

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LYNDON V. MACOY, ACCUSED-APPELLANT.

G.R. Nos. 96649-50. July 01, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 8, Cebu City in Criminal Case No. CBU-15909, convicting accused-appellant Lyndon V. Macoy of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Paul Ocampo, in the sum of P30,000.00 and the costs. Suprema

The records show that on July 4, 1989, at about 12:30 in the morning, at the Bottom's Up Beerhouse in Sancianguco corner Junquera Streets, Cebu City, Paul Ocampo, the beerhouse manager, was gunned down causing his instantaneous death.[1] The postmortem report states:[2]

Body normally developed, well nourished, in the state of cadaveric rigidity. Lips and fingernailbeds, pale; pupils dilated. Liver mortis, brownish, most prominent at the neck, shoulder blades, buttocks and calves.

Gunshots wound, ENTRANCE, ovaloid, 0.8 x 0.7 cm., with gun powder burns, contuso-abraded collar widest supero-posteriorly by 0.5 cm., edges inverted, 6.0 cm. above and 4.0 cm. in front of the right external auditory meatus; directed slightly forward, downward and to the left, involving skin and the underlying soft tissues, making a punch-in fracture on the right temporal bone, bevelling its inner table, into cranial cavity, lacerating brain, right temporal lobe and finally a .38 cal. slug was imbedded and recovered from the left zygomatic bone, 7.0 cm. in front and 1.0 cm. below the left external auditory meatus.

Lyndon Macoy who was found in front of Bottom's Up with a gun in his hand was arrested by patrolmen Ferdinand Tumakay, Felipe Nonong, Gaudencio Javier, and Pelayo Dingcong. The policemen, who were on patrol duty, were within ten (10) meters from Bottom's Up when they heard a gunshot and a commotion. In response to what they had heard they went to the beerhouse. They saw accused-appellant carrying a gun, a .38 snub-nosed paltik Smith and Wesson revolver, which he surrendered to the police officers. Three live bullets and two empty shells were retrieved from the gun. Paul Ocampo was taken to the Cebu Community Hospital where he was dead on arrival.

On July 5, 1989, two cases, one for murder and another for illegal possession of firearms, were filed against Macoy. Upon being arraigned, he pleaded "not guilty," after which the cases were consolidated and tried. On May 31, 1990, the trial court rendered judgment, acquitting Macoy of the charge of violation of PD 1866 (illegal possession of firearms) but convicting him of murder. The dispositive portion of the decision reads:[3]

THE FOREGOING CONSIDERED, in case number CBU-15894, acquittal of the accused is hereby directed, with costs de oficio, but the forfeiture in favor of the government of the .38 caliber revolver Smith and Wesson, snub nose, locally made, with all the live ammunitions.

In case number CBU-15909. Murder, the Court finds the accused Lyndon Macoy guilty beyond reasonable doubt of the crime of Murder, and hereby imposes upon him the penalty, by way of imprisonment of RECLUSION PERPETUA, to indemnify the offended party the amount of Thirty Thousand Pesos (P30,000.00) and finally with costs against him.

SO ORDERED.

In finding the accused-appellant guilty, the trial court relied on the testimonies of prosecution witnesses Marcelo Tueco and Juancho Sanchez, who identified Macoy as the assailant, as well as on the circumstantial evidence provided in the testimonies of prosecution witnesses Pablito Piedad and Pat. Ferdinand Tumakay and defense witness Dr. Renato Obra. Marcelo Tueco, a customer of the beerhouse at the time of the incident, said he saw how Macoy committed the crime as he was about three meters from Macoy when the latter fired at Ocampo. He testified that after Macoy arrived, he (Macoy) rushed towards Ocampo, pushing aside a waiter in the process, and, with a handgun, shot Ocampo hitting the latter on the right side of the head. Thereafter, Macoy dashed for the door, where he met a companion to whom he gave the gun he had used in killing Ocampo and exchanged it with another gun. Macoy then faced the crowd and fired the gun upwards. Thereafter he and his companion ran down the stairs.[4]

