

## THIRD DIVISION

[ G.R. No. 164266, July 23, 2008 ]

### **NOVER BRYAN SALVADOR Y DE LEON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

#### **DECISION**

##### **NACHURA, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Nover Bryan Salvador y De Leon, assailing the Court of Appeals (CA) Decision<sup>[1]</sup> dated February 26, 2004 which affirmed the Regional Trial Court<sup>[2]</sup> (RTC) Decision<sup>[3]</sup> dated October 26, 2001. Likewise assailed is the appellate court's Resolution<sup>[4]</sup> dated July 6, 2004 denying petitioner's motion for reconsideration.

The facts of the case follow:

Spouses Ernesto and Margarita Zuñiga had three daughters, namely: Marianne, Mary Ann and the victim Arlene. Mary Ann was married to the petitioner herein. The Zuñiga family, including Mary Ann and the petitioner were living together at 550 Coloong I, Valenzuela City. Their residence had three bedrooms - one for the Zuñiga spouses; the other for Marianne and Arlene; and the last for Mary Ann and the petitioner.

On September 20, 1997, the Zuñiga spouses, together with Marianne, went to Bulacan to attend the wake of Ernesto's mother; while Mary Ann with her new born child, and Arlene, stayed at their Valenzuela home. Petitioner, at that time, asked permission to attend a birthday party.<sup>[5]</sup>

At about 9:00 in the evening, petitioner, accompanied by Eduardo Palomares, returned home to get some karaoke tapes to be used at the birthday party. They thereafter went back to the party and stayed there until 12 midnight before heading back home.

At 4:30 in the morning, the following day, the Zuñiga spouses and Marianne arrived home. They opened the main door which was then locked. After preparing for sleep, Marianne proceeded to the room which she was sharing with Arlene. There she saw Arlene, who suffered stab wounds, already dead. After seeing Arlene's body, the Zuñiga spouses rushed to the room of Mary Ann and the petitioner. While Mary Ann proceeded to Arlene's room, petitioner stayed at the *sala* and cried. He was later seen embracing Mary Ann and telling her that he was innocent.<sup>[6]</sup>

At around 5:00 in the morning, police investigators arrived. The police found no forcible entry into the house; no valuables were missing; and no bloodstains in other parts of the house except Arlene's room. They likewise discovered, on top of the

kitchen table, petitioner's underwear (briefs), gray t-shirt and short pants.<sup>[7]</sup> They further found hair strands on Arlene's bed. These pieces of evidence were brought to the laboratory for examination.

On September 21, 1997, Dr. Noel Minay (Dr. Minay), a medico-legal of the National Bureau of Investigation (NBI) conducted an autopsy of the deceased.<sup>[8]</sup> He found that Arlene suffered 21 stab wounds produced by a pointed instrument, one side of which was sharp like a *balisong* or a kitchen knife. He further declared the possibility that Arlene struggled with the assailant before she died.<sup>[9]</sup>

The NBI Forensic Biologist also examined petitioner's briefs, t-shirt and short pants, and found that the briefs and shirt were positive of type "O" human blood, Arlene's blood type.<sup>[10]</sup> The NBI Forensic Chemist, subsequently, conducted DNA Analysis on the following specimens:

1. One (1) dirty white Hanford brief[s];
2. One (1) light gray t-shirt with DKNY print in front;
3. Several strands of hair allegedly recovered in the bedroom of [the] victim;
4. Buccal swabs taken from the following:
  - a. ERNESTO ZUÑIGA (victim's father)
  - b. MARGARITA ZUÑIGA (victim's mother)
  - c. NOVER BRYAN SALVADOR (suspect)<sup>[11]</sup>

The examination of specimen no. 1 yielded a negative result for the presence of human DNA; while specimen nos. 2, 3, and 4 a-c, yielded positive results.<sup>[12]</sup>

Petitioner was thus charged with Homicide in an Information dated April 8, 1998, the accusatory portion of which reads:

That on or about the 20<sup>th</sup> day of September, 1997, in Valenzuela, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any justifiable cause and with deliberate intent to kill, did then and there willfully, unlawfully and feloniously assault and stab one ARLENE ZUÑIGA, hitting on the different parts of her body, which led to the death of said Arlene Zuñiga.

CONTRARY TO LAW.<sup>[13]</sup>

The aforementioned facts were established during the prosecution's presentation of evidence. It was further testified to by the witnesses that - petitioner owned a knife otherwise known as *balisong*, which he usually brought every time he went out. Ill motive was shown by petitioner's previous act of peeping through the bathroom and Arlene's room on two occasions - while she was taking a bath and while she was inside the room with Marianne.

For his part, all that the petitioner could offer was bare denial of the accusations against him.

On October 26, 2001, the RTC rendered a Decision finding the petitioner guilty of homicide. The dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused NOVER BRYAN SALVADOR y DE LEON guilty beyond reasonable doubt and as principal of the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code, without any attending mitigating or aggravating circumstance, and, applying the Indeterminate Sentence Law, hereby sentences him to an indeterminate penalty of EIGHT (8) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of prision mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum. The accused is further sentence (sic) to indemnify Spouses Ernesto and Margarita Zuñiga the amount of P50,000.00 for the death of Arlene Zuñiga and another amount of P50,000.00 as moral damages, both without subsidiary imprisonment in case of insolvency. The accused is further sentenced to pay the costs of suit.

