

EN BANC

[G.R. No. 140724-26, February 12, 2003]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ALLEN BUSTAMANTE, APPELLANT.

D E C I S I O N

CORONA, J.:

For automatic review is the "Joint-Judgment"* dated August 10, 1999 of the Regional Trial Court, Branch 25, Iloilo City, the dispositive part of which reads:

"WHEREFORE, premises considered, the court, finding the accused, Allen Bustamante, guilty beyond reasonable doubt of murder as charged in Crim. Case No. 47227 and frustrated murder as charged in Crim. Case No. 49118, hereby sentences him as follows:

1) for the first offense he is sentenced to suffer the extreme penalty of death; and

2) for the second offense he is sentenced to a penalty of twenty (20) years of reclusion temporal with such accessory penalties as provided in Article 41 of the Revised Penal Code.

The accused is also ordered to indemnify the family of George Gelfero the amount of P75,000 plus P70,760 for hospital and burial expenses; and to pay Narciso Flores P140,000 for his medical and hospital expenses, as well as P20,000 as moral damages.

The case of illegal possession of firearms is deemed dismissed in view of the filing of Crim. Case No. 47227 for murder wherein the use of illegally possessed firearm is appreciated as a special aggravating circumstance in the light of the Supreme Court ruling in the afore-cited case of People vs. Rex Bergante.

The accused is also ordered to pay the cost.

SO ORDERED."^[1]

In three separate Informations, the appellant was charged for committing the following: (a) frustrated murder in Criminal Case No. 49118; (b) violation of PD 1866, as amended in Criminal Case No. 49119 and; (c) murder in Criminal Case No. 47227. Specifically, these were:

(a) CRIMINAL CASE NO. 49118 (Frustrated Murder)

"That on or about the 22nd day of November, 1996, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with a .22 cal. Smith and Wesson revolver (without serial number) with treachery, with evident premeditation and with intent to kill, did then and there wilfully, unlawfully and criminally shoot, hit and wound Narciso Flores, with the said revolver with which the accused was provided at the time, thereby causing upon the said Narciso Flores gun shot wound on various parts of his body, which lesions with medical treatment will heal in twenty (20) to thirty (30) days; thus the accused, had performed all the acts of execution which would have produced the crime of murder as a consequence, but which nevertheless, did not produce it by reason of some cause or accident independent of the will of the accused, that is by the timely and immediate intervention of third person and the medical attendance afforded to the offended party, Narciso Flores."

(b) CRIMINAL CASE NO. 49119 (Violation of PD 1866, as amended)

"That on or about the 22nd day of November, 1996 in this City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally have in his possession, custody and control one (1) .22 cal. Smith and Wesson revolver (without serial number with two (2) empty shells of .22 cal. Magnum ammunition, one (1) live .22 cal. Magnum ammunition and two (2) live .22 cal. Ordinary ammunition without having obtained the proper license or permit to carry, to hold and possess the same, which firearm was used by the accused Allen Bustamante in shooting to death the victim, George Gelvero, with treachery and with evident premeditation."

(c) CRIMINAL CASE NO. 47227 (Murder)

"That on or about the 22nd day of November, 1996 in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with an unlicensed revolver, with treachery and evident premeditation, did then and there willfully, unlawfully and criminally shoot, hit and wound George Gelvero, with the said revolver with which the accused was provided at the time, thereby causing upon said George Gelvero gunshot wound on vital part of his body, which caused his death a few moments thereafter."

The three criminal cases against the appellant were ordered consolidated by the trial court.^[2] The appellant thereafter pleaded not guilty to the charges.^[3] After pre-trial was waived, trial on the merits ensued.

During the trial, the prosecution presented its version of the facts.

