

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SALCEDO, DEFENDANT-APPELLANT.

G.R. No. L-37080. May 03, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Mandatory review of the decision of the Circuit Criminal Court at Pasig, Rizal in Criminal Case No. CCC-VII-765 Rizal imposing death penalty on Romeo Salcedo, the dispositive portion of which reads:

"WHEREFORE, finding the accused, Romeo Salcedo, GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences him to suffer the penalty of DEATH; to indemnify the heirs of the victim the amount of P12,000.00; to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages; and to pay the costs."

In an information filed with the court a quo on April 15, 1971, appellant Romeo Salcedo was charged with the crime of murder, allegedly committed thus—

"That on or about the 15th day of February 1971, in the municipality of Mandaluyong, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with John Doe and Peter Doe whose true names and whereabouts are still unknown, conspiring and confederating together and mutually helping one another, armed with gun and sharp pointed instrument, with intent to kill, evident premeditation, treachery and taking advantage of their superior strength did, then and there willfully, unlawfully and feloniously attack, assault and stab one ROMEO PAGUIO on the vital parts of his body, thereby inflicting upon the latter multiple stab wounds which directly caused his death."

The facts, as stated in the appellee's Brief, are:

"On February 15, 1971 at about 5:00 in the afternoon Romeo Paguio hailed a City Cab Taxi driven by Juanito Reyes at Arayat Street, Mandaluyong, Rizal in which he and two girl companions rode to Kalentong Street (pp. 4, 23, tsn, 17 August 1972). At Kalentong, Romeo Paguio and his companions alighted with instruction to the taxi driver to wait for him. After having been gone for 20 minutes more or less, Paguio returned and requested the driver to proceed back to Arayat Street (pp. 4-5, 7, 23, tsn, 17 August 1972). At precisely the same time that Romeo Paguio was at Kalentong but before his arrival at Arayat Street, Efren Barredo went out of the apartment of Danny de Guia to buy cigarettes at a store adjacent to said apartment also at Arayat Street, and while smoking thereat he saw Romeo Paguio arrive in a taxi at about 5:30 P.M. (Exh. '7', p. 88, Rec.; p. 2, tsn, 29 September 1972; pp. 32-34, 35-36, 64-65, 69, 74, tsn, 2 October 1972). The taxi stopped facing the direction towards Epifanio de los Santos Highway in front of the gate of the apartment of Danny de Guia which was about five (5) meters from where Efren Barredo was at the store (Exhs. '4' and '4-A', pp. 231-232, Rec.; pp. 55-60, tsn., 2 October 1972).

"After Romeo Paguio had alighted with instruction to the taxi driver to wait for him and while he was in the act of opening the gate of De Guia's apartment, accused Romeo Salcedo who had just alighted from a Cortina car had arrived and parked in front of the taxi shortly after said taxi had stopped, grabbed Romeo Paguio from

behind with his left hand holding the body with his right hand stabbed Romeo Paguio with a balisong on the chest (pp. 22, 28-29, tsn, 17 August 1972; pp. 2, 3-4, tsn, 29 September 1972; pp. 37-38, 40-42, 43-44, 54-55, 60, tsn, 2 October 1972). Romeo Paguio grappled with Romeo Salcedo trying his best to get loose from the hold of Salcedo. After he succeeded, he ran to a vacant lot across the street passing behind the parked taxi (Exh. '4-A', p. 232, Rec.; Exh. '7', p. 88, Rec.; p. 2, tsn, 29 September 1972; pp. 64, 67-68, tsn, 2 October 1972). Salcedo, however, chased Romeo Paguio and when he caught up with him, Romeo Salcedo stabbed Romeo Paguio again several times until Paguio lying prostrate on the ground with Salcedo still stabbing him pleaded: 'Tama na patay na ako!' (Exhs. '4' and '4-A' pp. 231-232, Rec.; pp. 2-3, tsn, 29 September 1972; pp. 64, 66-67, tsn, 2 October 1972).

