PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL PABLO Y LAZARO AND RAMIL CASTILLO, ACCUSED-APPELLANTS.

G.R. Nos. 113822-23. August 15, 2001

Ponente: PARDO, J.

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PARDO, J. :

Raul Pablo y Lazaro and Ramil Castillo appeal from the decision of the Regional Trial Court, Pangasinan, Urdaneta, Branch 45, finding them guilty beyond reasonable doubt of illegal possession of firearm and of murder, sentencing each of them to reclusion perpetua and to pay jointly and severally the heirs of the deceased Aurelio Barcena in the amount of P50,000.00 as indemnity, P14,700.00 as actual expenses, P203,920.00 by way of lost earnings and P20,000.00 as moral damages.[1]

On October 9, 1990, 3rd Assistant Provincial Prosecutor Jose F. Lopez of Pangasinan filed with the Regional Trial Court, Pangasinan, Urdaneta an information charging accused Raul Pablo y Lazaro with illegal possession of firearm, thus:

> "The undersigned hereby accuses RAUL PABLO Y LAZARO of the crime of ILLEGAL POSSESSION OF FIREARM AND AMMUNITION, committed as follows:
>
> That on or about the 6th day of August 1990, in the evening, at Poblacion, municipality of Loac, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control, one (1) Cal. 45 firearm with ammunitions, without first securing the necessary permit or license to possess the same.
>
> That the accused used the said firearm in the commission of the offense of murder for the fatal shooting to death of Aurelio Barcena of the Poblacion, Loac, Pangasinan.
>
> Contrary to Presidential Decree No. 1866.
>
> Urdaneta, Pangasinan, October 1, 1990.
>
> "JOSE F. LOPEZ
>
> "3rd Asst. Provincial Prosecutor"[2]

On October 15, 1991, 2nd Assistant Provincial Prosecutor Jovito C. Peralta of Pangasinan filed with the Regional Trial Court, Pangasinan, Urdaneta an information[3] charging accused Raul Pablo y Lazaro, Reynaldo Molina, Arnulfo Medrano, Ramil Castillo, Tony Molina and Arnold Rebamonte with murder, thus:

> "The undersigned hereby accuses RAUL PABLO Y LAZARO, REYNALDO MOLINA, ARNULFO MEDRANO, RAMIL CASTILLO, TONY MOLINA and ARNOLD REBAMONTE, of the crime of MURDER, committed as follows:
>
> "That on or about the 6th day of August 1990, at the Poblacion, municipality of Loac, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring,

confederating, and mutually helping one another, with deliberate intent to kill, qualified by treachery, evident premeditation and use of superior strength, did then and there, willfully, unlawfully and feloniously chase, attack, assault, pull the hair of, hold And shoot one Aurelio Barcena, with the use of a Cal. 45 firearm, inflicting upon the latter, the following injuries:

"External Findings:

- Gunshot wound:

Point of Entry: 0.5 x 0.5 cm
Mid-parietal area;
Point of Exit: None

- Contusion, 3 x 3 cm., face left;
- Contusion, 1 x 1 cm., upper lip, left;

"Internal Findings:

- Fracture linear 8 cm., extending brow right temporal to left temporal area;
- Fracture circular, 1x1 cm. temporal area, right with metallic foreign body.

which caused the death of said Aurelio Barcena, as a consequence, to the damage and prejudice of his heirs.

"Contrary to Art. 248 of the Revised Penal Code.

"Urdaneta, Pangasinan, October 10, 1991.

"JORITO C. PERALTA
"2nd Asst. Provincial Prosecutor"[4]

On October 24, 1991, on motion of the prosecution,[5] the trial court ordered the consolidation of the cases, and assigned them to Branch 45, Regional Trial Court, Pangasinan, Urdaneta.[6]

Meantime, on arraignment on September 26, 1991, accused Raul Pablo y Lazaro pleaded not guilty to the charge of illegal possession of firearm.[7] On August 20, 1992, accused Raul Pablo y Lazaro, Reynaldo Molina and Ramil Castillo were arraigned in the murder case and also pleaded not guilty to the information.[8]

On August 6, 1990, at around 10:30 in the evening, Marcelina Rebugio and Darwin Barcena were walking along the provincial road in Poblacion Laoac, Pangasinan, looking for Marcelina's son, Cristopher Rebugio. They had just come from the house of Aurelio Barcena to inquire whether the latter knew of Christopher's whereabouts; they were told that Aurelio was outside the house searching for spiders.[9]

