

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PATRICIO Y. BAGCAL, ACCUSED-APPELLANT.

G.R. Nos. 107529-30. January 29, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Patricio Y. Bagcal appeals from the joint judgment rendered by the Regional Trial Court of Quezon City, Branch 103, on October 2, 1992, in Criminal Cases Nos. Q-90-14152 and Q-90-14154, finding him guilty beyond reasonable doubt of two counts of murder. Its decretal portion reads:

"ACCORDINGLY, judgment is hereby rendered finding the accused PATRICIO Y. BAGCAL GUILTY as principal beyond reasonable doubt of MURDER in Q-90-14152 and 90-14154 for which he is hereby sentenced to suffer imprisonment of reclusion perpetua in each of said cases.

On the civil aspect, Patricio Bagcal is hereby ordered to indemnify the heirs of Leonides Cartella y Marquez in Q-90-14152 the sum of P50,000.00 and the heirs of Marissa Domingo in Q-90-14154 the sum of P50,000.00. The accused is also ordered to pay the heirs of both victims the sum of P100,000.00 each set of heirs as moral damages.

Case No. Q-90-14153 (for slight illegal detention) is hereby DISMISSED for insufficiency of evidence. No costs.

SO ORDERED."[1]

Appellant, a sergeant with the PC Civil Security Force based in Camp Crame, Quezon City, in the now-defunct Philippine Constabulary (PC) was dishonorably discharged on June 12, 1990.[2]

On August 2, 1990, the City Prosecutor of Quezon City charged appellant with two counts of murder, docketed as Criminal Cases Nos. Q-90-14152 and Q-90-14154. The Information in Criminal Case No. Q-90-14152 states:

"That on or about the 27th day of April, 1990, in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, wilfully, unlawfully and feloniously with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack, assault and employ personal violence upon the person of one LEONIDES CARTALLA y MARQUEZ, by then and there shooting him with an (A)rmalite rifle hitting him on the different parts of his body, thereby inflicting upon him serious and mortal wounds, which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of Leonides Cartalla y Marquez in such amount as may be awarded under the provisions of the Civil Code.

CONTRARY TO LAW."[3]

The charge in Criminal Case No. Q-90-14154 was virtually identical, except that the victim was identified as Marissa Domingo.

That same day, a separate Information for slight illegal detention, docketed as Criminal Case No. Q-90-14153,

was also filed against appellant for allegedly detaining the spouses Rolando and Adelina Velasquez, their 4-month old son Cris Nicola, and housemaid Corazon Escote for more than two hours at their house in 1st Avenue, Cubao, Quezon City.[4]

On April 30, 1991, appellant was arraigned in all three cases. He entered a plea of not guilty. Since all of the cases stemmed from the same incident, they were consolidated and tried jointly.

The prosecution's evidence established that on April 26, 1990, Lito Camara, Jr., celebrated the first birthday of his daughter Samantha Mae at his house in No. 45-A 1st Avenue, Cubao, Quezon City, with several guests present. Close to midnight, while the merrymaking was still going on, the sound of distant gunfire was heard coming from the direction of Camp Crame. Lito and his guests ignored it since such sound was not unusual near the camp.[5]

A few minutes thereafter, appellant armed with an M-16 assault rifle barged into the garage of the Camara residence. Pointing the rifle at the guests near the entrance door, he asked for the keys of a car parked near the house. A certain Rino, a guest, tossed the key to his car to the appellant. The latter failed to catch it, but instead of picking it up, he ran to another car near the first vehicle. Inside, on the driver's seat was victim Leonides Cartalla, also a guest of Lito. Beside him was Marissa Domingo. Outside the car, drinking beer, were three other guests: Joselito Arcega, Dennis Arcega, and Joseph David. Appellant aimed his rifle at Leonides and told him to start the engine, but the victim said that he did not have the key.[6]

Lito and his other guests scampered towards the house. Once inside, Lito peeped through the window and saw appellant firing his rifle at the occupants of the car.[7] Prosecution eyewitness Leovilgildo Cartalla, brother of Leonides, also saw appellant firing at the car.[8] Appellant also fired four or five times at the persons around the car causing them to either flee for safety or play dead. He next fired at the door of the Camara house, then ran off.[9]

When Lito and his guests went outside, they found Marissa prostrate. Close to her, playing possum was Joseph. Slumped in the driver's seat, with half his body outside the car was Leonides. Marissa and Leonides were rushed to a hospital, but Marissa was pronounced dead on arrival and Leonides died later.[10]

