

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. RIZALITO DE GUZMAN, ARTURO DE GUZMAN AND YSMAEL SEMBRERO, ACCUSED. RIZALITO DE GUZMAN, ACCUSED/APPELLANT.

G.R. No. 105964. November 04, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

Accused/appellant Rizalito de Guzman together with Arturo de Guzman, Ysmael Sembrero, Virgilio Pupulangas, Eranio Briones, John Doe and Peter Doe were charged with murder in an information which reads:

"That on or about the 1st day of January, 1988, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without justifiable cause but with deliberate intent to kill, with treachery and with the aid of armed men, did then and there wilfully, unlawfully and feloniously stabbed (sic), hacked (sic) and hit one Carlito Mendoza y Umel with the knives, 'gulok' and pipes (tubo) the accused were then provided with thereby inflicting upon said Carlito Mendoza y Umel mortal wounds which caused his death.

"Contrary to law."

Only appellant Rizalito de Guzman, Arturo de Guzman and Ysmael Sembrero were apprehended and they all pleaded not guilty upon arraignment. Arturo de Guzman and Ysmael Sembrero were granted provisional liberty but later jumped bail and were consequently tried in absentia.

The facts, as found by the trial court, are as follows:

"x x x that about 6 in the afternoon of January 1, 1988, Carlito Mendoza was on his way to the house of his mother-in-law at de las (Alas) St., Pasay; that he came from Tramo St., Pasay City where he was residing accompanied to the place by Cora Mendoza, his sister-in-law, and Ederlin Mendoza, a sister. That they did not reached (sic) his mother-in-law's house as on the way a group of men armed with bolo, ice pick and other blunt instruments blocked their way and someone even threw stone on him. They run (sic) for cover but the men in the group identified as Rizalito de Guzman, Ysmael Sembrero, Arturo de Guzman, Christopher Silva and Virgilio Pupulangas chased and caught up with them in the alley and Carlito Mendoza was attacked and stabbed first by Rizalito de Guzman on the back, followed by Christopher Silva, then by Arturo de Guzman, then Ysmael Sembrero and finally by Virgilio Pupulangas and afterwards, all the assailants run (sic) towards F. Victor St., (TSN, Dec. 16/88). Carlito Mendoza died upon arrival at the Manila Sanitarium Hospital where he was brought on the same day. He sustained body wounds described in the Autopsy Report (Exh. D) of Dr. Ricardo G. Ibarrola, (among others), as follows:

"POSTMORTEM FINDINGS

x x x

"Stab wounds, back, lower half, multiple, fourteen in number, covering an area of 24.0 x 19.0 cm. elliptical in shapes, sizes ranging from 3.1 cm. to 0.4 cm. long, with varying orientations, with clean cut edges, superior

extremities of which are pointed and their inferior extremities are rounded, directed downward, either medially or laterally, and forward, involving, among others, the skin and underlying soft tissues nine of which are non-penetrating, two pieces (sic) the right 7th and 8th intercostal muscles and penetrated (sic) CAUSE OF DEATH : Hemorrhage, severe, secondary to multiple stab wounds. x x x (Rollo, pp. 6-8).

After trial, the court a quo rendered its decision dated October 5, 1989 convicting the accused of the crime of murder, to wit:

"All the premises considered, judgment is rendered finding the accused Rizalito de Guzman, Arturo de Guzman and Ysmael Sembrero guilty beyond reasonable doubt of the crime of murder defined and penalized under Art. 248 of the Revised Penal Code, there being no qualifying circumstance present and applying the Indeterminate Sentence Law, the Court sentences each of them to suffer the penalty of 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 and jointly and severally to pay Alejandria Mendoza, the widow, P5,000.00 hospital bills, P5,000.00 food and drinks during the wake, P15,000.00 funeral expenses and P30,000.00 indemnity to his heirs and the costs of this proceedings." (Rollo, p. 10)

On appeal to the Court of Appeals, appellant Rizalito de Guzman assigned the following errors:

I

"THE TRIAL COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE THEORY OF THE PROSECUTION AND IN DISREGARDING THAT OF DEFENSE.

II

"THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT."

On June 29, 1992, the Court of Appeals modified the appealed judgment the decretal portion of which reads:

"WHEREFORE, judgment is hereby rendered finding the appellant guilty beyond reasonable doubt of the crime of murder punishable by reclusion perpetua. However, in view of the Supreme Court's pronouncement in *People v. Centeno* (108 SCRA 710 [1981], x x x, we hereby desist from entering the aforesaid judgment and instead certify this case to the Honorable Supreme Court for its review and final determination." (Decision, p. 8)

Hence, this review as certified to Us by the Court of Appeals.

