PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS PATRIARCA, ACCUSED-APPELLANT.

G.R. No. 137891. July 11, 2001

Ponente: VITUG, J.

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VITUG, J.:

The case under review is an appeal from the 18[th] February 1999 decision[1] of the Regional Trial Court, Branch 16,[2] of Kabacan, Cotabato, in Criminal Case No. 965, convicting Jesus Patriarca of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Melchor Gulmayo P50,000.00 civil indemnity, P50,000.00 moral damages, and P1,500.00 and P800.00 representing, respectively, reimbursement of the cost for embalming and the coffin used.

The Information filed before the trial court which indicted Patriarca for murder read:

> "That on the 24th day of December 1993 at about 7:00 o'clock in the evening, more or less at Barangay Pag-asa, Municipality of Mlang, Province of Cotabato, Philippines, the above-named accused, armed with a 22 magnum revolver, with intent to kill, did then and there wilfully, unlawfully, feloniously and with evident premeditation and treachery, attack, assault and shot therewith the person of MELCHOR GULMAYO, thereby hitting him in the different parts of his body, which caused his instantaneous death thereafter."[3]

The accused pled "not guilty" to the charge.

The evidence for the prosecution consisted basically of the testimony of witnesses Romy Gulmayo, Ervin Gulmayo, Alicia Gulmayo, Dr. Candida Paracha, Rodrigo Elvas and Francisco Pastolero.

Romy Gulmayo, a nine-year old son of Melchor, testified that on 24 December 1993 he was at home at Pag-asa, Mlang, Cotabato, together with his brother Ervin, his mother Alicia, and his father Melchor. At around seven-thirty in the evening, he and Ervin were resting at the "lawting," an elevated portion of the house, when, suddenly, they heard a gunshot. He looked through an opening and, at a distance of about 5 meters, saw the accused, armed with a short firearm, running away from their house. The accused was wearing a pair of short pants and had an orange shirt wrapped around his hand. His mother, brother Ervin and he ran towards the kitchen, located in the annex of their house, where they saw Melchor screaming in pain ("Agoy") from a gunshot wound. Moments later, Melchor died. Romy identified in court the accused who had been a long time neighbor.

Ervin Gulmayo, the twelve-year old son of the victim, corroborated the testimony of Romy. The two were resting in the "lawting" when they heard the gunshot. He then saw the accused running away from their house with a shirt wrapped around his right hand. He was able to identify the accused because of the light coming from the kitchen. The accused, he said, was a neighbor whose house was only about 250 meters away from the Gulmayos. The following day, Ervin, along with some neighbors, surveyed the scene of the incident. The group was able to retrieve an orange t-shirt a few meters away from their house. It was the same shirt Ervin saw wrapped around the accused's hand on the night of the incident.

Alicia Gulmayo declared that on 24 December 1993, she was at their residence in Pag-asa, Mlang, Cotabato, when her husband was shot and killed. Shortly after hearing the gunshot, she, with her sons Romy and Ervin, rushed to help Melchor. She said her family spent P1,500.00 for embalming and P800.00 for the coffin. She also testified on the moral anguish they had suffered due to the untimely death of her husband.

Dr. Candida Paracha, the resident physician of Mlang District Hospital at Mlang, Cotabato, conducted an autopsy on the body of Melchor. She found Melchor to have sustained a gunshot wound with entry at the back of the ribs which caused his death.

Rodrigo Elvas, a resident of Pag-asa, Mlang, Cotabato, was at home on 24 December 1993 when he heard a gunshot coming from the direction of the house of Melchor Gulmayo and his family. He later learned that Melchor was shot to death. The next day, he went to the Gulmayo residence to survey the place, where he saw footprints which led him to an orange t-shirt near the creek. The shirt appeared to be the same shirt the accused was seen to have been wearing around five-thirty in the afternoon on the day of the incident when he and his friends were drinking tuba and beer at Erning Idobingco's nearby store.

