

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FELIX LOPEZ Y JAVIER AND JOHN DOE, ACCUSED,

G.R. Nos. 141112-13. January 14, 2003

Ponente: CORONA, J.

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CORONA, J.:

Before us on automatic review is the decision[1] dated July 20, 1999, of the Regional Trial Court of Calamba, Laguna, Branch 34, in Criminal Case Nos. 4667-96-C and 4668-96-C, finding appellant Felix Lopez y Javier guilty beyond reasonable doubt of the crimes of robbery and murder, respectively.

On January 11, 1996, two Informations against the accused-appellant were simultaneously filed. The first case, docketed as Criminal Case No. 4667-96-C,[2] charged appellant with robbery, as follows:

That on or about August 22, 1995 at Brgy. Sampiruhan, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with intent to gain and while conveniently provided with a baby armalite rifle and by means of violence and intimidation against one MAURICIO LANZANAS, did then and there wilfully, unlawfully and feloniously take, steal and carry away two (2) handheld radios having a total value of P25,000.00 owned and belonging to the said Mauricio Lanzanas, after the latter was attacked, assaulted and shot by the said accused, to the damage and prejudice of the said owner in the aforementioned amount of TWENTY FIVE THOUSAND (P25,000.00) PESOS, Philippine Currency.

Contrary to law.

The second case, docketed as Criminal Case No. 4668-96-C,[3] charged appellant for killing Mauricio Lanzanas, as follows:

That on or about August 22, 1995 at Brgy. Sampiruhan, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, while conveniently provided with a baby armalite rifle, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, inflict personal violence and shot one MAURICIO LANZANAS, thereby inflicting upon the latter serious and mortal wounds which directly caused his death, to the damage and prejudice of the surviving heirs of the said MAURICIO LANZANAS.

That in the commission of the offense, the aggravating circumstances of treachery and evident premeditation were in attendance.

Contrary to law.

Upon arraignment on October 21, 1998 for both charges, appellant separately entered the plea of not guilty.[4] During the trial on the merits of both cases, the appellant escaped from detention and remains at-large to the present. Hence, trial proceeded in absentia against him.

The prosecution evidence upon which the judgment of conviction was based follows:

Richard Lanzanas, 11-year-old son of the victim, Mauricio Lanzanas, testified that, on August 22, 1995, at about 7:00 a.m. while he was standing near the barangay hall of Barangay Sampiruhan, Calamba, Laguna, he heard two gunshots. Turning his head, he saw his father inside the sash factory, lying on the ground face up. The trigger man, Felix Lopez, shot his father twice more and then got the latter's two handheld radios. Richard remained motionless but, after regaining his composure, rushed home and met his mother along the way. He told his mother about his father's fate. She tried to catch up with the appellant but failed.[5]

Bonifacio Lanzanas declared that about 7:10 a.m. on August 22, 1995, he, together with his father, Mauricio Lanzanas and brother, Ernesto, was working in their sash factory when a man carrying an armalite rifle suddenly appeared. His father approached the man and nodded at him. Suddenly, he heard three successive shots. Looking in their direction, he saw his father already lying on the ground. He was so afraid that he did nothing but bow his head when appellant stared at him. The killer approached his father and shot him again before taking his handheld radios. It was only then that he approached his father and brought him to the hospital, with the help of his brother Ernesto and cousin Lito.[6]

The widow of the victim, Nympha Lanzanas, declared that she was washing clothes in their house located at the back of the barangay hall when she heard four shots emanating near the barangay hall. She went out of the house and met her son, Richard, who told her "Mama, si Papa binaril." On her way to their sash shop, she heard somebody say "Doon tumakbo yong bumaril." She followed the person who shot her husband but failed to catch up with him because the killer was already 20 meters away. She noticed that the suspect was carrying a long firearm and the two handheld radios belonging to her husband. She then proceeded to the corner of Cardinal, hoping that the suspect would emerge from that corner but he did not. She proceeded to the hospital and learned that her husband had died.

