

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO CLAUDIO, ACCUSED-APPELLANT.

G.R. No. 100880. December 16, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This case was certified and elevated to this Court by the Court of Appeals pursuant to Section 13, Rule 124 of the Rules of Court after it had reviewed the decision of the Regional Trial Court of Pasay City, Branch 115, which convicted the appellant of murder. The Court of Appeals affirmed the decision of the trial court, but with modifications increasing the penalty imposed and the amount of indemnity. However, pursuant to paragraph 3. Section 13 of Rule 124, which provides:

"Whenever a Criminal Cases Division should be of the opinion that the penalty of death or life imprisonment should be imposed in a case, the said Division after discussion of the evidence and the law involved, shall render judgment imposing the penalty of either death or reclusion perpetua as the circumstances warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review."

the Court of Appeals certified to Us the instant case for final determination.

The facts of the case as found by the trial court and the Court of Appeals, are as follows:

"The evidence revealed that the victim Freddie Flores was the son of Leonida Flores; that the accused and the victim were friends; that Leonida Flores had known the accused for seven years; that on December 2, 1986, about 10 in the evening the accused, accompanied by Atoy Silvestre and one alias Dodong dropped by the place at 199 Kalayaan Compound in Malibay, Pasay and invited the victim for a stroll, at the Plaza in Malibay. Leonida Flores did not know where they would go; she did not easily give her consent to the invitation. That shortly, after her son left with the accused and his companions, Leonida Flores asked her nephew, Gerardo Unawa, to follow Freddie Flores. Evelyn Flores whom her mother had also asked, left and followed Freddie Flores to the Plaza. That it did not take long after she left, Evelyn returned to the house and informed her mother, that something bad happened to her Freddie Flores. She saw at the Plaza Gerardo Unawa holding her brother lying on the ground with head injuries. At the Plaza Leonida Flores found her son, lying on the ground and bleeding. They rushed him to the Philippine General Hospital in a taxi where he was treated. At the Hospital Leonida Flores, was able to talk with Freddie. When she asked him who hit him on the head. Freddie Flores told her that it was Leonardo Claudio. That she asked her son how he feels and the victim answered; that [he] may not survive. Evelyn Flores was present and she heard Freddie Flores told [sic] that to her mother. Freddie Flores died on December 9, 1986 (Exh. A). That as per the Autopsy Report rendered by Dr. Maximo Reyes, who conducted the Autopsy, the victim suffered:

'Cyanosis, lips and fingernailbeds.

'Tracheostomy, 2.0 cm. anterior aspect of the neck.

'Surgical incision, right fronto-temporo parieto-occipital region 33.0 cm. sutured with some chip bones missing.

'Lungs, heavy, voluminous, soggy and violaceous, mottled in appearance, particularly its surfaces: cut sections showed severe congestion with areas of atelectic and emphysematous changes and oozes purulent materials particularly consolidations.

'Hemorrhage, meningial; epidural, subdural and subarachnoidal, consisting of fluid and clotted blood over the right cerebral hemisphere and basal portion.

'Heart, covered with moderate amount of adipose tissues and chambers filled with minimal amount of dark fluid blood.

'Other visceral organs are congested.

'Stomach, 1/4 filled with brownish fluid materials.'

"The evidence also disclosed that Gerardo Unawa, who followed the victim to the Plaza, saw Leonardo Claudio the accused hit Freddie Flores on the head [with] a lead pipe from behind; that at the time Atoy Silvestre was talking with Freddie Flores when he was hit with the lead pipe, measuring 3/4 inch thick and about half meter long. Gerardo Unawa was 10 - 15 meters away at the time when he shouted to the accused, Nardo, he run together with his companions Atoy Silvestre and alias Dodong (TSN, Oct. 20/87). (Records, pp. 164-165)." (p. 68, Rollo: pp. 3-4, Decision.)