Juancho Sanchez, a waiter in the beerhouse, earlier recounted that, while Paul Ocampo, the beerhouse manager, was working on an order slip and he (Sanchez) was waiting for drinks ordered from the counter, he felt something hard pressed on the side of his head. Then he heard a gun fire followed by a shout. When he looked at Ocampo, who was nearby facing him, he saw the latter squatting on the floor, writhing in pain, blood flowing out of his nose and ears. Turning around, he saw Macoy retreating to the door, firing his gun upwards and then brandishing it sidewise, and running down the stairs.[5]

Witness Pablito Piedad, another waiter, said he was stationed on the ground floor and, although he did not see the shooting, he saw Macoy holding a gun while coming down from the second floor. Macoy was brandishing the gun and pointing it at anyone he saw.[6]

Patrolman Ferdinand Tumakay narrated how he and his companions arrested Macoy on July 4, 1993 in front of Bottom's Up. He described accused-appellant as drunk and incoherent in his speech and quoted him as having said he had killed Ocampo because a gambling "card" had told him to do so.[7]

Dr. Obra, psychologist of the Southern Islands Medical Center, who had been presented by the defense as an expert to testify on the results of the examinations and interviews he had conducted on accused-appellant on August 15, and September 5, 1989, and who had submitted a Psychiatric Evaluation Report on October 10, 1989, told the court that Macoy was suffering from drug addiction[8] and positive auditory hallucination.[9] This witness said that accused-appellant had admitted to him having shot Paul Ocampo because the latter refused to allow him to get inside Bottom's Up the day before the incident because he was not properly dressed.

The trial court rejected accused-appellant's defense that he only fired a warning shot because, as a member of the CAFGU, he wanted to identify and stop the assailant.[10] Accused-appellant claimed he went to the beerhouse armed because he had been told that a killer had "hacked" Paul Ocampo in the face and the accused-appellant wanted to have a means for his self- protection.[11]

In this appeal, the accused-appellant contends that the evidence against him is insufficient to sustain a conviction and that the trial court erred in giving full faith and credence to the testimonies of the prosecution witnesses and in admitting the extrajudicial confession he allegedly made to Pat. Tumakay. Accused-appellant further contends that on the basis of the finding of the trial court that the gun he surrendered could not have been the one used in

the killing of Paul Ocampo, he should have been acquitted.

The appeal is without merit.

First. Accused-appellant claims that, contrary to the trial court's findings, Tueco and Sanchez did not actually witness the crime. Accused-appellant cites the following testimony of Manuel Tueco to show that this witness did not really see the shooting of the deceased:[12]

Q: How many times did he fire shots in the air?

A: Twice. The first one was fired at the deceased and the second time was pointed upwards.

Q: So, you only heard gunburst, nothing more, nothing less?

A: Yes, Sir.

and the admission of the other witness, Juancho Sanchez, during cross-examination that witness did not see the accused-appellant shoot Ocampo, but only saw Macoy firing upwards.[13]

We do not agree. The portion of the testimony cited by the accused-appellant is quoted out of context. Here in full is what Tueco said:[14]

FISCAL RAMA

....

Q While drinking at the Bottom's Up at that time, at the Bottom's Up, (sic) was there anything unusual that happened?

A Yes, there was.

Q What was it?

A Somebody was shot.

Q Who was shot?

A Manager of Bottom's Up.

COURT

Q What is his name?

A Paul Ocampo.

Q Who shot him?

A Lyndon Macoy.

COURT

Proceed.

FISCAL RAMA

Q If that Lyndon Macoy is in the courtroom, please look around and point to him?

A That one.

INTERPRETER

Witness pointing to the accused.

FISCAL RAMA

Q Paul Ocampo was hit?

A He was hit on the right side of the head.

Q When Paul Ocampo was hit on the right side of his head, what happened next?

