

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO CARIZO Y LLAMES, JULITO CARIZO Y LLAMES AND CARLOS CARIZO Y LLAMES, ACCUSED-APPELLANTS.

G.R. No. 123053. August 21, 1997

Ponente: MELO, J.

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MELO, J.:

Leonardo Carizo y Llames, Jerry Carizo y Llames, Julito Carizo y Llames, Carlos Carizo y Llames, and Sergio Artajo y Calda were charged with murder in an Information reading :

That on or about the 16th day of May 1993 in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, while armed with bladed weapons, conspiring and confederating together and they mutually helping and assisting one another, with intent to kill, by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one MARIO DAPITAN, thereby inflicting upon the latter mortal wounds which directly caused his death.

(p. 10, Rollo.)

Another information was filed against Dindo Carizo y Llames, Carlos Carizo y Llames, and Jerry Carizo y Llames for Attempted Homicide.

After trial, the court a quo rendered a decision dated April 25, 1995, disposing:

WHEREFORE, premises considered, judgment is hereby rendered in these cases, as follows :

1. In Crim. Case No. 2195, finding accused Leonardo, Julito and Carlos, all surnamed Carizo, GUILTY beyond reasonable doubt of the crime of Murder, as defined and penalized under Art. 248 of the Revised Penal Code and sentencing each of them to suffer reclusion perpetua, to indemnify the heirs of the deceased Mario Dapitan in the amount of P60,000.00, and to pay the costs.

Upon a reasonable doubt, accused Jerry Carizo and accused Sergio Artajo are hereby ACQUITTED from the same charge of Murder.

Said accused are therefore ordered released from custody unless there are other valid grounds for their continued detention.

2. In Crim. Case No. 2196, ACQUITTING accused Dindo, Carlos and Jerry Carizo from the charge of Attempted Homicide upon a reasonable doubt.

Accordingly, except for Carlos Carizo who has been convicted of Murder, the two (2) other accused, Dindo and Jerry Carizo, are ordered released from custody unless there are other valid grounds for their continued detention.

(pp. 49-50, Rollo.)

Leonardo Carizo, Julito Carizo, and Carlos Carizo have interposed the instant appeal imputing the following errors to the trial court :

I -THE COURT A QUO GRAVELY ERRED IN CONVICTING THE THREE CARIZO BROTHERS, HEREIN ACCUSED-APPELLANTS LEONARDO, CARLOS AND JULITO FOR THE CRIME OF MURDER DESPITE THE OVERWHELMING EVIDENCE OF THE DEFENSE AS TO WHAT REALLY TRANSPIRED ON MAY 16, 1993.

II-THE COURT A QUO GRAVELY ERRED IN CONVICTING THE THREE CARIZO BROTHERS, HEREIN ACCUSED-APPELLANTS LEONARDO, CARLOS AND JULITO FOR THE CRIME OF MURDER DESPITE THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT.

The facts of the case, as accurately summarized by the Office of the Solicitor General, based on the evidence are as follows :

In the morning of May 16, 1993, the fiesta of Sitio Ese, San Rafael, Rodriguez, Rizal, Mario Dapitan asked Elmer Ewan to accompany him to his cousin Edith's house, to which Elmer acceded. The two reached Edith's house at about 10 in the morning and stayed there up to about 12 noon (TSN., January 6, 1994, pp. 4-5).

On their way home, Juan Camacho invited the two to drop by his house, it being a fiesta. Inside Camacho's house, they saw appellant Julito Carizo, who asked Mario to drink. The latter declined. Appellant Julito felt slighted by the rebuff and a heated exchange followed where appellant Julito challenged Mario to a fistfight outside Camacho's house (Ibid., pp. 6-7).

Mario did not accept the challenge. The host, Juan Camacho, pacified Julito who was then taken home. When Camacho returned to his house, Mario and Elmer asked for leave to go, but before they can do so, appellant Carlos (Julito's brother) arrived. He was then in a foul mood and he bragged of his being a barangay tanod. He asked Juan Camacho, "Pare sino ba ang kalaban ng kapatid ko rito?", to which Juan Camacho replied, "wala pare". At this point, appellant Carlos saw Mario threw dagger looks at him while asking the latter "To, ako, kaya mo?". Mario simply raised his hands and said, "Hindi ako lalaban, kuya". After that, Mario and Elmer simply decided to go home (Ibid., pp. 6-8).

The two arrived at Sitio Tabak at about 3 in the afternoon and they stayed at the house of Mario. At about 6 in the early evening, Mario again asked Elmer to accompany him to his cousin's house, in Sitio Ese to which Elmer acceded. The two, however, were not able to reach Edith's house as they were blocked by the Carizo brothers (Ibid., p. 9). Seeing that the brothers were armed, the two (Mario and Elmer) raised their hands and Elmer even said "Carlo, hindi kami lalaban." (TSN., January 27, 1994, pp. 15-16).

