

SECOND DIVISION

[G.R. No. 129212, September 14, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO LACUESTA, RICHARD LACUESTA (AT LARGE), ALI LAMELA (AT LARGE) AND RODNEY LAMELA (AT LARGE), ACCUSED. MARIO LACUESTA, ACCUSED-APPELLANT.

D E C I S I O N

BELLOSILLO, J.:

TRAGEDIES, as they happen in our time and age, seem to have inanities for beginnings. As shown in this case, the dreadful death which befell the victim traces its roots to a trivial tale of a fighting cock.

Sometime in late 1994 Danilo Panes borrowed a fighting cock from accused-appellant Mario Lacuesta to be entered in a cockfight in Dueñas, Iloilo. On the day of the derby, Danilo took the cock to the *poblacion* and proudly showed it around. The oblivious cock somehow found its way into the hands of Elmer Piccio who upon recognizing it to be his cock that was earlier stolen, asserted his right to it. As a consequence, Danilo found himself confronted by an incensed Elmer who demanded an explanation why his cock that was earlier stolen was being entered in the derby. Danilo disclaimed any knowledge about the theft of the cock; instead, he pointed to accused-appellant as its owner. Elmer immediately went to the house of accused-appellant and demanded reparation for the theft. But accused-appellant claimed that he just bought it from somebody whom he could no longer remember. Elmer insisted on taking it back home.

The embarrassment that accused-appellant suffered triggered the unexpected. At about 11:00 o'clock in the evening of 3 August 1994 an exhausted Danilo hastily alighted from the passenger jeepney that brought him home. Danilo had just come with Nestor Mata from a whole-day seminar for *barangay* officials at the *poblacion*. They were joined in the jeepney by Elnora Latumbo who earlier missed the last public utility vehicle that was to take her home. While the three (3) were walking home after getting down from the jeepney Elnora begged to be excused to answer the call of nature and took cover behind a mango tree along the way. She pleaded with her two (2) companions to slow down a little bit so she could catch up with them.

As soon as Elnora left her two (2) male companions to relieve herself, a volley of shots was heard. Instantly, Nestor fell to the ground. When Danilo looked back, he saw in a fleeting moment the faces of the attackers - accused-appellant Mario Lacuesta, his brother Richard, and their cousins Ali^[1] and Rodnie Lamela, each armed with a twelve (12)-gauge *pugakhang*. Danilo sought cover among the tall rice stalks. His right arm was oozing with blood. He was in fear. The four (4) assailants were just five (5) arms length away. They were inching their way towards

Nestor and then turned his motionless body to face up and beamed their flashlights at his face. Then Danilo heard accused-appellant dejectedly say, "*he is not the one*" (referring to the bloodied Nestor), after which they abandoned Nestor on the road.

After the four (4) gunmen left, Danilo ran to the house of Oscar Villanueva for help. Oscar responded immediately by attending to Nestor hoping that he was still alive, but Nestor had already expired. Oscar was followed by his son Arnold. After an hour, Oscar returned to Danilo and took the latter to the *Pototan Provincial Hospital* for treatment. Danilo stayed in the hospital for five (5) days after which he transferred residence to far-away Mandurriao, Iloilo, for fear of reprisal. Meanwhile, Nestor succumbed to the three (3) gunshot wounds on his head.

Accordingly, criminal complaints for the death of Nestor Mata and the wounding of Danilo Panes were instituted against accused-appellant Mario Lacuesta together with Richard Lacuesta, Ali Lamela and Rodnie Lamela. After conducting a preliminary investigation, the 7th Municipal Circuit Trial Court of Dingle-Dueñas, Iloilo, issued an *Order* finding probable cause for murder and frustrated murder against all the accused.^[2] Forthwith, the corresponding Informations were filed against the four (4) accused and warrants for their arrest were issued. Accused-appellant Mario Lacuesta surrendered himself, posted bail and was accordingly released, while the three (3) other accused, Richard Lacuesta, Ali Lamela and Rodnie Lamela, evaded arrest. Up to now they have not submitted to the jurisdiction of the Court.

Subsequently, upon agreement of the prosecution and the defense, the cases for murder and frustrated murder were jointly tried and decided.

