

MOISES SIMANGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 157984. July 08, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals in CA-G.R. CR No. 11971 and its Resolution denying the petitioner's motion for reconsideration of the said decision.

The Antecedents

The petitioner Moises Simangan and Loreto Bergado were charged with murder in an Information filed with the Circuit Criminal Court in Cagayan, the accusatory portion of which reads:

That on or about February 10, 1980, in the municipality of Solana, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Moises Simangan y Trinidad and Loreto Bergado y Rigor alias Boy, together with Bening Gomabong (sic), who is still at large and not yet apprehended, and two (2) John Does, who were not identified, armed with guns and knives, conspiring together and helping one another, with intent to kill; with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one Ernesto Flores, inflicting upon him several wounds on his body which caused his death.

Contrary to law.[2]

The accused, assisted by counsel, were duly arraigned, and pleaded not guilty to the charge.

The Case for the Prosecution

At 8:00 p.m. on February 10, 1980, the petitioner, Loreto Bergado, Bening Gumabong and two other male persons arrived at the store of the spouses Ernesto Flores and Sofronia Saquing in Barangay Maasin, Solana, Cagayan. The Flores Spouses, along with fifteen-year-old Lorna Saquing, Sofronia's niece, were then having dinner. The five men were in fatigue uniforms and were armed with long firearms. When they knocked on the door, Lorna responded and inquired what they wanted, and she was told that they wanted to buy cigarettes. Ernesto and Sofronia entertained the men, two of whom were their neighbors, Loreto Bergado and Bening Gumabong.

Momentarily, the petitioner asked Ernesto to go with them to serve as a guide. In response, Ernesto invited the men to sleep at their house, but the latter refused. Ernesto then agreed to accompany the visitors. The petitioner warned Ernesto and Sofronia not to tell anyone that they had been to the store. As they were leaving, Romeo Galano, the couple's helper at the store, arrived. Ernesto ordered Romeo to go with him, and the latter did as he was told. However, at about 9:00 p.m., Romeo returned to the store and told Sofronia that Ernesto had sent him back to get money, matches and cigarettes. He also told Sofronia that he and Ernesto were seated as they conversed with each other. Sofronia gave P50.00, a box of matches and a ream of Hope cigarettes. Romeo left the

store at about 9:30 p.m.[3] Ernesto did not return that evening.[4]

The next morning, Romeo Balunggaya arrived at Sofronia's house and told her that Ernesto was dead, and that his body had been found about three hundred (300) meters away. Sofronia and Lorna rushed to the place, and found Ernesto's body near the creek.[5] Ernesto was lying on the ground, face down, with his hands tied behind his back. Police investigators Pagulayan and Caronan arrived, along with a photographer. Pictures of the victim were taken.[6]

Dr. Anastacia Taguba, the Municipal Health Officer, performed an autopsy of the cadaver and found that the victim sustained multiple stabwounds. She concluded that the victim died because of shock due to massive internal and external hemorrhage from multiple stab wounds.[7] She also signed the Certificate of Death of Ernesto.[8]

On February 18, 1980, Fernando Saquing attended his classes in civil engineering at the St. Louis University in Tuguegarao, Cagayan. He noticed his seatmate and close friend, petitioner Moises Simangan, writing on a piece of paper. He grabbed the paper, read it, and saw that the petitioner had written the following: "Andres Buena alias Ka Ren, Cely Peña alias Ka Laarni, Moises Simangan alias Ka Ronie Ledesma." The petitioner warned Fernando not to divulge his secret to anybody.[9]

On February 24, 1980, Fernando and the petitioner were on their way home from their ROTC classes at the St. Louis University. The petitioner then narrated to Fernando that at about 7:00 p.m. on February 10, 1980, after buying cigarettes from a store, the store-owner agreed to go with him and his four companions. The petitioner revealed that they brought the victim over to the place where twenty of his other comrades were waiting. He also told Fernando that he and his companions stabbed the victim over and over again, and tasted the latter's blood so that "they would not get sick." The petitioner warned that if Fernando divulged to anyone what he had just revealed, he (the petitioner), would drink his blood, too.[10]

The petitioner did not know that Fernando was the first cousin of Sofronia, the widow of Ernesto Flores, who was, in turn, the store-owner referred to by Moises.[11] Fernando immediately told Sofronia what the petitioner had told him.

