

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMULO SORIA Y GALLETES, ACCUSED-APPELLANT.

G.R. No. 119007. October 04, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused-appellant Romulo Soria appeals from the decision[1] of the Regional Trial Court of Cagayan (Tuguegarao), Branch 2, of 7 March 1994 in Criminal Case No. 2091 finding him guilty beyond reasonable doubt of the crime of murder as charged in an information[2] whose accusatory portion reads as follows:

That on or about April 7, 1992, in the Municipality of Solana, Province of Cagayan, and with the Jurisdiction of this Honorable Court, the said accused, Romulo Soria y Galletes alias Mol, armed with a gun, with intent to kill, with evident premeditation and with treachery did then and there wilfully, unlawfully and feloniously attack, assault and shoot one, Patricio M. Reyes, inflicting upon him several gunshot wounds on the different parts of his body which caused his death.

The case originated in the Municipal Circuit Trial Court (MCTC) of Solana-Enrile, Cagayan, with the filing on 15 April 1992 of a criminal complaint for murder against the accused. The complaint was supported by the sworn statements of the victim's mother, Aurea Reyes, and of the victim's first cousin, Felix Bago; the post-mortem findings of Dr. Anastacia Taguba, the Municipal Health Officer of Solana, Cagayan, who conducted a post-mortem examination of the body of the victim; and the certificate of death of the victim.[3] Finding after appropriate preliminary investigation that the offense charged was committed and that the accused was probably guilty thereof, the MCTC forwarded the record of the case to the Office of the Provincial Fiscal, which subsequently filed the foregoing information.[4]

The accused entered a plea of not guilty at his arraignment on 2 March 1993.[5] Since he waived pre-trial,[6] trial on the merits ensued with the prosecution presenting as its witnesses Felix Bago, Aurea Reyes, and Dr. Anastacia Taguba. For its part, the defense presented the accused, Leonardo Bago, Nazario Mabborang, and Juanito Balubal.

The prosecution's version, as culled from the testimonies of the witnesses, is as follows:

In the evening of 7 April 1992, Aurea Reyes and her two children, one of whom was Patricio Reyes, were at the house of her sister (the mother of Felix Bago). They had been invited to have dinner there. The Reyeses and the Bagos had already finished eating when, suddenly, the door opened and accused Romulo Soria appeared carrying a gun. At a distance of about two to three meters, the accused aimed his gun at Felix, who was then sitting near Patricio. Without much ado. He fired his gun but missed his target, as the latter hurriedly hid himself behind a post. The accused fired again. This time Felix "dived to the floor." Patricio followed suit, but, unfortunately, he was hit on the arm. Felix managed to go out of the house and then broke into run. The accused chased him and fired several times. To his luck, Felix was not hit. The accused forthwith returned to the house of the Bagos and shot Patricio, who was then "lying on the floor, face upwards." Patricio drew his last breath on that same evening. The autopsy revealed that the multiple gunshot wounds on his head and on the left side of his chest caused his

death.

The accused tried to cloak the truth in alibi, and the trial court summarized his testimony in this wise:

In the afternoon of April 7, 1992, Leonardo Bago called him to slaughter a dog in their house at Basi, Solana, Cagayan. Two dogs were butchered because there [would] be a conference of barangay officials in their house. After butchering the dogs, he cooked the meat, and finished cooking about 7:00 or 8:00 P.M. Leonardo Bago and Juanito Balubal helped him butcher and cook food. They finished serving food to the visitors about 11:00 P.M. When the visitors left, he went home. He does not know the time when he left Bago's house. The following morning he and his three brothers Romeo Soria, Pedro Soria and Jose Soria were picked up by policeman Mat Battung and brought to the townhall for investigation. After arriving at the townhall Aurea Reyes was called to identify the person who killed his son and she said she did not know. Likewise Aurea Reyes told the police that none of them committed the crime. He was not subjected to any paraffin tests but only his three brothers. After the investigation they were sent home, but after five (5) days he was again investigated. This time Aurea Reyes implicated him in the killing of her son.[7]

The trial court gave full credence to the testimony of Aurea Reyes, who was the only eyewitness to the actual shooting of Patricio Reyes by the accused and who could not have failed to identify the accused at that time, since the room was lighted with a fluorescent bulb and she knew the accused "very well." It rejected the accused's defense of alibi because he failed to prove that it was physically impossible for him to have been at the crime scene at the time of the commission of the offense. The house of Leonardo Bago where the accused was is only "3 kilometers" to the house of Felix Bago where the crime was committed. Besides, it had its own doubts on the presence of the accused in the house of Leonardo Bago.

