

SECOND DIVISION

[G.R. NO. 173309, January 23, 2007]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FERDINAND
PASCUAL Y BAUTISTA, APPELLANT.**

D E C I S I O N

TINGA, J.:

This is an appeal from the Decision^[1] of the Court of Appeals dated March 24, 2006, affirming the decision^[2] of the Regional Trial Court of Tayug, Pangasinan, Branch 51, which found appellant Ferdinand B. Pascual (Pascual) guilty of the crimes of Attempted Murder in Criminal Case No. T-2515 and Murder in Criminal Case No. T-2516, but modifying the civil aspect of the case and the sentence imposed in Criminal Case No. T-2515.

Pascual was charged with Frustrated Murder and Murder in two Informations dated August 8, 2000, which read as follows:

Criminal Case No. T-2515

That on or about the 15th day of April, 2000, in the evening, at Brgy. Flores, Municipality of Umingan, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a firearm, with treachery, did then and there wilfully, unlawfully and feloniously shoot one ADELAIDA PERLAOAN on the back of his (sic) body, the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence, but nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, due to the timely and able medical assistance rendered to the offended party which prevented his (sic) death, to the damage and prejudice of said ADELAIDA PERLAOAN.^[3]

Criminal Case No. T-2516

That on or about the 15th day of April, 2000, in the evening, at Brgy. Flores, Municipality of Umingan, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with a firearm, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shoot thrice MANUEL PERLAOAN on his face which caused his death, to the damage and prejudice of the heirs of said MANUEL PERLAOAN.^[4]

Pascual pleaded not guilty upon arraignment. Joint trial on the merits thereafter ensued.

The prosecution presented as witnesses Adelaida Perlaoan (Adelaida), Noel "Boy" Perlaoan and SPO1 Jeremias Fernandez (SPO1 Fernandez).

According to Adelaida, at about 11:00 o'clock in the evening of April 15, 2000, she was on the way home aboard a passenger jeepney driven by her husband, Manuel Perlaoan, the deceased victim in this case. As she and her young granddaughter were alighting from the jeepney, Adelaida heard two (2) successive gunshots. At the time she heard the sound of the first gunshot, she was helping her granddaughter get off the jeepney but got a glimpse of her husband lying face down on the steering wheel. She heard another gunshot and immediately took cover embracing her granddaughter. She felt that she had also been hit by gunfire.^[5]

A few seconds later, Adelaida stood up and saw Pascual walking away carrying a gun about two (2) feet long. She was then approximately seven (7) meters away from Pascual, whom she recognized because of the light coming from the jeepney's headlights and a street post. She cried out to her son, shouting that her husband was shot by Pascual. Her son came out of their house, embraced her and noticed that she was also hit because she had blood at her back. She lost consciousness but regained her bearings soon enough. She was thereafter taken to the Medicare Hospital in Umingan.^[6]

Noel "Boy" Perlaoan testified that he was already in bed at about 11:00 o'clock in the evening of April 15, 2000 when he heard gunshots coming from outside their house followed by his mother shouting that his father had been shot by Pascual.^[7] He immediately went out of the house and saw his mother on the right side of the vehicle. He also saw his father lying face down on the steering wheel with his head smashed. He turned off the jeepney's engine and headed for his uncle's house, which was two (2) houses away from theirs, to tell his uncle that his father had been shot. He returned to his mother and daughter and, with his uncle's help, hailed a jeep to take his mother to the hospital.^[8] Policemen arrived about an hour later and conducted an investigation.^[9]

SPO1 Fernandez testified that he was on duty on April 15, 2000 and received a report that there was a shooting incident in Brgy. Flores, Umingan, Pangasinan. Together with three (3) other policemen, he went to the crime scene to conduct an investigation. He noticed that Adelaida was wounded. Nonetheless, Adelaida told him that she saw Pascual shoot her husband and then flee.^[10]

The policemen immediately proceeded to Pascual's house but was told by the latter's wife that Pascual left their house just after dinner and might visit his brother in Brgy. Lapaz, Umingan, Pangasinan. Having received this information, they went to Brgy. Lapaz but failed to find Pascual. The policemen decided to put up a checkpoint in Balungao but still failed to locate Pascual. They returned to Pascual's house only to be told by the latter's brother that a tricycle arrived at dawn to fetch Pascual's wife.^[11]

They later received a report that Pascual was residing somewhere in Quezon Province. Pascual was apprehended by virtue of a previously issued warrant of arrest which was forwarded to Lucena City.^[12]

The defense presented Pascual as sole witness. According to Pascual, on August 15, 2000, he was at his wife's house in Ibabang Dupay, Red V, Lucena City with his brother-in-law, sister-in-law and three (3) children.^[13] He claimed that he has lived in Lucena City since he was released from prison in 1995.^[14]

The trial court rendered judgment finding Pascual guilty of Attempted Murder in Criminal Case No. T-2515 and Murder in Criminal Case No. T-2516. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the Court hereby sentences the accused to suffer:

1. Under Crim. Case No. T-2515, and applying the pertinent provisions of Act 4103, the penalty of from six (6) years of *prision correccional* maximum as MINIMUM, to ten (10) years of *prision mayor* medium as MAXIMUM; and,
2. Under Crim. Case No. T-2516, the penalty of *RECLUSION PERPETUA*.

