

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARMANDO PASILIAO Y GUTIERREZ ALIAS “MANDO” AND TITO PASILIAO, ACCUSED-APPELLANTS.

G.R. Nos. 98152-53. October 26, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is an appeal from the Joint Decision* of the Regional Trial Court (RTC) of the First Judicial Region, Branch 44, Dagupan City in Criminal Case No. D-9035 finding the accused Armando Pasilio and Tito Pasilio guilty of Murder and sentencing them to Reclusion Perpetua and to pay an indemnity of P50,000.00 to the heirs of the deceased Dominador Lalata; and in Criminal Case No. D-9357 finding the accused Armando Pasilio guilty of Illegal Possession of Firearm and Ammunitions and sentencing him to an indeterminate penalty of from 17 years and 4 months to 20 years, plus costs.

The facts, as found by the trial court and as testified to by two eyewitnesses, Ronald Broquel and Helen Lalata, are as follows:

On December 6, 1988, at about 6:00 o'clock in the evening, the deceased Dominador Lalata was in front of the store of one Lolita Lalata at Salaan, Mangaldan, Pangasinan, Dominador was drinking nipa wine with Ronald Broquel, Arturo Cendaña, and a few others, when the accused-appellants Tito Pasilio and Arturo Pasilio arrived less than an hour later.

Tito Pasilio, without any warning, drew a jungle bolo from a scabbard tucked in his back, rushed towards Dominador and hacked him in the head, in the scapular area, deltoid area and the right hand.[1] Wounded and mustering all the strength he could summon, Dominador tried to run towards his sister's house which was some 12 meters away from the store. Tito and Arturo caught up with him in the landing of the said house; then, Tito held Dominador by the hair while Armando collared him. Both of the accused fired at Dominador, then ran away.

Dominador was rushed to the hospital but died before reaching the same. The autopsy report showed that the cause of death was cardio-respiratory arrest secondary to hypovolemic (hemorrhage) shock, secondary to massive homothorax, secondary to gunshot wound to lung parenchyma.

On January 11, 1989, the accused were charged with Murder in an Information which reads as follows:

That on or about December 6, 1988 in the evening at Barangay Salaan, Municipality of Mangaldan, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with each other, armed with samurai and handgun, with intent to kill and treachery and evident premeditation, did then and there willfully, unlawfully and feloniously hack and shoot Dominador Lalata inflicting upon him the following injuries:

- Incised wound, 5 cms. long, 2 cms. deep, frontal area, head

- Incised wound, 6 cms., 2 cms. depth, scapular area, left
- Incised wound 3 cms., del-toid area, right
- Amputation, small finger, right
- Gunshot wound #1: Point of entry: .5 x 5 cms., inverted edges, neck area, posterior level of 6th cervical vertebrae
Point of exit: 1 x 1 cm., everted edges, supra scapular area, right
- Gunshot wound #2: Point of Entry: .5 x 5 cms., inverted edges, posterior axil-lary line, level of 6[th], ICS
- Point of Exit: 1 x 1 cm. everted edges, PAL, level 5th-5th ICS

ON OPENING UP, GUNSHOT WOUND NO. 2 TRAVERSED THE LOWER LOBES OF BOTTOM LEFT AND RIGHT LUNGS. ABOUT 2 LITERS OF NON CLOTTED BLOOD EVACUATED IN THE THORACIC CAVITY.

which directly cause the death of Dominador Lalata as a consequence, to the damage and prejudice of his heirs.

Contrary to Article 248, Revised Penal Code.

Dagupan City, January 11, 1989.[2]

An Information for Illegal Possession of Firearm and Ammunition was filed against Armando Pasiliao on the later date of May 30, 1989, alleging the following:

That on or about the 6th day of December 1988 in the evening, of Barangay Salaan, Municipality of Mangaldan, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one (1) short firearm with ammunitions, without first securing the necessary permit or license to possess the same, neither to show nor have any written authority to carry outside residence to transport for the purpose of surrendering the said firearm and ammunitions to the proper authority.

