

FIRST DIVISION

[G.R. No. 133886, September 05, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR PARBA, ACCUSED-APPELLANT.

D E C I S I O N

YNARES-SANTIAGO, J.:

For the fatal shooting of *Barangay Tanod* Teodoro Coronado, Oscar Parba was charged with the crime of Murder in an Information^[1] which alleges -

That on or about the 11th day of November 1996, at about 3:45 o'clock in the morning, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a gun, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there suddenly and unexpectedly attack, assault and shoot one Teodoro Coronado with said deadly weapon, thereby inflicting upon him the following physical injuries to wit:

- a) Hemorrhagic shock secondary to penetrating GSW to the abdomen perforating
- b) The descending colon at 2 pts. With moderate fecal spilage 3.0 cm. cortical laceration of the L kidney
- c) With non expanding retro peritoneal hematoma 5% renal contusion left moderate hemoperitoneum

And as a consequence of said injuries, said TEODORO CORONADO died a few hours later.

CONTRARY TO LAW.

Upon arraignment, the accused, assisted by counsel, pleaded not guilty.^[2] The case thereafter proceeded to trial.

After trial, the Regional Trial Court of Cebu City, Branch 18, found accused guilty as charged and accordingly rendered judgment^[3] against him, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing facts and circumstances, accused OSCAR PARBA is found guilty beyond reasonable doubt of the crime of MURDER and is hereby imposed the penalty of *RECLUSION PERPETUA*, with the accessory penalties of the law; to indemnify the heirs of the

deceased Teodoro Coronado in the sum of P50,000.00 and to pay the costs. The accused is, however, credited in full during the whole period of his detention provided he will signify in writing that he will abide by all the rules and regulations of the penitentiary.

SO ORDERED.

On review, accused-appellant asserts that -

I

THE LOWER COURT ERRED IN CONSIDERING THE EVIDENCE SUBMITTED AS SUFFICIENT TO WARRANT A FINDING OF ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT FOR THE CRIME OF MURDER.

II

THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE ONLY ALLEGED EYEWITNESS PRESENTED BY THE PROSECUTION.

III

ASSUMING WITHOUT ADMITTING THAT ACCUSED-APPELLANT COMMITTED THE CRIME, THE LOWER COURT ERRED IN FINDING TREACHERY AND EVIDENT PREMEDITATION ATTENDED THE COMMISSION OF THE CRIME.

The Prosecution's version of the incident, as summed in the People's Brief, tends to show that -

On November 11, 1996, about 3:45 o'clock in the morning, Barangay Tanods Efren Belcher, Rosalio Navasquez, Blaise delos Reyes, Leonil Cuizon, Crisologo Bautista, Victor Reyes and Teodoro Coronado decided to have a roving patrol of Labangon, Cebu City.

When the roving patrol was at Shangrila Village II, Teodoro Coronado told Efren Belcher that he would go ahead to the interior of Shangrila Village II as he would check on the building which he was guarding. Teodoro Coronado's distance from the roving patrol was about 6 meters ahead.

The roving patrol suddenly heard 2 gunshots somewhere in the vicinity of Shangrila Village II and Salvador Extension. Running towards the gunshots, Efren Belcher and the rest of the roving patrol saw appellant with a gun and Teodoro Coronado on the ground. They also saw appellant shoot, for the third time, Teodoro Coronado.

Sensing the presence of the roving patrol, appellant turned his attention towards them and shot at them twice. Fortunately, nobody was hit as

the members of the roving patrol were able to immediately scamper for safety.

Thereafter, a taxi passed by. Appellant again shot his gun towards the taxi. He then ran away from the scene of the incident.

Coming out from hiding fifteen minutes later, the roving patrol carried Teodoro Coronado and loaded him on a taxicab. The roving patrol was able to bring Teodoro Coronado to the Cebu City Medical Center for treatment.^[4]

Despite the medical attention given to Teodoro Coronado, he died on November 12, 1996 as a result of the gunshot wounds he sustained on November 11, 1996. As explained by Dr. Policarpio Murillo IV in his testimony:

Q Now kindly examine again you have copy of the death certificate tell us the cause of death?

A The causes of death as written in the Certificate of Death for this patient is hemorrhagic shock secondary to penetrating gunshot wound to the abdomen, perforating the descending colon at 2 points with moderate fecal spilage 3.0 cm cortical laceration of the left kidney with non-expanding retro peritoneal hematoma 50% renal contusion on the left moderate hemoperitoneum and I include here other operative notes, other cause of death. Acute necroses secondary to no. 1 zs I said earlier PTB other one is gunshot wound 0.5 x 0.5 cm antero medial aspect middle third (exit) left thigh.