The two were heading home when Marcelina saw Aurelio being chased by Reynaldo Molina, Tony Molina, Arnulfo Medrano, Ramil Castillo, Arnold Rebamonte and Arnold Pablo. Reynaldo and Tony held Aurelio's long hair, causing Aurelio to slow down. Seizing the opportunity, Arnulfo and Ramil then held both hands of Aurelio and twisting his arms backward. Arnold also held Aurelio's feet to stop him from kicking. Accused Raul Pablo and his companions finally pressed Aurelio's head towards the ground.[10]

At this juncture, accused Raul Pablo poked a gun at the mouth of Aurelio and pulled the trigger, which caused Aurelio to fall, face down. From a distance of about eight (8) meters, Marcelina saw the malefactors committing the killing.[11]

Prosecution witness Menardo Barcena testified that in the evening of August 6, 1990, at around 10:30, he was in his house conversing with Alvin Barcena, Jose Puerto and other members of his family, when he heard three (3) gunshot sounds. He immediately rushed outside the house to get a glimpse of what was happening. While in front

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of the gate, Menardo saw accused Arnold Rebomante, Ramil Castillo, Tony Molina, Arnulfo Medrano, and Reynaldo Molina running away. He also saw accused Raul Pablo holding a .45 caliber gun standing in front of a person sprawled on the ground, bathed with his own blood. When Raul walked away, Menardo went near the person whom he immediately recognized as his brother Aurelio. He asked his brother who was responsible for the shooting. Aurelio mentioned the names of the accused Raul Pablo and his companions as his assailants.[12]

After due trial, on January 14, 1994, in a joint decision, the trial court convicted accused Raul Pablo y Lazaro and Ramil Castillo. The dispositive portion of the decision reads:

> "WHEREFORE, the court finds:
>
> "In Criminal Case No. U-5818, the accused RAUL PABLO y Lazaro GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearm and Ammunitions and hereby sentences him to suffer imprisonment of RECLUSION PERPETUA and to pay costs.
>
> "In Criminal Case No. U-6262, the accused RAUL PABLO y Lazaro and RAMIL CASTILLO GUILTY beyond reasonable doubt of the crime of MURDER and hereby sentences them to suffer imprisonment of RECLUSION PERPETUA each and to pay jointly and severally the heirs of the deceased Aurelio Barcena, the following amount:
>
> "1. P50,000.00 as indemnity for the death of the victim;
> "2. P14,700.00 as actual expenses;
> "3. P203,920.00 by way of lost earnings;
> "4. P20,000.00 as moral damages and to pay costs.
>
> "With respect to accused REYNALDO A. MOLINA, being a youthful offender in accordance with Section 1, Presidential Decree No. 1179, he was sixteen (16) years old, six (6) months and twenty (20 days at the time of the commission of the offense and nineteen (19) years, eleven (11) months and ten (10) days old today January 14, 1994 having been born on February 4, 1974 (Exhibit 14, Case No. U-6262) this Court finds the said youthful offender Reynaldo A. Molina has committed in conspiracy with the accused Raul Pablo and Ramil Castillo, the crime of murder which has the same imposable penalty including civil liability imposed on the accused Pablo and Castillo, however, instead of pronouncing judgment of conviction, this Court gives the youthful offender Reynaldo A. Molina a period of five (5) days from today within which to apply for the suspension of his sentence in accordance with Section 2 of P.D. 1179, otherwise, this Court shall pronounce judgment upon said youthful offender Reynaldo Molina.
>
> "On the other hand, the accused Raul Pablo and Ramil Castillo are hereby ordered committed to the Provincial jail of Lingayen, Pangasinan, for their immediate transfer or delivery to the Bureau of Prisons, Muntinlupa, Rizal, pursuant to law, as said accused are no longer entitled to bail as enunciated in the recent case of People vs. Divina, G.R. No. 93805-09, April 7, 1993, and other related cases.
>
> "In connection with the remaining accused Tony Molina and Arnold Rebamonte who are still at-large, let alias warrants of arrest be issued for their apprehension to be served by the National Bureau of Investigation (NBI), Criminal Investigation Service (CIS) and to the Philippine National Police (PNP). In the meantime that there is no certificate of death submitted to this Court on the alleged demise of the accused Arnulfo Medrano, let his name still remain as an accused thereof.
>
> "SO ORDERED."[13]

Hence, this appeal.[14]

Accused-appellants Raul Pablo y Lazaro and Ramil Castillo filed separate briefs. However, they raised similar issues and impute the same errors to the trial court.