A After he was shot on the head, he fell down.

COURT

Q Did you witness the shooting?

A Yes, sir.

Q How far were you from Macoy when the gun was fired?

A Only about three (3) meters, sir.

COURT

Proceed.

FISCAL RAMA

Q How about you?

COURT

He said about three (3) meters.

FISCAL RAMA

Q How far was Macoy from Paul Ocampo when he shot the latter?

A Very near.

INTERPRETER

Witness demonstrating by pointing the gun.

During his cross-examination, Manuel Tueco reiterated:[15]

Q How many seconds or perhaps minutes transpired from the time Mr. Macoy had entered the place up to the time of the shooting?

A About ten (10) seconds.

Q In other words, it was so sudden, from the time he came in, he immediately shot Ocampo?

A Yes, sir.

ATTY. BRAGAT

Q And because it was so sudden, what was your immediate reaction being only three (3) meters away?

A We were scared.

Q Did you notice the face of Lyndon Macoy as he entered the place before the shooting?

A Natural appearance, sir.

Q Did he carry a gun with him when you saw him for the first time in the place?

A No, sir.

Q And did you see when for the first time he was holding a gun before the shooting?

A I did not.

Q And the first time you noticed that he was holding a gun was when he fired a gun?

A Yes, Sir.

Q From the time Mr. Macoy had come in, you always had your eyes in him, am I correct?

A Well, it was only natural because we were posted near the entrance. We looked at persons coming in.

Q In other words, you did not persist in looking at him with your two eyes until the shooting?

A We were looking at him from the time he entered the place until he fired the gun.

It may be that Tueco did not see Macoy take aim and then shoot Ocampo, but this was because the incident, as far as he was concerned, was totally unexpected and because, as the medico-legal officer, Dr. Jesus P. Cerna, theorized, the victim was fired upon at close range, possibly at a distance of only 24 inches away.[16] But this witness saw accused-appellant fire a gun and he was only three meters away from accused-appellant so that he could very well conclude that Ocampo had been shot. Hence his testimony that he witnessed the shooting of Ocampo.

Manuel Tueco's positive testimony was corroborated by no less than a witness for the defense, Dr. Renato Obra, who testified that Macoy had confessed to him that he had shot Ocampo and that he did so because Ocampo refused to allow him to enter the beerhouse the night before the fatal incident. Accused-appellant himself admitted that before July 4, 1989, he had an altercation with the deceased because he wanted to have drinks but the deceased would not let him in, presumably because accused-appellant was not properly dressed.[17]

In his psychiatric report, dated October 10, 1989, Dr. Obra stated in pertinent part:[18]

HPI:

A year PTC [prior to consultation], patient was consulted for mental illness due to drugs. He was given medications which allegedly afforded relief. 3 weeks PTC, the patient drunk a bottle of Beer, he insisted to go inside in a Beerhouse but had a quarrel with the floor manager. On the following day, the patient came back to the Beerhouse and shot the floor manager. He was then brought to BBRC.

Elaborating on this report, Dr. Obra declared on the witness stand:[19]

ATTY. BRAGAT

Q Do you have a copy of that Psychiatric Evaluation Report?

A Yes, Sir. I have here the copy of the Psychiatric Evaluation Report dated October 10, 1989.

COURT (Reading)

Mental status, hallucinations, Mental disorder of Green Syndrome, Substance abuse.

Q Dr., I am briefing you that this case happened on July 4, 1989. Briefly, the deceased was a manager of one of the liquor establishments. He was attending to a waiter, that is the basis of the prosecution. Then, the accused came from behind, fired the gun point blank, went down and then left, swapped the gun with a companion, then the other gun was given to the police. That is the [gist] of the case of the prosecution evidence.

Now, on the basis of your examination, that was sometime in September, 1989, tell the Court. . .

ATTY. BRAGAT

August was the first time, Your Honor.

