

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS SUMIBCAY Y REPOLLO, ACCUSED-APPELLANT.

*G.R. Nos. 132130-31. May 29, 2002*

Ponente: YNARES-SANTIAGO, J.

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### YNARES-SANTIAGO, J.:

This is an appeal from the decision[1] of the Regional Trial Court of Urdaneta, Pangasinan, Branch 47, in Criminal Case Nos. U-5638 and U-5639, convicting accused-appellant of the crime of Murder and Attempted Murder.

On August 28, 1996, accused-appellant was charged in three separate informations for the crimes of Illegal Possession of Firearms, Murder and Attempted Murder. He was acquitted of Illegal Possession of Firearms, but was convicted of murder and attempted murder under the following informations:

In Criminal Case No. U-5638, for Attempted Murder:

That on or about the 6th day of November 1989, at brgy. Guiset Norte, municipality of San Manuel, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a cal. 38 revolver (paltik), with intent to kill, with treachery, evident premeditation and with the use of superior strength, did then and there, wilfully, unlawfully and feloniously assault and shoot Flordeliza Sampilo y Saballa, but missed, thus accused has commenced the commission of the crime of Murder directly by overt acts but did not perform all the acts of execution which should have produced the felony by reason of some cause other than the spontaneous desistance of the accused, to the damage and prejudice of said Flordeliza Sampilo.

CONTRARY to Article 248 in relation to Art. 6 of the Revised Penal Code.[2]

In Criminal Case No. U-5639, for Murder:

That on or about the 6th day of November 1989, at barangay Guiset Norte, municipality of San Manuel, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with an unlicensed Cal. 38 revolver (paltik), with intent to kill, with treachery, evident premeditation and with the use of superior strength, did then and there wilfully, unlawfully and feloniously assault and shoot GLICERIO SAMPILO, inflicting upon him the following injury: Gunshot wound –1- Entrance, anterolateral aspect, lower 3rd, which caused his death, as a consequence, to the damage and prejudice of his heirs.

CONTRARY to Art. 248 of the Revised Penal Code.[3]

Upon arraignment, accused-appellant pleaded not guilty to the charges against him. Trial thereafter ensued.

The version of the prosecution runs thus: In the morning of November 5, 1989, Flordeliza Sampilo, saw accused-appellant Jesus Sumibcay digging in her backyard without permission. When she confronted him, accused-appellant did not reply, but stopped digging. Later, in the afternoon, accused-appellant returned drunk

and threatened to kill Flordeliza, but she and her husband, Glicerio Sampilo, ignored him.[4]

The next day, November 6, 1989, at around 3:00 in the afternoon, accused-appellant suddenly showed up holding a gun, five meters away from the sari-sari store of the Sampilo spouses. He cursed and threatened to kill Flordeliza, who was then tending the store. Accused-appellant shot her but missed. Flordeliza hid at the back of the refrigerator and thereafter secured the safety of their youngest child, upon the instruction of Glicerio.[5]

Outside the store, Glicerio slowly approached accused-appellant with his arms raised, saying “No, I will not fight, Manong, I will not fight.”[6] As Glicerio advanced, accused-appellant backed off little by little, but kept the gun pointed at Glicerio. When Glicerio was approximately two meters away from him, accused-appellant fired his gun hitting him on the neck. Thereafter, accused-appellant fled.[7]

The whole incident was witnessed by Lynette De Leon, who was standing on the roadside, fifteen meters away from the victim and accused-appellant.[8]

Meanwhile, Glicerio was rushed to the hospital where he expired the following day. Before he died, he revealed to the investigating police officers that it was accused-appellant who shot him.[9]

Dr. Felipe Tablada, the physician who operated on Glicerio, testified that the victim sustained a single gunshot wound on the neck. The bullet entered the right side of the neck, penetrating the upper part of the chest.[10]

Accused-appellant, on the other hand, claimed that the shooting of Glicerio was an act of self-defense, and that the firing of the gun at Flordeliza was accidental. The facts as presented by the defense are as follows: Sometime in October 1989, accused-appellant was working in his backyard, using stones from the yard of his neighbors, the spouses Glicerio and Flordeliza Sampilo. He noticed a commotion and when the window of the couple’s house opened, he realized that they were arguing about the stones he was using. He heard Flordeliza insulting him, thus, he attempted to explain that Glicerio gave his permission. However, Flordeliza signaled him to leave.[11]