The said firearm was used by accused, in conspiracy with Tito Pasiliao, who was also armed with another short firearm, in shooting to death one. Dominador Lalata, for which both are indicted in a separate Information for Murder.

CONTRARY to Presidential Decree No. 1866.

Dagupan City, May 30, 1989.[3]

In Criminal Case No. D-9035, only accused Armando Pasiliao was tried as the other accused Tito Pasiliao remained at large. The trial court then jointly tried the two cases and rendered a Joint Decision on both in February 1, 1991, the decretal portion of which reads as follows:

"WHEREFORE, in Criminal Case No. D-9035 the Court finds accused Armando Pasiliao guilty beyond reasonable doubt of the crime of Murder with the use of unlicensed firearm and attended by the aggravating circumstance of nighttime which is not affected by any mitigating circumstance, and pursuant to law, hereby sentences Armando Pasiliao to suffer the penalty of Reclusion Perpetua and to pay an indemnity of P50,000.00 to the heirs of the deceased Dominador Lalata, plus costs.

Accused Armando Pasiliao is ordered to pay the sum of P8,980.00 as actual damages.

In Criminal Case No. D-9357, the Court finds accused Armando Pasiliao guilty beyond reasonable doubt of Violation of Section 1, Paragraph 1 of Presidential Decree Number 1866 and pursuant to the Decree, hereby sentences him to suffer an indeterminate penalty of from 17 years and 4 months which is the maximum period

of Prison Mayor in its maximum period Reclusion Temporal in its medium period, as minimum to 20 years which is the medium period of Reclusion Temporal in its maximum period to Reclusion Perpetua, as maximum, and to pay the costs.

The slug (Exhibit B, Illegal Possession of Firearm and Ammunition) is declared confiscated and forfeited in favor of the Government. It is ordered that the slug be turned over to the nearest Philippine Constabulary Command for proper disposal.

SO ORDERED.

Dagupan City, February 1, 1991."[4]

From the above decision, the accused appealed to this court assigning the following as errors allegedly committed by the lower court, to wit:

ASSIGNMENT OF ERRORS

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ARMANDO PASILIAO ON THE BIAS AND UNRELIABLE TESTIMONIES OF ALLEGED EYEWITNESSES RONALD BROQUEL AND HELEN LALATA.

II

THE LOWER COURT ERRED IN IMMEDIATELY LOOKING WITH DISFAVOR THE DEFENSE OF ALIBI, DENIAL AND/OR AVOIDANCE PUT UP BY THE ACCUSED-APPELLANT.

III

THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT BEYOND PROOF OF REASONABLE DOUBT.

We affirm.

The accused-appellant would deny his complicity in the crime by alleging alibi. He testified that on December 6, 1988 at about 6:30 in the evening, he was at his shop in Poblacion, Mangaldan, Pangasinan, repairing the television set of one Ramon Aldana. It took him more than an hour to finish the job. After which, he and Ramon drunk some bottles of beer inside his shop. He did not issue a receipt for the repair fee as Ramon did not ask for one.

We have consistently held that alibi is a weak defense because it is easy to fabricate. In order to be given full faith and credit, it must be clearly established and must not leave for doubt as to its plausibility and verity. The accused must show not only that he was not at the place where the crime was committed but that it was impossible for him to be there.[5] Here, the accused-appellant has not shown by clear and convincing evidence that it was impossible for him to be at the store of Lolita Lalata in Salaan, Mangaldan, Pangasinan on that fateful day of December 6, 1988 at around 7:00 o'clock p.m. By his own admission, the accused Armando Pasiliao testified that his shop is only three kilometers away from the store of Lolita Lalata where the incident took place. He further testified that Salaan, Mangaldan, the scene of the crime, may be reached by tricycle or calesa. We have ruled time and again that no physical impossibility exists where the distance between the scene of the crime and the place where the accused allegedly was at the time would take only fifteen to twenty minutes to negotiate by jeep, or where it can be traversed by walking in one and a half hours, or where the places involved are only two hundred meters

apart.[6] Here, there was no such impossibility.

