

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIMEON A. CASTRO, ACCUSED-APPELLANT.

G.R. No. L-42478. October 04, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision of the Court of First Instance of Cagayan, Branch II*, convicting the accused-appellant, Simeon Castro of the crime of Murder, qualified by treachery, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, the Court is to the opinion and so holds that the accused Simeon Castro is guilty beyond reasonable doubt of the crime of Murder qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code, without any mitigating or aggravating circumstance offsetting each other, hereby sentences him to suffer a penalty of reclusion perpetua; to indemnify the heirs of the victim in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay 1/4 of the costs.

The Court further finds that the prosecution failed to establish the guilt of the accused Rodrigo Sales and Cresencio Siazon beyond reasonable doubt, and hereby accordingly orders their acquittal with 2/4 of the costs de oficio.

SO ORDERED."

Accused-appellant was charged with three others by the Provincial Fiscal of Cagayan with the crime of Murder in an information dated April 25, 1968 alleging the offense to have been committed as follows:

"That on or about November 24, 1965, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Simeon Castro, Conrado Rodrigo, Cresencio Siazon and Rodrigo Sales, together with Wilson Stacy who is already dead, armed with guns, conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one Rodrigo Elizaga Sabado, inflicting upon him several gun-shot wounds on his body, which wounds caused his death.

That in the commission of the crime the aggravating circumstance of taking advantage of official position was present, the accused being all Municipal Policemen of Gattaran, at the time of the incident.

Contrary to law."

Wilson Stacy also a policeman, was included in the criminal complaint filed with the Municipal Court of Gattaran by the Provincial Investigator of the Cagayan Constabulary Command of Tuguegarao, Cagayan (Crim. Case Record, p. 1) but he died during the preliminary investigation of the case (Crims. Case Record, p. 203) and the case against him was dismissed by the Municipal Court (Crim. Case Record, p. 207). Accused Conrado Rodrigo died on November 15, 1971 (Crim. Case Record, p. 700) and the case against him was also dismissed (Decision, p. 2).

The testimonies of the witnesses of the prosecution as summarized by the lower court are as follows: (1) Felix Caranza testified on direct examination that when Cresencio Siazon, Rodrigo Sales and Conrado Rodrigo arrived in the scene of the crime, shortly after Wilson Stacy and Simeon Castro shot Rodrigo Sabado, they fired their guns into the air but on further questions of the Court and on cross-examination of the defense, he gave conflicting statements to the effect that the three accused (Rodrigo Sales, Cresencio Siazon and Conrado Rodrigo) fired their guns ten times and that some were directed into the air and some at Rodrigo Sabado; that five shots were fired by Conrado Rodrigo at Sabado, although he cannot remember how many shots were fired by Cresencio Siazon to the later because when the three accused were firing into the air and at the deceased, he hid in the canal (Rollo, p. ???); (2) Rolando dela Cruz Mangupag, another eye witness who corroborated the testimony of Felix Caranza stated that shortly after Wilson Stacy and Simeon Castro shot Rodrigo Sabado, the three accused arrived and each of them shot the victim several times and that Conrado Rodrigo and Cresencio Siazon used a carbine in shooting Sabado while Rodrigo Sales used a side arm. (Rollo, p. 10) and (3) Dr. Tomas L. Nolasco, the Medical Health Officer of Gattaran, Cagayan who performed the post mortem examination and autopsy stated that Rodrigo Sabado died from two (2) gunshot wounds and as testified by said Dr. Tomas L. Nolasco the cause of death were gunshot wounds of the lungs and heart (Rollo, p. 10).

On the other hand, the defense presented three witnesses in addition to the three accused; (1) Simeon Castro who made a complete denial as to his participation in the commission of the crime. On the contrary, he alleged that he witnessed the killing of Rodrigo Sabado by Wilson Stacy who told him that Rodrigo Sabado wanted to kill him (Stacy) and that he saw Wilson Stacy shoot Rodrigo Sabado twice. Thereafter, he took Wilson Stacy to the municipal building and accused Conrado Rodrigo went with them. He denied the testimonies of Felix Caranza and Rolando dela Cruz Mangupag and stated that Caranza was not at the scene of the crime although he admitted that Mangupag was with the deceased at the time of the incident (Rollo, p. 11); (2) Cresencio Siazon and Rodrigo Sales put up the defense of alibi; (3) Bernardo Farinas, Chief of Police of Gattaran, Cagayan who testified on the entries in the police blotter stating that Rodrigo Sabado was shot by Wilson Stacy (Hearing Jan. 25, 1972 Tsn pp. 7-22); (4) Judge Romarico who corroborated the alibi of Rodrigo Sales that the latter was present at the program held in Gattaran Elementary School from 6:00 to 10:00 p.m. of that day, maintaining order thereat; and (5) Juana Lacerma who corroborated the alibi of Cresencio Siazon that the latter was in the balcony of his house from 6:00 to 9:00 p.m. of November 24, 1965.

