PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. PO3 NOEL PADILLA, ACCUSED-APPELLANT.

G.R. Nos. 138472-73. August 09, 2001

Ponente: VITUG, J.

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VITUG, J.:

PO3 Noel Padilla has appealed from the decision[1] of the Regional Trial Court of Bataan, Branch 2, in Criminal Cases No. 5095 and No. 5096, convicting him of murder and frustrated murder.

The twin indictments against appellant for murder and frustrated murder, respectively, read:

> "That on or about November 19, 1991, in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon Apolinario Belmonte by then and there shooting him with a firearm on the different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Apolinario Belmonte."[2]

> "That on or about November 19, 1991, in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon Jesus Casaul, Jr., by shooting him with a firearm on the right cheek, thereby inflicting upon the said Jesus Casaul, Jr., physical injury which could have caused his death, thus the said accused performing all the acts of execution which would produce the crime of Murder as a consequence, but which nevertheless did not produce it by reason or cause independent of his will, that is, the timely and able medical attendance rendered upon Jesus Casaul, Jr., which prevented his death, to the damage and prejudice nevertheless of the said offended party."[3]

Noel Padilla, a member of the Philippine National Police since 1985, pleaded not guilty to both charges. The cases were jointly tried and heard, initially, by Judge Vivencio S. Baclig and, later, by Judge Lorenzo R. Silva, Jr.

The facts found by the trial court that led to the conviction of the accused were largely sourced from the eyewitness account of Jesus Casaul, Jr., the victim in the frustrated murder charge.

On 18 November 1991, around 11:30 p.m., Jesus Casaul, Jr., and his cousin Apolinario Belmonte, the victim in the murder charge, were partaking of beer and watching a video cassette recording on television inside the Mango Grove restaurant at the Philippine Refugee Processing Center (PRPC) in Morong, Bataan, when PO3 Noel Padilla together with several companions, among them Nonong Navarette, arrived at the scene. Navarette approached Casaul and Belmonte. An ensuing conversation turned into a heated argument. Navarette went back to his group while Padilla, at first appearing to aim his gun at the television set, suddenly went behind Belmonte and shot him twice at the back of his head. Padilla next pointed his gun at Casaul who raised his hands pleading for dear life. The accused, unmindful of the plea, shot Casaul twice, hitting him on the cheek and at the back of his ear.

Belmonte and Casaul were rushed by the owner of the restaurant to the PRPC Hospital. Belmonte did not make it.

Dr. Roberto Luneta who conducted the post mortem examination attributed the death of Belmonte to the gunshot wound that had penetrated his skull. Casaul survived. Dr. Benjamin Dacula, the medical officer who attended to Casaul at the PRPC Hospital said that the gunshot wounds sustained by Casaul did not pose any threat to his life. While he had to undergo an operation for the removal of the slugs embedded on his cheek and the right side of his vertebrae, Dr. Antonio Rafael, the surgeon, stated there was, however, no vital tissue damaged and the wounds suffered by the victim, without complications, would not have been enough to kill him.

The defense placed the accused and nine others to the witness stand but, except for the accused, no one attested to the events that had transpired on the night of the shooting. Padilla's own account was synthesized by the trial court; viz:

> "On November 18, 1991, he was with Lt. Nieves conducting a mobile patrol. On their way to the municipal station, they received a radio call from the station. When they reached the station they were informed that there was a stabbing incident at the PRPC. He was ordered by Lt. Nieves to look into the incident. He had then the handgun which he kept in his possession even if he was not on duty. He changed to civilian clothes and together with members of the family of the victims of the stabbing incident proceeded to the PRPC hospital. At the hospital, Noel saw SPO4 Lagundino, the investigator, who told him that he saw PO3 Tongia at the Shakey's party at the mess hall of the PRPC. When he went to the party, he saw PO3 Tongia who was with some youngster whom he has not met before. Tongia, offered him a mug of beer. He left Shakey's at 10:00 o'clock in the evening, more or less. FO3 Tongia invited him together with the young boys to the picnic grove.
>
> "Upon arriving at the picnic grove, they went directly to the long table. Tongia ordered softdrinks for the young boys and for Tongia and him two (2) bottles of beer. There were two tables near the store occupied by different groups.
>
> "A betamax was playing very loud. But he was not interested in the show.
>
> "When they ran out of cigarettes, he went to the store to buy. He was joking with the saleslady. Afterwards he introduced himself to a person who must have noticed his gun. This man introduced himself as Pines Simon. After he returned to the long table, a group of four (4) males arrived, a group which he saw at Shakey's. One of them occupied the seat near Tongia and two (2) occupied the seats near him. He was introduced to the three who were homosexuals. After exchanging jokes, he left the picnic grove for the hospital after telling Tongia about it. Nothing unusual happened before he left for the hospital.
>
> "x x x x x x x x x
>
> "When he was at the hospital at the lobby when he saw Casaul and his cousin at around 1:00 or 2:00 o'clock being transferred in an ambulance he heard their names from SPO2 Lagundino. He has not met the victims before.
>
> "On cross-examination, Noel Padilla declared that he was assigned at the Regional Special Action Force in Camp Olivas in December 1985 up to March 1987. He was the platoon sergeant of the company. They were assigned at civil disturbance control and went to infiltrated areas. This is an elite force of the police.
>
> "x x x x x x x x x
>
> "He confirmed that he arrived at around 9:00 o'clock in the evening at the PRPC and after ten (10) or fifteen (15) minutes, he proceeded to Shakey's. x x x
>
> "x x x x x x x x x
>
> "It was only after he had a few drinks of beer with Navarette and his companions and with Tongia that he decided to proceed to the picnic grove and Shakey's was about to close. Only he, Tongia and three youngsters who were not homosexuals proceeded to the picnic grove. A few minutes later Nonong Navarette and his three

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> companions arrived. The three (3) went to their table while Nonong Navarette went to the store. This was the second time he met Navarette; the first time was at the police station.
>
> "He was not irritated by the loud volume of the betamax; he did not draw his firearm and aimed it at the betamax. He did not notice if Navarette went to the table occupied by Apolinario Belmonte and Jesus Casaul. He denied that Navarette complained to him about Apolinario Belmonte. From 10:00 p.m. to 12:00 midnight he was at the picnic grove drinking beer and conversing with Tongia. He does not know of any reason why Jesus Casaul should point to him as the one who fired and killed Apolinario Belmonte. He does not know of any reason why Jesus Casaul pointed to him as having fired a gun at him except that he was the policeman present. He decided to transfer his gun to the front of his pants because according to Navarette someone quarreled with them the night before.
>
> "On re-direct, Noel Padilla declared that he never met Jesus Casaul, Jr., and Apolinario Belmonte before the incident."[4]

The trial court gave scant value to the testimony of the accused which it described to be "uncorroborated, negative and evasive in character."[5] The court held the shooting of Belmonte and Casaul to have been attended by treachery. The trial court concluded thusly:

> "WHEREFORE, the guilt of the accused for the murder of Apolinario Belmonte and the frustrated murder of Jesus Casaul, Jr., having been proved beyond reasonable doubt the accused Noel Padilla is hereby sentenced as follows:
>
> "In Crim. Case No. 5095 for the offense of frustrated murder against Jesus Casaul, Jr., the accused Noel Padilla is sentenced to suffer the indeterminate penalty of six (6) years, one (1) month and eleven (11) days prision mayor as minimum to twelve (12) years, five (5) months and eleven (11) days reclusion temporal as maximum with the accessory penalties provided by law, to indemnify the offended party in the amount of P20,000.00 for moral damages, plus the costs of suit.
>
> "In Crim. Case No. 5096 for the murder of Apolinario Belmonte, the accused Noel Padilla is sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law, to indemnify the heirs of the deceased Apolinario Belmonte the sum of P50,000.00 and to pay the costs of suit."[6]

In this appeal, appellant raises the following issues:

> "WHETHER THE TESTIMONY OF JESUS CASAUL, JR., IS TRUSTWORTHY AND RELIABLE, and
>
> "WHETHER THE NON-PRESENTATION OF WITNESSES LISTED IN THE INFORMATIONS (SHOULD) BE CONSTRUED AGAINST THE PROSECUTION."[7]

In its attempt to support the first argument, the defense pointed to what it considered to be contradictions in the testimony of Casaul. Thus, Casaul declared on direct examination that he was facing the accused when the latter shot him; however, Dr. Rafael said that based on the location of the wounds, the triggerman must have been at Casaul's right side. Casaul stated that he was still conscious when he was shot on the right cheek, a claim which was not in accord with the opinion of Dr. Rafael that while the wound on Casaul's cheek did not render the victim unconscious, the wound, however, on his ear must have did.