COURT

Q Then it went on for a couple of sessions. Please tell the Court if this accused was more or less insane at the

time of the killing. Insanity presupposes different vision of the accused from normal mental faculties. Deprivation, “buang”. Was it because of drugs, possibly? Was he mentally incapacitated at the time of the killing on the basis of your examinations and sessions with the accused?

A My basis, Your Honor?

Q Yes, on July 4, 1989?

A One of my basis, Your Honor, is the history of the patient that the patient has allegedly taken a prohibited drug prior to the incident. When I interviewed the patient and that was last year, he really accepted that he has been using this drug for quite sometime and during that day when he allegedly gunned down the manager of Bottom’s Up Beer House, he took some bottles of beer. He insisted to go inside the beer house and had a quarrel with the floor manager. On the following day, the patient came back to the beer house and shot the manager and he was then brought to the BBRC.

ATTY. BRAGAT

Q Now . . .

COURT

Just a moment.

Q Precisely. I am asking if he was mentally ill to the point of being insane at the time of the shooting?

A Your Honor, it is very hard to make a conclusion to that question because our informant here is not very reliable, you know and my basis for my impression that the patient is suffering from organic syndrome, second, substance abuse if mainly because of that history but when I interviewed the patient, he was relevant, coherent and his judgment was okay except that he accepted that he has been using drugs.

Q The interview was when?

A The first interview was August.

Q What date?

A Fifteen, 1989.

Q You mean to say that he was able to recall in detail how it happened?

A Yes, he was able to recall what really had happened inside the Bottom’s Up.

Q At the time of the shooting?

A Yes, Your honor.

Q Did you ask him the details preceeding the shooting?

A He said he was provoked because he was not allowed to go inside the beer house because he was allegedly not in proper attire.

Accused-appellant confirmed Dr. Obra’s testimony. Accused-appellant said:[20]

ATTY. BRAGAT:

Q Do you know a certain Renato Obra, a doctor at the Southern Island medical or rather at the Southern Island Mental Ward?

WITNESS:

A There was an occasion I met him at the Southern Island Hospital.

ATTY. BRAGAT:

Q Under what circumstances did you meet him at the Southern Island Hospital?

WITNESS:

A I was interviewed.

ATTY. BRAGAT:

Q And when was that if you recall that you were interviewed by him?

WITNESS:

A About 7 months ago.

ATTY. BRAGAT:

Q Was it sometime in October of 1989?

A Yes, sir.

ATTY. BRAGAT:

Q And what was the subject of the interview that you had with this Dr. Renato Obra?

WITNESS:

A It was a psychological interview concerning my brain.

ATTY. BRAGAT:

Q Why, what happened to your brain?

WITNESS:

A Maybe they have a suspicion that I became mentally ill.

ATTY. BRAGAT:

Q And do you know what was the result of that interview?

WITNESS:

A I was examined mentally and the result was good.

This divulgence of facts by Macoy constitutes an extrajudicial confession[21] which supplied his motive for committing the crime. It has been held that where the identity of the assailant is in dispute, motive becomes relevant, and when it is supported with sufficient evidence for a conclusion of guilt, a conviction is sustainable.[22]

Second. Accused-appellant claims that Tueco had been “coached” and that his accounts were marked by inconsistencies, self-contradictions, and incredible assertions. This is allegedly shown by the fact that even though the prosecution had not laid the basis for the identification of the assailant, Tueco was able to say that accused-appellant Lyndon Macoy had shot Paul Ocampo. Another manifestation of the fact that Tueco had been taught what to say, according to accused-appellant, was when Tueco referred to the waiter, who was pushed aside by Macoy, as a “witness.” Accused-appellant further claims there were inconsistencies between Tueco’s testimony and the testimonies of Piedad and Sanchez. To prove these, accused-appellant cites the fact that Sanchez and Piedad never mentioned a “friend” with whom Tueco claimed accused-appellant exchanged guns he had used in shooting Ocampo and who ran down the stairs with the accused-appellant and the fact that while Sanchez said people scampered after the gunshots, Tueco said the incident did not cause the people to run.

