

SANTIAGO B. SERRANO, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 97484. August 11, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

The defense would have us believe that two eyewitnesses to a killing lied in court and spun a tale of treachery to incriminate a farmer who was at the time allegedly sleeping soundly at home. Thus, we are again asked to believe an alibi over eyewitnesses' testimony. The truth will either set an innocent man free or put an end to the protests of innocence of one who is really guilty.

At around 3:00 o'clock in the afternoon of June 10, 1981, as Agapito de Roxas and his son Efren were going home from a "pasaknungan" (or "bayanihan") in Barangay Apacay, Taal, Batangas, a man suddenly emerged from a "callejon" (an alley) choked with weeds, and started hacking the former with a long bolo. He continued without letup even when his victim had already dropped to the ground with his arms raised. Agapito dropped the plow being pulled by a cow which plodded on towards the direction of their house. Stunned, Efren remained rooted to the ground some fifteen meters behind his father. Meanwhile, Agapito's wife Paciencia who had left the "pasaknungan" earlier, noticed their solitary cow and immediately retraced the cow's path, just in time to see in an open field her fallen husband still being hacked by another man. She screamed, startling her husband's attacker and rousing her son from his momentary shock. Efren gave chase, but the man had already fled towards the cover of the trees. Mother and son identified the murderer as petitioner Santiago Brosoto Serrano, a barriomate.

Agapito's brother Anastacio reported the occurrence to the police. During the investigation, a post-mortem examination was conducted by Taal Municipal Health Officer Dr. Leocadio Dimailig right at the residence of the victim. His report and testimony confirmed in most part the treacherous attack described by Efren: Agapito suffered thirteen wounds, six of which were cranial and fatal, and the others found at the back, arms, chest, and abdomen.

A few hours later, petitioner was arrested in his house about half a kilometer from the crime scene, upon information provided by Anastacio. With petitioner safely detained in jail, Efren arranged for his father's funeral. Paciencia gave her statement to the police on June 15, 1981, a day after the burial. Efren initially did not want to give any statement, preferring to leave petitioner's fate to God, but was prevailed upon by his relatives to do so. He gave his statement on June nineteenth.

Mother and son provided the motive for the killing. It appears sometime in April of the same year, during a "bulungan" or pre-nuptial arrangement where both the de Roxas and Serrano clans were in attendance, petitioner and Agapito had an altercation which ended with a threat from the former that something would happen to the latter.

Not surprisingly, the defense presented a different story.

Petitioner denied any participation in the hacking incident and claimed that he was sleeping at home at the time. His alibi was corroborated by his wife Remedios and son Emiliano. Another witness, RCPI radio operator Teresita Semana Landicho, was presented to show that a telegram was sent by a certain Oding Balbacal to Efren de Roxas a few hours after the death of Agapito de Roxas, thereby proving that it was physically impossible for Efren to have witnessed the slaying of his father. To further prove that Efren was really not in town at the time to witness the crime, the defense offered in evidence, in addition to the aforesaid telegram, a list of participants in the "pasaknungan" prepared by a certain Reynald Brosoto, which did not include Efren's name.

The prosecution also tried to establish that Paciencia could not have seen her husband being hacked by petitioner, considering the distance of their house from the crime scene and the lapse of time from the moment Agapito's cow arrived home alone to the time that Paciencia ran towards the path it came from.

The theory of the defense is that nobody actually saw the commission of the crime because Efren was out of town on that date and Paciencia was still at home at the time it was committed.

In rebuttal and to prove that he was in town on the date of the incident, Efren was again put on the stand to authenticate the contract for funeral services[1] dated June 10, 1981, which he personally signed and executed.

After trial conducted in most part by Judge Francisco Mat. Riodique, judgment was rendered by Judge Glicerio L. Cruz (Regional Trial Court, Lemery, Batangas, Branch 5) on October 20, 1989, the dispositive portion of which reads, thus:

"WHEREFORE, the Court finds accused Santiago Serrano guilty beyond reasonable doubt of having committed the crime of Murder defined under Article 248 of the Revised Penal Code and hereby impose(s) on said accused the penalty of imprisonment from Twelve (12) years and One (1) day to Twenty (20) years; and to pay the heirs of deceased Agapito de Roxas the sum of Thirty Thousand (P30,000.00) Pesos as indemnity.

SO ORDERED."

Petitioner appealed to the Court of Appeals which sustained the trial court's findings and conclusion.

The main issue in this case, as correctly pointed out by the appellate court, is the credibility of the witnesses. Two eyewitnesses, the son and wife of the victim, claim that Santiago Serrano y Brosoto waylaid Agapito de Roxas on June 10, 1981. Aside from the doctor who performed the autopsy and whose findings confirmed the veracity of Efren's testimony regarding the manner of attack, no other witness was presented by the prosecution.

On the other hand, the defense presented a similar set of witnesses to corroborate petitioner's alibi, namely, his son and wife. The two remaining witnesses were utilized to show that Efren was absent from the crime scene at the time of its commission. RCPI radio operator Landicho said a telegram dated June 10, 1981, was sent to Efren by a certain Oding Balbacal, informing Efren to go home because his father died. Patrolman Rodolfo Navarro testified that Agapito's brother Anastacio was the one who reported the incident and informed him of the suspect's name. His testimony was offered in evidence presumably to bolster the defense's posture that Efren was out of town at the time; otherwise, as the victim's son, he would have logically sought police assistance after the occurrence.

In this appeal, petitioner claims that the prosecution failed to establish his guilt beyond reasonable doubt, considering the following points:

- a) The testimony of the prosecution witnesses was replete with inconsistencies which greatly impaired their credibility;
- b) The defense of alibi, though weak it may be, should have sufficed to exonerate petitioner because the

eyewitnesses' credibility is questionable in light of the other evidence presented by the defense; and

c) Motive and treachery were not duly established.

