

JEREMIAS EBAJAN, PETITIONER, VS. THE HON. COURT OF APPEALS, (FORMER SPECIAL SECOND CRIMINAL CASES DIVISION), RESPONDENT.

G.R. Nos. 77930-31. February 09, 1989

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

For the death of Arturo Lubrico and Emeterio Rodas, Jr. on January 20, 1982 at about 7:30 p.m. near the comfort room inside Holiday Mart, a refreshment store in downtown Dumaguete City, petitioner Jeremias Ebajan y Edicto, a PC constable, was charged in two (2) separate cases for homicide with the Regional Trial Court, Branch XL, 7th Judicial Region, Dumaguete City.[1] Upon being arraigned, the petitioner entered a plea of not guilty in both cases. After a Joint trial of the cases, the trial court rendered a decision on October 22, 1984, convicting the petitioner of the offenses charged, the dispositive portion of which reads:

"WHEREFORE, this Court finds accused, Jeremias Ebajan, guilty beyond reasonable doubt for the crime of Homicide as charged in Criminal Cases Nos. 5363 and 5364 and there being no mitigating and aggravating circumstance and applying the indeterminate Sentence Law, imposes upon him in Criminal Case No. 5363 on imprisonment of eight (8) years and one (1) day to ten (10) years of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal as maximum; to pay the heirs of Arturo Lubrico the sum of Twelve Thousand (P12,000.00) Pesos; to pay P7,748.00 as actual expenses incurred by the heirs of Arturo Lubrico; to pay P2,000.00 as reasonable attorney's fees; and to pay the costs. And in Criminal Case No. 5364, the Court imposes upon him an imprisonment of eight (8) years and one (1) day to ten (10) years of prison mayor as minimum to fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal as maximum; to pay the heirs of Emeterio Rodas, Jr. the sum of Twelve Thousand (P12,000.00) Pesos; to pay P1,964.00 as actual expenses incurred by the heirs of Emeterio Rodas, Jr., to pay P2,000.00 as reasonable attorney's fees; and to pay the costs." (Rollo, p. 75)

On appeal, the respondent Intermediate Appellate Court (now Court of Appeals) rendered a decision[2] which affirmed the Judgment of the trial court convicting the petitioner herein except that the circumstance of voluntary surrender was appreciated, the indemnity award raised to P30,000.00 and the attorney's fees eliminated. The dispositive portion of the decision reads:

"Wherefore, as modified with respect to the penalty of imprisonment, the indemnity award and the award for attorney's fees, the decision appealed from is hereby AFFIRMED in all other respect, being in accordance with the evidence and the laws. Cost against appellant.

"SO ORDERED." (Rollo, p. 55)

The following facts appear from the record:

"Eusebio Cruz testified that he knew Emeterio Rodas, Jr. because the latter was his companion in his house from 1979 to 1982; that he also knew Arturo Lubrico, as the latter was the manager of the store of his father

from 1980 up to the time of his death in 1982; that at 7:30 o'clock in the evening of January 20, 1982, he was drinking at the Holiday Mart, together with Emetrio Rodas, Jr. and Arturo Lubrico when four (4) persons arrived, namely: three (3) P.C. soldiers and one (1) policeman. Of the four (4) persons, he only recognized the accused Jeremias Ebajan and Patrolman Ernesto Alega also known as 'Boy Alega'. He greeted the accused and invited him and his companion to drink with them in their table. While they were drinking, the elder brother of Eusebio Cruz, Leoncio Cruz, arrived. After drinking a bottle of beer, Leoncio Cruz invited Emetrio Rodas, Jr. to go with him to buy cigarettes outside the Holiday Mart. He saw (2) P.C. soldiers and Pat. Alega follow Leoncio Cruz and Emetrio Rodas, Jr. out of the Holiday Mart, near the main door, Arturo Lubrico, the accused Jeremias Ebajan, and Eusebio Cruz remained seated on their table; that accused Ebajan invited Arturo Lubrico to go with him to the comfort room; that when the accused and Arturo Lubrico failed to come back to their table, he went to the comfort room to find out what happened to them. In the comfort room, he saw Arturo Lubrico wearing only his brief while the accused was holding a mop facing Lubrico. He asked the accused, 'Why are you doing this to my friend?' The accused answered, 'You are not a part of this.' His brother, Leoncio Cruz, arrived and invited him to go out of the main door of the Holiday Mart. He testified further that Arturo Lubrico remained inside the comfort room while Emetrio Rodas, Jr. was standing outside the door of the comfort room. Then he heard a gunshot. Thinking it was a warning shot, he did not do anything. When he heard the second shot, he got apprehensive, So he went inside the Holiday Mart and was met by the accused who pointed a gun at him. Leoncio Cruz told the accused, 'Do not do this to my brother, just leave him to me and of which the accused replied, 'You let him go home.' So he went home with his brother, Leoncio Cruz, and informed the sister of Emetrio Rodas, Jr. that her brother had been shot.

