

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO CALDITO AND BENJAMIN BEBEDOR, DEFENDANTS-APPELLANTS.

G.R. Nos. 78432-33. February 09, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

The accused, Benjamin Bebedor and Rolando Caldito, are before us on appeal from the Decision of the Regional Trial Court, National Capital Judicial Region, Branch 39, Manila, convicting them of the crime of murder and sentencing each of them to reclusion perpetua.

Appellants were accused in Criminal Case No. R-82-2125 in an information which read as follows:

"The undersigned accuses ROLANDO CALDITO and BENJAMIN BEBEDOR of the crime of murder committed as follows:

"That on or about December 29, 1975, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each other, with intent to kill and by means of treachery and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one ERNESTO BIDAURE, by then and there shooting him several times on the body with their .38 cal. revolvers, thereby inflicting upon the said Ernesto Bidaure mortal wounds on the head which were the direct and immediate cause of his death moments thereafter.

Contrary to law."[1]

The appellants were also both charged in an information in Criminal Case No. R-82-2126, which, except for the name of the victim, Rodrigo Carado, Jr., was cast in terms identical with those of the first information, quoted above.

After accused had both entered a plea of not guilty, they were tried jointly. In the course of presentation of evidence by the prosecution, a fire broke out on the fourth floor of the Manila City Hall on 19 November 1981, destroying, among other things, the records of Criminal Cases Nos. R-82-2125 and R-82-2126, as well as the real evidence, such as the guns and spent bullets, which the prosecution had submitted. The records were reconstituted after the fire and the cases tried anew. After the prosecution rested, the defense manifested that the former had failed to establish the accused's guilt beyond reasonable doubt. The accused waived presentment of evidence on their own behalf and submitted the cases for resolution upon filing of their memorandum.[2]

The trial court rendered a decision on 24 February 1986 finding both accused guilty of murder. The dispositive portion of the decision states:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court finds both accused, Rolando Caldito and Benjamin Bebedor guilty beyond reasonable doubt of the crime of murder and there being neither generic mitigating nor aggravating circumstance in attendance, conformably sentences each accused to life imprisonment; to indemnify the heirs of Ernesto Bidaure and Rodrigo Carado Jr. 40,000 pesos each and to pay

the cost of the proceedings.

The period of preventive imprisonment undergone by the accused shall be deducted from their term of imprisonment in pursuance of Article 29 of the Revised Penal Code, as amended.

xxx xxx xxx

SO ORDERED."

Appellants, in their Brief, made the following assignment of errors:

"I.

the trial court erred in finding that the prosecution has proven the guilt of the accused beyond reasonable doubt

II.

the trial court erred in finding that there was treachery; if accused are guilty at all, it can only be of homicide not murder."

From the record, the facts may be collated and summarized as follows:

In the evening of December 29, 1975, the accused, both, privates in the Philippine Army, together with three (3) other persons (Danilo Esta, Nestor R. Dimas and Herve Tabo), were drinking beer at the Bonino Beerhouse located at 745 Rizal Avenue, Sta. Cruz, Manila. They had with them at their table four (4) waitresses of the Beerhouse, and consumed at least one (1) case of beer. In the early morning hours of the succeeding day, 30 December 1975, at approximately 2:00 a.m., PC/Sgt. Ernesto Bidaure, Rodrigo Carado, Jr., Ship Capt. Alfonso Luzareta and Roger Luzareta arrived in the same Beerhouse to eat and sat down on a table opposite that occupied by the accused. The two (2) tables were separated by the main aisle of the Beerhouse, about two and a-half (2-½) arm's length in width. A waitress approached Sgt. Bidaure's group and informed them that their orders for food and drinks could no longer be served because the establishment was about to close. The Floor Manager of the Beerhouse, Mr. Claudio Gregorio, also approached Sgt. Bidaure's group reiterating that they were about to close. Ship Capt. Luzareta replied that they would simply look for another restaurant.

