

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CASIMIRO JOSE Y GAYOL @ "JUN", ACCUSED-APPELLANT.

G.R. No. 130666. January 31, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal taken by accused-appellant Casimiro Jose y Gayol @ "Jun" from the decision[1] of the Regional Trial Court, Branch 57, San Carlos City (Pangasinan), finding him guilty of murder, defined and penalized under Article 248 of the Revised Penal Code, for hacking to death Felix Zacarias, and sentencing him to reclusion perpetua and to pay the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00), and to pay actual expenses of Thirty Thousand Pesos (P30,000.00) and to pay the costs."[2]

On December 20, 1996, Second Assistant Provincial Prosecutor Federico G. Qunit filed with the Regional Trial Court, San Carlos City (Pangasinan) an information charging accused-appellant Casimiro Jose y Gayol @ "Jun" with murder committed as follows:

"That on or about the 15th day of September, 1996, in the morning, in barangay Dusoc, municipality of Bayambang, province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there, wilfully, unlawfully and feloniously attack, assault and stab Felix Zacarias, inflicting upon him the following injuries:

"HEENT-

Hacking wound with laceration of major blood vessel at left lateral and medical cervical area 5 cm. in length

"Cause of death:

R/O Cardiac arrest Hypovolemic shock 2 Laceration of major vessel (Carotid artery and (L) Jugular [sic] vein which caused the death of said Felix P. Zacarias as a consequence, to the damage and prejudice of his heirs.

"With generic aggravating circumstance of nighttime.

"CONTRARY to Art. 248 of the Revised Penal Code."[3]

On October 21, 1996, accused-appellant Casimiro Jose y Gayol was arrested by the elements of Bayambang Police Station, Bayambang, Pangasinan.[4]

With the assistance of counsel, accused-appellant was arraigned on February 7, 1997 and pleaded not guilty.[5] Thereafter, trial on the merits ensued.

The prosecution presented eight (8) witnesses, while the defense presented only accused Casimiro Jose.

At about 1:00 o'clock in the morning of September 15, 1996, prosecution eyewitness Gina Zacarias was awakened from her sleep by the noise caused by her drunken brother, Felix Zacarias. Felix came home from the wake of Federico Herrera, brother of accused Casimiro Jose's father-in-law, whose house was about two hundred (200) meter's away from the victim's house, both located in Barangay Dusoc, Bayambang, Pangasinan. Felix worked in Manila and he was in the province on a three-day vacation.

To pacify Felix who was then ascending the front steps of their house, Gina stepped out of her room and asked her brother to stop shouting because their neighbors were still asleep. Felix did not listen and continued shouting "Mga walanghiya kayo!" directed against no one in particular.

Instead of proceeding to the house, Felix suddenly went down the steps. A neighbor, Beatriz Calimlim, called Felix and angrily uttered "Pedro, Pedro ano yong pinagsasabi mo." Felix tried to locate the voice of the woman who was calling him, with Gina following him down the steps.

Before Gina could catch up with her brother, accused Casimiro Jose suddenly appeared from the back of their house. From a distance of five (5) meters, Gina saw accused Casimiro hack her brother in the left side of the neck with a bolo.[6] Felix was facing the accused and was about a meter away from him. The attack was sudden and unprovoked.[7]

Though it was still dark, Gina recognized accused Casimiro as the assailant of her brother because the light coming from a sixty-watt bulb in their kitchen illuminated the place.[8] She was familiar with accused Casimiro as the latter is her cousin's husband.[9]

After the attack, accused Casimiro immediately fled and in his haste, left behind his slippers.[10]

Despite the wound in his neck, Felix was able to climb the six (6) steps of their house unaided. For fear that the accused was still following him to his house, once inside, Felix turned off the lights and jumped out of the window. Felix rushed to the house of his cousin, Corita Tabora,[11] shouting that he was hacked. Thereafter, his cousins who were attending the wake brought Felix to Bayambang District Hospital. Gina was left behind to attend to her mother who was suffering from hypertension. Felix expired on the way to the hospital.[12]

Roberto Velasquez, barangay kagawad of Brgy. Dusoc, Bayambang, Pangasinan, testified that while attending the wake of Federico Herrera, also in Dusoc, Bayambang, Pangasinan, he received a report that somebody was hacked. His initial investigation revealed that accused-appellant Casimiro Jose was responsible for the hacking. Thereafter, he went to the police detachment, about one-half (1/2) kilometer away, and reported the incident. Right there and then, SPO1 Bernard Padlan and SPO2 Romeo Sajor went with Kagawad Velasquez to Brgy. Dusoc and searched for accused-appellant Casimiro Jose.