It is readily apparent that these issues entail appreciation of evidence, a task best reserved to the trial judge who had a better opportunity to study the witnesses as they testified. Worth noting, however, is that two judges tried the case below: Judge Riodique presided over the entire prosecution stage and heard the testimonies of three defense witnesses, while the ponente of the decision, Judge Cruz, heard only the petitioner and his mother testify.

The rule that the factual findings of the court a quo should be given great respect because the trial judge had the opportunity to observe the behavior and demeanor of the witnesses, needs to be applied with special care in the present case insofar as the conclusions of Judge Cruz regarding this case are concerned.

After carefully scrutinizing the transcripts of the testimonies given in open court, as well as the records in the case at bench, the Court is convinced that neither the trial nor the appellate courts committed any reversible error in convicting the petitioner based on the eyewitness account of the son and wife of the victim.

The court a quo found Efren a credible witness. Efren's reaction to the attack, of simply watching and doing nothing to help his father, was not unnatural for a 27-year old man. His action, or, more accurately, the lack of it, may not be worth emulating and does not speak much of his valor, but it nevertheless showed his frailty as a human being - that he can be overcome by shock and fear to the point of being rendered temporarily stunned. The ambush was sudden, made by a man whom he knew had a grudge to settle against his father. Neither he nor his father was armed at the time. What could he have done against a man armed with a long bolo? What if that man attacked him too? He admitted snapping back to consciousness by his mother's screams. Thus rallying, he attempted to catch the fleeing murderer. Not surprisingly, shock beclouded his mind even when the assailant was already in police custody. He initially refused to give a statement, preferring to see God mete His own brand of divine justice.

Efren's testimony jibed with that of Dr. Dimailig as far as the location and nature of the wounds were concerned. It was also in accord with the story of his mother who witnessed the final stages of the attack from a different angle.

As regards Efren's presence in town on June 10, 1981, the defense tried in vain to prove that he was in another province at the time. They presented as documentary evidence the RCPI telegram dated June 10, 1981 addressed to Efren de Roxas asking him to go home because of his father's death. Also presented to prove that the telegram was indeed sent was radio operator Landicho. There is, however, no proof if the telegram was actually received by Efren at the address stated therein. Neither was the sender of the message presented to authenticate the telegram. As Landicho testified, anyone could have sent the wire, even someone using an assumed name.

Likewise presented was a list of those who participated in the "pasaknungan," where Agapito and Efren supposedly came from immediately prior to the incident, but it did not include their names. The man who prepared the list, Reynald Brosoto, aside from being related to petitioner, was, however, not called to the witness stand to authenticate the said list.

In the absence of the persons who authored the telegram and the "pasaknungan" list, said documentary evidence fails to impress for lack of any probative value.

On the other hand, the funeral contract submitted by the prosecution to prove actual expenses incurred by the de Roxas family for Agapito's burial, after being properly identified by Efren as the one who contracted the same, was also used in rebuttal to show that he indeed was in town on June 10, 1981. The contract for funeral services

bore the same date, indicated the date and time of interment as June 14, 1981, at 2:00 o'clock in the afternoon, and was signed by Efren de Roxas. This piece of evidence was never rebutted by the defense.

On the other hand, petitioner not only denied killing Agapito but also his presence at the crime scene at the time of its commission. His alibi, that he was at home sleeping when Agapito was supposedly slain, was corroborated by his wife and son. Alibi is a very lame defense, as petitioner submits, and especially so when considered in light of credible eyewitness testimony. Petitioner himself even admits that not only did he figure in an altercation with the victim two months before the incident, but also that his house is located a mere half kilometer from the crime scene, which fact makes it not quite impossible for him to have been at the place of the incident at around 3 o'clock in the afternoon of June 10, 1981.

It is likewise contended that if petitioner really killed Agapito, why did he not escape when he had the opportunity to do so. While flight may sometimes be an indication of guilt, non-flight cannot be perceived as a sign of innocence. What remains undisputed is that he was seen hacking to death the victim and he was in a position and had the motive to actually do it.

Intent to kill and treachery have been adequately established in this case by proof that petitioner suddenly emerged from somewhere, lunged at the unsuspecting victim and repeatedly hacked him even when he had already collapsed, a mode of attack specifically chosen to insure the success of the crime without risk of retaliation from the victim. The motive of the killer, though not necessary in this case to prove the commission of the crime in view of his positive identification as the culprit, nevertheless provides reason for the act.

The Court notes, however, that the trial court erroneously imposed an indeterminate sentence upon the petitioner when the Indeterminate Sentence Law should not have been applied, considering that the proper imposable penalty is the indivisible penalty of reclusion perpetua.[2] Furthermore, the award of civil indemnity to the heirs of Agapito de Roxas should be increased from P30,000.00 to P50,000.00 in keeping with the present policy of the Court adopted in the en banc resolution dated August 30, 1990.[3]

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the modification that the penalty imposed should be reclusion perpetua and the civil indemnity awarded to the heirs of the deceased Agapito de Roxas be increased to P50,000.00.

SO ORDERED.

Feliciano, (Chairman), Melo, and Vitug, JJ., concur.

[1] Exhibit "C".

[2] *People v. Bahuyan*, G.R. No. 105842, November 24, 1994.

[3] *People v. de Guzman*, G.R. No. 82002, December 20, 1990; *People v. Lugto*, G.R. No. 89214, October 18, 1990; *People v. Sazon*, G.R. No. 89684, September 18, 1990.

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