The following information for Murder was filed against defendant-appellant Leonardo Claudio in the Regional Trial Court of Pasay City, Branch 115:

"That on or about the 2nd day of December, 1986, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Leonardo Claudio, with intent to kill and by means of treachery, did then and there wilfully, unlawfully and feloniously, suddenly, unexpectedly and without warning, and to insure that there would not be any risk to himself, attack, assault and hit Freddie Flores with a pipe said accused was then provided with, inflicting upon said Freddie Flores fatal injuries in the head which caused his death." (p. 4, Rollo.)

When arraigned on July 23, 1987, appellant entered a plea of not guilty. Trial ensued thereafter, and on December 29, 1988, the trial court rendered judgment convicting the accused. The dispositive portion of the decision reads:

"All the premises considered and finding the accused guilty beyond reasonable doubt of the crime of Murder, the Court sentences Accused LEONARDO CLAUDIO to suffer the penalty of Reclusion Temporal maximum to Reclusion Perpetua (the death penalty having been abolished in the 1987 Constitution). Considering the absence of any mitigating or aggravating circumstances, the imposable penalty in its medium period or from 18 years, 8 months and 1 day to 20 years. For purposes of the Indeterminate Sentence Law, the penalty next lower to that prescribed for the offense is prision mayor in its maximum period to reclusion temporal in its medium period or from 10 years and 1 day to 17 years and 4 months, to indemnify the heirs of Eddie Flores for his death the amount of P20,000.00 and to reimburse them for hospitalization and burial expenses of P7,469.46 and to pay the cost of the proceedings." (pp. 167-168, Records.)

The accused appealed to the Court of Appeals alleging that the trial court erred:

1. in giving full and total credence to the testimonies of prosecution witnesses;
2. in failing to appreciate the evidence in favor of the accused-appellant; and
3. in convicting the accused appellant when his guilt has not been duly proved beyond reasonable doubt.

The Court of Appeals found no cogent reason to disturb the judgment of the trial court, but it increased the penalty meted to the accused from reclusion temporal to reclusion perpetua, and likewise increased his civil liability from P30,000.00 to P50,000.00. However, pursuant to Section 13 of Rule 124, it did not enter judgment but certified sua sponte the case to us for final determination.

Bereft of merit is appellant's contention that the trial court erred in giving full credit to the testimonies of the prosecution witnesses who were relatives of the victim: Leonida Flores being his mother, Evelyn Flores, his sister, and Gerardo Unawa, a first cousin. We have already ruled in the case of *People vs. Mision*, 194 SCRA 432, that the relationship of the witnesses to the victim per se does not affect their credibility. Relatives are not necessarily partial to each other. Some relatives fight among themselves. The factual observation of the Court of Appeals that even if the prosecution witnesses were relatives of the victim, there was no credible evidence of bias and prejudice on their part, is conclusive on us.

Appellant correctly argues that the testimonies of Leonida and Evelyn that Freddie told them that it was the appellant who hit him with an iron pipe should not have been considered by the trial court as part of the res gestae, because the statement was made one day after the incident. It was, however, a dying declaration for it was made by the victim under consciousness of impending death, as he did in fact die.

The Court of Appeals appropriately did not give any credit to the appellant's alibi, an alibi being the weakest of all defenses. More so, when it is pitted against the testimony of the eye-witness. Gerardo Unawa, who positively identified the appellant as the person who struck the back of the victim's head with a lead pipe, and the deceased's dying declaration to his mother and sister that it was Nardo (appellant) who attacked him. Leonida and Evelyn had absolutely no reason to falsely implicate the accused for, as far as they knew, he and Freddie were friends. The clear and positive identification of the accused by the prosecution witnesses is, as a general rule, entitled to more weight than the accused's alibi (*People vs. Arenas*. 198 SCRA

"Q - Were you able to reach the Plaza?

"A - Yes, sir.

"Q - When you reached the Plaza what happened?

"A - I saw Atoy Silvestre talking with Freddie Flores.

"Q - How were they talking with each other?

"A - I saw Atoy Silvestre put his hand on top of the shoulder of Freddie Flores.