On March 21, 24 and 25, 1980, Sofronia, Fernando and Lorna gave their respective statements[12] to Sgt. Quirino Espiritu of the Philippine Constabulary in Tuguegarao, Cagayan, in which they identified Moises as one of Ernesto's assailants.

The Case for the Defense

The petitioner denied any involvement in the killing of Ernesto. He testified that on the day that Ernesto was killed, he was in his boarding house in Tuguegarao. He was the classmate of Fernando at the St. Louis University in Tuguegarao, Cagayan, where they were enrolled in the civil engineering course.[13] Sometime in February 1980, Fernando asked him about Andres Balbuena who was from Solana, Cagayan. A week later, he was arrested on suspicions that he had something to do with the death of Ernesto.[14] Fernando, who was in the PC barracks, pointed to him as one of the assailants of Ernesto. He was surprised at Fernando's accusation.[15]

The petitioner also denied knowing Loreto Bergado, claiming that he only met the latter at the provincial jail.[16] He had not been to Barangay Maasin, Solana.

The accused Loreto Bergado also denied killing Ernesto. He testified that he did not know Ernesto and the latter's wife, Sofronia. On February 10, 1980, he was in his house at Nangalasauan, Amulung, Cagayan. After waking up the next day, he went to his farm.[17]

To corroborate his testimony, Bergado presented his neighbor, Feliciano Trinidad, who testified that after his classes on February 10, 1980, he went out of their house at Barangay Nangalasauan, Amulung, Cagayan, to get a breath of fresh air. He then saw Bergado and spoke with him until 9:00 p.m.[18]

Cornelia Trinidad corroborated the testimony of the petitioner that she boarded in the house of Rosendo Tuddao in February 1980.

The defense also presented Leona Balunggaya, who testified that between 4:00 and 5:00 a.m. on February 11, 1980, Sofronia and Leon Rigor arrived at their house, crying. Sofronia inquired if Ernesto had passed by, because her husband had not slept in their house. Balunggaya replied in the negative. When Balunggaya asked Sofronia if she recognized the armed men who were with her husband, Sofronia replied that she did not because their faces were new to her.[19] Aside from their house, there were no other houses in the vicinity of Sofronia's place. Right after Sofronia and Leon had left, she and her husband Romeo went to their farm to drive away the birds and saw the cadaver of Ernesto, about three hundred (300) meters away.

After trial, the court rendered judgment finding the accused guilty beyond reasonable doubt of homicide. The decretal portion of the decision reads:

WHEREFORE, the accused Moises Simangan y Trinidad and Loreto Bergado y Rigor having been found by the Court guilty beyond reasonable doubt of the crime of Homicide defined and penalized under Art. 249 of the Revised Penal code, and considering the presence of two aggravating circumstances, are hereby sentenced each to an indeterminate penalty of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of the victim Ernesto Flores the sum of P30,000.00, proportionately and to pay costs pro rata.

SO ORDERED.[20]

On appeal to the Court of Appeals, it rendered judgment, affirming with modification, the decision of the trial court. It found the testimonies of Sofronia, Lorna, and Fernando, credible and entitled to full probative weight.

The Present Petition

Petitioner Moises Simangan filed the instant petition for review on certiorari, asserting that:

I

THE TRIAL COURT ERRED IN BELIEVING THE PROSECUTION WITNESSES AND DISREGARDING THE EVIDENCE FOR THE DEFENSE.

II

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.[21]

The petitioner contends that the prosecution failed to adduce circumstantial evidence sufficient to prove his guilt of the crime of homicide beyond reasonable doubt. He asserts that Sofronia and Lorna pointed to and identified him only upon the prodding of Fernando, who told Sofronia that he (the petitioner) had admitted to stabbing and killing the victim together with twenty of his other companions. The petitioner contends that the testimony of Fernando is hearsay, as he had no personal knowledge that he was one of those who killed the victim.

