

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO SARDON AND MICHELL SARDON, ACCUSED-APPELLANTS.

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HERNANDO, J:

Before Us is an appeal from the Decision[1] dated May 20, 2009 rendered by the Regional Trial Court (RTC), Branch 11 of San Jose, Antique in Criminal Case No. 2004-1-6923 finding accused-appellant Gregorio Sardon and Michell Sardon[2] guilty beyond reasonable doubt of the crime of Murder, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered finding the accused GREGORIO SARDON and MICHELL SARDON, guilty beyond reasonable doubt of the felony of murder as defined and penalized under Article 248, Revised Penal Code, as amended by Republic Act No. 9346, hereby:

(1) IMPOSING upon each of the accused GREGORIO SARDON and MICHELL SARDON the penalty of reclusion perpetua and the accessory penalties appertaining thereto;

(2) ORDERING the said accused GREGORIO SARDON and MICHELL SARDON to jointly and severally pay to the heirs of the victim RUBEN SANTAMENA the sums of Php65,000.00 for and as actual damages; Php25,000.00 for and as exemplary damages; Php50,000.00 for and as moral damages; and Php50,000.00 for and as civil indemnity; and

(3) PRONOUNCING no costs.

SO ORDERED.[3]

The Antecedents

In an Information dated January 13, 2004, Assistant Provincial Prosecutor Cesar Dan T. Alecando of the Province of Antique charged accused-appellants Gregorio Sardon and Michell Sardon, father and son, respectively, with the crime of Murder, allegedly committed as follows:

That on or about the 19th day of October 2003, in the Municipality of Tobias Fornier, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court the above-named accused being then armed with knives, with intent to kill, conspiring, confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously attack, assault and stab with said knives one Ruben Santamena, thereby inflicting upon the latter fatal wounds, on the vital parts of his body which caused his instantaneous death.

With the qualifying circumstance of treachery.

Contrary to the provisions of Article 248 of the Revised Penal Code.[4]

Gregorio Sardon pleaded not guilty at his arraignment on February 19, 2004.[5] On the other hand, Michell Sardon, who was apprehended on a later date, likewise pleaded not guilty when arraigned on October 29, 2004.[6] Pre-trial and trial thereafter ensued.[7]

Version of the Prosecution

The prosecution's version, as spelled out in the Brief of the Office of the Solicitor General, shows that at about seven o'clock in the evening of October 19, 2003, both accused-appellants were having a drinking session with Ruben Santamena, Maximo F. Mondragon, and Ricardo Navales at the house of Moises Sanot in Barangay Igtugas, Tobias Fornier, Antique. While they were drinking, a heated argument arose between Ruben and Ricardo. Maximo tried to pacify them but Ruben suddenly stood up and threatened to slam the pitcher on the table. Ruben made good on his threat and slammed the pitcher on the table. Immediately thereafter, Gregorio and Michell stood up and pinned Ruben face down on the table. Gregorio stabbed Ruben at the left upper arm while Michell stabbed the latter three times at the back. Michell later went up to the house, told Moises to put off the solar light, and stayed inside.[8]

Meanwhile, Ruben's body was left lying on the ground. Ricardo attempted to lift Ruben's body but was prevented by Gregorio. Thereafter, Gregorio pushed the table towards Maximo, pinning him to the ground.[9]

Afterwards, Ruben's wife Jane Ruben and her father Juan Sanot arrived. They placed Ruben's body in a hammock and hurriedly went to the hospital. On the way to the Mamerto Portillo Memorial Hospital, Maximo dropped by the police station of Tobias Fornier, Antique and reported the incident to the police officers. He narrated what happened and told the police that Gregorio and Michell stabbed Ruben. At around 11:00 p.m., the group arrived at the hospital. The attending physician, however, pronounced Ruben dead on arrival.[10]

On October 20, 2003, Dr. Ramon A. Moscoso, Jr., conducted an autopsy on the cadaver of Ruben at the President Diosdado Macapagal Hospital. The Autopsy Report revealed that Ruben suffered four stab wounds. The stab wounds of Ruben were produced by a sharp-edged instrument. He died due to the fatal stab wound at his back which penetrated the pleural cavity and the lower lobe of the left lung.[11]

On January 17, 2004, the police arrested Gregorio. He was transferred to the Antique Rehabilitation Center on January 19, 2004. Seven months later, the police captured Michell in Guimbal, Iloilo.[12]

