

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VIVENCIO SABELLANO AND, WESLY SABELLANO, ACCUSED-APPELLANTS.

G.R. Nos. 93932-33. June 05, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal purportedly interposed by two of the accused in Criminal Cases Nos. 65155 (for frustrated homicide) and 67688 (for murder) which were jointly tried and then decided by the Regional Trial Court of Pasig, Metro-Manila, Branch 156 on June 6, 1990. The dispositive portion of the assailed judgment of conviction reads:

“WHEREFORE, premises considered, judgment is hereby rendered as follows, to wit:

“The court finds accused VIVENCIO SABELLANO guilty beyond reasonable doubt of the offense charged in Criminal Case No. 65155 and hereby sentences said accused VIVENCIO SABELLANO to suffer an indeterminate prison term of two (2) years, four (4) months and one (1) day of prision correccional to six (6) years and one (1) day of prision mayor and to pay the costs.

Let alias warrant be issued for the arrest of VIVENCIO and MAYOLING SABELLANO the same to be served by the NBI and other national police agencies.

Accused WESLY and JAIME SABELLANO on the other hand are hereby acquitted of the offense charged in said Criminal Case No. 65155 with costs de oficio.

In Criminal Case No. 67688, the Court finds accused WESLY SABELLANO guilty beyond reasonable doubt of the crime of MURDER qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code and hereby sentences said accused WESLY SABELLANO to suffer the penalty of reclusion perpetua with all its accessory penalties, to indemnify the heirs of victim Benito Abrogar, in the amount of THIRTY THOUSAND PESOS (P30,000.00) without subsidiary imprisonment in case of insolvency and to pay the costs.

In the service of his sentence, accused WESLY SABELLANO shall be credited in full with the period of his preventive imprisonment.

Let alias warrant be issued for the arrest of accused VIVENCIO and JIMMY SABELLANO the same to be served by the NBI and other national police agencies.” (RTC Decision, pp. 13-14; Rollo, pp. 34-35)

The accused-appellants whose surnames had occasionally been misspelled in the records were both charged with the crimes of frustrated homicide and murder in two separate informations. In Criminal Case No. 65155, the accused-appellants together with Jaime and Mayoling, also surnamed Sabellano were indicted of the crime of frustrated homicide committed as follows:

“That on or about the 6th day of February, 1985, in the Municipality of Mandaluyong, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, with intent to kill, did, then and there

wilfully, unlawfully and feloniously attack, assault and stab one Benito Abrogar, hitting the latter on the different parts of his body, thereby causing him stab wounds which would ordinarily cause his death, thus performing all the acts of execution which should have produced the crime of homicide, but nevertheless, did not produce it by reason of causes independent of their will, that is due to the timely and able medical attendance rendered to said Benito Abrogar, which prevented his death.” (RTC Decision, p. 1; Rollo, p. 22)

In Criminal Case No. 67688, the accused-appellants with one Jimmy Sabellano were charged with the crime of murder committed as follows:

“That on or about the 9th day of March, 1986, in the Municipality of Mandaluyong, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with one John Doe whose true identity and present whereabouts are still unknown and mutually helping and aiding one another, with intent to kill, evident premeditation and treachery, did, then and there wilfully, unlawfully and feloniously attack, assault and stab one Benito Abrogar with a bladed weapon on the different parts of his body, thereby inflicting upon the latter stab wounds which directly caused his death.” (RTC Decision, p. 2; Rollo, p. 236)

On April 18, 1986, all the accused in Criminal Case No. 65155 except Mayoling Sabellano who had remained at large up to the present time, entered a plea of “not guilty” with the assistance of counsel. Subsequently, accused Vivencio and Jaime jumped bail, hence, they were tried in absentia.

On December 8, 1987, the accused-appellant Wesly Sabellano, duly assisted by counsel, pleaded not guilty to the offense charged in Criminal Case No. 67688.

Initially, the case for frustrated homicide was dismissed for the repeated failure of prosecution witnesses to appear in court. However, the case was revived and consolidated with the murder case after a motion for reconsideration and/or to revise case filed by the private respondent, Walderita Abrogar, wife of the deceased Benito Abrogar, was granted by the trial court in an Order dated January 12, 1988.