"When questioned by the Court, he testified that he did not see the accused shoot Arturo Lubrico but his brother, Leoncio Cruz, saw who fired the two (2) gunshots.

"Leoncio Cruz testified that he is a resident of Cervantes Extension, Dumaguete City; that he knew Arturo Lubrico because the latter is the manager of his father's business; that he also knew Emetrio Rodas, Jr. because besides being neighbors at Cervantes Extension, he also met him at his brother's house; that about 7:00 o'clock in the evening of January 20, 1982, he was told by Emetrio Rodas, Jr. to go to the Holiday Mart. When he arrived at the Holiday Mart, he noticed the presence of his brother, Eusebio Cruz, the accused Ebajan, Emetrio Rodas, Mr. Arturo Lubrico, Patrolman Ernesto 'Boy' Alega, and another person whose name he did not know. Emetrio Rodas, Jr. invited him to have a drink. Before finishing his bottle of beer, he invited Emetrio Rodas, Jr. outside the Holiday Mart to buy 'blue seal' cigarettes as the latter knew where to buy it. When he went back to the Holiday Mart with Emetrio Rodas, Jr., he noticed that Patrolman Alega was the only one left on the table and he was told by Pat. Alega that his companions were in the comfort room. When he went to the comfort room, he heard somebody quarreling; that the accused and his brother, Eusebio Cruz, were having an exchange of words, and Arturo Lubrico was only wearing his brief. He pulled his brother Eusebio Cruz out of the comfort room and brought him outside the Holiday Mart; that while he was near at the main door of the Holiday Mart, he heard two (2) gunshots and he looked and peeped through the main door of the Holiday Mart and saw Arturo Lubrico falling down slowly and he also saw the accused standing, holding a gun pointed at Arturo Lubrico. When Emetrio Rodas, Jr. who was facing the main door of the Holiday Mart, looked outside, turned his face towards the accused, the accused shot him, hitting on the left eye which caused Emetrio Rodas, Jr. to fall down to the floor of the Holiday Mart. He tried to stop the accused but the accused pointed a gun at his brother Eusebio Cruz; that he told the accused that Eusebio Cruz was his brother and 'to leave him to me.' He was advised by the accused to go home; that he has known the accused since 1980 because the latter used to borrow the motorcycle of his uncle. He called the sister of Emetrio Rodas, Jr., Rosalie Bebe, and informed her that her brother was shot. At 9:00 o'clock in the morning of January 21, 1982, he together with Eusebio Cruz and a certain Macias, went to the police station but was advised to report the incident to the Philippine Constabulary Headquarters as the suspect was a Philippine Constabulary soldier.

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"Answering questions from the Court, he testified that the inside of the Holiday Mart was lighted with a flourescent lamp; that the accused was outside the urinal of the comfort room when he shot the victim.

"When asked by the Prosecuting Fiscal how far he was from the accused when he was peeping at the main floor of the Holiday Mart, he answered that he was only four (4) meters away from the accused. He also testified that the accused, used a super .38 caliber pistol in shooting the victims.

"Dr. Urbano Diga, Jr., City Health Officer of Dumaguete, testified that he conducted a medico-legal examination on the dead body of Emeterio Rodas, Jr. and Arturo Lubrico; that from his medical examination, Emeterio Rodas, Jr. suffered the following injuries:

'1.

wound (entrance) at the left outer canthus 1 cm. in diameter with slight contusion and swelling of the left eye;

'2.

Stellate wound (exit) at the right occipital region measuring 2 cm. x 3 cm. Fragmented bones were seen;

'3.

