

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GREGORIO NARAJOS, ACCUSED-APPELLANT.

G.R. No. 72814. March 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal interposed by the accused Gregorio Narajos from the decision of the Regional Trial Court of Tacurong, Sultan Kudarat, Branch XX, sentencing him to serve the penalty of reclusion perpetua, to indemnify the heirs of the late Enrico Garzon the amount of P12,000.00, and to pay the costs.

The information filed against the accused alleged:

"The undersigned Acting Provincial Fiscal accuses Gregorio Narajos and Uldarico Prado of the crime of Murder, committed as follows:

"That on or about September 12, 1976, in the Municipality of Tacurong, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring, confederating together and mutually helping each other, armed with a knife and with intent to kill, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault, and stab with the use of the aforementioned instrument one Enrico Garzon, thereby inflicting upon the latter a mortal stabbed wound, pene-trating his right lung, which directly caused his death several days thereafter.

"CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code with the aggravating circumstances of superior strength and nocturnity which facilitated the commission of the crime, and that the crime was committed at the residence of the victim."

The trial court found the following facts and circumstances clearly and duly established:

xxx xxx xxx

"x x x The families of the accused Gregorio Narajos and the victim Enrico Garzon are neighbors and residing in Malvar Street and Lapu-Lapu Street, Tacurong, Sultan Kudarat, respectively on or about September 1976. These Malvar and Lapu-Lapu Streets run paral-lel to each other, as shown in Exhibit '1'. On August 31, 1976 there was a report to the Police of Tacurong, Sultan Kudarat, that on August 30, 1976 there was a tumultuous affray involving rela-tives of the accused Gregorio Narajos against a relative and helpers of the victim Enrico Garzon. Some of them with Aida Narajos wife of the accused Gregorio Narajos were injured in this tumultuous affray. This tumultuous affray case was settled amicably by the parties with the agreement that the medical or hospital bills shall be paid by those involved in the tumultuous affray includ-ing the hospital expenses incurred by Aida Narajos for the injuries she suffered while trying to pacify. On September 12, 1976 while the victim Enrico Garzon, his wife Socorro Garzon and their driver Alejandro Gonzales were having a conversation in the veranda of their house located at Lapu-Lapu Street, Tacurong, Sultan Kudarat the accused Uldarico Prado arrived and asked the victim Enrico Garzon why was his brother-in-law the accused Gregorio Narajos be the one to pay the hospital bills. The accused Gregorio Narajos suddenly appeared and without saying a word to anyone immediately stabbed the victim Enrico Garzon on the right chest. The victim Enrico Garzon held the

por- tion of the knife which was not embedded on his chest with his left hand to prevent further penetration of the knife in his body thereby sustaining also a wound on his left hand. The victim Enrico Garzon tried to remove the hand of the accused Gregorio Narajos which held the knife by hitting the same with his right hand making the handle of the knife separated from its blade. The victim Enrico Garzon pulled the blade of the knife from his body with his left hand and thereafter fell down from the rail- ings of the terrace in a crawling position. The accused Gregorio Narajos also fell to the ground and he tried to regain possession of the blade of the knife. The victim Enrico Garzon con- tinuously struck the ground with the blade of the knife to prevent or stop the accused Gregorio Narajos to get near him but at that time the accused Uldarico Prado rode on him and strangled him with his two hands. Alejandro Gonzales pulled away Uldarico Prado from the victim Enrico Garzon and boxed him. The accused Gregorio Narajos and Uldarico Prado ran away. Alejandro Gonzales brought the victim Enrico Garzon to the Tamondong--Eugenio Hospital at Tacurong, Sultan Kudarat for medical assistance and treat- ment. The victim Enrico Garzon was treated for his injuries described as follows:

"Stab wound, deep penetra- ing at right lungs, right side, chest with concomittant pneumonia, massive and Hemothorax, wound, incised, palm left.