The antecedent facts in Criminal Case No. 65155 as summarized by the trial court from the lone testimony of the prosecution witness Walderita Abrogar are as follows:

“x x x [O]n February 6, 1985, she was in her house at 536 Calbayog Street, Mandaluyong watching a wake across the street. A game had then been in progress for about two (2) hours between one Julio Catayong and Wesly. A few people were watching said game among them, the son of the deceased, Almar Abrogar. Due to both players’ zealousness, a misunderstanding ensued. Julio cursed ‘putang ina mo’ and delivered a fist blow to the rightside jaw of Wesly. Seeing the trouble erupt, Salvador, brother of Julio, pulled out a knife and advanced towards Wesly. Vivencio Sabellano, at the same time, had also approached and held up Salvador preventing the latter from attacking Wesly. As this occurred, Wesly went home and after getting hold of a knife, rushed back and stabbed Salvador twice. In the process, Wesly had held Salvador’s right arm and stabbed him with the knife on his right hand. Salvador was released and ran to his Aunt’s house. Almar, who was then a mere three (3) arm-lengths (sic) away watching, followed to see if Salvador’s wounds were serious. Salvador asked Almar to fetch a taxi to which the latter obliged. When the taxi arrived however, its path was blocked by Wesly, Vivencio and Paulino Sabellano. Wesly confronted Almar and said ‘putang ina mo huwag kang makialam bayaan mo siyang mamatay’ while pulling out the knife. Almar ran to the house and hid. The deceased, Benito Abrogar, was at that time fixing the toilet. Hearing the commotion, he went out holding a bolo. He was met by Vivencio, Mayoling, Wesly and Jaime who struck him with a bareta. Mayoling and Wesly mauled Benito while Vivencio delivered a stab to the back with a 29” knife. Benito fell to the ground wounded. He was then picked-up by his wife who, along with other relatives, took him to Nayan where a doctor advised that he be taken to the Rizal Provincial Hospital and confined for ten (10) days.” (RTC Decision, pp. 3-4; Rollo, pp. 24-25)

In Criminal Case No. 67688, the pertinent facts that led to the conviction of the accused-appellant Wesly Sabellano are stated by the trial court, to wit:

“On March 9, 1986, Benito and Walderita with Gertrudes Basilides were walking along Cordillera Street near Sierra Madre Street on their way to Divisoria to buy merchandise to be resold later in the day. It was 3:45 a.m. as they chanced upon the group of Vivencio, Wesly, Jimmy and John Doe at a grocery store. The Abrogars ignored them. Further down the street however, Gertrudes noticed that two (2) joggers, were coming up behind them. One of the joggers, Wesly, grabbed Walderita with his left arm around her neck and warned her “huwag kang sisigaw, papatayin kita kapag sumigaw ka”. The other jogger, Vivencio, embraced Benito and stabbed the latter on the right breast. Two (2) persons, Jaime and John Doe came from Cordillera and Sierra Madre Streets and stabbed Benito in the abdomen. Wesly released Walderita and stabbed Benito in the back. As Benito dropped to the ground, his assailants ran in different directions to escape and Walderita tried to help Benito for home but he died shortly thereafter. Gertrudes was only an arm-length away when the attack occurred. With light coming from a nearby house, she was able to recognize the assailants. She also remembered the clothes that the attackers had worn. Wesly was wearing a white sando and maong pants; Jaime had an orange T-shirt and maong and Vivencio was in a black jacket and maong pants. Seeing Benito fall to the ground, Gertrudes looked at him before going back to Calbayog Street to get help from their relatives. Walderita stayed with Benito until help arrived. She then called for the police to bring the deceased to the Municipal Hall and later to Camp Crame for autopsy. A request for autopsy (Exhibit “H”) was made and a Certificate of Death (Exhibit “I”) was issued. Medico Legal Report M-0-418-86 (Exhibit D) was issued on the findings as testified to by Dr. Moraleda. Walderita executed a statement (Exhibit “E”) and so did Gertrudes. (Exhibit “G”)” (RTC Decision, pp. 4-5; Rollo, pp. 25-26)

After a joint trial on the merits, the trial court promulgated the questioned decision from which the present appeal was filed assigning as errors:

I

THE LOWER COURT ERRED IN FINDING THAT (SIC) ACCUSED-APPELLANT VIVENCIO SABILLANO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF FRUSTRATED HOMICIDE IN CRIMINAL CASE NO. 65155.

II

THE LOWER COURT ERRED IN GIVING MUCH CREDENCE TO THE CLEARLY BIASED, HIGHLY IMPROBABLE, CONTRADICTORY AND CONFLICTING TESTIMONIES OF WALDERITA ABROGAR (WIFE OF THE DECEASED BENITO ABROGAR) AND GERTRUDES BASELIDES (NIECE OF THE SAID DECEASED).