Together with Kagawad Velasquez, the two policemen apprehended accused-appellant Casimiro Jose in the house of his father-in-law's brother, located in the same barangay. Initially, accused-appellant Casimiro Jose denied responsibility for the death of Felix. However, because his clothes were soiled with blood, he was compelled to admit that he hacked the victim.[13]

SPO1 Jesus V. Ramos, PNP, Bayambang, Pangasinan, said that while he was on duty in the morning of September 16, 1996, Gina Zacarias reported a hacking incident at Brgy. Dusoc, Bayambang, Pangasinan.

Thereafter, he conducted an investigation and went to Bayambang District Hospital. When he arrived at the hospital, he found out that the victim was dead. Upon his return to the police detachment, he received a radio message from the duty policemen at Brgy. Dusoc that accused-appellant Casimiro Jose was in their custody.[14]

Based on the post-mortem examination conducted on September 16, 1996 at about 7:30 in the morning by Dr.

Imelda Soriano, Municipal Health Officer, Bayambang, Pangasinan, Felix Zacarias sustained a hacking wound in the left neck, about five (5) centimeters in length extending from the medial cervical area to the lateral cervical area. Judging from the wound, a bolo might have been used in attacking the victim and the assailant could have been in front of the victim when it happened. Dr. Soriano testified that because what was hit was a major blood vessel, the jugular vein, in the neck of the victim, the wound was sufficient to cause the latter's death. The cause of death was cardiac arrest, secondary to hypovolemic shock, secondary to laceration of the carotid artery and jugular vein.[15]

Alicia Zacarias, the mother of Felix, testified that as a result of her son's death her family incurred thirty thousand five hundred (P30,500.00) pesos in expenses.[16]

Accused-appellant Casimiro Jose interposed the defenses of denial and alibi. On the night in question, September 15, 1996, he said that he was sleeping at the house of the brother of his in-laws at Brgy. Dusoc, Bayambang, Pangasinan. He and his family really lived in Brgy. Magsaysay, Bayambang, Pangasinan and they only went to Brgy. Dusoc to attend the wake of his father-in-law's brother, Federico Herrera.

At about 2:00 o'clock in the morning, he was awakened by the arrival of the policemen at the house where he was staying. He was suspected as the assailant of Felix Zacarias. Thereafter, he was handcuffed and ordered to board a tricycle that would bring him to the police station. Before he could be brought to the station, Elpidio Bato, one of the cousins of the victim, boxed him in the face and blood oozed from his mouth. For about fifteen (15) minutes, he was unconscious. When he regained consciousness, he was inside the tricycle.

At the PNP station, Bayambang, Pangasinan accused Casimiro was turned over to SPO1 Jesus Ramos, who in turn put him in jail.

When asked about his relationship with Felix Zacarias and Elpidio Bato, accused-appellant Casimiro Jose said that they were cousins of his wife. He denied killing the victim, though he admitted seeing the latter at the wake of the brother of his father-in-law early evening of the night in question. He does not have any grudge against either of them for him to kill Felix or for Elpidio to box him.[17]

On May 7, 1997, the trial court promulgated its decision finding accused-appellant Casimiro Jose y Gayol @ "Jun" guilty beyond reasonable doubt of murder. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing, the Court finds the accused Casimiro Jose guilty beyond reasonable doubt of the crime of Murder and sentences him to an imprisonment of Reclusion Perpetua, there being neither an aggravating nor mitigating circumstances. The accused is likewise ordered to pay the heirs of the victim in the amount of Fifty Thousand Pesos (P50,000.00), and to pay actual expenses of Thirty Thousand Pesos (P30,000.00) and to pay the costs.

"SO ORDERED.

"San Carlos City (Pangasinan), May 7, 1997.

"BIENVENIDO R. ESTRADA

"Presiding Judge"[18]

On May 19, 1997, accused-appellant Casimiro Jose filed a notice of appeal with the trial court,[19] which the Court gave due course in a resolution dated March 4, 1998. On July 12, 1997, accused-appellant was transferred to the custody of the New Bilibid Prison in Muntinlupa City.[20]

In arriving at a judgment of conviction, the trial court did not give credence to the defenses of denial and alibi. The court a quo said that accused-appellant Casimiro Jose failed to prove that he "was not at the locus delicti at

the time the offense was committed, and that it was physically impossible for him to be at the locus criminis at the time of its commission." [21] It further said that the defense of alibi could not prevail over the positive testimonies of the prosecution witnesses. The defense put up by accused remained uncorroborated. Considering the sudden and unprovoked assault on the intoxicated victim, treachery qualified the killing into murder. Though evident premeditation has been alleged, the prosecution failed to establish its existence.