Bilateral nasal bleeding as well as bleeding from the right external ear; and

'4.

Multiple scars in the abdominal wall.'

that Emeterio Rodas, Jr. died of a gunshot wound in the head; that he also issued a Certificate of Death of Emeterio Rodas, Jr. From his medical examination, he also found that Arturo Lubrico suffered the following injuries:

'1.

Circular wound at the right temporal region 1 cm. in diameter (entrance wound);

'2.

Stellate wound at the left posterior suricular region 2 cm. from the ear lobe measuring 1 cm. x 1.8 cm. (Exit wound);

'3.

Bilateral nasal bleeding.'

that Arturo Lubrico died on a gunshot wound in the head; that a Certificate of Death was issued by him concerning Lubrico's death." (Rollo, pp. 44-47)

On the other hand, the petitioner's version of the incident is as follows:

"Appellant claims that at about 7 o'clock in the evening of January 20, 1982, while waiting for a tricycle to ride home he met Pat. Ernesto Alega. To while away the time while waiting for a tricycle, he invited Pat. Alega for a bottle of beer inside the Holiday Mart; that before he could finish his bottle appellant felt the call of nature and so he rushed to the comfort room. Unfortunately, somebody was ahead of him as the comfort room was closed, so he knocked continuously until the door was opened by an annoyed Arturo Lubrico who was only in brief, confronting appellant, Lubrico berated him Shouting 'putang ina mo, wala kang kwan'. Appellant told him to bear with him for he had stomach trouble. Instead of being pacified, Lubrico became more belligerent and allegedly took a water pipe from inside the comfort room and tried to strike him with it, which appellant

successfully parried with a floor mop. At that moment, Eusebio Cruz arrived and intervened shouting, "kaibigan ko yan". In reply, appellant said, "you have nothing to do with this. If he is your friend, why does he want to strike me?" Just then Leoncio Cruz appeared and pulled his brother away towards the main door of Holiday Mart. As they were leaving, Emeterio Rodas, Jr. allegedly darted towards appellant while at the same time drawing his gun in the act of shooting appellant. The latter, however, was quicker and outdrew Rodas, Jr., shooting him on the head. At the precise moment, Lubrico was also poised to hit him with a water pipe on the head, but before the blow could land, he also shot Lubrico on the head killing him instantly." (Rollo, p. 49)

Failing to obtain a favorable decision from the lower court and then the respondent court, the petitioner now calls upon this Court on a petition for review on certiorari to review not only the law but also the facts in the interest of substantial justice. He claims that respondent Court erred in affirming with uncritical acceptance and patronizing attitude the judgment of conviction of the trial court. To paraphrase petitioner, the reasons for allowance of the petition are the following:

(1)

that the alleged eyewitness account of the lone state witness Leoncio Cruz defies logic and reason;

(2)

that not only are the testimonies of prosecution witnesses, brothers Leoncio and Eusebio Cruz incredible but also that said witnesses are incredible in themselves;

(3)

that the prosecution failed to establish any motive for the shooting and

(4)

that admission by the accused of the killing, coupled with a statement of the causes of exculpation, does not relieve the prosecution of its constitutional obligation to establish the guilt of the accused beyond reasonable doubt.

Petitioner claims that the trial court and respondent Court obviously overlooked or otherwise disregarded the following established relevant and material facts (a) that at the main door of the Holiday Mart is a partition or division with holes through which Leoncio Cruz "looked and peeped"; (b) that at the time Leoncio Cruz heard the two shots, he was outside the main door of the Holiday Mart at a distance of eight (8) meters, (i.e., 26.24 ft.) from the main door, talking with a PC soldier, a companion of accused, and his brother Eusebio Cruz with his (Leoncio's) arms around the Shoulders of Eusebio; (c) that the two (2) gunshots were at a two-second interval; (d) Eusebio Cruz who was similarly located as Leoncio - only heard the shots but could not see who fired the shots or who was hit because of the partition at the main door of Holiday Mart which obstructed his view. He argues that it is physically impossible for Leoncio to negotiate the distance of eight (8) meters, or 26.24 feet in two seconds, from the place where he was with the PC soldier and his brother Eusebio at the time he heard the first shot to the partition where he peeped. Consequently, he could not possibly have seen Arturo Lubrico falling down slowly after the first shot. Neither could he say that he saw the actual shooting of Rodas, for before he could have reached the partition to peep through its holes, the two shots had already been fired.

