

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERSON MAGHANOY, ACCUSED-APPELLANT.

G.R. Nos. 67170-72. December 15, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant went on a drinking spree and into an orgy of killing that left four lifeless bodies and a dying man in his drunken trail. Now he asks us to exonerate him on the presumptuous ground that he is innocent. Impossible.

The evidence against him is clear and convincing. The prosecution witnesses were consistent and credible while his own defense was conjectural and improbable. He more than deserves the penalties meted out to him which are in fact less than he deserves.

The killings took place in the evening of July 11, 1978, in San Francisco, Agusan del Sur. Accused-appellant Herson Maghanoy, who was then a constable second class, had been drinking beer with PC trainee Dominador Bartolome in a store located in the public market, starting at three o'clock in the afternoon. Maghanoy was totally inebriated by seven o'clock, when he started throwing benches in the market. PC Sgt. Carlos Martinez, who happened to be in the vicinity at that time, identified himself as a peace officer and tried to pacify Maghanoy. Maghanoy instead lunged at him. Martinez boxed the drunken soldier and forced him to withdraw, apparently subdued.

But as it turned out, the incident did not end there. Maghanoy and Bartolome took a motorcab and proceeded to the PC barracks in Prosperidad, in the same province. They got their armalite rifles. On the way back to the market in the same vehicle, they fired three rounds as if to announce hostilities. They fired another three shots upon their arrival shortly before 8 o'clock.

Bartolome went inside the store and then came out with Gavino Montante. Meanwhile, Pat. Raul Montante, Pat. Modesto Gumimba, ICHDF, George Gortifacion and ICHDF Pablo Arones, who were then on duty as security guards of the market and had heard the shots, approached the store to investigate. As they faced Maghanoy, the latter gave one of the two rifles he was carrying to Bartolome, who slung it on his shoulder. Suddenly, Maghanoy pointed his rifle at the four peace officers and shouted "Do not move!" Bartolome tried to deflect the rifle and Maghanoy fired, hitting both Bartolome and Pat. Montante. Montante died that same night with five bullet wounds[1] and Bartolome expired the following day with three bullet wounds.[2]

From the store, Maghanoy proceeded to the national road leading to Barobo, Surigao del Sur, where he met his other victims. Reynante Sabelino, Daniel Baguio and Benito Pacañot were on their way home and did not know the grisly fate that awaited them. Maghanoy reloaded his rifle and watched them come close. Without warning, he opened fire on them, felling all three. As they moaned in pain, Baguio and Pacañot were shot several more times until they died. By sheer luck, Sabelino was hit only in the left thigh and was able to crawl to the nearby ricefield where he hid until he was found by the police. He was taken to the Agusan del Sur Provincial Hospital, together

with his slain companions. Post-mortem examinations revealed six bullet wounds in the body of Baguio[3] and four in the body of Pacañot.[4]

Maghanoy was in hiding for three days until he was apprehended on July 14, 1978, on board a passenger jeep where he had identified himself to a policeman as "Sgt. Fernandez." [5] In due time, he was charged in three separate informations with the murders of Raul Montante and Dominador Bartolome,[6] the murders of Daniel Baguio and Benito Pacañot,[7] and the frustrated murder of Reynante Sabelino.[8] He was convicted on all counts in a decision penned by Judge Eutropio Migriño of the Court of First Instance of Agusan del Sur.[9]

The events prior to the actual shooting and the actual killing of Bartolome and Montante were narrated by Gavino Montante, George Gortifacion, Modesto Gumimba and Carlos Martinez.[10] The killing of Baguio and Pacañot and the wounding of Sabelino were related by Julian Rotante.[11] The rest of the prosecution version was established by other witnesses, most of them members of the same PC command and staying in the same barracks as the accused-appellant.

The trial court found there was no reason to question their reliability, considering their lack of motive in testifying against Maghanoy and the intrinsic credibility of their testimonies. We affirm. The rule is that the factual findings of the trial court, including the assessment of the testimony of each witness, whom it is able to observe on the stand, is entitled to acceptance on appeal in the absence of a showing that they are arbitrary and without basis.[12] There is no such showing here.

The Court also notes that the accused-appellant disappeared after the killing and was obviously trying to escape under an assumed name. It is curious that when asked why he did not return the same night to the PC barracks, he said he did not know the way, improbably expecting the trial judge to believe him.[13]

The rejection of the evidence for the defense by the trial court must also be sustained by this Court. Such evidence is unacceptable because it is palpably false, especially when considered in the light of the acts of the accused-appellant before and after the killings.

Briefly stated, the contention of the defense is that Maghanoy did not shoot any of the five victims and had merely been "framed" by the police. The accused-appellant says it was Bartolome who killed Montante and Montante who killed Bartolome; and furthermore, he himself would not have shot Bartolome who was his friend. Baguio and Pacañot were also shot to death not by him but by the peace officers who were pursuing him after the earlier shooting of Bartolome and Montante, and it was the same pursuers who shot Sabelino.

The trial court correctly observed that the accused-appellant was lying when he said that Montante killed Bartolome with a single shot fired at the latter as he alighted from the motorcab and that Montante had succumbed from three shots fired at him by Bartolome. The autopsy showed that Bartolome had sustained three bullet wounds[14] and that there were five bullet wounds in Montante's body.[15] As for Baguio and Pacañot, the post-mortem report showed that they had also been shot when already lying on their backs after the initial volley. This would show that they were killed deliberately when they were helpless on the ground.[16]

The defense makes much of the failure of the prosecution to present in evidence the armalite rifle carried by Bartolome and says it would have proved that it was Bartolome who killed Montante. The prosecution was under no obligation to submit that exhibit. If the defense thought that the rifle could serve its cause, there was nothing to prevent it from requiring its production in court so the accused-appellant could offer it as his own evidence. No such effort was taken.