Further, accused-appellants' denial cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.[7] Ronald Broquel, in his direct examination on June 13, 1989, positively and clearly identified Armando Pasiliao and Tito Pasiliao as the perpetrators of the crime. Thus:

x x x x x

COURT:

Q: Who hacked Dominador Lalata for three times?

A: Tito Pasiliao, Sir.

FISCAL CARIÑO:

Q: After Dominador Lalata was hacked three times by Tito Pasiliao, what else happened?

A: They chased Dominador Lalata, sir.

COURT:

Q: Who chased Dominador Lalata?

A: Tito Pasiliao and Armando Pasiliao, sir.

FISCAL CARIÑO:

Q: Up to where did Tito Pasiliao and Armando Pasiliao chase Dominador Lalata.

A: Up to in-front of the house, sir.

Q: House of whom?

A: The sister of Dominador Lalata, sir.

Q: What happened in-front of that house when the chasing ended?

A: When they caught up with him Tito Pasiliao held him by the hair, sir.

Q: When Tito Pasiliao held Dominador Lalata by the hair, what did Armando Pasiliao do, if any?

A: Armando Pasiliao held Dominador Lalata at the collar of his shirt and then they shot him, sir.

Q: Who shot him?

A. Both of them at the same time, sir.

Q: After Armando Pasiliao and Tito Pasiliao fired (at) Dominador Lalata, what happened?

A: They ran away, sir.

When asked to identify the accused in open court the other eyewitness, Helen Lalata, pointed at Armando Pasiliao as one of the two men who chased her uncle to their house, held his head and collared him, and then shot him. Her testimony is thus quoted in full:

x x x x x

Q: And what did you observe while closing that door?

A: I saw Tito Pasiliao and Armando Pasiliao sandwiched my uncle Domy.

Q: When you said Tito Pasiliao and Armando Pasiliao, are you referring to the accused in this case?

A: Yes, sir.

Q: (If) the Tito and Armando Pasi-liao are in court will you be able to identify them?

A: Yes, sir.

Q: Will you please stand up and point to the person of this Tito and Armando Pasiliao if they are here in court?

A: Tito is not present. Armando Pasiliao is that man (witness pointing to a man who, when asked his name, identified himself as Armando Pasiliao).

x x x x x

Q: According to you, this Tito Pasiliao and Armando Pasiliao sandwiched Dominador Lalata, after sandwiching Dominador Lalata, what did this Tito Pasiliao do, if you remember?

x x x x x

A: He pulled the hair of my uncle, sir.

Q: What about Mando Pasiliao?

A: He held the collar of the shirt of my uncle, sir.

x x x x x

Q: What happened next?

A: I was frightened and was about to close the door, then they shot Domy Lalata.

x x x x x

Q: Who shot your uncle?

A: The two (2) of them, sir (wit-ness referring to Armando Pasi-liao and Tito Pasiliao).[8]

This Court places great reliance on the findings of the trial court based on the facts directly available to it as disclosed by the parties during the trial, especially in criminal cases where the identity of the culprit is the pivotal issue. The conclusions of the trial judge who had the opportunity to observe and examine the witnesses and to determine whether or not they were honoring their oaths, are generally accepted on appeal.[9]

But the accused-appellant would have this Court disregard the testimony of Helen Lalata. He contended that being a relative of the deceased, her testimony was biased and was not worthy of credence. Suffice it to state that mere relationship to the victim need not automatically tarnish the testimony of witnesses. When there was no showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they were related to the victim did not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating persons other than the culprits; otherwise, the latter would thereby gain immunity.[10] No improper motive was imputed against Helen Lalata that would make her implicate the accused-appellants in the criminal cases filed against the latter. She had positively identified the accused as the assailants. Hence, We are constrained to uphold her testimony positively pointing at Armando Pasiliao and Tito Pasiliao as the murderers of her uncle.

And now, We consider the issue of absence of powderburns on the person of the accused-appellant.

Accused-appellants contend that such absence negatives the assertion that he killed the deceased.