On November 22, 1996, at around 9:30 in the evening, George Gelvero and Narciso G. Flores were inside the River Queen Hotel located in front of the Hall of Justice of Iloilo City, listening to a live band. After each consumed a bottle of beer, they decided to go home because Flores wanted to test a compressor to be used the following day in connection with his work as painter in Aurora Subdivision in Iloilo City.^[4]

Flores went outside the hotel ahead of Gelvero to get a ride home while Gelvero proceeded to the hotel washroom. Flores headed towards the side of the road across River Queen hotel. He saw two persons standing by the driveway of the hotel and noticed a security guard talking to another person near the hotel's driveway. The driveway was illuminated by light coming from the hotel and by an electrical post at the side of the road.^[5]

After five minutes, Gelvero exited from the hotel. Flores waited at the side of the road in front of the River Queen hotel and was about 20 meters away from Gelvero. While Gelvero was walking towards Flores, he was shot by one of the two men standing by the driveway of the hotel. The assailant used a short firearm in shooting Gelvero who fell to the ground.^[6]

In a matter of seconds, the assailant also shot Flores who was 5 to 7 meters away. Flores was hit on the left side of his waist. After the shooting, the person who was talking to the security guard of the hotel yelled "*Sibat na!*" while the assailant's companion at the other side of the driveway said, "You are just dr(u)nk while we are high." Afterwards, the three men escaped. While fleeing from the crime scene, they passed by Flores who was already lying on the ground.^[7]

Flores later identified his and Gelvero's assailant as "slit eyed, (with) dark complexion and curly hair" referring to appellant in this case. Flores also remembered the appellant wearing a white T-shirt and a pair of maong pants. Before Flores lost consciousness, he saw the three men running towards Lapaz Bridge.^[8]

SPO3 Domingo Andig of the Iloilo City Mobile Group, with four members of his team, was on patrol on November 22, 1996. At past 10:00 in the evening, they were informed by their headquarters that there was a shooting incident at Bonifacio Drive in front of River Queen Hotel. They responded and proceeded to the crime scene. Upon arrival at the scene of the crime, SPO3 Andig and his men were informed by the bystanders that the assailant, with dark complexion and wearing a white T-shirt, fled towards Lapaz Bridge (a.k.a Forbes Bridge). The two victims (Flores and Gelvero) had by then been brought already to the hospital.^[9]

Acting on the information given by the bystanders, the team of SPO3 Andig together with the PNP members of Lapaz, Iloilo City immediately pursued the appellant. One of the bystanders accompanied the two police teams and proceeded to Lapaz Bridge. The bystander-informant lead the police teams to a house, made of bamboo and lawanit, with 3 rooms, located under the bridge. The house was where the appellant allegedly hid himself. The police saw two women there but they initially denied having seen anybody enter. The women later allowed the police to search the house. The appellant was discovered hiding inside one of the rooms and was immediately apprehended. The police frisked him and recovered a homemade .22 caliber gun with one live bullet and two empty shells in the cylinder of the gun. The revolver was tucked in the waist of the appellant.^[10]

The women denied knowing the appellant and suggested that he must have clandestinely entered their house.^[11]

Flores regained consciousness at St. Paul's Hospital^[12] and later learned that Gelvero died in the same hospital.^[13] The cause of Gelvero's death was cardio-pulmonary arrest secondary to irreversible hypovolemia or massive loss of blood. As a result of the gunshot wound, the heart ceased to function because of the low supply of blood.^[14]

Dr. Jesse Uy of St. Paul's Hospital treated Flores for a gunshot wound in the pelvic area. The gunshot wound also fractured the abdominal cavity. According to Dr. Uy, Flores could have also died from the gunshot wound without able and timely medical attention. As a result of such treatment, Flores stayed in the hospital for a month. The bullet, however, was still embedded in the body of Flores. A month's recuperation was needed before the bullet could be surgically extracted.^[15]

On November 27, 1996, Dr. Tito Doromal, medico-legal officer of PNP, Iloilo City, conducted an autopsy on the body of Gelvero. He reduced his findings in Autopsy Report No. MLA-96-182. According to Dr. Doromal, the cause of Gelvero's death was "hemorrhage secondary to bullet wound." The sole bullet wound was fatal as it hit the liver and the inferior venacava.^[16]

