

FIRST DIVISION

[G.R. Nos. 132325-26, July 26, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO ESPINA, ACCUSED-APPELLANT.

DECISION

YNARES-SANTIAGO, J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Tagbilaran, Branch 47, in Criminal Case Nos. 8194 and 8155 convicting accused-appellant of the crime of Murder qualified by Illegal Possession of Firearms under P.D. No. 1866, as amended by R.A. No. 8294; and sentencing him to suffer the penalty of *Reclusion Perpetua* and to pay the heirs of the deceased the sum of P50,000.00 and the costs.

The information for the crime of murder alleged:

That on or about the 30th day of September, 1992, in the municipality of Tubigon, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused without justifiable motive, with treachery and abuse of superior strength, the accused being then armed with a short firearm and without giving opportunity to the victim to defend himself, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Romeo Bulicatin, with the use of said firearm, hitting the latter on the vital part of his body resulting to his death; to the damage and prejudice of the heirs of the deceased.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code with the aggravating circumstance of nighttime being purposely sought for or taken advantage of by the accused to facilitate the commission of the crime.^[2]

For Illegal Possession of Firearms, the information stated:

That on or about the 30th day of September, 1992, in the municipality of Tubigon, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, with intent to possess firearm and ammunition did then and there willfully, unlawfully and criminally keep, carry and have in his possession, custody and control a short firearm and ammunition without first obtaining the necessary permit or license to possess the said firearm and ammunition from competent authority, which firearm and ammunition were carried by the accused outside of his residence and used by him in committing the crime of Murder of which one Romeo Bulicatin was the victim; to the damage and prejudice of the Republic of the Philippines. Acts committed contrary to the provisions of Presidential Decree No. 1866.^[3]

Upon arraignment on June 27, 1994, accused-appellant pleaded not guilty to both charges;^[4] thereafter trial followed.

The facts as adduced by the prosecution are synthesized in the People's Brief, thus -

In the afternoon of September 30, 1992, the members of an association locally known as the "ripa-ripa" went to the house of Eufronia Pagas located at sitio Batic, Tan-awan, Tubigon, Bohol for their scheduled contribution to a fund intended for a wedding celebration. (p. 3, August 23, 1996, TSN; p. 3, January 21, 1997, TSN) Among those present thereat were Romeo Bulicatin, Rogelio Espina, Samson Abuloc who were having a drinking spree and playing "chikika", a card game. (p. 4, May 9, 1995, TSN).

When accused-appellant arrived, Romeo asked three (3) bottles of "kulafu" wine from him and he acceded by buying three (3) bottles of "kulafu" wine from the store of Eufronia Pagas. Later on, at around 4:00 of that afternoon, Romeo again demanded another bottle of "kulafu" wine from accused-appellant but this time, the latter refused to give in to the demand. (p. 4, January 21, 1997, TSN) Romeo then proceeded to where accused-appellant was playing cards and without any warning, urinated on the latter and clipped him under his (Romeo) arms. (p. 4, August 23, 1996, TSN) Accused-appellant got angry. He however did not engage Romeo in any altercation but instead turned away and went home. (p. 5, May 9, 1995, TSN)

Later on in the evening, at about 9:00 p.m., while Romeo, Rogelio and Samson were still having a drinking spree at the store of Eufronia Pagas, they heard accused-appellant calling Romeo from outside, saying, "Borgs, get out because I have something to say." The trio came down from the house. Rogelio went down first, followed by Samson and Romeo (pp. 5-6, *ibid.*) When Rogelio reached the ground, accused-appellant told him to drop down while Samson also dropped himself to the ground when he saw accused-appellant about to draw his firearm. At that juncture, Romeo was still at the stairway and when he turned his back towards accused-appellant, the latter shot him, hitting him at the back. Romeo ran away but he was chased by accused-appellant who fired two (2) more shots at him. (p. 5, March 19, 1996, TSN; p. 7, May 9, 1995)

Samson ran away from the scene of the incident and upon reaching the house of Poloy Concha, he saw Romeo outside the house asking for help. Samson asked some of residents to help him bring Romeo to barangay Cawayanan. (pp. 14-15, March 19, 1996, TSN) They loaded Romeo in a rattan cradle and upon reaching the said barangay at about 3:00 o'clock of the following morning, they transferred him to the vehicle owned by a certain Emiliano Fucanan. From the said barangay, Romeo was taken to the house of Mayor Placing Mascarinas in Poblacion, Tubigon, Bohol where he was transferred to the ambulance which took him to the Celestino Gallares Memorial Hospital in Tagbilaran City. On the way to the hospital, Felix Celmar asked Romeo what happened to him and the latter answered that he was shot by accused-appellant. (pp. 4-8, July 29, 1996, TSN) Romeo was brought to the emergency room and underwent

operation. He however died at about 5:00 p.m. of October 2, 1992, due to septic shock irreversible, generalized peritonitis, gunshot wound, perforating ileum. (pp. 7 & 11, June 18, 1996, TSN)^[5]

The defense presented four witnesses, namely: Rogelio Espina, Dr. Harold B. Gallego, Maximiano Dormal and accused-appellant himself.

