

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO RETUTA AND CRESENCIO RETUTA, ACCUSED-APPELLANTS.*G.R. No. 95758. August 02, 1994*

Ponente: BELLOSILLO, J.

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The brothers REYNALDO RETUTA and CRESENCIO RETUTA were charged with murder in Crim. Case No. U-4692 before the Regional Trial Court of Urdaneta, Pangasinan. The Information alleged that in the evening of 19 June 1986, in Barangay Babasit, Manaoag, Pangasinan, the accused armed with a sharp bladed weapon, conspiring with one another, with deliberate intent to kill, and with treachery and evident premeditation, feloniously boxed, slashed and wounded one Rufo T. Naoe, Sr., which caused his death. Specifically, the wounds allegedly inflicted were a clean-cut wound, 2.5 inches deep, 4.5 inches long, trajecting the jugular vessel, trachea, esophagus at the level of the Adam's apple, anterior aspect of the neck, and another clean-cut wound, 2.5 centimeters deep, 3 inches long, and 1 inch above the sternum.[1]

After trial, the court a quo convicted Reynaldo Retuta of murder and sentenced him to "life imprisonment" and to indemnify the heirs of the victim jointly and severally with Cresencio Retuta in the amount of P30,000.00 plus moral damages of P150,000.00. Cresencio Retuta was convicted as an accomplice and, applying Art. 52 of The Revised Penal Code and the Indeterminate Sentence Law, was imposed a prison term of seven (7) years, four (4) months and one (1) day of prision mayor as minimum to thirteen (13) years, one (1) month and ten (10) days of reclusion temporal as maximum, with both accused to pay the costs.[2]

Maintaining their innocence, both accused interpose the present appeal.

Meanwhile, the Provincial Warden of Pangasinan wrote the Court that accused Cresencio Retuta was not committed to the provincial jail. Consequently, on 11 October 1993, the Court ordered his surety to surrender him to the trial court within ten (10) days from notice.[3] But his surety failed to comply with the order so that on 14 March 1994 the Court dismissed the appeal of Cresencio for abandonment pursuant to Sec. 8, Rule 124 of the Rules of Court.[4] Hence, only the appeal of Reynaldo stands.

The evidence for the prosecution tends to establish that in the evening of 19 June 1986, victim Rufo Naoe, Sr., attended a despedida tendered by one Fermin Mejia at the latter's residence along the Provincial Road of Babasit. At around nine-thirty that evening, while Rufo was on his way home, appellant Reynaldo Retuta accosted and boxed him. Rufo who was drunk fell down. Unable to rise, Rufo was pulled by appellant to the dark side of the feeder road. The incident was witnessed by Josie Calderon, Nora Enriquez, Efren Punay and accused Cresencio who were then under a kamias tree about ten (10) meters away from the victim and appellant. Calderon and Enriquez, intending to help the victim and pacify appellant, tried to follow but were held back by Cresencio who told them not to intervene as appellant knew what he was doing; instead, Cresencio ordered them and Punay to go home, with a warning that something would happen to whoever would divulge the incident. Calderon and Punay heard the victim moan in pain, as if gasping for breath.

Dr. Arnulfo Bacorro, Municipal Health Officer of Manaoag, autopsied the body of Rufo and found the injuries now mentioned in the Information.[5] According to Dr. Bacorro, with the first wound inflicted on the victim, he could have survived only from 5 to 10 seconds, and that without this first wound, he could have lived. The examining physician further said that the weapon used in the first wound could be a sharp thin object, not a balisong, but could be a small bolo or a razor, and that both wounds could have been inflicted by one person with the same instrument.

The defense admits that on 19 June 1986, at six o'clock in the evening, appellant and others were at the party in the house of Fermin Mejia where they stayed for one hour. When they left, Rufo was still there but they never talked with him; neither did they have any misunderstanding. They stopped under the mango tree and talked with Punay, Jaime Enriquez, Willy Enriquez, Sonny de Guzman and Eddie Solomon for about fifteen (15) minutes. When they arrived home, they watched television with their parents and went to sleep at eight o'clock.

