

## FIRST DIVISION

[ G.R. No. 123325, March 31, 1998 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ALBERTO CARIO A.K.A. "ENTENG," ACCUSED-APPELLANT.**

### D E C I S I O N

**DAVIDE, JR., J.:**

Accused-appellant Alberto Cario *alias* "Enteng" appeals from the 17 August 1995 decision<sup>[1]</sup> of the Regional Trial Court of Cavite City, Branch 17, in Criminal Case No. 365-94, which ruled against him as follows:

WHEREFORE, in view of the foregoing, the Court finds the accused Alberto Cario also known as "Enteng" guilty beyond reasonable doubt of "MURDER" and he is hereby sentenced to *reclusion perpetua*; to indemnify the heirs of Rolando B. Sobreo in the amount of ₱50,000.00 without subsidiary imprisonment in case of insolvency; to pay the amount of ₱28,000.00 for funeral expenses also without subsidiary imprisonment, and to pay the costs.

SO ORDERED.

The accusatory portion of the information<sup>[2]</sup> to which accused-appellant entered a plea of not guilty upon arraignment, and under which he was tried and convicted, read as follows:

That on or about June 7, 1994, in the City of Cavite, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, then being armed with an improvised shotgun or "sumpak", with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one ROLANDO B. SOBREGO, thereby inflicting upon the latter gunshot wounds affecting his internal organs such as heart, lung, liver, stomach and part of intestine, which ultimately caused his death.

CONTRARY TO LAW.

The witnesses presented by the prosecution were Arlene Sobreo, the victim's wife; Roberto Maxwell, an eyewitness; and Dr. Regalado Sosa, City Health Officer of Cavite City.

Arlene Sobreo testified that on 7 June 1994 at around 6:00 p.m., she was on her way home. As she neared "Nognog" store at Jasmin Street, Cavite City, she heard a "shot." As she passed by the store she saw accused-appellant carrying a "sumpak," a homemade shotgun. When she got home, Bernadette Mata, a neighbor, told Arlene that her husband was shot by accused-appellant. Arlene rushed to the scene of the incident, which was a short distance from "Nognog" store, only to find her husband wounded and lying on the ground in front of "Medy" store. While there were people milling around at the crime scene, she was unable to recognize them as she was

thinking of her husband. As she was unable to carry him, she asked Lito, her neighbor, to help bring her husband to the hospital, where a doctor told her that her husband was dead. She declared that she incurred expenses for her husband's wake, but could not recall the precise amount as the receipts therefor were with the victim's parents. On cross-examination, Arlene recalled that the incident took place at around 6:00 p.m., but it was not yet so dark that she was unable to see accused-appellant carrying a "sumpak," and that the place where her husband was shot was near the sea, while "Nognog" store was on the other side near the main road.<sup>[3]</sup>

Roberto Maxwell testified that he was able to positively identify accused-appellant as the one who shot the victim as Roberto had been seeing accused-appellant at the public market. On 7 June 1994, between 5:30 and 6:00 p.m., while Roberto was on his way to visit Rolando, Roberto saw accused-appellant shoot Rolando at a place called Aplayang Munti, at Sea Breeze Subdivision, Cavite City. At that time, accused-appellant and the victim stood facing each other, an arm's length apart. Roberto, who was then about ten meters away from the victim, was startled by the occurrence that he stepped back and went home. He described the gun used by accused-appellant as a "sumpak," which was made from a lead pipe.<sup>[4]</sup> However, it was only on 20 June 1994 when Roberto gave his statement about the incident<sup>[5]</sup> to the police authorities.

Dr. Regalado Sosa, City Health Officer of Cavite City, conducted the autopsy on the cadaver of the victim. His findings were summarized in the Autopsy Report<sup>[6]</sup> as follows:

#### EXTERNAL FINDINGS:

x x x

- = Contusion on the left jaw with 0.3 cm. x 0.6 cm. Abrasion within.
- = Contusion on the left chin with 0.1 cm. x 0.2 cm. Abrasion within.
- = Abrasion triangular in shape 0.5 cm. x 0.5 cm. X 0.3 cm. At the left posterior shoulder.
  - = Gun shot wound, 2.5 cm x 2.8 cm wound with irregular inverted borders at the center of a 6 cm x 5 cm powder burns. The wound is located 4 cm below the level of the nipples and 2 cm away from the anterior median line to the left. It is directed inwards, postero-lateral wards to the left with eight (8) exit wounds at the left posterior shoulder. The exit wounds are 4 cm-5 cm apart and the wound measures 0.5 cm in dm with irregular everted borders occupying 13 cms x 9 cms x 7 cms triangular space. One (1) deformed 0.5 in dm lead pallet was protruding from one of the exit wounds. Two slugs of the same form was palpated near the exit wounds and excised.

