456 Phil. 719

THIRD DIVISION

[G.R. No. 150590, August 21, 2003]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIE ALMEDILLA Y ARCILLA, ACCUSED-APPELLANT.

D E C I S I O N

PUNO, J.:

Before us is an appeal from the decision of the Regional Trial Court of Manila, Branch 27 ("RTC"), convicting appellant, Willie Almedilla y Arcilla ("Almedilla") of the crime of murder, *viz*:

> WHEREFORE, in view of all the foregoing, the court finds accused **WILLIE ALMEDILLA y ARCILLA** guilty beyond reasonable doubt of the crime of **MURDER** and hereby sentencing (*sic*) him to suffer the penalty of Reclusion Perpetua.
>
> Accused is ordered to indemnify the heirs of the victim the sum of P126,000.00 and a further sum of P50,000.00 as moral damages.
>
> Accused is further directed to pay the heirs of his victim the amount of P322,666.66 as his unearned income.
>
> Costs against the accused.
>
> SO ORDERED.[1]

Almedilla was charged with the crime of murder committed as follows:

> That on or about July 3, 1997, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill and with evident premeditation and treachery, attack, assault and use personal violence upon one RUEL BORELA y TAUY, by then and there suddenly and treacherously shooting him with a .38 cal. revolver while his back was against said accused, hitting him on the left side of the body below the armpit, thereby inflicting upon him (a) mortal and fatal gunshot wound, which was the direct and immediate cause of his death thereafter.
>
> Contrary to law.[2]

The eyewitness of the prosecution, Ruben Mesa y Catason ("Mesa") testified that on July 3, 1997, he reported for work at OIC Construction where he was a leadman/welder. At 7:00 o'clock in the evening, he was waiting for his men who were to work overtime. While seated near the office waiting, he saw their manager, the victim Ruel Borela ("Ruel") and the security guard, appellant Almedilla arguing

outside the office. An armslength away, he saw Almedilla throw a chair at the door of the office. Ruel, who was inside his office, went out and asked who threw the chair. Almedilla replied "*Ikaw kasi(,)* sir." Ruel turned his back and was about to go back into the office when Almedilla shot him. Mesa called his men and they rushed the victim to the Philippine General Hospital. Ruel was declared dead-on-arrival.[3]

Dr. Ludivino J. Lagat, the medico-legal officer of the National Bureau of Investigation, conducted the autopsy. He testified that "a gunshot wound was noted at the back portion, back lateral portion of the body on the left side and this gunshot wound involves (*sic*) the heart and the lungs."[4] He stated that the trajectory of the bullet was "forward, downward and middle, meaning the barrel of the gun is (*sic*) at a higher ground than that of the point of entry."[5] He concluded that the death was caused by "massive hemorrhage secondary to gunshot wound."[6]

Gemma Sus Borela ("Gemma"), the widow of the victim, testified that Ruel was the breadwinner of their family of two children. She stated that her husband earned P22,000.00 monthly as an employee. He was also paid P10,000.00 for every plan of an ordinary house which he did as a sideline. She likewise alleged that after the death of her husband, she was unable to sleep and eat normally due to physical and mental sufferings. She claimed actual damages in the amount of P100,000.00, for the coffin and funeral services, the cemetery lot and other burial expenses.[7]

The testimony of SPO1 Diomedes A. Labarda, police investigator, was dispensed with. The parties stipulated that:

1. The police investigator of this case was informed by the informant of the killing incident x x x and x x x proceeded to the crime scene and conducted an investigation.

2. He prepared the pertinent documents: the Advance Information marked as Exh. "F," Progress Report marked as Exh. "G" and Sworn Statement of eyewitness by the name of Ruben Mesa y Catason, marked as Exh. "H."[8]

Appellant Almedilla was the lone defense witness. He stated that on April 3, 1997, he was on duty as a security guard of OIC Construction. While he was eating, Ruel approached and cursed him because the gate of the construction site was open. Almedilla told Ruel to mind his own business. Ruel threatened to hit him with a chair and he dared Ruel to do it. Ruel did so, but Almedilla evaded the blow. Ruel rushed towards him and took the gun tucked at his waist. They grappled for the possession of the gun until it went off. Fearful that someone got hurt, Almedilla left and reported the incident to Mr. Dumaycos, the owner of the security agency. The latter assured him that he would take care of everything. With that assurance, Almedilla went to the province until he was arrested in 1998.[9]

The RTC found the appellant guilty of murder. It held that the killing was aggravated by treachery.[10]

This appeal is grounded on the lone assignment of error that the lower court gravely erred in appreciating the qualifying circumstance of treachery.[11] Citing People vs.

Academia, Jr.,[12] appellant avers that "treachery may not be appreciated where an altercation preceded the shooting, and the time between the altercation and shooting was not significant as to create a break in the series of events." He claims that the shooting in the case at bar occurred immediately after the altercation between the victim and the accused.

We find no merit in the argument of the appellant.

It is given that appellant killed Ruel. Appellant merely assails the decision of the RTC appreciating the aggravating circumstance of treachery that qualified the killing to murder. He contends that there could be no treachery since there was an altercation which preceded the killing. However, the records show that although Almedilla and Ruel got engaged in an argument before the incident, there was a gap of about a minute between the argument and the shooting, *viz*:

> ATTY. LEE:
>
> Q: How long were they quarrelling when you heard the gunshot?
> A: After one minute approximately I heard the phrase "Ikaw kasi sir" when I heard the gunshot (*sic*).[13]

This shows that the shooting did not immediately follow the altercation of the parties. In fact, Almedilla waited for Ruel to turn around and head for the office before he fired the fatal shot:

> ATTY. LEE:
>
> Q: How far were you at that time when you were seating beside the office, from the door of the office?
> A: Also an armslength, sir.
>
> Q: How far were you from the accused Almedilla at that time when you were seating (*sic*)?
> A: Approximately 6 meters away, sir.
>
> Q: And how far were you at that time when you were seating (*sic*), from Architect Borela?
> A: Less than an armslength.
>
> Q: And this is (*sic*) also the time when you heard him say "IKAW KASI SIR"?
> A: Yes, sir.
>
> Q: And at this time, this door where you are a (*sic*) distance is only an armslength is the same door Architect Borela entered (*sic*). Is that correct?
> A: Yes, sir.
>
> Q: And Architect Borela was able to enter the room. Is that correct?
> A: No more, sir.
>
> Q: I thought you said a while ago (that) Architect Borela