

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENANTE SISON ALIAS “DANTE”, ACCUSED-APPELLANT.

G.R. No. 119307. August 20, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by Renante Sison alias Dante from the Decision of Branch 44 of the Regional Trial Court of Dagupan City, First Judicial Region convicting him of the crime of murder.[1]

The Information against the accused and Jessie Sison reads:

"That on or about midnight of May 21, 1993, at Barangay Maticmatic, Municipality of Sta. Barbara, Province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, acting in conspiracy and taking advantage of darkness, armed with a bladed weapon with intent to kill, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously stab EDWIN A. ABRIGO, inflicting upon him stab wounds which caused his instant death, to the damage and prejudice of his heirs.

"CONTRARY to Art. 248, Revised Penal Code."

Both accused were arraigned on September 10, 1993. Renante pled not guilty. Jessie was not arraigned as the trial judge[2] found him mentally unfit. He was ordered to be treated at the Baguio General Hospital. His trial was suspended.[3] In due time, he recovered. Hence, on May 11, 1994, the trial judge directed his return to jail to face trial.[4] On June 16, 1994 the prosecution moved to discharge him as a state witness. The motion was granted despite the opposition of the accused-appellant.[5]

Jessie Sison testified that accused-appellant is his uncle - his deceased father being the latter's brother. He lives with his siblings in their family home located at Barangay Leet, Sta. Barbara, Pangasinan. On 21 May 1993, at about midnight, accused-appellant and Alfredo Cervantes went to their house. He was already asleep in the kitchen at that time. Accused-appellant woke him up saying, "I killed someone. Come with me and we will bury him." Aided by the moonlight, he saw that accused-appellant was armed with a bayonet and his clothes full of blood. He refused to go with the two men but because of fear that accused-appellant might strike him with the bayonet, he went with them to the Sinucalan river. Upon reaching the river, accused-appellant told him and Cervantes that they would bury the person he killed. All of them dug the ground where they buried the cadaver. Then they parted ways, and he went home. He learned later that the person they buried was Edwin Abrigo.[6]

Aurora Sison, Jessie's mother, corroborated her son's testimony. She testified that their family home, where she and her children live, is located at Barangay Leet, Sta. Barbara, Pangasinan. At the southside of the house is the Sinucalan River. At about 12 o'clock midnight of 21 May 1993, she was awakened by the accused-appellant and Alfredo Cervantes. By a nearby lamp she noticed that accused-appellant was holding a bayonet with scabbard and measuring about one and a half feet long. His white T-shirt was stained with blood. Upon entering her house, accused-appellant proceeded to the room of Jessie and woke him up. She heard him order Jessie to get a shovel

and bury Edwin Abrigo. Jessie refused but accused-appellant threatened him with death. After getting the shovel from the house of Egmidio Sison located about ten (10) to twelve (12) meters away, Jessie, accused-appellant and Cervantes left the house. Suspicious, she followed them until the riverbank where she saw a cadaver. She got frightened and left immediately. When Jessie returned, he did not speak to her. He appeared to be in shock. It was only on 23 May 1993, that Jessie spoke to her and informed her that the corpse which they buried frightened him.[7]

Jonathan Abrigo, brother of Edwin, testified that on 11 May 1993, at about 6:30 in the evening, he was in their house located at the Bliss Housing Project in Barangay Matic-Matic, Sta. Barbara, Pangasinan. He went out to borrow a carton box from a nearby store and passed by the house of Molong de Venecia where accused-appellant, Jessie Sison and others were engaged in a drinking spree. From two (2) meters away, he heard accused-appellant say, "Have you seen Edwin Abrigo, and that if you have seen him then we will surely kill him." He reported the incident to his mother who assured him she would talk to accused-appellant regarding his threat. He saw Edwin on 20 May 1993, and informed him about the threat from accused-appellant. Edwin responded, "I don't know of any wrong I committed against him." That was the last time he saw his brother alive. On 23 May 1993, he and his mother could not find Edwin. They looked for him. A child named Bangkay gave to them Edwin's brown wallet which he found near the river. They asked several persons to help them find him. They saw a newly dug grave with flies around it near the river. The grave contained the corpse of Edwin. They were able to identify Edwin's remains through the gold ring on his finger and the short pants he was wearing.[8]

Dr. Cristito D. Garcia conducted a post mortem examination on Edwin's cadaver. The Medico-Legal Certificate (Exhibit A) he issued shows the following findings:

x x x

"1. Stab wound 1.5 cm parasternal area left chest penetrating nipple aspect;

"2. Lacerated wound 0.5 - 1 cm scapular area, lateral aspect (L) back.