Version of the Defense

Accused-appellants interposed denial as their primary defense. They alleged that at the time of the stabbing of Ruben Santamena, they were not around the place where it took place but in some other places. They illustrated their defense in their brief as follows:

Gregorio Sardon testified that on October 19, 2003, at about 7:30 in the evening, he was in his house in Barangay Igtugas, Tobias Fornier, Antique, watching over his mother. At that time, he had no knowledge of the whereabouts of his son Michell Sardon but at five o'clock in the afternoon of the same day, Michell was in the house of Barangay Kagawad Moises Sanot, the uncle of his wife. He knew the victim Ruben Santamena because they are from the same barangay. Ruben Santamena is dead because he was allegedly stabbed. However, he does not know the assailant. He averred that he could not have killed the victim because he was in his home. He only came to know that he was one of the suspects in the killing of Ruben Santamena when he was picked up by the police on January 17, 2004.[13]

Further, Gregorio denied knowledge as to what time his son Michell Sardon got home on October 19, 2003. He did not see his son the following morning because the latter told him that he will have to accompany his aunt to Barangay Lindero. He saw his son again on October 20, 2003 at around 7:30 in the evening. At that time he did not hear of any rumor that he and his son were the suspects in the killing of Ruben Santamena.

He knew Kagawad Moises of Barangay Igtugas, Tobias Fornier, Antique because the latter is the uncle of his

wife. He said that in the early part of the day of October 19, 2003, and until five o'clock in the afternoon, he was in the house of Moises Sanot to help out because there was a celebration.

The Barangay Captain at that time was Maximo Mondragon who was also in the house of Kagawad Moises on October 19, 2003. He was already home by six o'clock in the evening and did not return to the house of Moises Sanot on that day.[14]

The next day, before seven o'clock in the morning, he dropped by the house of Maximo Mondragon because they were supposed to harvest rice. That was the time when he was told by Maximo Mondragon that Ruben Santamena was stabbed to death by Ricardo Navales in his presence.[15]

Michell Sardon testified that he is 29 years old and single. He said that at about 7:30 in the evening of October 19, 2003 he was in Mandurriao, Iloilo. He left for Iloilo after lunch of that day to accompany his uncle Joselito Gangoso. He knew the victim Ruben Santamena because they live in the same barangay. He later learned that Ruben Santamena was stabbed to death but he was surprised to know that he was being accused of the crime when he was not the one responsible. He was arrested in August of 2004 in Guimbal. He averred that in the morning of October 19, 2003, he was in the house of Moises Sanot as there was a gathering. Maximo Mondragon and his father Gregorio were also present in the said house. After lunch, he left for Iloilo.[16]

Thereafter, the defense formally offered in evidence Certificate of Entry No. 9447 found on page 0636 of the Police Blotter of the Tobias Fornier Police Station which was admitted by the trial court in the Order dated January 11, 2007.[17]

The Ruling of the Regional Trial Court

On May 20, 2009, the RTC convicted accused-appellants as charged.[18] The court gave credence to the testimony of eyewitness Maximo F. Mondragon, the Barangay Captain of Igtugas, Tobias Fornier, Antique that both Gregorio and Michell Sardon had inflicted the stab wounds on Ruben Santamena that resulted to the latter's death and disbelieved the denial and alibi interposed by the accused-appellants. It appreciated Maximo Mondragon's credibility particularly since both accused admitted that prior or even after the incident, they and Maximo had no rift or discord that would impel the latter to falsely testify against them. In addition, the autopsy report which stated that four stab wounds were found on the victim jibed with the testimony of Maximo that Gregorio inflicted one stab wound on Ruben while Michell delivered the three other stab thrusts on the victim.

