PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ESPINA, ACCUSED-APPELLANT.

G.R. Nos. 132325-26. July 26, 2001

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 Tagbilaran, Branch 47, in Criminal Case Nos. 8194 and 8155 convicting accused-appellant of the crime of Murder qualified by Illegal Possession of Firearms under P.D. No. 1866, as amended by R.A. No. 8294; and sentencing him to suffer the penalty of Reclusion Perpetua and to pay the heirs of the deceased the sum of P50,000.00 and the costs.

The information for the crime of murder alleged:

> That on or about the 30th day of September, 1992, in the municipality of Tubigon, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused without justifiable motive, with treachery and abuse of superior strength, the accused being then armed with a short firearm and without giving opportunity to the victim to defend himself, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Romeo Bulicatin, with the use of said firearm, hitting the latter on the vital part of his body resulting to his death; to the damage and prejudice of the heirs of the deceased.
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> Acts committed contrary to the provisions of Article 248 of the Revised Penal Code with the aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime.[2]

For Illegal Possession of Firearms, the information stated:

> That on or about the 30th day of September, 1992, in the municipality of Tubigon, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to possess firearm and ammunition did then and there willfully, unlawfully and criminally keep, carry and have in his possession, custody and control a short firearm and ammunition without first obtaining the necessary permit or license to possess the said firearm and ammunition from competent authority, which firearm and ammunition were carried by the accused outside of his residence and used by him in committing the crime of Murder of which one Romeo Bulicatin was the victim; to the damage and prejudice of the Republic of the Philippines. Acts committed contrary to the provisions of Presidential Decree No. 1866.[3]

Upon arraignment on June 27, 1994, accused-appellant pleaded not guilty to both charges;[4] thereafter trial followed.

The facts as adduced by the prosecution are synthesized in the People's Brief, thus -

> In the afternoon of September 30, 1992, the members of an association locally known as the "ripa-ripa" went to the house of Eufronia Pagas located at sitio Batic, Tan-awan, Tubigon, Bohol for their scheduled contribution to a fund intended for a wedding celebration. (p. 3, August 23, 1996, TSN; p. 3, January 21, 1997, TSN) Among those present thereat were Romeo Bulicatin, Rogelio Espina, Samson Abuloc who were having a

drinking spree and playing "chikika", a card game. (p. 4, May 9, 1995, TSN).

When accused-appellant arrived, Romeo asked three (3) bottles of "kulafu" wine from him and he acceded by buying three (3) bottles of "kulafu" wine from the store of Eufronia Pagas. Later on, at around 4:00 of that afternoon, Romeo again demanded another bottle of "kulafu" wine from accused-appellant but this time, the latter refused to give in to the demand. (p. 4, January 21, 1997, TSN) Romeo then proceeded to where accused-appellant was playing cards and without any warning, urinated on the latter and clipped him under his (Romeo) arms. (p. 4, August 23, 1996, TSN) Accused-appellant got angry. He however did not engage Romeo in any altercation but instead turned away and went home. (p. 5, May 9, 1995, TSN)

Later on in the evening, at about 9:00 p.m., while Romeo, Rogelio and Samson were still having a drinking spree at the store of Eufronia Pagas, they heard accused-appellant calling Romeo from outside, saying, "Borgs, get out because I have something to say." The trio came down from the house. Rogelio went down first, followed by Samson and Romeo (pp. 5-6, ibid.) When Rogelio reached the ground, accused-appellant told him to drop down while Samson also dropped himself to the ground when he saw accused-appellant about to draw his firearm. At that juncture, Romeo was still at the stairway and when he turned his back towards accused-appellant, the latter shot him, hitting him at the back. Romeo ran away but he was chased by accused-appellant who fired two (2) more shots at him. (p. 5, March 19, 1996, TSN; p. 7, May 9, 1995)

