

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RES DELAVIN, ACCUSED-APPELLANT.

G.R. Nos. 73762-63. February 27, 1987

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant was charged in the Regional Trial Court of Masbate with the murder of Ricardo Rojas and the attempted murder of Romana Rojas.[1] After a joint trial of the two cases, he was convicted of both offenses in a decision[2] he now asks us to reverse on the ground of insufficiency of the evidence against him.

That evidence consists mainly of the testimony of two alleged eyewitnesses to the crimes and of another witness who corroborated the former. For his part, the accused-appellant offered the defense of denial and presented his own witnesses to support him.

According to Deolinda Rojas, daughter-in-law of the victims, the accused-appellant suddenly barged into their store in the early morning of December 12, 1981, and upon seeing him, Romana Rojas immediately shouted in warning, "Ricardo evitar!" Thereupon, Delavin pointed the gun he was carrying at Romana and pulled the trigger four times, but luckily the gun did not fire. Ricardo Rojas then appeared and asked, "What is that?" The accused-appellant immediately shot him, hitting him in the right upper side of his body and (as the autopsy[3] later revealed) instantly killing him. Delavin then turned on Deolinda, but she had the presence of mind to throw at him some empty bottles that were at hand and then to run upstairs and escape through the rooftop.[4]

This testimony was corroborated by the widow, Romana, who added that when Delavin entered their store at about 4:30 o'clock that morning, he shouted, "Where are you, I will kill you all" and that when he pointed the gun at her and squeezed the trigger he also said, "I will kill you." [5] After the shooting of her husband, she hid herself while Delavin pursued Deolinda who, fortunately, was able to escape. Like Deolinda, the widow said she recognized the accused-appellant because they had known him for seven years and they could identify him that tragic morning because the store was lighted by a Petromax lamp and two kerosene lamps.[6]

Artemio Deocariza, Jr. did not witness the shooting but merely heard a gunshot from his house which was about fifteen meters away from the Rojas store. He said that when he later went down to the store he saw Ricardo Rojas lying on the floor. He said he also saw Delavin then, with a gun and walking toward a house of one of the neighbors, but later, he affirmed his earlier affidavit and said he saw Delavin aiming his gun at the head of Ricardo Rojas when the latter was already prostrate on the cement floor of the store. He further declared that the day before the incident, he saw the accused-appellant pointing his gun at Ricardo Rojas and at his store.[7]

The court rejects the testimony of this last witness as immaterial and self-contradictory, not to say inconclusive.

We also rebuff the accused-appellant's denial as, apart from the fact that it cannot stand as against the forthright testimony of the prosecution eyewitnesses, the tale he tells is inherently improbable and was most likely contrived. He says he heard a gunshot from the direction of the Rojas store and then a woman screaming and

shouting inside the place, which was only about twelve to fifteen meters away from his house. Three minutes later he left his house to proceed to the pier where he was to take the motor launch to Manila. On the way, he saw Deocariza and his father looking at the Rojas store, but it did not occur to him to ask what had happened or to go to the place and see for himself.[8] Unnaturally, his curiosity was not at all aroused by the unusual sounds. His attitude was one of supreme indifference. A gunshot, screams and shouting at the house of a neighbor left him completely cold. It is also significant that when one week later his wife informed him by long-distance telephone that he was suspected of the killing, he nevertheless remained in Manila — possibly to hide — until he was finally arrested and brought back to Masbate.[9]

The trial court correctly disbelieved the testimony of defense witness Aproniano Villamor, who declared that the killer was not Delavin but another person, a mysterious stranger he met coming from the Rojas house on that fateful morning who pointed a gun at him and thereafter "fled toward the hill of Tara Street." [10] Commenting on his testimony, the trial judge observed: "Aproniano Villamor, who claims to have seen the real assassin did not even reveal this matter to any one in the market after the incident in the pier where he was working at the time, and to any one in Mobo, Masbate, when he went home on the same day, nor to any police authorities. It is said that 'a witness who keeps silent is incredible.' (People v. Madarang, 31 SCRA 148)." [11]

The trial judge had the opportunity to observe the witnesses personally and to determine by his own firsthand impressions the credibility of their testimony as indicated by their demeanor on the stand, the forthrightness of their declarations, the shades of tone and word and pause drawing the line between fact and fabrication. We sustain his findings on this matter, there being no showing that he has abused his discretion or had no basis for his conclusions. And while it is true that, as pointed out by the defense, [12] there are a number of discrepancies and inconsistencies in the testimony of the prosecution witnesses, we agree that these lapses are only on minor details that do not detract from, but in fact, by their very imperfection, strengthen its veracity.

