

THIRD DIVISION

[G.R. No. 134756, February 13, 2001]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINGO PEREZ Y DE LEON, APPELLANT.

D E C I S I O N

PANGANIBAN, J.:

A frontal attack does not necessarily rule out treachery. The qualifying circumstance may still be appreciated if the attack was so sudden and so unexpected that the deceased had no time to prepare for his or her defense.

The Case

Domingo Perez y de Leon appeals the March 4, 1998 Decision^[1] of the Regional Trial Court (RTC) of Malolos, Bulacan (Branch 21), in Criminal Case No. 519-M-91, finding him guilty of murder and sentencing him to *reclusion perpetua*.

In an Information dated March 14, 1991, Assistant Provincial Prosecutor Victoria Fernandez Bernardo charged appellant with murder, allegedly committed as follows:
^[2]

"That on or about the 28th day of January, 1991, in the [M]unicipality of San Rafael, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Domingo Perez, armed with a handgun and with intent to kill one Felecidad^[3] Virginiza, did then and there willfully, unlawfully and feloniously, with evident premeditation, abuse of superior strength and treachery, attack, assault and shoot with the said handgun he was then provided the said Felecidad Virginiza, hitting the latter on the different parts of her body, thereby causing her serious physical injuries which directly cause[d] her instantaneous death.

"Contrary to law."

When arraigned on September 23, 1994, appellant, with the assistance of Counsel Ronolfo Pasamba,^[4] pleaded not guilty. After trial, the RTC rendered its Decision, the dispositive portion of which reads:

"WHEREFORE, all premises considered, this Court finds and so resolves that the prosecution has established the criminal liability of the accused beyond reasonable doubt. Accordingly, Domingo Perez Y de Leon is hereby found GUILTY of the crime of murder. Absent any circumstances that would mitigate or aggravate the penalty, and in line with the decision in the case of People vs. Villanueva, et al. GR. Nos. 97144-45, July 10, 1992, he is hereby sentenced to suffer the penalty of reclusion perpetua provided under Article 248 of [the] Revised Penal code. It

follows that the benefits of the Indeterminate Sentence Law cannot be applied to the accused herein.

"On the civil aspect, the accused is hereby condemned to indemnify the Heirs of Felicidad Virginiza in the sum of P50,000.00. Without positive proof except the receipt from the funeral home, of expenses incidental to her death, he is hereby ordered to pay the said offended parties the sum of P30,000.00 in actual/compensatory damages and the further sum of P100,000.00 in moral damages.

"With costs against the accused."

The Facts **Version of the Prosecution**

The Office of the Solicitor General summarizes the prosecution's version of the facts as follows:

"Appellant is the live-in partner of the victim Felicidad Virginiza, with whom he had two (2) children. After ten (10) years together, Felicidad, upon the advice of her brothers and sisters, ended the relationship and left appellant (TSN, December 12, 1994, p. 20, November 26, 1997, pp. 3, 6, 9-10, 15-16).

"In the late afternoon of January 28, 1991, Felicidad was in Barangay Capihan, San Rafael, Bulacan, sitting on a bench and taking a snack in front of the variety store of one 'Baby.' Across her were two (2) of her nephews, Gilbert Toria and Richard Virginiza, seated on another bench and likewise taking snacks. Nearby were some persons playing cards on a table (Ibid., November 4, 1994, pp. 7-8, 10, 16; June 9, 1995, p. 12; December 12, 1994, p. 10).

"Suddenly, appellant came from behind Felicidad, drew a .38 caliber pistol from his waist, and shouted 'Putang ina mo, Bebot.'" As Felicidad stood, up, exclaiming 'Huwag' with outstretched arms to restrain appellant, the latter fired twice at close range, grazing Felicidad's right forearm. When she turned to her side to escape, Felicidad tripped on an exposed root of a nearby tree and fell face down on the ground. Appellant caught up with her, raised her head by the hair, and shot her on the nape. Appellant warned the onlookers not to do anything, then hurriedly left the store on board a tricycle (Ibid., November 4, 1994, pp. 8-9, 10; December 12, 1994, p. 4-5, 17-18; February 6, 1995, p. 8-9, 11-12; March 8, 1995, pp. 9-12; June 9, 1995, pp. 4-8).

"Recovering from their initial shock, Felicidad's brother Adriano Virginiza, who had just arrived, together with Gilbert and Richard, carried her body to a place where medico-legal officer, Dr. Benito Caballero, conducted an autopsy. His findings showed that Felicidad sustained four (4) gunshot wounds, two on her right forearm, one on the upper left chest and one at the back of the head (Ibid., February 6, 1995, pp. 10-12; December 12, 1994, p. 18; June 30, 1995, p. 8; RTC Decision, p. 1). Gilbert and Richard also executed separate sworn statements about the incident

(Ibid., November 4, 1994, pp. 11-12; June 9, 1995, p. 15).