On the other hand, the Court of Appeals declared in its assailed decision that the array of circumstantial evidence adduced by the prosecution constitutes proof beyond cavil that the petitioner was one of those who killed the victim. As catalogued by the appellate court:

- at about 8:00 o'clock in the evening of February 10, 1980, accused Moises Simangan, Loreto Bergado, Bening Gumabong and two unidentified companions each of whom were armed with long rifles, went to the store of the victim Ernesto Flores at Sitio Masin (sic), Iraga, Solana and bought cigarettes;
- that Moises Simangan asked Ernesto Flores to guide Simangan, Bergado, Gumabong and their two companions on their way to the road;
- that Simangan, Bergado and their two companions, together with Ernesto Flores and Romeo Galano, were out of the house;
- that Simangan warned Sofronia and Lorna not to tell anybody that he and his companions went to the house;
- that five days after the death of Ernesto, Simangan became worried when told by his classmate Fernando Saquing that several persons were arrested at Nangalasauan, Amulung, for the death of Ernesto;
- that two weeks after the death of the victim, Simangan admitted to Fernando that he and twenty others had just killed a person in Masin, (sic) Iraga, Solana, after the victim accompanied them to show them the way;
- and that Fernando was warned not to relate it to any other person with the threat that if it will be known by others, Simangan will drink his blood.[22]

The Ruling of the Court

We find the contention of the petitioner to be unmeritorious. Sofronia narrated in detail how the petitioner and his companions, armed with long firearms, managed to convince Ernesto to go with them and be their guide on the road. Sofronia pointed to and identified the petitioner in open court. Thus:

Q On February 10, 1980, at 8:00, do you recall where you were?

A Yes, Sir.

Q Where were you?

A We were at home, Sir.

Q And you mentioned . . . and who were your companions at that time?

A My husband, my sister Lorna Saquing, my daughter, Sir.

Q What is the name of your daughter?

A Jannet, Sir.

Q How old was she at that time?

A Two (2) years old, Sir.

Q What is the name of your sister?

A Lorna, Sir.

Q And your husband?

A Ernesto Flores, Sir.

Q What were you doing at that time?

A Eating, Sir.

Q Where is your house located?

A Masim (sic), Solana, Cagayan, Sir.

Q Do you recall of anything unusual that happened on February 10, 1980, when you were actually eating with your family, if any?

A On February 10, 1980, while we were actually taking our supper, there was a person who went to buy cigarette in our store and it was my sister Lorna who went to open the store and saw five persons holding gun (sic), Sir.

Q Where is your store located?

A In Masim (sic), Solana, Cagayan, Sir.

Q Is your store also a part of your house where you live-in (sic)?

A Yes, Sir.

Q When these five persons came to your house and Lorna Saquing, your sister, was the one who opened the door, what happened next?

A When those five persons entered our store, Lorna came to us in the kitchen and called for us and the three of us proceeded to the store and looked to those five persons, Sir.

Q And what happened next when you went to see those five persons?

A We saw five persons with long firearms, Sir.

Q Do you know the names of those five persons whom you saw?

A I know the three of them only, Sir.

Q What are the names of these three persons whom you know?

A Moises Simangan, Boy Bergado and Bening Bungabong (sic), Sir.

Q This Bening Bungabong (sic), if he is in court, can you point him out?

A No, he is not here in court, Sir.

Q Yes, but this Loreto Bergado, if you can see him in the courtroom, can you point him out?

A Yes, Sir.

INTERPRETER:

Witness pointing to that person in brown t-shirt who identified himself to be Loreto Bergado y Rigor when he was pointed to by the witness.

Q How about this person by the name of Moises Simangan, will you look around the courtroom and see if he is here?

A He is there, Sir.

INTERPRETER:

Witness pointing to a person seated in the courtroom who stood up when he was pointed to by the witness and identified himself to be Moises Simangan y Trinidad.[23]

The petitioner even warned Sofronia and Ernesto not to tell anyone that he and his companions had been in their house:

Q And when Moises Simangan came to know that your barangay captain in Iraga was Mr. Mario Marsan, what happened next, if any?