The trial court did not give weight to the testimony of Felix Caranza which it describes as vacillating and doubtful and therefore not sufficient evidence to support conviction beyond reasonable doubt. Likewise, the testimony of Rolando dela Cruz Mangupag, although positive according to the trial court, gives the impression that the inculpatory facts and circumstances are susceptible to two explanations, one favorable to the accused and the other one against.

Considering the physical facts established by Dr. Tomas L. Nolasco that the victim sustained four gunshot wounds which were attributed to the shots fired by Wilson Stacy and Simeon Castro, the trial court came to the conclusion that the three accused Cresencio Siazon, Rodrigo Sales and Conrado Rodrigo did not fire their guns at the deceased but in the air. (Rollo, pp. 10-18)

Thus, the trial court acquitted Rodrigo Sales and Cresencio Siazon on the ground that the prosecution failed to establish their guilt beyond reasonable doubt, but convicted accused Simeon Castro of the crime of Murder qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code.

In his brief, accused-appellant, through his counsel de oficio, Atty. Leon L. Asa of the Laurel Law Office, assigns the following errors:

I

THAT THE TRIAL COURT ERRED IN SURMISING THAT ACCUSED-APPELLANT SIMEON CASTRO AIDED HIS BROTHER POLICEMAN BY SHOOTING THE DECEASED RODRIGO SABADO; and

II

THE TRIAL COURT ERRED IN CONVICTING APPEL-LANT SIMEON CASTRO.

The two assignments of error are meritorious:

While it is a settled rule that the appellate courts will not disturb the factual findings of the trial court considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, (People v. Marzan 28 SCRA 203 /1984/; (People v. Royeras, 130 SCRA 259 /1984/; (People v. Tala, 141 SCRA 240 /1986/) the exceptions apply to the instant case where the trial court overlooked certain facts of substance and value which if considered would affect the result of the case, as follows:

- 1 -

As to the number of gunshot wounds and firearms used:

The medical certificate (Exh. A) issued by Dr. Tomas Nolasco the physician who performed the postmortem examination showed the following findings:

“II. Findings -

A. Head and Neck-Nothing of importance

B. Upper Extremities-

1. Right upper Extremities?

a. Gunshot wounds of entrance at the middle of the adductor side of right hand.

b. Gunshot wound of exit at the adductor side of right hand nearer the elbow joint.

2. Left upper extremities?

a. Gunshot wound of entrance at the adductor side of left hand near the elbow joint without gunshot wound of exit (Slug reco-vered here)

C. Thorax -

1. Gunshot wound of entrance at the right side at the axillary line.

2. Gunshot wound of exit at the left side between the axillary line and anterior axillary line.

D. Abdomen - Nothing of importance.

E. Lower Extremities?

1. Left Lower Extremities?

a. Gunshot wound of entrance at the middle third of the adductor side of left thigh without gunshot wound of exit breaking the femur into splinter (Slug was recovered here)

III. Cause of Death -

Gunshot wound of lungs and heart."

On the witness stand, Dr. Nolasco testified that the gunshot wound under paragraph 2 of paragraph B (upper extremities), gunshot wound left and near the elbow joint, was the exit of the gunshot wounds a and b under paragraph 1, right upper extremities and that the gunshot wound of entrance and exit found on paragraph C-thorax is the continuation of the gunshot wound under paragraph B-upper extremities. Thus, the three (3) gunshot wounds were caused by only one bullet from a 38-caliber gun which was recovered imbedded at the thorax side of the left arm. This would be the bullet that caused the death of the victim by causing injury to his lungs and heart. The second bullet also coming from 38-caliber gun, found its mark on the left thigh of the victim where it was recovered. He testified:

"Court:

Q- You said that there are three gunshot wounds, were the 3 gunshot wounds caused by only one bullet?

A- Yes, sir, only one.

Fiscal:

Q- In your medical certificate, doctor, Exhibit A, you stated here under findings 1 and 2 were gunshot wounds, could you indicate the gunshot wound of entrance?

A- Here (The witness points on the right side of his body on the left).

Q- So we understand from you that this gunshot wound of entrance and exit found on paragraph C thorax is the continuation of the gunshot wound under paragraph B upper extremities?

A- Yes, sir.

Q- You stated here that there is a gunshot wound here at the left side, will you please indicate the location of said wound, doctor?

A- At the left thigh, sir.

Q- Could you indicate the relative position of the assailant in relation to the victim at the time this gunshot wound was fired?