Reginaldo Delfin, witness for the defense, said that on 19 June 1986, at around seven-thirty in the evening, he saw Cresencio and Reynaldo pass by and proceeding towards their house less than twenty (20) meters away from his.

Another witness, Nieves Enriquez, testified that on 19 June 1986, at around seven-thirty to eight o'clock in the evening, she visited her balae "Tuding" Retuta and "Insiong" Retuta in Babasit. She watched television with them and the accused who arrived at seven-thirty that night. Thirty minutes later, the accused went inside their room and slept.

Appellant Reynaldo Retuta contends that the trial court erred in appreciating the circumstantial evidence against him, albeit shaky and crude; and, in disregarding his alibi. He asserts that various inconsistencies and incredible allegations of the prosecution witnesses regarding the killing of Rufo exist so that his conviction on the basis of circumstantial evidence is totally unwarranted. In particular, he mentions the following which we find pertinent to resolve: Josie Calderon did not recognize the person who passed by them and boxed the victim since the identity of that person was only told to her by Cresencio; the claim of Punay that he saw appellant strike the victim is unbelievable because, according to Calderon, Punay and his group arrived only when the victim was already moaning after having been stabbed; Calderon and Punay did not do anything when the victim was groaning, not even bothering to relate the incident to anyone; and, there was no link between the boxing and the actual killing of the victim, thus giving rise to the inference that others could have killed him as there were other persons before or during the incident. Appellant further argues that although alibi is the weakest of defenses, the facts in support thereof have all been proved and never rebutted by the prosecution.

The Court believes otherwise and affirms the conviction of appellant.

Josie Calderon knew both Reynaldo and Cresencio Retuta as they were also from Babasit like her.[6] She was able to recognize Reynaldo as the person who punched and dragged Rufo toward the side of the feeder road because there was an electric light[7] and because he was the only one who passed by the place[8] and she was ten (10) meters away from them.[9] Vividly she recalled:

Q: In the month of . . . (on) June 19, 1986, at around 9:30 o'clock in the evening, do you remember if you ever saw Rufo Naoe, Sr.?

A: Yes sir, because we are (sic) at the Camias tree and I saw him pass by.

Q: Where did you see him?

A: At the feeder road, sir.

x x x x

Q: After Rufo Naoe passed by, can you tell the Court if you know Reynaldo Retuta?

x x x x

A: Yes, sir.

x x x x

Q: Why do you know that the man who passed by was Reynaldo Retuta?

A: Because I asked Cresencio who is (sic) he and he answered "Nante," sir.

Q: Are you telling the Court the name "Nante" referred to Reynaldo Retuta?

A: Yes, sir.

Q: After Reynaldo Retuta passed by x x x half naked, what happened?

A: When Nante passed by, he went towards a dark place and after a while Rufo Naoe passed by and that is (sic) when the former box(ed) the latter, sir.

Q: Who box(ed) Rufo?

A: Reynaldo, sir.

Q: Why do you say that Reynaldo box(ed) Rufo?

A: I saw him, sir.

x x x x

Q: After Reynaldo box(ed) Rufo, what happened?

A: When Reynaldo box(ed) Naoe, he fell down and Naoe was trying to rise but he was unable to rise and that is (was) when Reynaldo pulled him there somewhere in the feeder road, sir.

Q: To what place . . . where Reynaldo pulled Naoe?

A: Just beside the feeder road sir, the witness demonstrating with her left hand beside the feeder road which is approximately 1/2 meters (sic) away.

x x x x

Q: How about you, what did you do when you saw Rufo Naoe box(ed) by Reynaldo?

A: Me and Nora Enriquez were able to go to where Naoe was but Cresencio took hold of my hands and refrain (sic) us from going there, sir.

Court:

Q: Did he also take the hands of Nora Enriquez?

A: Yes, sir.

Q: So you mean to say that Cresencio Retuta hold (sic) your hand and Nora?

