

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR SAMSON, ACCUSED-APPELLANT.

G.R. No. 55520. August 25, 1989

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Cavite (now Regional Trial Court), Branch V which convicted Salvador Samson of murder. The dispositive portion of the decision reads:

"WHEREFORE, in view of the foregoing considerations, accused Salvador Samson is hereby found guilty beyond reasonable doubt of the crime of Murder as defined and penalized in Article 248 of the Revised Penal Code which is qualified by treachery and evident premeditation and with the aggravating circumstances that the offense was committed with the aid of armed men and with use of superior strength, and is therefore sentenced to suffer the capital punishment of Death, to indemnify the heirs of the offended party in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the principal penalty, P2,930.00 corresponding to the funeral and mortuary expenses, and to pay the cost of the proceeding." (Original Record, p. 96)

The facts of the case as summarized in the People's Brief are as follows:

"On December 23, 1978, in the evening, Benjamin Lara and Cenon Herrera were conversing at the terrace of the house of Eugenio Sapalasan located at the old public market of Zapote, Bacoar, Cavite. At about 9:30 o'clock that same evening, four (4) men, namely, Jose Jerusalem, Felix Jerusalem, Salvador Samson, and another unidentified person, passed by. Benjamin asked, 'Ano ba ang dala ninyo na nakabalot sa papel?' but they did not answer. Instead, they immediately turned back and started stabbing and hacking Benjamin. Two were armed with jungle bolos 20 inches long, and the other two with knives 10 inches long. They also tried to attack and hack Herrera but he was able to run away. After killing Benjamin, the four ran towards the sea (Sworn statement of Cenon Herrera, Exh. H; TSN, Sept. 12, 1979, pp. 4-28; TSN, December 11, 1979, pp. 3-4; TSN, Dec. 25, 1979, pp. 3-12). When Herrera returned, he found Benjamin Lara already dead (TSN, Sept. 12, 1979, p. 10).

"Pat. Miguel de Leon of the Bacoar police department was on duty that evening. Having been informed of the incident, he, together with Pat. Cabrera, proceeded to the crime scene. They saw Benjamin Lara prostrate on the ground, bleeding and dead. Cenon Herrera related to them how the incident happened. He informed them that there were four persons who participated in the gruesome killing. He specifically mentioned the names of Felix Jerusalem and Salvador Samson, appellant herein, as among the persons who stabbed Benjamin (TSN, Dec. 17, 1979, pp. 7-8, 10-11).

"Cenon Herrera told Pat. de Leon that it was Salvador Samson who first stabbed the deceased. He also said that Samson can easily be apprehended. He volunteered to go with the policemen to apprehend Salvador Samson. He pointed to the latter's house which was just after the old public market of Zapote. Samson was arrested in his house that same evening or before midnight, December 23 (Ibid, pp. 9-13). He was alone upstairs when arrested. His house was about 15 arms' length from the place where Benjamin Lara was killed (TSN, Dec. 17,

1979, p. 16).

"Salvador Samson smelled of liquor (TSN, Dec. 17, 1979, p. 16). He was still wearing the same T-shirt and 'maong' pants he was wearing when he and his companions ganged up on Benjamin some 2 hours before (TSN, Sept. 12, 1979, p. 28). There were bloodstains on his pants. His feet were full of mud (TSN, Dec. 17, 1979, p. 9). Salvador Samson explained that he fell into a ditch (Ibid. pp. 15-16).

"Salvador Samson was brought by the policemen that same night to the municipal building of Bacoar. Cenon Herrera went with the group. The taking of his (Cenon's) sworn statement was completed at 2:20 o'clock on December 24 (See Exh. H).

"Meanwhile, the lifeless and gory body of the victim was brought to the Perpetual Help Hospital at about 10:00 o'clock, December 23. The following day, the body was brought to the NBI morgue for autopsy (TSN, July 19, 1979, pp. 2-3).