Appellant took refuge inside the house of Rolando Velasquez at No. 30, 1st Avenue, Cubao, Quezon City. Acting on a report that the Velasquez family had been taken hostage by an armed man, several law enforcers rushed to the house and surrounded it. After he was called to surrender he said he would only do so to members of the PC SAF, his former unit. PC Captain Anthony Alcantara, appellant's former commanding officer, prevailed upon him to give up.[11] Appellant turned over a loaded M-16 rifle with Serial No. RP 164624 to Alcantara. The rifle and several empty 5.56mm cartridges were then turned over to the Quezon City police investigators.[12] Ballistics tests on the rifle and cartridges revealed that the empty shells of M-16 ammunition found at the crime scene had been fired from the rifle surrendered by appellant to Captain Alcantara.[13]

Dr. Roberto Garcia, a medico-legal officer of the National Bureau of Investigation, autopsied the remains of Leonides and Marissa. He reported that Leonides died from a gunshot wound at his back[14] and Marissa also died of a gunshot wound at her back.[15]

Appellant, the sole witness for the defense, denied shooting the victims. He declared that on the evening of April 26, 1990, he was on his way to see his mistress, Avelina Morales, who was residing at the house of a certain Cesar Futol[16] in 2nd Avenue, Cubao, Quezon City. A group of men were drinking and one of them, a certain Jimmy Lopez, a discharged soldier, approached him and told him to lay off Avelina because she was already Lopez's girlfriend. Lopez and appellant had a heated argument and before a fistfight ensued, a buddy of appellant, PC Sgt. Adolfo Darao, arrived and pulled appellant away.

Darao and appellant proceeded to a nearby restaurant where they had a meal and drank one bottle of beer each. When they parted, appellant returned to the Futol residence. He was still some distance away, when the group of Jimmy Lopez intercepted him. A certain Marvin, whom appellant knew was a military man, and two Futol brothers, accompanied Lopez. Lopez and Marvin carried M-16 rifles, while the Futols sported automatic pistols. Without warning, they fired at him, but missed. Appellant dashed off to his house, about a kilometer away. He grabbed his service rifle and some ammunition and told his wife he was going to Ilocos. Once outside, he hailed a taxi. However, the cab he hired broke down at 1st Avenue, Cubao, Quezon City. Appellant then got out and walked. He saw a parked car with some occupants and told them to help him get away since some armed men were after him. Appellant was still talking to the occupants of the car when a shot was fired at him. He ran towards the front of the car and fired back. He did not notice if his pursuers hit the occupants of the car, as his primary concern then was his own safety. He sprinted towards a concrete fence, clambered over it, and entered the Velasquez residence where he hid until the wee hours of the morning. Police and military units then surrounded the house. A brief firefight broke out when they tried to flush him out. He then decided to surrender to his former officer in the PC SAF.[17]

The trial court convicted appellant of two counts of murder, while acquitting him of the slight illegal detention charge.

Hence, the instant appeal, with appellant assigning the following errors:

- THE COURT A QUO ERRED IN CONVICTING THE APPELLANT DESPITE PATENT ABSENCE OF EVIDENCE (PROOF) BEYOND REASONABLE DOUBT.
- THE COURT A QUO ERRED IN CONCLUDING SUPPOSED PRESENCE OF TREACHERY AND USING THE SAME AS BASIS TO JUSTIFY ITS JUDGMENT.
- THE COURT A QUO ERRED IN CONCLUDING THE PRESENCE (OF) SUPERIOR STRENGTH.
- THE COURT A QUO ERRED IN AWARDING MORAL DAMAGES DESPITE THE ABSENCE OF ANY EVIDENCE PRESENTED TO SUBSTANTIATE SUCH AWARD.
- THE COURT A QUO ERRED IN UTILIZING ARTICLE 4 OF THE REVISED PENAL CODE TO JUSTIFY THE CONVICTION OF THE APPELLANT.

Considering the five assigned errors, we find in essence they are subsumed properly into two issues: (1) Was appellant's guilt proven beyond reasonable doubt? (2) Were the appropriate penalties imposed on him?

Appellant faults the trial court for convicting him, notwithstanding the failure of the prosecution's physical evidence to conclusively prove that the bullets, which killed the victims came from the M-16 rifle which he fired that night. He avers that not only did the State fail to present the "smoking gun," it likewise did not present the person who allegedly subjected the supposed murder weapon to a ballistics test.

