

## EN BANC

[ G.R. Nos. 142683-84, June 23, 2003 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SERGIO JOROLAN Y FAJARDO, ACCUSED-APPELLANT.**

### D E C I S I O N

**QUISUMBING, J.:**

On automatic review is the decision<sup>[1]</sup> dated November 22, 1999 of the Regional Trial Court of Marikina City, Branch 272, in Criminal Cases Nos. 97-2158-MK and 97-2159-MK. In the first case, appellant Sergio Jorolan was found guilty of murder and sentenced to suffer the penalty of death. In the second case, he was found guilty of homicide and sentenced to imprisonment ranging from twelve (12) years of prision mayor as minimum to twenty (20) years of *reclusion temporal* as maximum.

His convictions and sentences stemmed from two informations dated November 22, 1997. In the first, he was charged of murder, as follows:

That on or about the 19<sup>th</sup> day of November, 1997, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun, with intent to kill, and with treachery and taking advantage of his superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shot (*sic*) one Leonil Jimenez y Pitalio on his trunk, thereby causing the latter to sustain gunshot wound which directly caused his death.

CONTRARY TO LAW.<sup>[2]</sup>

In the second information, he was charged of rape with homicide, as follows:

That on or about the 19<sup>th</sup> day of November, 1997, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a gun and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with Rodelyn Roxas @ "Lenlen" against her will and consent; and that by reason on (*sic*) the occasion of the said rape, the above-named accused while armed with the said weapon, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and shot (*sic*) Rodelyn Roxas @ "Lenlen" on her trunk, thereby causing the latter to sustain gunshot wound which directly caused her death.

CONTRARY TO LAW.<sup>[3]</sup>

Among the facts,<sup>[4]</sup> found by the trial court, are the antecedents to the filing of cases against herein appellant, Sergio Jorolan:

The spouses Joselito and Sherryl Jimenez live at 90 Apitong St., Villa Cristina Subdivision, Marikina Heights, Marikina City, Metro Manila. Living with them were Leonil Jimenez, 12 years old,<sup>[5]</sup> student and a younger brother of Joselito Jimenez; Rodelyn Roxas, a 15-year old maid; and the accused Sergio Jorolan, 19 years old, single, and store helper of the Jimenez spouses.

On November 19, 1997, at about 2:00 p.m., while the Jimenez spouses and Leonil were away, Rodelyn was shot to death. Thereafter, when Leonil returned home at about 2:15 p.m. of that same fateful day, he was brought to the comfort room where he was shot twice in the head which caused his instant death.

Alarmed when nobody answered their phone despite repeated calls, Sherryl Jimenez and Salvador Padre, the family driver, rushed to the area at about 4:00 p.m. They found Sergio in the living room lying on a wooden sofa with his mouth, arms and feet loosely tied with pieces of cloth. They further observed that an electric fan was blowing on him and that he used a stuffed toy as pillow.

They discovered that Rodelyn and Leonil were already dead while Sergio survived with a penetrating gunshot wound on the upper right side of his chest. The 9mm pistol of Joselito was found on the floor near where Sergio was lying. Everything inside the house was normal and all things were intact, including the cabinet where the gun of Joselito was kept.

Sergio was brought to the hospital for treatment. On the following day, because of his extrajudicial confession, suspicious utterances and inconsistent statements, Sergio was suspected of being the author of the crime and was subjected to paraffin test where both of his hands were found positive for gunpowder nitrates. As a consequence of these leads, pointing Sergio as the author of the crime, the instant cases were filed against him in court.

Upon arraignment, appellant Sergio Jorolan pleaded not guilty. Thereafter, joint trial of the cases ensued.

The first witness for the prosecution was P/Insp. MA. LUISA DAVID, a forensic chemical officer of the Physical Sciences Division, Crime Laboratory, Camp Crame, Quezon City, who performed the paraffin test on Sergio while the latter was being treated at the Amang Rodriguez Medical Center.<sup>[6]</sup> She testified that the paraffin cast taken from both hands of Sergio tested positive for gunpowder nitrates.<sup>[7]</sup> On cross-examination, she stated that it was possible for a person who did not fire a gun, but who was actually shot at, to likewise test positive for gunpowder nitrates.<sup>[8]</sup> However, on redirect examination, she testified that if person A is within one (1) meter distance from person B, and person A fired a shot at person B, person B would also test positive for gunpowder nitrates, but not specifically on the hands.<sup>[9]</sup>