"In his autopsy report (Exh. I), Dr. Maximo Reyes noted that the victim died of 'hemorrhage, acute, profuse, secondary to multiple stab wounds.' All in all, there were 14 stab and hack wounds, the fatal wounds being Nos. 4, 5, 7, 9 and 10, as shown in the report. The last three wounds directly hit and penetrated the vital organs that produced severe bleeding, causing death. These wounds were caused by sharp-pointed, single-bladed instruments wielded, according to Dr. Reyes' testimony, by more than one (1) person (Tsn, Dec. 17, 1979, pp. 3-4)" (Appellee's Brief, pp. 1-5)

The accused-appellant Samson, in his denial of any participation in the killing narrates his version of the incident as follows:

"x x x on December 23, 1978, in the evening, he was at the old public Market in Zapote, Bacoar, Cavite. He heard a noise coming from the residence of Eugenio Sapalasan. As he turned around, he saw somebody being stabbed, so he ran towards his house, and later fell asleep. He did not recognize the victim (Tsn, Feb. 4, 1980, pp. 1-3).

"That same evening, some policemen went to his house to arrest him. He was told that he was one of the suspects in the killing of Benjamin Lara. He told the policemen that he had nothing to do with the incident. Just the same, he was brought to the municipal building where he was interrogated (Ibid. pp. 3-4; TSN, Dec. 11, 1979, pp. 4-5)." (Appellee's Brief, p. 6)

An information for murder was filed against Salvador Samson on February 6, 1979. It reads:

"That on or about December 23, 1978, in the Municipality of Bacoar, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused SALVADOR SAMSON together with FELIX JERUSALEM, JOSE JERUSALEM and one John Doe whose identity is still unknown the latter three (3) accused were still at-large, with treachery and evident premeditation, conspiring, confederating and mutually helping and assisting one another, being then conveniently armed with bolos and knives, with intent to kill and without justifiable cause, did, then and there, wilfully, unlawfully and feloniously, attack, assault, stab and hack with the said bolos and knives one BENJAMIN E. LARA, thereby inflicting upon him hack and stab wounds on his body which caused his subsequent death, to the damage and prejudice of the heirs of said BENJAMIN E. LARA.

"CONTRARY TO LAW." (Original Record, p. 8)

Salvador Samson, assisted by his counsel, pleaded not guilty when arraigned on April 11, 1979.

Trial proceeded and judgment was rendered by the lower court on July 28, 1980, finding him guilty of the crime charged.

The accused, through his counsel, now assigns the following errors:

I

THE TRIAL COURT ERRED IN HOLDING 'THAT SUFFICIENT AND CONVINCING PROOF HAS BEEN ADDUCED WHICH DEFINITELY AND BEYOND ANY SCINTILLA OF DOUBT POINTS TO THE GUILT OF ACCUSED-APPELLANT SALVADOR SAMSON AS A PRINCIPAL, TOGETHER WITH THE THREE OTHER ASSAILANTS, NAMELY, JOSE AND JESUS JERUSALEM AND ONE JOHN DOE, THEY HAVING GANGED UP ON THEIR HELPLESS VICTIM AND HACKED HIM UNTIL HE DIED.'

II

THE TRIAL COURT ERRED IN NOT GIVING THE ACCUSED-APPELLANT THE BENEFIT OF REASONABLE DOUBT.

III

GRANTING IN GRATIA ARGUMENTI THAT THE ACCUSED-APPELLANT WAS GUILTY OR RESPONSIBLE FOR THE KILLING OF BENJAMIN LARA, WHICH THE DEFENSE VEHEMENTLY DENIES, NEVERTHELESS, THE TRIAL COURT ERRED IN HOLDING THAT 'THE KILLING WAS CHARACTERIZED OR QUALIFIED BY TREACHERY AND EVIDENT PREMEDITATION.'" (Brief for the Accused-Appellant, p. 1)

In support of his first and second assigned errors, the appellant capitalizes on the turnabout in the testimony of prosecution witness, Cenon Herrera. Five (5) hours after the killing, Herrera gave a detailed statement of the incident identifying the assailants, specifying their acts, and narrating in clear and logical sequence exactly what took place. Forty six (46) days later, he executed an affidavit before the municipal mayor, exculpating the appellant from direct participation in the crime. He stated that at the time of the incident, he merely saw Salvador Samson nearby. This subsequent statement cannot be given any probative value not only because it was made 46 days after the incident but because it was repudiated and the first statement reaffirmed when Herrera was placed on the witness stand. Exhibit H, the sworn statement of Herrera, was admittedly given "freely and voluntarily." Being the companion of Lara at the time of the incident, he could easily distinguish between the persons who hacked the victim beside him and the persons who were merely within the vicinity of the crime. In his first statement which was spontaneously given, he was positive that Samson was among those who stabbed and hacked Lara. This is believable considering that he was the companion of the victim and the place was lighted. He even stated that he was not in a state of shock when he made the statement. In contrast, the manner by which he made his recantation was doubtful, thus, prompting the trial court to note that he was lying. Moreover, when asked by the Fiscal whether he was the one who personally executed the affidavit (Exh. 1), he admitted that the same was prepared by the counsel for the defense.