"Efren Barredo while witnessing the affray wanted to intervene and help Romeo Paguio but he desisted because Romeo Salcedo had three other companions, two of whom remained inside the Cortina car, and one Jesus Villacorta, whom he knows and who was driving the Cortina car, also alighted at the time when Romeo Salcedo went out and stood near the Cortina car holding a submachine gun with both hands the muzzle pointing downwards, facing Efren Barredo (p. 3, tsn, 29 September 1972; pp. 46-47, 63, tsn, 2 October 1972). Taxi driver Juanito Reyes, who has not yet been paid on the other hand, upon seeing his passenger being stabbed several times moved over his taxi because of fear, at about five (5) armlengths ahead of the Cortina car (pp. 26-27, 51, tsn, 17 August 1972; pp. 62-63, tsn, 2 October 1972).

"After hearing the plea of Romeo Paguio and believing that he had sufficiently inflicted mortal wounds upon him, Romeo Salcedo left Paguio prostrate on the vacant lot, walked to the waiting Cortina 1959 model car with green color, and with Jesus Villacorta again on the wheel fled from the scene (p. 3, tsn, 29 September 1972).

"It was only after the Cortina car had left that Efren Barredo was able to render assistance to Romeo Paguio who walked staggering from the vacant lot towards the taxi shouting that he be helped and brought to the hospital (pp. 26-27, tsn, 17 August 1972; pp. 28, 66, 70-71, tsn, 2 October 1972). When Romeo Paguio was near the street from the vacant lot, he fell and could no longer stand at which juncture Efren Barredo, who met him, supported him and helped him board the taxi driven by Juanito Reyes (pp. 11-12, tsn, 17 August 1972; pp. 28, 30-31, 66, 71, 73-74, 79, tsn, 2 October 1972).

"Inside the taxi, Romeo Paguio reiterated his request that he be brought to the hospital and Juanito Reyes brought him to the emergency admission of the Provincial Hospital at Pasig, Rizal (pp. 13-16, tsn, 17 August 1972). Juanito Reyes lingered for a while in the hospital until he was paid more than P9.00 by a security guard. When a policeman arrived, he narrated the circumstances of how he brought the victim to the hospital and he gave his name and address to the police investigator who requested him to go to the Mandaluyong Police Department when called (pp. 16-18, 23-24, 25, tsn, 17 August 1972).

"While Efren Barredo did not accompany Romeo Paguio in the taxi, which brought him to the hospital, because of fear that Romeo Salcedo and his companions might cross them along the way, Efren Barredo together with his friends Eddie and Jess repaired to the Provincial Hospital of Pasig that same evening of February 15, 1971 (pp. 12-13, 31, tsn, 2 October 1972). There he saw Romeo Paguio's wife and brother as well as policemen talking to them but he did not report what he knew to the relatives and the policemen (pp. 14-16, 19-20, tsn, 2 October 1972). However, when Efren Barredo was in the house of Romeo Paguio on the morning of February 17, 1971 after his death, Barredo, Paguio's wife and Paguio's brother talked about the incident and Barredo was prevailed upon to be a witness. He was accompanied by Leonardo Paguio and the widow to the NBI that same morning where he gave a written statement (Exh. '2', pp. 85-86, Rec.; pp. 11, 21-23, 80-86, tsn, 2 October 1972).

"Likewise, although Juanito Reyes has repeatedly told the relatives of Romeo Paguio that he can recognize and remember the face of the person who stabbed Romeo Paguio, he told said relatives who went to see him several times as well as the Mandaluyong police investigator; that he did not want to testify if possible (pp. 36-37, 42, 44-45, tsn, 17 August 1972; pp. 26-27, tsn, 14 November 1972). However, he was finally prevailed

upon to cooperate in testifying and hence was interrogated and executed an affidavit at the Office of the Provincial Fiscal of Pasig, Rizal on July 7, 1972 (Exh. '1', p. 229, Rec; pp. 35-36, 39, 45-46, 56, tsn, 17 August 1972).