As to whether treachery attended the commission of the crime, the trial court's answer is in the affirmative; thus:

The facts established by the prosecution consist of two stages: The first stage consists of the sudden opening of the door of the house of Felix Bago by Romulo Soria and immediately thereafter the accused shot Felix Bago. It was the first gun report. Felix Bago dived to the floor followed by Patricio Reyes. Another gun report. This time Patricio was hit on his arm because he called for his mother. Felix Bago escaped and went out of the house. Soria chased Felix Bago outside. When the accused failed to hit Felix outside, he came back to the house of Felix Bago. This was the second stage. Upon entering the house, the accused saw Patricio Reyes lying on the floor, face upwards and fired his gun, killing Patricio Reyes. Aurea Reyes was two (2) meters hiding under the table when she witnessed the shooting of her son.

In the recent case of PP VS. PERALTA 193 SCRA 9, the Supreme Court held that there is treachery where the victims were shot thru the window suddenly. Likewise, the PP VS. ALFARO 83 Phil. 85, PP VS. UNTONG 106 Phil. 1160, PP VS. MOSQUERADO 107 Phil. 62, where the accused shot the victim when the latter opened the door of his house and focused his flashlight on the accused, there being no risk to the accused and the victim did not expect the attack suddenly made upon him was considered by the Supreme Court to have been attended with treachery.

In the case at bar Romulo Soria entered the house of Felix Bago, suddenly pushed the door of the house and fired upon Felix Bago who was not hit because he dived to the floor. On the second firing although Patricio Reyes dived, [he] was hit in the arm. [T]he accused returned after he failed to hit Felix Bago and fired at Patricio Reyes, [who was then] wounded and bleeding, with his back to the floor and his face upward. Analogous to the instant case is the case of PP VS. CASA 92 Phil. 1082, where the attack was sudden and unexpected and the deceased was lying unconscious and therefore helpless. Treachery was appreciated in this case.[8]

Hence, in its decision of 7 March 1994, promulgated on 11 March 1994, the trial court decreed as follows:

WHEREFORE, finding the accused Romulo Soria y Galletes guilty beyond reasonable doubt of the crime of

Murder as defined and penalized under Art. 248 of the Revised Penal Code, he is hereby sentenced to reclusion perpetua with all the accessories of law and to indemnify Aurea Reyes the following amounts:

1. P50,000.00 for the death of Patricio Reyes;
2. P45,000.00 for actual and compensatory damages;
3. P50,000.00 as moral damages; and
4. To pay the costs.[9]

On 21 April 1994, the accused filed a motion for the reconsideration of the decision[10] alleging therein that the trial court erred in not considering the testimony of his witnesses, in relying solely on the witnesses for the prosecution, and in convicting him; and that "new evidence" show that there is doubt regarding the identity of the perpetrator of the crime. The so-called "new evidence" consist of the affidavits,[11] both dated 20 April 1994, of Ponciano Reyes and Aurea Reyes, parents of the victim, wherein in they declared that they were not convinced that it was the accused who killed their son. Aurea further declared that although she saw at close range the man who shot her son, she was not very certain if indeed the man was the accused.

In its order of 13 June 1994,[12] the trial court denied the motion for reconsideration for lack of merit; thus:

Now, coming to the retraction of Aurea Reyes that she entertains doubts as to the identity of the killer of her son. The affidavit of retraction or repudiation was ratified by no less than the defense counsel of Romulo Soria.

Recantation or retraction of witnesses is a settled issue especially so after the accused had already been convicted by the trial court. Philippine jurisprudence is abundant of cases, where the Supreme Court said and ruled that recantation or retraction should not be given probative value. In PP VS. CRUZ, 208 SCRA 326, the Supreme Court said retraction can easily be secured from poor and ignorant witnesses, usually for monetary considerations. Likewise, in PP VS. LOSTE, 210 SCRA 614, recantation made by a prosecution witness after conviction of the accused is unreliable and deserves scant considerations. This ruling is reiterated in PP VS. FLORES, 211 SCRA 622, where the High Court held that retraction is an afterthought which should not be given probative value. This ruling was further reinforced in PP VS. LOGRONIO, 214 SCRA 519, where the High Court said that retractions are generally unreliable and are looked upon with considerable disfavor by the court.

On 30 June 1994, the accused filed a motion for new trial[13] based on newly discovered evidence, which consist merely of the affidavits of Aurea Reyes and Ponciano Reyes mentioned in the motion for reconsideration. Photocopies thereof were attached to the motion.

Finding no cogent and valid reason to set aside or reconsider the decision, the trial court denied the motion for new trial in its order of 19 August 1994.[14]

On 9 September 1994, the accused filed a Notice of Appeal[15] wherein he announced that he is appealing to the Court of Appeals from the order of 19 August 1994. In view thereof, the trial court transmitted the record of the case to the Court of Appeals, which, however, forwarded it to this Court on account of the penalty imposed. We accepted the appeal on 5 June 1995.