The RTC also considered the qualifying circumstances of conspiracy and treachery by elucidating as follows:

In the present case, at the time of the felonious assault, the victim Ruben Santamena was not in a position to defend himself as he was then being pinned face down on the table and had no weapon, whereas both the accused Gregorio Sardon and Michell Sardon each had a knife which they respectively wielded when they attacked the victim. The superiority of the accused in number and the fact that they were armed with knives when they stabbed the victim show treachery attended the slaying of the victim. xxx

In light of all the foregoing, this Court is of the view that the conspiracy of the accused Gregorio Sardon and Michell Sardon resulted to the death of the victim Ruben Santamena, whose slaying is qualified to murder by the circumstances of treachery pursuant to paragraph 16, Article 14, and paragraph 1, Article 248 of the Revised Penal Code, of which both accused are guilty beyond reasonable doubt.[19]

On May 25, 2009, both accused filed a Motion for Reconsideration[20] aimed at seeking a reversal of the decision or, at the least, a modification of the judgment to the lesser offense of homicide. Accused pointed out that Maximo Mondragon lied when he implicated them (accused) since Exhibit "1",[21] a police blotter dated October 20, 2003, indicated that during the incident, a commotion ensued and after the commotion, it was found that

Ruben Santamena was stabbed by an unidentified assailant, which information was allegedly supplied by Maximo. In effect, they questioned the credibility of the sole eyewitness Maximo since his statement given after the occurrence of the stabbing was contradictory to the statement he gave in court.

As to the second ground raised in the motion, accused insisted that treachery was absent because the incident was preceded by a provocative statement by victim Ruben Santamena when the latter uttered that he will crush the pitcher. This statement elicited a terse response from Gregorio Sardon who dared Ruben to “crush it”, and when Ruben did crush the pitcher, Michell pinned Ruben on the table where he was then stabbed.

On June 17, 2009, the RTC denied the motion for reconsideration based on its findings that the blotter entry stating that the assailants were unidentified does not adversely affect the credibility of Maximo Mondragon who testified and positively identified Gregorio and Michell Sardon as the assailants; a police blotter cannot prevail over a testimony given in open court; the heated altercation was between Ruben Santamena and Ricardo Navales and not with either accused, such that the utterances of Ruben Santamena, if such constituted as a provocation, was directed against Ricardo Navales and not against the accused; and, that treachery is not negated by the mere fact that the attacker and the victim had a fight or that the victim was forewarned of the danger to his person.

Assignment of Errors

Aggrieved by the judgment of conviction, accused-appellants have interposed this appeal on the ground that the trial court erred in convicting them of the crime charged by citing in their Brief the following errors:

- I. The trial court erred in giving credence to the testimony of the prosecution witness Maximo Mondragon which is contrary to his statement reflected in the police blotter;
- II. The trial court erred in finding that there was conspiracy so as to hold both accused for the crime of murder;
- III. The trial court erred in finding that there was treachery to qualify the killing to murder.[22]

The Solicitor General recommended that the trial court’s judgment of conviction against appellants be affirmed with modification only as to the amount of damages based on prevailing jurisprudence.[23]

THE RULING OF THE COURT

In this appeal, appellants seek their acquittal on the grounds that: (1) the testimony of prosecution eyewitness Maximo Mondragon is contrary to the statements stated in the police blotter; (2) conspiracy is not present; and (3) treachery is likewise absent.

The testimony of Maximo Mondragon

Defense insists that the police blotter (Exhibit “1”) which stated that the assailants of Ruben Santamena was unidentified, should be given credence and probative value since such utterance of Maximo was conveyed to the policemen right after the incident and thus can be taken as a form of *res gestae*. At such moment when he delivered the information that the assailants were unidentified, Maximo had no time to prevaricate much less contrive a story different from what really happened, thus, appellant insists that they are not responsible for the death of Ruben Santamena since his assailants had been unidentified.

We find appellants’ arguments not worthy of credit.

Maximo was categorical in his testimony that it was Gregorio and Michell who stabbed Ruben Santamena and was even explicit as to how it happened, thus:

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Q:

Mr. Witness, can you tell the persons who pinned down Ruben Santamena unto the table?

A:

Gregorio Sardon and Michell Sardon, Sir.

Q:

Where was Michell Sardon located when he helped in the pinning down of Ruben Santamena on the table?

A:

At the right side of Ruben, Sir.

Q:

How about Gregorio Sardon, where was he in relation to Ruben Santamena?

A:

Left side, Sir.

Q:

Now, when Ruben Santamena was pinned down by the two (2) accused Gregorio Sardon and Michell Sardon on the table, what did Gregorio Sardon and Michell Sardon do?

A:

They stabbed Ruben Santamena, Sir.

Q:

You mean to tell the Honorable Court that both accused, Michell Sardon and Gregorio Sardon stabbed Ruben Santamena?

A:

Yes, Sir.

Q:

How far were you from Ruben Santamena when you saw him being stabbed by the two accused?

A:

One (1) meter away, Sir.

