462 Phil. 480

EN BANC

[G.R. No. 149889, December 02, 2003]

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUEL BACONGUIS Y INSON, APPELLANT.

D E C I S I O N

CARPIO MORALES, J.:

On automatic review is the Decision of July 11, 2001 promulgated by the Regional Trial Court of Cagayan de Oro City, Branch 18, convicting Ruel Baconguis *y* Inson (appellant) of murder and sentencing him to death.

To the charge of murder allegedly committed as follows,

> That on or about June 23, 2000 at 2:04 early in the morning at Phase 3, Block 21, Lot 9, Villa Trinitas Subd., Bugo, Cagayan de Oro City, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and with intent to kill, attacked one Roberto C. Mercado with the use of an undetermined caliber of a gun thereby inflicting mortal wounds which is the cause of his immediate death.
>
> Contrary to Article 248 of the Revised Penal Code, in relation to RA 7659, as amended.[1]

appellant pleaded not guilty during his arraignment on July 27, 2000.[2]

Culled from the evidence for the prosecution is its following version of the case:

On June 23, 2000, at around 2:40 a.m., while Lydia Mercado-Lledo was sleeping in her 3-bedroom one storey house, she was awakened by the sound of a gunshot. She immediately looked out of her bedroom window and saw to her right a tall man some five meters away from her[3] leave her house and jump over the $2^1/_2$ - 3 meters high bamboo fence.[4] Before the man who was wearing khaki short pants and a white T-shirt jumped, he turned his face to the left, thus enabling her to see his slim face and tall nose.[5]

Lydia soon heard someone moaning. She thus repaired to the sala where she found her younger brother, taxi-driver 24-year old Roberto Mercado (the victim), sprawled and bleeding on the floor. He was brought to the hospital but he died on the way due to severe hemorrhage resulting from a gunshot wound at the left chest. Aside from the chest, the victim also suffered gunshot wounds on his left forearm.[6]

The investigating officers found that the description of the man seen leaving Lydia's house matched that of herein appellant Ruel Baconguis who was a suspect in several

cases of theft and robbery.

In the afternoon of the incident, the police arrested appellant in the house of his in-laws at Purok 2-B, Gusa, Cagayan de Oro City.[7] At about noon of the following day or on June 24, 2000, appellant was paraffin-tested and was found positive for gunpowder nitrates on both hands.[8]

Lydia was accordingly informed by her other brother, policeman Adolfo Mercado, that the suspect had been arrested. In the early afternoon of June 24, 2000, she was brought to the cell of the police station where appellant was detained and was informed that the lone detainee therein was **the** suspect.[9] On seeing appellant, she declared that he was the man she saw leaving her house and jumping over the fence.[10]

The defense, on the other hand, denied the accusation.

Proffering alibi, appellant claimed that on the night of June 22, 2000, he took a walk along Limketkai with his common-law-wife Liezel Sacala, child, mother-in-law and sister-in-law after which they returned to the house of his in-laws; and at the time of the incident, he was fast asleep.[11]

Liezel corroborated appellant's claim, adding that on the night of the incident she woke up twice to give milk to their 2-year old baby, and appellant never left the house following their return from the walk.[12]

Crediting Lydia's positive identification of appellant as the man she saw leaving her house and jumping over the fence and the results of the paraffin test, the trial court convicted appellant by the decision on review,[13] the dispositive portion of which reads:

> WHEREFORE, finding accused RUEL BACONGUIS y INSON GUILTY beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code in relation to R.A. 7659, and after taking into account the presence of one generic aggravating circumstance of dwelling, without any mitigating, the said accused is hereby sentenced to suffer the supreme penalty of DEATH by lethal injection. He is further directed to indemnify the heirs the amount of FIFTY THOUSAND PESOS as damages for the death of the victim, another FIFTY THOUSAND PESOS as exemplary damages, actual expenses in the amount of THIRTY FOUR THOUSAND PESOS, plus to pay the costs. Pursuant to section 22 of R.A. 7659 and section 10 of Rule 122 of the Rules of Court, let the entire record of this case be forwarded to the Supreme Court for automatic review.
>
> SO ORDERED.[14]

In his brief, appellant proffers the following assignment of errors:

> I.
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> THE LOWER COURT ERRED IN CONVICTING THE ACCUSED OF THE

CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE LOWER COURT ERRED IN DISREGARDING THE TESTIMONIES OF THE ACCUSED AND DEFENSE WITNESSES AND IN RELYING HEAVILY ON THE TESTIMONY OF THE PROSECUTION WITNESSES.

III.

THE LOWER COURT ERRED IN APPRECIATING THE FACT THAT THE ACCUSED WAS NOT ASSISTED BY A LAWYER DURING THE CUSTODIAL INVESTIGATION IN VIOLATION OF HIS BASIC CONSTITUTIONAL RIGHT.