From the foregoing, petitioner said he could not understand how respondent Court could affirm the conclusion of the trial court that the "Cruz brothers testified in a categorical, straightforward, spontaneous and frank manner and remained consistent on cross-examination."

Petitioner likewise attempts to discredit prosecution witnesses stating that they were close friends of the victims and that like their victim-friends Rodas and Lubrico, the Cruz brothers were also drug addicts. Besides, he claims

that Leoncio Cruz was an ex-convict, having been convicted of illegal possession of hand grenade and ammunitions.

Inasmuch as the prosecution had no evidence of the actual shooting, petitioner claims that motive then had become important yet the respondent Court failed to appreciate the fact that the prosecution had not established any motive for the shooting.

Finally, petitioner assails the affirmance of the conviction in view of his alleged failure to prove his theory of self-defense with certainty by sufficient, satisfactory and convincing evidence. He argues that the prosecution should have established his guilt in the first place. Notwithstanding his admission, the same does not carry with it the liberation on the part of the prosecution of its constitutional obligation to establish its accusation beyond reasonable doubt. In sum, the petitioner said that after disposing of the version of its lone eyewitness Leoncio Cruz as a physical impossibility, the prosecution is left with no evidence whatsoever of the actual shooting and therefore, the judgment of conviction affirmed by respondent Court is based entirely on speculation, surmises and conjectures.

The sole issue in this case, therefore, is whether or not the Court of Appeals erred in affirming the trial court's decision finding that the guilt of the petitioner has been established beyond doubt.

We answer in the negative.

In affirming the judgment of conviction, the respondent Court quoted with approval the statement of the trial court:

"The prosecution proved during the trial that Arturo Lubrico and Emeterio Rodas, Jr. were shot and killed by the accused inside the Holiday Mart in the evening of January 20, 1983. This fact was admitted by the accused. The prosecution also proved that the accused used a gun in killing the victims who both suffered head injuries. Dr. Urbano Diga, Jr., the City Health Officer of Dumaguete, testified that the victims died of gunshot wounds. To prove that the victims died, the Certificates of Death of the victims were presented in Court. Eusebio and Leoncio Cruz saw the accused holding a gun. Even defense' witness, Pat. Alega testified that when he entered the Holiday Mart after the shooting incident, the accused was holding a gun. Leoncio Cruz saw the (sic) accused Emeterio Rodas, Jr. and saw Arturo Lubrico 'falling down slowly', after the second shot; that when the victims were shot by the accused, they were not armed. All these direct and circumstantial evidence clearly established that the accused committed the crime of Homicide in both cases tried before this court." (Rollo, pp. 52-53)

Therefore, the judgment of conviction is not only based on the eye-witness account by Leoncio Cruz of the violent incident. Independently of whether or not Leoncio actually saw the shooting of the victims, the trial court and the respondent court reasonably arrived at a conclusion that the crimes had been committed precisely by the person on trial under the exacting test of proof beyond reasonable doubt. The testimonies on the prior altercation of the petitioner and the victim Lubrico, the shots heard and the observation by both prosecution and defense witnesses of the petitioner holding a gun immediately after the shots were heard as well as the declaration of the City Health Officer of Dumaguete City that the victims died of gunshot wounds can point to no other conclusion other than that arrived at by the trial court.

Noteworthy is the Fact that petitioner merely seeks to discredit the factual narration of the actual shooting incident and the alleged actuations of the Cruz brothers thereafter. He does not deny their testimonies on what transpired prior to the shooting. Notwithstanding the absence of the eyewitness account of the actual shooting, the prosecution evidence can still stand. Besides, We cannot subscribe to the view of the petitioner that the conduct of the Cruz brothers after the incident is contrary to human experience. We agree with the Solicitor General that the

workings of the human mind, when exposed to startling events, vary.