As the group of Sgt. Bidaure was about to depart, accused Bebedor suddenly shouted, "Alam ko isa lang ang may baril diyan." Sgt. Bidaure replied "Bakit?" Without further ado, appellants stood up and drew their .38 caliber handguns pointing them at Sgt. Bidaure's group. Accused Bebedor fired first; accused Caldito fired "almost simultaneously." [3] Sgt. Bidaure was hit by the first shots but managed to draw his .45 caliber pistol and to fire back. Sgt. Bidaure failed, however, to hit either of the accused and the latter continued firing at Bidaure's group discharging approximately eight (8) shots. Sgt. Bidaure and Carado, Jr. fell to the floor critically wounded. Ship Capt. Luzareta was also wounded while Roger Luzareta, who had managed to duck under the table, survived unscathed. Carado and the Luzaretas were unarmed. After the firing, the two (2) accused ran down the stairs and fled; their three (3) companions had already scampered away the moment the firing began. The Luzaretas brought Sgt. Bidaure and Carado to the Jose Reyes Memorial Hospital. There, Bidaure and Carado died of their gunshot wounds. [4]

The accused and their three (3) companions were arrested within a few hours after the bloody incident by the Philippine Constabulary Metropolitan Command and turned over to the Intelligence and Investigation Group in Camp Crame. In Camp Crame, on the same day, i.e., 30 December 1975, accused Bebedor was identified by three

(3) of the waitresses who had sat on their table — i.e., Ligaya de Leon, Helen de la Cruz and Betty Tolete — and as well by Roger Luzareta.

Paraffin tests were carried out on the same day in the Philippine Constabulary Crime Laboratory upon the accused Bebedor and Caldito and on their three (3) companions. The tests showed that both Bebedor and Caldito had gunpowder residues on their hands while none of the three (3) persons showed traces of gunpowder on their hands. The PC Crime Laboratory also carried out micro-chemical examination of twos (2) Smith and Wesson caliber .38 revolvers belonging to the two (2) accused. The examination showed that the two (2) revolvers had been recently fired.

Dr. Angelo Singian, former Chief, Medico-Legal Officer of the Western Police District, conducted an autopsy on the bodies of Ernesto Bidaure and Rodrigo Carado, Jr., upon request of the police authorities. Dr. Singian testified that the immediate cause of the death of Sgt. Bidaure was a “gunshot wound on the left posterior arm through the shoulder, re-entering the left occipital bone, fracturing the skull and lacerating the brain.”[5] This slug was recovered from Sgt. Bidaure’s head. In respect of Rodrigo Carado, Jr., Dr. Singian testified that the cause of death was the infliction of “four (4) gunshot wounds one a richocette (sic) with one perforating lacerating the lung, heart, diaphragm and liver.”[6] One slug and fragments of another were recovered from Carado’s body.

During the trial, Roger Luzareta positively identified accused Bebedor as having fired first at Bidaure and without provocation.[7] He also testified that accused Caldito fired his gun “almost simultaneously” with Bebedor at Bidaure’s group —

"Q.

When Bebedor fired his gun, will you please tell us what did Caldito do?

A.

He also fired.

Q.

In what direction?

A.

Towards us.

Q.

How about Bebedor after he hit Ernesto Bidaure, what did he do?

A.

I don't remember, just I heard are sounds of shot.

Q.

What did you do when Bebedor fired his gun and you saw Ernesto Bidaure was hit?

A.

I covered myself under the table.

xxx xxx xxx

Q.

When Caldito also fired his gun, what happened to Carado Jr.?

A.

He was hit.

Q.

Do you know whose gun hit Carado?

A.

I do not know.

xxx xxx xxx

Q.

Do you know how many times Bebedor fired his gun?

A.

Four to five times.

Q.

How about Caldito?

A.

I cannot remember."^[8]

Roger Luzareta's testimony indicates that after Bebedor's first shot, events moved swiftly and furiously. Considering that Roger Luzareta was in the group being fired upon, it is understandable that his perception of subsequent events became less than crystal clear. In any case, Roger Luzareta was subjected to intense cross-examination by counsel for the two (2) accused. Luzareta, however, stuck to his description of the initial stages of the shooting and to his identification of the two (2) accused as the gunmen who had slain Bidaure and Carado. Claudio Gregorio, Floor Manager of the Bonino Beerhouse, also testified and his testimony corroborated that of Roger Luzareta:

"Q. Where were you when you heard Bebedor say: only one has a gun, did you retreat . . .

Court:

Q: Where were you when you heard this?

A: I was beside Capt. Luzareta.

Q: So you were with Capt. Luzareta?

A: Yes, sir.

