

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN SALVADOR, FREDO LIM, EDUARDO REMOTO AND DANILO LLEDO, ACCUSED-APPELLANTS.

G.R. No. 113025. September 16, 1997

Ponente: VITUG, J.

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VITUG, J.:

Jonathan Antonio, Efren Salvador, Fredo Lim, Eduardo Remoto and Danilo Lledo were charged in an information with the crime of murder for the killing of Esicio Alonso; viz:

That on or about the 10th day of December, 1989, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, armed with pipes, stones and bladed weapon, conspiring and confederating together, mutually aiding and assisting with one another, with intent to kill, evident premeditation and with treachery, that is, by suddenly and without warning assault, attack, hit, hurl and stab several times at the back of the person of ESICIO ALONSO y STA. MARIA, with the use of said weapons that they were then armed with, thereby inflicting multiple injuries and mortal stab wounds on the different parts of the victim's body which directly caused his death, to the damage and prejudice of the heirs of said victim.

“CONTRARY TO LAW.” [1]

The four accused pleaded not guilty to the charge; thereupon, trial proper commenced.

The facts according to the prosecution. -

On 09 December 1989, at about 1:30 in the morning, Nicanor Alonso, the 14-year old son of Esicio Alonso, was awakened and instructed by his grandmother to fetch his father at a “benefit dance” which was being held about 300 meters from their house in Lantawan, Pasonanca, Zamboanga City. Arriving at the place, Nicanor saw his father, Esicio, having a verbal tussle inside the dance hall with accused Eduardo Remoto, Danilo Lledo, Efren Salvador, Fredo Lim and Jonathan Antonio. The rough argument continued outside the dance hall. Then, suddenly, Nicanor saw the four accused gang up on his father. Eduardo Remoto held Esicio from behind while Efren Salvador picked up a fairly big stone and smashed it at the back of the head of Esicio. Fredo Lim, holding a water pipe, struck Esicio on the forehead. Danilo Lledo, with his fists, repeatedly hit Esicio. The coup de grace was delivered by Jonathan Antonio when, using a knife, he stabbed the victim on the stomach and on the left breast. Esicio fell to the ground. Jonathan Antonio took the victim's “waltham” wrist watch worth P4,500.00 and wallet containing P1,500.00 in cash before leaving the scene with the group.

Nicanor rushed to his father's side, vainly calling for help. Nicanor ran home and came back with his mother. He covered the lifeless body of his father with a “tapis.” Moments later, his mother left to report the matter to the authorities. She returned to the scene together with some police officers who, forthwith, conducted an investigation. The victim's body was taken to the La Merced Funeral Parlor for a post mortem examination.

The version of the defense. -

Accused Jonathan Antonio claimed self-defense. He testified that he was just requested by the barangay captain and the sponsor of the benefit dance, Veronica Teo, to take charge of maintaining order at the dance hall. At about eleven o'clock in the evening, he noticed that Esicio, Fredo Lim, Bino Arcillas and Danilo Lledo were engaged in a heated discussion. The group, shortly after, left the dance hall. Jonathan went out to pacify the protagonists. He noticed that Esicio kept on with his belligerence and even started to make threats. After a while, just when he thought everything had already calmed down, he returned to the dance hall only to see Esicio coming towards him with a bolo. Alonso struck Jonathan Antonio but missed. Esicio swung the bolo a second time but, again, he missed. Instantly, Jonathan Antonio embraced and, with his free hand, stabbed Esicio.

Accused Danilo Lledo said that on the evening of 09 December 1989, he went to Lantawan to see Eduardo Remoto. On his way home, he dropped by the dance hall. When he was about to leave, he saw Esicio, appearing to pull something from his waist. Danilo Lledo pulled Efren Salvador and placed himself between the latter and Esicio. Danilo Lledo suddenly felt himself hit from behind by Bino Arcillas. Danilo Lledo fell and, while still on the ground, he was hit by Esicio. Danilo Lledo went home after Esicio was pacified.

Accused Eduardo Remoto claimed that he was already asleep in his house, situated about 15 feet away from the dance hall, when the trouble had occurred and that he only learned about the incident after having been awakened by the barangay captain and police investigators who came to make inquiries. He professed that he had no misunderstanding with Esicio.