At around 3:00 in the afternoon of November 6, 1989, accused-appellant passed by the sari-sari store of the spouses. When Flordeliza saw accused-appellant, she hurled insults at him. Accused-appellant confronted her and reiterated that Glicerio gave him permission to use their stones in fixing the eroded portion of his lot. Flordeliza got angry and commanded Glicerio to get a gun and shoot accused-appellant. Moments later, Glicerio went out and poked a gun on accused-appellant. He tried to pacify Glicerio but the latter was determined to shoot him. Hence, accused-appellant grabbed the gun and tried to wrestle it away from Glicerio. In the ensuing scuffle, the gun went off while directed towards Flordeliza. This prompted Glicerio to comment, “Look, one bullet was wasted, it costs very expensive.”[12] When the gun again accidentally fired, Glicerio said, “You see two bullets are already wasted, if you will not get me loose, I’ll shoot you.”[13] Determined to save his life, accused-appellant twisted the gun towards Glicerio’s neck. It was at this instance when the gun went off, hitting Glicerio on the neck.[14]

On November 7, 1997, the trial court rendered the assailed decision. The dispositive portion thereof reads:

WHEREFORE, in view of all the foregoing, judgment is rendered as follows:

IN CRIMINAL CASE NO. U-5638

(1)

Finding the accused GUILTY beyond reasonable doubt of the crime of ATTEMPTED MURDER, he is hereby sentenced to suffer imprisonment of FOUR YEARS, TWO MONTHS and ONE DAY of prision correccional maximum as minimum to TEN YEARS and ONE DAY of prision mayor as maximum, applying the Indeterminate Sentence Law.

(2)

Accused is hereby ordered to pay the complainant and victim FLORDELIZA SAMPILO the sum of FIVE THOUSAND (P5,000.00) PESOS as an indemnity.

IN CRIMINAL CASE NO. U-5639

(1)

Finding the accused GUILTY beyond reasonable doubt of the crime of MURDER, he is hereby sentenced to suffer imprisonment of RECLUSION PERPETUA, with all the accessory penalties provided by law.

(2)

The accused is hereby ordered to pay the heirs of the deceased GLICERIO SAMPILO the sum of FIFTY THOUSAND (50,000.00) PESOS as indemnity, moral and exemplary damages in the sum of P50,000.00; consequential damages in the sum of P58,500.00 and attorney's fees of P10,000.00.

(3)

Costs against the accused.

IN CRIMINAL CASE NO. U-9044

The accused is ACQUITTED of the crime of ILLEGAL POSSESSION OF FIREARM.

SO ORDERED.[15]

Hence, this appeal on the following grounds:

A.

THE TRIAL COURT GRAVELY ERRED IN OVERLOOKING AND DISREGARDING FACTS AND CIRCUMSTANCES OF GREAT & SIGNIFICANT WEIGHT AND IMPORTANCE WHICH, IF PROPERLY CONSIDERED, WOULD HAVE RESULTED TO (sic) THE ACQUITTAL OF THE ACCUSED-APPELLANT.

B.

THE TRIAL COURT ERRED IN DISREGARDING THE VERSION OF THE DEFENSE WHICH IF TAKEN TOGETHER, WOULD AFFECT THE RESULT OF THE CASE IN FAVOR OF THE ACCUSED-APPELLANT.

C.

THE TRIAL COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT ON GROUNDS OF REASONABLE DOUBT.[16]

Accused-appellant's self-defense theory is unavailing. In alleging that the killing arose from an impulse to defend oneself, the onus probandi rests upon accused-appellant to prove by clear and convincing evidence the following elements: (a) that there was unlawful aggression on the part of the victim; (b) that there was reasonable necessity for the means employed to prevent or repel it; and, (c) that there was lack of sufficient provocation on the part of the defendant.[17]