These claims are insufficient to discredit Tueco and his testimony. When Tueco stated that accused-appellant Lyndon Macoy shot Paul Ocampo, he was responding to the question, “Who shot him [referring to Paul Ocampo]?” On the other hand, Tueco’s reference to the waiter as a “witness” does not indicate prior knowledge by Tueco of Sanchez’s testimony. In fact, accused-appellant now claims that the testimonies of Tueco and Sanchez are inconsistent with each other, although these inconsistencies relate to minor details which are expected

of an “uncoached” witness,[23] and are in fact explainable.

Thus, it has been held that when something is done quickly and unexpectedly, it is not unlikely that the witnesses may perceive the same set of facts in different ways.[24] It may therefore be that the reason Sanchez and Piedad did not mention the person with whom Macoy exchanged guns used in shooting Ocampo is precisely that they did not see him, although Tueco did. The same is true of Tueco’s statement that although the people were scared they did not run away. Tueco may have been so startled by the events he saw that he did not equally perceive the events Sanchez did.

With regard to alleged self-contradictions, the fact that (1) Tueco did not mention in the cross-examination, as he did in the direct, that Macoy pushed aside a waiter as he rushed to Ocampo, and (2) Tueco said that he and his companion, Felix Wirda, were “posted at the entrance” of the second floor but later he said that he “was sitting [on the] first chair near the counter,” do not impeach Tueco’s credibility. It was understandable for this witness to have omitted the fact first pointed out by accused-appellant because the examination of this witness focused on the suddenness of the shooting incident and not on how accused-appellant shot the deceased.[25] Also, Tueco’s alleged contradictions as to where he was at the time of the murder are more apparent than real. Tueco’s statement that he was seated on the first chair near the counter refers to the place in which he was at 11:30 in the evening, immediately after he and his companion arrived at the beerhouse, while his statement that he was near the entrance refers to the time when he saw Macoy arrive. Now Tueco did not say that he stayed in one place and did not move to any other part of the beerhouse afterward.

Accused-appellant contends that for him to have retreated to the door, met a “friend,” exchanged guns, and then fired the other gun upwards would be contrary to the ordinary course of human events and behavior. This is not so. The purpose for exchanging his gun with another one was to mislead the authorities as accused-appellant now does by claiming that the bullet slug recovered from the body of the victim was not fired from the gun seized from him. What accused-appellant was seen doing was not after all as illogical as the defense claims it to be.

It only remains to be said that while it is undisputed that the slug recovered from the victim’s body could not have come from the surrendered gun, this does not create any doubt at all as to the accused-appellant’s guilt. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case.[26] What is important is that the prosecution in this case was able to explain the ballistic finding: accused-appellant was met near the door by a companion who took the fatal weapon from him (accused-appellant) and gave him another gun in exchange. This testimony fills the gap which would otherwise be present in the prosecution’s theory.

Nor is there doubt that there was treachery employed in killing Paul Ocampo. The attack was carried out with such suddenness that the victim was totally unable to defend himself.[27] As Juancho Sanchez and Manuel Tueco testified, Ocampo was working on an order slip and was totally unaware of the attack when accused-appellant rushed in and shot him. The location of the wound at the right lateral aspect of the head bears out this conclusion. Dr. Jesus P. Cerna, NBI medico-legal officer, testified that it was possible the assailant was standing on the right side of the victim but more to the back and the victim was sitting down in a lower portion when the attack was made.[28]

It is nonetheless contended that Tueco was a biased witness as shown by the fact that, according to Tueco, he alone, and not any member of the victim’s family, asked Felix Wirda to testify in the case. This circumstance, standing alone, is insufficient to show ill motive. Tueco knew Wirda, while the victim’s family did not. And, while the general impression is that people do not want to get involved in the toils of a trial, civic mindedness is not dead. Besides Tueco implied he felt more confident if his testimony was corroborated by another witness to the crime. So he wanted his friend also to testify.[29]

Lastly, although we are in agreement with the accused-appellant that his extrajudicial confession, as testified upon by Pat. Tumakay, was inadmissible, because it was taken during custodial investigation and without benefit of a counsel,[30] the other evidence of the prosecution fully sustains Macoy's conviction beyond reasonable doubt.