We have time and again held that an NBI chemist's finding that the paraffin test on the person of the appellant is negative, is not conclusive to show that appellant has not fired a gun. It is possible for a person to fire a gun and yet be negative for the presence of nitrates, as when firing while wearing gloves or by washing the hands afterwards.[11] In this case, close to 3 days had elapsed before the paraffin test was had. In all probability, the powderburns must have been mashed away as it was impossible and contrary to human experience for the accused-appellant not to have washed his hands during those three days.

The trial court appreciated the presence of the qualifying circumstance of treachery, thus elevating the crime to Murder; and the aggravating circumstance of nighttime. There was treachery when the offender committed any of the crime against persons employing means, methods or forms in the execution without risk to himself arising from the defense which the offended party might make, which means that no opportunity was given to the latter to do so.[12] The deceased Dominador was unarmed, and the attack was so sudden as to leave him utterly defenseless. The hacking came like the bolt of lightning and without any warning. He tried to escape but his assailants easily caught up with him as he was too weak to run, and too weak to defend himself. Without giving him any opportunity or means to repel the attack, Tito and Armando held his head, collared him and shot him. This was treachery.

The lower court appreciated nocturnity against appellants solely on the basis of the fact on record that the crime was committed at about 7:00 o'clock in the evening. We find this erroneous. By and of itself, nighttime is not an aggravating circumstance. It becomes so only when it is especially sought by the offender, or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture.[13] In the instant case, there was no proof to show that the aggravating circumstance of nighttime was deliberately sought by accused-appellant in committing the crime. As such, said circumstance should be disallowed.

We agree with the Solicitor General that it was error for the lower court to impose the indeterminate penalty of from 7 years and 4 months to 20 years in Criminal Case No. D-9357 for violation of P.D. No. 1866 or Illegal Possession of Firearm and Ammunitions. Section 1, paragraph 2 of P.D. 1866 provides that "if homicide or murder is committed with the use of an unlicensed firearm, the penalty of death shall be imposed." The death penalty cannot be imposed under the 1987 Constitution. The Indeterminate Sentence Law does not apply to persons convicted of offenses punished with death or life imprisonment (reclusion perpetua).[14] The trial court committed an error in giving the accused Armando Pasiliao the benefits of the Indeterminate Sentence Law.

It is the opinion of this Court, in the light of the foregoing analysis and the applicable law and jurisprudence on the matter to hold that the evidence was sufficient to sustain the judgment finding the accused-appellant guilty beyond reasonable doubt of the crime as charged, the judgment in Criminal Case No. D-9035 is hereby affirmed, but the judgment in Criminal Case No. D-9357 is hereby modified imposing the penalty of Reclusion Perpetua on the accused, Armando Pasiliao.

SO ORDERED.

Feliciano, Regalado, and Nocon, JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

* Decision, "People of the Phils. vs. Tito Pasiliao and Armando Pasiliao," and "People of the Phils. vs. Armando Pasiliao y Gutierrez, alias "MANDO"; Regional Trial Court, First Judicial Region, Branch 44, Dagupan City, Crispin C. Laron, Judge.

- [1] T.S.N., pp. 12-14, June 14, 1989; Exhibit "B".
- [2] Records, pp. 7-8.
- [3] Records, p. 9
- [4] Joint Decision, p. 13.
- [5] People vs. Albarillo, 188 SCRA 113 (1990); People vs. Loveria, 187 SCRA 47 (1990).
- [6] People vs. Arceo, 137 SCRA 265 (1990).
- [7] People vs. Payumo, id., at 64.
- [8] T.S.N., pp. 7-10, July 19, 1989.
- [9] People vs. Manzon, 190 SCRA 378 (1990).
- [10] People vs. de Mesa, 188 SCRA 48 (1990).
- [11] People vs. Talingdan, 191 SCRA 333 (1990).
- [12] Art. 14, paragraph 16, Revised Penal Code of the Phils.; People vs. Tiozon y Acid, 198 SCRA 368 (1991).
- [13] People vs. Boyles, 11 SCRA 88; Reyes, L.B., The Revised Penal Code, Book One Eleventh Edition, p. 357.
- [14] Sec.2 Art. No. 4225; People vs. Oga, 133 SCRA 530.

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