There is, of course, no need to prove motive where the culprit has been positively identified by eyewitnesses. [13] But in any event, for whatever it may be worth, evidence was also adduced showing that Delavin harbored resentments against the victims because they had refused to extend him a loan of P10,000.00. [14]

Treachery attended the commission of both offenses as there was a sudden and unexpected attack that rendered the victims unable to defend themselves. [15] "The killing is qualified with treachery when the shooting was sudden and unexpected and the victims were not in a position to defend themselves." [16] The sudden and unexpected attack was also deliberate. [17] In the case of the attempted murder, the intent to kill was amply established by Delavin himself when he said, "I will kill you" as he squeezed the trigger. Correctly, evident premeditation, not having been proved, was not appreciated.

We sustain the lower court on the civil damages due, to wit:

"It was established in this case that at the time of the death of the victim, he was 50 years old and engaged in business where he derived a monthly income of P10,000.00. As a result of his death, the family lost their business. Taking the average span of life of a Filipino, he may be expected to live for six (6) years more. (Merchan vs. Mendoza, 24 SCRA 888) The yearly income of the deceased is around P120,000.00, less expenses necessary in the creation of such earnings or income and less living and other incidental expenses in amount of P60,000.00, thus, his yearly net income is P60,000.00 multiplied by 6 years, the heirs of the deceased should be entitled to the loss of earning capacity in the amount of P360,000.00 pursuant to Article 2202, in relation to Articles 2205 and 2206, New Civil Code, and People vs. Pentola, 25 SCRA 468."

and on the dispositive portion of the decision reading as follows:

"WHEREFORE, premises considered, the Court finds the accused guilty beyond reasonable doubt of the crime

of murder in Crim. Case No. 3813 and hereby sentences him to a penalty of reclusion perpetua, to indemnify the heirs of the deceased in the amount of P30,000.00; moral damages loss of earning in the amount of P360,000.00, without subsidiary imprisonment in case of insolvency, together with all the accessory penalties provided for by law, and to pay the costs. In Crim. Case No.3814, the Court finds the accused guilty beyond reasonable doubt of the crime of attempted Murder and hereby sentences him to an indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS of prision correccional as minimum, to SIX (6) YEARS and ONE (1) DAY of prision mayor as maximum, together with all the accessory penalties provided for by law, and to pay the costs."

One of the arguments invoked by the defense was that the accused-appellant, knowing that he could easily be identified, would not have committed the offenses openly but would have chosen a more subdued place and hour to prevent his discovery. In reply, the Solicitor General says: "Time has changed a great deal. The brazenness with which crimes are committed in broad daylight are too numerous to be recounted." We agree, with not a little sense of sadness. Vanished, indeed, are those gentler yesterdays when one's neighbor was, as certain as the break of dawn, a friend.

WHEREFORE, the appealed decision is affirmed in toto, with costs against the accused-appellant.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Feliciano, Gancayco, and Sarmiento, JJ., concur.

[1] Rollo, pp. 12-13.

[2] Ibid., pp. 21-22.

[3] Id., p. 15.

[4] Id., p. 13.

[5] Id., p. 14.

[6] Id., p. 14.

[7] Id., p. 15.

[8] Id., pp. 15-16.

[9] Id., p. 16.

[10] Id., pp. 16-17.

[11] Id., p. 20.

[12] Appellant's Brief, pp. 2-5.

[13] People vs. Soriano, 134 SCRA 542.

[14] Rollo, p. 14; pp. 19-20.

[15] People vs. Gamut, 118 SCRA 35; People vs. Canette, 129 SCRA 452; People vs. Dofilez, 130 SCRA 603; People vs. Maruhom, 132 SCRA 116; People vs. Beltran, 137 SCRA 508.

[16] People vs. Pasco, Jr., 137 SCRA 1377; People vs. Gida, 102 SCRA 70; People vs. Candado, 84 SCRA 508.

[17] People vs. Lorenzo, 132 SCRA 17; People vs. Tajon, 128 SCRA 656; People vs. Villanueva, 130 130 SCRA 75; People vs. Calicdan, 138 SCRA 385; People vs. Gamut, supra.

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