Q:

Where were you in relation to Ruben Santamena when you saw him being stabbed by the two accused?

In front of Ruben Santamena, Sir.

Q:

How were you able to see the stabbing of Ruben Santamena when that was 7:30 o'clock in the evening?

A:

Because we have an oil lamp, Sir.

Q:

Were you able to see the instrument that the two (2) accused use in stabbing Ruben Santamena?

A:

Yes, Sir.

Q:

What was Gregorio Sardon using when he stabbed Ruben Santamena?

A:

Patting knife, six (6) inches in length and three (3) inches in width.

Q:

How about accused Michell Sardon, what was he using in stabbing Ruben Santamena?

A:

A knife, eight (8) inches in length but smaller in width.

Q:

Can you tell the Honorable Court how many times did Michell Sardon stab Ruben Santamena?

A:

Three times, Sir.

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Q:

Do you know which part of the body of Ruben Santamena was hit?

A:

At the back, Sir.

Q:

How about accused Gregorio Sardon, how many times did you see him stab the victim?

A:

One (1) time.

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Q:

Which part of the body of the victim was hit by the accused Gregorio Sardon?

A:

At the left upper arm of the victim.[24]

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Maximo's testimony coincided with the Autopsy Report[25] that one stab wound, six (6) centimeters in length, was found in the left arm of the victim while three (3) other stab wounds, each about four centimeters in length, were found on his back.

Clearly, there is nothing in the evidence that would even remotely suggest that there is a doubt as to who are the assailants of the victim. Moreover, as aptly stated by the trial court, police blotters cannot prevail over the testimonies given by witnesses in open court. Had defense counsel been really convinced that Maximo was lying through his teeth as to the "real" persons responsible for the killing of Ruben Santamena, such could have been revealed during the course of the cross-examination. However, even the cross-examination and the subsequent questions propounded on the witness failed to destroy the definite testimony of Maximo as to how Gregorio and Michell assaulted Ruben Santamena and as to who delivered the most number of stab thrusts.

Conspiracy and treachery

The RTC appreciated conspiracy and treachery to qualify the killing of the victim to murder. These qualifying circumstances were alleged in the Information and were explained in the decision of the court a quo.

On the other hand, accused-appellants insist that there is no conspiracy and treachery which attended the commission of the offense since the group was having a drinking spree and there was an altercation prior to the stabbing of the victim. Hence, they argue, in the alternative, that they should be convicted of the lesser offense of homicide.

We rule for the appellants on this matter.

According to jurisprudence, there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. On this aspect, the prosecution needs to establish that (a) at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means, method or form of attack employed by him. On the other hand, for conspiracy to be appreciated, it is necessary that the prosecution prove that two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[26]

Here, the court a quo opined that treachery and conspiracy were present because at the time of the assault, the victim was not in a position to defend himself, thus:

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In the present case, at the time of the felonious assault, the victim Ruben Santamena was not in a position to defend himself as he was then being pinned face down on the table and had no weapon, whereas both the accused Gregorio Sardon and Michell Sardon each had a knife which they respectively wielded when they attacked the victim. The superiority of the accused in number and the fact that they were armed with knives when they stabbed the victim show that treachery attended the slaying of the victim.

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However, the proof alone that the appellants were armed with knives is not a sufficient justification to presume that they consciously armed themselves for the purpose of killing the victim. It could have also been possible that the victim and Maximo were also carrying knives with them at that time. It should be emphasized that the group where the eyewitness, the victim and the accused were in, was celebrating the "babang luksa" of the wife of Moises Sanot. They were having merriment and drinking liquor in celebration of the occasion.[27]

As a rule, there can be no treachery when an altercation ensued between the appellant and the victim.[28] In this case, there was an altercation that transpired between Ruben Santamena and Ricardo Navales but when they were pacified by Maximo, they stopped. Apparently, Ruben was still in the mood to cause trouble, because he suddenly stood up and shouted that he will crush the pitcher. While he was still shouting and holding the pitcher as if about to crush it, Gregorio and Michell also stood up and the former dared Ruben to crush the pitcher. When Ruben did crush the pitcher, that was the time that Gregorio and Michell pinned Ruben to the table and stabbed him. In short, the fracas erupted spontaneously.