In the case at bar, other than the self-serving testimony of accused-appellant, there is absolutely no evidence on record that would show that Glicerio attacked him. Likewise, the Court is totally unconvinced that the firing upon Flordeliza was accidental. Indeed, the trial court, which had the unparalleled opportunity to observe the demeanor

of the witnesses as they testify,[18] correctly sustained the version presented by the prosecution. We extensively reviewed the testimony of the prosecution witnesses and found their declarations to be materially corroborated, consistent and credible. It is hard to believe that the prosecution eyewitness, a disinterested party who was not shown to have been moved by improper motive, would perjure herself and falsely implicate accused-appellant in the present case. [19]

Moreover, it appears that no powder tattooing or smudging were noted on the entrance wound sustained by Glicerio. This indicates that the gun must have been fired from a distance of more than two feet. "As the distance of the muzzle of the firearm increases, the burning, powder tattooing and smudging gradually diminish until (the same) disappear at a distance beyond twenty-four inches." [20] Verily, this belies the claim of the defense that the gun went off at close range, and conversely, bolsters the version of the prosecution that Glicerio was shot at a distance of no less than two meters.

Likewise, the improbabilities pointed out by accused-appellant are too trivial to merit consideration. Certainly, it was not impossible for accused-appellant to have missed the shot when he fired upon Flordeliza at a distance of five meters. As correctly argued by the Solicitor General, five meters is not too near to miss a shot, especially for accused-appellant who was not shown to be a trained marksman. Furthermore, the prosecution witnesses' failure to boldly confront accused-appellant during and immediately after the shooting incident is in perfect conformity with human reaction and experience. Considering the terror and violence stirred up by the situation, it is understandable for one to seek cover rather than to expose one's self to danger.

Finally, the attempt to discredit the eyewitness testimony of Lynette De Leon on the point of entry of the bullet must also fail. Contrary to the claim of accused-appellant, there is no inconsistency between the testimony of the prosecution eyewitness and the medical finding which shows that Glicerio was hit on the right side of the neck. De Leon never testified that accused-appellant aimed his gun in front of Glicerio, or directly fronting Glicerio's neck, or that Glicerio was hit on the front portion of the neck. Her testimony was that Glicerio was shot on the neck, but she was not certain as to what part of the neck exactly was hit.[21] Hence, the precise point of entry of the bullet as testified to by the doctor who examined the victim does not in any way diminish the probative value of De Leon's testimony.

In Criminal Case No. U-5638, the trial court was correct in convicting accused-appellant of attempted murder. The testimony of Flordeliza that accused-appellant deliberately fired the gun at her was reinforced by the corroborative declaration of prosecution witness De Leon who stated that the shot was intended to kill Flordeliza. Since accused-appellant already commenced the criminal act by overt acts but failed to perform all acts of execution as to produce the felony by reason of some cause other than his own desistance, the crime committed is an attempted felony.[22] Accused-appellant already commenced his attack with a manifest intent to kill by shooting Flordeliza, but failed to perform all the acts of execution by reason of causes independent of his will, that is, poor aim and the intervention of Glicerio. So also, accused-appellant's attack on Flordeliza, who was then unsuspectingly tending their sari-sari store, was sudden and done without any provocation, thus giving her no chance to defend herself. This circumstance constitutes treachery[23] which qualifies the crime to attempted murder.

Under Article 51 of the Revised Penal Code, the penalty to be imposed upon the principal of an attempted crime shall be lower by two degrees than that prescribed for the consummated felony. Prior to its amendment by Republic Act No. 7659, Article 248 provided that the crime of murder shall be punished by reclusion temporal in its maximum period to death. In accordance with Article 61(3), the penalty two degrees lower would be prision correccional maximum to prision mayor medium. Since there is no modifying circumstance, the medium period of the penalty, which is prision mayor minimum, should be imposed as the maximum penalty. Under the

Indeterminate Sentence Law, accused-appellant is entitled to a minimum penalty within the range of *arresto mayor* in its maximum period to *prision correccional* in its medium period, the penalty next lower than the penalty for attempted murder.[24]

The award of P5,000.00 by way of indemnity to Flordeliza Sampilo in the attempted murder case should be deleted for lack of basis.

In Criminal Case No. U-5639, the trial court correctly appreciated the qualifying circumstance of treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime, without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden, unexpected, on the person of the victim, without the slightest provocation on the part of the latter.[25] In the present case, Glicerio was utterly defenseless when he was shot by accused-appellant. He was raising his hands in an act of surrender and repeatedly informing accused-appellant that he will not fight. In shooting Glicerio, accused-appellant therefore deliberately and consciously took liberty of the absence of any real chance on the part of Glicerio to defend himself. Hence, treachery which qualifies the killing of the victim to murder should be appreciated against accused-appellant.