Q: Then all of a sudden you heard first the gun fire.

A: Yes, sir.

Court:

Q: Before the firing you said that you were talking to Captain Luzareta?

A: Yes, sir.

Q: So, you were on the side?

A: I was standing in front of the table of Bidaure.

Fiscal:

Q: What is the distance between the table of the group of Luzareta and the table of the two accused?

A: 2-½ arm's length.

Q: Do you remember who called you?.

A: Captain Luzareta

Q: Did you approach him?

A: Yes, sir.

Q: What did he tell you?

A: I was asked by him if they were allowed to drink and I told them that we were closed and he told me that they will transfer to another restaurant.

Q: What was the answer of Capt. Luzareta when you told him that Bonino Restaurant is already closed?

A: He said they will transfer to another restaurant.

Q: After telling you that they will transfer to another restaurant what transpired, if any?

A: Somebody from the table of Bebedor told 'Alam ko isa Lang baril diyan.'

Q: When you heard somebody from the group of the two accused that there was only one man carrying a gun,

what happened?

A: When I heard that, I look backward at the table of Bebedor.

Q: What did you see?

A: I saw Bebedor and Caldito drew their gun.

Q: What where their position when they drew their gun?

A: They were standing.

Q: Why do you know when the accused fired their gun, it was pointed to group of Luzareta and Bidaure?

A: Because of the man who uttered the word, 'I know that there is only one carrying gun.' I saw Bebedor stood up and fire his gun and at the same time, I ducked on the cement floor but I tried to look at the table of Bebedor and Caldito.

Court:

Q: Who fired the first shot?

A: Bebedor and Caldito fired the first shots.

Q: Simultaneously?

A: Yes, sir."^[9]

Although under cross-examination, some inconsistencies in the testimony of Claudio Gregorio developed in respect of the acts of Sgt. Bidaure after the shooting started^[10] and in respect of what he (Claudio Gregorio) did at the height of the firing, Claudio Gregorio remained certain and categorical in identifying the accused Bebedor and Caldito as the aggressors who had carried out an unprovoked and deadly attack upon Sgt. Bidaure's group.

The trial court evidently found the testimonies of Roger Luzareta and Claudio Gregorio to be credible narrations of the shooting in the Bonino Beerhouse, and the two (2) to be credible witnesses. The trial court held the

testimony of the two (2), corroborated by the testimony of the medico-legal and forensic chemistry experts, as sufficient to warrant a finding of guilt. We have examined carefully the record of the case and we find no reason to disagree with this conclusion of the trial court. The firmly established rule is that the findings of the trial court as to the credibility of witnesses "are accorded much respect, if not indeed conclusive effect, save only in those exceptional instances where they are clearly shown to be arbitrary." [11] The fact that witness Roger Luzareta had not previously known either of the accused personally made his identification more believable. No reason was adduced by the defense why Roger Luzareta should falsely accuse Bebedor and Caldito of firing upon their group. It cannot be presumed that Roger Luzareta would, knowing that the penalty for murder is life imprisonment, denounce the accused falsely and without cause.

We turn to the second assignment of error. The accused urge that the trial court was in error in finding the presence of treachery. The trial court found treachery basically in view of the suddenness with which the accused attacked the victims and the unprovoked nature of that attack. [12]

In *People v. Manalo*, [13] the Court stressed that:

"[T]reachery cannot be presumed. It must be proven as conclusively as the act of killing itself. The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery. Such a finding must be drawn more or less logically from hypothetical facts. This Court has ruled that the suddenness of an attack is not, of itself, enough to constitute treachery when the method of killing does not positively show that the assailant thereby knowingly intended to ensure the accomplishment of his purpose without risk to himself from any defense which the victim might put up. (*People v. Carsano*, 95 SCRA 146 [1980]; *People v. Cabiling*, 74 SCRA 185 [1976]; *People v. Satone*, 74 SCRA 106 [1976]). In other words, to sustain a finding of treachery, the means, method or form of attack must be shown to have been deliberately adopted by the appellant (*People v. Bongo*, 55 SCRA 547 [1974])." [14]

We agree with the Solicitor General that here there was no sufficient showing by the prosecution of treachery on the part of the two (2) accused. The hostile taunt of Bebedor ("Alam ko isa lang ang may baril diyan") was uttered prior to the attack and served to warn (however briefly) Sgt. Bidaure and Carado and their companions of a possible impending assault. The circumstance that Sgt. Bidaure was able to reply, albeit no more than two (2) syllables ("Bakit?"), coupled with the fact that Bidaure had managed to pull out his own revolver and apparently (this is not absolutely clear) to fire a shot before he collapsed to the floor, suggest that there was a brief interval before the firing actually commenced and that the victims (at least one of them) had probably not been totally deprived of the means to defend themselves. We hold that there was an insufficient showing of treachery and that accordingly, the offense committed cannot be regarded as having been qualified from homicide to murder.

