

FIRST DIVISION

[G. R. No. 140634, September 12, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO PANSENSOY, ACCUSED-APPELLANT.**

D E C I S I O N

CARPIO, J.:

Before this Court is an appeal from the Decision^[1] dated September 13, 1999 in Criminal Case No. 94-11527 of the Regional Trial Court of Antipolo City, Branch 73, convicting appellant Roberto Pansensoy ("appellant" for brevity) of the crime of murder and sentencing him to suffer the penalty of *reclusion perpetua*. The trial court also ordered appellant to pay the heirs of the victim P50,000.00 as civil indemnity, P40,000.00 as actual damages and P20,000.00 as moral damages.

The Charge

Asst. Provincial Prosecutor Rolando L. Gonzales filed an Information^[2] charging appellant with the crime of murder, committed as follows:

"That on or about the 8th day of May, 1994, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a handgun, with intent to kill and by means of treachery and evident premeditation, did, then and there willfully, unlawfully and feloniously attack, assault and shoot one Hilario Reyes y Inovero, hitting him on his forehead, thereby inflicting upon him a mortal gunshot wound, which directly caused his death.

CONTRARY TO LAW."

Arraignment and Plea

When arraigned on February 20, 1995, the appellant, assisted by his counsel, entered a plea of not guilty.^[3] Thereafter, trial on the merits followed.

The Trial

The prosecution presented the following witnesses: (1) Analie Pansensoy, eyewitness to the actual shooting of the victim; (2) Dr. Emmanuel Aranas, the medico-legal officer who conducted the autopsy on the victim; (3) SPO1 Reynaldo Ancote, the police officer who conducted the investigation of the incident; (4) Gregoria Reyes, mother of the victim; and (5) Rogelio Fullente, neighbor of the victim. For its part, the defense presented the appellant as its lone witness.

Version of the Prosecution

Analie Pansensoy ("Analie" for brevity), twenty-eight years old, is the legitimate wife of appellant. She testified that she had been living-in with the victim, Hilario Reyes ("Hilario" for brevity), since February 1994. On May 8, 1994, she and Hilario were in the house they were renting at Lumang Bayan, Antipolo, Rizal. Hilario was lying down inside the house. She stood up when she heard a knocking on the door. As she opened the door, she saw appellant holding a gun. She embraced appellant and tried to wrest the gun away from him but she failed. Hilario went out of the house and sat on a bench. Appellant approached Hilario and asked him if he really loves his wife. Hilario answered in the affirmative. Appellant next asked Hilario if he was still single. Hilario answered yes. Appellant counted one to three and at the count of three shot Hilario. Hilario was hit on the forehead and sprawled on the ground.^[4]

Dr. Emmanuel Aranas, physician, conducted the autopsy on the victim at the St. James Funeral Parlor at past midnight on May 9, 1994. He found a single gunshot wound on the forehead which was the cause of death. He opined that the entry shows the area of smudging which indicates that Hilario was shot at close range. The distance of the muzzle of the gun from the forehead could be less than three inches. He also opined that the person who fired the shot and Hilario were facing each other.^[5]

SPO1 Reynaldo Ancloste, member of the Philippine National Police, conducted the investigation on the shooting of Hilario. He took the statements of Gregoria Reyes and Analie in the police station a day after the incident. He did not conduct an ocular inspection at the scene of the crime.^[6]

Gregoria Reyes ("Gregoria" for brevity), mother of Hilario, testified that she came to know about the death of her son through a neighbor, Roger. She found out that her son was dead upon arrival at the hospital and was taken to the funeral parlor. She saw the gunshot wound on the forehead of her son. On the same night of May 8, 1994, she went to the police station where she saw Analie give her statement to the police. She also gave her statement to the police. As a result of the death of her son, she incurred expenses in the amounts of P10,000.00 and P30,000.00 for the funeral and the burial, respectively. At the time of his death, her son was managing two passenger jeepneys, one of which he was also driving. He was earning P800.00 a day.^[7]