Despite such pleas, the brothers attacked them. Elmer managed to evade the stab thrusts and ran away. When he was already at a safe distance and was not followed, he looked back and saw that his friend Mario was still standing at the place where they met the brothers. He saw appellant Carlos dealt Mario the first stab thrust. Mario pushed appellant Carlos aside and tried to flee while walking in a zigzag manner (TSN., February 11, 1994, pp. 6-9).

The fleeing Mario was chased by his tormentors, namely, appellants Julito, Leonardo and Carlos Carizo until they reached the place called "tibagan ng bato," which was near the resident of witness Rosemarie Esplana. Rosemarie saw appellant Julito blocked Mario's way. Appellant Julito, who was then holding a pointed instrument, gave Mario what looked like a fist blow, after which blood splattered from Mario's body making him fall on his knees. While in that position, appellant Leonardo followed it up with another stab, causing Mario to fall down. The downed Mario tried to get up, raised both of his hands as if pleading. Then, appellant Carlos also stabbed Mario; and "he even tried to turn the knife (inikot-ikot sa tiyan)" (TSN., June 22, 1994, pp. 3-5).

All that time, there were many curious on-lookers, with some of them shouting “huwag, huwag, huwag”. Rosemarie likewise shouted “tama na, tama na, maawa na kayo sa tao”. After appellant Carlos was through with Mario, he ditched his knife into the river. As appellants proceeded towards Rosemarie’s direction, the latter got frightened and went inside her house (Ibid., pp. 5; 8).

At about that same time, a certain Fred Francisco reported to the police station of Rodriguez, Rizal about an incident going on at Sitio Ese. SPO1 Virgilio San Jose, together with his colleagues, responded. On their way to the place, they met a group of tanods who had with them appellants Leonardo and Carlos. The tanods informed them that the two brothers were involved with the incident so the police took them to the station. After that, SPO1 San Jose and his companions went back to Sitio Ese to investigate. They found the cadaver of Mario Dapitan and some pictures of the cadaver were taken, after which the body was sent to the PNP Crime Laboratory (TSN., April 8, 1994, pp. 3-5).

Dra. Jesusa Nieves-Vergara, a medico-legal officer with the PNP Crime Laboratory at Camp Crame, testified that she was the one who performed the autopsy on the body of Mario. She declared that the deceased sustained 36 wounds or injuries - 20 stab wounds, 10 abrasions, 3 incised wounds, 1 lacerated wound and 1 contusion. Of the 20 stab wounds, 6 were superficial, 10 were fatal and 4 were less fatal. The contusion was at the extremity, at the left. There was a laceration at the back of the head and there was also a fracture on the bone at the back of the head, which is also fatal. As an expert witness, she also testified that judging from the kind of wounds inflicted on the deceased, there could have been more than two (2) attackers. The doctor reasoned out that since the wounds sustained were compatible with double-bladed weapon, and a single bladed weapon, it means that more than two wounding instruments were used.

(pp. 3-8, Appellee’s Brief.)

The version of accused-appellants of the incident is as follows :

On May 16, 1993, accused-appellant Leonardo Carizo was then at Tibagan Bato, arranging the stones which are to be hauled by trucks. At 6 o’clock in the evening of that same day, accused-appellant Leonardo Carizo saw Elmer Ewan and Mario Dapitan who were passing nearby and quarreling with each other. Accused-appellant Leonardo Carizo, feeling obliged, tried to pacify the two men. Elmer Ewan and Mario Dapitan who were the ones originally having a petty quarrel felt irked by the actuation of accused-appellant Leonardo Carizo in pacifying them and took it as “pakikialam”. Elmer Ewan turned his anger at accused-appellant Leonardo Carizo and tried to stab the latter who was hit at the right thigh. Mario Dapitan, witnessing what his friend Elmer did, also tried to stab accused-appellant Leonardo Carizo but the latter was able to parry the blow. The second attack of Mario Dapitan however hit the accused-appellant Leonardo Carizo at his left thigh. Sensing that the two men really meant to stab him, accused-appellant Leonardo Carizo, with his instinct of self-preservation, did all he could to evade the thrust and stab of the two men to the extent of using the body of Mario Dapitan as a shield from the stab of Elmer Ewan. It was therefore Mario Dapitan who took the rest of the stabs thrust by Elmer Ewan. Accused-appellant Leonardo Carizo ran for his life and was not pursued anymore by the two men.