There is no question, upon the other hand, that the trial court correctly found the presence of conspiracy in the instant case. There was no showing of a pre-agreement between the accused Bebedor and Caldito to wait in ambush for the victims. However, there is equally no question that Bebedor and Caldito acted in concert in standing up and firing their pistols "almost simultaneously" and in continuing so to fire at the victims and their group. In view of the principle that, where conspiracy is shown, "the act of one is the act of all," each of the two (2) accused here may be held guilty of two (2) homicides.

The defense strenuously argues, however, that there was no evidence to show which of the two (2) accused — Bebedor or Caldito — had actually fatally shot Sgt. Bidaure; neither was there evidence to show which of the said accused — Caldito or Bebedor — had in fact shot and killed Carado, Jr. The absence of such kind of evidence would, in the opinion of the Court, lead not to the conclusion (as the accused contend) that the guilt of the accused had not been shown beyond reasonable doubt. It would, rather, lead to consideration of the question of whether the accused had committed two (2) distinct crimes of homicide or whether they had committed (as suggested by

the Solicitor General) the complex crime (more precisely, the *delito compuesto*) of double homicide under the first clause of Article 48 of the Revised Penal Code. Article 48 provides:

"Penalty for Complex Crimes. — When a single act constitutes two (2) or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the more serious crime shall be imposed, the same to be applied in its maximum period." (Italics supplied)

The technical question that must be addressed now is whether there was here a single act which constituted two (2) crimes of homicide and which case the penalty appropriate for a complex crime must be imposed, or whether, in contrast, there existed here distinct acts constituting two (2) separate crimes of homicide, in which case two (2) penalties are imposable for two (2) distinct homicides. The principle involved is simple enough; its application in respect of particular facts is frequently a matter for debate.

The classic example of a single act constituting two (2) homicides is, of course, that of a single bullet successively killing two (2) victims. This textbook instance is not, however, present here. The bullet which killed Sgt. Bidaure was recovered from his head. Similarly, as noted earlier, Rodrigo Carado, Jr. suffered four (4) gunshot wounds one of which involved a bullet penetrating and lacerating four (4) organs — the lung, heart, diaphragm and liver — the slug ultimately lodging in the right flank of his abdomen, from where it was recovered. There were here two (2) offenders and two (2) victims. The logical possibilities are thus limited in number: (1) Bebedor could in fact have shot and killed Sgt. Bidaure (or Carado, Jr.), while Caldito was fatally wounding Carado, Jr. (or Sgt. Bidaure); or (2) Bebedor could have shot and killed both Sgt. Bidaure and Carado, Jr. successively, i.e., with different shots; or (3) Caldito could have successively and fatally hit Sgt. Bidaure and Carado, Jr. Whichever scenario had actually materialized, the accused performed separate and distinct acts which, of course, were animated by a common criminal intent — to slay Sgt. Bidaure and the other members of his group. Since Bebedor and Caldito had acted in concert with each other, which of them had in fact fatally wounded Sgt. Bidaure and Carado, Jr. becomes unimportant. The fiscal expressly recognized the above facts when he filed two (2) separate informations charging in each information both Bebedor and Caldito for having shot and killed Bidaure (in one information) and Carado, Jr. (in the other). We believe and so hold that under this set of circumstances, each of the accused Bebedor and Caldito must be held guilty of two (2) distinct crimes of homicide, rather than the complex crime of double homicide.