Accused-appellant Raul Pablo doubted the testimonies of prosecution witnesses Menardo and Marcelina Barcena. According to accused-appellant Raul Pablo, Menardo Barcena, had a conversation with the victim after he saw the victim sprawled on the ground in the evening of August 6, 1990, and that the latter revealed the names of his assailants. Accused assails this testimony as improbable if not impossible considering the nature of the wounds Aurelio suffered.[15] Accused-appellant presented the expert testimony of Dr. Bernardo Macaraeg, the doctor who attended to the victim when he was brought to the hospital. He testified that with the nature of the wound inflicted on the deceased, which was on the head, he would immediately or in just a few seconds after being shot be unable to talk.[16]

Accused-appellant also presented an expert witness in the person of Dr. Ferdinand Florendo, who testified that "the injury sustained by the victim will immediately cause loss of consciousness and comatose. And comatose patients cannot move or utter any word or sound, much less enumerate names of persons who allegedly shot him."[17] Ergo, according to accused-appellant Raul Pablo, it is obvious that witness Menardo Barcena was making up stories and lying during his testimony in open court.

As to the testimony of witness Marcelina Barcena Rebugio, the same can only be fabricated. In her testimony she could not make up her mind whether the gun was placed inside the mouth of the victim or pressed on the mouth or the right side of the mouth of the victim Aurelio. The inconsistencies can only be explained by one singular conclusion, that Marcelina was not at the scene of the crime. She did not witness the shooting of the victim Aurelio, and that she was just fabricating lies to support the statement of Menardo Barcena.[18]

As to accused-appellant Ramil Castillo, first, according to him there was nothing in the evidence that would show that he acted in concert with Raul Pablo in killing the victim Aurelio. What Ramil Castillo did was simply to hold the hand of the victim. He did not have any knowledge that Raul Pablo was going to kill Aurelio. The fact of conspiracy was not proved, hence, accused-appellant Castillo could not be held liable for the killing of Aurelio. It was accused-appellant Raul Pablo who pulled the trigger of the gun that killed Aurelio.[19]

Accused-appellant Ramil Castillo raised as error the fact of the dying declaration of the victim Aurelio considered by the trial court as part of res gestae, hence, exempted from the hearsay rule.[20]

According to accused-appellant Ramil Castillo, in order that a dying declaration may be considered admissible in evidence, it must be shown that: a) the declaration concerned the cause and surrounding circumstances of the declarant's death; b) that at the time the declaration was made, the declarant was under a consciousness of an impending death;

c) that the declaration is offered in a criminal case for murder, homicide, or parricide, in which the declarant is the victim. [21]

Accused-appellant Ramil Castillo submits that the evidence does not justify the finding of the lower court that the statement of Aurelio Barcena can be considered as dying declaration. The prosecution failed to establish that Aurelio Barcena made the declaration with full knowledge of an impending death. The mention of his name as one of the companions of Raul Pablo certainly did not prove that he was one of the assailants, absent any express mention of his participation. Neither would the declaration be legally considered as part of res gestae. It lacked the necessary ingredients to make it admissible in evidence.[22]

Accused-appellant submits that the trial court erred when it considered the testimonies of Menardo Barcena and Marcelina Rebugio as gospel truths when in fact these witnesses had executed an affidavit of desistance claiming that there was no sufficient evidence to prove or establish the guilt of the accused-appellants.[23]

The issues raised are as follows:

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- Whether the testimonies of Menardo Barcena and Marcelina Barcena are entitled to full credence;

- Whether the defense of the accused is one of alibi;

- Whether the accused acted in conspiracy in causing the death of the victim, Aurelio Barcena; and

- Whether the deceased's declaration naming Ramil Castillo and the other accused as his assailants could be taken as a dying declaration, or as part of the res gestae.

The Solicitor General points to what it termed as the very basic issue in this case which is credibility of witnesses. According to the Solicitor General, the long-standing principle in our jurisdiction is that when an appealed conviction hinges on the credibility of witnesses, the assessment of the trial court is accorded the highest degree of respect. The findings of the trial judge who heard the witnesses, would not be disturbed on appeal and would be given considerable weight and respect especially in regard to the credibility of witnesses, since he was in a better position to observe the conduct and deportment of the witnesses.[24]

We find the appeal without merit.

