

THIRD DIVISION

[G.R. No. 139340, January 17, 2001]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NATIVIDAD "TONY" LOVEDORIAL, ACCUSED-APPELLANT.**

DECISION

MELO, J.:

On March 30, 1999, accused-appellant Natividad "Tony" Lovedorial was found guilty of the crime of Murder by the Regional Trial Court of the Fifth Judicial Region (Branch 52, Sorsogon) per the Honorable Honesto A. Villamor, as follows:

WHEREFORE, premises considered, the Court finds the accused Natividad "Tony" Lovedorial Guilty of the crime charged of Murder and there being no mitigating circumstance to offset the aggravating circumstance of treachery, hereby sentences said accused to suffer the indeterminate penalty of Seventeen (17) years, Eight (8) months and one (1) day of reclusion temporal maximum as minimum to Twenty (20) years of reclusion temporal as maximum. The accused is ordered to pay the amount of TEN THOUSAND (P10,000.00) as actual damages, the amount of FIFTY THOUSAND (P50,000.00) as civil indemnity without subsidiary imprisonment in case of insolvency with cost de oficio.

The accused being a detention prisoner, the full period of his detention in the Sorsogon Provincial Jail shall be credited fully in the service of his sentence.

(Rollo, pp. 35-36.)

Thereafter, accused-appellant filed a motion for reconsideration, arguing that Oscar Manjares' killer was a person other than accused-appellant. The prosecution also filed a motion for reconsideration, contending that the penalty imposed upon accused-appellant was erroneous, the penalty for murder being *reclusion perpetua* to death. On May 31, 1999, the trial modified its judgment, thusly:

WHEREFORE, premises considered, the MOTION FOR RECONSIDERATION filed by the accused is hereby DENIED. The sentence imposed upon the accused is hereby modified, and the penalty of RECLUSION PERPETUA is hereby imposed upon him in accordance with Sec. 6 of R.A. 7659 and in consonance with Art. 63 of the Revised Penal Code.

(Rollo, p. 40.)

The Information filed on November 20, 1996 charged:

That on or about the 29th of September, 1996, at about 6:45 in the evening, at Barangay Milagrosa, Municipality of Castilla, Province of

Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a hand gun, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously, attack, assault and shot one Oscar Manjares y Jebulan, thereby inflicting upon the latter mortal injury which caused his death, to the damage and prejudice of his legal heirs.

(Rollo, p. 14.)

Upon his arraignment on January 27, 1997, accused-appellant entered a plea of Not Guilty. Trial ensued on May 8, 1997, following which, the judgment of conviction was rendered, prompting the instant appeal.

The version of the prosecution, as culled from the testimony of its witnesses Emelita Manjares, the wife of the victim; Eduardo Arcos, the barangay captain of Milagrosa; and Dr. Melquiades Boque, Jr., the physician who performed the autopsy on the victim, may be synthesized as follows:

On September 28, 1996, while Oscar Manjares was at the basketball court of Barangay Milagrosa, a drunken accused-appellant arrived and quarrelled with Oscar. During the course of their quarrel, accused-appellant hit Oscar twice. To avoid trouble, Oscar left the place. However, accused-appellant pursued Oscar, prompting the latter to hit the former. The matter was reported to the barangay but when asked if he wanted the matter to be placed in the blotter, Oscar declined, saying that it would only make accused-appellant even more angry.

In the evening of the next day, September 29, while Oscar and his wife, Emelita, were repacking garlic near the window of their house, Emelita heard a gunshot from outside their window. She immediately stood up, looked out of the window and saw accused-appellant, about three meters away, holding a gun and about to flee. Emelita claimed that she recognized accused-appellant because she had known the latter ever since he was a child. Looking backwards, she noticed that Oscar had been shot and came to the latter's aid. As she approached her husband, Emelita saw blood oozing out of his mouth. She brought Oscar to the hospital, enlisting the aid of their barangay captain to drive her there, but her husband died en route. It was the barangay captain who proceeded to the police to report the killing of Oscar.

Dr. Melquiades Boque, Jr. testified that Oscar died of cardio-pulmonary arrest secondary to massive hemorrhage brought about by a gunshot wound to the chest. His findings, as formalized in the autopsy report, are as follows:

Gunshot wound, entrance, left anterior chest, mid clavicular line, 14 cms. above left nipple, directing medial ward, posterior ward, penetrating the left second intercostal space, penetrating the apex of left lung, through & through, perforating the middle third of trachea, through & through, penetrating the apex of right lung, fracturing the middle third of the third right rib at the level of the mid axillary line, penetrating the right axillary space, penetrating the medial portion of the right arm.