III

THE LOWER COURT ERRED IN HOLDING THAT THE SABILLANOS, ACCUSED-APPELLANT WESLY SABILLANO BEING ONE THEM, (SIC) WERE THE PERSONS WHO HELD UP AND KILLED THE DECEASED BENITO ABROGAR IN THE MORNING OF MARCH 9, 1986 IN THE CORNER OF CORDILLERA AND SIERRA MADRE STREETS, MANDALUYONG, METRO MANILA.

IV

THE LOWER COURT ERRED IN CONCLUDING THAT THE PROSECUTION HAD ESTABLISHED OR PROVED THE GUILT OF ACCUSED-APPELLANT WESLY SABILLANO BEYOND REASONABLE DOUBT IN CRIMINAL CASE NO. 67688 FOR MURDER.” (Rollo, p. 52)

At the outset, we are constrained to review the trial court's decision only insofar as the accused-appellant Wesly Sabellano's conviction for the murder of Benito Abrogar is concerned considering that with respect to the other accused-appellant Vivencio Sabellano, an order dated June 8, 1990 was issued by the trial court which states:

“He who wants to avail of the processes of the Court must be within the reach of the Court. Having escaped from detention, accused Vivencio Sabellano's Notice of Appeal through counsel must perforce be DENIED DUE COURSE and it is hereby SO ORDERED.” (Records, p. 487)

Either by deliberate omission or on account of ignorance of the rules of procedure specifically Section 18, Rule 114 and Section 8, Rule 124, the counsel for the accused Vivencio Sabellano failed to seasonably question the above order which by this time has become final and executory. Well-settled is the rule that the right to appeal is a statutory right, not a natural or inherent one, so that the party who seeks to avail of the said right must comply with the requirements of the Rules. Otherwise, the right to appeal is lost. (*Ozaete v. Court of Appeals*, 179 SCRA 800 [1989]). Hence, as regards Criminal Case No. 65155 accused Vivencio Sabellano, who was found guilty beyond reasonable doubt of the crime of frustrated homicide, lost his right to appeal from the trial court's judgment of conviction.

Anent Criminal Case No. 67688, the issue is whether or not the evidence for the prosecution establishes the guilt of the accused-appellant Wesly Sabellano beyond reasonable doubt.

In support of his prayer for a reversal of the trial court's verdict, the accused-appellant Wesly Sabellano makes the following contentions in his brief, namely: (a) that the testimonies of the prosecution witnesses contained material inconsistencies and contradictions, so that the trial court erred in giving much credence thereto; (b) that the complaining witness, Walderita Abrogar, failed to immediately report to the police officer who conducted the “on-the-spot investigation” on the day of the incident in question that the Sabellanos were the persons responsible for the death of her husband, Benito Abrogar; and (c) that the trial court unjustly failed to appreciate the defense of alibi despite the fact that the credibility of the prosecution witnesses who allegedly identified Benito's assailants is highly questionable.

The alleged contradictions in the testimonies of the prosecution witnesses alluded to by the accused-appellant Wesly Sabellano are that while Walderita Abrogar stated in her testimony in court that it was only on March 9, 1986, the day of the fatal incident that the other prosecution witnesses, Gertrudes Baselides, accompanied the former and her husband, Benito Abrogar to Divisoria to buy some merchandise, Gertrudes testified that she went with her uncle and aunt, Benito and Walderita, to Divisoria everyday (Appellant's Brief, pp. 22-23); that Walderita testified that when she and her deceased husband were held up by the accused-appellants Wesly and Vivencio Sabellano, respectively, Gertrudes ran back to her house immediately, while Gertrudes claimed that she remained at the scene of the fatal incident while her uncle and aunt were embraced by the accused-appellants until she saw her uncle being stabbed after which she ran home (Appellants' Brief, pp. 23-24); that while Walderita said in open court that after the stabbing of her husband, she saw four (4) persons run to different directions, some towards Libertad Street and the others towards Sierra Madre Street, Gertrudes asserted that all the assailants ran towards only one direction, towards the Producers Market (Appellants' Brief, pp. 24-26); and that while Walderita claimed that there were police officers at the scene of the fatal incident since she was the one who summoned them on March 9, 1986, Gertrudes categorically stated that no policeman arrived at the scene of the crime. (Appellants' Brief, pp. 26-28)

The discrepancies pointed out by the accused-appellant Wesly Sabellano are not only on minor details but they do not alter the fact that the deceased Benito Abrogar was fatally stabbed on March 9, 1986 and that one of the assailants was the accused-appellant Wesly Sabellano. The autopsy report (Exh. “D”; Records, p. 356) indicated that Benito suffered from cardio-respiratory arrest due to shock and hemorrhage as a result of stab wounds of the

trunk and upper extremity.

