

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IRVING FLORES Y DICHOSO, ACCUSED-APPELLANT.

G.R. Nos. 103801-02. October 19, 1994

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Irving Flores y Dichoso was charged in two (2) separate Informations with Murder and violation of P.D. 1866 (Illegal Possession of Firearm) before the Regional Trial Court, Valenzuela, Metro Manila, Branch 172.[1]

The Information for Murder reads:

"That on or about the 6th day of July, 1991, in the Municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause, with treachery and evident premeditation and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with an unlicensed handgun one EDWIN ALBERTO y BAYLON, thereby inflicting upon the latter serious physical injuries, which directly caused his death.

"Contrary to Law." (Rollo, p. 3)

The Information for Illegal Possession of Firearm, on the other hand, reads:

"That on or about the 6th day of July, 1991, in the Municipality of Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a private person without any authority of law, did then and there wilfully, unlawfully and feloniously have in possession and control one (1) .38 cal. rev. mark(ed) Taurus Brasil, with Serial No. 2140012 with two (2) spent shells of .38 cal. rev. and one (1) black holster of .38 cal. rev., without any purpose and intent of surrendering the same to the proper authority.

"Contrary to Law." (Rollo, p.2)

As the two (2) cases arose out of the same incident, both were tried jointly.

During the trial, the prosecution established the following:

On July 6, 1991, at around 11:45 p.m., Edwin Alberto and Demetrio Mendoza, both residents of #3 Silverio Domingo Apartment, Lawang-Bato, Valenzuela, Metro Manila, took out the garbage from their house. They walked towards the dumpsite -- a vacant lot near the Mariposa Bed Factory also located in Lawang-Bato.[2] After disposing of the garbage and while enroute home, accused-appellant Irving Flores, a security guard of the Mariposa Bed Factory, emerged from the factory. Accused-appellant, apparently drunk, was carrying a gun. Suddenly and for no apparent reason, accused-appellant fired at them. Sensing danger, Alberto and Mendoza ran for their lives. Accused-appellant chased them. At a distance of about fifteen (15) meters, accused-appellant again fired at them. Alberto, who was hit at the back, exclaimed: "Demet, I was hit." Mendoza ran to Alberto's succor and immediately brought his wounded friend to the hospital. It was too late, though, for Alberto was pronounced

dead upon arrival.[3] The cause of death was hemorrhage resulting from the gunshot which lacerated his lungs.[4] Mendoza was interviewed by the police. In his sworn statement,[5] he narrated the shooting incident and identified accused-appellant as the person responsible for the death of Alberto.[6]

Approximately two (2) hours after the incident, at about 1:35 a.m., after receiving a report about the shooting incident, Patrolmen Federico Patag and Reynaldo Tapar proceeded to the scene of the crime. They received information from the residents in the area that the person involved in the shooting incident went inside the Mariposa Bed Factory compound. They went to the factory and inquired from security guard Eman about the identity of the person who fired the gun. Eman pointed to accused-appellant. As they were approaching accused-appellant, the latter, who was drunk, was also coming towards them. Accused-appellant handed to Pat. Patag a .38 caliber revolver with serial number 2140012. The license covering said gun was handed by security guard Eman to Pat. Patag. From the license, they discovered that the subject firearm was regularly issued in the name of the security agency employing accused-appellant.[7]

For his defense, accused-appellant presented an entirely different version of the incident. He testified that as a security guard of the Kossaks Investigation, Security and Detective Agency, he was designated as officer-in-charge of the four (4) security guards assigned at the Mariposa Bed Factory, namely: Danilo Eman, Rey Nargatan, Edwin Goto and Rex dela Cruz.[8]

On said date and time, he conducted a roving inspection of the factory premises. He was accompanied by security guards Danilo Eman and Rey Nargatan. Both he and Eman were armed with a .38 caliber revolver while Nargatan was armed with a shotgun.

While conducting their inspection, Eman informed accused-appellant that three (3) unidentified men were roaming in front of the factory gate. Accused-appellant went out to verify the identity of these men. Upon inquiry, the three (3) men represented to him that they were relatives of the factory owner. Noting that it was almost midnight, accused-appellant informed them that the owner was not around and instructed them to return the next day. However, the three (3) still insisted on entering the factory. Accused-appellant adamantly refused to let them in. One of the men cursed him: "Putang-ina mo, guwardiya ka lang." In the meantime, the two (2) other men started scaling the factory fence. Accused-appellant then instructed Eman to go to the guardhouse on top of the factory gate and assist him. Still standing outside the gate, accused-appellant fired two (2) successive warning shots in the air. Frightened, the two (2) men immediately climbed down the fence, then fled swiftly.