Cause of Death: Cardio pulmonary arrest secondary to massive hemorrhage secondary to gunshot wound of the chest.

(Record, p. 66.)

On the other hand, the defense presented Gemma Badera, a forensic chemist of the National Bureau of Investigation; Socorro Lovedorial, accused-appellant's mother; Dr. Caesar Romano, chief of the Vicente Peralta Memorial Hospital at Castilla; Dr. Melquiades Boque, Jr.; and accused-appellant himself.

Gemma Badera testified that her duties as NBI forensic chemist included examination of gunpowder. According to her, the results of the paraffin test conducted on accused-appellant to determine if he had fired a gun were negative. On cross-examination, however, it was brought to light that nitrates on a person's hands could remain for, at most, only three days from the time said person fired a gun. It was disclosed that accused-appellant was paraffin-tested only on October 4, 1996, or six (6) days after the commission of the crime.

Accused-appellant's mother, Socorro Lovedorial, testified that her son could not have killed Oscar at around 6:45 P.M. of September 29, 1996 since her son was lying injured in bed at that time. She stated that her son had been given an anti-tetanus shot because his cheek had a bleeding puncture wound. She further stated that her son had been boxed by a person the day before. Her son was able to come home only in the morning of September 29, 1996, having spent the night with his brother Gil because the former had fallen unconscious in the afternoon of the 28th of September after having been boxed by an unknown person.

Dr. Caesar Romano identified for the prosecution a document signed by Dr. Boque, Jr. According to said document, accused-appellant was treated for facial injuries at the Vicente Peralta Memorial Hospital in the morning of September 29, 1996. He had abrasions on the right eyebrow and right cheek bone and a puncture wound on the left side of the face penetrating the buccal mucosa. Accused-appellant was given an anti-tetanus shot, antibiotics, and mefenamic acid.

On the witness stand, Dr. Melquiades Boque, Jr. testified that he prescribed amoxicillin, anti-tetanus, a pain reliever and Betadine oral solution for accused-appellant. When asked by accused-appellant's counsel, upon further direct examination, whether or not a person with the kind of injuries suffered by accused-appellant would be disposed to rest rather than to move about, Dr. Boque answered "Not necessarily because that injury was here (pointing to the wounds) but he could use his hands." Upon further prodding, the doctor stated that it depended on the general physical condition of the person injured whether he would rest or move about.

For his part, accused-appellant denied killing Oscar Manjares, asserting that at the time and date of the incident, he was at home in Milagrosa, Castilla recuperating from his wounds. He testified that his house is 200 meters away from that of Oscar Manjares.

The trial court found no merit in accused-appellant's defense, finding his culpability well established by the testimony of Emelita Manjares, whom it adjudged a credible witness. The court found the denial and alibi proffered by accused-appellant to be self-serving and weak. Consequently, it declared accused-appellant guilty of murder, the crime having been committed with treachery. According to the trial court, the

"attack on the unarmed victim was sudden, unprovoked and unexpected. It was done in a manner which directly and specially insured the execution of the act without any risk to him arising from the defense which the victim may have made. Treachery was thus present in the instant case, which qualified the crime to murder" (Rollo, p. 35).

Accused-appellant pleads for reversal, raising, in his assignment of errors, certain facts which, if considered, would allegedly lead to his acquittal. In particular, accused-appellant points to alleged contradictions between Emelita Manjares' testimony and the autopsy report conducted by Dr. Melquiades Boque, Jr.

The petition has no merit.

Capsulized, accused-appellant's argument boils down to and centers on the alleged implausibility of Emelita Manjares' testimony as to the position of the gunman at the time of the assault. Accused-appellant states that Emelita Manjares, the lone eyewitness to the shooting, testified that the victim was standing with the right side of his body to the window. He cites Emelita Manjares' testimony as follows:

Q: You said that your husband died on September 29, 1996, were where you then?

A: I was facing him during that time.

Q: By the way, what time was that?

A: 6:45 in the evening.

Q: What were you doing when you said you were in front of your husband?

A: I was repacking the garlic.

Q: What was your husband doing?

A: Because he was in front of me, we were conversing about the things he will be doing the following morning.

Q: Then, what happened?

A: While we were talking, I suddenly heard a gunshot.

Q: From where did that gunshot sound come from?

A: From outside the window.

Q: When the incident happened, you and your husband were doing something, you were repacking some garlic or onions?

A: He was repacking and he was in front of me.

Q: And what was he doing?

A: He was peeling the garlic.

Q: Of course, the two of you were not standing when you were doing that?

A: My husband was standing.

Q: So (on) one side of the table was your husband and you were by the other side?