

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BENJAMIN JOLIPAS, DEFENDANT-APPELLANT.

G.R. Nos. 91592-93. November 28, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

At about 5:00 o'clock in the afternoon of August 20, 1987, Benjamin Jolipas, Rogelio Pasul and Eduardo Alcalde were engaged in a drinking spree at the store of Delia Alcalde situated at Barangay Nabitasan, Leganes, Iloilo. Eriberto Gargar thereafter arrived and joined the group.

After some time, Rogelio Pasul and Eduardo Alcalde left the group. Eriberto Gargar requested Delia Alcalde that he be allowed to talk with Aida Alcalde, Delia's sister-in-law, whom Gargar was courting. Later that evening, Eriberto Gargar and Jolipas left the store.

Jolipas went back to the store at about 8:30 in the evening where he saw Roberto Jarandilla and Demetrio Pasul. Jolipas invited them to attend the birthday party of his son, which they accepted. Eriberto Gargar and Alfonso Calzado were already in the house of Jolipas when Jolipas, Jarandilla and Pascual arrived. They partook of the supper which consisted of noodles and chicken and after which they continued drinking beer.

As there were just few bottles of beer left, Gargar volunteered to buy some more beer. He pulled out his wallet and extracted a P50.00 bill which he gave to Jolipas. Gargar then remarked that he has still enough money left for more bottles of beer as he counted P1,000.00 remaining in his wallet. Jolipas then requested Calzado to buy a half case of beer. Jolipas later followed Calzado. Jarandilla then invited Gargar to see the prawn fries he just bought. Gargar obliged and went with Jarandilla to the latter's house. There Gargar was shown the prawn fries. He was observed to be wearing a perforated sleeveless sando, a necklace around the neck, a watch and a golden ring. Jolipas later arrived at Jarandilla's house and requested them to go back to his house as the beer they ordered had already arrived but Jarandilla refused. Jarandilla then offered to conduct Gargar to his boarding house at the SEAFDEC compound. However, Jolipas offered to do the chore to which Gargar agreed.

At about 11:00 o'clock of that evening, Delia Alcalde heard a male voice crying and another male voice saying, "I will submerge your head into the canal." Delia later heard an explosion. Delia then peeped through the window of her store and saw Jolipas holding a handgun. From five (5) meters away, she likewise saw Gargar facing Jolipas, the former holding his left arm, apparently shot and wounded. Delia was able to observe the incident with the aid of the fluorescent light coming from multi-purpose building and from the 50 watt-bulb from Jolipas' house. Twenty minutes later, another explosion was heard coming from the direction of the house of Jolipas.

The next day, Delia heard talks of the presence of a cadaver inside the house of Jolipas. As she went out of their house, Delia saw Jolipas taking his coffee at a neighbor's house. Delia accosted Jolipas charging the latter of killing Gargar. Jolipas merely answered that Gargar was killed because the latter was a drug addict.

The personal effects of Gargar consisting of his wallet, driver's license, SEAFDEC Identification Card, his denim

pants and jacket[1] were turned over by the police to Carlos Gargar who issued a receipt.

The autopsy of the cadaver of the victim was performed by Dr. Tito Doromal, the Medico-Legal Officer, who stated his findings in a Medico-Legal Report and who prepared a sketch of a human body.[2]

The victim suffered from two (2) gunshot wounds.

Bullet wound No. 1, the fatal wound, is located at the back portion of the lower right of the neck and head, particularly behind the right ear.[3] A deformed slug was recovered from inside the mouth of the victim.[4] Dr. Doromal stated that the victim was in a kneeling position when shot at close range, as the powder burns were very evident around the wound. Bullet Wound No. 2 is found under the thoraco-abdominal region with powder burns. The slug from that wound was recovered at the superior border of left scapula or left knee bone.[5]

It appears likewise that Jolipas did not have the license to possess the firearm that was found in his possession after the incident.

Hence, in due course, two informations were filed against Jolipas in the Regional Trial Court of Iloilo City for the crimes of illegal possession of a homemade single shot Armalite Pistol and for Robbery with Homicide. Upon arraignment, the accused entered a plea of not guilty. Thereafter, the trial followed. A decision was rendered by the trial court on November 3, 1989 convicting the accused as follows:

"WHEREFORE, in view of the foregoing, this Court finds the accused GUILTY beyond reasonable doubt on both charges and hereby sentences him: In Criminal Case No. 31392, for Illegal Possession of Firearm, an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY as Minimum to TEN (10) YEARS and ONE (1) DAY as Maximum; in Crim. Case No. 31393, to suffer the penalty of RECLUSION PERPETUA or Imprisonment For Life.

Accused is hereby further ordered to pay the heirs of the deceased Eriberto Gargar an indemnity in the amount of P30,000.00, and to pay the peso value of the wristwatch, necklace, and ring of the deceased which is P4,500.00, and another P1,000.00 which was the money missing in the wallet of the deceased, without subsidiary imprisonment in case of insolvency.