Obviously, the court cannot give any weight to the retraction of the earlier statement by the witness.

The same principle which looks with disfavor upon retractions of testimonies previously given in court may also be applied here. An eyewitness may be prevailed upon to either recant the first statement or tell a different story once placed on the witness stand. The reason is that retractions can easily be secured from poor and ignorant witnesses usually for a monetary consideration (Reano, et al. v. CA, et al., G.R. No. 80992, September 21, 1988). Or they may be threatened with harm. In this case, the eyewitness told the truth once questioned during the trial.

The defense likewise questions the reaction of one of the prosecution witnesses who happens to be the sister of the deceased. The defense contends that the reaction of Bumangkit was not natural for a sister. They maintain that she should have run to her brother's succor. There is nothing unnatural about the sister's reaction. She was alone and helpless so that her natural action, as would be done by any other person in the same situation, was to run and

shout for help. In contrast, it was the reaction of Samson which was unnatural. His version of the facts reveal that when he saw that somebody was stabbed, he ran home and slept. In the normal course of events, his reaction is unusual. Moreover, he has not successfully explained the fact that he was still wearing the same maong pants and t-shirt which he wore during the stabbing and which pair of pants was stained with blood and full of mud. His explanation that the blood stains were caused by his falling into a ditch is quite flimsy.

The difference in the number of assailants as specified by prosecution witnesses Herrera and Bumangkit is of no consequence considering that under such circumstances, it is not expected that witnesses would have a clear account of the details of the incident, such as the number of attackers. Human instinct would dictate self-preservation. What is important is the fact that both positively identified Samson. There is nothing in the records which would show a motive or reason on the part of these witnesses to falsely implicate the accused. In *People v. Dollantes*, 151 SCRA 592 (1987), it was held that if no motive was shown why the prosecution witness would falsely incriminate the appellants, identification would be given full credit.

The appellant further contends that his motive to kill has not been established. The contention is without merit. Proof of motive is not necessary when there is positive identification of the assailant.

The accused-appellant assigns as the trial court's third error, the qualifying of the crime to murder by treachery and evident premeditation.

We agree with the defense that evident premeditation was not clearly established. However, we cannot concede that treachery is likewise absent. The trial court committed an error in assuming that these circumstances are inseparable. As correctly stated by the Solicitor General, evident premeditation and treachery are independent of each other.

In the instant case, there was treachery in the sudden, deliberate, and unexpected attack on the victim. He was sitting down when he was attacked and was stabbed simultaneously by the assailants, thus insuring the accomplishment of the crime without risk to the appellant and his group arising from the defense which the victim might have offered. The case of *People v. Rojas*, 147 SCRA 169 [1987] clearly enunciates the principle, thus: "treachery exists when the offender commits any crime against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make."

On the other hand, evident premeditation cannot be appreciated as there was no direct evidence of the planning and the preparation to kill. We quote with approval the Solicitor General: "Under normal conditions, conspiracy presupposes premeditation but in case of implied conspiracy, as where there was concerted attack, evident premeditation cannot be appreciated."

The defense of denial and being elsewhere made by the accused certainly cannot prevail over the positive identification by prosecution witnesses as author of the crime (*People v. Dava*, 149 SCRA, 582 [1987]).

Given the above circumstances, we find no cogent reason to depart from the well-settled rule that the findings of fact of the trial court on the credibility of witnesses should be accorded the highest respect because it has the advantage of observing the demeanor of witnesses and can discern if a witness is telling the truth (*People v. Ornoza*, 151 SCRA 495 [1987]; *People v. Pilapil*, 147 SCRA 528 [1987]).

WHEREFORE, premises considered, the decision of conviction is hereby AFFIRMED with modification that the accused shall suffer a penalty of reclusion perpetua pursuant to the abolition of the imposition of the death penalty in the present Constitution. The indemnity to the heirs shall be increased to P30,000.00 in line with recent decisions of the Court.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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