

FIRST DIVISION

[G.R. No. 216056, December 02, 2020]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS.
ROBERTO BERNARDO Y FERNANDEZ, ACCUSED-APPELLANT.**

D E C I S I O N

ZALAMEDA, J.:

Truth often lies in the lips of a dying man. A person aware of a forthcoming death is generally considered truthful in his words and credible in his accusation. A dying man's statements, given under proper circumstances, are treated with highest weight and credence.^[1]

The Case

Before this Court is an appeal seeking the reversal of the Decision^[2] dated 20 May 2014 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04486, which affirmed the conviction of accused-appellant Roberto Bernardo (accused-appellant) for the crime of murder.

Antecedents

In an Infonnotation^[3] dated 26 July 2001, accused-appellant was charged with the crime of murder under Article 248 of the Revised Penal Code (RPC), as amended by Section 6 of Republic Act No. (RA) 7659. The accusatory portion of the Information reads as follows:

That on or about May 25, 2001, in the Municipality of Solana, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused Roberto Bernardo y Fernandez, armed with a gun, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously attack, assault and shoot one, Roger Arquero y Cudiamat Alias Rolando, inflicting upon him fatal gunshot wounds on the different parts of his body which caused his death.

That in the commission of the offense the special aggravating circumstance of use of an unlicensed firearm was present.

Contrary to law.

During arraignment on 06 February 2002, accused-appellant pleaded not guilty.^[4]

Trial on the merits ensued after the pre-trial conference.

Version of the Prosecution

The facts, as culled from the testimony of the prosecution witnesses, are as follows:

On 25 May 2001, at around 6:00 a.m., the victim, Roger Arquero (Arquero), fetched his brother-in-law, Rolando Licupa (Licupa)^[5] to go to the rice field. While they were walking towards the other side of the rice paddy, accused-appellant suddenly appeared from the hilly portion of the field and shot Arquero once using a homemade shotgun, hitting the latter on the lower abdomen.^[6] Accused-appellant ran away, while Licupa shouted for help. Dionisio Evangelista (Evangelista) arrived.^[7]

Licupa and Evangelista carried Arquero using a sledge and brought him to Pedro Arquero's house before taking him to St. Paul Hospital.^[8] Policemen arrived to investigate. Arquero died the same day.^[9]

During trial, Licupa testified that he knew accused-appellant because he is Arquero's nephew.^[10] On the other hand, Mercilyn Arquero, the victim's widow, testified that Arquero told her that accused-appellant was the one who shot him.^[11] She identified a list of expenses incurred due to the victim's hospitalization and death, but did not present receipts.^[12]

Meanwhile, Dr. Honorario Reyes (Dr. Reyes), the medico-legal officer testified that the victim's wounds perforated his small intestines, colon, and urinary bladder.^[13]

Version of the Defense

Accused-appellant testified that in the morning of 25 May 2001, he was with his family at their house in Sitio Masin, Iraga, Solana, Cagayan.^[14] They were sleeping when Arquero, Loreto Arquero, Licupa, Dionisio Arquero, Ambot Soriano and a certain Amboy fired gunshots at his house.^[15] He surmised that the attack was motivated by revenge because in 1991, he was convicted for killing Arquero's brothers.^[16] He also stated that prior to the shooting, the assailants ordered his wife and children to go out of the house.^[17] When accused-appellant was the only one left inside, the assailants open fired. Accused-appellant testified that he was able to avoid the bullets because he dropped to the ground.^[18] He claimed, however, that the victim was shot by his companion, Licupa,^[19] and that he even reported the shooting incident to the police.^[20]

Ruling of the RTC

In a Decision^[21] dated 24 May 2010, the Regional Trial Court (RTC) convicted accused-appellant for the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua* without possibility of parole. He was also ordered to pay Arquero's heirs the amounts of Php75,000.00 as civil indemnity, Php25,000.00 as temperate damages, Php50,000.00 as moral damages, and Php25,000.00 as exemplary damages, all with interest of six percent (6%) *per annum* from finality of the decision until full payment.

Ruling of the CA

On 20 May 2014, the CA issued a Decision,^[22] affirming the RTC *in toto*.

It gave credence to the testimony of Licupa, as well as the victim's statement to the police and his wife that accused-appellant shot him. It also appreciated the presence of the qualifying circumstance of treachery, and the special aggravating circumstance of use of unlicensed firearm.

Issues

For purposes of this appeal, the Office of the Solicitor General^[23] (OSG) and the Public Attorney's Office^[24] (PAO) manifested they were no longer filing their respective supplemental briefs, and prayed the briefs submitted to the CA be considered in resolving the appeal.

In his brief, accused-appellant claims that the physical evidence is consistent with his version of the events. He points to the fact that the victim sustained nine (9) gunshot wounds, contrary to Licupa's testimony that he only heard one gun shot.^[25]

With this argument, the Court is tasked to determine whether the CA erred in affirming accused-appellant's conviction for murder.