Q How many wounds in all did this Teodoro Coronado [sustain]?

A Including the entrance and exit four open wounds.

Q If you have to take it totally, he only sustained 2 two wounds.

A But they are both wounds entrance and exit.

Q We just considered it as four (4)?

A It's actually how we reported it we still consider the exit wound as another wound.

Q Now tell us which of the two wounds was fatal?

A I believe that the wounds that [the] patient sustained hitting his abdomen is the most fatal.^[5]

Accused-appellant denied that he had anything to do with the killing of Teodoro Coronado. As culled from the transcripts and summed in his brief, he narrates that -

9. On 11 November 1996, at 2:00 o'clock in the morning, Accused-Appellant was in house along with his wife Cristina Recana.^[6] Not feeling

well, he awakened his wife and informed her that he had a fever.^[7] He told his wife that he was chilling, so his wife attended to him^[8] his fever subsided at about 10:00 in the morning.^[9]

10. In the meantime, at around 3:30 o'clock of the same morning, Accused-appellant heard a gunburst.^[10] His wife likewise heard several gun shots at that moment.^[11] Accused-Appellant learned that a person was shot at Shangrila, Labangon, two days after the incident.^[12]

With regard to the first assigned error, accused-appellant insists that the lower court erred in considering the evidence submitted as sufficient to warrant a finding of guilt beyond reasonable doubt for the crime of murder because:

1. The evidence presented by the prosecution is merely circumstantial in nature, which is likewise grossly insufficient to support a conviction beyond reasonable doubt.
 - 1.1 When cross-examined, Efren Belcher, the only alleged eyewitness presented by the prosecution, admitted that he did not actually see the person who fired the gunshots. Neither did he see which particular portion of the victim's body was hit.
 - 1.2 The place where the alleged crime was committed was dark. Hence, Belcher could not have clearly identified the perpetrator of the crime.
 - 1.3 Other circumstances cast doubt upon the alleged positive identification of Accused-Appellant as the perpetrator of the crime.
2. In the absence of clear and positive identification the defense of alibi should be upheld.

In the second assigned error, accused-appellant claims the lower court erred in giving credence to the testimony of the only alleged eyewitness presented by the prosecution since:

1. Efren Belcher's testimony that he allegedly saw the Accused-Appellant fire two shots at the deceased Teodoro Coronado is inconsistent, thus casting doubt as to whether he actually witnessed the shooting.
2. Efren Belcher's testimony that he was able to witness the shooting incident, and to identify the Accused-Appellant as the assailant despite the poor visibility at the scene of the crime is incredible, thus further discrediting him as an eyewitness.
3. Belcher's testimony that Accused-Appellant allegedly fired a shot at a taxi and a panel passing by is likewise inconsistent as to whether

the shot was fired upon the taxi or towards the air.

We disagree.

It must be pointed out that prosecution witness Efren Belcher, who was with the other members of the roving patrol, was only about six (6) meters away from the *locus criminis* when he heard two (2) gunshots and, thereupon, saw accused-appellant with a gun beside Teodoro Coronado who was prostrate on the ground. He also saw accused-appellant shoot the victim after which he fired at them. He testified as follows on how he witnessed the incident:

Q Now, tell us the circumstances how and why this co-tanod of yours, Teodoro Coronado, was shot?

A While we were standing at the corner of Shangrila Village II and Salvador Extension, moments later, Barangay Tanod Teodoro Coronado said that he would go first to Shangrila Village II.

Q How about you, what then were you doing when he said that he will go ahead?

A Doro went ahead and at the distance of six (6) meters, we followed him.

Q Then, what happened next, if there is any?

A When we reached at Shangrila, an unusual incident was, Teodoro Coronado, we heard a shot and we saw the one who shot and we saw the fallen Teodoro. When we saw the person who shot Teodoro and the person who shot also saw us, he also directed a shot towards us, the group, and so, we ran away to the city and hid ourselves.

Q Tell us that person whom you saw, who knew you and who shot Teodoro Coronado, if he is in court, will you be able to identify him?

A Yes, I can.

Q Kindly just stand and point out to the people inside the courtroom.

A That person sitting last.

INTERPRETER:

Witness pointing to the person who stood up, identifying himself as Oscar Parba.

FISCAL PEDROSA:

Q How many times did this Oscar Parba, whom you had identified, shot Teodoro Coronado?

A Two (2) shots.

Q How many times did this Oscar Parba, whom you had identified, shot Teodoro Coronado?

A Two (2) shots.

Q These two (2) shots, were they able to hit Teodoro Coronado?

A Yes. He fell down.

He consistently maintained, on cross-examination, that it was accused-appellant who shot the victim, despite intense grilling and repeated attempts of the defense