

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CASIANO ROSE, SR. (DECEASED), CASIANO ROSE, JR. AND FELICISIMO ROSE, ALIAS 'TIMONG'; ACCUSED-APPELLANTS.

G.R. No. 80457. September 29, 1988

Ponente: PARAS, J.

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PARAS, J.:

The accused-appellant Casiano Rose, Jr., appeals from the Decision of the Regional Trial Court, Branch III, Kalibo, Aklan finding him guilty beyond reasonable doubt of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua.

Also charged initially were Casiano Rose, Sr. and Felicisimo Rose. The information filed by the Second Assistant Provincial Fiscal reads —

"The undersigned Second Assistant Provincial Fiscal of Aklan hereby accuses CASIANO ROSE, SR., CASIANO ROSE, JR. and FELICISIMO ROSE, alias 'TIMONG' of the crime of MURDER, committed as follows:

"That on or about the 17[th] day of October, 1981, at 12:30 o'clock in the afternoon, in Barangay Rosario, Municipality of Malinao, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, and mutually helping one another with treachery, evident premeditation and abuse of superior strength, without just motive, and while armed with knives and with intent to kill one FRANCISCO IMACULATA, did then and there willfully, unlawfully and feloniously attack, assault and wound the said FRANCISCO IMACULATA, thereby inflicting upon the latter mortal wounds, as follows:

"Injuries:

"1. Stab wound back 3 inches lateral to the spinal cord at the level of the 7[th] rib, 1 ½ inches opening, 6 inches deep.

"2. Stab wound back, ½ inch opening at the level of the 8[th] rib.

"3. Stab wound right lumber area, 1 inch wide opening.

"4. Stab wound left arm thru and thru.

"5. Incise wound, 1 ½ inches long skin deep right forearm.

as per Autopsy Report of Dr. Querubin R. Iguban, Rural Health Physician, Main Health Center, Malinao, Aklan, hereto attached and forming integral part hereof, which wounds directly caused the death of the said FRANCISCO IMACULATA.

"That as a result of the criminal acts of the herein accused, the heirs of the deceased FRANCISCO IMACULATA suffered the following damages:

"1. P12,000.00 as actual and compensatory damages,

"2. P12,000.00 as moral damages; and

"3. P5,000.00 as exemplary damages.

CONTRARY TO LAW." (pp. 56-57, Rollo)

All the accused pleaded not guilty when arraigned. But, in the course of the trial, Casiano Rose, Sr. died. Consequently, the lower court dismissed the case with respect to him. Trial thus proceeded with respect to Casiano Rose, Jr. and Felicisimo Rose only.

After trial, the lower court rendered a decision finding both accused guilty as charged. The dispositive portion of the decision reads —

"WHEREFORE, premises considered, the Court finds accused Casiano Rose, Jr. and Felicisimo Rose GUILTY beyond reasonable doubt of the crime of Murder. The Court hereby sentences each of them to a penalty of RECLUSION PERPETUA, with costs.

"They are hereby ordered to pay the heirs of the deceased Felicisimo Imaculata the sum of P30,000.00 for the death of the said deceased, P12,000.00 for moral damages, P5,000.00 for exemplary damages and P3,000.00 for funeral expenses.

"The claim for loss of earnings is hereby denied for being speculative.

"SO ORDERED." (p. 16, Decision, p. 341, Record; pp. 2-3, Brief for Appellee; p. 88, Rollo)

As stated earlier, only Casiano Rose, Jr. appealed his conviction to this Court contending that the lower court erred in giving credence to the evidence of the prosecution and in convicting him of the crime charged (p. 1, Appellant's Brief; p. 48, Rollo).

The prosecution narrates the facts as follows:

"The stabbing incident in question happened during a fiesta at barangay Rosario, Malinao, Aklan (p. 3, tsn, May 29, 1984).

"At about past noon of October 17, 1981, people gathered at the barangay plaza to watch the ball games played as part of the festivities. Present among those who watched the ballgames were: Francisco Imaculata, his sister Rosalia, Casiano Rose, Sr. with his two sons Casiano Jr. and Felicisimo and a certain Larry Fernando. Rosalia Imaculata stood near her brother Francisco. Larry Fernando, on the other hand, stood about nine (9) meters away from Rosalia Imaculata and her brother Francisco. Months prior to the fiesta, Francisco Imaculata killed Danilo Rose, a member of the Rose family (pp. 7, 9, tsn, May 29, 1984).