A- I believe it was fired when the victim was lying down.

Q- You stated that the slug which caused the wounds on the right upper extremities passing through the thorax and went out at the left side of the thorax and imbedded at the thorax side of the left hand, if that slug is shown to you, could you still identify the same?

A- Yes, sir.

Q- Presenting to you this slug which for purposes of identification, I request that it will be marked as Exhibit B.

Court: Mark it.

Fiscal:

What relation has this slug with the slug which you recovered imbedded at the left hand of the victim?

A- This was the same slug which I recovered, sir. (Witness refers to Exhibit B, slug.)

Q- In this medical certificate, you stated that you recovered the slug at the thigh, could you still identify it if it

is shown to you?.

A- Yes, sir.

Fiscal:

I request, Your Honor, that this slug be marked as Exhibit G.

Q- What relation has this Exhibit with the slug you recovered at the thigh of the victim?

A- This was the slug I recovered from the thigh, sir. The other one was recovered from the left arm.

Q- Could you tell us, doctor, the cause of death of the victim?

A- The cause of death is injury of the lungs and heart.

Q- Could you tell us the caliber of the bullet which you found imbedded at the middle of the left thigh?

A- 38 caliber." (TSN, December 15, 1969, p. 57-59).

On cross-examination, Dr. Nicolas said that there were only two gunshot wounds or points of entrance on the body of the victim and the gunshot wounds have come from only one firearm. He testified:

"Cross-examination

by Atty. MANDAC:

Q- You stated, doctor that there were only 3 gunshot wounds inflicted upon the body of the victim, is it correct?

A- There were two gunshot wounds, two points of entrance.

Court: For clarification. How many gunshot wounds, doctor?

A- There were only two gunshot wounds on the body of the victim, Your Honor.

Atty. Mandac:

Q- And the gunshot wounds might have come from only one firearm?

A- Yes, sir, caliber 38. I do not know the firearm but the bullets were one of one kind." (TSN, Ibid. p. 60)

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As to the relative position of the assailant in relation to the victim.

At the time the gunshot wounds at the right upper extremities was inflicted, Dr. Nolasco testified that the assailant was at the right side of the victim:

"Q- I will go to your findings, doctor, from the right upper extremities under par. A - gunshot wound of the entrance at the middle of the right hand, will you indicate the location of said wound?

A- Here, sir, (The witness points at the back part of the right arm.)

Q- Could you tell this Honorable Court the relative position of the assailant in relation to the victim at the time this wound is inflicted?

A- The assailant must be a little bit at the right.

Q- Which right?

A- At the right side of the victim." (TSN, Ibid, p. 54-55).

The assailant was five meters away from the victim.

"Q- This Exhibit B doctor, is a slug which you stated you have recovered it from the left arm. What was the relative position of this slug when you removed it?

A- I don't remember.

Q. How far might have been the assailant to the victim?

A- Five meters. (TSN, February 16, 1970, p. 69-79).

Dr. Nolasco opined that the assailant might be standing and the victim lying when the gunshot wound on his left thigh was inflicted (TSN, December 15, 1969, p. 61), but he categorically stated at the continuation of the cross examination that the assailant was at the right side of the victim.

His testimony was as follows:

"Q- Doctor, will you please indicate the entrance of the gunshot wound which you found on the left thigh of the de-ceased Rodrigo Sabado?

A- Here, the bullet entered the left thigh and was lodged at the femurs at the lower third.

COURT:

Q- I (sic) did not touch any other part of the thigh?

A- No, Your Honor.

FISCAL ANTONIO:

Q- You stated femur, did it break the bone?

A- Yes, the bone were broken into small pieces.

Q- On the basis of your findings regarding the entrance and exit of the bullet, what would be the possible position of the assai-lant to the victim?

A- The assailant was at the right side of the victim."

(TSN, February 16, 1970, p. 68)

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As to the admission of the killing by one of the accused:

Wilson Stacy took responsibility for the death of Rodrigo Sabado. According to Bernardo Farinas, Chief of Police of Gattaran who was then the police desk sergeant at the time when the incident happened, at about 7:00 and 8:00 o'clock in the evening of November 24, 1965, the late Patrolman Wilson Stacy reported to him that he (Stacy) shot one Rodrigo Sabado at the cafeteria or restaurant just in front of the public market of Gattaran (Tsn, Sept. 14, 1972, p. 25). He identified the entry on page 5 (Exh. 4-C), police blotter, as the one written by then Cpl. Rodrigo Sales about the incident, and the signature below the entry as that of then Chief of Police Bonifacio de la Pena. It was the policy of Chief of Police de la Pena that only the corporal would make the entries in the police blotter (Tsn, Ibid, p. 9, 13-14).