The testimony of Efren Salvador consisted of a similar denial of involvement in the killing of Esicio. Efren Salvador asseverated that he could not have been among those who ganged up on Esicio since he was not at all in bad terms with the latter.

Defense witness Rosito Agustin corroborated the claim of self-defense made by Jonathan Antonio. Rosito asserted that while Esicio and Jonathan Antonio were grappling with each other, the latter got hold of a water pipe and, with it, hit Esicio.

The other defense witnesses Mario Espiritusanto and Pilarito Coronel confined themselves to having witnessed the exchange of words between the deceased and some of the accused inside the dance hall. The two admitted not having seen the actual killing of Esicio.

Barangay captain Eugenio Julian testified that he assisted in the investigation of the incident. On cross-examination, the barangay official said that when he and some policemen went to Remoto's residence immediately after the crime, he saw the latter standing inside the house wearing a t-shirt with blood stains on the chest. [2]

Following the conclusion of the trial, the Regional Trial Court of Zamboanga City, 9th Judicial Region, presided over by Judge Jaime T. Hamoy, promulgated its decision finding all the accused guilty of the crime charged; concluding, the court held:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds the accused JONATHAN ANTONIO y Garcia, EFREN SALVADOR y Antonio, EDUARDO REMOTO y Santos and DANILO LLEDO y Agyong, GUILTY as principals of the crime of murder qualified by treachery, and there being no generic aggravating nor mitigating circumstances attending the commission of the crime, hereby sentences each of them to suffer the penalty of reclusion perpetua, together with all the accessory penalties prescribed by law, to indemnify the heirs of the deceased Esicio Alonso jointly and severally in the amount of P50,000.00, without subsidiary imprisonment in case of insolvency, and to pay their proportionate share of the costs.

“The accused JONATHAN ANTONIO y Garcia is further ordered to pay the heirs of the deceased the amount of P4,500.00 representing the value of the watch, plus P1,500.00 representing the money in his wallet, without subsidiary imprisonment in case of insolvency.

“The case against accused FREDO LIM y Toribio is ARCHIVED without prejudice to its revival and prosecution as soon as he shall have been arrested. Let an Alias Warrant of arrest be issued which need not be returned until he is arrested.

“SO ORDERED.” [3]

Accused-appellants appealed to this Court. Later, however, Jonathan Antonio withdrew his appeal.

Accused-appellant Danilo Lledo submitted the following assignment of errors:

1. The lower court erred in giving credence to the testimony of the son of the victim.
- “2. The lower court erred in finding there was conspiracy among the accused when Enciso Alonzo was killed.
- “3. The lower court erred in finding accused-appellant Lledo guilty of murder.” [4]

In his case, accused-appellant Eduardo Remoto contended that -

“1. The lower court erred in basing the decision of conviction of accused-appellant Eduardo Remoto, solely on the biased, uncorroborated and baseless testimony of the son of the victim.

“x x x x x x x x

“2. The lower court erred in not believing the testimony of accused-appellant as corroborated by his witnesses and in relying solely on the testimony of Nicanor Alonzo, the police investigator as well as the Barangay Captain, of the prosecution, instead of weighing the evidence adduced during the trial in favor of appellant that accused-appellant Eduardo Remoto never had serious misunderstanding much less engaged into any trouble orally or physically with deceased Enciso Alonzo.

“x x x x x x x x

3. The lower court erred in convicting all the accused of the crime of murder on the basis that they acted in conspiracy.” [5]

Accused-appellant Efren Salvador simply raised, in his lone assignment of error, that -

The trial court erred in finding the accused Efren Salvador guilty beyond reasonable doubt of the crime of murder of Esicio Alonzo y Sta. Maria in conspiracy with Jonathan Antonio y Garcia and three others despite insufficient evidence to hold him liable thereon.” [6]

With great care, the Court has gone over the records, and it sees nothing substantial to warrant a reversal of the findings of the trial court. The testimony of Nicanor Alonso, particularly, is replete with enough details to preclude any probability of his having been a perjured eyewitness. In his narration of the incident, Nicanor gave clear, spontaneous and straightforward answers. Thus -

Q

Were you able to reach the place of the benefit dance, the Atilano’s residence?