A few hours after the incident, when the police authorities arrived at the factory, accused-appellant alleged that he voluntarily surrendered himself to them, including his service firearm.[9]

After trial, a decision was rendered by Judge Teresita Dizon-Capulong[10] acquitting accused-appellant from the charge of illegal possession of firearm. The trial court found that the subject firearm was properly licensed and that accused-appellant, as officer-in-charge of the security agency, had authority to possess the same at the time of the shooting incident. However, accused-appellant was found guilty beyond reasonable doubt of murder for the death of Edwin Alberto. He was sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of Edwin Alberto in the sum of fifty thousand pesos (P50, 000.00) and to pay the costs.

Hence this appeal where accused-appellant ascribed the following errors:

I

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER.

II

ASSUMING ARGUENDO THAT THE ACCUSED IS GUILTY, HE IS GUILTY ONLY OF THE CRIME OF HOMICIDE WITH THE PRIVILEGED (sic) MITIGATING CIRCUMSTANCE OF INCOMPLETE JUSTIFICATION UNDER ARTICLE 13, PARAGRAPH 1 OF THE REVISED PENAL CODE AND GENERIC MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.

In his first assigned error, accused-appellant faults the trial court for giving credence to the testimony of prosecution eyewitness Mendoza. He points that the statement was taken almost three (3) hours after the incident, at which time, Mendoza allegedly has had more than enough time to compose himself and narrate an entirely different story. Accused-appellant also stresses that the prosecution failed to show that he has any motive or reason to shoot at Mendoza and Alberto.

We find no merit in these contentions.

It is incorrect to argue that accused-appellant was convicted solely on the basis of the sworn statement of prosecution witness Mendoza. More accurately, the trial court examined the testimony of Mendoza in open court where he unflinchingly recounted in detail the confluence of events leading to the death of the victim. The records will bear that his testimony is substantially congruent with his sworn statement and no material inconsistency emanated therefrom. Truth to tell, his testimony withstood rigid cross-examination.

The fact that accused-appellant had no motive to kill the victim is of no moment. It is a settled rule in criminal law that proof of motive is crucial only where the identity of an accused is not sufficiently established.[11] In the case at bench, the identity of accused-appellant as the author of the crime has been positively and categorically established by the testimony of prosecution eyewitness Mendoza who was himself a survivor of accused-appellant's belligerent assault.

Accused-appellant would cast doubt on Mendoza's identification of him as the assailant. He claims that at the time of the shooting incident, there was no light at the scene of the crime which could have aided Mendoza in identifying him as the culprit.

A perusal of the records reveals otherwise. As per the testimony of Mendoza, the crime scene was adequately illuminated by a Meralco lamp post near the gate of the factory where accused-appellant started his aggression.[12] Mendoza, who was not shown to be biased, even described accused-appellant as wearing a light blue uniform at the time of the attack and that the latter retreated to the factory immediately after shooting the victim.

Coming now to the second assigned error, accused-appellant proposes that, assuming arguendo that he should be held liable for the death of Alberto, he should have been found guilty of the lesser crime of homicide. He maintains that the killing of the victim is not qualified by treachery.

We agree. The mere fact that the victim was shot at the back while attempting to run away from his assailant would not per se qualify the crime to murder. In the case at bench, the evidence established that accused-appellant, apparently drunk, emerged from the factory and fired upon the victim and his companion who were just innocently passing by. Sensing an imminent danger to their lives, the two started to run. However, the next gunshot hit the victim at the back and caused his death. Clearly then, with the first gunshot, the victim has been placed on guard and has, in fact, attempted to flee. There could thus be no treachery since, prior to the attack, the victim has been forewarned of the danger to his life and has even attempted, albeit unsuccessfully, to escape. Moreover, there was absolutely no evidence to show that accused-appellant consciously and deliberately employed a specific form of attack which would specially and directly ensure its commission without

impunity.[13]

We come now to the appreciation of the mitigating circumstances. Accused-appellant claims that he is entitled to the mitigating circumstance of incomplete defense of the property or rights of a stranger. He maintains that in shooting the victim, he acted in the performance of his duty as a security guard since he was trying to prevent the victim and his companions from scaling the wall of the factory. He further claims that he is entitled to the mitigating circumstance of voluntary surrender for when the police authorities went to the factory looking for him, he allegedly approached them and voluntarily surrendered himself.

We find that none of the mitigating circumstances alleged by accused-appellant attended the commission of the crime.

The justifying circumstance of defense of property or rights of a stranger requires the concurrence of the following requisites: (1) unlawful aggression, (2) reasonable necessity of the means employed to prevent or repel it, and (3) the person defending is not induced by revenge, resentment or other evil motive.[14] Absent either or both of the last two (2) requisites, the mitigating circumstance of incomplete defense of stranger may be appreciated. However, in either case, unlawful aggression is always an essential element. It has been held that without unlawful aggression, there could never be a defense, complete or incomplete.[15]

In this case, the evidence adduced by the prosecution established beyond reasonable doubt that it was accused-appellant who was the aggressor. Indeed, appreciation of the mitigating circumstance of incomplete defense of property or rights of a stranger would require that we accept as true the defense's version of the incident. Accused-appellant failed to convince the trial court of his innocence. He remains unsuccessful before this Court.