A Then Moises Simangan requested my husband to accompany them to the road because Moises Simangan is new in our place, Sir.

Q And what did your husband say, if any?

A Then my husband told them if it will be alright for them, they may sleep in the house, Sir.

Q And what did he say?

A Then Moises Simangan answered my husband that: “we cannot sleep in your place because we might be late tomorrow,” Sir.

Q And what happened next?

A And then Moises Simangan told us not to tell anybody about their going to our store, Sir.

Q And when Moises Simangan warned you not to tell anybody about their presence in your place, what happened next, if any?

A Then my husband told me that he would accompany them to the road, Sir.

Q And when your husband told you that he would bring them to the road, what happened next, if any?

A And then Moises Simangan and his companions took my husband to the road and not long afterwards, my boy by the name of Romeo Galano, went back to the store and told me that my husband told him to go back to get money and cigarette and also [a] match, Sir.

Q And what time did they take away your husband from your house?

A 8:00 o'clock in the evening, Sir.

Q Was it exactly 8:00 o'clock or past 8:00?

A Past 8:00, it could be past 8:00 o'clock already, Sir.[24]

Lorna also testified that when she attended to the petitioner and his companions, she saw their faces:

Q Now, while at about that time on February 10, 1980, do you remember any unusual incident that happened in the house of your sister?

A Yes, Sir.

Q What was that incident that happened?

A On that evening, Sir, while we were eating I heard a voice calling outside or I heard someone calling outside with the word “Diyos Apo” and when I finished eating, I went inside the house and asked who was that, and nobody answered, and so, what I did was to open the door and I was surprised there were five armed men at our door who went inside our house.

Q You said that these five men who entered the house were armed, will you please tell this Honorable Court what were their arms?

A All the five men who entered our house were armed with long rifle each of them (sic).

Q Now, do you know the identity of these five armed men who entered the house where you were staying?

ATTY. VELASCO:

The question is vague, Your Honor.

Whether he refers to the present or at that time of the incident.

COURT:

Reformed. (sic)

FISCAL HERNANDO:

Q At the time of the incident, of these five armed men who entered the house of your sister upon your opening the door, do you know the identity of these five armed men or any of them?

A Yes, Sir, I know them.

Q Will you please tell this Honorable Court who were they?

A Moises Simangan, Boy Bergado, Bening Gumabong and two others whom I do not know.

Q You said that at the time you opened the door and these five men entered, you already knew three of them, namely Moises Simangan, Bening Gumabong and Boy Bergado, why do you know them?

A I was able to recognize them, Sir, through their faces.

Q Why were they familiar to you?

A When I opened the door, Sir, and the five armed men entered our house, I stared at their faces.

Q Will you please answer my question, why were you able or why were you familiar with the faces of these men when they entered the house of your sister that evening of February 10, 1980?

ATTY. SORIANO:

She answered, "I saw their faces."

COURT:

Witness may answer.

A These Boy Bergado and Bening Gumabong were my barcada in Maasim, Solana, Cagayan.

FISCAL HERNANDO:

Q What do you mean by saying that Gumabong and Bergado were your barcada?

A They were my companions, Sir.

Q For how long were they your barcada before the incident?

A Three years, Sir.

Q Now, with respect to Moises Simangan, why do you say that his face is familiar to you at the time of the incident?

A I stared at his face because he was new in our place.[25]

It was only when Fernando told his cousin Sofronia that the petitioner had admitted to being one of those who

inveigled Ernesto into going with them, and thereafter killed the victim, that she and Lorna heard the petitioner's name for the first time.

Q Now, do you know, I withdraw that question, Your Honor. How about Moises Simangan, did you know him already before February 10, 1980?

A No, Sir.

Q Why do you know his name then?