Rogelio Fullente ("Rogelio" for brevity), fifty-six years old, is a co-driver of Hilario in the Antipolo-Marikina route. He was the neighbor referred to by Gregoria in her testimony as Roger, who reported to her the shooting incident. He has known Hilario for ten to fifteen years. In the evening of May 8, 1994, he was in his home in Lumang Bayan which was about ten meters away from where Hilario was staying. According to him, their houses were separated by a driveway which could accommodate one jeep. He heard several knocks and opened the door of his house. When he opened the door he found out that somebody was knocking on the door of Hilario and ordering him to come out. The first time he saw the man knocking on Hilario's door, the man was not carrying anything. When he heard a gunshot, he opened the door again and saw the man carrying something before he left. Rogelio further narrated that when the man asked Hilario to come out, Hilario was standing by the door. The man asked Hilario if he loved his wife and Hilario answered yes. The man then fired a shot and Hilario's head bent forward before he fell down. He does not know the caliber of the gun but just heard the gunshot. He went to the parents of Hilario to report the incident. On cross-examination, Rogelio testified that

when appellant knocked on the door, it was Hilario who opened the door. Hilario sat on the bench by the door. When Hilario answered yes to appellant's question of whether he loved his wife, appellant immediately fired a shot. Rogelio testified that he watched appellant fire the shot and then left to report the incident to the parents of Hilario.^[8]

Version of the Defense

As expected, the defense had a different version as told by the appellant himself.

Appellant, twenty-eight years old and a security guard, invoked self-defense in his testimony. He testified that Analie is his wife and they have three children. According to him, their relationship as husband and wife was normal.

On May 8, 1994, at about 6:30 p.m., a certain Amadong Bisaya ("Bisaya" for brevity) told him that he saw his wife with their youngest child and "Tisoy", referring to Hilario, board a jeep on their way to Lumang Bayan. He had met Bisaya before when the latter told him some time in April 1994 that he always saw appellant's wife with another man. He asked Bisaya to accompany him to Lumang Bayan where Bisaya pointed to the room where his wife and "Tisoy" entered.

The appellant kicked the door of the room and there he found his wife and "Tisoy" lying beside each other. They were only clad in their underwear. He dragged his wife out of the room by her hair and while doing so, he saw "Tisoy" pull a gun from the table which was covered with clothes. He let go of his wife and jumped on "Tisoy" to grab the gun.

While they struggled for possession of the gun he hit the testicles of "Tisoy" with his knees. "Tisoy" fell on his knees but was still holding the gun. Still grappling for possession of the gun, appellant held on to the back portion of the gun and part of the trigger, while his other hand held Hilario's hand which was holding the butt of the gun. When Hilario knelt down, appellant was able to twist Hilario's hand and to point the barrel of the gun towards the latter.

The gun suddenly went off. At that moment, "Tisoy" was holding the trigger of the gun. "Tisoy" was shot on the head and fell down. It was "Tisoy" who was holding the trigger when the gun fired and hit him on the head. "Tisoy" was still holding the gun when he fell to the floor.

He confronted his wife and pulled her hair and slapped her. His wife was just seated in the corner of the room. He asked her where their child was. But before she could answer, their child went inside the room and embraced her mother very tightly. He tried to pull their daughter away from Analie but the latter did not let go of the child. He told Analie that he would kill her too if she did not release the child. He started to count "one, two", which made his wife release their daughter. He left the room with the child and proceeded to their house. "Tisoy" was still sprawled on the ground face down when he left."^[9]

The Trial Court's Ruling

The trial court accorded full faith and credence to the testimony of Analie and rejected the version of the appellant that he acted in self-defense. It found the testimony of Analie credible and observed that she remained unperturbed during the cross-examination. The trial court also noted that appellant, who was then a

security guard, was charged by his employer with the crime of qualified theft for the loss of a .38 caliber revolver. Appellant allegedly committed the theft on May 8, 1994, the very same day the shooting incident happened. The gun used in shooting the victim was not found at the scene of the crime but the slug recovered was that of a .38 caliber revolver. Although appellant was subsequently acquitted of the charge, the trial court considered this as "evidence of a circumstance connected with the crime." The trial court further noted that appellant went into hiding from the time the shooting incident happened until the case was filed in court on August 24, 1994.