The penalty for murder at the time of its commission was *reclusion temporal* maximum to death.[26] There being three distinct penalties, each one shall form a period.[27] Since no aggravating or mitigating circumstance was proved in this case, the penalty shall be imposed in its medium period.[28] Thus, the trial court was correct in sentencing accused-appellant to suffer the penalty of *reclusion perpetua*.

Anent accused-appellant's civil liability for the crime of murder, the amount of P58,500.00 as actual damages awarded by the trial court should be deleted for failure of the prosecution to produce receipts in support thereof. However, in lieu thereof, temperate damages under Article 2224 of the Civil Code may be recovered, as it has been shown that the deceased's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty. For this reason, an award of P15,000.00 by way of temperate damages should suffice.[29] In line with recent jurisprudence, the heirs of the deceased should be awarded P50,000.00 as civil indemnity and another P50,000.00 as moral damages.[30] The exemplary damages and attorney's fees awarded by the court *a quo* should be deleted for lack of basis.

WHEREFORE, in view of all the foregoing, the Decision of the Regional Trial Court of Urdaneta, Pangasinan, Branch 47, in Criminal Case No. U-5638, finding accused-appellant guilty beyond reasonable doubt of Attempted Murder and Criminal Case No. U-5639, finding accused-appellant guilty beyond reasonable doubt of Murder, is **AFFIRMED** with the following **MODIFICATIONS**:

- 1) In Criminal Case No. U-5638, accused-appellant Jesus Sumibcay y Repollo is sentenced to suffer an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.
- 2) In Criminal Case No. U-5639, accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*; and to pay the heirs of the deceased the amounts of P15,000.00 as temperate damages, P50,000.00 as civil indemnity and another P50,000.00 by way of moral damages.

**SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Austria-Martinez, JJ., concur.

- [1] Penned by Judge Meliton G. Emuslan.
- [2] Rollo, p. 16.
- [3] Rollo, p. 18.
- [4] TSN, November 4, 1996, pp. 4-6.
- [5] Ibid., pp. 6-10.
- [6] TSN, November 18, 1996, p. 5.
- [7] TSN, November 18, 1996, pp. 5-7 and 18-19.
- [8] Ibid., pp. 1-22.
- [9] TSN, December 17, 1996, pp. 6-8.
- [10] Ibid., February 7, 1997, pp. 5-8.
- [11] TSN, May 7, 1997, pp. 3-10.
- [12] TSN, May 7, 1997, p. 16.
- [13] Ibid.
- [14] Id., pp. 13-18.
- [15] Rollo, pp. 48-49.
- [16] Rollo, p. 60.
- [17] People v. Almazan, G.R. Nos. 138943-44, September 17, 2001, citing People v. Molina, 292 SCRA 742 [1998].
- [18] People v. Gonzales, Jr., G.R. Nos. 143143-44, January 15, 2002, citing People v. Tabones, 304 SCRA 781 [1999].
- [19] People v. Palabrica, G.R. No. 129285, May 7, 2001, citing People v. Bayotas, 348 SCRA 627 [2000].
- [20] Sierbo v. Workmen's Compensation Commission, et al., 114 SCRA 762, 782 [1982], citing Solis, Legal Medicine, 1964 ed., p. 242.
- [21] TSN, November 18, 1996, p. 19.
- [22] People v. Alba, G.R. Nos. 130627 & 139477-78, May 31, 2001.
- [23] People v. Mantes, G.R. No. 138914, November 14, 2001.
- [24] People v. Balderas, 276 SCRA 470, 488 [1997].
- [25] People v. Mantes, *supra*.
- [26] Revised Penal Code, Article 248.
- [27] Revised Penal Code, Article 77.
- [28] Revised Penal Code, Article 64 (1).
- [29] People v. Del Valle, G.R. No. 119616, December 14, 2001.

[30] *People v. Manzano*, G.R. No. 138303, November 26, 2001, citing *People v. Panado*, 348 SCRA 679 [2000]; *People v. Sullano*, 331 SCRA 649 [2000].

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