First, accused-appellants argue that prosecution witnesses Menardo and Marcelina were perjured witnesses. This is untenable. It is an accepted principle that absent the most compelling reason or motive, it is inconceivable why witnesses would openly and publicly lie or concoct a story which would send an innocent man to jail.[25] Accused-appellants failed to show any animosity or ill-feeling on the part of the prosecution witnesses which could have motivated them to falsely accuse him of a serious crime as murder. No evil or improper motive on their part in testifying against accused-appellants having been shown, the presumption is that the witnesses do not have ill motive and that their testimonies are entitled to full faith and credence.[26]

The relationship of the witnesses to the victim may not be taken as an indicium of bias. On the contrary, the witnesses' relationship to the victim would render their testimonies more credible as it would be unnatural for relatives, who are particularly interested in vindicating the crime, to accuse somebody else other than the real culprits.[27]

Second, accused-appellants allege that the testimonies of the prosecution witnesses are replete with material inconsistencies. They maintain that the injury sustained by the victim does not conform to the declaration of Marcelina that the muzzle of the gun was "placed" inside the victim's mouth. From the vantage view, Marcelina testified that she saw accused-appellant Raul Pablo poke a gun at the mouth of Aurelio. The fact that the point of entry was in the midparietal area (top of the head) does not in any manner imply that the witness lied. The discrepancy may be explained by the fact that at the time Aurelio was shot, he was moving and struggling, trying to free himself from the hold of his assailants.[28]

Accordingly, the Solicitor General submits that, where there is a discrepancy between the testimony of the witness and the autopsy report of the medico legal officer, such discrepancy has to give way to the positive identification of the accused-appellants as the ones who killed Aurelio.[29]

Moreover, the witness did not categorically state that the muzzle of the gun was placed inside the mouth of the victim. The discrepancies pointed out by the accused-appellants is on minor details that may be explained as lapses in memory and can not be considered as a deliberate attempt to state a falsehood.[30]

Accused-appellants also harped on the one (1) year delay that took Marcelina to execute a written declaration pointing to them as the perpetrators of the crime. It is plain from the record that Marcelina executed a joint affidavit with Darwin Barcena on August 10, 1990, to the effect that it was accused-appellant Raul Pablo who shot Aurelio with a .45 caliber gun. Marcelina also satisfactorily explained her failure to appear before the local

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authorities and the Municipal Circuit Trial Court.[31] "Prosecution witness Marcelina positively identified accused-appellant Raul Pablo as the gunman. Her testimony was corroborated by Menardo who declared that he saw accused-appellant in front of a person lying on the ground, holding a .45 caliber gun."[32]

Third, accused-appellants lament the inability of Marcelina and members of the victim's family to come to the aid of Aurelio during and subsequent to the attack. There is nothing wrong or reprehensible with this seeming inaction of the victim's family especially so when accused-appellant Raul Pablo made an ominous warning for them "to stay home because he (Aurelio) is already dead." It is also a settled doctrine in our behavioral response that when one is confronted with a strange, startling or frightful experience, one's actions and reactions cannot be stereotyped.[33]

Fourth, accused-appellants contend that it was physically impossible for the victim to name his assailants after sustaining a serious injury in his head. Dr. Bernard Macaraeg, the attending physician who treated the victim, admitted that there was a possibility that Aurelio could have made a dying declaration immediately after the shooting. Likewise, Dr. Ferdinand Florendo, an expert witness for the defense, did not foreclose any chance that the victim was able to mention the names of his attackers despite the fatal injuries he sustained in his head. Aurelio did not die instantly after the shooting; he expired two (2) hours later.[34]

Fifth, accused-appellant Raul Pablo faulted the trial court for considering his denial as one of alibi, maintaining that he was in his house and never heard a gunfire. Such denial, uncorroborated as it is by any reliable evidence, can not in any manner overcome the clear and convincing testimonies of the prosecution witnesses that he was the gunman.[35]

After a piece by piece analysis and consideration of the issues, arguments and allegations raised by accused-appellants, we find that the trial court committed no error in convicting them of the crime charged.

"The probative value of the testimonies of eyewitnesses is not diminished by the mere fact that they are the brothers of the victim. Indeed, relatives are interested in vindicating the crime, and it would be unnatural for them to accuse someone other than the real culprit."[36]

As to the accused-appellants' defense of denial the same is untenable. "It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law"[37]

In Criminal Case No. 5818, the court found accused-appellant Raul Pablo y Lazaro guilty of illegal possession of firearm and ammunition punished under P. D. No. 1866 and sentenced him to the penalty of reclusion perpetua and to pay the costs. His separate indictment was on account of an unlicensed firearm used in the killing. "Under Section 1 of Republic Act No. 8294, if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. Although the crime in this case was committed in 1990, the amendatory law (R. A. No. 8294) which became effective on July 6, 1997, may be given retroactive effect since it is favorable to accused-appellant. Therefore, the illegal possession of an unlicensed firearm may no longer be separately charged against accused Raul Pablo and only one offense shall be punished, that is, murder, and the use of an unlicensed firearm shall only be considered as an aggravating circumstance.[38]

IN VIEW WHEREOF, the decision of the Regional Trial Court, Pangasinan, Urdaneta, Branch 45 is hereby AFFIRMED with MODIFICATION.