"Q - Will you please show to the Court how Atoy Silvestre put his hand on top of the shoulder of Freddie Flores, I reform my question. Will you please demonstrate how this handling [sic] of Atoy Silvestre being on top of the shoulder of Freddie Flores?

"FISCAL ABRAZALDO:

"Make it of record that the right hand is on top of the shoulder of Freddie Flores.

"Q - When Atoy Silvestre talking with Freddie Flores and his hand on top of the shoulder of Freddie Flores how far were you then?

"A - 10 to 15 meters away from them.

"Q - The relation to the position of Freddie Flores could you please show that to the Court if where was this

Leonardo Claudio?

"A - He was at the back.

"Q - Of whom?

"A - Back of Freddie Flores.

"Q - How far was Leonardo Claudio from Freddie Flores while he was standing at the back of Freddie Flores?

"A - Less than one meter behind.

"Q - While Freddie Flores was in that position conversing with Atoy Silvestre and accused Leonardo Claudio was at the back was there anything (sic) unusual incident that happened?

"A - Yes, sir.

"Q - Will you please tell the Court if what was that unusual inci-dent?

"A - Leonardo Claudio hit Freddie Flores.

"Q - How, what instrument did he use if you know?

"A - Iron pipe.

"Q - Will you demonstrate (sic) that iron pipe?

"A - A lead pipe, which is less than half a meter in long [sic].

"Q - You said Reynaldo Claudio hit Freddie Flores with a lead pipe?

"A - Yes, sir.

"Q - What part of his body was hit?

"A - At the head.

"Q - What happened to Freddie Flores when he was hit by Leonardo Claudio?

"A - He fell down and my cousin Evelyn Flores arrived.

"Q - When you saw accused Leonardo Claudio hitting Freddie Flores with a lead pipe what did you say, if any?

"A - I said, 'NARDO.'

"Q - What else?

"A - No more, sir.

"Q - When you uttered this word what did Leonardo Claudio do if any?

"A - They ran away. (tsn, pp. 5-9, October 20, 1987.)" (pp. 8-11, Court of Appeal's Decision.)

The Court of Appeals correctly convicted the accused of murder for the killing was attended by treachery. The victim was attacked from behind without warning while he was engaged in conversation with Atoy Silverstre. The Court properly increased the imposable penalty for the crime:

"But while we are four square with the findings of the trial court, including its appreciation of the qualifying circumstance of treachery we disagree however with the court a quo when it sentenced appellant to suffer the

penalty of imprisonment of only ten (10) years and one (1) day to seventeen (17) years and four (4) months. In line with the ruling of the Supreme Court in *People vs. Munoz*, 170 SCRA 107, the penalty should be reclusion perpetua. Indeed, and as correctly observed by the Solicitor General: 'Under Article 248, Re-vised Penal Code, the prescribed penalty for Murder is reclusion temporal, in its maximum period to death, which is 17 years, 4 months and 1 day to death. There being no aggravating or mitigating circum-stances, the prescribed penalty should be imposed in its medium period, which is reclusion perpetua. The imposable penalty being reclu-sion perpetua, the provisions of the Indeterminate Sentence Law do not apply. (People's Brief. p. 14.)

"Similarly, the award of P30,000.00 by way of civil indemnity should be. as is hereby increased to P50,000.00 conformably with the prevailing ruling of the Supreme Court on the matter (*People vs. Sazon* (sic), G.R. No. 75814. September 24, 1990; *People vs. Tesarra*, G.R. No. 85531. December 10, 1990; *People vs. Peralta*. G.R. No. 67702, January 18, 1991.)" (pp. 15-16, CA Decision.)

WHEREFORE, we find the accused, Leonardo Claudio, GUILTY beyond reasonable doubt of the crime of murder and hereby sentence him to suffer the penalty of reclusion perpetua, with the accessory penalties provided by law and to indemnify the legal heirs of the deceased, Freddie Flores, in the sum of Fifty Thousand Pesos (P50,000.00), plus the costs.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

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