Samson ran away from the scene of the incident and upon reaching the house of Poloy Concha, he saw Romeo outside the house asking for help. Samson asked some of residents to help him bring Romeo to barangay Cawayanan. (pp. 14-15, March 19, 1996, TSN) They loaded Romeo in a rattan cradle and upon reaching the said barangay at about 3:00 o'clock of the following morning, they transferred him to the vehicle owned by a certain Emiliano Fucanan. From the said barangay, Romeo was taken to the house of Mayor Placing Mascarinas in Poblacion, Tubigon, Bohol where he was transferred to the ambulance which took him to the Celestino Gallares Memorial Hospital in Tagbilaran City. On the way to the hospital, Felix Celmar asked Romeo what happened to him and the latter answered that he was shot by accused-appellant. (pp. 4-8, July 29, 1996, TSN) Romeo was brought to the emergency room and underwent operation. He however died at about 5:00 p.m. of October 2, 1992, due to septic shock irreversible, generalized peritonitis, gunshot wound, perforating ileum. (pp. 7 & 11, June 18, 1996, TSN)[5]

The defense presented four witnesses, namely: Rogelio Espina, Dr. Harold B. Gallego, Maximiano Dormal and accused-appellant himself.

The testimonies of accused-appellant and Maximiano Dormal may be summarized as follows:

At around 1:00 o'clock in the afternoon of September 30, 1992, accused-appellant was in the house of Eufronia Pagas to represent his father in a meeting to prepare for a wedding celebration. Among those present in the said gathering were accused-appellant's brother, Rogelio Espina, and the deceased, Romeo Bulicatin who were having a drinking spree. When accused-appellant arrived thereat, Bulicatin asked him to buy 3 bottles of "kulafu" wine to which he acceded. At around 4:00 o'clock of the same afternoon, Bulicatin again demanded another bottle of "kulafu" wine from accused-appellant. The latter, however, refused to obey, prompting Bulicatin to urinate on accused-appellant. This infuriated accused-appellant, but instead of assaulting Bulicatin, he turned his back and walked away because he knew that Bulicatin always carried a knife. When accused-appellant was about 12 meters away from the house of Eufronia Pagas, Bulicatin pursued him. Accused-appellant tried to evade Bulicatin but the latter caught up with him and stabbed him on his side. Consequently, accused-appellant sustained a deep punctured wound but was fortunately able to escape until he passed out.[6]

At around 6:00 o'clock p.m. of the same day, Maximiano Dormal who was then on his way home, saw accused-appellant wounded and lying on the ground. Recognizing the latter, Dormal immediately informed and accompanied accused-appellant's parents who lost no time in bringing him to the hospital.[7]

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On the other hand, defense witness Rogelio Espina (Rogelio), declared that in the afternoon of September 30, 1992, he was in the house of Eufronia Pagas, having a drinking spree with Romeo Bulicatin and Samson Abuloc, while his brother, herein accused-appellant, was playing cards. At around 3:00 o'clock p.m., he saw Bulicatin approach accused-appellant and forthwith urinated on him. Thereafter, Bulicatin grabbed accused-appellant under his arms but the latter was able to extricate himself from the hold of Bulicatin and ran away. Rogelio wanted to follow accused-appellant but was prevailed upon by Bulicatin to stay. They then continued their drinking spree until 9:00 o'clock p.m. When they were about to go home, Rogelio heard somebody calling Bulicatin, saying - "Get out, Borgs, as I have something to tell you." According to Rogelio, he is certain that the voice was not that of accused-appellant. When they decided to go home, he was the first one to go downstairs, followed by Samson Abuloc, and then by Bulicatin. Upon reaching the ground, Rogelio heard a gunshot and immediately scampered away without looking back to see who was shot. He claimed that it was only two days after the incident that he came to know who the victim of the shooting incident was. He added that from the house of Eufronia Pagas, he directly went home where he was told by his mother that accused-appellant was stabbed and was brought to the hospital.