The next witness, SHERRYL JIMENEZ, testified that on November 19, 1997 at around 4:30 p.m., she arrived with driver Salvador Padre at their house at 90 Apitong St., Villa Cristina Subdivision, Marikina Heights, Marikina City, Metro Manila.<sup>[10]</sup> She testified that everything in the house was in order.<sup>[11]</sup> She also testified that she found Sergio in the living room with a cloth placed on top of his mouth and

with his arms loosely tied placed on top of his chest.<sup>[12]</sup> She further testified that Sergio looked as if he was only sleeping and so she proceeded to the bedroom, whereupon she saw that the comfort room was open and that somebody was lying on the floor of the comfort room. Terrified, she immediately ran outside.<sup>[13]</sup> She said she asked Salvador, who was then waiting inside the vehicle, to verify what happened.<sup>[14]</sup>

The prosecution next presented SALVADOR PADRE, the driver, who testified that on November 19, 1997 at around 4:00 p.m., he drove Sherryl to her house at 90 Apitong St., Villa Cristina Subdivision, Marikina Heights.<sup>[15]</sup> He said that Sherryl went inside the house while he waited inside the vehicle, but soon thereafter he saw her running towards the vehicle.<sup>[16]</sup> According to him, Sherryl told him that something happened in the house so she asked him to look inside to see.<sup>[17]</sup> He testified that when he entered the house, he saw Sergio lying down with his feet tied to the narra chair and hands tied across his chest.<sup>[18]</sup> He said that he thought Sergio was sleeping.<sup>[19]</sup> He also testified that after seeing Sergio, he did not go further inside the house because he became frightened.<sup>[20]</sup>

The next prosecution witness was CHERRY DUMDUM, Sherryl's sister, who testified that on November 20, 1997, from 9:30 a.m. to 1:00 p.m., she was at the hospital where Sergio was being treated.<sup>[21]</sup> She testified that at that time, she already knew that Sergio was the suspect so in order to trap him, she told him to get well because he and Leonil would both testify on what happened.<sup>[22]</sup> She testified that upon hearing this, Sergio said that it was impossible for Leonil to be alive because he was hit in the head. She then made him believe that Leonil's brain was not damaged and told him that as soon as Leonil got well, the two of them could testify against their assailants.<sup>[23]</sup> She testified that Sergio then uttered that he wished he had died.<sup>[24]</sup> She also testified that in the afternoon of November 19, 1997, until about 12 midnight, she stayed at the house of her mother at 19 Narra St., Marikina Heights, Marikina City, where three policemen were posted because they were receiving threat calls.<sup>[25]</sup>

The next witness was FELICIDAD DESAMIRO, a helper in the business of Sherryl's family. She testified that on November 20, 1997, from 8:00 a.m. to 7:00 p.m., she stayed at the Amang Rodriguez Medical Center to watch over Sergio.<sup>[26]</sup> At around 2:00 p.m., when she had a chance to talk with Sergio, knowing him to be the suspect, she told him that Leonil was alive, to see how he would react.<sup>[27]</sup> She testified that upon learning Leonil was still alive, Sergio pointed out that Leonil sustained two wounds in the head and asked her how it could be possible that he was still alive.<sup>[28]</sup>

The last witness for prosecution was SPO3 JAIME GAMUEDA, a police officer assigned in the criminal investigation division of the Marikina Police. He testified that he conducted an ocular inspection at the scene of the crime at around 5:00 p.m. of November 19, 1997.<sup>[29]</sup> He said that he found the lifeless bodies of Leonil and Rodelyn soaked in blood in the comfort room and bedroom, respectively.<sup>[30]</sup> He also testified that he found empty shells of bullets and a gun lying in the living room.<sup>[31]</sup>

The defense presented appellant Sergio Jorolan himself. He testified that in the afternoon of November 19, 1997, he was at his employer's house located at 90 Apitong St., Villa Cristina Subdivision, Marikina Heights, Marikina City. He was sleeping in the living room but he was awakened when a man tried to tie his mouth.<sup>[32]</sup> He further testified that he then saw that there were two (2) men inside the house looking for Jun Jimenez and Lito Jimenez for a wrong supposedly done by the two against the intruders.<sup>[33]</sup> They allegedly searched the house for valuables and asked him for jewelry or cash amounting to P30,000.00.<sup>[34]</sup> He also testified that for his failure to heed their demand, they boxed and mauled him several times.<sup>[35]</sup> He testified further that when Rodelyn tried to run, she was shot dead at the back by one of the intruders using the gun of Joselito, which he claimed the intruder found while searching for valuables.<sup>[36]</sup> Thereafter, according to Sergio, when Leonil entered the gate, the intruders waited for him to go in, whereupon, he was immediately brought to the comfort room.<sup>[37]</sup> He testified that he then heard two (2) shots from the comfort room.<sup>[38]</sup> He stated that he saw how Rodelyn was actually shot, but did not see how Leonil was shot.<sup>[39]</sup> Sergio finally averred that after he was tied to the sofa, the man who shot Rodelyn and Leonil also shot him on his upper right chest.<sup>[40]</sup>