The testimonies of accused-appellant and Maximiano Dormal may be summarized as follows:

At around 1:00 o'clock in the afternoon of September 30, 1992, accused-appellant was in the house of Eufroonia Pagas to represent his father in a meeting to prepare for a wedding celebration. Among those present in the said gathering were accused-appellant's brother, Rogelio Espina, and the deceased, Romeo Bulicatin who were having a drinking spree. When accused-appellant arrived thereat, Bulicatin asked him to buy 3 bottles of "kulafu" wine to which he acceded. At around 4:00 o'clock of the same afternoon, Bulicatin again demanded another bottle of "kulafu" wine from accused-appellant. The latter, however, refused to obey, prompting Bulicatin to urinate on accused-appellant. This infuriated accused-appellant, but instead of assaulting Bulicatin, he turned his back and walked away because he knew that Bulicatin always carried a knife. When accused-appellant was about 12 meters away from the house of Eufroonia Pagas, Bulicatin pursued him. Accused-appellant tried to evade Bulicatin but the latter caught up with him and stabbed him on his side. Consequently, accused-appellant sustained a deep punctured wound but was fortunately able to escape until he passed out.^[6]

At around 6:00 o'clock p.m. of the same day, Maximiano Dormal who was then on his way home, saw accused-appellant wounded and lying on the ground. Recognizing the latter, Dormal immediately informed and accompanied accused-appellant's parents who lost no time in bringing him to the hospital.^[7]

On the other hand, defense witness Rogelio Espina (Rogelio), declared that in the afternoon of September 30, 1992, he was in the house of Eufroonia Pagas, having a drinking spree with Romeo Bulicatin and Samson Abuloc, while his brother, herein accused-appellant, was playing cards. At around 3:00 o'clock p.m., he saw Bulicatin approach accused-appellant and forthwith urinated on him. Thereafter, Bulicatin grabbed accused-appellant under his arms but the latter was able to extricate himself from the hold of Bulicatin and ran away. Rogelio wanted to follow accused-appellant but was prevailed upon by Bulicatin to stay. They then continued their drinking spree until 9:00 o'clock p.m. When they were about to go home, Rogelio heard somebody calling Bulicatin, saying - "Get out, Borgs, as I have something to tell you." According to Rogelio, he is certain that the voice was not that of accused-appellant. When they decided to go home, he was the first one to go downstairs, followed by Samson Abuloc, and then by Bulicatin. Upon reaching the ground, Rogelio heard a gunshot and immediately scampered away without looking back to see who was shot. He claimed that it was only two days after the incident that he came to know who the victim of the shooting incident was. He added that from the house of Eufroonia Pagas, he directly went home where he was told by his mother that accused-appellant was stabbed and was brought to the hospital.

On August 25, 1997, the trial court rendered the assailed decision, holding as follows:

WHEREFORE, Premises Considered, the Court finds the accused, Romeo Espina, guilty beyond reasonable doubt, for the crime of Murder defined and penalized by Article 248 of the Revised Penal Code and Qualified Illegal Possession of Firearms under Presidential Decree No. 1866, as amended by Republic Act No. 8294 and sentences him to suffer the straight penalty of imprisonment of RECLUSION PERPETUA with the inherent accessory penalties provided by law, there being a mitigating circumstance of vindication for a grave offense committed on the accused; to indemnify the heirs of the deceased, Romeo Bulicatin, in the amount of Fifty Thousand (P50,000.00) Pesos; and to pay the costs.

SO ORDERED.^[8]

Hence, this appeal on the following grounds:

I

THAT THE LOWER COURT HAS OVERLOOKED OR MISINTERPRETED THE SIGNIFICANCE OF SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND INFLUENCE APPEARING IN THE RECORD IN FINDING THE ACCUSED GUILTY OF THE OFFENSES CHARGED.

II

THAT THE LOWER COURT HAS GRAVELY ABUSED ITS DISCRETION IN FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE OFFENSES CHARGED.^[9]

In particular, accused-appellant points to the following facts and circumstances that had been allegedly overlooked by the trial court, to wit -

- 1) The resolutions of the 2nd Municipal Circuit Trial Court of Tubigon, Bohol in Criminal Case Nos. 1245 and 1246 to the effect that there was no sufficient evidence that accused-appellant had committed the crimes charged;
- 2) The non-presentation of Eufroonia Pagas (the owner of the house where the victim and his companions had a drinking spree), despite being listed in the information as one of the witnesses for the prosecution.
- 3) The testimony of prosecution eyewitness Samson Abuloc, that he does not know Felix Celmar who claimed to be one of the persons asked by the former to help him bring the victim to the hospital.
- 4) The incredibility of the testimony of Samson Abuloc as regards his having identified accused-appellant through his voice and the type of firearm used by the latter in shooting the victim as well as his having seen the victim being hit at the back by the first gunshot fired at him by accused-appellant;