"The stab wound was caused by a sharp bladed instrument. The victim Enrico Garzon died in the hospital on September 16, 1976 after being treated by Dr. Soledad Tamondong-Eugenio." (pp. 99-101, Rollo)

The lower court rendered its decision against Gregorio Narajos only, as Uldarico Prado remained at large.

Appellant Narajos raised the following assignments of errors in this appeal:

I

THE TRIAL COURT ERRED IN ALLOWING JUDGE VALENTINO G. TABLANG TO RENDER THE DECISION INSTEAD OF JUDGE MACARIO C. CAMELLO WHO HEARD ALL THE TESTIMONIES OF THE WITNESSES FOR THE PROSECUTION AND THE DEFENSE.

II

THE TRIAL COURT ERRED IN ACCEPTING THE VERSION OF THE PROSECUTION AND REJECT- ING OUTRIGHT THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

III

THE TRIAL COURT ERRED IN ITS APPRECIATION AND EVALUATION OF THE ENTIRE EVIDENCE OF RECORD.

IV

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT.

The central issue raised by these assigned errors is whether or not the trial court erred in determining the value and credibility of the evidence presented.

First, the appellant contends that the trial court made a faulty assessment of the evidence presented because the judge who rendered the decision did not fully hear the case from its inception.

The change of judges was a result of the judiciary reorganization which transferred jurisdiction over cases in that area from the Court of First Instance of Isulan, Sultan Kudarat, Branch IV to the Regional Trial Court of Tacurong, Sultan Kudarat, Branch XX. Thus, when the case was trans-ferred to the latter court, its presiding judge heard only the rebuttal testimony of Socorro Garzon and the appellant's sur-rebuttal.

However, the contention is without merit. A judge may validly render a decision although he has only partly heard the testimony of witnesses.

As held in the case of Villanueva v. Estenzo (64 SCRA 407):

"As early as *Ortiz v. Aramburo*, et al case, (8 Phil. 98), We ruled that there is no provision of law which would preclude a Judge of the Court of First Instance from deciding a case on the basis of the oral and documentary evidence presented before the first judge who re-signed from the service without deciding the case, which oral evidence was taken by a stenographer and was produced before the second judge.

xxx xxx xxx

"This rule is rooted in practical considerations. Sometimes it is an impossibility for the judge who tried the case to be the same judicial officer to decide it. The judge who tried the case may die, resign or retire from the bench before he could render judgment thereon. In that case, We find no legal impediment to his successor's continuing with the trial or rendering judgment on the basis of the evidence submitted if the trial has been terminated. It is sufficient that in such circumstances the judge, in deciding the case, must base it completely on the cold record before him, in the same manner as appellate courts when they review the evidence of the case raised to them on appeal. x x x."

The appellant points out that the judge made mention of only one (1) documentary exhibit with sub-markings of the defense when there were actually thirteen (13) exhibits.

We agree with the Solicitor General's observation when he said:

"We are in accord, however, with appellant on one point, i.e., that Judge Tablang seems to have erred in declaring in the Preliminary Statement of his Decision that the defense submitted only Exhibits "1" to "1-M" (p. 4, Decision). The records show that there were thirteen (13) documents presented by the defense, namely Exhibits "1" to "13", with sub-markings ('Written Offer of Evidence', p. 599, Records), all of which were admitted in evidence by Judge Tablang in his Order dated October 12, 1983 (p. 655, Records). This error is apparently due to mere inadvertence, because in his subsequent discussion of the evidence for the defense, Judge Tablang made reference to Exhibit "13" (medical certificate dated September 20, 1976 issued in appellant's favor)." (pp. 10-11, Appellee's Brief)

As a matter of fact, the thirteen (13) exhibits were submitted to Judge Tablang and not to his predecessor.

Second, the appellant contends that the trial court erred in the appreciation of the evidence presented because the testimonies of the prosecution witnesses were fraught with inconsistencies and contradictory with the other testimonies.

There were alleged testimonial inconsistencies regarding the mortal wound inflicted on the victim.

