

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SERGIO SERENIO, DEFENDANT-APPELLANT.

G.R. No. 60490. November 14, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The accused, Sergio Serenio, has appealed the decision dated August 17, 1981 of the Circuit Criminal Court, Cebu City, in Case No. CCC XIV-2403, convicting him of Murder, qualified by treachery, and sentencing him to suffer -

"x x x the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify the heirs of the deceased Perfecto Jacalan in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay the costs.

"SO ORDERED." (p. 15, Rollo.)

The facts are as follows:

The victim Perfecto Jacalan, a member of the Barangay Assistance Force, Barangay Sambag I, Cebu City, arrived home with his friend Ruben Aranco at around 11:30 in the evening of March 29, 1981. He was hungry and he asked for food from his wife Gregoria who said there was none. The victim then decided to buy some viands from a "carinderia" at the nearby South Expressway Bus terminal located at the left side of Rizal Avenue. His house is situated in the interior of Rizal Avenue, third from accused-appellant's house. The deceased Perfecto Jacalan was accompanied by Ruben Aranco and his wife Gregoria Jacalan, with the former walking to his right and his wife behind him. As they were passing in front of the appellant's house, the latter suddenly appeared and fired a gun at Jacalan hitting him in the left temple. The victim staggered and fell to the ground lifeless. Ruben Aranco tried to help his companion but the appellant confronted him and pointed the gun at him. Frightened, Ruben Aranco fled from the scene of the crime. Gregoria rushed to her husband's side and cradled his head. She heard Sergio Serenio's wife ask her husband, "Nganong imong man nang gipusil" (Why did you shoot them?) to which the accused-appellant replied: "Kinsa man god sila" (Who are they anyway?) (p. 4, Appellee's Brief.) Gregoria shouted for help but nobody came. So she ran to her house to summon help.

Receiving an alarm report of the incident at approximately 12:00 to 12:15 midnight, police officer Flaviano Samson and his men at the Intelligence Section of the Central Police Station proceeded to the crime scene. The victim's widow and Ruben Aranco informed the police that the gun wielder was the appellant. Corporal Samson and his companions arrested the appellant at around 12:20 midnight in his house and brought him to the police headquarters for a confrontation with the witnesses. Appellant was drunk and even challenged the policemen to a fistfight. Both witnesses positively identified him as the gun wielder, but he denied having committed the crime.

The body of the deceased was autopsied at the Cosmopolitan Funeral Homes at Cebu City by Dr. Tomas P. Refe, a Senior Medico-Legal Officer of the NBI, Cebu City at 3:45 o'clock in the afternoon of March 30, 1981. The necropsy report findings, partly reads:

"x x x Hemorrhage, intracranial, extensive severe.

"Heart chambers contain small amount of clotted blood.

"Lungs, congested and edematous, cut sections show reddish congested cut surfaces.

"Brain and other visceral organs, slightly congested.

"Stomach, empty.

"CAUSE OF DEATH: Hemorrhage, intracranial, extensive, severe, secondary to gunshot wound on the head.

"REMARKS" One (1) deformed bullet submitted to the Ballistics Section for examination." (p. 32, Decision.)

The version of the defense as testified to by the appellant and his wife, Leonila Serenio, is as follows:

That her husband, a dental technician, worked on orders for dentures the whole day of March 21, 1981. On that fateful evening, accused went to sleep at 8:00 o'clock P.M., until he was awakened by the police at dawn the following day. That sometime before midnight, she was awakened by the sound of a gunshot in front of their house, directly below their bedroom window. She slowly and cautiously peeped out of their window and saw a person running away from the place where she heard the explosion come from. The person jumped over the island in the middle of the street and ran to the opposite side of the street. Notwithstanding the incident, she did not wake up her husband nor did she call for any help. Five minutes later, she heard shouts indicating the discovery of the body of a dead man. She transferred to another window and from there she saw directly below her window the body of a man lying face up and holding a piece of wood measuring 24x2x20. Gregoria Jacalan who was standing over the body took the piece of wood and threw it away.