Francisco Pastolero, also a resident of Pag-asa, Mlang, Cotabato, corroborated the testimony of Rodrigo that the accused was wearing an orange t-shirt the day Melchor was shot and killed, the same shirt which was later found at the creek near Melchor's house the following day.

The defense, on its part, presented the testimony of accused Jesus Patriarca and its witnesses Rex Fare, Rodolfo Perseverancia, PS1 Noemi Austero and SPO4 Joel. Burgos.

The accused claimed that at around seven o'clock in the evening of 24 December 1993, he was in his house at Pulang-lupa, Mlang, Cotabato, with his nephew, Rex Fare, and Rodolfo Perseverancia. Earlier, he and Rex were at Inggo Tababa's residence in Pulang-lupa from three o'clock until five o'clock in the afternoon fetching water in preparation for the wedding of one of Inggo's daughters. At about five o'clock, he and Rex went home to meet with Rodolfo Perseverancia who spent the night in his house. He denied having shot and killed Melchor. He also denied having owned the orange colored t-shirt found near Melchor's house after the incident. He admitted having had a drinking spree at Erning Idobingco's store but that it was, he said, on 20 December 1993 and not on 24 December 1993.

Rex Fare, a nephew of the accused, averred that he and the accused were together on the afternoon and night of 24 December 1993. He asserted that the accused did not own any orange colored t-shirt. He added that neither he nor the accused had a drinking spree at Erning Idobingco's store on 24 December 1993.

Rodolfo Perseverancia, a resident of La Fortuna, Mlang, Cotabato, confirmed that at about five o'clock in the afternoon of 24 December 1993, he went to the house of the accused to borrow rice palay. He claimed that he spent the whole night with the accused.

SPO4 Jocel Burgos of the Provincial Crime Laboratory Office 12, Kidapawan City, conducted a paraffin test on the accused following the incident. The cast taken from the accused was then forwarded to the PNP Crime Laboratory for examination.

PSI Noemi Austero, a forensic chemist of the PNP Crime Laboratory, Regional Unit II, Ecoland, Davao City, testified that the pair of paraffin cast taken from both hands of Jesus Patriarca yielded negative results for gun-powder nitrates.

On the basis of the evidence before it, the trial court, in its decision on 18 February 1999, found the accused guilty of murder. It held:

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> "WHEREFORE, in the light of all the foregoing, the court finds and so holds that the prosecution was able to prove the guilt of the accused beyond reasonable doubt. The court, therefore, declares the accused JESUS PATRIARCA, 31 years old (born May 31, 1967), GUILTY of MURDER, defined and punished under Article 248 of the Revised Penal Code, and he is hereby punished as follows:
>
> "1) To the penalty of RECLUSION PERPETUA;
>
> "2) To pay to the heirs of Melchor Gulmayo the sum of P50,000.00 in concept of indemnity;
>
> "3) To pay to the heirs of Melchor Gulmayo the sum of P50,000.00 by way of moral damages;
>
> "4) To pay to the heirs of Melchor Gulmayo the sum of P1,500.00 and P800.00 as reimbursement for the embalming and for the coffin, respectively of Melchor Gulmayo;
>
> "5) Whether or not the accused will file a notice of appeal, let the records be forwarded to the Supreme Court for review."[4]

In the appeal brief, the defense contended that -

> "1) The trial court a quo erred in convicting the accused considering that his constitutional rights were violated when he was arrested without a warrant under circumstances which do not warrant the Application of Rule 113, Section 5 of the 1985 Rules of Criminal Procedure allowing warrantless arrest under exceptional circumstances;
>
> "2) The trial court a quo erred in convicting the accused considering that the guilt of the accused was not proved beyond reasonable doubt.
>
> "3) In the alternative, the trial court a quo erred in convicting the accused of the crime of murder, qualified by treachery considering that this qualifying circumstance was not proved beyond reasonable doubt."[5]

The trial court convicted appellant on the basis of circumstantial evidence testified to by the victim's two sons, Romy and Ervin Gulmayo, who swore that they had seen appellant running away from their house after their father, Melchor, was shot and killed. Appellant was holding a gun and had an orange colored shirt wrapped around his hand. Prosecution witnesses Rodrigo Elvas and Francisco Pastolero stated that an orange t-shirt was found at a nearby creek, the same shirt that appellant was seen wearing on the day of the incident while appellant and his friends were drinking tuba and beer at a nearby store.