We agree with the ratiocination of the Court of Appeals in resolving the assigned errors, to wit:

"In the assigned errors, appellant maintains that the prosecution failed to establish his guilt beyond reasonable doubt, claiming that the testimonies of the witnesses for the prosecution were plagued with inconsistencies. We are not persuaded. Appellant stresses that prosecution witness Cora Limson Mendoza testified that they (Carlito Mendoza, Ederlin Mendoza and herself) were stoned by somebody while they were walking along F.B. Victor Street prompting them to run towards Natividad Street until appellant and his co-accused caught up with them; whereas, prosecution witness Ederlin Mendoza stated that the stone throwing incident took place after they were cornered by the accused at a dead end where the deceased Carlito Mendoza was hit and knocked down. As we see it, the alleged inconsistencies in the testimonies of these witnesses are plainly insignificant and so inconsequential as to justify a reversal of the appealed judgment of conviction. It should be understandable that in the frenzied commotion which was then taking place, both witnesses, fearing for their own lives, failed to identically see every detail of the stabbing incident. They must have been terrified and

greatly agitated. Be that as it may, what is clear and certain is that the testimonies offered by the prosecution were in agreement upon one essential point, i.e., appellant was one of the persons who attacked the deceased Carlito Mendoza. (CA Decision, pp. 5-6)

Appellant denies having participated in the senseless killing of Mendoza by interposing the defense of alibi. Appellant claims that he eloped with his girlfriend to Imus, Cavite, on the night of December 31, 1987 and stayed there in his uncle's house until January 26, 1987.

While alibi is generally considered a weak defense, it is not always false and bereft of merit where the evidence for the prosecution is even weaker. In such cases, alibi may be given merit (*People v. Padilla*, 177 SCRA 129 [1989]), citing *People v. Delmendo*, 109 SCRA 350 [1981]; *People v. Castelo*, 133 SCRA 667 [1984]). Indeed, the prosecution bears the onus probandi in establishing the guilt of the accused beyond reasonable doubt and should not rely on the weakness of the defense.

Tested in the light of the aforesaid principles, however, We find that the prosecution has sufficiently discharged its duty in establishing the guilt of the accused beyond reasonable doubt.

For the defense of alibi to prosper, it is not enough to prove that the accused was somewhere other than the site of the commission of the crime. More importantly, he must also prove that it was physically impossible for him to be at the scene of the crime (*People v. Urquia, Jr.*, 203 SCRA 735 [1991]). No physical impossibility exists where the distance between two places could be easily reached in a matter of 15 to 20 minutes by jeep or a tricycle (*People v. Temblor*, 161 SCRA 623 [1988]) or is just 8 kilometers apart and can be negotiated by foot in one and a half hours (*People v. Bugho*, 202 SCRA 164 [1991]); see also *People v. Almario*, 171 SCRA 291 [1989]). Just recently, we also held that no physical impossibility exists where the distance involved is merely a two and a half (2 1/2) hour trip by bus (*People v. Abuyan, Jr.*, G.R. No. 95254-55, July 21, 1992).

The instant case is no exception. Here, the time of travel between the locus crimini which is Pasay City, Metro Manila and Imus, Cavite where appellant alleged he was at the time of the commission of the crime is merely a 30-45 minute ride by bus, as found by the trial court. In other words, it was not physically impossible for appellant to have been at the situs of the crime at the time of the commission thereof.

The defense of alibi crumbles even more in the face of positive identification of the assailants which, in this case, has been clearly established by prosecution witnesses (*People v. Arroyo*, 201 SCRA 616 [1991]). Accused/appellant was positively identified by prosecution witness Cora Mendoza as the one who first stabbed the deceased from behind. It has been invariably ruled that alibi cannot prevail over the positive identification of the accused.

Coming now to the penalty, we also find no error committed by the Court of Appeals in imposing the penalty of reclusion perpetua in lieu of the Indeterminate Sentence Law as erroneously applied by the trial court. As aptly noted by the appellate court, murder is punishable by reclusion temporal in its maximum period to death (Art. 248, RPC); there being three (3) distinct penalties (Art. 77, RPC) and no aggravating or mitigating circumstances, the penalty imposable should be in its medium period (Art. 64 [1], RPC) which is reclusion perpetua. Needless to say, the death penalty may not be imposed under the 1987 Constitution. On the other hand, the award of P30,000.00 as indemnity, should be, as it is hereby, increased to P50,000.00 conformably with the prevailing jurisprudence.

WHEREFORE, the judgment under review finding the appellant guilty beyond reasonable doubt of the crime of murder punishable by reclusion perpetua is hereby **AFFIRMED** with the modification above indicated.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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