"Romeo Paguio who was brought to the Provincial Hospital at Pasig, Rizal on the evening of February 15, 1971 expired on February 16, 1971 (Exh. 'B', p. 175 Rec.). At the request of his brother, an autopsy examination was undertaken by Dr. Mariano B. Cueva, Jr. on February 17, 1971 on the basis of which he accomplished a Necropsy Report (Exh. 'B', p. 175, Rec.) together with a sketch indicating the locations of the different stab wounds suffered by Romeo Paguio (Exh. 'C', p. 176, Rec.). Dr. Cueva categorically gave the opinion that the stab wounds had the characteristics and nature of those inflicted by a balisong knife (pp. 18-28, 39, tsn, 30 October 1972). Dr. Cueva's post-mortem findings are as follows:

'Pallor. severe and generalized.

'Abrasions: 6.0 x 2.0 cms. left leg, anterior aspect, lower third; 4.0 x 2.0 cms., left arm, medial aspect, upper third.

'Incised wounds: 8.0 cms. long, left arm, anterior aspect lower third running horizontally, cutting skin and subcutaneous tissue, 5.0 cms. long, left elbow, anterior aspect, running downward and laterally involving skin and subcutaneous tissue.

'Stab wounds: (1) 2.5 cms, elliptical, located at epigastric region of abdomen. 1.0 cm. to the left of anterior median line. 5.0 cms, below level of nipple, oriented obliquely upward and medially, upper extremity sharp, lower EXTREMITY contused, edges clean-cut and gaping; path of wound is directed backward upward and medially, perforating diaphragm, dome of liver and penetrating lower lobe, right lung; approximate depth 17.0 cms.

'(2) 1.8 cms., elliptical, located at pectoral region, left chest, 9.0 cms, from anterior median line, 5.0 cms, directly below left nipple, oriented horizontally, medial extremity sharp. lateral extremity contused directly backward upward and medially, taking an intramuscular route 3.0 cms. deep.

'(3) 2.0 cms. long, elliptical located at left arm, anterior aspect, lower third, 5.0 cms, above elbow, oriented vertically downward, edges and extremities, modified by surgery; directed backward upward and medially, cutting blood vessels and nerves, approximate depth 6.0 cms.

'(4) 3.0 cms. long. modified and extended by surgical incisions to 10.0 cms., located at left forearm, anterior aspect. upper third 4.0 cms. below elbow; path of wound is directed backward upward and medially. severing blood vessels and nerves and communicating with a wound of exit 1.7 cms. located at left arm, medial aspect lower third, 3.0 cms. above elbow.

'(5) 1.7 cms., elliptical, located at left lumbar, sacral region, 10.0 cms. from posterior median, 5.0 cms. above iliac crest oriented downward and laterally, upper extremity contused, lower extremity sharp directed forward upward and medially, taking an intramuscular route 6.0 cms. deep.

'Hemothorax. right side. 1300 cc.

'Hemoperitoneum, 200 cc.

'Heart and its big vessels, contains small amount of dark fluid blood.

'Right lung, marked stelectatic.

'Brain and other visceral organs, marked pale.

'Stomach, half filled with partly digested food substances.

'Surgical intervention: Laparotomy repaid of stab wounds, drainage.'" (Exh. 'B', p. 175, Rec.)

The defense is alibi. The accused-appellant claimed that on February 15, 1971 he was at the law office of Atty. Pedro Quadra, at Alliance Building, Rosario, Manila from 3:30 to 6:00 in the afternoon for consultation with said lawyer. Atty. Quadra was not in the office and appellant contended himself in talking with a certain Atty. Guerrero, following which he left the office passing by Rosario Street and then Escolta where he did a little window shopping. He walked down the streets and because of the heavy traffic he reached home at about ten o'clock in the evening.

In this appeal, Salcedo alleged that the trial court erred (1) in giving credence to the testimony of People's witness Efren Barredo; (2) in giving credence to the testimony of People's witness Juanito Reyes; and (3) in imposing capital punishment on appellant.

Appellant claims that Efren Barredo is a family friend of the deceased Romeo Paguio and his wife; that prior to the stabbing incident, Barredo used to go to the house of the victim for some drinking spree; and that it was there where Barredo met accused-appellant Romeo Salcedo.

Further, appellant assails the credibility of Juanito Reyes on the ground that it took the latter one year and five months before he executed his affidavit in July 1972.