Ruling of the Court

Accused-appellant failed to assail the sufficiency of the allegations of the Information

Preliminarily, this Court would address the sufficiency of the allegations in the Information.

Part of the constitutional rights guaranteed to an accused in a criminal case is to be informed of the nature and cause of the charge against him. Correlatively, the State has the obligation to sufficiently allege the circumstances constituting the elements of the crime. Thus, the Information must correctly reflect the charge against the accused before any conviction may be made.^[26]

In *People v. Valdez*,^[27] this Court made a pronouncement that in criminal cases, the State must specify in the information the details of the crime and any circumstance that may qualify the crime or aggravate an accused's liability. Hence, it is no longer sufficient to merely allege the qualifying circumstances of "treachery" or "evident premeditation" without including supporting factual averments. The prosecution must now specify in the information the acts and circumstances constituting the alleged attendant circumstance in the crime committed.

In this case, this Court notes that the Information merely alleged "with evident

premeditation and treachery"^[28] without supporting factual allegations on how the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.^[29]

Ordinarily, the non-allegation of a detail that aggravates his liability is to prohibit the introduction or consideration against the accused of evidence that tends to establish that detail, and the accused shall be convicted of the offense proved included in the offense charged, or of the offense charged included in the offense proved.^[30] Nonetheless, this Court finds the defect in the allegations of the Information insufficient to cause the downgrade of the accused-appellant's conviction, for his failure to timely assert his right in the proceedings before the RTC and CA.

There are various procedural remedies available to an accused who believes that the information is vague or defective. Section 9 of Rule 116 of the Rules of Court provides that the accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial.^[31] Likewise, Rule 117 thereof allows an accused to file a motion to quash a patently insufficient or defective information.^[32] In both instances, Our procedural rules require the accused to avail of these remedies prior to arraignment. Hence, in order to successfully object to the information, the objection must not only be meritorious, but must also be timely exercised.

According to the guidelines set by the Court in *People v. Solar*,^[33] when an information failed to state the ultimate facts relating to a qualifying or aggravating circumstance, the accused should file a motion to quash or a motion for a bill of particulars. Otherwise, his right to question the defective statement is deemed waived:

Any Information which alleges that a qualifying or aggravating circumstance - in which the law uses a broad term to embrace various situations in which it may exist, such as but are not limited to (1) treachery; (2) abuse of superior strength; (3) evident premeditation; (4) cruelty - is present, must state the ultimate facts relative to such circumstance. Otherwise, the Information may be subject to a motion to quash under Section 3 (e) (*i.e.*, that it does not conform substantially to the prescribed form), Rule 117 of the Revised Rules of Criminal Procedure, or a motion for a bill of particulars under the parameters set by said Rules.

Failure of the accused to avail any of the said remedies constitutes a waiver of his right to question the defective statement of the aggravating or qualifying circumstance in the Information, and consequently, the same may be appreciated against him if proven during trial.

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For cases in which a judgment or decision has already been rendered by the trial court and is still pending appeal, the case shall be judged by the appellate court depending on whether the accused has already waived his

right to question the defective statement of the aggravating or qualifying circumstance in the Information, (*i.e.*, whether he previously filed either a motion to quash under Section 3 (e), Rule 117, or a motion for a bill of particulars) pursuant to this Decision.^[34]

In this case, it does not appear that accused-appellant raised any objection to the sufficiency of the allegations in the information at any stage of the case. Not only did accused-appellant fail to move for a bill of particulars or quash the information before his arraignment, he also participated in the trial. Obviously, it is too late in the proceedings to invalidate the information without unduly prejudicing the State, which was also deprived of the opportunity to amend the information^[35] or submit a bill of particulars in the trial court.^[36]

We now proceed to review the propriety of accused-appellant's conviction.

This Court agrees with the RTC and CA that the crime committed was murder. The elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

*The
prosecution
established
that accused-
appellant shot
Arquero*

There is no doubt that accused-appellant was the person who shot Arquero to death. He was identified by Licupa and the victim through his dying declaration to his wife.

In his testimony, Licupa was clear that accused-appellant suddenly appeared from the hilly portion of the farm to shoot Arquero while he and Licupa were walking along the rice paddy. He even prepared a sketch to show the relative locations of the rice field and the spot where accused-appellant emerged from. Interestingly, accused-appellant has not put forth any convincing argument for this Court to disregard the substance of Licupa's testimony.

Moreover, the victim himself told his wife that accused-appellant shot him. Such statement constitutes as a dying declaration sufficient to justify a conviction.

While witnesses in general can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."^[37] Jurisprudence^[38] elaborates on the requisites of a dying declaration. For its admissibility, the following should concur:

- 1) the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to