It should be emphasized that the incident happened during the “babang luksa” of the wife of Moises Sanot. Moises Sanot is the uncle of Gregorio’s wife[29] and they, Gregorio and Michell, even helped in the food preparation for that celebration.[30] Thus, when Ruben crushed the pitcher on the table, it was an act of insolence to the hospitality extended by the family. This fact should be taken in conjunction with the added fact that the group was drinking hard liquor since morning and it was only at around four o’clock in the afternoon when Maximo joined the group. In effect, the group where the victim and the appellants belonged was partaking in the hard liquor to celebrate the “babang luksa”. It cannot be presumed then that appellants had earlier planned to attack Ruben. In addition, there were plenty of people in the house of Moises Sanot and the place was well lighted such that appellants risked being identified as the perpetrators of the crime. It becomes apparent therefore that the attack was impulsively done, a spur of the moment act made in the heat of anger or extreme annoyance.[31] Plainly, there was no evidence adduced by the prosecution that appellants deliberately planned to stab the victim at that place and time. Hence, treachery and conspiracy cannot be appreciated.

The Crime of Homicide Was Committed

It is evident therefore that the crime committed by appellants is homicide which is punishable by reclusion temporal. Under the Indeterminate Sentence Law, the maximum of the sentence shall be that which could be properly imposed in view of the attending circumstances, and the minimum shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code.

Absent any mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of reclusion temporal in its medium term which has a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of prision mayor which has a duration of six (6) years and one (1) day to twelve (12) years. Thus, the imposition on appellants of imprisonment from twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, is in order.

As to the award of damages to Ruben’s heirs, We grant the amount of Php50,000.00 as moral damages and Php50,000.00 as civil indemnity. Since the burial and related expenses were stipulated and agreed upon during the pre-trial, We affirm the award of Php65,000.00 as burial and related expenses.

WHEREFORE, premises considered, this appeal is PARTLY GRANTED. The Decision dated May 20, 2009 rendered by the Regional Trial Court (RTC), Branch 11, San Jose Antique in Criminal Case No. 2004-1-6923 is MODIFIED as follows:

- a) Accused-appellants Gregorio Sardon and Michell Sardon are found GUILTY of Homicide;
- b) They are each SENTENCED to suffer imprisonment of twelve (12) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; and
- c) They are ORDERED to pay jointly and severally the heirs of Ruben Santamena the amounts of Php50,000.00

as moral damages, Php50,000.00 as civil indemnity, and Php65,000.00 as burial and related expenses.

SO ORDERED.

Quijano-Padilla, and Azcarraga-Jacob, JJ., concur.

[1] Penned by Judge Nery G. Duremdes.

[2] Accused is also referred as Michelle Sardon in the records.

[3] RTC records, pp. 105-119.

[4] RTC records, p. 18.

[5] Order dated February 19, 2004; RTC records, p. 30.

[6] Order dated October 29, 2004; RTC records, pp. 51-52.

[7] See Orders dated May 26, 2004 and October, 29, 2004; RTC records, pp. 36-37, 51-52.

[8] Brief for the Appellee; Rollo, pp. 71-84.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Evidence for the Defense, Brief for Accused-Appellant; Rollo, pp. 17-33.

[14] Ibid.

[15] Ibid.

[16] Ibid.

[17] Ibid.

[18] RTC Decision, supra.

[19] RTC Decision, supra.

[20] RTC records, pp. 120-124.

[21] RTC records, p. 11.

[22] Assignment of Errors, Brief for the Accused-Appellant; Rollo, pp. 17-33.

[23] Brief for Appellee, supra.

[24] TSN, February 9, 2005, pp. 11-14.

[25] Exhibit "A"; RTC records, p. 10.

[26] *People v. Nazareno*, G.R. No. 196434, October 24, 2012, 684 SCRA 604; *Quidet v. People*, G.R. No. 170289, April 8, 2010, 618 SCRA 1.

[27] Testimony of Maximo Mondragon; TSN, February 9, 2005, p. 9.

[28] *People v. Aquino*, G.R. No. 147220. June 9, 2004, 431 SCRA 501 citing *People v. Perez*, G.R. No. 134485, October 23, 2003, 414 SCRA 106.

[29] Testimony of Gregorio Sardon; TSN, May 11, 2006, p. 8. See also the testimony of Michell Sardon; TSN, January 11, 2007, pp. 8-9.

[30] *Ibid.*

[31] See the case of *People v. Vilbar*, G.R. No. 186541, February 01, 2012 and its companion cases.

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