A: Yes, sir.

Atty. Madronio:

Q: Aside from Cresencio holding your hand and the hand of Nora Enriquez, what did you do, if any?

A: He simply told us not to go there where the two were because "Nante" knows what he is doing.

Q: Will you please tell us why you attempted to go to the place where Reynaldo and Rufo were?

A: Because we wanted to help Naoe and at the same time pacify Reynaldo, sir.

Q: When Rufo Naoe was pulled to the dark place, what happen(ed) if you know?

A: I heard Naoe groaning in pain, sir.

Q: Why do you know that the person groaning is (was) Naoe?

x x x x

A: Because I am familiar with his voice and besides he was our neighbor, sir.

Q: You said that Rufo Naoe was your neighbor, how long have you been the neighbor of Rufo Naoe?

A: For five (5) years, sir.[10]

Calderon added during the cross-examination that she heard the voice of the victim as if he was losing his breath or at the point of death.[11]

Likewise, Punay knew the brothers Reynaldo and Cresencio Retuta.[12] As a matter of fact, they had a drinking spree in the house of Fermin Mejia from six to eight o'clock in the evening of 19 June 1986, after which, they went under a mango tree where appellant proposed that they accost Rufo but Punay and Cresencio remained silent.[13] Punay was informed by appellant that he had an old grudge against Rufo.[14] Punay corroborated on material points the previously quoted testimony of Calderon, to wit: (a) he saw appellant manhandling Rufo;[15] (b) the victim fell to the ground;[16] (c) he heard the groaning or moaning voice of Rufo as if gasping for life or at the throes of death;[17] and, (d) he was familiar with Rufo's voice because he had known the victim for a long time.[18]

As regards the allegations of appellant that Calderon did not recognize the person who passed by them and boxed the victim, and that there was no link between the boxing and actual killing thus inferring that somebody else killed the victim, the prosecution witnesses have clearly explained these during the direct and cross-examinations

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(TO WITNESS CALDERON):

Q: And you also stated that you asked Cresencio Retuta who was that person who passed by at that precise (time) and he said it was Reynaldo Retuta?

A: Yes, sir.

Q: So, you are not then sure of the identity of Reynaldo Retuta because you asked the brother who is that person who passed by, is that correct?

A: I was sure that it was Reynaldo Retuta who passed by but I wanted to ascertain by (sic) Cresencio himself.[19]

x x x x

Q: At 9:30 o'clock in the evening is already dark, how were you able to recognize Reynaldo Retuta box Rufo Naoe?

A: Because he was the only one who passed by towards the feeder road, I'm sure he was he.[20]

x x x x

Q: At the time you saw Reynaldo Retuta box Rufo Naoe and the pulling him towards the dark place, have you seen any other person?

A: None, sir.[21]

x x x x

Q: From the time you saw Reynaldo Retuta by the side of the road up to the time Rufo Naoe arrived at the place where Reynaldo Retuta was, did you see any other person pass by?

A: None, sir.[22]

There may be an inconsistency between the testimony of Josie Calderon that it was after the stabbing incident when Punay and his two (2) companions arrived,[23] and the testimony of Punay that he was already sitting under the kamias tree before the victim passed by.[24] However, we agree with the observation of the Solicitor General that -

x x x x the alleged inconsistency as to when Efren Punay and his group arrived at the Kamias tree refers to a minor or collateral matter which does not impair the credibility of prosecution witnesses Josie Calderon and Efren Punay regarding the act of accosting, boxing and dragging of the victim by appellant Reynaldo. The discrepancy signifies that the two witnesses did not deliberately pervert the truth in their narrations. The discordance in their testimonies on minor matters heightens their credibility and shows that their testimonies were not coached nor rehearsed (People vs. Doria, 55 SCRA 425). As this Honorable Court held in People vs. Agudu, 137 SCRA 516, to wit:

‘However, the variance, if any, is on a minor detail which would not destroy the effectiveness of their testimony. We cannot expect absolute uniformity in every detail because witnesses react differently to what they see and hear, depending upon their situation and state of mind. Complete uniformity in details is a badge of untruthfulness. The slight contradictions, on the other hand, strengthen the sincerity of the testimony of a witness’ (emphasis supplied).