The trial court pronounced judgment thus:

"WHEREFORE, premises considered, the accused is hereby found guilty beyond reasonable doubt with the crime of murder and is hereby sentenced to the penalty of *reclusion perpetua*. The accused is hereby further ordered to pay the heirs of Hilario Reyes y Inovero the amount of P50,000.00 as death indemnity and P40,000.00 and P20,000.00 as actual or compensatory and moral damages, respectively.

Costs against the accused.

SO ORDERED."^[10]

Hence, the instant appeal.

The Issues

Appellant is before this Court raising the following assignment of errors:

"I

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

II

THE COURT A *QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE ANY OF THE QUALIFYING CIRCUMSTANCES."

The Court's Ruling

The appeal is partly meritorious.

First Issue: Self-Defense

Appellant insists that he acted in self-defense. Self-defense as a justifying circumstance may exempt an accused from criminal liability when the following requisites are met, namely: (1) there has been an unlawful aggression on the part of the victim; (2) the means employed to prevent or repel such aggression are reasonably necessary; and (3) the person defending himself has not provoked the victim into committing the act of aggression.^[11] The burden of proving by clear and convincing evidence that the killing was justified is on the accused.^[12] In doing so, he must rely on the strength of his own evidence and not on the weakness of that of the prosecution.^[13]

Appellant asserts that the unlawful aggressor was the victim and his death could be attributed to himself alone. By his own testimony, appellant tried to prove unlawful aggression on the part of Hilario. According to him, he kicked the door, and when it opened he saw his wife and Hilario inside the room clad in their underwear. He pulled the hair of his wife and dragged her outside while she was embracing him. At this point, Hilario pulled a gun from the table. He let go of his wife, jumped on Hilario and grappled for possession of the gun. While trying to wrest the gun from Hilario, he hit Hilario's testicles with his knees. Hilario fell on the floor but was still holding the gun. When Hilario knelt down, appellant was able to hold and twist Hilario's hand, pointing the gun towards the latter. The gun suddenly went off and Hilario was hit on the head.

On the other hand, Analie testified that when she opened the door to their room, she saw appellant holding a gun. She embraced appellant and tried to wrest the gun from him but failed. Hilario went out and sat on a bench. Appellant approached him and asked him questions. Appellant counted and, at the count of three, shot Hilario in the head.

The conflicting versions of the prosecution and of the defense as to who initiated the aggression was settled by the trial court which gave full faith and credence to the testimony of Analie over that of appellant. The trial court, which had the opportunity to observe the demeanor of the witnesses on the stand, was convinced of the truthfulness of Analie's testimony and not that of appellant's.

Undeterred, appellant's first assignment of error is focused on the sufficiency of the evidence for the prosecution, questioning in particular the trial court's assessment of the credibility of the prosecution's eyewitness, Analie. According to him, Analie's testimony is flawed as she insisted that she and appellant had been separated for more than three years but this is belied by the fact that their youngest daughter is barely a year old. He also points out that appellant's version that he dragged his wife outside by pulling her hair was more believable and in accord with human behavior rather than Analie's version that appellant took time to interrogate the victim regarding how much the latter loved his wife and other personal circumstances before shooting him.

We find no reason to reverse or alter the evaluation of the trial court. We reiterate the time tested doctrine "that a trial court's assessment of the credibility of a witness is entitled to great weight – even conclusive and binding if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence."^[14] The alleged flaws in the testimony of Analie do not serve to impair her credibility or diminish the truthfulness of her remarks as to who initiated the aggression and fired the shot.

The allegedly incredible statements do not pertain to the act of killing, but rather to minor or incidental matters which happened before and after the fact of killing. Analie's testimony that she had been separated from appellant for three years which, as pointed out by appellant, was belied by the age of their youngest daughter, does not necessarily impair her credibility. Analie's 3-year separation from appellant does not preclude Analie's still having a child with appellant. As to Analie's version that appellant interrogated Hilario before shooting him, suffice it to say that it is a matter of common observation that the reaction of a person when confronted with a shocking or unusual incident varies.^[15] As admitted by appellant himself, it was the first time he saw his wife and Hilario together, veritably confirming what