"ASSESSMENT: Cardio respiratory arrest 20

Hypovolemic shock 20

"assessment: Stab wound; Asphyxiation."[9]

x x x

In defense, accused-appellant testified that at about 7 p.m. of 21 May 1993, he left his house to work as a carpenter in the Bliss Housing Project. He returned to his house at about 11:30 a.m. to eat his lunch. At 1 p.m. he went back to work. At about 12:30 midnight, he repaired to the house of Barangay Captain de Guzman of Barangay Matic-Matic to borrow an icebag because his son had a fever. On his way back, he saw a light coming from the housing project and waited for the person carrying it. It was Alfredo Cervantes. As they walked together, Cervantes asked him to inform Jessie Sison that Edwin Abrigo is missing and he is the suspect. When they reached his house, he applied the icebag to his son. Thereafter, they went to the house of Jessie, woke him up, and told him about the disappearance of Edwin Abrigo. Jessie was mum.

Accused-appellant also declared that he had a misunderstanding with Jessie. It was allegedly brought about by Jessie's use of marijuana and his daughter's report that Jessie was fooling her. He scolded Jessie who apologized. On 22 May 1993, Alfredo Cervantes informed him about the death of Edwin Abrigo. On 23 May 1993, he learned that the body of Edwin Abrigo was dug up at Barangay Matic-Matic beside the Sinucalan River. Later, he and two (2) other men were picked up and jailed by the policemen of Sta. Barbara. They asked him if he had any

difference with Edwin Abrigo. The three of them were released at about 8:30 in the evening. After some time, he was again apprehended and detained together with Jessie Sison in the municipal jail of Sta. Barbara.

He denied the testimonies of Jonathan Abrigo Aurora Sison implicating him to the crime at bar. He claimed that he was wearing a black shirt and a pair of blue pants when he went out to borrow the icebag on the evening of 21 May 1993. He admitted that he has been charged previously with the crime of robbery with rape.[10]

Remedios Sison, accused-appellant's wife, corroborated the testimony of her husband that he went to the house of Barangay Captain De Guzman on 21 May 1993, at past 12 o'clock midnight, to borrow an icebag for their sick son. She declared, however, that Cervantes went to their house after the arrival of her husband from the house of the said barangay captain. She likewise stated that Jessie Sison and her husband have no misunderstanding, and the relationship of her husband with Aurora Sison is pleasant.[11]

Trial court convicted accused-appellant of the crime of murder, rationalizing as follows:

"In an attempt to exculpate himself, accused Renante Sison alias Dante Sison wants to convince the Court that on May 21, 1993, at around 12:30 in the evening, he went [out] to borrow an icebag from the house of Barangay Captain de Guzman. As he had seen a light coming from the housing project, he waited for Fred Cervantes. While they were walking and conversing with each other, Fred Cervantes told him that Edwin Abrigo is missing and Jessie Sison is the suspect. After reaching their house at 12:40, they applied the icebag on his son who had a fever. Thereafter, he and Alfredo Cervantes went to the house of Jessie Sison, reaching the house at around 12:50. He woke up Jessie Sison and Alfredo Cervantes told Jessie that he is the suspect. Jessie Sison was trembling and was not able to say anything.

"Rather than corroborating the testimony of her husband's arrival at their house at 12:40, Remedios Sison, wife of the accused, testified that her husband arrived at 2:30 in the morning of May 22, 1993.

"Accused Renante Sison alias Dante Sison wants to impute the crime of Murder to Jessie Sison. The Court is not convinced. The defense of the accused is not worthy of belief. For a careful evaluation of the evidence adduced by the prosecution discloses that accused Renante Sison alias Dante and Fred Cervantes woke up Jessie Sison (co-accused and discharged) on May 21, 1993, at 12:00 in the evening. While Jessie Sison was sleeping in their house at Leet, Sta. Barbara, Pangasinan, Dante Sison woke him up and said, "I killed someone, come with me and we will bury him." Jessie Sison refused to go with him but he was afraid as accused Dante Sison was holding a bayonet. The person buried is (sic) Edwin Abrigo.

"The statement of accused Renante Sison alias Dante to Jessie Sison, 'I killed someone, come with me and we will bury him.', is part of the *res gestae*. It was made under the stress of [an] exciting event. Ergo, it is admissible against accused Renante Sison alias Dante.

"Jessie Sison could not have made a mistake that the person who woke him up on May 21, 1993, in the evening, is accused Renante Sison alias Dante. The latter is his uncle because he is the brother of his father, and besides, there was moonlight.

"Further, when accused Renante (alias Dante) Sison woke up Jessie Sison, Renante's clothes were full of blood and [he] was armed with a bayonet. These are incriminating pieces of circumstantial evidence that point to Renante Sison alias Dante as the perpetrator of the offense.

