

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SOMERA, ACCUSED-APPELLANT.

G.R. No. 65589. May 31, 1989

Ponente: CORTES, J.

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CORTES, J.:

For the death of Ernesto Sarabia, Romeo Somera was charged with Murder in Criminal Case No. 572-K before the Regional Trial Court of Cabugao, Ilocos Sur, Branch XXIV, in an information which reads:

That on or about the 12th day of November, 1979, in the Municipality of Cabugao, province of Ilocos Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Romeo Somera, with treachery and evident premeditation and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and strike with a knife (Balisong) one Ernesto Sarabia alias Orling, thereby inflicting upon the latter, wounds at his head and back, which wound (sic) necessarily produced the death of said Ernesto Sarabia alias Orling shortly thereafter.

Contrary to law and with the aggravating circumstance of recidivism, the accused having been previously convicted of the crime of homicide in Criminal Case No. 191-K on July 24, 1975. [Rollo, p. 3.]

When arraigned on March 13, 1980, the accused pleaded "not guilty". After trial, the lower court found the accused guilty beyond reasonable doubt of the crime of murder and sentenced him to death. The dispositive portion of the decision reads as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime of murder, as defined in, and penalized by, Art. 248 of the Revised Penal Code, and with the qualifying and generic aggravating circumstances heretofore mentioned, he is hereby sentenced to suffer the penalty of DEATH in the manner provided by law, to indemnify the heirs of the deceased, Ernesto Sarabia, in the amount of P12,000.00, and to pay the costs.

SO ORDERED.

[RTC Decision, p. 21; Rollo, p. 55.]

On October 10, 1983, the accused filed a motion for reconsideration which was denied by the trial court in its order dated October 15, 1983. In view of the penalty imposed, the record of the case was elevated to this Court for review. Considering that the death penalty is no longer imposable under the 1987 Constitution, the accused Romeo Somera was asked whether or not he wished to continue with the case as an appealed case. When the accused manifested that he is willing to accept the sentence of reclusion perpetua, the Court required the counsel de oficio for the accused to file a Comment on the waiver of appeal. In his Comment, appellant's counsel de oficio challenged the validity of the waiver of appeal on the ground that it was made by the appellant without the advice of counsel. The Court took note of the Comment of appellant's counsel de oficio and considered the case as an appealed case.

In his brief, appellant assigns the following errors:

I

THAT THE LOWER COURT ERRED IN CONCLUDING THAT THE INCONSISTENCIES OF THE TWO EYEWITNESSES WERE ONLY ON MINOR DETAILS AND THEREFORE REINFORCED RATHER THAN WEAKENED THEIR CREDIBILITY.

II

THAT THE LOWER COURT ERRED IN NOT ACQUITTING ON THE GROUND OF REASONABLE DOUBT THE ACCUSED-APPELLANT, ROMEO SOMERA, FROM THE CRIME CHARGED.

III

THAT THE LOWER COURT CONSEQUENTLY ERRED IN ORDERING THE ACCUSED-APPELLANT TO INDEMNIFY THE HEIRS OF THE DECEASED, ERNESTO SARABIA, IN THE AMOUNT OF P12,000.00 AND TO PAY THE COSTS. [Brief for Appellant, p. 1; Rollo, p. 34.]

The real issue of the case at bar is whether or not the guilt of the accused had been proved beyond reasonable doubt.

The prosecution's evidence consisted of the autopsy report, the buri hat belonging to the deceased, the Batangas knife used by the assailant and the oral testimonies of the following witnesses: Avelino Somera, Arsenio Saquiton, Felicitas Sarabia, and Dr. Jaime Gorospe.

On the other hand, the defense presented the accused himself, as well as his wife Leonora and his brother Pedro Somera.

From the testimonies of its witnesses, the prosecution presents the following version of the facts:

In the evening of November 12, 1979, between the hours of 9:00 and 10:00 o'clock, Avelino Somera, Pedro Balois, Ernesto "Orling" Sarabia and Arsenio Saquiton were seated on bamboo benches on the western side of the store of one Virgie Ballete at Barangay Sabang, Cabugao, Ilocos Sur. They were attending the wake of Perlito Villegas. The house where the deceased Villegas laid (sic) in state, which was about 8 meters away from the store, was lighted with two optimum lamps, one inside the house and the other outside north of the house . . . (pp. 2-9, tsn., September 26, 1980; pp. 2-4, 6-8, tsn., July 24, 1981).

The four persons were then conversing relative to the planting of garlic when accused Romeo Somera suddenly appeared from behind Orling Sarabia who was wearing a buri hat, and stabbed the latter with a Batangas knife at the upper portion of his back and on the right side of his forehead. After being hit in the forehead, deceased Sarabia turned around, stood up, walked towards the west direction and fell down face downward, about five (5) meters away from the place where he was stabbed. Accused Somera hurriedly left the place (pp. 4-5, 8-11, tsn., July 24, 1980; pp. 6-10, tsn., September 26, 1980).