IV.

THE LOWER COURT ERRED IN APPRECIATING THE PRESENCE OF THE GENERIC AGGRAVATING CIRCUMSTANCE OF DWELLING DESPITE THE FACT THAT IT WAS NOT ALLEGED IN THE INFORMATION. (Underscoring supplied)

Appellant questions his arrest as bereft of a valid warrant. Having, however, submitted to the jurisdiction of the trial court when he entered his plea[15] and actively participated in the trial of the case, any infirmity in his arrest was deemed cured.[16]

Appellant likewise questions his subjection to custodial interrogation without the assistance of counsel. There was, however, nothing inculpatory or exculpatory obtained from him by the police during his custodial investigation.

> While it cannot be denied that accused-appellant was deprived of his right to be informed of his rights to remain silent and to have competent and independent counsel, he has not shown that, as a result of his custodial interrogation, the police obtained any statement from him—whether inculpatory or exculpatory—which was used in evidence against him. The records do not show that he had given one or that, in finding him guilty, the trial court relied on such statement x x x x In other words, no uncounseled statement was obtained from accused-appellant which should have been excluded as evidence against him.[17]

It bears noting that the evidence relied upon by the prosecution is circumstantial.

It is settled that for circumstantial evidence to suffice to convict, the following requisites must be met: 1) there is more than one circumstance; 2) the facts from which the inferences are derived are proven; and 3) the combination of all circumstances is such as to produce a conviction beyond reasonable doubt.[18]

The first circumstance which the prosecution sought to prove is that appellant was seen leaving the house where the victim lay bleeding of gunshot wounds not long after a gunshot was heard.

Prosecution witness Lydia identified appellant, then alone in the detention cell, and in open court as the person she saw leaving the house.

The value of the in-court identification made by Lydia, however, is largely dependent upon the out-of-court identification she made while appellant was in the custody of the police. In *People v. Teehankee, Jr.*,[19] this Court held that corruption of out-of-court identification contaminates the integrity of in-court identification during the trial of the case.

> In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.[20] (Underscoring supplied)

The *totality of circumstances* test has been fashioned to assure fairness as well as compliance with constitutional requirements of due process in regard to out-of-court identification.[21]

Applying the above-said test, there are nagging doubts if Lydia had a good opportunity to view the man she saw leaving her house. For by her claim, after hearing a gunshot, she stood up and "opened" the 3-panel jalousied and grilled bedroom window upon which she saw a tall, slim man who was about 5 meters away at the "right side of the window";[22] and the man turned his face to the left, glancing at the terrace[23] which terrace she could not see from where she was, but which was lighted by an 18-watt "[n]ot quite dim" but "more yellow" bulb "attached to the road (sic)."[24]

If Lydia could not see the terrace[25] which was five meters away from where she was, how could the suspect, who was by her account also five meters away from the terrace, glance at the terrace by merely turning his whole face to the left, given the logical location of the terrace to be obliquely behind (to his right) him.

If before appellant jumped he was, by Lydia's claim, about three meters away from the light bulb "attached to the road" which light illuminated the terrace, how could Lydia have clearly seen the face of the man turning his face to the left?

As for the circumstances surrounding the identification process, they were clearly tainted by improper suggestion. While there is no law requiring a police line-up as essential to a proper identification, as even without it there could still be proper identification as long as the police did not suggest the identification to the witness,[26] the police in the case at bar did even more than suggest to Lydia.

Thus, by Lydia's own account, the following transpired after she arrived at the cell where appellant was detained.

> Pros. On June 24, that is the following day, where were you?

Nolasco:

A : I was in our house.

Q : In the afternoon or morning?

A : In the morning, Adolfo Mercado went to my house and informed me that they already arrested a suspect last June 23.

Q : And what did you do with that information?

A : At 1:00 o'clock in the afternoon, June 24, I went together with my brother to Puerto Police Station.

Q : What did you do?

A : They let me see the suspect.

Q : Were you able to see the suspect?

A : Yes, sir.

Q : What was your reaction upon seeing the suspect?

A : I was so mad because the person whom I saw at that time was the same person.[27]

x x x

Atty. Azis [defense counsel]: You said that at about 8:00 o'clock of the same morning there were operative[s] from the Puerto Police Station and you said they investigated you about the incident?

A : Yes, ma'am.

Q : Who among the police officer[s]?

A : PO3 [Eddie] Akut, PO3 Ruben and PO3 Achas.

Q : You only described to them what you saw, the description of the suspect?

A : Yes, ma'am.

Q : About his being slim built?

A : Yes, ma'am.

Q : <u>You could not determine whether he is a fair skin[ned] or dark person</u>?

A : <u>I could not determine.</u>