On August 25, 1997, the trial court rendered the assailed decision, holding as follows:

> WHEREFORE, Premises Considered, the Court finds the accused, Romeo Espina, guilty beyond reasonable doubt, for the crime of Murder defined and penalized by Article 248 of the Revised Penal Code and Qualified Illegal Possession of Firearms under Presidential Decree No. 1866, as amended by Republic Act No. 8294 and sentences him to suffer the straight penalty of imprisonment of RECLUSION PERPETUA with the inherent accessory penalties provided by law, there being a mitigating circumstance of vindication for a grave offense committed on the accused; to indemnify the heirs of the deceased, Romeo Bulicatin, in the amount of Fifty Thousand (P50,000.00) Pesos; and to pay the costs.
>
> SO ORDERED.[8]

Hence, this appeal on the following grounds:

> I
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> THAT THE LOWER COURT HAS OVERLOOKED OR MISINTERPRETED THE SIGNIFICANCE OF SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND INFLUENCE APPEARING IN THE RECORD IN FINDING THE ACCUSED GUILTY OF THE OFFENSES CHARGED.
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> II
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> THAT THE LOWER COURT HAS GRAVELY ABUSED ITS DISCRETION IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSES CHARGED.[9]

In particular, accused-appellant points to the following facts and circumstances that had been allegedly overlooked by the trial court, to wit -

> 1) The resolutions of the 2nd Municipal Circuit Trial Court of Tubigon, Bohol in Criminal Case Nos. 1245 and 1246 to the effect that there was no sufficient evidence that accused-appellant had committed the crimes charged;
>
> 2) The non-presentation of Eufronia Pagas (the owner of the house where the victim and his companions had a drinking spree), despite being listed in the information as one of the witnesses for the prosecution.
>
> 3) The testimony of prosecution eyewitness Samson Abuloc, that he does not know Felix Celmar who claimed to be one of the persons asked by the former to help him bring the victim to the hospital.

> 4) The incredibility of the testimony of Samson Abuloc as regards his having identified accused-appellant through his voice and the type of firearm used by the latter in shooting the victim as well as his having seen the victim being hit at the back by the first gunshot fired at him by accused-appellant;
>
> 5) The fact that at about 6:00 o'clock in the evening of September 30, 1992, accused-appellant was found by one Maximiano Dormal lying wounded and groaning near a pathway leading to the latter's house; and
>
> 6) The length of time that elapsed before Felix Celmar revealed that the victim told him that accused-appellant was the one who shot him.[10]

Accused-appellant makes capital of the November 23, 1992 Resolutions[11] of the 2nd Municipal Circuit Trial Court of Tagbuin-Clarin Bohol, which found the evidence against accused-appellant to be insufficient after conducting the preliminary investigation. We note, however, that said resolutions were reversed and superseded by the February 2, 1993 Omnibus Resolution[12] of the Second Assistant Provincial Prosecutor, who, after conducting a re-investigation of the instant case, found probable cause to hold accused-appellant for trial and accordingly filed the corresponding informations against accused-appellant.

Moreover, the basis of the investigating judge in declaring insufficiency of evidence does not appear to be substantial. Pertinent portion of said resolution reads:

> Upon the foregoing facts, the court finds and is satisfied that the offense complained of has been committed, but there is insufficiency of evidence that the herein accused Romeo Espina committed the crime for the simple reason that according to the declaration of Eufronia Pagas who is an unbiased witness as compared to the declaration of Samson Abuloc who was a close barcada of the victim, the herein accused Romeo Espina was not in her house where the drinking spree was held from 6:00 to 9:00 o'clock in the evening of September 30, 1992.[13]

Clearly, the fact that Eufronia did not see accused-appellant in her house between 6:00 - 9:00 o'clock in the evening of September 30, 1992, does not in any way contradict or refute the claim of the prosecution that accused-appellant left the house of Eufronia at around 4:00 in the afternoon after being urinated on by the victim and thereafter returned at about 9:00 p.m. and shot the victim outside the house of Eufronia.

Then too, the non-presentation of Eufronia Pagas as a prosecution witness is not damaging to the case of the prosecution. In Eufronia's affidavit, she declared that after Rogelio Espina, Samson Abuloc and the deceased went out of her house, she heard three gunshots but bothered not to go outside because of fear.[14] Evidently, Eufronia Pagas is not an eyewitness and her testimony would not do much for the prosecution. At any rate, it is the prosecution's prerogative to determine who should be presented as witnesses on the basis of its own assessment of their necessity.[15] Hence, its choice of witnesses can not be successfully challenged by accused-appellant.