In his brief, the accused makes the following assignment of errors, which we quote verbatim; thus:

ASSIGNMENT OF ERRORS

1. THAT RESPONDENT, HON. ABRAHAM Y. PRINCIPE, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH II, TUGUEGARAO, CAGAYAN COMMITTED ERRORS IN DENYING ACCUSED-APPELLANT ROMULO SORIA Y GALLETES MOTION FOR NEW TRIAL;
2. THAT RESPONDENT, HON. ABRAHAM Y. PRINCIPE, PRESIDING JUDGE REGIONAL TRIAL COURT, BRANCH II, TUGUEGARAO, CAGAYAN HAS ERRED IN CONVICTING

ACCUSED-APPELLANT ROMULO SORIA Y GALLETES WITHOUT CONSIDERING THE SWORN STATEMENTS OF WITNESS AUREA M. REYES AND PONCIANO M. REYES WHEREIN THEY DISOWNED THE KILLING OF THEIR MINOR SON THE LATE PATRICIO REYES, TO HAVE BEEN ALLEGEDLY PERPETUATED BY ACCUSED-APPELLANT ROMULO SORIA Y GALLETES;

3. IN BASING ITS DECISION OF CONVICTION OF APPELLANT SOLELY ON EXHIBIT C ALLEGED EXTRAJUDICIAL CONFESSION OF ACCUSED DURING THE INVESTIGATION AT THE SOLANA POLICE STATION; AND

4. IN RELYING ON THE WITNESSES FOR THE PROSECUTION INSTEAD OF WEIGHING THE EVIDENCES DURING THE TRIAL IN FAVOR OF THE APPELLANT.

The Office of the Solicitor General, on the other hand, gives full support to the trial court and prays that the challenged decision be affirmed in toto.

We find the appeal bereft of any merit.

I

The first and second assigned errors are intertwined, as the affidavits mentioned in the second were those relied upon in the motion for new trial.

The accused failed to realize that the trial court even extended him a special act of liberality when it did not consider his motion for new trial as pro-forma. The alleged newly discovered evidence in support of the motion for new trial are but photocopies of the affidavits of Aurea Reyes and Ponciano Reyes which were already attached to the motion for reconsideration in support of one of its grounds. Put a little differently, the motion for new trial was merely a rehash of one of the grounds of the motion for reconsideration. Being, pro-forma, the former did not stop the running of the period to appeal. Besides, the motion for reconsideration was filed forty-one days after promulgation of the judgment. The accused should then be grateful to the trial court for its liberality when it gave due course to the notice of appeal.

The trial court correctly denied the motion for new trial, which was based on the affidavits of Aurea Reyes and Ponciano Reyes. Curiously, both affidavits were subscribed and sworn to before Notary Public Isidro S. Reyes, who was then, and until now, the counsel for the accused.

Ponciano Reyes, who was not a witness to the commission of the crime, merely declared in his affidavit that he was not convinced that the accused killed his son Patricio because his own investigation disclosed that the crime was done by a certain group interested in killing Felix Bago, and that he would be bothered by his conscience if the accused would be made to suffer for Patricio's Death. Ponciano's personal opinion can in no way be considered an exculpatory evidence for the accused.

The affidavit of Aurea Reyes is one of recantation. Aurea stated therein that her conscience started to bother her after she testified in court; that although she saw at close range the man who shot her son, she was not very certain if indeed that man was the accused; that she knew for a fact that Felix Bago was the intended victim; and that the accused who is one of her husband's good friends could not have possibly killed her son in cold blood. Yet, in her testimony before the trial court on 11 June 1993, she positively identified the accused as the person who shot her son Patricio. On clarificatory questions by the trial court, she made the following answers:

Q How were you able to identify Romulo Soria?

A When he went back and fired at my son, sir, this was the time when I saw him.

Q Did he enter the house when he went back?

A Yes, sir.

Q He entered the sala?

A Yes, sir.

Q and then he fired to [sic] your son?

A Yes, sir.

Q What kind of lighting was your house provided at that time when the incident happened?

A It is a flourescent, sir, and a bulb.

Q How many flourescent lamp?

A Only one, sir.

Q One in the sala?

A Yes, sir.

Q What kind of flourescent lamp is it a medium size or the large one?