No pronouncement as to cost."

Not satisfied therewith, the accused now interposed this appeal, alleging the following assigned errors:

"I

THAT THE HONORABLE TRIAL COURT ERRED IN ITS FINDINGS THAT ACCUSED COMMITTED ROBBERY, BEING SO THE ACCUSED CANNOT BE CONVICTED OF ROBBERY WITH HOMICIDE.

II

THAT IT ERRED IN NOT APPRECIATING SELF-DEFENSE, DEFENSE OF RELATIVES OR AT LEAST INCOMPLETE SELF-DEFENSE AND VOLUNTARY SURRENDER OF THE ACCUSED.

III

THAT IT ERRED IN NOT APPRECIATING THAT ACCUSED IS AN AGENT OF THE STATE IN ITS RIGHT TO PRESERVE ITSELF FROM SUBVERSION THUS, THE ACCUSED CANNOT BE HELD LIABLE FOR VIOLATION OF P.D. 1866."

The Court finds the appeal to be devoid of merit.

While the appellant admits the killing he interposed self-defense or defense of relative to exculpate himself. He advanced the fantastic story that the victim went to the former's house at about 11:00 o'clock on that evening, disrobed himself and then made karate stances. With a knife, the victim allegedly brought havoc to appellant's house and destroyed appellant's furniture. Then, he allegedly threatened to harm appellant's wife, prompting appellant to shoot him. When the victim allegedly tried to attack him the appellant then shot the victim anew.

This pretension of the appellant was given scant consideration by the trial court as it is not corroborated by any credible evidence.

On the contrary, the physical evidence shows that one of the two bullet wounds reflected in the autopsy report appears to have been inflicted while the victim was in a kneeling position to the back portion of the head. How the victim sustained a gunshot wound at the back of the right ear when the protagonists are supposed to be facing each other, as claimed by appellant, has not been satisfactorily explained by the appellant.

Prosecution witness Delia Alcalde categorically testified that at 11:00 o'clock that evening she heard a male voice crying and another male voice saying, "I will submerge your head into the canal." She later heard an explosion and when she peeped through the window of her store, she saw the accused holding a handgun, facing the victim who was in turn holding his left arm apparently shot and wounded. What is obvious from this set of facts is that the appellant was the unlawful aggressor as he shot the defenseless victim. Apparently from said place appellant brought the victim to his house whereby he fired the second shot which proved to be fatal this time. The claim of self-defense is thus untenable.

The body of the victim was found in the house of the appellant. The police then arrived. When the police searched the body of the victim, there was no more necklace, watch and gold ring. His wallet was found empty.

The Court agrees with the observation of the trial court that under the circumstances of the case the only logical conclusion is that it was the appellant who took the personal effects of the victim after the killing. The commission of the robbery with the homicide has been duly established.

The appellant assails the credibility of the witnesses for the prosecution alleging certain inconsistencies and improbabilities in their testimonies. The Court finds that the alleged inconsistencies are on minor matters which rather than affect their credibility are indications of truth and candor. Moreover, the findings of the trial court as to the credibility of witnesses is seldom disturbed by the appellate court because of its superior advantage of observing the conduct and demeanor of the witnesses while testifying unless some facts and circumstances may have been overlooked that may affect the result of the case. The appellant failed to show a cogent basis for the court to depart from this good rule.

The desperate plea of the appellant is that he is not guilty of illegal possession of a firearm because he was then a member of the Bantay Banua or Alsa Masa which is a para-military organization against insurgency whereby they are allowed to carry firearms without the need to secure a license, as part of the anti-insurgency drive of the government. He cites the testimony of Station Commander, Major Zoilo Rojo, in support of his claim. On the contrary, an examination of the testimony of said police officer shows that although he issued a memorandum receipt for firearms issued to recruits in Bantay Banua, he denied having authorized the use of a homemade firearm by the appellant without a license or memorandum receipt.[6]

This denial was confirmed by Sgt. Superio who assisted in the issuance of memorandum receipts to said recruits.[7]

Presidential Decree No. 1866 explicitly provides as follows:

"Section 1. Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or

Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition. - The penalty of reclusion temporal in its maximum period to reclusion perpetua shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any firearm, part of firearm, ammunition or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition."

The appellant was found in possession of an unlicensed firearm. His liability is obvious.

WHEREFORE, the decision appealed from is AFFIRMED in toto with costs against the appellant.

SO ORDERED.

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

[1] Exhibits J, J-1, K, L and H.

[2] Exhibit M.

[3] Exhibit N-2.

[4] Exhibit O.

[5] TSN, April 29, 1989, pp. 15-19, 21-24.

[6] TSN, April 20, 1989, pp. 5-6.

[7] TSN, April 20, 1989, pp. 38-39.

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