Whether or not prosecution witness Samson Abuloc knew Felix Celmar who claimed to be one of the persons asked by the former to help him bring the victim to the hospital, is of no consequence. As correctly pointed out by the Solicitor General, it is possible that Felix Celmar, a resident of another barangay, is not known by name to Abuloc, especially so since their meeting on that fateful day was only casual.

Neither do we find improbable the testimony of Samson Abuloc that he recognized the voice of accused-appellant. Being a friend and a second cousin of accused-appellant, he is expected to be familiar with his voice. So also, we find no reason to doubt the testimony of Abuloc that he was able to identify the pistol used by accused-appellant as well as witnessed the stabbing of the victim at the back. Not only was Abuloc only three to four meters away from accused-appellant,[16] the prosecution was likewise able to establish that the moonlight illuminating the locus criminis afforded the witness a clear view of the shooting incident.[17] The Court has previously held that the light from the stars or the moon, an oven, or a wick lamp or gasera can give ample

illumination to enable a person to identify or recognize another.[18] Under the circumstances, therefore, Abuloc could not have failed to recognize accused-appellant who is not only his "barkada" but a second cousin as well.

Contrary to the claim of accused-appellant, the trial court did not overlook his contention that he could not have committed the offenses charged because at around 4:00 o'clock p.m. of September 30, 1992, he was unconscious due to a stab wound. In fact, the trial court treated the same as a defense of denial and alibi. Indeed, these defenses cannot prevail over the categorical and positive identification of accused-appellant by prosecution witness Abuloc who was not shown to have any ill motive to testify falsely against him.[19]

Moreover, it is doctrinally settled that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct and attitude under grilling examination.[20] In the case at bar, the trial court did not err in giving credence to the version of the prosecution. The facts and circumstances alleged to have been overlooked by the trial court are not material to the case and will not affect the disposition thereof.

The alleged dying declaration of the victim should not have been admitted as an ante mortem statement, considering that the prosecution failed to show that the subject declaration was made under the consciousness of an impending death. Prosecution witness Celmar testified that on the way to the hospital, the victim told him that it was accused-appellant who shot him. Though the victim eventually died two days after he was shot, there is nothing in the records that would show that the victim was under the impression that he was going to die. However, the declaration of the deceased pointing to accused-appellant as the culprit is admissible as part of res gestae. Having been made shortly after a startling occurrence and under the influence thereof, the victim evidently had no opportunity to contrive.[21] Furthermore, the delay of Felix Celmar in revealing the declaration of accused-appellant does not make Celmar's testimony unworthy of belief. Delay in revealing the identity of the perpetrator of a crime does not necessarily impair the credibility of a witness, especially where such witness gives a sufficient explanation. In the case at bar, such delay was amply explained by the witness. Celmar testified that it took him four months to reveal what he knew because he thought he would not be utilized as witness for the prosecution. Moreover, after the incident, he had to leave for his work in Albay.

In convicting accused-appellant, the trial court appreciated the special aggravating circumstance of use of unlicensed firearm, pursuant to P.D. No. 1866, as amended by R.A. No. 8294. Considering the penalty provided for in Article 248 of the Revised Penal Code, as amended by R.A. No. 7659, the trial court imposed the penalty of death on accused-appellant. However, in view of the suspension of the imposition of the death penalty then, accused-appellant was sentenced to suffer the penalty of reclusion perpetua.

The third paragraph, Section 1, of R.A. No. 8294 (which took effect on July 6, 1997), amending P.D. No. 1866, provides that "If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be used as an aggravating circumstance." This amendment, however, cannot be applied in the present case. It bears stressing that when the offenses at bar were perpetrated on September 30, 1992, the unlicensed firearm used in taking the life of another was not yet a special aggravating circumstance in murder or homicide. Not being favorable to the accused, the amendatory provision cannot be applied to accused-appellant, lest it acquires the character of an ex post facto law.[22]

Likewise, the trial court erred in treating alevosia merely as a generic aggravating circumstance, moreso in offsetting the same by the generic mitigating circumstance of having committed the crime in immediate vindication of a grave offense. The treachery employed by accused-appellant in shooting the victim is actually a circumstance that qualified the killing to murder. Such being the case, treachery cannot be offset by a mitigating circumstance.