At this moment, Avelino Somera, Pedro Balois and Arsenio Saquiton ran toward the house where the dead person was lying in state. Rogelio Sarabia, brother of deceased Ernesto Sarabia, called for Felicitas M. Sarabia, wife of the deceased. When Felicitas saw her husband sprawled on the ground, she cradled him. While she was trying to talk with her husband, the latter removed the knife on the left side of his face causing the constant flow of blood. Then Erning Sarabia was loaded in a tricycle and was brought to the clinic of a certain Dr. Apostol where Sarabia expired three hours thereafter (pp. 3-6, tsn., September 26, 1980; pp. 10-13, tsn., July 2, 1981).

On November 13, 1979, Dr. Jaime Gorospe, Rural Health Physician of Cabugao, Ilocos Sur conducted an autopsy on the cadaver of victim Ernesto Sarabia. According to autopsy report (Exhibit "A"), Dr. Gorospe found the following:

Wound No. 1 - Puncture wound of the left side of the head at the parietal region one inch above the left ear, one-half inch long down to underlying bone and the brain.

Wound No. 2 - Puncture wound at the back along the left side of the vertebral column at the level of the nipple, three and one-half inches deep hitting the lung and its blood vessel.

[Brief for the Appellee, pp. 3-6; Rollo, pp. 82-85.]

During the trial, the accused Romeo Somera, interposed the defense of alibi. The defense sought to establish that Romeo Somera was visiting his sick brother in Carmen, Rosales, Pangasinan at the time the murder took place. The witnesses for the defense claimed that the accused left for Pangasinan on November 10, 1979 and returned to Sabang, Cabugao, Ilocos Sur only on November 14, 1979 [TSN, July 1, 1982, p. 5; July 1, 1983, p. 3; August 19, 1983, p. 4.]

Appellant raises as error the reliance by the trial court on the testimonies of the prosecution's two eyewitnesses, Avelino Somera and Arsenio Saquiton, who positively identified appellant Romeo Somera as the assailant. It is appellant's contention that it was impossible for Avelino Somera to have identified Romeo Somera as the assailant of Ernesto Sarabia since the assailant came from behind the victim who was then seated beside Avelino Somera. The latter had his back to the assailant and did not notice anything until the victim was hit and fell, but by that time the assailant had fled and Avelino Somera could not have identified him.

Appellant's contention is devoid of merit. At the time of the murder, Avelino Somera was seated beside Ernesto Sarabia [TSN, July 24, 1980, p. 5.] Although he did not actually see how Romeo Somera inflicted the wounds, he heard a cracking sound [TSN, July 24, 1980, p. 8] and saw Romeo Somera standing just a foot behind Ernesto Sarabia. He then saw Ernesto Sarabia stand up, walk for about five meters and suddenly fall. It was then that Avelino Somera noticed the wounds sustained by the victim (TSN, August 7, 1980, p. 4.) The witness had no difficulty in identifying Romeo Somera because of his proximity to the victim and because the place where they were seated had sufficient illumination coming from the lighted "coleman" or kerosene lamp hanging south of the store and from the two optimus lamps from the house where a dead person was lying in state [TSN, July 24, 1980, p. 6.] Also, Avelino Somera had known Romeo Somera since childhood, the latter being his brother's son [TSN, July 24, 1980, p. 6.]

Moreover, witness Arsenio Saquiton corroborated the testimony of Avelino Somera. At the time the killing took place, Saquiton was seated beside a certain Pedro Balois and they were facing Ernesto Sarabia and Avelino Somera [TSN, July 2, 1981, p. 6.] He saw how the accused suddenly appeared from behind Ernesto Sarabia and stabbed him twice [TSN, July 2, 1981, p. 6.] He even identified the Batangas knife used by the accused in stabbing the victim [TSN, July 2, 1981, p.13.]

In his attempt to destroy the credibility of the prosecution's eyewitnesses, appellant claims that the bamboo wall east of the benches where the witnesses and the victim were then seated blocked the illumination coming from the kerosene lamp and the two optimus lamps and therefore, because of the darkness, it was not possible for the witnesses to identify the assailant [Appellant's Brief, p. 10.] However, while it is true that there was a six (6) feet bamboo wall east of the benches where the group of Sarabia was seated [TSN, July 25, 1980, p. 5.], the said bamboo wall had holes through which the light could pass through [TSN, July 25, 1980, pp. 5-6.] Both witnesses Avelino Somera and Arsenio Saquiton testified that they were able to identify Romeo Somera because there was enough light coming through the holes of the bamboo wall [TSN, July 24, 1980, p. 6; TSN, July 2, 1981, pp. 8-9.]

