

## EN BANC

[ G.R. Nos. 132791 & 140465-66, September 02, 2002 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNEL BERNAL, ACCUSED-APPELLANT.**

### DECISION

**CORONA, J.:**

Accused-appellant Arnel B. Bernal seeks reversal of the judgment of conviction promulgated by Branch 2 of the Regional Trial Court of the First Judicial Region stationed in Bangued, Abra, on November 4, 1997, sentencing him to death for the crime of Murder with the aggravating circumstances of evident premeditation and habitual drunkenness, and likewise separately sentencing him to suffer the prison terms of 10 years and 1 day of prision mayor as minimum to 17 years of reclusion temporal as maximum for the crime of Illegal Possession of Firearms and Ammunition (Presidential Decree No. 1866), and 2 years and 4 months with disqualification from holding public office and deprivation of the right of suffrage for violation of Resolution No. 2735 of the COMELEC otherwise known as the "Gun Ban."

The criminal cases were commenced with the filing of three informations for the crime of murder, and violations of Presidential Decree No. 1866 and Resolution No. 2735 of the COMELEC, pertinently reading as follows:

Criminal Case No. 1645

"That on or about February 6, 1995, at Zone 5, in the Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above named accused, with the intent to kill, with treachery and evident premeditation and while armed with a caliber .38 revolver Smith and Wesson without serial number (recovered) (sic), did then and there, willfully, unlawfully and feloniously (sic) shot twice from behind one PEDRITO BERALAS, hitting him on his head, which caused his death shortly thereafter, to the damage and prejudice of the heirs of the offended party."

CONTRARY TO LAW.<sup>[1]</sup>

Criminal Case No. 1647

"That on or about the 6th day of February, 1995, at around 9:30 o'clock in the evening, in the Municipality of Bangued, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the said accused, not authorize, by law, did then and there, wilfully, unlawfully and feloniously, kept in his possession, custody and direct control one caliber 38 Revolver Smith and Session (sic) without serial number with three (3) live ammunitions for caliber .38 revolver and two (2) empty

shells for caliber .38 (recovered), without first securing the necessary license to possess the daid (sic) firearms and without lawful permit to carry the same; that the offense was also committed during the election period in violation of firearm ban.”

CONTRARY TO LAW.<sup>[2]</sup>

Criminal Case No. 1646

“That on or about February 6, 1995, at around 9:30 o’clock in the evening, at Zone 5, Philippines and within the jurisdiction of this honorable Court, the said accused, person not authorized by law, did then and there, willfully, unlawfully and feloniously keep in his possession, custody and control one (1) caliber .38 Smith and Wesson without serial number with three (3) live ammunition for caliber .38 revolver and two (2) empty shells for caliber .38 revolver (recovered), without first securing the necessary permit from the COMELEC to carry the same outside his residence.”

SO ORDERED.<sup>[3]</sup>

Upon arraignment, accused-appellant pleaded not guilty. Thereafter, the cases were tried jointly.

The inculpatory facts adduced by the prosecution during trial are succinctly summarized in the People’s brief as follows:

In the evening of February 6, 1995, appellant, Pedrito Beralas, Felix Bernal, Fernando Bernal and Rey Bernal were on board a tricycle on their way to the Benedisco pub house located along Zamora St., Zone 5, Bangued, Abra (p. 3, Decision). Upon reaching the pub house, Pedrito invited the group to go inside to dance. Pedrito, Rey and Arnel went inside while Felix and Fernando were left outside (pp. 10-13, TSN, September 18, 1995).

Later, Fernando went inside to look for the three (appellant, Rey and Pedrito). He saw them in a sleeping position inside Benedisco. Upon seeing the three (appellant, Rey and Pedrito), Fernando returned to where Felix was and told him to start the tricycle engine as they would bring home appellant, Rey and Pedrito. Fernando first brought Pedrito out of the pub house and had him seated at the passenger’s seat inside the tricycle. Thereafter, he returned and got appellant who was roused when they reached the tricycle. After that, Fernando fetched Rey. While the two (Fernando and Rey) were already at the gate of Benedisco, Fernando heard a gunshot. When Fernando looked at the tricycle where his companions were, he saw appellant holding a gun. Immediately, he rushed to the tricycle where Pedrito was. Then, Fernando heard a second gunshot. According to Fernando, “he knew that appellant shot Pedrito.” Consequently, Fernando attacked appellant and held him. The two (Fernando and appellant) grappled for possession of the gun. While they were thus grappling, some policemen arrived (pp. 13-17, TSN, September 18, 1995).