A I came to know his name when Moises Simangan informed Fernando, my cousin, about those things that they have done to my husband, but Fernando did not mention to him that I am his cousin and it was Fernando, my cousin, who informed me about his name, Sir.[26]

The testimony of Fernando, that the petitioner admitted to him that he was one of the victim's killers, is not hearsay. The testimony of Fernando was offered to prove the petitioner's extrajudicial admission of his involvement in the killing of Ernesto. Such admission is an admission against personal interest, and is admissible against the petitioner.[27]

We note that the petitioner admitted during trial that he and Fernando were classmates in a civil engineering subject at St. Louis University, and in the ROTC training. The petitioner also admitted that he and Fernando were friends. Hence, it was not impossible for the petitioner to have revealed his involvement in the killing to Fernando. The petitioner did not hesitate to inform Fernando that he and his companions had killed Ernesto because an informer had told them that Ernesto was "bad." The testimony of Fernando reads, viz:

Q What else did he tell you?

ATTY. SORIANO:

May we ask the witness that he be directed to speak louder.

COURT:

You speak louder.

A There, Sir.

FISCAL HERNANDO:

Q And what was that?

A He informed me that they had just killed a person in Maasim (sic), Solana, Cagayan and we threw him beside a creek. And I asked Moises Simangan, "How come that that person is bad," and he answered me, "We had an informer who is their neighbor."

FISCAL HERNANDO:

Q Now, you said that there were some companions of Moises Simangan because he used the word "WE," were you able to find out from him how many persons were those who perpetrated the crime in Maasim (sic), Solana, Cagayan, as you stated recently?

ATTY. SORIANO:

May we request that witness should stop.

FISCAL HERNANDO:

That is the narration, Your Honor.

ATTY. SORIANO:

May we request that the narration should be in a question and answer (sic).

COURT:

Continue.

A What Moises Simangan narrated to me, Sir, is “We were five persons who went to the store of that person and (sic) to buy cigarette. At the time the persons were waiting in the store and after we bought the cigarette, we let the person accompany us on our way because we do not know the way and then Moises Simangan brought the person to the place where there were twenty persons waiting who were their companions and then they stabbed the person and in stabbing, each person tasted the blood (sic) that, according to Moises Simangan, they will not get sick.

FISCAL HERNANDO:

Q Did you or did you not ask him what time of the day or night was that?

A No, Sir. When they visited the house of the victim to buy cigarette I was informed by Moises Simangan that it was 7:30 in the evening.

Q Now, after having revealed to you all these things, do you remember if Moises Simangan told you anything else?

A Yes, Sir.

Q What did he tell you?

A He told me that Nanding, I now warn you, and you know me, “once they know these, I am going to drink your blood.”[28]

The petitioner’s alibi and denial of the crime charged cannot prevail over the positive and straightforward identification made by Lorna and Sofronia that he was one of the armed men who left with Ernesto, coupled with the petitioner’s own admission that he was one of the victim’s assailants. We note that there is no evidence, nor any showing of any ill-motive on the part of Lorna, Sofronia and Fernando to prevaricate. In fact, the petitioner and Fernando were close friends. Thus, the presumption is that the said witness acted in good faith; hence, their testimonies must be accorded credence and full probative weight.

The three witnesses cannot be faulted, and their credibility denigrated for giving their statements to Sgt. Espiritu of the Philippine Constabulary only on March 21 to 25, 1980. As copiously explained by the Court of Appeals:

Appellant’s attempt to cast doubt on the credibility of [the] positive identification made by Sofronia and Lorna that they were among those five (5) armed persons who took along the victim Ernesto Flores on the pretext that appellant Simangan being new to the place would need said victim to guide him on the road. Both Lorna and Sofronia knew personally appellant Bergado and Gumabong being Lorna’s former friends and Sofronia’s neighbors. On the other hand, the delay in revealing the identities of appellants Bergado and Simangan had been sufficiently explained. It must be recalled that appellant Simangan had made a stern warning before they left that Sofronia and Lorna should not tell anybody about their presence in the place that night. Those men being then armed and determined to take along with them the victim out on the road, even threatening Sofronia and Lorna not to divulge the incident to others, there was strong reason for said witnesses to keep mum on the identities of appellants even when the police investigators arrived the following morning and asked them about the names of the five (5) persons or at least any of them they had recognized. It is understandable when a

