

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MELCHOR SIMENE, ACCUSED-APPELLANT.

G.R. NO. 86164. April 03, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the judgment of the Regional Trial Court of Agusan del Norte and Butuan City finding the accused Melchor Simene guilty beyond reasonable doubt of the crime of Murder.

The information filed against the accused reads:

"That on or about the evening of October 1, 1980 at Punta, Nasipit, Agusan del Norte, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill and with treachery and evident premeditation, taking advantage of the darkness of the night attack, club and strike with the use of a round stick locally known as 'Olise' one Mario Remotigue, hitting the latter on the right side of the head, thereby inflicting on him injuries which caused his death. " (At pp. 18-19, Rollo)

Upon arraignment on November 27, 1981, the accused, assisted by counsel, pleaded not guilty.

Trial on the merits ensued and judgment was rendered finding Simene guilty of the crime charged. The dispositive portion of the decision reads as follows:

"IN VIEW OF THE FOREGOING, the Court hereby finds accused MELCHOR SIMENE guilty beyond reasonable doubt for (sic) the crime of murder, as defined and penalized under Art. 248, par. (1) of the Revised Penal Code and hereby sentences him to suffer the penalty of RECLUSION PERPETUA, and to indemnify the heirs of the victim, in the sum of P30,000.00 by way of actual and compensatory damages.

Considering the circumstances under which the offense was committed, it is recommended to the proper authority that a certain degree of leniency and clemency be extended to the accused." (at p. 46, Rollo)

The antecedent facts of the case upon which the judgment of conviction was based are summarized in the Appellee's Brief as follows:

"In the evening of October 1, 1980, the son of the accused passed by the house of the Remotigues bringing with him a flashlight which was beamed at Ronald Remotigue; Ronald cautioned the son of Melchor Simene not to flash the light straight towards his face. However, the son of the accused failed to heed the request, prompting Ronald to pick up a stone and hurl it towards Merchor's son. Ronald missed; accused's son then reported the matter to his father, who immediately looked for Ronald. (TSN, Sept. 6, 1982, p. 2).

"Melchor Simene found Ronald at about six (6) o'clock (ibid, p. 8) and asked why he (Ronald) threw a stone at his son. An altercation ensued, leading ultimately to a fist fight which lasted for about two (2) minutes. All this time, Teofilo Remotigue was on top of a coconut tree gathering 'tuba' (Ibid, p. 2; tsn, 11 April 1984, pp. 6-7). Teofilo descended from the coconut tree but, upon reaching the ground, Melchor and Ronald were no longer around (TSN, 6 Sept. 1982, p. 7).

Later on and at around seven (7) o'clock in the evening, Mario Remotigue, the victim, asked permission from his father, Teofilo Remotigue, to go out of their house as he was going to the house of Fernando Patac (Ibid, p. 10). While Mario together with Cesar Patac and Herminigildo Simbajon were walking from the cemetery of Nasipit, somewhere near the house of Cesar Patac, accused, Melchor Simene clubbed Mario Remotigue from behind using a round piece of wood called 'olise', hitting the victim on his right ear (tsn, 11 February 1982, pp. 2-3). Cesar Patac was walking ahead of Mario but when he heard the impact of the clubbing, he immediately turned around and saw the accused holding a piece of wood with his two (2) hands (witness Cesar Patac demonstrating with his two (2) hands as if holding something like striking something with a bat from the back towards the left, Tsn, 11 February 1982, p. 12). After hitting the victim, the accused passed by Cesar Patac and Herminigildo Simbajon. (Ibid, p. 7)

Cesar and Herminigildo helped Mario head for home. In their house, his father, Teofilo, asked what happened to his ear and Mario answered that he was clubbed by Melchor Simene (ibid, p. 13). After that, Mario vomitted and fell to the floor (tsn, 6 Sept. 1982, p. 3). He was first brought to St. Christopher Hospital in Nasipit but because of his very serious condition, he was transferred to the Butuan Doctor's Hospital in Butuan City where, in spite of medical treatment, he expired at 2:30 p.m. of October 2, 1980 (ibid, p. 4).