Nympha Lansanas further testified that she spent P50,000 for funeral expenses and that, during his lifetime, her husband earned from P500 to P1000 per day as the owner of the sash factory.[7]

Dr. Ariel Ang, Municipal Health Officer of Los Baños, Laguna, conducted the post mortem examination on the body of the victim. He found that the victim sustained four gunshot wounds, two of which were fatal. The cause of death was severe hemorrhage with multiple organ injuries secondary to multiple gunshot wounds.[8]

On July 20, 1999, the trial court rendered its decision convicting appellant Felix Lopez of murder and robbery. The dispositive portion reads:

ACCORDINGLY, in Criminal Case No. 4668-96-C, this Court finds accused Felix Lopez y Javier GUILTY beyond reasonable doubt of the crime of Murder and hereby sentences him to suffer the penalty of DEATH.

Accused is further ordered to indemnify the heirs of the victim Mauricio Lanzanas the sum of P100,000.00 as actual damages and P50,000.00 as moral damages.

In Criminal Case No. 4667-96, this Court finds accused Felix Lopez y Javier GUILTY beyond reasonable doubt of the crime of Robbery and hereby sentences him to suffer the penalty of Four (4) Years, Two (2) Months and One (1) Day of Prision Correccional as minimum, to Ten (10) Years of Prision Mayor as maximum.

Accused is further directed to indemnify the heirs of the victim Mauricio Lanzanas the value of the two (2) radios subject of the offense in the sum of EIGHTEEN THOUSAND (P18,000.00) PESOS.

With costs against the accused in both cases.

So Ordered.

After the death penalty was imposed by the trial court, the records were elevated to us for automatic review. Regardless of whether appellant has withdrawn his appeal or has escaped, automatic review is mandatory in death penalty cases.

The main issue in the gruesome murder of Mauricio Lanzas is whether the appellant was correctly identified as the killer by the eyewitnesses and whether his guilt was established beyond reasonable doubt.

After a thorough assessment of the evidence, the Court is convinced that appellant's identity and liability have been established beyond reasonable doubt.

Two eyewitnesses to the shooting positively identified appellant as the person who shot the victim. The pertinent portions of prosecution witness Bonifacio Lanzas' account in court, positively identifying appellant as his father's assailant, are quoted hereunder:

FISCAL MASA:

Q

Mr. Witness, do you recall where you were more or less at 7:10 in the morning of August 22, 1995?

A

I was in the shop, sir.

Q

Where is that shop where you said you were in that morning of August 22, 1995?

A

In front of the barangay hall of Brgy. Sampiruhan, Calamba, Laguna.

Q

What kind of shop is it?

A

"Gawaan ng pinto at cabinet."

Q

Why were you there in that shop in that morning of August 22, 1995?

A

I am working in that shop.

Q

Who owns that shop where you said you were then working?

A

My father, sir.

Q

What is the name of your father?

A

Mauricio Lanzas, sir.

Q

While you were there in the shop of your father in that morning of August 22, 1995, do you recall of any unusual incident that you witnessed or you personally saw?

A

Yes, sir.

Q

Please tell the Court what is that unusual incident that you personally witnessed?

A

A man suddenly came.

Q

Where did he come from?

A

In the front of the shop, sir.

Q

The shop where you said you were then working?

A

Yes, sir.

Q

And that man whom you said came to your shop, what did he do?

A

When the man arrived in the shop he leaned on a place where the wood are (sic) being placed. My father then approached him and nodded him after that I did not mind him anymore, sir.

Q

Why? Where was your father when this person came?

A

In front of the shop, sir.

Q

And what happened after you said you saw this man and your father?

I

I was working when I heard three successive shots.

Q

And when you heard these three successive shots, what did you do?

A

So, I looked at them and saw my father lying on the ground.

Q

Now, you said that you looked at them and you said that your father was already lying on the ground when you take a look at them, please tell the court who are these “them” that you are referring to?

A

My father and the man who shot my father.

Q

What did you notice on (sic) the person who shot your father at the time you looked at them?

A

Nothing sir.

Q

And after you said that you take a look at them meaning to your father and to the other person who came and shot your father, what did that man do next, if any?

A

I was afraid because he was staring at me, sir.

Q

And that you said you became afraid, what did you see else (sic), if any when you said you became afraid?