Anent the credibility of the Cruz brothers, We rule that special friendly relations that existed between the Cruz brothers and the victims do not impair their credibility. It has been held that relationship of a witness to a party does not impair his credibility (*People vs. Demetrio*, L-48255, September 30, 1983, 124 SCRA 914). Friendship of the witness with the victims' families is not sufficient motive for witness to testify falsely against the accused (*People vs. Salcedo*, L-37080, May 3, 1983, 122 SCRA 54). Neither can their alleged record of bad character affect their credibility considering that the character evidence against them is so irrelevant to establish a reputation for dishonesty and untruthfulness. Time and again, We have also ruled that contradiction in the testimonies of the witness instead of suggesting prevarication, indicates veracity, thereby bolstering the probative value of the testimonies as a whole (*People vs. Barros*, L-34249, May 3, 1983, 122 SCRA 34). Furthermore, conclusions and findings of facts by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of witnesses while testifying in the case (*Chase vs. Buencamino, Sr.*, L-20395, May 13, 1985, 136 SCRA 365). No such reasons appear in this case as to Justify this Court to depart from the findings of the respondent appellate court.

We disagree with petitioner that proof of motive is relevant in the case at bar. Motive is important in cases where there is a doubt as to whether the defendant is or is not the person who committed the offense. But where the defendant admits the killing, it is not necessary to inquire into his motive for doing the act (*People vs. Arcillas*, G.R. L-11792, June 30, 1959).

The direct and circumstantial evidence established at the trial sufficiently showing his culpability is bolstered by the petitioner's admission of having fired the shots that killed the victims. The law is well-settled that a person who seeks justification for his act must prove by clear and convincing evidence the presence of the necessary justifying circumstances for having admitted wounding or killing his adversary, and he is criminally liable unless he is able to satisfy the court that he acted in legitimate self-defense. Like all matters of defense, the burden of establishing such a claim is on the party relying or invoking it (*People vs. Rosario*, L-46161, February 25, 1985, 134 SCRA 496). The accused must rely on the strength of his own evidence and not on the weakness of the prosecution for even if the latter were weak, it could not be disbelieved after the accused had admitted the killing (*People vs. Llamera*, L-21604-5-6, May 25, 1973, 51 SCRA 48, *People vs. Talaboc*, 30 SCRA 87).

In the case at bar, proof adduced in this respect by the petitioner is hardly persuasive. Thus, his conviction necessarily follows from his admission that he killed the victims (*People vs. Dorico*, L-31568, November 29, 1973, 54 SCRA 172; *People vs. Boholst-Caballero*, L-23249, November 25, 1974, 61 SCRA 180). Besides, the plea of self-defense cannot be justifiably entertained where it is not only uncorroborated, as in this case, by any separate competent evidence but in itself is extremely doubtful (*People vs. Flores*, L-24526, February 29, 1972, 43 SCRA 342) for failure of petitioner to present in evidence the water pipe allegedly used by Arturo Lubrico and the gun allegedly used by Emeterio Rodas, Jr.

In modifying the penalty and civil liability imposed by the trial court, the respondent Court of Appeals said:

"There is no doubt that the voluntary surrender of appellant to his commanding officer is mitigating, not only because it was done so before he was arrested, but because his commanding officer is an agent of a person in authority.

"In view of the presence of the mitigating circumstance of voluntary surrender, the penalty of reclusion temporal for the two cases should be imposed in its minimum period (Article 64, par. 2, Revised Penal Code).

"Applying the Indeterminate Sentence Law, appellant is sentenced in Criminal Case No. 5353, to a penalty of

imprisonment of from eight (8) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum; and to pay the heirs of Arturo Lubrico as indemnity the amount of P30,000.00 (People vs. Moreno, 129 SCRA 461).

"In Criminal Case No. 5364, appellant is likewise sentenced to a penalty of imprisonment of from eight (3) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum, and to indemnify the heirs of Emeterio Rodas, Jr. the amount of P30,000.00.

"Attorney's fees awarded in the two cases is without legal basis. Under Article 2308 (No. 9) of the Civil Code of the Philippines provides that attorney's fees can only be recovered 'in a separate civil action to recover civil liability arising from crime.' This was likewise the ruling in People vs. Conrado Biador,' C.A.-G.R. No. 19589-R, Jan. 21, 1959, 55 O.G. No. 32, p. 6384)." (Rollo, p. 54)

We agree.

ACCORDINGLY, the judgment of the respondent appellate court is hereby affirmed in toto. Costs against petitioner.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[1] Presided over by Judge Luis R. Ruiz, Jr.

[2] Penned by Associate Justice Rodolfo A. Nocon.

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