Police Superintendent Sarte called up the police station and ordered his men to pick up appellant for investigation (p. 10, *ibid.*).

Subsequently, Police Superintendent Sarte inspected the tricycle. He saw Pedrito inside who appeared dead because of the bullet wound at his head (*ibid.*).

After that, Felix and Fernando brought Pedrito to Seares Clinic. Pedrito was already dead upon arrival at said clinic (pp. 17-18, TSN, September 18, 1995).

Dr. Milagros Burgos, municipal health officer of Bangued, Abra, testified that she conducted an autopsy on Pedrito's cadaver on February 7, 1995 at 9:45 in the morning at the Baquiran Funeral Homes. Dr Burgos found out that rigor mortis had already set in when she conducted the autopsy. She found two (2) gunshots wounds. The point of entry of the first wound was in the parietal area which is located at lower left side of the back of the head. The other gunshot wound was beside the other wound. Dr. Burgos opined that the assailant could have been at the back or behind the victim when the enemy shot the victim because the entry points of the wounds were at the back (pp. 3-9, TSN, September 18, 1995).

SPO4 Napoleon Pascual, officer-in-charge of the Firearm and Explosives Unit (FEU) of Abra, PNP Command, testified that appellant is not a holder of any license or authorized to possess any kind of firearm. He also testified that the gun used in killing Pedrito is not a licensed firearm (p. 11, Decision). A certification (Exhibit K) was issued stating that appellant is not a duly licensed firearm holder.<sup>[4]</sup>

Accused-appellant denied culpability and offered his own recollection of the incident. Accused-appellant narrated that when he was only 2 years old, his father was killed by victim Pedrito Beralas. This he learned from his mother and other relatives. Accused-appellant admitted that, on February 6, 1995, he joined the victim and his group in their drinking spree. It was at that time that the alleged killing of the father of accused-appellant by victim Pedrito was brought up. Accused-appellant maintained that Pedrito confessed to killing his father. But accused-appellant insisted that they should stop discussing about the death of his father.

Thereafter, when they were about to go home, accused-appellant and Pedrito had an altercation. Accused-appellant claimed that Pedrito threatened him and attempted to fire his gun at him but failed. So, accused-appellant struggled with Pedrito for the possession of the gun and consequently, the gun went off. Accused-appellant felt that Pedrito was losing his grip on the gun and so he seized it from him. Because accused-appellant feared for his life, it was at that moment that he shot the victim.

In its decision dated November 4, 1997, the trial court rendered a judgment of conviction in the three cases, finding and disposing that–

IN CRIMINAL CASE NO. 1645 FOR MURDER, the Court finds the accused Arnel Bernal guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code as amended by Sec. 6 of Republic Act No. 7659 with the aggravating

circumstances of evident premeditation and habitual drunkenness and sentences him to suffer the penalty of DEATH and to indemnify the family of the late Pedrito Beralas the amount of P52,500.00 in actual expenses incurred in connection with the burial of the latter plus P50,000.00 for his death and P500,000.00 in moral and exemplary damages;

IN CRIMINAL CASE NO. 1646 FOR VIOLATION OF RESOLUTION NO. 2735 OF THE COMELEC otherwise known as the "gun ban" during an election period and the Omnibus Election Code, the Court finds the accused Arnel Bernal guilty beyond reasonable doubt of violation of the said COMELEC resolution and as provided by par. (q) Secs. 261 and 262 of Article XX11 of the Omnibus Election Code and sentences him to suffer an imprisonment for a period of TWO (2) YEARS and FOUR (4) MONTHS and to suffer disqualification to hold public office and deprivation of the right of suffrage; and

IN CRIMINAL CASE NO. 1647 FOR SIMPLE VIOLATION OF PRESIDENTIAL DECREE NO. 1866 or ILLEGAL POSSESSION OF FIREARM AND AMMUNITION, the Court likewise finds the accused Arnel Bernal guilty beyond reasonable doubt of the crime of simple illegal possession of firearm defined and penalized under Section 1 of Presidential Decree No. 1866 and sentences him to suffer an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to SEVENTEEN (17) YEARS of reclusion temporal as maximum.