For conviction of an accused in criminal cases, it is enough that the prosecution proves beyond reasonable doubt that a crime was committed and that the accused committed it. Production of the weapon used in committing the crime is not a condition sine qua non for the discharge of that burden.[18] It is not vital to the cause of the prosecution,[19] especially where other evidence is available to support sufficiently the charges. As to the presentation of witnesses, the question of which witness to present and when to present him is up to the prosecution, leaving the court thereafter to make the judgment call.[20] In the instant case, the trial court depended on the other evidence to determine the guilt of the accused, especially the eyewitness accounts of Lito Camara, Jr., and Leovilgildo Cartalla. While it is true that the trial court characterized their testimonies as "not too clear on what transpired,"[21] the transcripts nonetheless show that the vagueness refers only to minor or

inconsequential details. What is vital is that both eyewitnesses categorically declared that they saw appellant shoot at the occupants of the car and that after appellant ran off, they saw the victims either dead or dying. It is settled that discrepancies in minor details tend to bolster the credibility of witnesses and indicate veracity rather than prevarication, as they erase any suspicion that the witnesses have been coached and the testimony rehearsed.[22]

We note that appellant could not say why the two eyewitnesses should falsely accuse him. Where there is no evidence to show that the principal witnesses for the State were actuated by ill motive, their testimony is entitled to full faith and credit.[23] Furthermore, eyewitness Leovilgildo Cartalla is the brother of victim Leonides Cartalla. The natural interest of a witness, who is a relative of the victim, in securing the conviction of the guilty would deter him from implicating a person other than the true culprit.[24]

Appellant contends treachery could not be present in the instant case simply because the victims were shot in the back. He argues that for treachery to be appreciated, there must be a showing that the accused intentionally and deliberately chose a mode of committing the crime which would insure that the accused will be shielded from any harm that the victim may cause in defending himself.[25] He suggests that the victims were regrettably caught in the crossfire between him and his pursuers. His firing back in self-defense was not a deliberate choice to kill the victims without risk to himself. His use of an assault rifle was not a deliberate intent on his part to employ deadly force out of proportion to the means available to the person attacked. After all, he said, he was being shot at and his pursuers were armed also with the same guns as he was. Hence, appellant avers that the trial court erred in finding that he took advantage of superior strength and that he acted treacherously.

Treachery is the deliberate and unexpected attack on the victim without any warning and without giving him an opportunity to defend himself or repel the assault.[26] The fact that the victims were shot in the back does not per se indicate treachery. Nonetheless, undisputed is the fact that appellant fatally shot the unarmed victims while seated inside a car, unaware of any impending tragedy, and without opportunity to defend themselves. As the victims were totally unprepared for an unexpected and deliberate attack from behind, with no weapon to resist it, the shooting could only be described as treacherous.[27] The location of the gunshot wounds of the victims bolster the trial court's conclusion that treachery qualified the fatal shooting into murder. Abuse of superior strength need not be further shown. Treachery alone qualified the killing into murder and that absorbs the circumstance of abuse of superior strength.[28]

Appellant assails the award of damages by the trial court because the heirs of the victim presented no evidence to prove damages. Appellant was sentenced to pay the heirs of Leonides Cartalla P50,000.00 and the heirs of Marissa Domingo another P50,000.00 as death indemnity. It further awarded P100,000.00 as moral damages to said heirs of each victim. The P50,000.00 award as indemnity ex delicto is proper and consistent with prevailing jurisprudence.[29] Moral damages, however, can be awarded only upon sufficient proof that the aggrieved parties are entitled thereto.[30] As correctly pointed out by appellant, the records are devoid of any factual basis for such an award. We must therefore delete said award of moral damages.

Lastly, appellant questions the finding of the trial court that:

"But even if this court, for the sake of argument, should subscribe to the defense story, still it will not avail him any.

As clearly shown in Patricio's testimony the whole tragedy was the product of his having returned to the house of Cesar Putol despite the fact that earlier that same night Jimmy Lopez, with his barkada had warned Patricio not to visit Avelina Morales anymore and because of Patricio's insisting he and Jimmy almost came to blows.

x x x

From all the above, the story of Patricio shows that he was committing a felony--adultery and was guilty of

provocation and aggression and exchanging gunfire to kill which gave rise to the train of events that ensued and ended in two deaths at least.

Under Article 4 of the Revised Penal Code 'Criminal liability is incurred by any person committing a felony although the wrongful act done be different from that which he intended.' The spirit, if not the letter, of this provision fits this case in relation to the defense version of the facts in issue."^[31]

Appellant now contends that the trial court erred in anchoring a finding of guilt based on Article 4 of the Revised Penal Code.