A

I just vowed (sic) and while vowing (sic) I was looking at him, sir.

Q

And what did that man do after your father was already lying down?

A

He approached my father and again shot my father.

Q

What kind of firearm was used by that person in shooting your father?

A

Baby armalite, sir.

Q

That man whom you said shot your father, if you will see him again will you be able to identify or recognize him?

A

Yes, sir.

Q

If that man who shot your father is inside the courtroom, will you kindly point to him?

A

Yes sir.

Q

Please point to him.

A

That man, sir wearing stripe t-shirt.

INTERPRETER:

Witness pointed to a man inside the courtroom who when asked gave his name as Felix Lopez.

FISCAL:

Q

And after the person of the accused whom you just pointed to us as the person who shot your father, what else did he do after your father was shot again?

A

He proceeded to the front of the shop and looked at me. When he looked at me I stooped and then he immediately took my father's two radios.

Q

These two radios, where were they located at that time when you said the accused took it?

A

It was hanging, sir.

Q

Where?

A

"Banse."

Q

Can you demonstrate to this Court the actuation of the accused before he took these two radios.

A

He hurriedly left the place after taking the two radios.

Q

Now, you said that before the accused took the two radios he was looking at you, was there anything that he did while looking at you before taking the radios?

A

No more, sir.

Q

And you said that these two radios which the accused took belongs to your father, why did you know that these two radios belongs to your father?

A

Because I've been seeing those radios in his possession and he told me that those radios are from him (sic).

Prosecution witness Bonifacio Lansanas had ample opportunity to see appellant at close range from the time the latter arrived at the scene of the crime until after the shooting incident. Appellant even stared at him before firing the last shot at his father. Hence, the possibility that he could have been mistaken as to appellant's identity was practically nil. Besides, his testimony was corroborated by his half-brother, Richard, thus:

FISCAL MASA

Q

Now, can you tell the court where you were at around 7:00 o'clock in the morning of August 22, 1995?

A

I was at the barangay, sir.

Q

When you said that you were then in a barangay, to what barangay are you referring to?

A

I was at the barangay hall of Brgy. Sampiruhan, sir.

Q

Calamba, Laguna?

A

Yes, sir.

Q

Now, were you alone while you were there at the barangay hall of Brgy. Sampiruhan, Calamba, Laguna?

A

Yes, sir.

Q

What were you doing there at the barangay hall of Brgy. Sampiruhan, Calamba, Laguna?

A

I was just standing near the barangay hall.

Q

While you were there at the barangay hall standing, do you recall of (sic) any unusual incident that you witnessed or you personally saw?

A

Yes, sir.

Q

Please tell the Court that unusual incident that you said you witnessed while you were there near the barangay hall?

A

When my father was shot, sir.

Q

Now you said that the unusual incident that you recalled and witnessed was when your father was shot, can you tell us the name of your father whom you said was shot on that date?

A

Mauricio Lanzanas, sir.

Q

Who shot your father Mauricio Lanzanas?

A

Felix Lopez, sir.

Q

Now, how were you able to see and identify Felix Lopez as the person who shot your father Mauricio Lanzanas?

A

I was then at the barangay hall when I heard two shots so I decided to go home. When I was on my way home, I saw my father lying on the ground and he shot again my father. After shooting my father, he looked around and then left the place.

Q

Now, you said that while you were going home, you heard two shots and then you saw your father already lying on the ground faced up (sic) and then he was shot again, who shot your father whom you saw?

A

Felix Lopez, sir.

Q

What kind of firearm did Felix Lopez use in shooting your father?

A

It was a baby armalite, sir.

Q

And you said that your father was already lying down faced up (sic) when Felix Lopez shot him again twice, what did you do when you saw again that your father was shot by Felix Lopez while lying down faced up (sic)?

A

I went home to tell my mother.

Q

This Felix Lopez who shot your father, is he in court now?

A

Yes, sir.

Q

Will you please point to him.

A

That man, sir.

xxx xxx xxx

INTERPRETER:

Witness tapped the shoulder of a man inside the courtroom who when asked gave his name as Felix Lopez.