Appellant also claims that there are inconsistencies in the statements of witnesses Avelino Somera and Arsenio Saquiton which, when taken together, engenders such doubt that merits his acquittal [Appellant's Brief, p. 6.] Thus, appellant points out that while Avelino Somera testified that they were seating north of the store of Virgie Ballete, Saquiton claimed that they were west of the store. The two eye witnesses were also not in agreement as to whether the store was opened or closed at the time of the murder [Appellant's Brief, p. 5.] Appellant claims that these inconsistencies are significant because they relate to the positions of the witnesses and the lighting condition of the scene of the crime which, in turn, can affect the ability of the witnesses to make a positive identification of the assailant.

A review of the record of the testimonies of the two eyewitnesses shows that the inconsistencies in their statements are not fatal, as claimed by the appellant, but refer only to minor details. Such minor discrepancies are to be expected from uncoached witnesses [People v. Arbois, G.R. No. L-36936, August 5, 1985, 138 SCRA 24.] They do not affect the witnesses' positive identification of appellant Romeo Somera as the assailant of Ernesto Sarabia. As repeatedly held by this Court, discrepancies and inconsistencies in the testimonies of prosecution witnesses which refer to minor details do not impair the probative value of their testimonies [People v. Agudo, G.R. No. L-43796, July 15, 1985, 137 SCRA 516; People v. Arbois, *supra*; People v. Pielago, G.R. No. L-42256, December 19, 1985, 140 SCRA 418.]

It is also worthy of note that in the instant case, no improper motive was proven by the defense as to why the two eyewitnesses would falsely testify against the appellant. This Court has held that where there is no evidence to show that the witnesses for the prosecution were actuated by improper motive, their identification of the accused as the assailant should be given full faith and credit [People v. Dollantes, G.R. No. 70639, June 30, 1987, 151 SCRA 592.]

The well established rule on the issue of credibility of witnesses is that the findings of the trial court which had the opportunity to observe and gauge the demeanor and conduct of the witnesses while testifying are accorded great weight and are not to be disturbed, unless the court overlooked undisputed facts of substance and value which, if properly considered, would affect the result of the case [People v. Sinaon, G.R. No. L-15631, May 27, 1966, 17 SCRA 266; People v. Gabay, G.R. No. 78269, February 27, 1989.]

In this case, the Court finds no cogent reason to depart from the general rule. The Court agrees with the trial court's finding that witnesses Avelino Somera and Arsenio Saquiton were unwavering in their clear and positive identification of the accused as the assailant of Ernesto Sarabia [RTC Decision, p. 16; Rollo, p. 50.]

Appellant also faults the prosecution for its failure to present Virgie Ballete, the owner of the store, as one of its witnesses. Appellant claims that Ballete could have testified on the lighting condition of the scene where the crime took place [Appellant's Brief, p. 11.]

However, as correctly pointed out by the Solicitor General, there was no need for the prosecution to present Virgie Ballete as a witness [Brief for the Appellee, p. 12; Rollo, p. 91.] The evidence on record does not show that Ballete was present when the killing took place. And even assuming that Ballete was then present, no unfavorable inference can be drawn from the failure of the prosecution to produce her as a witness because her testimony would only be corroborative in nature [People v. Extra, G.R. No. L-29205, July 30, 1976, 72 SCRA 199.]

The Court finds that the defense of alibi put up by the appellant to disprove that he was the assailant of Ernesto Sarabia does not merit serious consideration. Alibi is, at best, a weak defense. To be believed, it must be supported by the most convincing evidence [People v. Extra, *supra*; People v. Batac, G.R. No. 54500, January 29, 1988, 119 SCRA 608.] In this case, the only evidence presented by the defense to prove that the appellant was in Pangasinan when the crime took place are the testimonies of the accused himself and those of his wife and

brother. However, the statements of the appellant's wife and brother are undeniably tainted with bias for they spring from their natural desire to exculpate the accused from criminal liability [People v. Romero, G.R. No. L-38786, 119 SCRA 234, December 15, 1982; People v. Orongan, G.R. No. L-32751, December 21, 1988.] It has been held by this Court that alibi is weak where it is established mainly by the accused himself and his immediate relatives, and not by credible persons [People v. Cabanit, G.R. Nos. 62030-31, October 4, 1985, 139 SCRA 94.]