Anent the first and second errors, prosecution witnesses Efren Barredo and Juanito Reyes actually saw the stabbing incident committed at Arayat Street, Mandaluyong, Rizal. The trial court, in accepting the testimonies of these two witnesses, said:

"The deceased was stabbed several times by the accused, and this fact was successfully established by the two eyewitnesses in the persons of Efren Barredo and Juanito Reyes. Barredo was a friend of the accused while Juanito Reyes was a mere stranger, nothing more but a taxi driver whom the deceased hired to take him to the house of Danny de Guia, a friend of the latter. Barredo was standing in front of a store facing the house of Danny de Guia when he witnessed the stabbing incident. Reyes was inside his taxi; of course, he was seated on the wheel waiting for his passenger, the victim herein, when he saw the accused stab the former. It only shows that whatever positions these witnesses were at that precise moment were immaterial to defeat their positive identification of the accused. The contention of the accused that the testimonies of these witnesses are contradictory and inconsistent with each other is of no moment and could not be appreciated by the Court. Barredo might have omitted some facts in his narration, for some of the events that might have been observed by him might have skipped his mind, but it is enough that he identified the accused, in the same manner that the taxi driver identified him as the killer of the deceased Paguio. He might not have observed all the sequences of the incident from the beginning, but it is enough that he undoubtedly pointed to the accused as the one who stabbed the victim. One was standing while the other was sitting, so much so that the Court could not expect them to produce identical versions, otherwise the same would be a sham rehearsal—practiced phonograph. The defense pounded on the alleged inconsistencies of the statements of these witnesses from their open court testimonies. However, it is understandable because it is a matter of judicial experience that affidavits as species of evidence suffer from infirmities, because omissions therein often pass and escape the notice of police officers or the affiant himself who, unlike lawyers and judges are well-versed in the law of evidence. (People vs. Wenceslao Flores, et al., L-17077, April 29, 1968, p. 311-329). Any revelation by a witness in open Court which were not brought out in a previously executed affidavit may be introduced in evidence, for anyway, the defense has all the opportunity to cross examine the witness to test his credibility.

"The capacity for truth on the testimonies of the two eye-witnesses to the stabbing incident cannot be doubted by the Court. x x x"

The fact that Efren Barredo is a friend of the family of the victim is not sufficient motive for the witness to testify

falsely against appellant who is also an acquaintance and a friend. When Barredo took the witness stand he was merely doing a civic duty unlike so many who would just fold their arms and let others do it even if it would mean an injustice to the victim.

With regard to Juanito Reyes, it is understandable why he, a taxi driver and a breadwinner of his family, was reluctant to testify in view of the attendant inconveniences, loss of earning and fear of retaliation. The fact is, he was a witness to the horrible incident which befell Romeo Paguio that afternoon of February 15, 1971 in the hands of Romeo Salcedo whom he saw for the first time and for the second time when he identified him (Salcedo) in open court. As held in *People vs. Obngayan*, 55 SCRA 465, "Delay of a witness in informing other people of what he knew about a criminal offense would not affect his credibility where the delay was satisfactorily explained." It is a fact that Juanito Reyes has absolutely no motive to implicate appellant to such a heinous offense. His lack of motive to make a false imputation against the accused strengthens the credibility of the said witness.

Needless to state, the alibi interposed by appellant is one of the weakest defenses available in criminal cases and cannot prevail over the positive identification of Romeo Salcedo by Efren Barredo and Juanito Reyes as the perpetrator of the offense. On the basis of the evidence, the guilt of appellant has been established beyond reasonable doubt.

As there are no generic aggravating or mitigating circumstances, the proper penalty should be reclusion perpetua.

WHEREFORE, the trial court's judgment is modified in that appellant Romeo Salcedo, who was found guilty of the crime of murder, is hereby sentenced to suffer the penalty of reclusion perpetua. In all other respects, the appealed judgment is AFFIRMED. With costs.

SO ORDERED.

Teehankee (Acting C.J.), Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Aquino, J., took no part.

Fernando, C.J., on official leave.

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