witness does not immediately report the identity of the offender after a startling occurrence, more so when he is related to the victim as this makes it all the more traumatic. It is, likewise, understandable for a witness to fear for his safety especially when town mates are involved in the commission of the crime. Even if the principal witnesses, Lorna and Sofronia, did not witness the actual killing of Ernesto Flores, the circumstances that the latter was last seen alive together with the appellants and Gumabong, along with two (2) other unidentified companions that night who were armed with guns, that he was never to return home that night, and his dead body discovered in a nearby field, lying face down on the ground, both his arms tied at his back with multiple stab wounds on his neck and back – the combination of these circumstances leave no doubt on their minds that those five (5) persons were responsible for Ernesto's gruesome death and such conviction was enough to temporarily silence them from revealing immediately to the police investigators the identities of appellant Bergado and Gumabong, and subsequently, Simangan.[29]

In sum, then, we find and so rule that the appellate court correctly affirmed the decision of the trial court convicting the petitioner of homicide. However, the appellate court erred in appreciating against the petitioner the aggravating circumstances of cruelty and nighttime. In the first place, such circumstances were not alleged in the Information as mandated by Section 8, Rule 110 of the Revised Rules of Criminal Procedure.[30] Although the petitioner committed the crime before the effectivity date of said Rules, the same should be applied retroactively as it is favorable to him.[31]

Moreover, the crime is not aggravated by cruelty simply because the victim sustained ten stab wounds, three of which were fatal. For cruelty to be considered as an aggravating circumstance, there must be proof that, in inflicting several stab wounds on the victim, the perpetrator intended to exacerbate the pain and suffering of the victim.[32] The number of wounds inflicted on the victim is not proof of cruelty.

Consequently, then, the penalty imposed by the trial court on the petitioner must be modified. There being no modifying circumstances attendant to the crime, the maximum of the indeterminate penalty shall be taken from the medium period of the imposable penalty of homicide which is reclusion temporal. The minimum of the indeterminate penalty shall be taken from the full range of the penalty lower by one degree for reclusion temporal, which is prision mayor.

IN LIGHT OF THE FOREGOING, the petition is PARTIALLY GRANTED. The assailed decision of the Court of Appeals in CA-G.R. CR No. 11971 is AFFIRMED with MODIFICATION. The petitioner is hereby sentenced an indeterminate penalty of from Ten (10) Years and One (1) Day of prision mayor in its maximum period, as minimum, to Sixteen (16) Years of reclusion temporal in its medium period, as maximum.

No costs.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conchita Carpio Morales and Mariano C. del Castillo concurring.

[2] Rollo, p. 46.

[3] TSN, 27 July 1982, pp. 15-16.

[4] Id. at 17.

[5] Id. at 18.

[6] Exhibits “G” and “G-1.”

[7] Exhibit “E.”

[8] Exhibit “F.”

[9] TSN, 21 February 1984, pp. 3-4.

[10] Id. at 6-7.

[11] Id. at 8.

[12] Exhibits “A,” “C” and “B.”

[13] TSN, 3 November 1985, pp. 9-10.

[14] Id. at 13-14.

[15] Id. at 16.

[16] Id.

[17] TSN, 25 August 1987, pp. 3-4.

[18] TSN, 19 July 1989, pp. 5-6.

[19] TSN, 5 October 1988, pp. 6-9.

[20] Rollo, p. 76.

[21] Id. at 13.

[22] Id. at 125-126.

[23] TSN, 27 July 1982, pp. 4-7.

[24] Id. at 14-15.

[25] TSN, 3 December 1984, pp. 4-6.

[26] TSN, 27 July 1982, p. 8.

[27] Rule 130, Section 26, Revised Rules of Court.

[28] TSN, 21 February 1984, pp. 6-7.

[29] Rollo, p. 127.

[30] SEC. 8. Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[31] *People v. Delim*, 396 SCRA 386 (2003).

[32] *People v. Cortes*, 361 SCRA 80 (2001).

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