#### INTERNAL FINDINGS:

- = Complete fracture (Hole) of the sternum near the last three left floating ribs.
- = Ruptured heart at the lower left half of the heart 4 cm x 5 cm in size.
- = Ruptured fundus of the liver 10 cm x 8 cm x 6 cm x 8 cm.
- = Presence of thru and thru wound at the lower lobe of the left lung.
- = Severely ruptured stomach.
- = Severely ruptured duodenum and omentum.
  - = Presence of 0.5 cm in dm wound numbering nine (9) at the left internal lateral abdominal wall at the same level of the exit wounds.
- = A white palstic material was recovered inside the left thoracic cavity.

= Presence of 0.5 liter of liquid and clotted blood inside the thoracic and abdominal cavities.

#### CAUSE OF DEATH:

- = Shock secondary to massive internal hemorrhage due to gunshot wounds affecting the internal organs such as heart, lung, liver, stomach and part of intestine.<sup>[7]</sup>

Due to the presence of powder burns on the victim, Dr. Sosa opined that the victim's wounds could have been caused by a gun fired about two feet away from the victim. The gravity of the wounds, such as a ruptured heart, precluded the victim's survival even if he had been given immediate medical attention. The contusions and abrasion on various areas of the face could have been caused by contact with a hard or rough surface like sand, stone, or a rough floor, or possibly suffered from a fight. From the victim's body Dr. Sosa extracted three deformed lead pellets, each the size of a corn kernel, and a piece of hard, white plastic.<sup>[8]</sup>

The parties stipulated that in connection with the death of Rolando Sobreo, his family spent P28,000.00 for the funeral services rendered by the Funeraria Filipinas, as evidenced by a receipt (Exhibit "E") issued by the latter, and P10,000.00 for the wake.<sup>[9]</sup>

Accused-appellant, expectedly, told a different story, claiming he was a tricycle driver plying the route along Esteban Street, near the public market. Since childhood, he had known the victim, a kingpin in their area who acted as a bodyguard of a certain Max Gayak. On 6 or 7 June 1994, accused-appellant and the victim were gambling at a place called Ariston Sison.<sup>[10]</sup> The victim allegedly lost P1,000.00 in a bet, blamed accused-appellant for the loss, then immediately left. Later, at around 5:00 p.m., accused-appellant again met the victim, also at Ariston Sison. The victim was then with another person, while accused-appellant was with his son. In this second encounter, the victim charged that accused-appellant cheated the former and thus demanded a return of his money from accused-appellant. However, accused-appellant replied that the money was gone and that, anyway, it was not the victim's money. The victim then punched different parts of accused-appellant's body, but the latter did not retaliate as he was with his son. Afterwards, accused-appellant brought his son home, but returned later to buy food. He saw the victim engaged in a "drinking session." Although accused-appellant did not talk to the victim, the former heard the latter say "*hindi na ako sisikatan ng araw*" (meaning the sun would no longer shine on accused-appellant). Accused-appellant then "flared up" and grabbed the victim's gun which was lying on a bench near the victim, who then likewise went for the gun. While the two were grappling for the weapon, the gun went off, hitting the victim who fell to the ground. Accused-appellant threw the gun away and fled, as he did not know where to go. He saw neither Roberto Maxwell nor the victim's wife at the scene of the incident while fleeing from the area. While accused-appellant knew Roberto Maxwell, the former never saw Roberto until the latter testified in court.<sup>[11]</sup>

On cross-examination, accused-appellant stated that he saw what he claimed was the victim's gun, and identified it as a shotgun, not a *sumpak*. Furthermore, accused-appellant was three meters away from the victim when accused-appellant heard the victim's remark, and that the victim was still talking when accused-appellant grabbed the gun; moreover, (accused-appellant got hold of the gun ahead of the victim. Accused-appellant likewise admitted that he was taller than the victim, and that he

accused-appellant) had been previously charged with a similar offense, but denied that it was committed with the use of a *sumpak*.<sup>[12]</sup>

The trial court gave full credit to the version of the prosecution and appreciated against accused-appellant the qualifying circumstance of treachery, because of the suddenness with which he shot the victim who was then unarmed and had no chance of defending himself. The trial court likewise considered accused-appellant's running away after shooting the victim as flight evidencing guilt or a guilty conscience. Thus, in its decision of 17 August 1995,<sup>[13]</sup> the trial court found accused-appellant guilty beyond reasonable doubt of the crime of murder; sentenced him to *reclusion perpetua*; and ordered him to indemnify the heirs of Rolando B. Sobreo in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, to pay the amount of P28,000.00 for funeral expenses also without subsidiary imprisonment, and to pay the costs.

Accused-appellant filed his notice of appeal<sup>[14]</sup> on 25 September 1995 and we accepted the appeal in the resolution<sup>[15]</sup> of 27 November 1996.