Prosecution witness Desiderio Moraleda, the medico-legal examiner who conducted the autopsy on the deceased Benito Abrogar described in court the nature of the six (6) stab wounds inflicted on the victim's body and made a conclusion that the mortal wound caused by a single-bladed knife was that located on the right side of the chest and indicated as Stab Wound No. 1 in the report. (TSN, June 6, 1989, pp. 6-7).

The straight-forward and detailed testimonies of the other prosecution witnesses, Walderita Abrogar and Gertrudes Baselides relating to the fatal stabbing of Benito Abrogar clearly pinpointed the authors of the crime under consideration. (TSN, April 12, 1988, pp. 10-14; TSN, August 25, 1988, pp. 3-5). The inconsistencies and contradictions specified by the accused-appellant Wesly Sabellano merely pertain to minor details which cannot affect the credibility of Walderita's and Gertrudes' testimonies. Our ruling in the case of *People v. Tomas Gadiana* (G.R. No. 92509, March 13, 1991) bears reiterating. We stated:

“As this Court had remarked in *People v. De Guzman*, G.R. No. 76742, August 7, 1990:

“The truth need not be narrated with perfect symmetry. Several persons remembering the same incident may vary in their recollections of some of the details but these differences do not necessarily make liars of them all. What is important is that they agree on essential facts and that their respective versions, corroborate and substantially coincide with each other to make a consistent and coherent whole.” (at pp. 4-5)

The accused-appellant Wesly Sabellano further presents the argument that since the complaining witness, Walderita Abrogar, reported to the police authorities the matter of her husband's death and identified the Sabellanos as the culprits only after the lapse of two (2) days and not immediately when she had the very first opportunity to do so, i.e., at the time the police conducted an “on-the-spot” investigation on March 9, 1986, then, there is ground to believe that the credibility of Walderita's entire testimony is greatly weakened.

In the light of the circumstances in the case at bar, the delay in relating to the police authorities the attendant facts of the crime for which the Sabellanos had been charged is consistent with normal behavior considering that after a tragic incident, the last thing that the bereaved would want to happen is to provoke further reprisals from the perpetrators of the felonious act. Although there is a natural tendency to seek the ends of justice for the treacherous killing of a dearly departed, mourning and rites for the dead take priority as dictated by our culture. As we have held in the case of *People v. John Gabriel Gamboa* (G.R. No. 91374, February 25, 1991):

“It is quite understandable when the witnesses do not immediately report the identity of the offender after a startling occurrence more especially when they are related to the victim as they just had a traumatic experience. x x x Nevertheless, a delay of about a few hours before the identification of the offender by the prosecution witnesses does not thereby affect their credibility.” (at p. 9)

Moreover, in the case of *People v. Ponciano Mandapat*, (G.R. No. 76953, April 22, 1991), we distinctly stated that:

“As a general rule, the failure of a witness to report at once to the police authorities the crime he had witnessed cannot be taken against him (*People v. Demate*, 113 SCRA 353 [1982]) for ‘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 v. Pacabes*, 137 SCRA 158 [1985]; *People v. Coronado*, 145 SCRA 250 [1986]) and the fear of eyewitness when townmates are involved in the commission of the crime is understandable for they may provoke reprisals from the accused (*People v. Rosario*, 134 SCRA 496 [1985]). The delay, when adequately explained, does not impair the credibility of the witness, as in the case at bar (*People v. Cabanit*, 139 SCRA 94 [1985]; *People v. Millora*, 119 SCRA 417 [1984]); neither will it render his testimony biased (*People v. Itura*, 129 SCRA 127 [1984]); nor will it destroy

its probative value (*People v. Millora*, supra) x x x” (at pp. 5-6)

Lastly, the accused-appellant Wesly Sabellano tries to buttress his claim that he is innocent of the crime imputed to him by adducing evidence in support of the defense of alibi. Hence, he testified that at the time of the incident in question, he was asleep in his house and was awakened only by Walderita shouting about her being held-up together with her husband (TSN, March 13, 1990, pp. 9-12). Corroborative evidence on the defense of alibi was also given by Erlinda Sabellano, accused-appellant Wesly’s mother, who stated in her testimony that on March 6, 1986, between 3:00 o’clock and 4:00 o’clock in the morning, she was preparing food for her children which included accused-appellant Wesly who were all asleep at that time. (TSN, January 24, 1990, pp. 6-8)