In Criminal Case No. U-5818, the charge of illegal possession of firearm and ammunition is hereby DISMISSED.

In Criminal Case No. U-6262, the accused Raul Pablo y Lazaro and Ramil Castillo are found guilty beyond reasonable doubt of murder and each of them is hereby sentenced to reclusion perpetua[39] and to pay jointly and severally the heirs of the deceased Aurelio Barcena in the following amounts: (1) P50,000.00 as indemnity for the death of the victim; (2) P14,700.00 as actual expenses; (3) P203,920.00 by way of lost earnings; and (4) P50,000.00 as moral damages, and to pay the costs.

Costs in this instance against accused-appellants.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan and Ynares-Santiago, JJ., concur.

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[1] Joint Decision, Rollo pp. 30-76, at pp. 75-76, Judge Joven F. Costales, presiding.

[2] Information, Criminal Case No. U-5818, Original Record, Vol. II, p. 1.

[3] Original Record, Vol. I, pp. 1-3.

[4] Criminal Case No. U-6262, Information, Original Record, Vol. I, pp. 1-2.

[5] Ibid., Motion for Consolidation, p. 42.

[6] Order, Original Record, Vol. I, p. 44.

[7] Order, Original Record, Vol. II, p. 34.

[8] Order, Original Record, Vol. I, p. 153.

[9] TSN, 11 August 1993, testimony of Marcelina Rebugio, pp. 20-21.

[10] Ibid., pp. 21-22.

[11] Ibid., pp.22-24.

[12] TSN, July 19, 1993, testimony of Menardo Barcena, pp. 8-13.

[13] Joint-Decision, Original Record, Vol. II, pp. 137-188, at pp. 187-188.

[14] On May 16, 1994, we accepted the appeal (Rollo, p. 81).

[15] Brief for accused-appellant Raul Pablo, Rollo, pp. 100-135, at p. 105.

[16] TSN, testimony of Dr. Macaraeg, July 26, 1993, pp. 3, 20.

[17] TSN, testimony of Dr. Florendo, October 19, 1993, pp. 21-24.

[18] Ibid., p. 19.

[19] Brief for accused-appellant Ramil Castillo, Rollo, pp. 121-144, at pp. 130-131.

[20] Ibid., p. 132.

[21] Ibid., p. 133, citing People vs. Sagavro, 145 SCRA 468 [1986].

[22] Ibid., p. 136.

[23] Ibid., p. 137.

[24] Brief for Appellee, Rollo, pp. 212-234, at p. 223.

[25] Ibid., Rollo, p. 224, citing People vs. Rivera, 221 SCRA 647 [1993].

[26] Ibid., citing People vs. Hubillo, 220 SCRA 393 [1993].

[27] Ibid., citing Vicente, 225 SCRA 361 [1993].

[28] Ibid., pp. 224-225.

[29] Ibid., pp. 225-226.

[30] Ibid., p. 226.

[31] Ibid., p. 227.

[32] Ibid., p. 228.

[33] Ibid., pp. 228-229.

[34] Ibid., pp. 230-231.

[35] Ibid., p. 231, citing People vs. Mortos, 226 SCRA 29 [1993].

[36] People vs. De Guzman, G. R. No. 137806, December 14, 2000; People vs. De la Rosa, G. R. No. 133443, September 29, 2000; see also People vs. Legaspi, 331 SCRA 95 [2000].

[37] People vs. Lovedovial, G. R. No. 139340, January 17, 2001, citing People vs. Enriquez, 354 Phil. 659 [1998].

[38] People vs. Domingo Valdez, G. R. No. 127753, December 11, 2000; see also People vs. Taguba, G. R. Nos. 112792-93, October 6, 2000; People vs. Langit, G. R. Nos. 134757-58, August 4, 2000.

[39] The prescribed penalty can not be imposed in its maximum period (death) due to the aggravating circumstance of illegal possession of firearm because at the time of the commission of the offense, the death penalty may not be imposed (Article III, Sec. 19 (1), 1987 Constitution).

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