(pp. 3-4, Appellants’ Brief.)

Accused-appellants assert that the trial court should have based its decision on the testimony of the defense witnesses instead of ignoring the same. It is insisted that the defense witnesses are not biased but are impartial and credible and they have not been shown to have any motive to testify falsely and, thus, there is no reason for the trial court to disbelieve them.

It is axiomatic that the determination of the question of credibility is a function of a trial court for it is best equipped to make that assessment, and its factual findings are generally not disturbed on appeal (People vs. Nemeria, 242 SCRA 448 [1995]), unless the trial court had overlooked, misunderstood, or misapplied some fact

or circumstance of weight and substance which, if considered, would alter the result of the case (People vs. Gapasan, 243 SCRA 53 [1995]). A painstaking scrutiny of the record notwithstanding, no such fact or circumstance of weight or substance which had been ignored by the trial court has surfaced. The court a quo's findings of fact should, therefore, stand.

On the other hand, prosecution witness Elmer Ewan categorically testified that, as he and the victim were on their way to the house of Mario's cousin house in Sitio Ese, accused-appellants blocked their way. Elmer succeeded in running away but he saw accused-appellants attack and stab Mario. Elmer's testimony is corroborated by Rosemarie Esplana who positively and categorically identified accused-appellants as the assailants and killers of Mario. She testified in detail on how accused-appellants attacked the unarmed and helpless Mario. Her testimony, in turn, finds corroboration in the findings of the medico-legal expert, Dra. Jesusa Nieves-Vergara who unequivocally testified that, based on the number and kind of wounds inflicted on the victim, there were more than two attackers, rejecting the theory that there was only one assassin, as accused-appellants are insisting, because the wounds inflicted upon the victim were caused by a double-bladed knife and single-bladed knife, clearly signifying that two weapons were employed. Likewise, the testimony of these prosecution witnesses overthrows accused-appellants' version that Mario was used by accused-appellant Leonardo as a shield to protect himself from Elmer's attack.

The testimony of Rosemarie cannot be discarded merely on the ground that she is a relative of Elmer to whom accused-appellants would ascribe authorship of the crime. Mere relationship of a dramatis personae to a witness does not automatically impair the latter's credibility nor does it mean that his testimony would be rendered less worthy absent any improper motive which can be ascribed to him for testifying (People vs. Alban, 245 SCRA 549 [1995]). To warrant rejection of the testimony of a relative, it must be clearly shown that, independent of the relationship, the testimony was inherently improbable or defective or that improper or evil motives had moved the witness falsely to incriminate the appellant (People vs. Daen, Jr., 244 SCRA 382 [1995]). No such circumstances were demonstrated by accused-appellants.

Accused-appellants profess that their guilt has not been proven beyond reasonable doubt. The evidence on record stifles their protestations of innocence. Proof beyond reasonable doubt does not mean that which produces absolute certainty. Only moral certainty is required or "that degree of proof which produces conviction in an unprejudiced mind." (Preclaro vs. Sandiganbayan, 247 SCRA 454 [1995]; People vs. Reoveros, 247 SCRA 628 [1995]). We have assiduously evaluated the evidence on record and find no ground to reverse the conclusions of fact of the trial court. Accused-appellants were positively and categorically identified by two prosecution witnesses as the perpetrators of the crime charged. The evidence on record clearly satisfies the requirement of proof beyond reasonable doubt.

Finally, accused-appellants contend that the prosecution failed to prove the qualifying circumstance of treachery. The evidence shows that the attack on the victim was sudden and unexpected. While the victim, Mario, and Elmer were walking on their way to the house of Mario's cousin, their path was unexpectedly blocked by accused-appellants who were armed. Despite the fact that Mario and Elmer were unarmed and raised their hands and said "hindi kami lalaban" (we will not fight), they were attacked by accused-appellants. Elmer managed to escape, but Mario failed to evade the stab thrusts of accused-appellants. Accused-appellants numbering three ganged up on the victim and kept stabbing him even as he fell down. The circumstances and manner of the attack enabled them to kill Mario in such a manner that insured the execution of the crime without affording the victim any chance to defend himself. The presence of treachery is manifest. Verily, there is treachery when the offender commits any of the crimes against persons, employing means, methods or form in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the

offended party might make (Article 14, No. 16, Revised Penal Code).

The presence of treachery qualifies the killing to murder. The trial court, therefore, properly convicted the accused-appellant of murder.

WHEREFORE, the decision appealed from is hereby AFFIRMED, with the slight modification that the civil indemnity is reduced to Fifty Thousand Pesos (P50,000) to conform with prevailing jurisprudence. No special pronouncement is made as to costs.

SO ORDERED.

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

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