On appeal, accused-appellant Casimiro Jose argues that the trial court erred in finding him guilty beyond reasonable doubt of murder. Even assuming *arguendo* that he killed Felix Zacarias, he is guilty only of homicide.

The solicitor general maintains that the prosecution's evidence was sufficient to sustain accused-appellant's conviction for murder and prays for the affirmation of the trial court's decision, with the modification that the civil indemnity of fifty thousand (P50,000.00) be increased to seventy five thousand (P75,000.00) pursuant to the case of *People vs. Victor*. [22]

We shall now discuss the merits of the appeal.

Accused-appellant Casimiro Jose argues that the trial court erred in admitting in evidence his verbal admission before Brgy. Kagawad Velasquez. He said that because he was unassisted by counsel when he made the admission at the time of his arrest, it is not admissible.

A perusal of the decision showed that the trial court relied not on the verbal admission of accused-appellant Casimiro Jose that he killed Felix Zacarias, but on the testimony of the eyewitness, Gina Zacarias, which it found to be straightforward and candid. Gina positively identified accused-appellant Casimiro Jose as the assailant of her brother Felix.

As heretofore stated, accused-appellant Casimiro Jose interposed the defenses of denial and alibi. For the defense of alibi to prosper, "it must be established by positive, clear and satisfactory proof that (1) the accused was somewhere else when the offense was committed, and (2) it was physically impossible for the accused to have been present at the scene of the crime or its immediate vicinity at the time of its commission." [23] The requirement of time and place must be strictly met. [24]

In this case, prosecution eyewitness Gina Zacarias testified that their house was only about two hundred (200) meters away from the place of the wake. Accused-appellant Casimiro Jose admitted that he saw Felix Zacarias that night at the wake, prior to the hacking. Considering the short distance, it was not physically impossible for accused-appellant Casimiro Jose to have followed the victim to his house and kill him, and returned, thereafter, to the house of his father-in-law's brother and pretended to be sleeping as if nothing had happened.

As we have ruled:

"Extant in our jurisprudence are cases where the distance between the scene of the crime and the alleged whereabouts of the accused is only two (2) kilometers (*People v. Lumantas*, 28 SCRA 764 [1969]), or three (3) kilometers (*People v. Binsol*, 100 Phil. 713 [1957]) or even five (5) kilometers (*People v. Manabat*, 100 Phil. 603 [1957]), and yet it was held that these distances were not too far as to preclude the possibility of the accused's presence at the locus criminis, even if the sole means of traveling between the two places at that time was only by walking (*People v. Aparato*, 80 Phil. 199 [1948])." [25]

Furthermore, the defense of alibi cannot prevail over the positive and unequivocal identification of accused-appellant by prosecution eyewitness Gina Zacarias. "Positive identification, where categorical and consistent and without any showing of ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law." [26]

Assuming arguendo that he killed Felix Zacarias, accused-appellant Casimiro Jose alleged that he is only liable for homicide, in the absence of the qualifying circumstance of treachery. In view of the unruly behavior and verbal assault that Felix Zacarias hurled against him, accused-appellant Casimiro Jose was left with no other recourse but to attack him. Accused-appellant Casimiro Jose argues that Felix should have been forewarned that he might retaliate against such verbal assault. Hence, it was an error for the trial court to have ruled that treachery qualified the killing to murder.

The above contention is untenable. The trial court did not err in treating the killing of Felix Zacarias to be qualified by alevosia. "For treachery to be present, two conditions must concur, namely: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate, and (b) the means of execution was deliberately or consciously adopted." [27]

In the present case, the victim was intoxicated and unarmed. Accused-appellant Casimiro Jose surreptitiously appeared from behind the house of the victim, armed with a bolo, and hacked the victim without any provocation at all. The unruly behavior of the victim and the verbal invectives hurled against no one in particular would not justify the act of accused-appellant. "What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate." [28]

The trial court rightly ruled that the qualifying circumstance of evident premeditation was not present in this case. "The essential elements for evident premeditation to be appreciated are: (1) the time when the appellant decided to commit the crime; (2) an overt act showing that the appellant clung to their determination to commit the crime; and (3) the lapse of a sufficient period of time between the decision and the execution of the crime to allow the appellant to reflect upon the consequences of the act." [29] Moreover, "evident premeditation must be clearly proven, established beyond reasonable doubt and must be based on external acts which are evident, not merely suspected, and which indicate deliberate planning." [30] The prosecution failed to prove evident premeditation.