The case against accused-appellant was built around the testimonies of Danilo and Elnora. Danilo narrated that the story behind Nestor's death began from an ordinary confrontation in the cockpit until it ended in a tragedy in a deserted road in the evening of 3 August 1994.^[3]

Elnora corroborated Danilo's testimony that while she was about to relieve herself by the roadside she saw accused-appellant fire at Nestor while Ali shot Danilo. Richard and Rodnie were brandishing their *pugakhangs*. According to Elnora, she recognized all the accused because they had their flashlights on and the moon was bright that night. She also testified that she witnessed how the accused-appellant and his companions moved the body of Nestor, and that immediately after the assailants left, she went home and hid under her bed as she was traumatized by what she had just witnessed.^[4]

Accused-appellant Mario Lacuesta disclaimed having taken part in the killing of Nestor and the wounding of Danilo. Mario asserted that in the evening of 3 August 1994 he was at home drinking with Dominador Lara about a kilometer away from the crime scene. According to Mario, as it was the first day of his harvest, he invited Dominador, a *tuba* gatherer, for a few rounds of *tuba*. Their drinking spree lasted through the night; in fact, they broke up at two o'clock the following morning with both of them heavily intoxicated. Mario insisted that he learned of the shooting incident from Oscar Villanueva who told him casually about it in the afternoon of the following day while fetching water from their communal well.^[5]

Dominador Lara, Mario's alleged drinking buddy, supported his alibi. According to

Dominador, on 3 August 1994 while he was traversing the riverbank, accused-appellant invited him to the former's house to celebrate the first day of his harvest. They had a gallon of *tuba* and two (2) whole chickens, all to themselves. As he was too drunk to go home, he spent the night with Mario at the *palayas*^[6] and went home early the following morning unaware of the diablerie that had befallen their *barangay*.^[7]

The defense in a bid to discredit the testimonies of Danilo and Elnora presented Gil Catalan and Rene Lambuson as witnesses. Rene Lambuson, who claimed to be the conductor of the jeepney that brought home the *barangay* councilmen from the *poblacion* that night of 3 August 1994, insisted that Elnora was not aboard his vehicle thereby implying that she could not have witnessed the crime.^[8]

On the other hand, Gil Catalan, *barangay* captain of the community where the parties to this incident resided, testified that on the day of the slaying he attended the seminar for *barangay* officials together with his nine (9) *barangay kagawads* at the *poblacion*. As they were later joined by officials of two (2) other *barangays* they decided to hire a jeepney to take them home. There were two (2) other women from their *barangay* who joined them but he was certain that neither of them was Elnora Latumbo. He identified the two (2) women as Ruby Porras and Lorna Lapastora, the *barangay* secretary. He however admitted that he did not know much less meet Elnora prior to the incident.

An hour after Gil Catalan reached home, *Kagawad* Oscar Villanueva went to his house and reported that both Nestor and Danilo had been shot. Together with Oscar, Gil proceeded to the scene of the shooting. There they saw the lifeless body of Nestor lying prostrate on the ground. Gil summoned the relatives of Nestor and instructed them to take Danilo to the hospital for treatment. Meanwhile, according to Gil, he did some sleuthing himself but this did not bear fruit. No witness was available and, according to Danilo himself, he was not able to recognize their attackers as it was very dark.^[9]

The trial court was far from convinced by accused-appellant. According to the court, the defense failed to elicit credence and belief. Thus, for the death of Nestor Mata accused-appellant was convicted of murder qualified by treachery and sentenced to *reclusion perpetua*. Additionally, he was ordered to indemnify the heirs of Nestor Mata P22,482.40 as actual damages and P50,000.00 as civil indemnity.

As to the wounding of Danilo Panes, the trial court found the accused guilty only of attempted murder as no evidence was introduced to prove that Danilo would have died from his wounds without timely medical attendance. The court *a quo* ratiocinated that inasmuch as Danilo fled the crime scene immediately after "he was hit by the first shot, the subjective phase was not therefore complete."^[10] Accused-appellant was accordingly sentenced to suffer the penalty of imprisonment ranging from four (4) years and two (2) months as minimum, to ten (10) years as maximum, and to pay Danilo Panes P1,815.00 as actual damages. Incidentally, the court *a quo* did not give the specific nomenclature of the penalties it imposed.

In his brief, accused-appellant Mario Lacuesta assails the trial court for rejecting his alibi and convicting him of murder and attempted murder. He pins his hopes for a reversal on the argument that based solely on the testimonies of prosecution