

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT SESE Y BULANTE, ET AL., ACCUSED, GILBERT SESE Y
BULANTE, DEFENDANT-APPELLANT.**

G.R. No. L-54298. January 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Gilbert Sese y Bulante was charged with and convicted of robbery with homicide, in the Court of First Instance of Manila for the killing of Liberata Frejoles Cabanas and sentenced to reclusion perpetua together with the accessory penalties; to indemnify the heirs of the victim, Liberata Frejoles Cabanas, in the amount of P1,020.00, in cash money robbed and P12,000.00 as actual damages, the further amount of P50,000.00 as moral damages and another amount of P20,000.00 as exemplary damages, without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.[1] His brother, Romeo Sese who was similarly charged, was acquitted on ground of reasonable doubt. Hence, only Gilbert Sese interposed the present appeal.[2]

The Solicitor General, instead of filing an appellee's brief, filed a Manifestation on August 26, 1981, in which he made a very scrutinizing examination of the evidence, and on the basis thereof, submitted that the appellant is entitled to an acquittal, in effect finding appellant's contention that he was not identified beyond reasonable doubt as the perpetrator of the crime, to be well founded.

The sequence of events from the time of the commission of the crime is given in the Manifestation of the Solicitor General, by way of narrating the relevant facts, with emphasis on the testimony of the two (2) state witnesses who are supposed to have identified the appellant as the culprit. Thus -

"1. April 6, 1977 - At about 11:00 o'clock in the evening, an intruder entered the room occupied by the victim, Liberata Cabanas and her children, located at Tondo, Manila, through an opening in the wall (tsn pp. 12-16, Nov. 10, 1977). The intruder then climbed the bed where Liberata Cabanas and her children were sleeping and got a suit case (tsn pp. 16-17, *ibid*). Liberata Cabanas woke up and saw the intruder carrying the suit case (*ibid*). She got a broom and started hitting the intruder (tsn pp. 17-18, *ibid*). The intruder took out a knife and stabbed Liberata Cabanas four (4) times after which he ran away (tsn pp. 18-21, *ibid*).

"Noralyn Cabanas, daughter of Liberata Cabanas, who had witnessed what had transpired, shouted for help (tsn pp. 12-22, *ibid*). Neighbors responded and Liberata Cabanas was brought to the Mary Johnston Hospital where she died on arrival.

"2. April 7, 1977 - At about 4:00 o'clock in the morning, Noralyn Cabanas, the nine-year old daughter of the deceased, was investigated by the police and gave a written statement (Exhibit "L"), significant portions of which reads, as follows:

"25. T. Kilala mo ba ang lalake na sumaksak sa mama mo?

S. Hindi (umiling ang nagsasalaysay)

xxx xxx xxx

29. T. May suot ba na sombrero ang lalake?

S. May suot na sombrero, itim. May takip and mukha na puti, nakalabas ang mata ng lalake.

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31. T. Ano ang taas ng lalake?

S. Ganyan (itinuro si Teniente C. Melgar na ang taas ay 5'8"). (emphasis supplied)

"At about 6:00 o'clock in the morning, Zelda Puyod, whose family occupies the room adjacent to that of the deceased, gave a written statement (Exhibit "E") pertinent portions of which reads, as follows:

"14. T. Sino pa ang ibang umuukupa ng bahay na iyon bukod sa inyo?

S. Bukod pa sa amin, Si Aling Liberata, pamilya ni Sese at Villahermosa.

xxx xxx xxx

24. T. Kung malapit ka sa kuartero ni Liberata at bago ka makarinig ng hiyaw ni Amparo, meron bang nangyari sa kuartero ni Liberata?

S. Wala po akong napansin.

"3. April 8 or 9, 1977 - Police operatives of Precinct 2 picked up Romeo Sese, Roily Sese and Efren Sese in connection with the death of Liberata Cabanas (tsn. p. 14, March 19, 1979; tsn p. 38, *ibid*). They were detained, under waiver, for investigation (*ibid*). At the police precinct, Romeo Sese was told to admit the killing of Liberata Cabanas (tsn. pp. 38-39, *ibid*). After about a week in the detention cell, the Sese brothers, together with the other inmates were placed in a line-up (tsn p. 39, *ibid*). Noralyn Cabanas was asked to identify the assailant, but failed to do so (tsn pp. 39-40). After spending another week at the detention cell, the Sese brothers were released (tsn pp. 40-41).

"4. June 4, 1977 - Zelda Puyod gave an additional statement to the police (Exhibit "F") and this time narrating that she saw Boy (Gilbert) Sese climbing the partition going to the room of the deceased Liberata Cabanas while Dodong (Romeo) Sese and Totoy Sese were standing near the door of Liberata Cabanas' room. She further stated that -

"23. T. Itong si Boy Sese ano ang description niya, ano ang height niya?

S. Kasing taas nitong si Digoy (tinuro ay taas ni Rodrigo Frejoles na ang taas ay 5'4") x x x Kilala kong matagal si Boy Sese.

"5. June 10, 1977 or thereabout - Gilbert Sese, Romeo Sese and Joseph Sese were arrested by police operatives and were told to admit the killing of Liberata Cabanas (tsn pp. 13-15, May 11, 1979). Refusing to do so, they were mauled (*ibid*). Thereafter, they were made to line up, together with the other detention prisoners, where Noralyn Cabanas was told by the police to identify her mother's assailant (*ibid*).

"Testifying on how he was eventually 'identified' as the assailant, Gilbert Sese testified as follows:

"Q - You said a child was made to point, who was that child that was made by the police to point?

A - Noralyn.

Q - And what happened when the policeman tapped the child to point to the lineup?