In his Appellant's Brief filed on 26 June 1997,<sup>[16]</sup> accused-appellant contends that the trial court gravely erred in: (a) giving full weight and credence to the testimonies of the prosecution witnesses and in disregarding the theory of the defense; and (b) finding accused-appellant guilty of murder despite the insufficiency of the prosecution's evidence. He argues that the trial court apparently relied on the weakness of the defense and disregarded his claim that the victim was "a toughie and kingpin in the community [who] confronted him regarding the loss of money in gambling, boxed him on the different parts of his body and uttered to him, *HINDI KA NA SISIKATAN NG ARAW*." Accused-appellant explains that the victim's remark was threatening for it meant "you will die," and that there was an immediate and actual peril to accused-appellant as the victim was trying to reach for his shotgun. Thus accused-appellant reached for the gun "(u)pon instinct of self-preservation and to save himself from an impending death or injuries," but in the course of the struggle for the weapon, it accidentally went off and killed the victim. While accused-appellant admits his defense is weak, it is, nevertheless, believable and in accord with common knowledge and experience. In any event, the weakness of the defense should not be a basis for conviction.

Accused-appellant next cites a number of circumstances to assail the credibility of the testimonies of the prosecution witnesses. As to Roberto Maxwell, despite his friendship with the victim, Roberto did not offer to help bring the victim to the hospital; Roberto gave his statement to the police on 20 June 1994, only about two weeks after the occurrence of the incident; he had conveniently chosen that fateful day to visit his friend whom he had not seen for a year; and he failed to appear in court twice, and it was only after a warrant for his arrest was issued that he finally came to court to testify.

Accused-appellant likewise suggests that Arlene Sobreo's testimony was contrived since she "immediately mention[ed] the name of Roberto Maxwell when she had not even talk [sic] to him and not seen him for one year." Moreover, Arlene narrated that a neighbor, Bernadette Mata, told Arlene that her husband was shot, and that a neighbor named Lito helped bring the victim to the hospital, yet neither Bernadette nor Lito was presented as a witness for the prosecution.

Finally, accused-appellant maintains that granting *arguendo* that Roberto Maxwell's testimony was credible, it could not support a conviction for murder since the elements of treachery were not proven,<sup>[17]</sup> *i.e.*, the evidence did not show that accused-appellant employed means to deprive the victim of the opportunity to defend himself. In fact, according to Roberto, the protagonists were standing face-to-face, hence the victim had been "on guard" and would have been able to defend himself. Neither did the evidence indicate that accused-appellant deliberately and consciously adopted the means of execution of the offense, nor that there was a sudden attack against the victim. Thus accused-appellant concludes that treachery was not proved and points to the rule that treachery cannot be presumed but must be proved by clear and convincing evidence, as conclusively as the killing itself.<sup>[18]</sup>

In the Appellee's Brief, the Solicitor General agreed with the trial court's assessment of the evidence. First, Roberto Maxwell's testimony was straightforward and consistent and he positively and unhesitatingly identified accused-appellant. Second, that Roberto chose that fateful day to visit the victim but failed to help the victim and instead went home, were of no moment. Different people react differently to a given situation, and there is no standard response when one is confronted with a strange and startling experience; persons do not necessarily react uniformly to a given situation and there is no standard rule by which witnesses to a crime may react.<sup>[19]</sup> Besides, Maxwell was not shown to have any motive to testify falsely against accused-appellant. Third, Maxwell's testimony as to the distance between accused-appellant and the victim was corroborated by Dr. Sosa's conclusion that the victim was close to his assailant when the former was shot. Likewise militating against accused-appellant was his denial that a *sumpak* was used, when a plastic material and "corn-sized pellets," not bullet slugs, were recovered from the victim's body.

The Solicitor, however, disagrees with the trial court's finding of murder, for it was not conclusively proved that the attack was sudden; and even if it were, frontally or from behind, it was not shown that such mode of attack was coolly and deliberately adopted by accused-appellant with the purpose of depriving the victim of a chance either to fight or to retreat. Accused-appellant then could only be convicted of the lesser offense of homicide, without any mitigating or aggravating circumstance.

Accused-appellant explains in his Reply Brief<sup>[20]</sup> that there is no issue as to his identification since he admits to accidentally killing the victim. Neither is there an issue as to the distance between him and the victim as he concedes they were grappling for the weapon when it went off, thus Dr. Sosa's theory as to the distance between the victim and his assailant should not be deemed corroborative of Maxwell's testimony. Accused-appellant argues that the pellets and piece of plastic recovered from the victim should not be deemed to militate against his credibility, despite his claim that the victim's gun was a shotgun, not a *sumpak*. Regardless of whether the weapon was a shotgun or a *sumpak*, accused-appellant emphasizes that a gun was the cause of the victim's accidental death. Accused-appellant instead insists that attention should be focused on the credibility of the prosecution witnesses.

The first assigned error is without merit.

In his defense, while accused-appellant expressly admits having killed Rolando Sobreo, he interposes a combination of accident and what appears to be self-defense; the second is a justifying circumstance under paragraph 1 of Article 11, while the first is an exempting circumstance under paragraph 4 of Article 12, both of the Revised Penal