While there may be inconsistencies in the testimonies of the prosecution witnesses on the interval of gunshots, the discrepancies concern minor details that do not affect the veracity of their testimonies. Different persons have different reflexes that may produce varying reactions, impressions, perceptions and recollections. Differing physical, mental, emotional and psychological conditions may also affect their ability to recall details of the incident. No two individuals are alike in terms of powers of observation and recollection. Each may give a different account of what transpired. A testimony may be replete with details not found in another. But taken as a whole, the versions must concur on material points.[9]

Despite the minor inconsistencies therefore, the two witnesses declared in common having heard four gunshots and that they saw appellant shooting their father while the latter was already prostrate on the ground.

In the case of *People vs. Vallador*,[10] we held that:

There appears to be no reason to discredit the testimonies of the witnesses for the prosecution. They clearly and affirmatively gave a full account of what actually transpired on the night of November 27, 1985. They were consistent in their respective narrations on the witness stand, except for Freddie dela Cruz who testified that he heard four gunshots that night as against the testimony of the other prosecution witnesses that they only heard three gunshots. But, the divergence of his perception can be explained by the shot that one may

experience immediately after hearing the ostensible first two shots. Besides, we have held that inconsistencies in the testimonies of witnesses which refer to minor and insignificant details cannot destroy their credibility. Such minor inconsistencies even guarantee truthfulness and candor.

Likewise, the fact that the two prosecution witnesses were sons of the victim is not sufficient reason to disregard their testimonies since they had no improper motive to testify falsely against the appellant. The relationship of the witnesses to the victim did not per se render their otherwise clear and positive testimonies less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty party would deter them from implicating persons other than the culprits for otherwise, the latter would thereby gain immunity.[11]

Lastly, the act of appellant in escaping from detention during the hearing of the case is an indication of guilt. Thus, the established facts conclusively prove that the appellant was the author of the crime.[12]

On the charge of murder, we agree with the trial court that treachery was duly established considering that the appellant, in shooting victim Mauricio Lanzanas, employed means and methods which directly and specially ensured its execution without risk to himself arising from the possible defense the victim might have made. As appellant was approaching the sash factory, the victim was totally unaware of the former's criminal intent. The victim even greeted the appellant with a nod before he was shot twice by the latter with an armalite rifle, a high-powered weapon. Subsequently, the appellant again shot the helpless victim who was already lying prostrate on the ground. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack.[13]

The records of the case do not show any evidence to prove the aggravating circumstance of evident premeditation as alleged in the Information. There is no showing when and how appellant planned and prepared for the killing of the victim, hence, the same should be disregarded.

In its decision, the trial court found the appellant guilty of murder and sentenced him to suffer the penalty of death without, however, discussing the attending aggravating circumstance. Section 1, Rule 20 of the Revised Rules of Court requires that after an adjudication of guilt by the court, it should impose the proper penalty and civil liability provided for by law. Further, Section 2 of the same Rule mandates that the judgment of conviction should state, among others, the aggravating or mitigating circumstances attendant to the commission of the crime, if any. The appreciation of these attending circumstances is crucial for they determine whether the penalty should be increased or decreased. Judges who faithfully observe this duty contribute to the orderly administration of justice.[14]

After a thorough review, we failed to appreciate the presence of any aggravating circumstance.

While it is true that under RA 8294, the use of an unlicensed firearm aggravates the crimes of homicide or murder, the provisions of the said law cannot apply to the case at bar because the crime was committed prior to the effectivity of the said law on July 6, 1997. The provisions of RA 8294 may be applied retroactively so as to prevent conviction of the separate crime of illegal possession of firearm because this accrues to the benefit of the appellant. It cannot, however, be applied retroactively to aggravate the crime of homicide or murder.[15]

The penalty for murder under Article 248 of the Revised Penal Code, as amended by RA 7659 (The Heinous Crimes Law) is reclusion perpetua to death. Having discounted evident premeditation and illegal possession of a firearm, there was no aggravating circumstance present. And there being no mitigating circumstance either, the lesser penalty or reclusion perpetua should be imposed in accordance with Article 63. Thus, for the murder of Mauricio Lanzanas, we reduce the penalty of the appellant Felix J. Lopez from death to reclusion perpetua.

