

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERVACIO ESPARCIA, DEFENDANT-APPELLANT.

G.R. No. 94176. July 06, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Once again death has resulted from internecine conflicts characteristic of long standing family feuds left unresolved for generations. What adds bitterness to the situation is that the opposing camps involved here can trace their genealogy to common ancestors.[1]

Between the Sedillos and the Esparcia, the families of the parties involved in this case, there exists a history of confrontation involving a piece of land belonging to the former. As found by the Court of Appeals

"x x x Dionisio Sedillo, father of the victim, testified that there exists a long serious animosity between his family (Sedillo) and that of the appellant (Esparcia) and, particularly between his said son and the appellant. It was the victim who administered the land belonging to his grandfather Sedillo which the appellant and his father Felipe Esparcia were cultivating. On several occasions, the victim prevented the appellant from continuing with the cultivation of the land. What also aggravated the feud was that the animals belonging to appellant from time to time would destroy the crops of the victim resulting in confrontations (p. 47, tsn, August 21, 1964). The victim also prevented appellant from building his house on that land. There was an occasion when the victim insulted the appellant by admonishing the latter to go back to school and study further so that he (appellant) would know the law (p. 225, tsn, July 8, 1965). A case even arose which remained pending at the time the shooting incident occurred (p. 9, tsn, August 21, 1964). x x x"[2]

This brewing conflict came to a head during a shouting encounter between the accused and the father of the victim who testified that:

"x x x at 4:00 p.m. of May 1, 1962, after Dick Fleischer had paid his laborers, Felipe Esparcia, his son Gervacio, Felipe's sister Dominga Esparcia, his brother Raymundo, Manuel Raaging, the stepbrother of Gervacio, and Felix Abareta, the husband of Dominga Esparcia, arrived. Then Gervacio Esparcia went to a group of people and they agreed to have a cockfight. That the referee asked Dionisio to be the 'arimador'. That when the two cocks were released. Gervacio's flew away to the bushes and so the referee decided saying that the game was over. Here Gervacio addressed Dionisio saying, 'you are just as (sic) 'arimador' for dead cocks and not for lived (sic) ones' and continued further, 'Dionisio, you are a landgrabber. You let your son appear here, that son of yours who is strong, let him appear here because I'm going to kill him right now.' That Mundo Esparcia added 'I will squeeze you and turn you into a rope.' Whereupon, Teodoro Tag-at, the barrio lieutenant, intervened and advised Dionisio Sedillo to go home because these people came 'to create trouble.' So, together with Teodoro Tag-at, he went home." [3]

Two days later, on or about 7:00 o'clock in the evening of May 3, 1962, Dominador Sedillo was shot to death by unknown assailants as he was driving his jeep to Jantianon together with his brother-in-law, Macario Bongalos, and a mute, Bernardo Elnas.

In the light of the antecedent incidents Gervacio was the prime suspect. He and his cousin, Enrico Esparcia, were arrested and the corresponding Information dated 10 September 1962 was filed against them. It reads as follows:

"That on or about 7:00 o'clock in the evening of May 3, 1962, in barrio Jantanon, Municipality of Amlan, Province of Negros Oriental, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring together and acting upon a common purpose, with evident premeditation and treachery, taking advantage of nighttime to commit the felony did then and there willfully, unlawfully and feloniously, ambush Dominador Sedillo while the latter is (sic) on his way home and suddenly fire (sic) two shots from their rifle with which the accused were armed at the time, thus hitting and wounding Dominador Sedillo at the left anterior iliac spine and the bullet penetrating across the lower abdomen, medially and slightly downward injuring the sigmoid colon, small intestines, big vessels and urinary bladder, which wounds caused the untimely death of said Dominador Sedillo.