The Court finds the prosecution's evidence to be insufficient to sustain the conviction of appellant beyond reasonable doubt.

The criminal complaint for murder against appellant was filed on 27 December 1993 before the Municipal Circuit Trial Court of Mlang, Matalam, Cotabato. The Information against appellant for murder was subsequently filed before the Regional Trial Court of Kabacan, Cotabato, on 18 February 1994. The filing of the criminal complaint and Information for murder against appellant were premised at the time solely on the sworn statements of Rodrigo Elvas and Francisco Pastolero, together with the sworn statements of Ernie Idobingco and Dr. Candida Paracha, about the incident. The sworn statements of Ervin and Romy Gulmayo were procured only on 21 February 1994 after the complaint and the information were filed and two months after the incident. Why the statements of the two sons were not taken earlier considering that their testimony clearly appeared to be vital to the case was not aptly explained. Was it possible that the substance of the testimony of Romy and that of Ervin Gulmayo were put up merely to dovetail the theory of the prosecution?

Romy and Ervin claimed that they were able to identify the accused because of the light coming from the kitchen. The records, however, would show the kitchen's location to be in a separate portion of the Gulmayo house that

could make it doubtful that the beam coming therefrom provided sufficient illumination to the area. The incident occurred around seven-thirty in the evening in December in a barrio whose surroundings were not shown to have been well-lighted.

What would then appear to be the primary evidence linking appellant to the crime was an orange colored t-shirt, he was seen to have been wearing on the day of the incident, found the day after at a nearby creek. No motive was imputed to appellant; the firearm used was not recovered, and appellant was, in fact, negative for gun-powder nitrates when a paraffin test was conducted on him.

In a criminal case, the accused is entitled to an acquittal unless his guilt is established beyond a reasonable doubt. Here, the Court entertains serious doubt on the guilt of appellant upon the strength of circumstantial evidence. In order to warrant a conviction, the circumstantial evidence shown should constitute an unbroken chain which leads to but one fair and reasonable conclusion that points to the defendant, to the exclusion of all others, as being the guilty person.[6] This species of evidence should be considered and weighed with great caution for our jurisprudence is built around the precept that it would be preferable for the guilty to remain unpunished than for an innocent person to suffer unjustly.[7]

Acquittal being its verdict, the Court need not delve into appellant's other claim that his arrest is illegal for having been immediately and summarily done on the basis of a mere "call" or "report" by police officers who did not have personal knowledge of the circumstances of the crime.

WHEREFORE, the decision of the Regional Trial Court of Kabacan, Cotabato, Branch 16, is REVERSED. Appellant Jesus Patriarca is ACQUITTED of the crime of murder on the ground of the failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered released forthwith unless there are other lawful reasons for his continued detention. The Director of the Bureau of Prisons is directed to inform this Court forthwith of the action taken by him in this respect. Cost de oficio.

SO ORDERED.

Melo, (Chairman), Panganiban, and Sandoval-Gutierrez, JJ., concur.
Gonzaga-Reyes, J., on leave.

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[1] Rollo, pp. 23-38.

[2] Judge Francisco G. Rabang, Jr., presiding.

[3] Rollo, p. 8.

[4] Rollo, p. 38.

[5] Rollo, pp. 74-75.

[6] U.S. vs. Villos, 06 Phil. 510.

[7] People vs. Salangoste, 188 SCRA 422.

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