"The Provincial Prosecutor's Office filed the Information for murder on March 19, 1991. Pursuant to an arrest warrant issued on March 25, 1991, appellant was finally apprehended in Occidental Mindoro sometime in 1994 (RTC Decision, pp. 1-2)."^[5]

Version of the Defense

Appellant, on the other hand, states his version of the facts in the following manner:

"The evidence of the prosecution comprised of the testimonies of witnesses GILBERT TORIA, RICHARD VIRGINIZA, DOMINGO IRABAGON, ALFREDO VIRGINIZA and Dr. BENITO CABALLERO, which shows that in the late afternoon of January 28, 1991, victim FELECIDAD VIRGINIZA, [was] in Capihan, San Rafael, Bulacan, taking a snack in front of the store of one `BABY' when suddenly accused DOMINGO PEREZ Y DE LEON, her live-in partner for about ten (10) years, emerged in front of her, and shot her twice with [a] .38 caliber firearm, and when she tried to escape, she tripped on the root of a tree, causing her to fall face down, followed by the latter, [who] raised her head by the hair and pumped another bullet on her nape, after which accused escaped on board a motorized tricycle.

"On the other hand, the defense evidence composed of the testimonies of witnesses ALFONSO PEREZ, ROMEO RAMOS, ROGELIO PENEDA, ROMUALDO DELA CRUZ and accused DOMINGO PEREZ, himself, which established x x x that the accused was not in Capihan, San Rafael, Bulacan between lunchtime and early evening of January 28, 1991, but was in Bustus Dam celebrating the birthday of his wife, with his family and friends."^[6]

Ruling of the Trial Court

The trial court gave credence to the testimonies of the prosecution witnesses. It found that Prosecution Witnesses Gilbert Toria and Richard Virginiza had positively identified appellant to be the killer of their aunt. It also found the existence of the qualifying circumstance of treachery.

Hence this appeal.^[7]

Assignment of Errors

In his Brief, appellant submits the following issues for the consideration of the Court:

- "1. Whether or not it was the accused who committed the killing of the victim.
- "2 .If the accused was indeed the one who committed the killing of the victim, whether or not the killing was attended with qualifying circumstances to make it murder."^[8]

In the main, the Court will resolve two issues: (1) the sufficiency of the prosecution evidence and (2) the existence of treachery as a qualifying circumstance.

The Court's Ruling

The appeal has no merit.

First Issue: **Sufficiency of Prosecution Evidence**

Appellant posits that the accounts of the prosecution witnesses were merely fabricated and conflicting. Hence, he maintains that the trial court erred in giving credence to their testimonies.

We are not persuaded. Well-settled is the rule that this Court will not interfere with the trial court's evaluation of the credibility of witnesses, unless there appears in the record some fact or circumstance of weight and influence that has been overlooked or the significance of which has been misapprehended or misinterpreted.^[9] The reason for this is that the trial court, having heard the witnesses and observed their deportment and manner of testifying during the trial,^[10] is in a better position to decide the question. In the case before us, we find no cogent reason to disturb the trial court's assessment.

Appellant argues that the testimonies of the prosecution witnesses, who stated that the victim had been shot three times, do not jibe with the Medicolegal Report, which supposedly showed that the victim had sustained four gunshot wounds. This argument reveals the failure of the defense counsel to comprehend fully the Report and the testimony of the physician, Dr. Benito B. Caballero, who asserted that the victim had indeed been shot three times only. The four dots appearing in the medicolegal Report, which the defense counsel interpreted as four wounds, were explained by Dr. Caballero as corresponding to *three* gunshot *entrance* wounds and one gunshot *exit* wound. Clearly, the exit wound does not mean that a fourth shot was fired; it merely indicates that one of the three bullets went out of the victim's body, creating the fourth wound. Hence, contrary to appellant's claim, the Medicolegal Report corroborates and gives further credence to the story of the prosecution witnesses.

Insignificant are the alleged inconsistencies in the testimonies of the prosecution witnesses regarding the utterances of the accused immediately before the attack. Richard Virginiza and Gilbert Toria both testified that appellant swore immediately before shooting the victim, but they disagreed on whether those swear words were "*Walang hiya ka, Bebot*" or "*Putang ina mo, Bebot*." They agreed, however, on the manner of the attack and on the identity of the attacker. Indeed, the alleged inconsistency cited by appellant pertains to a very minor detail, and it strengthened, rather than impaired, the credibility of the two witnesses.^[11]

In the light of the foregoing, we reject appellant's submission that "although the defense of alibi may stand searching scrutiny, nevertheless, it acquires commensurate strength where no positive and proper identification has been made by the witnesses of the offended [party]."^[12] This doctrine is not applicable. We agree with the trial court that appellant was positively and properly identified by the