"There is no question that Edwin Abrigo is dead. The testimony of Dr. Cristito Garcia and the medico-legal certificate (Exhibit A) are clear on this point.

"The information alleges the qualifying circumstance of evident premeditation and abuse of superior strength.

"The qualifying circumstance of evident premeditation qualified the killing of Edwin Abrigo to Murder. The testimony of Jonathan Abrigo is clear that on May 11, 1993, at around 6:30 in the evening, he was at

Matic-Matic, Sta. Barbara, Pangasinan. While passing by a store, at a distance of two (2) meters, he heard Dante Sison utter, 'Have you seen Edwin Abrigo and that if you have seen him then we will surely kill him.' (tsn, May 26, 1994). The prosecution has proved the time when Renante Sison determined to kill Edwin Abrigo. The accused clung to his determination to kill his victim. There was sufficient lapse of time between the determination and execution of the killing.

"Abuse of superior strength was not proved.

"The aggravating circumstance of nighttime facilitated the commission of the crime.

"The accused failed to show any mitigating circumstance.

"The case is covered by Article 248 of the Revised Penal Code before it was amended by Republic Act Number 7659." [12]

Accused-appellant was sentenced to reclusion perpetua and to indemnify the heirs of Abrigo in the amount of P50,000.00. He was also ordered to pay P1,000.00 representing the expenses of Priscila Abrigo and the cost of suit.

Accused-appellant is now before this Court interposing the following assignment of errors:

I

"The lower court gravely erred in granting the motion to discharge Jessie Sison in the Information filed by the prosecution and in allowing him to become a state witness despite the fact that Jessie Sison is the most guilty person.

II

"The trial court erred in giving weight and credence to the testimonies of Jessie Sison and Aurora Sison which are ill motivated, fabricated and wholly concocted."

We find no merit in the appeal.

We reject the first contention of the accused-appellant. The records will show that it is only now that the accused-appellant is assailing the discharge of Jessie Sison as a state witness. This is too late in the day. In the early case of *US v. Inductivo*, [13] where it was only on appeal that counsel for the accused first argued against the competence of one Obdulio as a state witness, we held that "x x x it is almost universal rule x x x that aside from matters jurisdictional, which can only be raised for the first time on appeal, and aside from a few other exceptions which need not be noticed, questions not raised in the trial court will not be considered on appeal."

Moreover, it is difficult to sustain accused-appellant's submission that Jessie Sison is the most guilty of the crime at bar. The discharge of Sison as a state witness because he does not appear to be the most guilty is highly factual in nature. The discretionary judgment of the trial court on this factual issue is seldom interfered with by appellate courts except in case of grave abuse of discretion. We do not see any compelling reason to fault the discharge of Sison as a state witness in light of the trial court's assessment of the totality of the evidence adduced by the parties. Examining the evidence, we find no competent evidence establishing Sison as the most guilty party. Allegedly, the PNP of Sta. Barbara, Pangasinan had sworn statements of Danilo Losendo and Rodelio Lurian pointing to Sison as the one who stabbed the victim. These sworn statements are, however, hearsay evidence for Losendo and Lurian did not testify in court. Efforts of the authorities to locate them proved fruitless.

We also reject the second contention of the accused-appellant assailing the credibility of Jessie Sison and his mother, Aurora Sison. Allegedly, Jessie Sison does not deserve credence as he was a mental case. The records, however, show that Sison underwent treatment before he testified in court. In a letter dated May 20, 1994, Sison's

attending physician assured the court that he has recovered from his mental illness. A reading of his direct testimony and his answers during the cross-examination reveals that he could intelligently communicate his perceptions of the crime at bar. Jessie's testimony was corroborated in its material points by his mother. Both Jessie and his mother have no ill-motive to frame up accused-appellant for such a serious crime as murder. Their credibility is unaffected by trivial inconsistencies in their testimonies such as whether the night of May 21, 1993 was a moonlit night, or whether a lamp aided the witnesses in identifying the accused-appellant. As well-stressed by the Solicitor General, "what is material for the conviction of appellant is the positive and categorical testimony of Jessie Sison and Aurora Sison that appellant, armed with a bayonet, came to their house in the evening of May 21, 1993, told Jessie Sison that he killed somebody and thereafter coerced him to bury the cadaver of the victim who turned out to be Edwin Abrigo." [14]

Our rules on evidence allow the conviction of an accused even if no eyewitness is available provided that enough circumstantial evidence has been established by the prosecution to prove beyond reasonable doubt that the accused committed the crime. [15] Section 4, Rule 113 of the Revised Rules of Court thus provides:

"Section 4. Circumstantial evidence, when sufficient. -- Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt."