The appellant alleges that the testimony of Dr. Soledad Tamondong-Eugenio that there was no exit wound at the back of the victim contradicted the testimonies of Socorro Garzon and Alejandro Gonzales that the whole length (12 inches) of the murder weapon embedded itself in the victim's body. Furthermore, Dr. Eugenio testified that the blade created a short horizontal line wound while in Garzon and Gonzales' testimonies it could be gathered that the manner of infliction by the assailant would have produced a vertical line-wound.

The prosecution witnesses' testimonies vis-a-vis Eugenio's testimony are not actually contradictory.

Eugenio's testimony corroborates Garzon and Gonzales' testimonies that the appellant was not able to thrust the whole length of the knife into the victim's right chest because the victim held the unembedded portion of the blade with his left hand and then with his right hand struck or twisted the appellant's hand causing the handle which was being held by appellant to be detached from the blade (tsn., Oct. 14, 1977, pp. 2, 4; April 24, 1978, pp. 5-6).

When these two witnesses testified that the assailant swung the fatal weapon at the victim by raising it above his head and bringing it downwards, the wound created could well have been a horizontal line rather than vertical, depending on the victim's position.

The appellant also pointed out that the small wound on the victim's body could not have been caused by the bolo exhibited as the murder weapon.

On the contrary, the small wound corroborates the above-mentioned prosecution witnesses' testimonies that the victim held unto the unembedded portion of the weapon.

We agree with the Solicitor General that:

"There is nothing incredible about the declaration of Socorro Garzon and Alejandro Gonzales that after Enrico Garzon took possession of the bladed weapon from appellant, Alejandro Gonzales got it from him and threw it away while Uldarico Prado and appellant were still fighting him (Enrico Garzon). It must be remembered that after pulling the blade of the knife from his body with his left hand, the victim fell to the ground in a crawling position. Appellant also fell to the ground and tried to regain possession of the blade. For a while the victim managed to keep appellant from getting the blade by continuously striking the ground with it but then accused Uldarico Prado rode on him and strangled him with his two hands (tsn., July 15, 1977, p. 5; Nov. 28, 1977, pp. 3-7; April 24, 1978, pp. 8-10). Thus, when Alejandro Gonzales had the chance, he grabbed the blade from the victim and threw it away. If he had not done so, appellant could have retrieved it from the victim, considering that the latter was getting weaker due to loss of blood which was spurting from his chest wound, not to mention the fact that he was being strangled by Uldarico Prado. Certainly, once in possession again of the bladed weapon, appellant would have used it immediately against the victim.

"Exhibit "13" (medical certificate issued on September 20, 1976 which shows certain injuries suffered by appellant during the incident) and the testimonies of Socorro Garzon and Alejandro Gonzales are not incongruous. Both witnesses did not rule out the possibility that appellant was hit with the knife when the victim repeatedly struck the ground with it to prevent appellant, who was then also in a crouching position, from regaining possession thereof. x x x." (tsn., Nov. 29, 1977, pp. 4 & 6; and Sept. 29, 1978, p. 5).

The appellant questions the credibility of Garzon, wife of the deceased and Gonzales, driver of the deceased by virtue of the fact that they were not able to give their sworn statements to the police immediately. The delay he alleges, gave them enough time to concoct their stories.

As held in the case of *People v. Canada*, G. R. No. 63728, Sept. 15, 1986:

"When there is no showing of im-proper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit. On the contrary, their natural interest in serving the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the latter would thereby gain immunity. (*People v. Radomes*, 141 SCRA 548; *People v. Jabequero*, 125 SCRA 144; and *People v. Alcantara*, supra).

The flight of Uldarico Prado, a co-accused may be indicative of Prado's guilt but such action cannot be taken to mean that it is only Prado who is guilty and, therefore, exculpates the appellant from liability.

WHEREFORE, the judgment appealed from is **AFFIRMED** with the **MODIFICATION** that the indemnity to be paid is increased to **THIRTY THOUSAND PESOS (P30,000.00)**.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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