Thus, far from evidence of falsehood, the minor inconsistency between the testimony of Josie Calderon and Efren Punay could justifiably be regarded as a demonstration of their good faith (People v. Cielo, 132 SCRA 117).[25]

Accused-appellant criticizes Calderon and Punay for not lifting a finger while the victim was moaning in the dark and not disclosing the incident to anyone. We find their behavior understandable because it should be remembered that accused Cresencio threatened them that something would happen to the person who would divulge the incident.[26] Moreover, as correctly pointed out by the Solicitor General, invoking People v. Coronado, 145 SCRA 250:

x x x x The failure of a witness to report at once to the police authorities the crime they had witnessed should not be taken against them. It is not uncommon for a witness to a crime to show some reluctance about getting involved in a criminal case. The natural reticence of most people to get involved in a criminal case is of judicial notice (People vs. Pacabes, 137 SCRA 158).[27]

We thus sustain the trial court on the credibility of the two prosecution witnesses. It is a fundamental legal aphorism that the conclusions of the trial judge, on the credibility of witnesses, command great respect and consideration, especially when said conclusions are supported by the evidence on record, and will not ordinarily be disturbed or interfered with. The only exception to the rule is when the trial court plainly overlooked certain facts and circumstances of weight and influence which, if considered, will materially alter the result of the

case.[28] The present case falls under the rule.

It should also be noted that no evidence whatsoever was adduced to show that the witnesses for the prosecution had ulterior motives to testify falsely against appellant or mendaciously implicate him if indeed he was not involved in the killing.[29] Moreover, the circumstances established constitute an unbroken chain leading to one fair and reasonable conclusion to the exclusion of all others that the accused was the perpetrator of the crime.[30] Otherwise stated, these requisites must concur: (a) there is more than one circumstance; (b) the facts from which the inference is derived are proven; and, (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[31] In the case at bench, the following pieces of evidence pointing to the appellant as the author of the crime concur: (a) accused-appellant proposed to Punay that they accost Rufo while they were under the mango tree; (b) on the same occasion, accused-appellant revealed to Punay that he had a previous grudge against the victim; (c) Calderon and Punay saw accused-appellant accost, box and drag the victim towards the dark place; (d) Calderon and Punay heard immediately thereafter the groaning voice of the victim as if he was gasping for life; and, (e) Dr. Bacorro testified that after the infliction of the first wound, the victim could have survived only for 5 to 10 seconds, and that even with medical intervention the victim would have died just the same.[32]

The trial court correctly rejected the alibi proffered by appellant which was not only inherently weak but became more dubious when it was sought to be established by appellant himself with the aid of his brother, his neighbor, and the balae of his parents, and not by disinterested, unbiased persons who would in the natural order of things be best situated to support the alibi. It has been repeatedly said that alibi is a defense easily fabricated especially among parents, children and relatives, or even among those not so related, so that great caution must be exercised in accepting it. For alibi to prosper, it is not enough to prove that the accused was somewhere else when the crime was committed but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[33] The house of appellant, where he claims he was sleeping at the time of the killing, is also in Babasit where it took place.[34] The possibility for him to have gone to the scene of the crime at the time of its commission was not thus remote.

We affirm appellant's conviction for murder. Treachery qualified the killing to murder as the accused employed means, methods or forms in the execution of the crime without risk to himself arising from the defense which the victim might make.[35] The victim was drunk, walking in a zigzag manner along the feeder road when he was accosted and boxed by appellant. The victim fell down and, unable to rise, was dragged toward the dark place beside the feeder road and then knifed to death.