Contrary to Article 248 of the Revised Penal Code."[4]

Appellant pleaded NOT GUILTY to the crime charged upon his arraignment on 29 September 1962. The Regional Trial Court in Dumaguete City after trial on the merits found otherwise and sentenced him to suffer the penalty of seventeen (17) years, four (4) months and one (1) day to twenty (20) years of imprisonment, to pay the heirs of the victim Dominador Sedillo the sum of Twelve Thousand Pesos (P12,000.00), and to pay the costs.[5]

On appeal to the Court of Appeals, the Thirteenth Division[6] thereof found:

"x x x incriminating circumstantial evidence, as did the trial court, that point to the appellant as the perpetrator of the offense. And there are more than one circumstance in this case. The facts from which the inferences were derived have been proven. And the combination of all the circumstances as such produced a conviction beyond reasonable doubt.

"x x x x x x x x

"The events portrayed a compact mass of circumstances the existence of every bit of which have been satisfactorily proven and the proof of each was confirmed by the proof of the others. All, without exception, leads but to one conclusion that the accused was the person who shot and killed the deceased."[7]

While further observing that the trial court ordered appellant to pay the heirs of the victim the amount of P12,000.00, the Court of Appeals merely commented that the indemnity should have been raised to P30,000.00.[8] Instead of rendering judgment and imposing the corresponding penalty, however, said court in the dispositive portion of its decision simply declared:

"WHEREFORE, since the crime for which the appellant was charged, tried and convicted is murder, in which (sic) the penalty provided for by law is 'still reclusion perpetua' within the power of the Supreme Court to review, revise, reverse, modify or affirm on appeal or certiorari (sic) (sec. 5-(2)-(d), Art. 8, 1987 Const.),[9] this criminal case is hereby certified to the Supreme Court for review.

"SO ORDERED."[10]

The second paragraph of Section 13, Rule 124 of the Rules of Court, as amended, provides:

"RULE 124. Procedure in the Court of Appeals.-

"x x x x x x x x

"Sec. 13. Quorum of the court. -- x x x

"Whenever the Court of Appeals should be of the opinion that the penalty of reclusion perpetua or higher should be imposed in a case, the Court after discussion of the evidence and the law involved, shall render

judgment imposing the penalty of reclusion perpetua or higher as the circumstance warrant, refrain from entering judgment and forthwith certify the case and elevate the entire record thereof to the Supreme Court for review.”[11] (Emphasis supplied.)

The decision of the Court of Appeals makes a detailed assessment of the facts and the applicable provisions of law, but it did not render judgment imposing the proper penalty warranted by the circumstances. The rule is clear that after the discussion of the evidence and the law involved, it must render a judgment imposing the penalty of reclusion perpetua or higher if the circumstances warrant, but it must refrain from entering judgment and forthwith certify the case and elevate the entire record of the case to this Court for review. Clearly, the certification of the case to this Court is premature.

Nevertheless, We are not unmindful that the crime in this case was committed in 1962 and that its proceedings have dragged on for 28 years now. Remanding the case to the Court of Appeals for correct compliance with the rules will only further delay its disposition. The court will thus treat this case as if it were properly certified and elevated to this Court for review.

An examination of the decision of the Court of Appeals reveals that it made a complete review of the merits of the decision of the trial court and affirmed the findings and conclusions of the trial court that overwhelming circumstantial evidence by the prosecution established the guilt of the appellant beyond reasonable doubt and that appellant’s alibi could not overturn such evidence.

In the Court of Appeals, appellant raised the sole issue that the trial court committed a grave error in convicting him based on inconclusive circumstantial evidence.[12]

An examination of the decision of the trial court and the affirming decision of the appellate court shows no reversible error committed in the evaluation of evidence presented by the prosecution and the defense. The liability of appellant for the killing is very clearly established. That he has a motive has been previously adverted to. He also had the opportunity, as testified to by several witnesses who saw the appellant at the scene of the crime before, during and after the killing.