"While the basketball game was being played, Casiano Rose, Sr., coming from behind, suddenly stabbed Francisco Imaculata at the back. Francisco Imaculata ran away despite his wound but Casiano Rose, Jr. and Felicisimo Rose chased him. After a short chase, Casiano Rose, Jr. and Felicisimo Rose overtook Francisco Imaculata and stabbed him at the back and side of his body. As a result Francisco Imaculata fell to the ground (pp. 4-7, id., pp. 6-10, tsn, Aug. 7, 1984).

"Immediately after the stabbing incident, Francisco Imaculata was rushed to the puericulture center but he expired on the way as a result of the stab wounds sustained by him. Casiano Rose, Sr., Casiano Rose, Jr. and Felicisimo Rose, on the other hand, fled (p. 5, tsn, May 29, 1984).

"The next day, Dr. Querubin Iguban, Municipal Health Officer of Malinao, Aklan, performed an autopsy on the cadaver of Francisco Imaculata. His post-mortem report on the injuries sustained by Francisco Imaculata

and on the cause of his death states as follows:

"Injuries:

"1. Stab wound back 3 inches lateral to the spinal cord at the level of the 7[th] rib, 1 ½ inches opening, 6 inches deep.

"2. Stab wound back, ½ inch opening at the level of the 8[th] rib.

"3. Stab wound right lumber area, 1 inch wide opening.

"4. Stab wound left arm thru and thru.

"5. Incise wound, 1 ½ inches long skin deep right forearm.

"Cause of Death:

"Massive hemorrhage due to stab incise wounds." (Exh. A, p. 4, Record; pp. 3-5, Brief for Appellee; p. 88, Rollo)

On his part, appellant interposed the defense of denial and alibi. Thus, he testified that he was in Kalibo, Aklan on the date of the incident. He was not in Rosario, Malinao where the incident occurred. He declared he was told the deceased was stabbed by his father Casiano Rose, Sr.

The issue in this case therefore, rests on credibility. In convicting appellant, the trial court relied heavily on the testimonies of prosecution witnesses Larry Fernando and Rosalia Imaculata which categorically pointed to him as one of the assailants. The testimony of eyewitness Larry Fernando is as follows:

"Q.

In the afternoon of October 17, 1981 or to be exact at about 12:30 do you remember where were you?

"A.

Yes, sir.

"Q.

Please tell the court where were you at that time?

"A.

At the Plaza.

"Q.

In the Plaza of what place?

"A.

Rosario.

"Q.

What municipality and province?

"A.

Malinao, Aklan."

x x x

x x x

x x x

"Q.

What were you doing in the plaza of Rosario, Malinao, Aklan at about 12:30 in the afternoon of October 17, 1981?

"A.

I was there to see games.

"Q.

Why, what was the game going on at the plaza at that time?

"A.

Volleyball games and basketball.

"Q.

While you were watching volleyball and basketball games at the plaza of Rosario, Malinao, Aklan at about 12:30 in the afternoon of October 17, 1981 do you recall any unusual incident that happened?

"A.

Yes, sir.

"Q.

Please tell the court that incident?

"A.

Somebody was stabbed.

"Q.

Who was that somebody who was stabbed?

"A.

Francisco Imaculata.

"Q.

Who stabbed Franciso Imaculata?

"A.

Casiano Rose."

x x x

x x x

x x x

"Q. Now, what did Francisco Imaculata do if any after he had been stabbed once by Casiano Rose, Sr.

"A. He run away but he was chased by Casiano Rose, Jr.

"Q. Besides Casiano Rose, Jr. who else, if any, chased Francisco Imaculata when he ran away?

"A. Felicisimo Rose."

x x x

x x x

x x x

"Q.

What happened if any to Francisco Imaculata after he had been overtaken by Casiano Rose, Jr. and Felicisimo Rose?

"A.

They stabbed him.

"Q.

Now, when you say 'they' to whom are you referring to?

"A.

Casiano Rose, Jr. and Felicisimo Rose.

"Q.

You said that Casiano Rose, Jr. stabbed Francisco Imaculata, how many times did Casiano Rose, Jr. stab Francisco Imaculata?

"A.

Twice.

"Q.

Was Francisco Imaculata hit?

"A.

Yes, sir.

"Q.

In what part of his body was he hit?

"A.

In the center or middle part of his back.

"Q.

What weapon did Casiano Rose, Jr. use in stabbing Francisco Imaculata?

"A.

A knife.

"Q.

You also testified a while ago that Felicisimo Rose stabbed Francisco Imaculata, how many times did Felicisimo Rose stab Francisco Imaculata?

