon the same if only to validate the findings of the trial court.

The trial court held that the crimes committed by accused-appellant against brothers Fernando Jabol and Joel Jabol were, respectively, murder and frustrated murder, the same being qualified by treachery. We agree. The victims were sitting around a table inside the house of Domingo Lipas when, suddenly and without warning, accused-appellant barged into the house and instantly fired his gun at them. As a result, the Jabol brothers suffered mortal wounds. The suddenness of the attack afforded the victims no opportunity to put up a defense. Joel survived, but Fernando was not as fortunate. As consistently held by this Court, an unexpected and sudden attack which renders the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes *alevosia* or treachery. Its essence lies in the adoption of ways that minimize or neutralize any resistance which may be put up by the unsuspecting victim.[26]

Anent the crime committed against Joel Jabol, the trial court was likewise correct when it found that it was frustrated murder. The gunshot hit Joel on the right subcostal area,[27] i.e., below the right rib. This was a mortal wound which could have caused Joel Jabol's death, considering the vital organs in that part of the body. But due to timely medical attention, he survived. The intervention of medical treatment was independent of accused-appellant's will. A felony is frustrated where the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator,[28] such as prompt medical aid.[29]

We also agree with the trial court that accused-appellant's defense of alibi cannot prosper. As it correctly found, and as testified to by defense witness Ana Olvida, the distance between Angeles City and Quezon City can be traversed by bus in one and a half hours.[30] For the defense of alibi to prosper, an accused should prove, not only that he was at some other place at the time of the commission of the crime, but that also it would have been physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[31]

At the time of its commission, the penalty for murder was reclusion temporal maximum to death.[32] There being

three distinct penalties, each one shall form a period.[33] Since no aggravating or mitigating circumstance was alleged or proved in this case,[34] the penalty shall be imposed in its medium period. Thus, the trial court was correct in sentencing accused-appellant to suffer the penalty of reclusion perpetua for the murder of Fernando Jabol.

On the other hand, frustrated murder is punishable by the penalty next lower in degree,[35] which is prision mayor maximum to reclusion temporal medium. Again, there being neither aggravating nor mitigating circumstance, the penalty shall be imposed in its medium period,[36] i.e., reclusion temporal minimum, consisting of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. Applying the Indeterminate Sentence Law, accused-appellant is entitled to a minimum term to be taken within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense,[37] which is prision correccional maximum to prision mayor medium, or four (4) years, two (2) months and one (1) day to ten (10) years. The trial court, therefore, erred in fixing the penalty for frustrated murder. Instead, accused-appellant should be sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum.

Finally, the civil indemnity in the amount of P30,000.00 awarded by the trial court should be increased to P50,000.00, in line with prevailing jurisprudence.[38]

WHEREFORE, in view of the foregoing, the judgment of the trial court in Criminal Case No. Q-89-5349, finding accused-appellant guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, is **AFFIRMED** with the **MODIFICATION** that he is ordered to pay the heirs of Fernando Jabol the amount of P50,000.00 as civil indemnity.

The judgment in Criminal Case No. Q-89-5350, finding accused-appellant guilty beyond reasonable doubt of the crime of frustrated murder, is **AFFIRMED** with the **MODIFICATION** that accused-appellant is sentenced to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Record, p. 64.

[2] Exhibits "E" & "G."

[3] TSN, September 29, 1989, pp. 2-3.

[4] Record, pp. 5-8.

[5] TSN, October 16, 1989, pp. 2-4.

[6] TSN, January 18, 1990, pp. 3-4.

[7] Record, p. 67; penned by Judge Tirso D'C. Velasco.

[8] Ibid., p. 71.

[9] Id., p. 72.

[10] Id., pp. 76-80.

- [11] Id., p. 85.
- [12] Id., p. 100.
- [13] Rollo, pp. 45-55.
- [14] Ibid., p. 106.
- [15] Id., p. 179.
- [16] Id., pp. 215-218.
- [17] Record, p. 38.
- [18] Ibid., p. 64.
- [19] People v. Dano, G.R. No. 117690, September 1, 2000.
- [20] Rollo, p. 48.
- [21] RULES OF COURT, Rule 128, Section 3.
- [22] Judge Caña v. Gebusion, A.M. No. P-98-1284, March 30, 2000; Cristobal v. Court of Appeals, G.R. No. 124372, March 16, 2000.
- [23] RULES OF COURT, Rule 132, Section 6.
- [24] People v. Ramos, G.R. No. 120280, April 12, 2000.
- [25] People v. Listerio, G.R. No. 122099, July 5, 2000.
- [26] People v. Molina, G.R. Nos. 134777-78, July 24, 2000.
- [27] Exhibit "A."
- [28] REVISED PENAL CODE, Article 6, 2[nd] par.
- [29] People v. Jarandilla, G.R. Nos. 115985-86, August 31, 2000.
- [30] TSN, January 18, 1990, p. 4.
- [31] People v. Catuiran, Jr., et al., G.R. No. 134768, October 17, 2000.
- [32] REVISED PENAL CODE, Article 248.
- [33] REVISED PENAL CODE, Article 77.
- [34] REVISED PENAL CODE, Article 64 (1).
- [35] REVISED PENAL CODE, Article 50.
- [36] REVISED PENAL CODE, Article 64 (1).
- [37] Act No. 4103, as amended, Section 1.
- [38] People v. Piamonte, 303 SCRA 577, 590 (1999); People v. Gatchalian, 300 SCRA 1, 19 (1998).

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