A

Yes, sir.

Q

When you reach the dance was there any unusual incident that took place?

A

Yes, sir.

Q

What was that incident that took place in the dance hall?

A

There was a trouble with my father.

Q

You said 'they' who are these they that you are mentioning?

A

Eduardo Remoto.

Q

Who else?

A

Danilo Lledo, Efren Salvador and Pedro Lim and Jonathan Antonio.

Q

When you reach in the dance hall at the Atilano residence you said that you said the four accused were making trouble, how far were you then to them when you said they were making trouble?

A

About 5 to 6 meters.

Q

How were you able to identify these four (4) accused?

A

Because there was lights.

Q

You said you saw your father with the four (4) accused, what was he doing?

A

He was discussing with them.

Q

At this particular time when they were discussing with the four (4) accused what happened if any?

COURT:

Q

Who are these people they are discussing?

A

Eduardo Remoto, Efren Salvador, Fredo Lim, Danilo Lledo and Jonathan Antonio.

FISCAL

Q

Do you know what were they discussing?

A

I do not know.

Q

At this particular juncture was there anything that took place while you are 5 to 6 meters away from them, what happened?

A

They are helping one another.

FISCAL:

All right, let us make this very clear.

Q

Who were helping each other when you saw them in the dance hall making some discussion?

A

Eduardo Remoto, Efren Salvador, Fredo Lim, Danilo Lledo.

Q

You saw the accused helping each other, the question is: what was Eduardo Remoto doing when you saw him?

A

Remoto was holding my father.

Q

Will you demonstrate?

A

He is embracing my father (witness demonstrating that Remoto is at the back of the father embracing)

Q

At the time you saw Eduardo Remoto embracing your father, what was Efren Salvador doing?

A

He got a stone and hit my father at the head.

Q

When you saw Salvador throw the stone to the head of your father, can you tell the Honorable Court was he using one hand or two hands?

A

Two hands.

Q

What particular part, you said Efren Salvador hit the head of your father, what particular part of the head of your father was hit?

A

(Witness pointing back of the head)

Q

What happened to your father when he was hit by the stone?

A

He was dizzy.

FISCAL:

Q

Now, after Salvador hit your father's head with a stone what was Alfredo Lim doing?

A: ATTY. PUNO:

Your Honor, please, just for clarification the name of the accused is Fredo Lim.

WITNESS:

A: He got a pipe and hit my father.

FISCAL:

Q

Where did your father hit, in what part of your father's body was hit with the water pipe?

A

(Witness demonstrating at the right forehead)

Q

How many times was your father hit by the water pipe?

A

Once.

Q

After hitting your father with the pipe what did Lim do?

A

He move backward and throw the pipe.

Q

After your father was hit by the pipe where was Danilo at that time?

A

Infront of my father.

Q

What was he doing?

A

He box(ed) my father.

Q

How many times did he box your father?

A

Three (3) times.

Q

After Lledo boxed your father where was Jonathan Antonio at that time?

A

He was together with Danilo Lledo.

Q

What did he do if any?

A

He got his knife and stab my father.

Q

How many times did Jonathan Antonio stab your father?

A

I think three (3) times or more.

Q

Do you know the parts of the body your was hit with the stab?

A

ATTY. ELUMBA:

Leading, Your Honor.

COURT:

Answer, if he knows.

WITNESS:

A

(Witness demonstrating at the right stomach and front stomach - umbilicus and left breast)

Q

What happened to your father when you saw him stabbed several times by Jonathan Antonio?

A

He fell down.

Q

Were you able to seek the help of the neighbors in assisting your father?

A

I was trying to seek the help of our neighbors but they did not help.

Q

So when did you do about your father?

A

I ran home to ask the help of my mother and inform them that my father is already dead.

Q

Were you able to reach home?

A

Yes, sir.

Q

And what else happen when you reach home?

A

We went to the place of the incident together with my mother.

Q

Only you and your mother went to the place of incident where your father was?