We find, however, the reference by the trial court to said provision is merely for the purpose of showing the futility of appellant's putting the blame on his "alleged" pursuers. The court's citation of Article 4 is merely for rhetorical effect or emphasis, which we deem a surplusage.

Appellant was convicted of two counts of murder on the positive identification by eyewitnesses. Categorical, straightforward and positive identification carries great weight in determining the guilt of the accused as against appellant's bare denial. Denial is an inherently puerile defense and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters identifying appellant as the perpetrator of the crime.^[32]

WHEREFORE, the appeal is DISMISSED. The decision of the Regional Trial Court of Quezon City, Branch 103, in Criminal Cases Nos. Q-90-14152 and Q-90-14154 finding appellant Patricio Bagcal guilty beyond reasonable doubt of two counts of murder, and imposing the penalty of reclusion perpetua for each count, is AFFIRMED. The appellant is also ORDERED to pay P50,000.00 to the heirs of Leonides Cartalla and another P50,000.00 to the heirs of Marissa Domingo as civil indemnity. The award of P100,000.00 to the heirs of each of the victims as moral damages, however, is DELETED for lack of factual basis. Costs against appellant.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] Rollo, p. 21.

[2] Records, p. 26.

[3] Id. at 1.

[4] Id. at 3.

[5] TSN, June 17, 1991, p. 4; TSN, July 25, 1991, pp. 25, 41, 50.

[6] TSN, June 17, 1991, pp. 5-12; TSN, July 25, 1991, pp. 42-46.

[7] Id, at 13; Id, at 48.

[8] TSN, May 2, 1991, p. 38.

[9] Id. at 43-44; TSN, June 17, 1991, pp. 13-14, 16-17.

[10] Id. at 44-45; Id. at 19-22.

[11] Id. at 6-7.

[12] Id. at 9, 19.

[13] Exhibit "J," Records, p. 190.

[14] Exhibits "F", "G", Id. at 182-184; TSN, July 25, 1991, pp. 4-8.

[15] Exhibit "B," Records, Id. at 177-178.

[16] Also spelled "Putol" in the records and in the assailed decision. The correct spelling is attested to in the TSN of March 5, 1992, p. 5.

[17] TSN, February 5, 1992, pp. 5-33; TSN, March 5, 1992, pp. 5-36.

[18] *People v. Lumacang, et al.*, G.R. No. 120283, February 1, 2000, p. 14, citing *People v. Cabodoc*, 263 SCRA 187 (1996).

[19] *People v. Librando, et al.*, G.R. No. 132251, July 6, 2000, p. 12.

[20] *People v. Lozada*, G.R. No. 130589, June 29, 2000, p. 26.

[21] Rollo, p. 18.

[22] *People v. Muyco, et al.*, G.R. No. 132252, April 27, 2000, p. 6, citing *People v. Fabrigas, Jr.*, 261 SCRA 436 (1996).

[23] *People v. Milliam*, G.R. No. 129071, January 31, 2000, p. 12, citing *People v. Leoterio*, 264 SCRA 608 (1996).

[24] *People v. Dimailig*, G.R. No. 120170, May 31, 2000, pp. 9-10, citing *People v. Quilang*, 312 SCRA 314 (1999).

[25] Art. 14. Aggravating circumstances. - The following are aggravating circumstances:

x x x

- That the act be committed with treachery (*alevosia*).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

x x x

[26] *People v. Francisco*, G.R. No. 121682, April 12, 2000, p. 8, quoting *People v. Floro*, 316 SCRA 304 (1999).

[27] *People v. Adrales and Pano*, G.R. No. 132152, January 19, 2000, p. 17, citing *People v. Landicho*, 258 SCRA 1 (1996).

[28] *People v. Go-Od, et al.*, G.R. No. 134505, May 9, 2000, p. 10, citing *People v. Sancholes*, 271 SCRA 527 (1997).

[29] *People v. Base*, G.R. No. 109773, March 30, 2000, pp. 40-41, citing *People v. Borreros*, 306 SCRA 680 (1999).

[30] CIVIL CODE, Art. 2217; *People v. Manegdeg*, 316 SCRA 689 (1999).

[31] Rollo, p. 20.

[32] *People v. Araneta*, G.R. No. 137604, July 3, 2000, p. 8, citing *People v. Abdul*, 310 SCRA 246 (1999).

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