The defense argument has been convincingly refuted by the Solicitor General; he states:

> "A careful examination of the record will show that Casaul's testimony is not inconsistent with the testimony of Dr. Rafael. Casaul was telling the truth when he said that he saw the appellant shoot him. It must be noted that Casaul and his cousin Apolinario Belmonte were occupying a square table which were just beside the table being occupied then by appellant and his friends (pp. 14-15, TSN May 19, 1994). For this reason, Casaul could clearly observe and see the table where appellant was when the crimes were committed (p. 15, ibid.):

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"Q

How about your cousin Apolinario Belmonte, what was his position when Noel Padilla was already behind Apolinario Belmonte?

"A

His back is on Noel Padilla.

"Q

And then what happened please demonstrate.

"A

He fired two shots. (The witness is slightly in bending position with his two hands clutched).

"ATTY. CARIAN:

And the hand is less than one foot from the head of Apolinario Belmonte.

"ATTY. BANZON:

Showing the position of Noel Padilla holding a gun.

"Q

And then what happened?

"A

He fired two shots, `Bang, Bang' (in a split second).

"Q

What was the position of your cousin Apolinario Belmonte when hit?

"A

He fell on his right.

"ATTY. BANZON:

The alleged position of accused in line with the witness is around 45°.

"COURT:

Make of record that when the witness demonstrated the position of the accused he was not directly behind Apolinario Belmonte.

"ATTY. CARIAN:

Around 40°.

"ATTY. BANZON:

"Q

Was there any conversation that transpired before the shot was fired between Apolinario Belmonte and the accused?

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"A

There was none.

"Q

How about you granting that I am you, what was my position then?

"A

After he fired his gun to my cousin, he pointed his gun at me and I raised my hands to stop him, and I said:

`Huwag.'

(Witness demonstrating by turning his head towards his right towards the direction of the accused who went near him and then fired at him on his face. He slumped down on the table). (emphasis supplied) (pp. 15-16, TSN May 19, 1994)

"Clearly then, Casaul was not lying when he said that he saw the appellant shoot him and Apolinario Belmonte. He testified that when appellant approached the back of Apolinario and shot the latter, he turned his head to his right where he saw appellant. Hence, Dr. Rafael corroborates the testimony of Casaul that appellant was on the right side of Casaul when Casaul was shot and hit on the right cheek.

"Significantly, Dr. Rafael likewise confirms that Casaul could still identify appellant when he was shot by appellant. As stressed by Dr. Rafael, the first gunshot wound on Casaul's cheek could not render him unconscious. Therefore, Casaul could still see appellant shooting him (p. 10, TSN December 7, 1994). With this on record, it is immaterial whether or not the second gunshot wound inflicted by appellant at the back of the ear of Casaul could knock-out the latter. The trial court found no inconsistencies between the findings of Dr. Rafael and the testimony of Casaul. Both are consistent on material points. There is thus, no reason to disturb the conclusions reached by the trial court insofar as the prosecution witness credibility and appellant's guilt are concerned."[8]

The testimony of a witness would only need to be congruent on important and relevant points concerning the principal occurrence;[9] slight inconsistencies might even serve to strengthen the sincerity of the witness and would tend to prove that his testimony has not been rehearsed.[10]

Appellant would make an issue over an entry in the medical record of Casaul from the Jose Reyes Medical Hospital which stated "unknown assailant" to the question of whether the victim knew the identity of his attacker. The matter was easily explained, however, by Casaul himself who said that he had known appellant only by face until the case was filed. The weight of the eyewitness account should be on the fact that the witness saw the accused commit the crime and was positive on the latter's physical identification,[11] rather than in being able to identify him by his appellation or name.[12]

Appellant would impugn the credibility of Judge Silva in rendering the assailed decision on the ground that it was not he, but Judge Baclig, who heard the testimony of Casaul. This kind of argument had been dismissed a good number of times by the Court. The efficacy of a decision should not necessarily be impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial.[13] The fact that the judge who penned the decision did not hear the case in its entirety would hardly be a compelling reason to thereby jettison his findings and conclusions as long as the entire record was made available to him for his perusal.[14]

Appellant contends he has had a clean record and no strong motive to commit the crimes imputed against him. The absence of motive for committing the crime does not preclude a conviction for it is not unknown for persons to be killed or assaulted even for no reason at all.[15] More importantly, when an accused is positively identified

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by the victim himself, lack of motive on the part of the transgressor becomes close to being inconsequential.[16]

Appellant alleges that the failure of the prosecution to present three of the witnesses listed in the informations, as well as two others mentioned by Casaul, gives rise to the presumption that if the testimony of these witnesses were given before the court, their declaration would have been adverse to the prosecution. The settled rule is that the prosecution determines who among its witnesses are to testify in court,[17] and it is neither for the accused nor the court to override that prerogative. Corrolarily, the failure of the prosecution to present a particular witness does not give rise to the presumption that "evidence willfully suppressed would be adverse if produced" where that evidence is at the disposal of both parties or where the only object of presenting the witness would be to provide corroborative or cumulative evidence.[18]

This Court finds no cogent reasons to reverse the decision of the trial court in finding the accused guilty of murder.