The Solicitor General cited *People v. Lawas, et al.*[15] In *Lawas*, the accused and other members of the Home Guard commenced firing at a large group of Maranaos at a signal from Lawas and continued firing until Lawas gave a ceasefire signal. About fifty (50) Maranaos died in the slaughter. In holding the accused guilty of multiple homicide, the Court said:

"One last question involves the determination of the number of crimes for which each of the appellants may be found guilty, whether each one should be considered as having committed as many crimes as there were persons who were killed, or only for one complex crime of multiple homicide. The information is for multiple murder, and no inference can be made therefrom, that the accused are being charged of as many offenses as there were victims. Then the evidence positively shows that the killing was the result of a single impulse, which was induced by the order of the leader to fire, and continued with the intention to comply therewith, as the firing stopped as soon as the leader gave the order to that effect. There was no intent on the part of the appellants either to fire at each and everyone of the victims as separately and distinctly from each other. It has been held that if the act or acts complained of resulted from a single criminal impulse, it constitutes a single offense (Article 48 of the Revised Penal Code; *People v. Acosta*, 60 Phil. 158). So also it has been held that the act of taking two roosters belonging to two different persons in the same place and on the same occasion cannot give rise to two crimes having an independent existence of their own, because there are not two distinct appropriations nor two intentions that characterize two separate crimes (*People v. de Leon*, 49 Phil. 237, citing

decisions of the Supreme Court of Spain of November 2, 1898, October 4, 1905). And in the case of *People v. Guillen*, 47 O.G. No. 7, 3433, a single act, that of throwing a highly explosive hand grenade at President Roxas, resulting in the death of one victim and in physical injuries on others was considered as a single act, also falling under the first part of Article 48 of the Revised Penal Code. It may be added that there is absolutely no evidence as to the number of persons killed by each and every one of the appellants, so even if we were induced to hold each appellant responsible for each and every death caused by him, it is impossible to carry that desire into effect as it is impossible to ascertain the individual deaths caused by each and everyone. We are, therefore, forced to find the appellants guilty of only one offense, that of multiple homicide for which the penalty to be imposed should be in the maximum period.

xxx xxx xxx."[16]

We do not, however, believe that *Lawas*, which has been described by the Court as constituting an exception rather than as embodying the general rule,[17] is controlling in the case at bar, given the circumstances discussed above.

WHEREFORE, the Decision of the trial court dated 24 February 1986 is hereby MODIFIED by holding each of the accused Benjamin Bebedor and Rolando Caldito guilty of two (2) crimes of homicide. There being neither a generic mitigating nor an aggravating circumstance present, each of the accused shall suffer for each homicide imprisonment for an indeterminate period ranging from ten (10) years of prision mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum. The penalties shall be served successively in accordance with the provisions of Article 70 of the Revised Penal Code. The accused Bebedor and Caldito shall be solidarily liable to the heirs of Ernesto Bidaure and Rodrigo Carado, Jr. for indemnity in the amount of P30,000.00 for each victim, or a total of P60,000.00. As so modified, the Decision of the trial court is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Rollo, p. 51.

[2] Appellants' Brief, pp. 2-4; Rollo, p. 39.

[3] Decision of the trial court, p. 1; Rollo, p. 29.

[4] Record pp. 160, 164-165, TSN, p. 3, 19 October 1983; Record p. 160, TSN, p. 3, 10 May 1983; Record, pp. 215, 53, TSN, p. 7, 19 October 1983, TSN, p. 11, 26 April 1983; Record p. 216, TSN pp. 13-14, 26 April 1983.

[5] Record, p. 184.

[6] Record, p. 186.

[7] TSN, pp. 7-9, 26 April 1983.

[8] TSN, p. 11, 26 April 1983.

[9] Brief of the Solicitor General, pp. 6-9.

[10] TSN, p. 6, 5 December 1983.

[11] *People v. Liston*, G.R. No. 63396, promulgated 15 November 1989.

[12] Decision of the trial court, p. 7; Rollo, p. 35.

[13] 148 SCRA 98 (1987).

[14] 148 SCRA at 108; italics supplied.

[15] 97 Phil. 975 (1955).

[16] G.R. Nos. L-7618-20, promulgated June 30, 1955, slip. op., pp. 10-11; italics supplied.

[17] *People v. Remollino*, 109 Phil. 607 (1960). See also: *People v. Toling*, 62 SCRA 17 (1975); *People v. Mortero*, 108 Phil. 31 (1960); and *People v. Salazar*, 105 Phil. 1058 (1959).

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