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The trial court correctly appreciated the mitigating circumstance of having acted in immediate vindication of a grave offense. As the evidence on record show, accused-appellant was urinated on by the victim in front of the guests. The act of the victim, which undoubtedly insulted and humiliated accused-appellant, came within the purview of a "grave offense" under Article 13, paragraph 5, of the Revised Penal Code. Thus, this mitigating circumstance should be appreciated in favor of accused-appellant.

As to the imposable penalty, the applicable provision is Article 248 of the Revised Penal Code before its amendment by R.A. No. 7659 on December 31, 1993, the crime having been committed on September 30, 1992. Thereunder, the penalty for murder was reclusion temporal in its maximum period to death. With one generic mitigating circumstance and no aggravating circumstance to offset it, the penalty should be imposed in its minimum period, i.e., reclusion temporal maximum. Applying the Indeterminate Sentence Law, accused-appellant should be sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal, as maximum.

WHEREFORE, the Decision of the Regional Trial Court of Tagbilaran, Branch 47, in Criminal Case Nos. 8194 and 8195 finding the accused-appellant Romeo Espina guilty beyond reasonable doubt of the crime of murder, is AFFIRMED with MODIFICATION that the accused-appellant is hereby sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum; and to pay the heirs of Romeo Bulicatin the sum of P50,000.00 as death indemnity and to pay the costs.

SO ORDERED.

Puno, Kapunan, and Pardo, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

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[1] Penned by Judge Ranieldo T. Son.

[2] Rollo, p. 16.

[3] Rollo, p. 15.

[4] Records, Vol. I, p. 35.

[5] Rollo, pp. 101-103.

[6] TSN, January 21, 1997, pp. 2-5; January 27, 1997, p. 3.

[7] TSN, March 7, 1997, pp. 3-7.

[8] Rollo, p. 45.

[9] Rollo, p. 63.

[10] Rollo, pp. 68-70.

[11] Records, Vol. I, p. 82, Vol. II, p. 80.

[12] Records, Vol. I, p. 15.

[13] Records, Vol. II, p. 81.

[14] Records, p. 4.

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[15] People v. Magdamit, 279 SCRA 423, 432 [1997]; citing People v. Bautista, 92 SCRA 465 [1979]; People v. Tintero, 111 SCRA 714 [1982]; Estacio v. Sandiganbayan, 183 SCRA 12 [1990].

[16] TSN, March 19, 1996, pp. 3-4.

[17] TSN, February 27, 1996, pp. 5-6.

[18] People v. Sabalones, 294 SCRA 751, 789 [1998]; citing People v. Briones, 202 SCRA 708 [1991]; People v. Vacal, 27 SCRA 24 [1969]; People v. Pueblas, 127 SCRA 746 [1984]; People v. de la Cruz, 147 SCRA 359 [1987]; and People v. Aboga, 147 SCRA 404 [1987].

[19] Bautista v. Court of Appeals, 288 SCRA171, 177 [1998]; citing People v. Dinglasan, 267 SCRA 26 [1997]; and People v. Amania, 248 SCRA 286 [1995].

[20] People v. Bersabe, 289 SCRA 685, 691-692 [1998]; citing People v. Adora, 275 SCRA 441 [1997]; People v. Caballes, 274 SCRA 83 [1997]; People v. Alimon, 257 SCRA 658 [1996]; and People v. Castromero, 280 SCRA 421 [1997].

[21] People v. Ebrada, 296 SCRA 353, 366 [1998]; citing people v. Salison, Jr., 253 SCRA 758 [1996].

[22] People v. Ringor, Jr., 320 SCRA 342, 356 [1999]; citing People v. Valdez, 304 SCRA 611 [1999].

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