It was the findings of witness, Dr. Alfredo M. Noriega, who attended to Mario at the Butuan Doctors Hospital, that the cause of Mario's death was his head injury inflicted by a blunt instrument which caused a skull fracture as the eyes of Mario were bleeding (tsn, 12 October 1982, pp. 5-6)" (At pp. 4-7, Appellee's Brief)

Not satisfied with the decision of the trial court, the accused Melchor Simene, now seeks a reversal of said judgment, claiming that:

I

"THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES AND IN DISREGARDING THE VERSION OF THE DEFENSE WHICH IS CONSISTENT WITH THE TRUTH.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CASE BEYOND REASONABLE DOUBT." (At p. 80, Rollo)

We find the accused-appellant's contentions bereft of merit.

Simene specifically questions the credibility of the prosecution's main witness, Cesar Patac. He argues that Patac could not have seen the clubbing considering that from the latter's testimony Patac was walking in front of the deceased when the incident happened. Patac, however, testified that upon hearing the impact, he immediately turned around and saw Simene carrying a piece of wood and holding it in the same position as a person using a baseball bat. He likewise saw the victim staggering. Assuming that Patac did not see the accused in the very act of clubbing the victim, yet the clear and convincing evidence points to the accused. For one, aside from the deceased, Patac and Simbajon, there was nobody around except the accused who, right after the impact was heard, was seen by Patac in the position just mentioned and then running past them and carrying with him the piece of wood. Patac could not have been mistaken as to the identity of Melchor because he had known the accused for five (5) years. Moreover, at the time of the clubbing, there was a light at the yard of Cesar Patac which enabled him to see the attacker's face clearly. No motive was likewise shown why the identifying witness would falsify the truth (People v. Magdueno, 144 SCRA 210 [1986]). Neither is there any showing that the witness had any motive to testify falsely against the accused (People v. Torres, G.R. No. 76238, January 11, 1990). On the contrary, it was the accused who had reason to hit back at the Remotigues - Ronald Remotigue threw a stone hitting Melchor's 7

year old son which provoked an altercation followed by a fistfight. This also explains the absence of any direct personal dispute between the victim and the accused. It was not the victim himself who earned the ire of the accused. But because Mario Remotigue was a member of the family whom the accused thinks had wronged his son, then the accused felt some kind of impetus for his act. Against this background, the motive for killing becomes readily apparent.

The victim's father corroborated the testimony of Patac. The father testified that when he saw Mario's ear bleeding, he asked him what happened. The victim told his father that he was clubbed by Melchor. After saying that, he slipped into unconsciousness and was never revived.

The court cannot likewise accept the accused-appellant's defense of denial and alibi. The records do not show that Simene could not possibly be at the scene of the crime. In fact, even as the prosecution placed him at the scene of the crime as its author, defense failed to show his whereabouts at that time. If the defense of alibi is to be believed, it must not only appear that the accused was at some other place but also that it was physically impossible for him to be at the scene of the crime (*People v. Asuncion & Aguinaldo* G.R. No. 83870, November 14, 1989 citing *People v. Aquino*, 133 SCRA 283).

From the above circumstances, the guilt of the accused has been clearly established. The case of *People v. Roa* (167 SCRA 117, [1988]) holds that if circumstantial evidence is sufficiently established, direct evidence of the actual stabbing is not necessary. In this case, the evidence is more than circumstantial.

The accused further assails the fact that judgment was rendered by a Judge who did not see nor hear the witnesses. The records show that Judge Dabaloc heard the defense witnesses testify. He was, thus, able to observe the demeanor of the defense witnesses and was not convinced by their demeanor and manner of testifying. Moreover, it is not unusual for a Judge to try the case on the basis of the transcripts (*People v. Escalante*, 131 SCRA 237 [1984]). The fact that another Judge heard the prosecution witnesses does not disqualify the Judge who succeeds him from rendering a valid decision. Judgment has been rendered on the merits of the case. The rule is that the factual findings of the trial court, including the assessment of the testimony of the witnesses whom it was able to observe on the stand and those whose testimony is in the records, is entitled to acceptance on appeal in the absence of a showing that they are arbitrary and without basis. There is no such showing here. (*People v. Espinosa & Jundoy*, G.R. No. 72883, December 20, 1989).

We further agree with the trial court in holding that there was indeed treachery which qualifies the crime to murder. Treachery is present when the attack is so sudden and unexpected that the victim would be unable to defend himself (*People v. Maravilla*, 167 SCRA 645 [1988]).

WHEREFORE, IN VIEW OF THE FOREGOING, judgment of the trial court finding, the accused guilty of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the sum of THIRTY THOUSAND PESOS (P30,000.00) is AFFIRMED.

SO ORDERED.

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

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