A

There were others.”[7]

Nicanor’s testimony was bolstered by the medical findings made on the victim’s cadaver. The Autopsy Report submitted by Dr. Rodolfo M. Valmoria of the Medical Corps, Chief of the PC/INP Crime Laboratory Service, Regional Command 9, indicated that the contusions, lacerations and stabbed wounds found on the body of the deceased corresponded with Nicanor Alonso’s narration of how the accused had acted together in attacking the

victim; viz:

1. Contusion, proximal third, right arm, just anterior measuring 6 cm x 3.
- “2. Stabbed wound, right chest close to armpit, measuring 0.6 cm x 0.7 x 0.6, penetrating.
- “3. Stabbed wound, right supramammary region, measuring 1 cm x 1.2 x 1.2, penetrating.
- “4. Stabbed wound, left mammary region, measuring 1.5 cm x 1.5 x 1.7, 2.5 cm from the AML directed upwards and to the right and posterior, penetrating.
- “5. Stabbed wound, left inferior chest, measuring 1.3 cm x 1.2 x 1.3, perforating.
- “6. Stabbed wound, left hypochondriac region, measuring 1.5 cm x 1.6 x 1.5, perforating.
- “7. Contusion, anterior chest, measuring 5 cm x 10.
- “8. Contusions with abrasion, dorsum of right hand, right wrist joint, just posterior, distal third, right wrist joint.
- “9. Lacerated wounds, bone deep, left supraorbital region and, occipital region, just along the posterior midline, measuring 0.3 cm x 2.5 and 5.5. cm x 0.8 respectively.
- “CAUSE OF DEATH: Cardiorespiratory arrest due to shock and hemorrhage secondary stabbed wounds, chest, lacerated wounds, head.” [8]

On the question of credibility of witnesses, the Court, once again, must express the familiar and well-entrenched rule that the factual findings of the trial court, which is in a much better position than an appellate court to properly evaluate testimonial evidence, [9] should be respected. [10]

Relationship of the prosecution witness to the victim in a criminal offense does not necessarily render biased the testimony given. [11] This rule is particularly true in grave criminal offenses where the victim's close relatives, more than anyone else, logically would have great interest in helping prosecute the real offender. Justifiably, nothing in our rules would debar relatives of the victim from testifying in the criminal case [12] as long as such relatives are not, for some other reasons, incompetent to give testimony.

No jurisprudence in the prosecution of criminal cases perhaps is more settled than the rule that alibi is a weak defense and that, corollarily, it should be rejected when the identity of the accused is sufficiently and positively established by an eyewitness to the offense. [13] Nicanor, who has given a complete account of his father's death in the hands of the accused, had known the appellants even before the unfortunate incident. Nicanor testified:

Q

Can you still identify this Jonathan Antonio?

A

Yes, sir.

Q

Why do you know him?

A

He is our neighbor and he usually go to the creek and wash I usually saw him in the creek.

Q

For how many years have you known him?

A

For more than one year.

Q

Where do you usually see him?

A

Sometime he goes with the jeep of my father to the city proper and then go back.

Q

Can you still identify him?

A

Yes, sir.

Q

Where is he now?

A

(Witness pointing to a person seated in court who when asked of his name identify himself as Jonathan Antonio)

Q

About this Danilo Lledo how do you know him?

A

He is our neighbor also.

Q

For how many years have you been a neighbor?

A

More than one (1) year.

Q

And can you still identify him?

A

Yes, sir.

Q

Where is he now?

A

(Witness pointing to a person seated in Court who when asked of his name identify himself as Danilo Lledo)

Q

About Efren Salvador, do you know him?

A

He is our neighbor also.

Q

For how many years?

A

For more than (1) year.

Q

Can you still identify him?

A

Yes, sir.

Q

Where is he now?

A

Second (Witness pointing to a person seated in Court who when ask of his name identify himself as Efren Salvador)

Q

About Eduardo Remoto how do you know him?

A

He is also our neighbor.

Q

And how many years have you been his neighbor?

A

For more than (1) year

Q

Can you still identify him?

A

Yes, sir.

Q

Where is he now?

A

The last person. (Witness pointing to a person seated in Court who when asked of his name identify himself as Eduardo Remoto)

Q

About Fredo Lim, where is he now?

A

He was not apprehended.