In all these cases, the accused is likewise ordered to pay the costs.

SO ORDERED.<sup>[5]</sup>

Hence, the instant review, with accused-appellant anchoring his plea for reversal on the following assigned errors: (1) the trial court erred in imposing upon the accused the death penalty; (2) the trial court erred in appreciating evident premeditation and treachery; and (3) the trial court erred in treating Criminal Case No. 1647 as a separate offense.

It appears from the record that not one of the prosecution witnesses saw the actual killing of the victim by accused-appellant. However, the separate and detailed accounts of the event by prosecution witnesses Fernando and Felix Bernal reveal only one conclusion: that it was accused-appellant who shot the victim.

Circumstantial as it is, conviction based thereon can be upheld, provided the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to accused-appellant, to the exclusion of all others, as the guilty person.<sup>[6]</sup> Direct evidence of the commission of the crime is not the only matrix from which the trial court may draw its conclusions and findings of guilt. Circumstantial evidence is of a nature identical to direct evidence. It is equally direct evidence of minor facts of such a nature that the mind is led, intuitively or by a conscious process of reasoning, to a conclusion from which some other fact may be inferred. No greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, what is required is that there be proof beyond reasonable doubt that a crime was committed and that accused-appellant committed it.<sup>[7]</sup>

As noted by the Solicitor General, the evidence is replete with details to prove the fact of death of the victim and to sustain the guilt of accused-appellant, to wit:

- (1) accused-appellant, victim Pedrito, prosecution witnesses Fernando and Felix Bernal, and one Rey Bernal together went to Benedisco pub located at Bangued, Abra;
- (2) since accused-appellant, Pedrito, and Rey were already sleeping inside the pub, Fernando decided to go home, brought out Pedrito first and seated him inside the tricycle;
- (3) then Fernando took out accused-appellant who was roused from sleep and led him to the tricycle;
- 4) thereafter, Fernando went inside again to fetch Rey;
- (5) on their way out, Fernando heard a gunshot and he saw accused-appellant holding a gun;
- (6) Fernando rushed to the tricycle where Pedrito was and it was then that he heard another gunshot;
- (7) consequently, Fernando grappled with accused-appellant for the possession of the gun;
- (8) Felix Bernal testified that while Fernando fetched Rey inside the pub, he turned on the engine of the tricycle;
- (9) while doing so, he heard two gunshots;
- (10) when he looked at Pedrito, who was supposedly sleeping inside the tricycle, he saw blood oozing from his head; and
- (11) he saw accused-appellant holding a gun.

Concededly, Fernando and Felix did not see the actual shooting and killing of the victim. Nonetheless, the above-mentioned circumstances taken together form, in our view, one unbroken chain leading to the fair and reasonable conclusion that indeed, accused-appellant, to the exclusion of all others, was responsible for the death of the victim.

Worse, the death of the victim was accomplished with treachery.

The characteristic and unmistakable manifestation of *alevosia* is the deliberate, sudden and unexpected attack of the victim from behind, without any warning and without giving him an opportunity to defend himself or repel the initial assault. If the attack is sudden, unexpected, not preceded by any provocation and the deceased is not in a situation to defend himself, treachery must be considered as a qualifying circumstance of murder.

The circumstances obtaining in the instant case show that treachery attended the killing of the victim by accused-appellant. The attack on the victim was sudden and unexpected, and this was evident in the manner accused-appellant shot his victim — from behind and while asleep, giving his victim no opportunity to defend himself or repel accused-appellant's attack.