When she asked Gregoria Jacalan what happened, the latter did not reply. She did not see Ruben Aranco during or after the incident.

Significant in the testimony of Leonila Serenio was her revelation that on the night before the fatal shooting of Jacalan, Sergio Serenio, their son, and a guest were joined by Perfecto Jacalan and Ruben Aranco in a drinking session. During the drinking spree Perfecto Jacalan tore off and threw away the cigarettes of Serenio's guest. Sergio Serenio was outraged by the affront not only to his guest but also to himself. But Gregoria made a timely appearance and forcibly dragged her husband away, thus preventing a violent quarrel between Serenio and Jacalan from erupting.

The accused-appellant was charged with Murder for the fatal shooting of Perfecto Jacalan. The information reads:

"That on or about the 29th day of March, 1981 at about 11:30 P.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with a firearm, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there attack, assault and fire shots upon one Perfecto Jacalan with said firearm hitting him on his head, thereby inflicting upon him the following physical injuries:

'HEMORRHAGE, INTRACRANIAL, EXTENSIVE, SEVERE SECONDARY TO GUNSHOT WOUND AT THE HEAD.'

as a consequence of which said Perfecto Jacalan died instantaneously.

"Contrary to law." (p. 3, Rollo.)

Upon arraignment, the accused, assisted by counsel, pleaded "not guilty."

After the trial, the court found him guilty as charged.

In his appeal to this Court, the accused alleges that the trial court erred:

1. in finding him guilty of murder;
2. in not upholding his defense of alibi; and
3. in not considering the mitigating circumstance of "intoxication" in his favor.

The appeal is without merit.

We affirm the trial court's finding that the accused's guilt had been established beyond reasonable doubt.

The accused was positively identified by the prosecution's witnesses. His own wife (Leonila Serenio) revealed his possible motive for killing the deceased who had allegedly embarrassed him in front of his guest by tearing up and destroying the cigarettes offered to him by said guest during a drinking session in the house of the accused on the night before he was killed (Decision, p. 43 of Appellant's Brief).

The accused's defense that he slept through the shooting which occurred under his bedroom window and that he was not awakened by the shouts for help, nor by the commotion that followed, is incredible. (Decision, p. 43 of Appellant's Brief.)

Treachery was correctly appreciated by the trial court for the shooting was sudden, unexpected, and done at close-range when the victim had no expectation whatsoever that he would be attacked. (People vs. Valdemora, 102 SCRA 171.)

The trial court properly rejected the appellant's alibi that he was asleep in his room just above the scene of the crime when the shooting transpired. An alibi cannot prevail over the positive identification made by the eyewitnesses, his neighbors Ruben Aranco and Gregoria Jacalan, who knew him well. His alibi, corroborated only by his wife, is extremely weak. For an alibi to be acceptable, it must count with strong corroboration. (People vs. Bermoy, 105 SCRA 106.) Considering that the shooting occurred beside his house, it was entirely possible for the accused to have gone down from his house to shoot the deceased and rush back to his bed afterwards.

There is no merit in the appellant's contention that, as the trial court found that he shot Perfecto Jacalan "in a moment of extreme inebriation," he should have been convicted of homicide only, NOT murder, with the mitigating circumstance of "intoxication." (p. 25, Appellee's Brief.) Having failed to prove that the liquor he drank impaired his mental faculties and that his drinking was not habitual or subsequent to the plan to commit the felony, his intoxication was not a mitigating circumstance in the commission of the crime (People vs. Baduso, 60 SCRA 60; People vs. Noble, 77 Phil. 93.)

WHEREFORE, the decision of the trial court convicting the appellant, Sergio Serenio, is affirmed, except the award of civil indemnity to the heirs of the deceased Perfecto Jacalan which is hereby increased to P30,000. Costs against the accused-appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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