COURT:

Q

Do you know him?

A

Yes, Your Honor.

Q

Why do you know?

A

He is our neighbor, Your Honor.

Q

If you can see this accused can you still identify?

A

Yes, Your Honor.” [14]

The manner in which the crime was committed would indicate, quite convincingly, that accused-appellants have cooperated with one another toward a common criminal design with neither one of them having prevented or attempted to prevent the other from inflicting injury on the victim. The coordinated acts of accused-appellants heretofore shown sufficiently bear out their having been parties to the conspiracy. [15] It is not necessary, for that collective responsibility to be established, that the conspiracy be proved by direct evidence of a prior agreement to commit the crime. [16]

The Court, however, finds that the crime committed is homicide, not murder. The qualifying circumstances of treachery and evident premeditation have not been satisfactorily proven. [17]

To establish treachery, the evidence must show that the accused has made some preparations to kill the victim in such a manner as to ensure the execution of the crime or to make it impossible or hard for the person attacked to defend himself. A killing done at the spur of the moment is not treacherous. [18]

The accused-appellants and Esicio evidently met at the benefit dance affair and, for one reason or another, an argument ensued between them. The attack on the victim was not sudden and unexpected, the essential characteristics of treachery. [19] There would be no treachery when the victim was placed on guard, such as when a heated argument preceded the attack, or when the victim was standing face to face with his assailants and the

initial assault could not have been unforeseen. [20]

On the other hand, evident premeditation suggests the deliberate hatching of a plan to execute a crime. Its elements are: (1) a previous decision by the accused to commit the crime; (2) an overt act or acts manifestly indicating that the accused has clung to his determination; (3) a lapse of time between the decision to commit the crime and its actual execution enough to allow the accused to reflect upon the consequences of his acts. [21] Evident premeditation cannot be appreciated to qualify a killing to murder in the absence of direct evidence of the planning and preparation to kill when conceived. [22]

Evidently, in the case at bar, the killing was brought about by a misunderstanding among the protagonists which led to an argument, and then, ultimately, to the fatal killing.

Absent the qualifying circumstances of treachery and evident premeditation, which must be so clearly established as the killing itself, the crime committed cannot be murder, but homicide, defined and penalized under Article 249 of the Revised Penal Code.

WHEREFORE, the finding of GUILT of appellants EFREN SALVADOR, EDUARDO REMOTO and DANILO LLEDO by the Regional Trial Court of Zamboanga City, Branch 15 in Criminal Case No. 9964 is AFFIRMED, but only for the crime of HOMICIDE. The appealed decision, dated 19 July 1993, is MODIFIED so that appellants shall instead suffer the penalty of from nine (9) years of prision mayor, as minimum, to fifteen (15) years and seven (7) months of reclusion temporal, as maximum.

SO ORDERED.

Davide, Jr., Bellosillo, Kapunan and Heramosisima, Jr., JJ., concur.

[1] Rollo, p. 3.

[2] TSN, 11 December 1990, pp. 28-30.

[3] Rollo, p. 43.

[4] Appellant's Brief for the accused-appellant Danilo Lledo, p. 4.

[5] Appellant's Brief for the accused-appellant Eduardo Remoto, pp. 3-8.

[6] Rollo, p. 106.

[7] TSN of Nicanor Alonzo, 03 September 1990, pp. 13-29.

[8] Records, p. 43.

[9] People vs. Padilla, 242 SCRA 629.

[10] People vs. Morales, 241 SCRA 267.

[11] People vs. Villanueva, 242 SCRA 47.

[12] People vs. Acuña, 248 SCRA 668.

[13] People vs. Jimenez, 235 SCRA 322.

[14] TSN of Nicanor Alonzo, 03 September 1990, pp. 26-28.

[15] See People vs. Mallari, 241 SCRA 113.

[16] People vs. Tami, 244 SCRA 1.

[17] See People vs. Ganzagan, Jr., 247 SCRA 220.

[18] People vs. Nitcha, 240 SCRA 283.

[19] Sison vs. People, 250 SCRA 58.

[20] People vs. Lopez, 249 SCRA 610.

[21] People vs. Ganzagan, Jr., *supra*.

[22] *Ibid*.

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