The same observation is made regarding the pedicab driver, Tito Cena, who, the defense maintains, could have testified that he did not see who shot Bartolome and Montante. If that were really so, what it should have done

was insist on this person's attendance at the trial so he could testify as a witness for Maghanoy. The record shows that Cena was so required but did not appear at the scheduled hearing and the defense did not pursue the matter further.[17]

The alleged lack of a preliminary investigation is another matter that demonstrates the weakness of the defense. The record shows that the accused-appellant was twice advised by the fiscal's office to submit counter-affidavits against the complaints filed against him but he twice failed or refused to do so. He never thereafter objected to the lack of a preliminary investigation and did not allege it as a ground in his demurrer to the evidence, nor was it even mentioned in the petition for certiorari he filed with this Court to ask for a rehearing of the case.[18] (The petition was dismissed for lack of merit.) His right to a preliminary investigation had been forfeited by inaction and can no longer be invoked at this late hour.[19]

The other arguments of the defense are plainly insubstantial and do not deserve discussion in this opinion.

The trial court ruled that the accused-appellant should be held guilty only of homicide for the killing of Bartolome and Montante as no treachery attended the act. The victims had, indeed, been previously warned by Maghanoy and were not, or should not have been, taken by surprise. Besides the said warning, there was Maghanoy's drunken and belligerent condition plus the fact that he had minutes before fired shots in the air to signal his hostility. All these should have alerted both Bartolome and Montante, particularly because of their calling and experience as peace officers, to any sudden dangerous moves from the accused-appellant.

There is one circumstance, however, that the trial court has not taken into consideration. The accused-appellant, after having been boxed by Martinez, went to the PC barracks to get his rifle and returned to the public market, firing shots on the way and upon arrival. This clearly shows that Maghanoy was bent on revenge and that he had sufficient time to plan how to carry it out, as well as to ponder its consequences. That was evident premeditation and qualified the killings to murder. In Criminal Case No. 1113, therefore, the imposable penalty for each of the two murders, there being no generic aggravating or mitigating circumstances, is reclusion perpetua.

In Criminal Case No. 965 and Criminal Case No. 1112, the Court approves the ruling of the trial judge that the shooting of the other three victims should have been prosecuted under one information pursuant to Article 48 of the Revised Penal Code defining the complex crime as follows:

ART. 48. Penalty for complex crimes. - When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)

As the deaths of Baguio and Pacañot and the wounding of Sabelino were the result of one single act of the accused-appellant, the applicable penalty is the penalty imposed for the more serious offense. The more serious offense is murder, the killing having been attended by treachery because the victims were completely taken by surprise and had no means of defending themselves against Maghanoy's sudden attack. The penalty is imposable in its maximum degree but as the death penalty is no longer permitted, the same is hereby reduced to reclusion perpetua.

The civil awards are all affirmed except for the indemnity for the death of the four victims, which is increased to P30,000.00 for each of them.

The Court cannot express too strongly its grave concern over the alarming number of our men-at-arms who, while under the influence of liquor, have disturbed the very peace and order of the community they are required and expected to preserve. Using their weapons and position to abuse and terrorize, and even to wound and kill, many irresponsible law-enforcement officers have drunkenly attacked innocent and defenseless persons who had in fact

the right to look to them for protection. It is time these so-called agents of the law realized that guns and alcohol do not mix, as the accused-appellant has found, albeit too late to spare his victims. It is not yet too late for the others.

WHEREFORE, the appealed decision is AFFIRMED as above modified. Accordingly, the accused-appellant shall suffer the following penalties:

- (1) In Criminal Case No. 1113, reclusion perpetua and payment of P30,000.00 civil indemnity for each of the two murders;
- (2) In Criminal Case No. 965 and Criminal Case No. 1112, reclusion perpetua for the complex crime of double murder and frustrated murder and payment of P30,000.00 civil indemnity for each of the two murders; and
- (3) All the other monetary awards, which are hereby also AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Decision, p. 5; Records, p. 494.

[2] Ibid.

[3] Exhibit "Q."

[4] Exhibit "R."

[5] TSN, February 27, 1981, p. 14.

[6] Criminal Case No. 1113.

[7] Criminal Case No. 965.

[8] Criminal Case No. 1112.

[9] Decision, pp. 12-13; Records, pp. 501-502.

[10] TSN, November 26, 1980, pp. 3-4; TSN, November 27, 1980, pp. 3-6 and 36-37, TSN, December 2, 1980, pp. 10-13.

[11] TSN, November 26, 1980, pp. 17-21.

[12] People vs. Budol, 143 SCRA 241; People vs. Adones, 144 SCRA 364; People vs. Madarang, 147 SCRA 123; People vs. Alcantara, 151 SCRA 326.

[13] TSN, April 5, 1982, pp. 25-26.

[14] Exhibit "N."

[15] Exhibit "M."

[16] Exhibits "Q" and "R," supra.

[17] TSN, April 5, 1982, p. 1.

[18] G.R. No. 65038-40, Dec. 14, 1983.

[19] Brief for Appellee, pp. 10-12.

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