A It is the medium size, sir.[16]

The trial court gave full credence to her positive identification of the accused, tasking into account her deportment and manner of testifying. It was never shown that she lied. It is not be lightly supposed that a mother would callously violate her conscience to avenge the death of her son by blaming it on someone who is innocent.[17] Elsewise stated, it would have been unnatural for her who, definitely, was more interested than any other in vindicating the crime to accuse someone other than the real culprit and to let the latter go scot-free.[18]

Aurea signed the affidavit of recantation about a year after she testified in open court under a solemn oath and several weeks after the promulgation of the judgment of conviction. Understandably, the trial court suspected that this affidavit of recantation was procured by the defense, especially considering the fact that it was subscribed and sworn to before the defense counsel himself. Indeed, the recantation is highly suspect. That it was obtained for some consideration is not at all a remote possibility.

We have held that affidavits of recantation can easily be secured from poor and ignorant witnesses for monetary consideration[19] or through intimidation.[20] Recanted testimony is exceedingly unreliable,[21] for there is always the probability that it may later be repudiated.[22] Court thus look with disfavor affidavits of retractions of testimony given in open court,[23] and are wary or reluctant to allow a new trial based on retracted testimony.[24] Indeed, it would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness later on changed his mind for one reason or another, for such a rule will make a solemn trial a mockery and will place the investigation of truth at the mercy of unscrupulous witnesses.[25] It bears stressing that a testimony in court is made under conditions calculated to discourage and forestall falsehood, viz.:

that such testimony is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of solemn trial in an open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind towards the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that with the watchful eye of a trained-judge, his manner, general bearing, and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness.[26]

II

The third assigned error is baseless. The counsel for the accused may have either misunderstood the challenged decision or simply tried to mislead this Court.

Exhibit "C"[27] is not the accused's extrajudicial confession but the sworn statement of Aurea Reyes pointing to the accused as the killer of her son. A perusal of the challenged decision would readily show that the verdict is not based on the accused's extrajudicial confession.

III

The fourth assigned error is equally without merit. The prerogative of assigning value to the testimony of witnesses is vested in the trial court. The court's determination of the credibility of witnesses always deserves the highest respect because the trial court has the peculiar advantage of hearing the witnesses themselves, observing their deportment and manner of testifying, and noting other vital aids which assist it in assessing whether the witnesses are telling the truth or lying through their teeth. The exceptions to this principle are when the trial court has plainly overlooked, misunderstood, or misapplied certain facts or circumstances of weight and influence which, if considered, might affect the result of the case, or when the determination was reached arbitrarily.[28] The accused has not convinced us that any of these exceptions should be applied to him.

WHEREFORE, the instant appeal is DISMISSED and the challenged decision dated 7 March 1994 of the Regional Trial Court of Cagayan, Branch 2, in Criminal Case No. 2091 is hereby AFFIRMED in toto.

Costs against the accused-appellant.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Original Record (OR), Criminal Case No. 2091, 167-185; Rollo, 21-39. Per Judge Abraham Y. Principe.

[2] Id., 34; Id., 4.

[3] OR, 1-6.

[4] OR, 32-33.

[5] Id., 60.

[6] Id., 71.

[7] Id., 171; Rollo, 28.

[8] OR, 183-184; Rollo, 37-38.

[9] Id., 185; Id., 39.

[10] OR, 196-198.

[11] OR, 199-200.

[12] Id., 207-209.

[13] Id., 218-219.

[14] Id., 224.

[15] Id., 225.

[16] TSN, 11 June 1993, 13.

[17] *People vs. Boniao*, 217 SCRA 653, 671 [1993].

[18] *People vs. Viente*, 225 SCRA 361, 369 [1993].

[19] *People vs. Saliling*, 69 SCRA 427, 442 [1976]; *Reano vs. Court of Appeals*, 165 SCRA 525, 530 [1988].

[20] *Lopez vs. Court of Appeals*, 239 SCRA 562, 565 [1994].

[21] *People vs. Pasilan*, 14 SCRA 694, 701 [1965].

[22] *People vs. Clamor*, 198 SCRA 642, 651 [1991].

[23] *De Guzman vs. Intermediate Appellate Court*, 184 SCRA 128, 134 [1990].

[24] *People vs. Castelo*, 11 SCRA 193, 217 [1964]; *People vs. Saliling*, *supra* note 19.

[25] *People vs. Ubiña*, 97 Phil. 515, 526 [1955]; *People vs. Morales*, 113 SCRA 683, 688 [1982].

[26] *People vs. Uлита*, 108 Phil. 730, 733 [1960], citing *People vs. Farol*, 103 Phil. 1166 [1958].

[27] OR, 4.

[28] *People vs. Florida*, 214 SCRA 227, 236 [1992]; *People vs. Matrimonio*, 215 SCRA 613, 629 [1992]; *People vs. Datingginoo*, 223 SCRA 331, 334 [1993].

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