According to the testimony of Major Robert Taneo Page, Jr., the firearm used was a .22 caliber Smith and Wesson revolver without any serial number. The two slugs or empty shells recovered from the crime scene were confirmed as having been fired from the same gun.^[17]

According to SPO3 Ely Superio, a firearms and explosives PNCO at Camp Delgado, Iloilo City,^[18] the appellant was not a licensed firearm holder, not being in the master list of all licensed firearm holders of Region 6.

Florentina Gelvero, mother of the victim George Gelvero, testified on the actual and moral damages that she and her family suffered. According to her, they spent P96,520.70 because of the death of her son. She told the court that the sorrow and sadness she underwent due to the death of her son could not be quantified in any amount.^[19]

The defense offered its own version of the incident through the sole testimony of the appellant Allen Bustamante.

According to Bustamante, on November 22, 1996, at about 8 o'clock in the evening, he and companions Bongbong, Camlon and Nonoy went to Iloilo City proper to take a leisurely walk. After wandering for sometime in the city proper, they proceeded to Nonoy's house located under the bridge of Gaisano City. They reached Nonoy's house at about 9 o'clock in the evening and bought half a case of beer. He and his companions had already consumed twelve bottles of beer when five policemen arrived and arrested him and his companions. He later learned from a Bombo radio reporter that they were arrested by the police pursuant to the information given by a security guard that two people went down the bridge. Appellant denied having known Gelvero or Flores.^[20]

After trial, the trial court gave more credence to the prosecution evidence. It

belittled the evidence of the defense which consisted merely of alibi and denial. It particularly gave weight to the testimony of eyewitness and surviving victim Narciso Flores. Moreover, the trial court appreciated the aggravating circumstance of treachery in committing the said crimes. Thus, the trial court convicted the appellant of the crimes of murder and frustrated murder.

However, it dismissed the case for illegal possession of firearm. According to the trial court –

“x x x although the gun used by the accused is without license or permit he cannot however be penalized separately from or independently of the penalties in murder and frustrated murder charges that have been filed against him. This is in accord with the Supreme Court ruling in *People vs. Rex Bergante* x x x ”^[21]

The trial court thus considered the use of the unlicensed firearm as an aggravating circumstance.^[22] As a consequence, the appellant was meted the extreme penalty of death for committing the crime of murder and 20 years of *reclusion temporal* for committing the crime of frustrated murder.

The defense moved to reconsider and mainly argued that the trial court failed to consider the mitigating circumstance of minority in favor of appellant in the computation of the penalty. The trial court denied the motion for the reason that the matter was neither raised nor proved during the hearing of the consolidated cases but was made an issue by the counsel of the appellant only after the cases were submitted for decision, when he filed his memorandum. The trial court further explained that –

“It is a basic rule in evidence that a matter not raised and/or proved during the hearing cannot be admitted and appreciated in evidence. Besides, the accused, when he testified under oath on March 3, 1999, stated that he is 24 years old. His age is something personal to him and this matter is known to him even before he reaches the age of reason such that he takes note of it in his day-to-day life in such a way that whenever he is asked about it he can right away give an answer without need of somebody else to tell him.

What he said when he testified under oath that he is 24 years old simply shows that at the time he committed the crimes he was somewhere between 20 to 21 years old and what his belatedly registered certificate of birth is of dubious veracity or trustworthiness considering that the information about his date of birth which resulted to (sic) the issuance of the birth certificate was given only by his father on November 25, 1996 to the Civil Registrar of Iloilo City, or some three (3) days after the crimes were committed when said data were reported logically puts into serious doubt the credibility of the certificate of birth as a piece of documentary evidence.”^[23]

Hence, this automatic review of the trial court decision with appellant assigning the lone error that –