Accused-appellant's uncorroborated and self-serving testimony runs contrary to ordinary human experience. First, we find it inconceivable that the victim and his two (2) other alleged companions would claim to be relatives of the factory owner and insist on entering the factory premises at an unholy hour of 11:45 p.m. Second, it is unthinkable that, having been informed of the absence of the owner, the three (3) would still insist on entering the premises. Finally, having been refused entry, accused-appellant would have us believe that the three (3) men would desperately insist on entering the premises even to the extent of climbing the fence. What is more, all these were allegedly done in clear view and in the presence of two (2) armed security guards. On the whole, his testimony simply does not inspire credence.

A contrario, we are satisfied that the prosecution, through its eyewitness, sufficiently proved the culpability of accused-appellant. The evidence shows that accused-appellant, then under the influence of liquor, emerged from the factory and recklessly fired at the first people he saw who, unfortunately, happened to be the victim and his companion Mendoza. The fact that it does not appear on the record that bad blood existed between the parties prior to the incident which might have impelled him to shoot the victim does not affect the credibility of the prosecution evidence. Indeed, we have taken judicial notice of the fact that inebriated persons are inclined to be pugnacious, irrational and quarrelsome for no sensible reason.[16] From the unbiased and credible testimony of prosecution eyewitness Mendoza, we sustain the trial court's finding that the unlawful aggression originated from accused-appellant himself.

Neither can we accept accused-appellant's plea voluntary surrender. He did not surrender to the police. In fact, the evidence adduced shows that it was the police authorities who came to the factory looking for him. It was there that accused-appellant was pointed to them. Seeing that the police were already approaching him, accused-appellant did not offer any resistance and peacefully went with them. With the police closing in, accused-appellant actually had no choice but to go with them. To be sure, no surrender was made by

accused-appellant.

In sum, we find that the guilt of accused-appellant for the death of the victim has been established beyond reasonable doubt. Homicide carries with it the penalty of reclusion temporal.[17] There being neither mitigating or aggravating circumstance attending the commission of the crime, the impossible penalty is the medium period of reclusion temporal.[18] Applying the Indeterminate Sentence Law, accused-appellant should be meted the indeterminate sentence of ten (10) years and one (1) day of prision mayor maximum as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal medium as maximum penalty.

IN VIEW WHEREOF, accused-appellant IRVING FLORES y DICHOSO is found guilty beyond reasonable doubt of homicide. He is sentenced to suffer the indeterminate penalty of ten (10) years and one (1) day of prision mayor maximum as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal medium as maximum penalty, and indemnify the heirs of Edwin Alberto in the amount of FIFTY THOUSAND PESOS (P50, 000.00). No costs.

SO ORDERED.

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

[1] Docketed as Criminal Case Nos. 368-V-91 and 367-V-91, respectively.

[2] The lot is a private property directly opposite the factory compound but it was not owned by the Mariposa Bed Factory.

[3] TSN, August 12, 1991, pp. 3-12.

[4] Exhibit "F", Folder of Exhibits, p. 6.

[5] Dated July 7, 1991, Exhibit "A", Folder of Exhibits, pp. 1-2.

[6] TSN, August 12, 1991, pp. 14-18.

[7] TSN, September 16, 1991, pp. 7-13; TSN, September 30, 1991, pp. 3-4; TSN, October 7, 1991, pp. 3-4.

[8] TSN, November 6, 1991, pp. 3-6.

[9] *id.*, pp. 8-12; TSN, November 15, 1991, p. 4.

[10] Original Record, pp. 89-97.

[11] *People v. Canceran*, G.R. No. 104866, January 31, 1994, 229 SCRA 581; *People v. Javar*, G.R. No. 82769, September 6, 1993, 226 SCRA 103.

[12] TSN, August 12, 1991, p. 11.

[13] Article 14 (16), Revised Penal Code; *People v. Ocaña*, G.R. No. 63009, January 19, 1994, 229 SCRA 341; *People v. Amaguin*, G.R. Nos. 54344-45, January 10, 1994.

[14] Article 11, paragraph 3, Revised Penal Code.

[15] *People v. Layam*, G.R. No. 102308, July 25, 1994.

[16] *People v. Aguiluz*, G.R. No. 91662, March 11, 1992, 207 SCRA 187.

[17] Article 249, Revised Penal Code.

[18] Article 64 (1), *supra*.

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