Corporal Rodrigo Sales testified on that particular entry in the police blotter as follows:

"Q- Now, also on page 104 at the bottom, there appears a bracketed portion already marked as Exh. 4-C, will you please read and tell the Court what is all about, Wilson Stacy reported in this Office that he shot to death the person of Rodrigo Sabado at 8:00 and according to said Patrolman Stacy, he tried to aim a shot to said policeman. Do you know who wrote that?

A- I was the one who wrote that, sir."

(Tsn, September 14, 1972, p. 30)

Sales made the entry in the blotter, at around 10:00 o'clock p.m. of the same date of the incident (Tsn, June 29, 1972, p. 161). He testified that the investigation was made by the Chief of Police who called for him to enter the report in the police blotter. He was then at the veranda of the school building where a program was going on when the message of the Chief of Police was conveyed to him by patrolman Tuscano. He made the entry on the presence of Stacy, the Chief of Police who was the one questioning Stacy, desk sergeant Bernardo Farinas, Conrado Rodrigo and Simeon Castro (Tsn, June 29, 1972, p. 175; September 14, 1972, p. 31).

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As to the corroboration of documentary evidence by physical evidence:

The kind of weapon issued to Stacy on that day according to Farinas was a 38-caliber revolver Webley (tsn., Sept. 14, 1972), which was corroborated by testimony of Rodrigo Sales that they were only using 38 Caliber Webley (Tsn, June 29, 1972, p. 168). The affidavit executed by the PC investigator showed that Wilson Stacy surrendered to him on November 25, 1965 a 38 caliber revolver, Serial No. E-1548 and four empty shells (Crim. Case Record, p. 81). This corroborates the findings of Dr. Nolasco that the bullets that inflicted wounds upon the body of Rodrigo Sabado came from a 38 caliber gun.

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As to the negative results of appellant's paraffin test:

The report of the NBI dated January 3, 1966 on the results of the paraffin test conducted in the presence of the PC investigator, Sgt. Silvestre G. Pagawisan, by its Forensic Chemistry Division, on the persons of all the accused including the deceased Wilson Stacy and Conrado Rodrigo, gave a negative report on the presence of nitrate on the hands of Stacy, Sales, Rodrigo, and Castro but gave positive results for nitrates on both hands of accused Cresencio Siazon (Crim. Case Record, p. 129). There is no record that the investigator or the prosecution ever disputed or disproved the NBI findings. Neither was a ballistic test conducted to determine which gun fired the slugs recovered from the body of the victim, considering that the same type of guns were issued to all the accused on the day of the incident. The Gattaran police department used only .38 caliber guns.

Indeed, it is evident that the trial court erred in giving credence to the very testimonies it has rejected as conflicting and unreliable in convicting appellant and in holding that the latter's denial was not corroborated by evidence.

Despite the doubt engendered in its mind by the "vacillating and doubtful" testimony of prosecution witness Felix Caranza and its characterization of the testimony of witness Rolando dela Cruz Mangupag as susceptible of two explanations: one favorable to the accused and the other, against him, which is not sufficient to support conviction, the trial court nevertheless surmised that "it is not unlikely that Simeon Castro aided his brother policeman (Wilson Stacy) by shooting the deceased Rodrigo Sabado." Finding a defendant guilty in a criminal case cannot rest on a mere presumption, but upon clear proof of guilt beyond reasonable doubt (Ilo vs. Court of Appeals, 108 Phil. 938 /1960/). In *People vs. Dramayo* (42 SCRA 59 /1971/), this court held:

"Accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. Appellants were not even called upon then to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such a standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. x x x."

Convictions must come only after it survives the test of reason. (*People v. Bania*, 134 SCRA 347 /1985/). Where the prosecutor's evidence has many loose ends, and has failed to tie up to the satisfaction of the court so that the guilt of the accused has not been established beyond reasonable doubt the accused is entitled to acquittal (*People v. Tempongko, Jr.*, 144 SCRA 483 /1986/).

In the alternative, in order to implicate accused-appellant and hold him responsible for the death of Sabado, conspiracy must be shown to exist, for when there is conspiracy among the accused, the actual role played by each of them will not have to be differentiated or segregated from the acts performed by the other accused (*People v. Pamilgan*, 102 SCRA 578 /1981/). The records however, do not show that conspiracy has been proven in the case at bar.

WHEREFORE, the appealed judgment of conviction is hereby Reversed and Set Aside and the accused-appellant Simeon Castro is Acquitted on grounds of reasonable doubt.

SO ORDERED.

Fernan, C.J., Feliciano, and Cortes, JJ., concur.
Gutierrez, Jr., J., on leave.

* Penned by Judge Alfredo C. Florendo.

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