We affirm the trial court’s rejection of the defense of alibi in line with the doctrinal rule that the defense of alibi being inherently weak cannot prevail against the prosecution’s positive identification of the accused and in the absence of any convincing evidence showing physical impossibility of the accused’s being at the time and place of the crime. (See *People v. Roberto Soriano y Bruan alias “Ruben”*, et al., G.R. No. 74783, April 22, 1991, citing *People v. Garcellano*, 23 SCRA 595 [1968]; *People v. Naba-unag*, 79 SCRA 32 [1977]; see also *People v. Magno Gupo y Gayeta*, et al., G.R. No. 75814, September 24, 1990 citing *People v. Reunir*, 157 SCRA 686 [1988]) As the trial court stated:

“Also, as clearly shown in Exhibit “3” for the defense, the house of accused Wesly is not far enough from the scene of the crime for him to have been physically impossible to have participated in the crime and be at his house shortly thereafter. Established is the rule that the accused must be able to show that he was at another place at the time the crime was committed and that it was physically impossible for him to be at the scene of the crime at the particular moment it was perpetrated.

“Lastly, Mrs. Abrogar and Gertrudes Baselides gave such a vivid account of the attack, clearly identifying the attackers and the clothes worn that the defense of alibi must necessarily fail. Alibi is not credible where the prosecution witnesses directly testify as to how the assault was committed and positively identified the accused as the offenders.” (Rollo, pp. 33-34)

Moreover, the trial court correctly ruled that alibi becomes less plausible as a defense when it is mainly established by the accused himself and his immediate relatives who would naturally be expected to make statements in his favor, as in this case it was the mother of accused-appellant Wesly Sabellano who supported the accused’s alibi. (*People v. Dennis de Guzman y de Leon*, G.R. No. 95685, March 4, 1991, citing *People v. Somera*, 173 SCRA 684 [1989]).

We find no cogent reason to overturn the trial court’s finding that conspiracy exists among the assailants of the deceased Benito Abrogar. In the case at bar, although the records do not show any direct proof showing that the accused-appellant Wesly Sabellano together with his three other companions agreed to inflict fatal wounds on the person of the deceased, there is overwhelming evidence from the elaborate testimonies of the prosecution witnesses that Benito’s attackers were at the time and place of the stabbing incident that led to the death of the said victim, Benito Abrogar, and that all of them acted in consonance with a common design so that the guilt of one becomes the guilt of all. (*People v. Martin Cagadas, Jr.*, et al., G. R. No. 88044, January 23, 1991 citing *People v. Maralit*, 165 SCRA 427; *People v. Newman*, 163 SCRA 496; *People v. Salvador*, 163 SCRA 574) Conspiracy need not be proved by direct evidence but can be inferred from the acts of the accused tending to show community of criminal purpose. (*People v. Valeriano Pacris*, et al, G. R. No. 69986, March 5, 1991 citing *People v. Balane*, 123 SCRA 614; *People v. Baltazar Alan Alitao*, et al., G.R. No. 74736, February 19, 1991 citing *People v. Pineda*, 157 SCRA 71; *People v. Palino*, 183 SCRA 680)

After a careful review of the instant case, we find that the accused-appellant Wesly Sabellano is guilty of the crime of murder qualified by treachery considering that he and his other companions adopted a mode of attack

that insured the killing of the deceased Benito Abrogar without risk to themselves inasmuch as their attack was swiftly and methodically done as observed by the trial court and their victim and his party were unarmed and taken by surprise. (see *People v. Luis Mision y Salipot*, G.R. No. 63480, February 26, 1991 citing *Bernabe v. Bolinas, Jr.*, 18 SCRA 812; see also *People v. Mabubay*, 185 SCRA 675 [1990] citing *People v. Lopez*, 80 SCRA 18; *People v. Alegria*, 84 SCRA 614).

WHEREFORE, in view of the foregoing, the trial court's decision dated June 6, 1990 is hereby AFFIRMED with the MODIFICATION that the amount of indemnity be increased to FIFTY THOUSAND PESOS (P50,000.00) in accordance with the Court's recent pronouncements.

SO ORDERED.

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

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