Moreover, and as stipulated, the accused is hereby ordered to pay to private complainant Adelaida Perlaoan the amount of P5,000.00 as civil liability in Crim. Case No. T-2515, and to the heirs of the late Manuel Perlaoan, the amount of P200,000.00 as civil liability in Crim. Case No. T-2516.

Costs are likewise for his account.

SO ORDERED.^[15]

The case was elevated on appeal to this Court. However, pursuant to our ruling in *People v. Mateo*,^[16] the case was transferred to the Court of Appeals, which rendered the assailed decision affirming with modification the judgment of the trial court thus:

WHEREFORE, in the light of the foregoing disquisitions, the decision of the Regional Trial Court of Tayug, Pangasinan, Branch 51, in Criminal Case Nos. T-2515 and T-2516 finding appellant Ferdinand B. Pascual guilty beyond reasonable doubt of the crimes of Attempted Murder and Murder, respectively, are hereby **AFFIRMED**. In Criminal Case No T-2515, however, appellant's sentence is **MODIFIED**. His sentence is reduced to Two (2) years, Four (4) months and One (1) day of *prision correccional*, as minimum, to eight (8) years and One (1) day of *prision mayor*, as maximum.

The civil aspect of the case is **MODIFIED** to read: Appellant is ordered to pay the heirs of Manuel Perlaoan the amount of P25,000.00 as exemplary damages. The award of civil indemnity in the amount of P200,000.00 is reduced to P50,000.00. We affirm in all other respects.

SO ORDERED.^[17]

In his Brief,^[18] Pascual stakes his appeal on the assertion that his identity as the offender has not been established by sufficient evidence. He contends that Adelaida herself admitted that she did not see Pascual actually fire shots at her and her husband.

The Court of Appeals and the trial court accorded full faith and credence to the testimony of Adelaida who described with reasonable certainty the fact of the killing, as well as identified Pascual as the assailant. It is doctrinal that the trial court's evaluation of the credibility of a witness and his testimony is accorded the highest respect because of the latter's untrammelled opportunity to observe directly the demeanor of a witness and thus, to determine whether he is telling the truth.^[19]

In this case, Adelaida gave a straightforward, unequivocal and spontaneous testimony that she saw Pascual holding a long shotgun walking away rather hurriedly a few seconds after she heard the gunshots that killed her husband and wounded her. The following excerpts from her testimony inspire belief:

PROS. BINCE:

x x x x

Q When you took cover behind the jeep, what else happened?

A After around three seconds[,] I stood up and I felt nervous, sir.

Q When you stood up what did you notice, if any?

A I saw the person walking, sir.

Q Who was that person you noticed walking?

A Ferdinand Pascual alyas "Utak", sir.

Q This Ferdinand Pascual @ Utak whom you noticed walking, is this the same Ferdinand Pascual, [who was the] accused in this case?

A Yes, sir.

Q Where was Ferdinand Pascual when you noticed him walking?

A Going north, sir.

Q What did you notice from "Utak" when you noticed him proceeding north?

ATTY. STA. MARIA:

It presupposes that he was holding something?

WITNESS:

A I saw him carrying a gun in his hand, sir.

Q Did you notice what kind of gun was being held by the accused?

A About two feet long, sir.

Q And where was the accused when you first noticed him carrying a gun when you noticed him?

A He was only seven meters away from me when I noticed him, sir.

COURT:

Q Was he walking away from you when you noticed him?

A He was walking away, sir.

PROS. BINCE:

Q What did you do, if you did anything, when you saw him walking away?

A I shouted, sir.

Q What were the words you shouted?

A I cried out "Boy, Boy, your father was shot by "Utak."

Q Who was this Boy you are shouting?

A My son who was inside the house and maybe still asleep, sir.

Q Do you know how far was the accused when you started shouting?

A He was about 5-7 meters away. [20]

Adelaida further stated:

PROS. BINCE:

Q The last time you testified in court that after the shooting the accused walked towards the north. When you noticed the accused walking towards the north direction, what was his appearance?

A He was then in a long jacket (witness pointing up to the middle of her legs) and he was then walking towards north with a gun on his hand.

Q Will you please describe that gun holding [sic] by Utak when he was walking towards the north direction?

A The gun was about 2 feet long, sir.

Q Did you notice the color of that gun?

A No, sir.

Q How did Utak carry that gun?

A He was holding it with his hand danglely [sic], sir.

COURT:

Q His forearm was down?

A Yes, sir.

PROS. BINCE:

Q The incident happened during night time, to be exact at eleven o'clock in the evening of April 15, 2000. How sure are you that the one holding a gun was the accused Utak?

A I recognized [him] because the lights of the jeep were then on and