Under Article 248 of the Revised Penal Code, as amended by Republic Act 7659, any person guilty of murder shall be punished by reclusion perpetua to death. Considering that there are neither mitigating nor aggravating circumstances in the commission of the offense, the lesser penalty of reclusion perpetua shall be applied. [31] Hence, the trial court properly imposed the penalty of reclusion perpetua.

We affirm the award of fifty thousand (P50,000.00) pesos as indemnity ex delicto. The solicitor general's recommendation to increase this amount to seventy five thousand (P75,000.00) pesos, based on *People vs. Victor*, [32] is not well-taken. As we held in the recent case of *People vs. Costelo*, [33] *People vs. Victor* increased the award of indemnity in rape cases that are effectively qualified by any of the circumstances which calls for the death penalty. Clearly, it is inapplicable in the present case, which is a prosecution for murder. However, we eliminate the award of thirty thousand (P30,000.00) pesos as actual damages in the absence of competent proof thereof.

IN VIEW WHEREOF, the Court AFFIRMS the appealed decision with MODIFICATION. The Court finds accused CASIMIRO JOSE y GAYOL guilty beyond reasonable doubt of murder committed against Felix Zacarias, defined and penalized under Article 248 of the Revised Penal Code, and sentences him to reclusion perpetua, with all the accessory penalties of the law, and to indemnify the heirs of victim Felix Zacarias in the amount of P50,000.00 as death indemnity, plus P50,000.00 as moral damages. The award of thirty thousand (P30,000.00) pesos as actual damages is hereby eliminated.

With costs against accused-appellant.

SO ORDERED.

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

[1] In Criminal Case No. SCC-2617, promulgated on May 7, 1997, Judge Bienvenido R. Estrada, presiding.

[2] Trial Court Decision, Rollo, pp. 14-19.

[3] Information, Trial Court Records, p. 1.

[4] Trial Court Records, p. 30.

[5] Trial Court Records, p. 53.

[6] TSN, February 24, 1997, p. 7.

[7] TSN, October 10, 1996, pp. 19-27.

[8] TSN, *ibid*, p. 25.

[9] TSN, *ibid*, p. 20.

[10] TSN, *ibid*, p. 24.

[11] TSN, February 27, 1997, p. 8.

[12] TSN, *ibid*, pp. 26-27.

[13] TSN, March 17, 1997, pp. 13-20.

[14] TSN, March 13, 1997, pp. 29-34.

[15] TSN, February 25, 1997, pp. 8-16.

[16] TSN, March 3, 1997, p. 23.

[17] TSN, April 15, 1997, pp. 40-54.

[18] Trial Court Decision, Rollo, p. 19.

[19] Trial Court Records, p. 127.

[20] Rollo, p. 30.

[21] Trial Court Decision, *ibid*, p. 16.

[22] 292 SCRA 186 [1998].

[23] *People vs. Francisco*, G. R. No. 110873, September 23, 1999.

[24] *People vs. Atrejenio*, G. R. No. 120160, July 13, 1999.

[25] *People vs. Floro*, G. R. No. 120641, October 7, 1999, citing *People vs. Payot*, G. R. No. 119352, June 8, 1999.

[26] *People vs. Villablanca*, G. R. No. 89662, October 1, 1999, citing *People vs. Dinglasan*, 267 SCRA 26 [1997].

[27] *People vs. Gaballo*, G. R. No. 133993, October 13, 1999; *People vs. Floro*, *supra*; *People vs. Marcelino*, G.

R. No. 126269, October 1, 1999; *People vs. Villablanca*, supra; *People vs. Perez*, G. R. No. 130501, September 2, 1999.

[28] *People vs. Marcelino*, supra.

[29] *People vs. Sarabia*, G. R. No. 106102, October 29, 1999.

[30] *People vs. Marcelino*, supra, citing *People vs. Peña*, 291 SCRA 606, 616 [1998].

[31] Article 63 (2), Revised Penal Code.

[32] *People vs. Victor*, supra.

[33] G. R. No. 134311, October 13, 1999.

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