Regarding the amount of damages, the Court notes that the trial court awarded actual damages in the amount of

P100,000 and P50,000 as moral damages. Article 2199 of the Civil Code provides that a party may recover actual or compensatory damages only for such loss as he has duly proved. Only the amount of P1,012 was duly supported by receipts, hence, the award of actual damages should be reduced to the said amount. On the other hand, an award of P50,000 as civil indemnity in addition to the P50,000 moral damages should have been granted to the heirs of the victim in line with the recent rulings of this court.[16]

Finally, with regard to the crime of robbery, the trial court found appellant guilty as charged under Article 293 of the Revised Penal Code which provides:

Who are guilty of robbery. - Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

The evidence on record shows that appellant had already shot the victim before unlawfully taking his two handheld radios. Thus, the probability was that the unlawful taking was merely an afterthought. We find no evidence to prove that appellant originally planned to commit robbery. Any conclusion on his primary intent based on the proven facts is therefore speculative and without basis.[17]

Inasmuch as the taking did not entail the use of violence or force upon the person of the victim, the appellant can only be held guilty of the crime of theft under Article 308, penalized under Article 309 of the Revised Penal Code, which provide:

Art. 308. Who are liable for theft – Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent. x x x

Art. 309. Penalties – Any person guilty of theft shall be punished by:

- The penalty of prision mayor in the minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceed the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and for purposes of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

Since the value of the personal property taken from the victim, as fixed by the trial court, amounted to P18,000, the penalty imposable is the maximum period of the penalty prescribed by Article 309 which is prision mayor in its minimum and medium periods. Applying the Indeterminate Sentence Law, the imposable penalty for this particular theft is anywhere from 2 years, 4 months and 1 day of prision correccional medium period to 6 years of prision correccional maximum period, as minimum, to anywhere from 8 years and 1 day to 10 years of prision mayor medium period.

WHEREFORE, the assailed Decision dated July 20, 1999, of the Regional Trial Court of Calamba, Laguna in Criminal Case No.4668-96-C finding accused-appellant Felix J. Lopez guilty of murder is AFFIRMED with the MODIFICATION that the penalty of death is reduced to reclusion perpetua. In addition to the moral damages of P50,000, appellant is further ordered to pay the heirs of the victim P50,000 as civil indemnity. The award of actual damages is reduced to P1, 012.

In Criminal Case No. 4667-96-C, accused-appellant Felix J. Lopez is hereby found GUILTY of theft only and sentenced to a prison term of 4 years, 4 months and 1 day of prision correccional, as minimum, to 10 years, and 1 day of prision mayor, as maximum, and to pay the amount of P18,000 as reparation for the unrecovered stolen

articles.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Penned by Judge Antonio M. Eugenio, Jr., Rollo, pp. 19-25.

[2] Original records, Vol. 1, p. 32.

[3] Rollo, Vol. 2, p. 17.

[4] Original Records, Vol. 1, p. 63 (for robbery); Vol. II, p. 39, (for murder).

[5] TSN, January 11, 1999.

[6] TSN, January 22, 1999.

[7] TSN, February 12, 1999.

[8] TSN, March 17, 1999.

[9] *People vs. Mahinay*, 304 SCRA 767, 776-777 [1999].

[10] 257 SCRA 515, 523-524 [1996].

[11] *People vs. Dimailig*, 332 SCRA 340, 350 [2000]; *People vs. Quilang*, 312 SCRA 314, 328 [1999].

[12] *People vs. Payot*, 308 SCRA 43, 62 [1999].

[13] *People vs. Adame*, 346 SCRA 373, 380 [2000].

[14] *People vs. Bonito*, 342 SCRA 405, 425[2000].

[15] *People vs. Adame*, 346 SCRA 373, 381[2000]; *People vs. Valdez*, 304 SCRA 611[1999].

[16] *People vs. Caber*, 346 SCRA 166, 167 [2000], citing *People vs. Berzuela*, 341 SCRA 46, 57 [2000].

[17] *People vs. Sanchez*, 298 SCRA 48, 59 [1998].

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