We hold that the following circumstances which accused-appellant failed to disprove by his feeble defense of denial proved beyond reasonable doubt that he killed Edwin Abrigo:

- That on 11 May 1993, accused-appellant threatened to kill Edwin Abrigo although he was drunk at that time;
- That at midnight of 21 May 1993, accused-appellant left his house and went to the nearby barangay which was the locus criminis;
- That accused-appellant, together with Alfredo Cervantes, woke up Jessie Sison and ordered him to get a shovel and bury the person killed by appellant;
- That at the time accused-appellant woke up Jessie Sison, he was armed with a bayonet and his T-shirt was full of blood;
- That accused-appellant, Jessie Sison and Alfredo Cervantes dug a grave by the riverbank and buried therein the corpse of Edwin Abrigo;
- That the confused and inconsistent testimony of accused-appellant's wife reveals that he got home not at 12:30 but at about 2:30 in the early morning of 22 May 1993; and
- That even before the cadaver of Edwin Abrigo was dug up, accused-appellant already knew that he was dead.

We now review appellant's conviction of the crime of murder in keeping with the Court's duty, as an appellate tribunal, to correct such errors as may be found in the judgment appealed from, whether they are made the subject of assignment of errors or not. [16]

We do not agree with the trial court's ruling that evident premeditation qualified the killing of Edwin Abrigo to murder based on the testimony of Jonathan Abrigo. The qualifying circumstance of evident premeditation must be established with equal certainty and clearness as the criminal act itself. It must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning. [17] It cannot be presumed from mere lapse of time. [18] To authorize its finding, three (3) requisites must be duly proven, to wit: (a) the time when the

offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[19] We are not persuaded that evident premeditation was proved beyond reasonable doubt. While Jonathan Abrigo's testimony seems to indicate that accused-appellant had planned to kill the victim as early as ten (10) days before the incident, there is no evidence that the accused-appellant clung to his determination. Appellant's threat uttered while intoxicated[20] is insufficient to constitute premeditation when it was not followed by subsequent acts revealing a firm and decided purpose to carry out said threats and that he coolly and with reflection persisted in his purpose to commit the crime. Such threat may be construed only as a casual remark of a drunken man.

We agree with the trial court that abuse of superior strength was not proved. Likewise, we affirm its appreciation of nighttime as an aggravating circumstance. Nighttime facilitated the commission of the crime. Indeed, appellant took advantage of it by immediately burying the corpse of Edwin Abrigo to prevent its discovery.

Accordingly, appellant should be held liable only for the crime of homicide defined under Article 249 of the Revised Penal Code. There being one (1) aggravating circumstance which attended the killing, the penalty of reclusion temporal provided under said article shall be imposed in its maximum period. Applying the Indeterminate Sentence Law, appellant's sentence should be within the range of prision mayor, as the minimum, and reclusion temporal in its maximum period, as the maximum.

IN VIEW WHEREOF, the appealed Decision is MODIFIED. Appellant Renante Sison is found GUILTY OF HOMICIDE and sentenced to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum.

In all other respects, the questioned Decision is AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] In Criminal Case No. D-11734 penned by Judge Crispin C. Laron.

[2] Judge Erna Falloran-Aliposa.

[3] Records, pp. 66-67.

[4] Records, pp. 116-120, 140-142.

[5] Records, pp. 181-184, 192-195, 229-231.

[6] TSN, Jessie Sison, June 30, 1994, pp. 3-14, 27-40.

[7] TSN, Aurora Sison, May 11, 1994, pp. 7-12; May 20, 1994, pp. 5-47, 54-58.

[8] TSN, Jonathan Abrigo, May 26, 1994, pp. 3-16; May 27, 1994, pp. 7-46.

[9] Records, p. 9.

[10] TSN, Renante Sison, September 7, 1994, pp. 4-48.

[11] TSN, Remedios Sison, August 23, 1994, pp. 3-47.

[12] Decision, pp. 6-7; Rollo, pp. 107-108.

[13] 40 Phil. 84 (1919); see also *US v. Bonete*, 40 Phil. 958, 964 (1920).

[14] Appellee's Brief, pp. 26-27.

[15] *People v. Lagao, Jr.*, 271 SCRA 51 [1997].

[16] *Tabuena v. Sandiganbayan*, 268 SCRA 332 [1997]; *Obosa v. Court of Appeals*, 266 SCRA 281 [1997].

[17] *People of the Philippines v. Juan Pena*, G. R. No. 116022, July 1, 1998; *People v. Lacao*, 60 SCRA 89 [1974], citing *U. S. v. Banagale*, 24 Phil. 69, 73; *People v. Mendova*, 100 Phil. 811 [1957].

[18] *U. S. v. Ricafort*, 1 Phil. 173 [1902].

[19] *People v. Derilo*, 271 SCRA 633 [1997].

[20] TSN, Jonathan Abrigo, May 27, 1994, p. 20.

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