The prosecution did not present any evidence to prove the alleged rape. Records show that the medico-legal officer, who physically examined the corpse of Rodelyn, could not be located after he resigned from the PNP crime laboratory. Consequently, the medico-legal documents in his personal possession were never presented in court.

On November 22, 1999, the trial court convicted appellant as follows:

WHEREFORE, foregoing premises considered, finding the accused Sergio Jorolan y Fajardo GUILTY beyond reasonable doubt of the crimes as charged against him, judgment is hereby rendered as follows:

- 1) As to Criminal Case docketed as no. 97-2158-MK, to suffer the penalty of DEATH by lethal injection for the killing of Leonil Jimenez the court having appreciated the aggravating circumstances of treachery and use of unlicensed firearm and to indemnify the heirs of the victim the amount of P50,000.00 and to pay the amount of P30,000.00 as moral damages;
- 2) As to Criminal Case docketed as no. 97-2159-MK, to suffer the penalty of imprisonment ranging from TWELVE (12) YEARS of prison mayor as minimum to TWENTY (20) YEARS of reclusion temporal as maximum, for the killing of Rodelyn Roxas with the use of unlicensed firearm and to indemnify the heirs of the latter the amount of P50,000.00 and to pay the amount of P30,000.00 as moral damages.

SO ORDERED.<sup>[41]</sup>

Hence, this review. In his brief, appellant assigns the following errors for our consideration:

## I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE INSUFFICIENCY OF CIRCUMSTANTIAL EVIDENCE PRESENTED BY THE PROSECUTION.

## II

THE TRIAL COURT GRAVELY ERRED IN OVERLOOKING THE RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED BEYOND REASONABLE DOUBT.<sup>[42]</sup>

Appellant points out that the trial court disregarded the categorical declaration of Cherry Dumdum that some people were threatening the Jimenez family moments after the killings. Appellant argues that if indeed he committed the crimes and then attempted to kill himself to hide everything, why should there be people threatening the Jimenez family right after the incident? Appellant claims that said threats prove that the Jimenez family had a conflict with a particular group and appellant insists that he was also a victim of said conflict. Appellant dismisses as baseless his supposed suicide attempt after the alleged commission of the crimes. Appellant reasons that it is unbelievable for one to be able to tie his own hands and feet after having shot himself on the chest.

Appellant further asserts that if indeed he committed the offenses charged against him, he would have escaped immediately after the consummation of the alleged crimes, considering that he had the facilities to do so. For one, he said he had the keys to the car and motorcycles of the Jimenez spouses. Second, he enjoyed the trust and confidence of their neighbors because they knew him as a trusted helper of the Jimenez spouses. But appellant insists he did not escape; moreover, he was rendered unconscious after being shot by the malefactors.

For the appellee, the Office of the Solicitor General (OSG) argues that contrary to appellant's claims, he was convicted on the basis of adequate circumstantial evidence. The OSG stresses that the circumstances relied upon by the trial court constituted an unbroken chain, which led to one fair and reasonable conclusion pointing to appellant as the author of the crimes charged. The OSG adds that while the prosecution witnesses did not see the actual commission of the crimes by appellant, direct evidence is not the only basis on which his guilt may be predicated. The OSG points out that appellant's guilt may also be established through circumstantial evidence, which suffices for conviction so long as the requisites therefor are present.

The main issue for our resolution is whether or not the prosecution's evidence suffices to convict appellant of two crimes, murder and homicide, beyond reasonable doubt.

Admittedly, no direct evidence was presented by the prosecution in these cases to prove the guilt of appellant beyond reasonable doubt. As pointed out by the OSG, however, prosecution evidence sufficient for conviction need not be direct. Circumstantial evidence may suffice as long as the requisites therefor are satisfied. Section 4, Rule 133 of the Revised Rules of Court provides: