

## SECOND DIVISION

[ G.R. No. 157984, July 08, 2004 ]

### MOISES SIMANGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

#### DECISION

##### CALLEJO, SR., J.:

Before us is a petition for review of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR No. 11971 and its Resolution denying the petitioner's motion for reconsideration of the said decision.

##### The Antecedents

The petitioner Moises Simangan and Loreto Bergado were charged with murder in an Information filed with the Circuit Criminal Court in Cagayan, the accusatory portion of which reads:

That on or about February 10, 1980, in the municipality of Solana, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Moises Simangan y Trinidad and Loreto Bergado y Rigor alias Boy, together with Bening Gomabong (*sic*), who is still at large and not yet apprehended, and two (2) John Does, who were not identified, armed with guns and knives, conspiring together and helping one another, with intent to kill; with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab one Ernesto Flores, inflicting upon him several wounds on his body which caused his death.

Contrary to law.<sup>[2]</sup>

The accused, assisted by counsel, were duly arraigned, and pleaded not guilty to the charge.

##### The Case for the Prosecution

At 8:00 p.m. on February 10, 1980, the petitioner, Loreto Bergado, Bening Gumabong and two other male persons arrived at the store of the spouses Ernesto Flores and Sofronia Saquing in Barangay Maasin, Solana, Cagayan. The Flores Spouses, along with fifteen-year-old Lorna Saquing, Sofronia's niece, were then having dinner. The five men were in fatigue uniforms and were armed with long firearms. When they knocked on the door, Lorna responded and inquired what they wanted, and she was told that they wanted to buy cigarettes. Ernesto and Sofronia entertained the men, two of whom were their neighbors, Loreto Bergado and Bening Gumabong.

Momentarily, the petitioner asked Ernesto to go with them to serve as a guide. In response, Ernesto invited the men to sleep at their house, but the latter refused. Ernesto then agreed to accompany the visitors. The petitioner warned Ernesto and Sofronia not to tell anyone that they had been to the store. As they were leaving, Romeo Galano, the couple's helper at the store, arrived. Ernesto ordered Romeo to go with him, and the latter did as he was told. However, at about 9:00 p.m., Romeo returned to the store and told Sofronia that Ernesto had sent him back to get money, matches and cigarettes. He also told Sofronia that he and Ernesto were seated as they conversed with each other. Sofronia gave P50.00, a box of matches and a ream of Hope cigarettes. Romeo left the store at about 9:30 p.m.<sup>[3]</sup> Ernesto did not return that evening.<sup>[4]</sup>

The next morning, Romeo Balunggaya arrived at Sofronia's house and told her that Ernesto was dead, and that his body had been found about three hundred (300) meters away. Sofronia and Lorna rushed to the place, and found Ernesto's body near the creek.<sup>[5]</sup> Ernesto was lying on the ground, face down, with his hands tied behind his back. Police investigators Pagulayan and Caronan arrived, along with a photographer. Pictures of the victim were taken.<sup>[6]</sup>

Dr. Anastacia Taguba, the Municipal Health Officer, performed an autopsy of the cadaver and found that the victim sustained multiple stabwounds. She concluded that the victim died because of shock due to massive internal and external hemorrhage from multiple stab wounds.<sup>[7]</sup> She also signed the Certificate of Death of Ernesto.<sup>[8]</sup>

On February 18, 1980, Fernando Saquing attended his classes in civil engineering at the St. Louis University in Tuguegarao, Cagayan. He noticed his seatmate and close friend, petitioner Moises Simangan, writing on a piece of paper. He grabbed the paper, read it, and saw that the petitioner had written the following: "Andres Buena *alias* Ka Ren, Cely Peña *alias* Ka Laarni, Moises Simangan *alias* Ka Ronie Ledesma." The petitioner warned Fernando not to divulge his secret to anybody.<sup>[9]</sup>

On February 24, 1980, Fernando and the petitioner were on their way home from their ROTC classes at the St. Louis University. The petitioner then narrated to Fernando that at about 7:00 p.m. on February 10, 1980, after buying cigarettes from a store, the store-owner agreed to go with him and his four companions. The petitioner revealed that they brought the victim over to the place where twenty of his other comrades were waiting. He also told Fernando that he and his companions stabbed the victim over and over again, and tasted the latter's blood so that "they would not get sick." The petitioner warned that if Fernando divulged to anyone what he had just revealed, he (the petitioner), would drink his blood, too.<sup>[10]</sup>

The petitioner did not know that Fernando was the first cousin of Sofronia, the widow of Ernesto Flores, who was, in turn, the store-owner referred to by Moises.<sup>[11]</sup> Fernando immediately told Sofronia what the petitioner had told him.

On March 21, 24 and 25, 1980, Sofronia, Fernando and Lorna gave their respective statements<sup>[12]</sup> to Sgt. Quirino Espiritu of the Philippine Constabulary in Tuguegarao,

Cagayan, in which they identified Moises as one of Ernesto's assailants.

### **The Case for the Defense**

The petitioner denied any involvement in the killing of Ernesto. He testified that on the day that Ernesto was killed, he was in his boarding house in Tuguegarao. He was the classmate of Fernando at the St. Louis University in Tuguegarao, Cagayan, where they were enrolled in the civil engineering course.<sup>[13]</sup> Sometime in February 1980, Fernando asked him about Andres Balbuena who was from Solana, Cagayan. A week later, he was arrested on suspicions that he had something to do with the death of Ernesto.<sup>[14]</sup> Fernando, who was in the PC barracks, pointed to him as one of the assailants of Ernesto. He was surprised at Fernando's accusation.<sup>[15]</sup>

The petitioner also denied knowing Loreto Bergado, claiming that he only met the latter at the provincial jail.<sup>[16]</sup> He had not been to Barangay Maasin, Solana.

The accused Loreto Bergado also denied killing Ernesto. He testified that he did not know Ernesto and the latter's wife, Sofronia. On February 10, 1980, he was in his house at Nangalasauan, Amulung, Cagayan. After waking up the next day, he went to his farm.<sup>[17]</sup>

To corroborate his testimony, Bergado presented his neighbor, Feliciano Trinidad, who testified that after his classes on February 10, 1980, he went out of their house at Barangay Nangalasauan, Amulung, Cagayan, to get a breath of fresh air. He then saw Bergado and spoke with him until 9:00 p.m.<sup>[18]</sup>

Cornelia Trinidad corroborated the testimony of the petitioner that she boarded in the house of Rosendo Tuddao in February 1980.

The defense also presented Leona Balunggaya, who testified that between 4:00 and 5:00 a.m. on February 11, 1980, Sofronia and Leon Rigor arrived at their house, crying. Sofronia inquired if Ernesto had passed by, because her husband had not slept in their house. Balunggaya replied in the negative. When Balunggaya asked Sofronia if she recognized the armed men who were with her husband, Sofronia replied that she did not because their faces were new to her.<sup>[19]</sup> Aside from their house, there were no other houses in the vicinity of Sofronia's place. Right after Sofronia and Leon had left, she and her husband Romeo went to their farm to drive away the birds and saw the cadaver of Ernesto, about three hundred (300) meters away.

After trial, the court rendered judgment finding the accused guilty beyond reasonable doubt of homicide. The decretal portion of the decision reads:

WHEREFORE, the accused Moises Simangan y Trinidad and Loreto Bergado y Rigor having been found by the Court guilty beyond reasonable doubt of the crime of Homicide defined and penalized under Art. 249 of the Revised Penal code, and considering the presence of two aggravating circumstances, are hereby sentenced each to an indeterminate penalty of ten (10) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum, to indemnify the heirs of the

victim Ernesto Flores the sum of ₱30,000.00, proportionately and to pay costs *pro rata*.

SO ORDERED.<sup>[20]</sup>

On appeal to the Court of Appeals, it rendered judgment, affirming with modification, the decision of the trial court. It found the testimonies of Sofronia, Lorna, and Fernando, credible and entitled to full probative weight.

### **The Present Petition**

Petitioner Moises Simangan filed the instant petition for review on certiorari, asserting that:

#### **I**

THE TRIAL COURT ERRED IN BELIEVING THE PROSECUTION WITNESSES AND DISREGARDING THE EVIDENCE FOR THE DEFENSE.

#### **II**

THE TRIAL COURT ERRED IN FINDING THE ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF HOMICIDE.<sup>[21]</sup>

The petitioner contends that the prosecution failed to adduce circumstantial evidence sufficient to prove his guilt of the crime of homicide beyond reasonable doubt. He asserts that Sofronia and Lorna pointed to and identified him only upon the prodding of Fernando, who told Sofronia that he (the petitioner) had admitted to stabbing and killing the victim together with twenty of his other companions. The petitioner contends that the testimony of Fernando is hearsay, as he had no personal knowledge that he was one of those who killed the victim.

On the other hand, the Court of Appeals declared in its assailed decision that the array of circumstantial evidence adduced by the prosecution constitutes proof beyond cavil that the petitioner was one of those who killed the victim. As catalogued by the appellate court:

1. at about 8:00 o'clock in the evening of February 10, 1980, accused Moises Simangan, Loreto Bergado, Bening Gumabong and two unidentified companions each of whom were armed with long rifles, went to the store of the victim Ernesto Flores at Sitio Masin (*sic*), Iraga, Solana and bought cigarettes;
2. that Moises Simangan asked Ernesto Flores to guide Simangan, Bergado, Gumabong and their two companions on their way to the road;
3. that Simangan, Bergado and their two companions, together with Ernesto Flores and Romeo Galano, were out of the house;
4. that Simangan warned Sofronia and Lorna not to tell anybody that he and his companions went to the house;

5. that five days after the death of Ernesto, Simangan became worried when told by his classmate Fernando Saquing that several persons were arrested at Nangalasauan, Amulung, for the death of Ernesto;
6. that two weeks after the death of the victim, Simangan admitted to Fernando that he and twenty others had just killed a person in Masin, (*sic*) Iraga, Solana, after the victim accompanied them to show them the way;
7. and that Fernando was warned not to relate it to any other person with the threat that if it will be known by others, Simangan will drink his blood.<sup>[22]</sup>

### **The Ruling of the Court**

We find the contention of the petitioner to be unmeritorious. Sofronia narrated in detail how the petitioner and his companions, armed with long firearms, managed to convince Ernesto to go with them and be their guide on the road. Sofronia pointed to and identified the petitioner in open court. Thus:

Q On February 10, 1980, at 8:00, do you recall where you were?

A Yes, Sir.

Q Where were you?

A We were at home, Sir.

Q And you mentioned . . . and who were your companions at that time?

A My husband, my sister Lorna Saquing, my daughter, Sir.

Q What is the name of your daughter?

A Jannet, Sir.

Q How old was she at that time?

A Two (2) years old, Sir.

Q What is the name of your sister?

A Lorna, Sir.

Q And your husband?

A Ernesto Flores, Sir.

Q What were you doing at that time?

A Eating, Sir.