Meliton Reso-or stated that on his way home on the night of the incident he saw two persons behind a boulder of rock and recognized the appellant as the one who was clipping a carbine.[13] As he continued on his way he saw the approach of a jeep which turned out to be the one driven by the victim. In a very short while thereafter he heard gunfire and looked in the direction of the noise and saw the jeep stalled with its lights still on just opposite the boulder.[14]

Leoncio Tirsio, who on his way home took a short cut and was also in the area at the time of the incident, testified that he heard two loud shots followed by a cry for help. He hid himself and after a third shot saw appellant running holding a gun.[15] The independent testimony of Viterbo Culi corroborates this.[16]

In addition to the threat made by the appellant during the cockfighting incident, other witnesses testified on the boasts made by appellant to the effect that he would challenge the victim to a duel or even shoot the victim on sight.[17] Paula Gutib, a relative of appellant, also declared that she saw appellant in the afternoon of that day carrying a "buri" bag from which extruded the muzzle of a gun.[18]

The above witnesses were all considered credible by the trial court. In the record, there is nothing to show why they should perjure in their testimonies.[19] They have no motive to lie. Mamerto Sedillo and Paula Gutib are relatives of appellant.

The only defense of appellant is alibi. He claims he was not present in the vicinity of the incident when it happened. However, the alleged place where he was during the incident was only ten to fifteen kilometers from

the place where the crime happened.[20] It was therefore not impossible for him to go to the place of the crime when it occurred.[21] Furthermore, the defense of alibi cannot prevail over positive identification of the accused by witnesses for the prosecution.[22]

We are convinced, as both the trial court and the appellate court, that the circumstantial evidence presented are sufficient to establish beyond reasonable doubt the guilt of the accused of the crime of murder by ambush.[23] Treachery is the qualifying circumstance. The imposable penalty is reclusion perpetua and the indemnification should be increased to P30,000.00.

WHEREFORE and by reason of the foregoing, the decision of the Regional Trial Court of Dumaguete City dated November 10, 1987 convicting the appellant of the crime of murder is hereby **AFFIRMED** with the above modification as to the penalty and the indemnity. Costs against accused-appellant.

SO ORDERED.

Narvasa, Acting C.J., (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] The respective fathers of the accused and the victim are related within the fourth civil degree of consanguinity, i.e., they are first cousins. Cirilo Sedillo, the paternal grandfather of the victim is brother to the paternal grandmother of the accused, while, the paternal grandfather of the accused is brother to the paternal grandmother of the victim. (Page 46, tsn, August 21, 1969)

[2] Page 16, CA-G.R. CR No. 053208, February 14, 1990; page 92, Rollo.

[3] Id., page 5.

[4] Page 68, Rollo.

[5] Criminal Case No. 7084, November 10, 1987, Judge Jesus L. Tabilon, presiding, page 69, Rollo. Co-accused Enrico Esparcia was acquitted for insufficiency of evidence.

[6] Composed of Justices Manuel C. Herrera, Artemon D. Luna and Eduardo R. Bengzon, with Justice Luna as the ponente.

[7] Pages 17-18, supra, n. 2.

[8] Id.

[9] "Sec. 5. The Supreme Court shall have the following powers:

"x x x x x x x x

"(2) Review, revise, reverse, modify, or affirm on appeal or certiorari as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

"x x x x x x x x

"(d) All criminal cases in which the penalty imposed is reclusion perpetua or higher."

[10] Id., alluding to *People v. Muñoz*, G.R. Nos. 38968-70, page 20, supra., n. 2, February 9, 1989, 170 SCRA 107.

[11] As amended per Supreme Court Resolutions adopted on 17 June 1988 and 7 July 1988. The amendments took effect on 1 October 1988.

[12] Page 1, Appellant's Brief.

[13] Pages 12-13, tsn, June 20, 1967.

[14] Pages 18-20, tsn, June 20, 1967.

[15] Pages 15-16, tsn, July 22, 1968.

[16] Pages 4-33, tsn, January 17, 1967.

[17] Testimony of Climaco Villaflares, pages 9-10, tsn, November 6, 1967; testimony of Mamerto Sedillo, a relative of both the appellant and the victim, pages 6-9, tsn, September 21, 1965.

[18] Pages 5-14, tsn, January 17, 1966.

[19] See *People v. Jutie*, 171 SCRA 586, 594 (1989), citing *People v. Sawah*, 5 SCRA 385, (1962).

[20] Page 68, tsn, June 23, 1964.

[21] *People v. Madriaga IV*, 171 SCRA 103, 124 (1989).

[22] *Id.*, p. 126.

[23] *Id.*, p. 109.

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