Third. Accused-appellant contends finally that the trial court's decision has no basis in law or in fact. This is not true. The decision states the facts found by the court. The fact that the case law supporting it is not cited does not make the decision any less valid since it is implicit in the discussion of the evidence that discussion is made in the context of the law. Elucidation of the grounds of the decision would have been helpful in understanding it, but the want of this attribute does not militate against its validity. Some of the conclusions may even be erroneous. For example, we cannot understand why accused-appellant should be acquitted of the charge of illegal possession on the basis of finding that the slug recovered from the body of the victim was not fired from the gun seized from accused-appellant when the fact is that the gun, a .38 cal. paltik Smith & Wesson, was unlicensed. But this is an error of judgment, not of jurisdiction, and, precisely because the decision is valid this part of the decision cannot be reviewed on appeal without placing accused-appellant in double jeopardy of being punished for the same offense.

In sum, a decision is adequate if a party desiring to appeal therefrom can assign errors against it.[31] In the case at bar, the fact that accused-appellant is able to assign errors against the decision of the trial court is proof that the trial court's decision contains findings and conclusions of law on which it is based.

WHEREFORE, the decision of the Regional Trial Court is AFFIRMED, with the MODIFICATION that the indemnity to the heirs of Paul Ocampo is increased to Fifty Thousand Pesos (P50,000.00).

SO ORDERED.

Regalado, (Chairman), and Romero, JJ., concur.

Puno, and Torres, Jr., JJ., on leave.

[1] TSN, p. 9, Feb. 13, 1990.

[2] Records of CBU-15909 (for Murder), p. 52.

[3] Rollo, p. 28.

[4] TSN, pp. 5-6, 13, March 6, 1990.

[5] TSN, pp. 18-20, Feb. 13, 1990.

[6] Id., pp. 32-33.

[7] TSN, pp. 9-10, Feb. 12, 1990.

[8] TSN, p. 6, April 10, 1990.

[9] Id., pp. 11-12.

[10] TSN, pp. 4-6, April 18, 1990.

[11] Id., p. 20.

[12] TSN, pp. 15-16, March 6, 1990.

[13] TSN, p. 57, Feb. 13, 1990.

[14] TSN, pp. 4-5, March 6, 1990 (emphasis added).

[15] Id., pp. 11-12 (emphasis added).

[16] TSN, p. 4, Feb. 13, 1990.

[17] TSN, p. 19, April 18, 1990.

[18] Exh. 7, Records of CBU-15894 (Illegal Possession of Firearms), p. 16.

[19] TSN, pp. 4-5, April 10, 1990 (emphasis added).

[20] TSN, pp. 10-11, April 18, 1990.

[21] *People v. Moqueda*, 242 SCRA 565 (1995).

[22] *People v. Evangelista*, 256 SCRA 611 (1996).

[23] *People v. Nazareno*, G.R. No. 103964, August 1, 1996.

[24] *People v. Halili*, 245 SCRA 340 (1995); See *Mercado v. Court of Appeals*, 234 SCRA 98 (1994).

[25] TSN, p. 7, March 6, 1990.

[26] *People v. Pinto*, 204 SCRA 9 (1991).

[27] *People v. Saliling*, 249 SCRA 185 (1995).

[28] TSN, p. 3, Feb. 13, 1990.

[29] TSN, p. 9, March 6, 1990.

[30] CONST., Art. III, §12(1): “Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.”

[31] *M. Ramirez Industries and/or Manny Ramirez v. Secretary of Labor*, G.R. No. 89894, January 3, 1997.

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