Murder is the unlawful killing of any person when qualified by any of the circumstances listed under Article 248 of the Revised Penal Code.[19] Treachery, aptly alleged in the information, is one of such qualifying circumstances. Its elements are: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate and conscious adoption of the means of execution.[20] Here, treachery is evident when the accused suddenly positioned himself at the back of the unsuspecting victim, pointed his gun at him and, without any warning, promptly delivered the fatal shots. There was no way the victim could have defended himself, taken flight, or avoided the assault.

There is, however, reason to modify the lower court's ruling on the second crime of frustrated murder. A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.[21] For the crime of murder, the frustrated stage is reached only if the wound inflicted would have been mortal.[22] The examining physician has declared that the wounds suffered by the victim damaged no vital tissues and, without complications, would not have killed him. The penalty imposed upon appellant should correspondingly be lowered to prision mayor in its medium period, there being no aggravating or mitigating circumstance established. Applying the Indeterminate Sentence Law, the minimum term can be anywhere within the range of prision correccional or from six (6) months and one (1) day to six (6) years and the maximum within the range of prision mayor in its medium period, or from eight (8) years and one (1) day to ten (10) years.

The civil indemnity of P50,000.00 awarded to the heirs of the deceased victim Apolinario Belmonte conforms with prevailing jurisprudence. The grant of P20,000.00 moral damages to Jesus Casaul, Jr., found by the trial court has not been disputed by the defense; the award will not be disturbed.

WHEREFORE, the decision of the Regional Trial Court of Bataan, Branch 2, in Criminal Case No. 5096, finding accused-appellant guilty beyond reasonable doubt of the crime of MURDER and imposing upon him the penalty of reclusion perpetua, as well as sentencing him to indemnify the heirs of the deceased victim, Apolinario Belmonte, a civil indemnity of P50,000.00, is AFFIRMED. In Criminal Case No. 5095, the appealed judgment is MODIFIED and appellant is hereby found guilty only of the crime of ATTEMPTED MURDER and sentenced to an indeterminate penalty of two (2) years and nine (9) months of prision correccional as minimum to nine (9) years and one (1) day of prision mayor as maximum; the imposition on him by the trial court of P20,000.00 moral damages is AFFIRMED.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.
Sandoval Gutierrez, J., on leave.

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[1] Rollo, p. 70.

[2] Rollo, p. 70.

[3] Rollo, p. 70.

[4] Rollo, pp. 73-75.

[5] Rollo, p. 77.

[6] Rollo, p. 80.

[7] Rollo, p. 100.

[8] Appellee's Brief, p. 5-8.

[9] People vs. Binas, 320 SCRA 22; People vs. Sesbreño, 314 SCRA 87; People vs. Sy Bing Yok, 309 SCRA 28.

[10] People vs. Reyes, 309 SCRA 622.

[11] People vs. Tejero, 308 SCRA 660.

[12] People vs. Agsunod, Jr., 306 SCRA 612.

[13] People vs. Badon, 308 SCRA 175; People vs. Queliza, 279 SCRA 145; People vs. Espanola, 271 SCRA 689.

[14] People vs. Rabutin, 272 SCRA 197; People vs. Sorrel, 278 SCRA 368.

[15] People vs. Benito, 303 SCRA 468; People vs. Valdez, 304 SCRA 611.

[16] People vs. Bautista, 312 SCRA 214; People vs. Tan, 315 SCRA 375; People vs. Floro, 316 SCRA 304.

[17] People vs. Ronato, 316 SCRA 433.

[18] People vs. Barellano, 319 SCRA 567.

[19] Reyes, Revised Penal Code Book 2, 1998, p.472.

[20] People vs. Nullan, 305 SCRA 679; People vs. Piamonte, 303 SCRA 577; People vs. Realin, 301 SCRA 495.

[21] Article 6, Revised Penal Code.

[22] People vs. Kalalo, 59 Phil. 715; People vs. Pilones, 84 SCRA 167; People vs. Tamani, 55 SCRA 153.

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