Under Art. 248 of The Revised Penal Code, the prescribed penalty for murder is reclusion temporal in its maximum period to death. Apart from treachery, there is no other aggravating or mitigating circumstance which attended the commission of the crime, in which case, the penalty should be imposed in its medium period, or reclusion perpetua. The trial court however erroneously sentenced accused-appellant to "life imprisonment" which is not the same as reclusion perpetua which is the correct penalty. While "life imprisonment" may appear to be the English translation of reclusion perpetua, in reality, it goes deeper than that. First, "life imprisonment" is invariably imposed for serious offenses penalized by special laws, while reclusion perpetua is prescribed under The Revised Penal Code. Second, "life imprisonment," unlike reclusion perpetua, does not carry with it any accessory penalty. Third, "life imprisonment" does not appear to have any definite extent or duration, while reclusion perpetua entails imprisonment for at least thirty (30) years after which the convict becomes eligible for pardon,[36] although the maximum period thereof shall in no case exceed forty (40) years.[37]

WHEREFORE, the decision appealed from is AFFIRMED, with the modification that the proper penalty to be imposed on accused-appellant REYNALDO RETUTA is reclusion perpetua and the civil indemnity to be paid to

the heirs of RUFO T. NAOE, SR., is increased to P50,000.00.

It appearing from the records that the accused Cresencio Retuta has not yet been committed to jail as his surety failed to surrender him to the trial court despite the order of this Court of 11 October 1993, the court a quo is directed to pursue the arrest of the accused and his immediate commitment to the Bureau of Corrections (New Bilibid Prisons). The Presiding Judge of the Regional Trial Court of Urdaneta, Pangasinan, Br. 48, is further directed to submit a report thereon within ten (10) days from the arrest and commitment of the accused.

Costs against accused-appellant.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Rollo, p. 12.

[2] Decision penned by Judge Alicia Gonzales Decano, Presiding Judge, Regional Trial Court of Urdaneta, Pangasinan, Br. 48; Rollo, p. 32.

[3] Rollo, p. 60.

[4] Id., p. 61.

[5] See Exh. "A."

[6] TSN, 12 April 1989, p. 8.

[7] TSN, 9 May 1989, p. 5.

[8] TSN, 12 April 1989, p. 10.

[9] Ibid.

[10] TSN, 12 April 1989, pp. 8-12.

[11] TSN, 9 May 1989, p. 7.

[12] TSN, 26 July 1990, p. 4.

[13] Id., p. 7.

[14] Id., p. 16.

[15] Id., p. 10.

[16] Id., p. 15.

[17] Id., p. 24.

[18] Id., p. 11.

[19] TSN, 9 May 1989, p. 3.

[20] TSN, 12 April 1989, p. 10.

[21] Id., p. 13.

- [22] TSN, 26 July 1990, p. 25.
- [23] TSN, 9 May 1989, p. 6.
- [24] TSN, 26 July 1990, p. 10.
- [25] Brief for the Appellee, pp. 18-19.
- [26] TSN, 26 July 1990, p. 18.
- [27] Brief for the Appellee, p. 21.
- [28] *People v. Villanueva*, G.R. No. 77396, 20 July 1992, 211 SCRA 602.
- [29] *People v. Pascua*, G.R. No. 100990, 27 February 1992, 206 SCRA 628.
- [30] *People v. Galendrez*, G.R. Nos. 56465-66, 26 June 1992, 210 SCRA 360.
- [31] *People v. Desalisa*, G.R. No. 95262, 4 January 1994.
- [32] TSN, 12 April 1989, p. 4.
- [33] *People v. Cadag*, G.R. No. 93899, 8 May 1992, 208 SCRA 781.
- [34] TSN, 6 August 1990, p. 3.
- [35] *People v. Uy*, G.R. No. 84275, 14 February 1992, 206 SCRA 270.
- [36] *People v. Baguio*, G.R. No. 76585, 30 April 1991, 196 SCRA 459; *People v. Penillos*, G.R. No. 65673, 30 January 1992, 205 SCRA 546; Administrative Circular No. 6-92.
- [37] Art. 70, The Revised Penal Code.

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