

THIRD DIVISION

[G.R. No. 126171, March 11, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FEDERICO GENITA, JR. Y CULTURA, APPELLANT.

SANDOVAL-GUTIERREZ, J.:

Challenged in this appeal is the Decision^[1] dated June 14, 1996 of the Regional Trial Court, Branch 4, Butuan City in Criminal Case No. 4954 finding Federico Genita, Jr., appellant herein, guilty beyond reasonable doubt of two counts of murder and sentencing him to suffer *reclusion perpetua* for each count.

Appellant was charged in an Information which reads:

“That on or about the evening of December 17, 1991 in Barangay Bugsukan, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot with the use of a high powered firearm one Jesus Bascon thereby hitting him on both legs, and Reynaldo Timbal who was hit on his head which caused their subsequent death.”^[2]

On arraignment, petitioner pleaded “not guilty.” Forthwith, trial ensued. The prosecution presented Danilo Timbal, Vicente Olaco and Dr. Elsie Caballero as its witnesses. Appellant took the witness stand for the defense.

The version of the prosecution is as follows:

On December 17, 1991, at around 8:00 o'clock in the evening, while the victims Reynaldo Timbal and Jesus Bascon were loading firewood in a truck in Barangay Bugsukan, Butuan City, appellant who was drunk and armed with an M-14 rifle, asked Reynaldo for a Christmas gift. Reynaldo told him to just come back because they were still loading firewood. Appellant left the place. Not long after, he returned and fired his gun at Jesus' feet, hitting his left leg. He immediately jumped into the truck. Appellant then went near its bumper and fired at the tire near the chassis. Then **he changed the magazine of his gun and fired again** at Jesus, this time, hitting his right leg. Reynaldo ran away, his right hand covering his head. Appellant chased him and fired at him, hitting his nape and right hand. After the commotion, the victims' co-workers who were able to take refuge from the cascade of bullets returned to the scene and found the dead body of Reynaldo. Jesus was immediately brought to the Butuan City General Hospital but died thereafter.^[3]

Dr. Elsie Caballero, City Health Officer of Butuan City, who conducted the post mortem examination of the body of Reynaldo, found that he died of “shock, gunshot wound in the neck with avulsion of brain tissues.”^[4] On the other hand, the Death

Certificate^[5] issued by Dr. Raul Monton, Medical Specialist II of the Butuan City General Hospital, attributed Jesus' death to "compound fractures, (R) & (L) Legs, and Hypovolemic Shock."

Appellant, relying on the exempting circumstance of accident as his defense, presented a different version. He testified that he was a member of the Civilian Armed Forces Geographical Unit (CAFGU) stationed at Bugsukan, Butuan City, hence, he was officially issued an M-14 rifle. On the evening of December 17, 1991, while on his way to his camp, he saw a truck parked at the right side of the road with its rear lights on. While approaching the vehicle, somebody grasped his neck. As a consequence, he accidentally pulled the trigger of the M-14 rifle slung on his shoulder. The weapon automatically fired. At this instance, his assailant set him free. Immediately he rushed to the camp and reported the incident to Sgt. Montealto who placed the camp on alert. Appellant stayed in the camp during the entire evening. The following morning, he learned that two persons were killed.^[6]

On June 14, 1996, the trial court rendered the assailed Decision, the dispositive portion of which reads:

"WHEREFORE, finding accused FEDERICO GENITA, JR. y CULTURA guilty beyond reasonable doubt for the death of the two (2) victims:

(1) He is hereby sentenced to *reclusion perpetua* with its accessory penalties for the death of Reynaldo Timbal which penalty entails imprisonment for at least thirty (30) years.

(2) For the death of Jesus Bascon, the said accused, FEDERICO GENITA, JR. y CULTURA is also sentenced to another penalty of *reclusion perpetua* with its accessory penalties which penalty entails another imprisonment of at least thirty (30) years.

Both sentences shall be served by the accused successively at the Davao Prison and Penal Farm at Panabo, Davao del Norte.

Accused is also ordered to indemnify the Heirs of Reynaldo Timbal the sum of Fifty Thousand (P50,000.00) pesos and another Fifty Thousand (P50,000.00) pesos for the Heirs of Jesus Bascon plus costs of suit.

IT IS SO ORDERED."^[7]

Hence, this appeal anchored on the following assignments of error:

"I

THE TRIAL COURT GRAVELY ERRED IN NOT GIVING EXCULPATORY WEIGHT TO THE EXEMPTING CIRCUMSTANCE OF ACCIDENT INTERPOSED BY THE ACCUSED-APPELLANT

"II

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE FAILURE OF THE

PROSECUTION TO PROVE ITS ATTENDANCE ON THE ASSUMPTION THAT
THE KILLING OF THE VICTIM WAS NOT ACCIDENTAL.”^[8]

Appellant contends that he was performing a lawful act with due care when the victims were killed. He was then on his way to the CAFGU station to report for duty. He had no intention to kill the victims. He accidentally pulled the trigger of the rifle and the bullets hit the victims. Thus, he should have been exempted from any criminal liability. Even assuming that he is liable for the death of the victims, he contends that the trial court erred in appreciating the qualifying circumstance of treachery.

The Solicitor General maintains that considering the number of gunshot wounds inflicted on the victims, the shooting could not have been an accident. Nonetheless, the Solicitor General agrees with appellant that the qualifying circumstance of treachery was not sufficiently proven, stressing that the latter was drunk when he approached Reynaldo. This should have put the victims on guard as it was established during the hearing that appellant tends to be cantankerous and out of control when he is drunk. Also, it was not proven that he consciously adopted the means of executing the crime.

Appellant’s version that he “accidentally shot” the two victims is incredible. Accident is an exempting circumstance under Article 12 of the Revised Penal Code. It must be stressed that in raising this defense, appellant has the burden of the evidence and it was incumbent upon him to establish that he was exempt from criminal liability.^[9] He must show with clear and convincing proofs that: **1)** he was performing a lawful act with due care, **2)** the injury caused was by a mere accident, and **3)** he had no fault or intention of causing the injury. Considering appellant’s evidence, it is clear that the requisites of accident as an exempting circumstance were not proven. **First**, appellant’s manner of carrying his M-14 rifle negates his claim of “due care” in the performance of an act. Knowing that his rifle was automatic, he should have seen to it that its safety lock was intact. Worse, he admitted that his finger was constantly on the trigger. With the safety lock released and his finger on the trigger, how can we conclude that he acted with due care? We cannot accept his version that he was just following his trainer’s instruction to release the safety lock while in a critical area.^[10] For one, he never presented his trainer to corroborate his statement; and for another, he was not in a critical area. **Second**, the number of wounds sustained by the victims shows that the shooting was not merely accidental. Both victims sustained more than one wound. While it could have been possible that the first wound sustained by both victims was by accident, however, the subsequent wounds sustained by them in different parts of their bodies could not have been similarly inflicted. And **third**, appellant manifested an unmistakable intent to kill the victims when he **reloaded his rifle** after his first unsuccessful attempt to kill them. Jesus had already sought refuge by jumping into the truck when another bullet hit his right leg. Reynaldo was already running away when he was shot on his nape and right hand. That appellant chased the victims and shot them several times clearly show that he had the intent to kill them.^[11] His defense must necessarily fail.

Moreover, if it were true that someone attacked appellant, thus causing him to accidentally pull the trigger of his rifle, then his natural reaction should have been to defend himself. Instead, he rushed towards the camp. Furthermore, he did not