"A.

Once.

"Q.

Was Francisco Imaculata hit?

"A.

Yes, sir.

"Q.

In what part of his body was he hit?

"A.

At his side." (pp. 3-6, tsn, May 29, 1984; pp. 7-9, Brief for Appellee; p. 88, Rollo)

This was corroborated by the testimony of Rosalia Imaculata, as follows:

"Q.

While this Francisco Imaculata was watching the basketball game, do you remember if there was anything unusual that happened?

"A.

Yes, sir.

"Q.

What was that incident about?

"A.

I do not know how it started. All that I can tell is that they suddenly stabbed my brother.

"Q.

When you said 'they', whom are you referring to?

"A.

To Casiano Rose.

"Q.

There are two Casiano Rose ... Sr. or Jr.?

"A.

Sr."

x x x

x x x

x x x

"Q.

After Francisco Imaculata had been stabbed by Casiano rose, Sr., what did Francisco Imaculata do, if any?

"A.

He ran away.

"Q.

Towards what direction did he run?

"A.

Towards the school.

"Q. When Francisco Imaculata ran away after he had been stabbed by Casiano Rose, Sr., what did the other accused do, if they did anything?

"A. The three (3) of them chased my brother and they stabbed him.

"Q. Who stabbed your brother Francisco Imaculata after he ran away?

"A. Felicisimo and this Casiano, Jr."

x x x

X X X

X X X

"Q.

You said that Felicisimo Rose and Casiano Rose, Jr. stabbed Francisco Imaculata after the latter ran away. Can you tell the court the relative positions of this Casiano Rose, Jr. and Felicisimo Rose when they stabbed Francisco Imaculata?

"A.

(As demonstrated and explained by the witness Francisco Imaculata ran away and he was chased and when Francisco Imaculata was overtaken he was stabbed and as demonstrated Francisco Imaculata was stabbed at the right side of his body).

"Q.

Who stabbed Francisco Imaculata at the right side of his body?

"A.

Casiano, Jr.

"Q. How many times did Casiano, Jr. stab Francisco Imaculata?

"A. Once only.

"Q. How about Felicisimo Rose, what did he do, if any, after Francisco Imaculata had been stabbed by his brother Casiano, Jr.?

"A. He stabbed also.

"Q. Was Francisco Imaculata hit when he was stabbed by Feliciano Rose?

"A. Yes, sir.

"Q. Where was he hit?

"A. (Witness demonstrated on her body that her brother was hit at his back)." (pp. 5-7, tsn, Aug. 7, 1984; pp. 10-11, Brief for Appellee; p. 84, Rollo)

No error was committed by the trial court in convicting appellant on the basis principally of the categorical testimonies of these two (2) prosecution witnesses. The defense has not shown any improper motive on the part of said witnesses in testifying the way they did against appellant. Their testimonies are therefore entitled to full weight and credence (*People vs. Alcantara*, 126 SCRA 425).

Moreover, the record shows that appellant and his co-accused Casiano Rose, Sr. and Felicisimo Rose in killing Francisco Imaculata had a motive. Prosecution witness Larry Fernando testified that months prior to the stabbing incident in question, Francisco Imaculata had killed Danilo Rose, who was a member of the family of appellant and his co-accused. This certainly generated ill feelings towards Francisco Imaculata if not a resolution to avenge the death of Danilo Rose.

The defense of alibi interposed by appellant is unavailing. It cannot prevail over the positive identification of the witnesses for the prosecution (*People vs. Pacada, Jr.*, 142 SCRA 427).

Appellant's brother, his co-accused Felicisimo Rose testified that the route from Kalibo to Rosario Malinao can be reached in one (1) hour. It was not therefore physically impossible for them to be at that place at the time of the commission of the crime.

The crime was committed with treachery and was, therefore, correctly categorized as Murder. No other modifying circumstances attended the commission of the offense.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should have been reclusion perpetua, as imposed by the trial court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period, to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. For purposes of the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor maximum to reclusion temporal medium or from ten (10) years and one (1) day to seventeen (17) years and four (4) months (Art. 61, par. 3, Revised Penal Code; (*People vs. Alcantara*, G.R. No. 74737, July 29, 1988; *People vs. Rizal Idnay y Batara*, G.R. No. L-48269, Aug. 15, 1988).

WHEREFORE, the judgment appealed from is hereby AFFIRMED except that the penalty is modified to ten (10) years and one (1) day of prision mayor as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento and Regalado, JJ., concur.

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