SO ORDERED.<sup>[14]</sup>

The RTC considered the following circumstantial evidence sufficient to establish petitioner's guilt:

(1) The perpetrator did not use any force or destroy any portion of the house to get inside the house. This implies that the perpetrator is an occupant of the house. The accused was, during the time material to this case, residing with his in-laws. The allegation of the accused that the main door of the house was open when he returned to get the tape is difficult to believe. It is unthinkable that the remaining occupants of the house, namely, Arlene and Mary Ann, who are both female, would not take the necessary precaution for their own protection such as locking the door of the house. It is as difficult to suppose that the perpetrator of the crime would go to the house where his intended victim was sleeping without being sure that he could gain entry to the house or have the necessary instruments to open the door.

(2) There were no personal belongings missing in the house. This shows that the person who entered the room of the victim had no intention to steal. This fact can better be appreciated if we consider the evidence that the accused was caught many times peeping at Arlene during her lifetime; and that [bloodstains] were found not in the short pants of the accused but in his Hanford brief and T-shirt.

(3) The absence of [bloodstains] or spots in any other part of the house except the room of the victim. This indicates that the assailant must have cleaned the traces of blood inside the house. The facility and time to clean the area is more available to an assailant who was an occupant of the house or a member of the household.

(4) Prior to and up to the date of the commission of the crime on September 20 or 21, 1997[,], the accused was seen by his parents-in-law Ernesto and Margarita Zuñiga and her sister-in-law Marianne and his friend Dondy Hiponia in many occasions to have in [his] possession a "balisong" or "beinte (sic) nueve." A "balisong" or "beinte (sic) nueve" is the tagalong name for a knife with folding blade. There is no reason for

the Court to doubt the testimonies of said witnesses. Being close relatives and friend of the accused[,] they have no motive to fabricate a story against the accused or to implicate him to the commission of the crime charged. The claim of the accused that his father-in-law Ernesto Zuñiga is trying to implicate him [for] the killing of Arlene because his father-in-law disapproved his marrying Mary Ann, and that he accompanied his mother-in-law to the house of the mistress of his father-in-law is not supported by the facts of the case. The accused was allowed to stay in the house of the Zuñigas, an indication that he was acceptable to the family. The alleged mistress of Ernesto was not shown to exist, nor her supposed address revealed by the accused. The disappearance of said bladed weapon and the denial by the accused that he ever owned the same are intriguing because, according to expert testimony, the stab wounds sustained by the victim were produced by a pointed instrument one side of which is sharp like a "balisong" or "beinte (sic) nueve."

(5) The presence of human blood with type "O" in the t-shirt and brief of the accused, the finding that the blood type of the victim belongs to groupd (sic) "O," and the circumstance that the accused had suffered no scratches or wound from which to come blood to stain his T-shirt and brief are revealing and could only lead to the conclusion that the victim was the source of the blood found in the T-shirt and brief of the accused.

(6) The conclusion arrived at by Magsipoc that the DNA Profile of the [bloodstain] in the light gray t-shirt and the DNA Profile on the hair strands could come from the accused and the victim.

(7) The unusual behavior of the accused after the discovery of the dead body of Arlene betrayed the accused. Ernesto and Margarita Zuñiga testified that soon after the discovery of the death of Arlene[,] they immediately went to the room of the accused and his wife Mary Ann; that it took Margarita a hard time to awaken the accused; and that upon being awakened, the accused did not get (sic) inside the room where Arlene was and instead stayed and cried in the sala telling his wife that he was innocent even if nobody yet at that time was pointing to him as the suspect. The actuation of the accused then was that of a perpetrator of the crime with troubled conscience.<sup>[15]</sup>

On appeal, the CA affirmed petitioner's conviction.<sup>[16]</sup> Hence, the present petition for review on *certiorari* anchored on the following grounds:

## I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR WHEN IT RULED THAT THE MOST CONVINCING EVIDENCE OF THE PROSECUTION IS THE RESULT OF THE DNA ANALYSIS CONDUCTED BY THE NBI FORENSIC CHEMIST.

## II.

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR WHEN IT RULED THAT BY MEANS OF CIRCUMSTANTIAL

EVIDENCE, IT WAS PROVEN AND ESTABLISHED BEYOND REASONABLE DOUBT THAT ACCUSED-APPELLANT WAS THE ONE RESPONSIBLE FOR THE DEATH OF ARLENE ZUÑIGA.

### III.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT FINDING ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.<sup>[17]</sup>

The petition lacks merit.

Direct evidence of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.<sup>[18]</sup>

Section 4, Rule 133 of the Rules of Court, provides that circumstantial evidence is sufficient for conviction if the following requisites are complied with:

- (1) There is more than one circumstance;
- (2) The facts from which the inferences are derived are proven; and
- (3) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.<sup>[19]</sup>

All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld, provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others, as the guilty person.<sup>[20]</sup>

In the present case, both the trial and appellate courts considered these pieces of evidence in finding petitioner's guilt: 1) the non-employment of force in entering the scene of the crime; 2) no missing personal belongings; 3) the absence of bloodstains in other parts of the house except Arlene's room; 4) petitioner's ownership of a *balisong*, the same weapon used in stabbing the victim; 5) the presence of type "O" human blood on petitioner's T-shirt and briefs; 6) the positive result of the DNA analysis using the bloodstains found in petitioner's shirt and briefs; and 7) petitioner's unusual behavior after the discovery of the victim's lifeless body.<sup>[21]</sup>

In his appeal before the CA and likewise in this present petition, petitioner questions the sufficiency of each and every circumstance enumerated above. He specifically points out the inconsistent findings of the NBI Forensic Chemist and those of the NBI Forensic Biologist.<sup>[22]</sup> As to the circumstance that there was no forcible entry to the house, he insists that the main door was not locked; and he, in fact, faults Arlene for not locking the door to her bedroom.<sup>[23]</sup> Petitioner adds that the