Further, for the defense of alibi to prosper, it is not enough to prove that the accused was somewhere when the crime was committed but he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime [U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Coronado, G.R. No. 68932, October 28, 1986, 145 SCRA 250; People v. Pineda, G.R. No. 72400, January 15, 1988, 157 SCRA 71.] In the present case, the accused allegedly left Barangay Sabang, Cabugao, Ilocos Sur, for Carmen, Rosales, Pangasinan, on the morning of November 10, 1979 [TSN, July 1, 1983, p. 15.] According to the defense witness, Pedro Somera, the travel time between Carmen, Rosales, Pangasinan, and Cabugao Ilocos Sur is at most five (5) hours only by taking the Philippine Rabbit Bus [TSN, August 19, 1983, pp. 6 & 13.] The trial court correctly held that it was not physically impossible for the accused to have been at the scene of the crime on November 12, 1979, at about nine o'clock in the evening, even granting that he went to Carmen, Rosales, Pangasinan on November 10, 1979.

More importantly, the alibi of the accused cannot prevail over the clear and positive identification of the accused by the prosecution witnesses [People v. Rival, G.R. No. L-14077, March 31, 1964, 10 SCRA 55; People v. Mercado, G.R. Nos. L-39511-13, April 20, 1980, 97 SCRA 232.] It is a settled rule in criminal cases that alibi should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime [People v. Pelagio, G.R. No. L-16177, May 24, 1967, 20 SCRA 153; People v. Jamero, G.R. No. L-19852, July 29, 1968, 24 SCRA 206.]

The Court agrees with the trial court's finding that the crime committed is murder, qualified by treachery. There is treachery when the attack was so sudden and unexpected that the victim was unable to defend himself, thus insuring the execution of the crime without risk to the assailant [People v. Pampanga, G.R. No. 66046, October 17, 1985, 139 SCRA 339; People v. Gutierrez, G.R. No. L-39383, March 14, 1988, 158 SCRA 614.] The two eyewitnesses in this case were one in saying that the accused attacked the unarmed and unsuspecting victim from behind and without any warning [TSN, July 24, 1980, p. 8; July 2, 1981, p. 6.]

While the information also alleged evident premeditation as a qualifying circumstance, the trial court correctly found that it has not been established by the evidence of the prosecution [RTC Decision, pp. 19-20; Rollo, pp. 53-54.]

As to the generic aggravating circumstance of recidivism, the trial court took judicial notice of Criminal Case No. 191-K, entitled "People of the Philippines v. Romeo Somera and Pedro Somera", wherein appellant Romeo Somera and his brother Pedro were convicted by final judgment of the crime of homicide for the killing of Antonio Sarabia, the brother of the victim in the instant case [RTC Decision, p. 20; Rollo, p. 54.] The decision in the above mentioned case was rendered by the same trial court which convicted the appellant in the instant case. Thus, contrary to the appellant's claim, the failure of the prosecution to formally offer the original judgment of conviction in Criminal Case No. 191-K does not preclude the trial court from properly appreciating recidivism against the accused. In the case of Baguio v. Vda. de Jalagat [G.R. No. L-28100, November 29, 1971, 42 SCRA 33] this Court held that the trial court can take judicial notice of the finality of judgment in a case that was previously pending and thereafter decided by it. Moreover, recidivism has been duly alleged in the information which made reference to the docket number of the previous case. Prosecution witness Avelino Somera also testified that he knew of the previous criminal case against the appellant which involved the killing of Antonio Sarabia by the appellant Romeo Somera and his brother Pedro [TSN, July 24, 1980, p. 12.] Appellant's counsel

had the opportunity to challenge this statement during the cross-examination but did not do so.

There being one generic aggravating circumstance, which is not offset by any mitigating circumstance, the penalty for the crime of murder, which is reclusion temporal maximum to death, should be applied in its maximum period. However, considering that the 1987 Constitution prohibits the imposition of the death penalty, and in view of this Court's pronouncement in the case of *People v. Millora* [G.R. Nos. L-38968-20, February 9, 1989] the penalty which should be imposed upon the appellant Romeo Somera is reclusion perpetua.

The award of Twelve Thousand Pesos (P12,000.00) as indemnity to the heirs of the victim should be increased to Thirty Thousand Pesos (P30,000.00) in accordance with recent jurisprudence [*People v. de la Fuente*, G.R. Nos. 63251-52, December 29, 1983, 126 SCRA 518; *People v. Centeno*, G.R. No. L-48744, June 29, 1984, 130 SCRA 198; *People v. Totong*, G.R. No. 68898, March 31, 1989.]

WHEREFORE, the judgment of the RTC finding accused-appellant Somera GUILTY beyond reasonable doubt of the crime of murder is AFFIRMED, subject to the following modifications:

- (1) in view of the Constitutional provision prohibiting the imposition of death penalty, the accused-appellant is sentenced to suffer the penalty of reclusion perpetua, and
- (2) in view of the ruling in *People v. de la Fuente*, supra, the indemnity to be awarded to the heirs of the victim is increased to Thirty Thousand Pesos (P30,000.00).

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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