A - We were not pointed to by the child.

Q - And when nobody was pointed to by the child, what else transpired?

A - The auntie was forcing the child to point.

Q - And who was that auntie you are referring that was forcing the child Noralyn Cabanas to point?

A - Carmen.

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Q - You said Carmen was trying to force the child to point in the lineup, will you please tell the Honorable Court how was that done?

A - What the auntie did was to hold the hand of the child and went near me and put the hand on my shoulder.

Q - In that precise moment when the auntie Carmen held the hand of Noralyn Cabanas and placed the hand of Noralyn on your shoulder, what transpired?

A - She left and the picture was taken. (tsn pp. 15-16, May 11, 1979)."[3]

As to the testimony of state witness Noralyn Cabanas, what cannot escape notice is that despite the fact that appellant is known to her for a long time, being a close neighbor, and he used to play with her brothers, she failed to mention during the investigation conducted by the police just five (5) hours after the incident, the name of appellant and point to him as the one who stabbed her mother. With the seriousness of the crime, and the perpetrator not having threatened her if she named him as the offender, because he left in great haste, this young girl would have had no cause for fear to reveal the identity of her mother's killer to the police. If she did not do so, as she should have done if she knew the identity of the intruder, it must be because the latter was not known to her, or at least was not recognized by her. This circumstance would exclude appellant who is well known to her, or would render her subsequent identification of him unreliable, specially with her own statement she gave to the police that the intruder wore a hat, his face covered, only his eyes being visible (Exh. L.).[4] No plausible reason then could be perceived why in her statement to the police given just five (5) hours after the incident, this witness did not specifically mention appellant as her mother's killer.

Accordingly, appellant's allegation that Noralyn Cabanas was aided by her aunt, Carmen Frejoles, when she (Noralyn) pointed to him in a police line up gains credence. As the Solicitor General correctly observed from the following testimony of Carmen Frejoles:

"ATTY. ARIAS:

Do you recall in relation with the death of your sister whether you went to the Police Headquarters at United Nations?

ATTY. ESTRELLA:

It is not proper for rebuttal question, Your Honor.

COURT:

Witness may answer.

A - Yes, sir.

Q - On what occasion was that?

A - To accompany the child so that she will be able to point.

Q - Point to whom?

A - To the accused.

(tsn pp. 9-10, July 20, 1979; underscoring supplied)"[5]

Noralyn and Carmen Frejoles, before the police line up took place, "had a preconceived plan to point to the accused as the assailant."

Similarly apt is the following observation of the Solicitor General:

"It may be proper to point out that the Sese brothers, as early as three days after the incident, were suspected by the police operatives as having something to do with the crime. They were arrested, detained, released and again, re-arrested. Thus, what initially might have been a mere suspicion on the part of the prosecution witness may have deepened into a conviction, especially since the police had apparently concentrated their efforts on the Sese brothers in their determined bid to "solve" the crime." [6]

Further, affecting seriously Noralyn's credibility is the variance of her estimate of the offender's height with that of the other state witness, Zelda Puyod, the former giving it as five feet, eight inches, while the latter, gave it as only five feet, four inches.

For her part, Zelda Puyod alleged that she saw appellant climbing the wall leading to the room of the victim. She made this statement in Exhibits "F" [7] and "G" [8] taken on June 4 and 10, 1977, respectively. Unquestionably militating against the truth of this statement is an earlier statement she gave on April 7, 1977 (Exh. E) [9] from which is quoted the following:

"24. T. Kung malapit ka sa kuarto ni Liberata, at bago ka makarinig ng hiyaw ni Amparo, meron bang nangyari sa kuarto ni Liberata?

S. Wala po akong napansin." [10]

Witness Zelda Puyod tried to explain why she did not immediately report what she allegedly saw, saying she was afraid something untoward may happen to her family. This can hardly be an excuse for her utter lack of civic courage, for in her situation, she would have precisely desired, for her own safety and that of her family, the apprehension and subsequent conviction of persons she knew would pose upon her a constant threat of a fate similar to that of the deceased who lived in the same neighborhood.

The changing statements given by the two principal state witnesses - Noralyn Cabanas and Zelda Puyod - first, without identifying who the culprit was, followed later after two (2) months from the death of Liberata Cabanas, with the identification of appellant as the offender, cannot but fail to make the mind rest at ease on the moral certainty of guilt of the person so shakily and waveringly identified. No less than a firm and positive identification closest to the time of the incident would suffice to generate that moral certainty, which would render futile and unavailing a mere defense of alibi, as appellant has put up. As illustrated, however, both by appellant's counsel and the Solicitor General, it might be said that appellant's alibi acquires strength commensurately as his identification exhibits weakness for being manifestly unreliable, thus generating substantial doubt as to appellant being the perpetrator of the crime. (See *People vs. Baquiran*, 20 SCRA 451). For the inflexible rule under our system of criminal justice is for the prosecution to prove the guilt of the accused beyond reasonable doubt, independently of the weakness of the evidence of the defense.

WHEREFORE, concurring in the submission of the Solicitor General, in that the guilt of appellant has not been proved beyond reasonable doubt, the decision appealed from is reversed and appellant is hereby acquitted of the crime charged. *Cost de officio*.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Abad Santos, Ericta, and Escolin, JJ., concur.

[1] p. 15, Rollo.

[2] p. 17, Rollo.

[3] pp. 64-68, Rollo.

[4] p. 21, Record of Exhibits.

[5] pp. 70-71, Rollo.

[6] p. 71, Rollo.

[7] p. 7, Record of Exhibits.

[8] p. 11, Id.

[9] p. 6, Id.

[10] p. 72, Rollo.

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