

THIRD DIVISION

[G.R. No. 140618, December 10, 2003]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BERNARDO SARA,
APPELLANT.**

D E C I S I O N

CARPIO MORALES, J.:

Appellant Bernardo "Berning" Sara was charged before the Regional Trial Court (RTC) of Iloilo City with Murder in an information dated March 7, 1988 reading:^[1]

The undersigned Provincial Fiscal accuses BERNARDO SARA, [a]lias "BERNING," of the crime of MURDER committed as follows:

That on or about November 2, 1987, in the Municipality of Cabatuan, Province of Iloilo, Philippines and within the jurisdiction of this Court, the above-named accused, together with an unidentified person, conspiring and helping one another, armed with firearms of unknown caliber, with treachery and evident premeditation and deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously shoot and hit one Paterno Morcillo on his chest which caused his death.

CONTRARY TO LAW.

Appellant was earlier charged for the same offense, along with Efren Robles, in a November 6, 1987 complaint.^[2] In a December 17, 1987 Order, ^[3] however, Acting Municipal Circuit Trial Judge Simeonito A. Salarda of Cabatuan, Iloilo, who conducted the preliminary examination, found no probable cause to hale Robles into court.

Upon arraignment^[4] on July 6, 1988, appellant, assisted by his counsel, entered a plea of not guilty.

From the evidence for the prosecution, the following version is established:

At around 7:30 p.m. of November 2, 1987, while Paterno Morcillo (the victim) and his wife-prosecution witness Virginia Morcillo were sitting at their balcony situated at the left side of their one storey house ^[5] in Barangay Acao, Cabatuan, Iloilo, the victim revealed to her that on account of his accusation against appellant and Efren Robles for killing his chicken, ^[6] the two had threatened to kill him on November 1, 1987.^[7] Allaying any anxiety of the victim, his wife told him not to be bothered as it was already the second of November, and he should be thankful for being alive.^[8]

Moments later, hearing the incessant barking of dogs, Virginia prodded the victim to transfer their carabao from the back portion of the house to the front.^[9] Hearing

that the victim, their father, was going to transfer the carabao, prosecution witnesses Felipe and Benjamin Morcillo curiously looked out of the window situated at the side of their house^[10] to watch the transfer of the carabao.^[11] Unknown to the victim who proceeded to the back of the house, appellant and one whom Felipe and Benjamin claim to be Efren Robles were squatting^[12] beside a nearby coconut tree.^[13] While the victim was at the right side of the house,^[14] before he could reach the carabao, he was shot by appellant.^[15]

Soon after hearing the sound of a gunshot, Virginia heard her husband-the victim moaning.^[16]

Another shot was soon after fired by Efren Robles,^[17] prompting Virginia to run downstairs where she saw her husband lying on the ground.^[18] She then lifted him and placed him in her arms,^[19] and as their children Felipe and Benjamin approached her, they told her "Nay, it was Tay Berning who killed Tatay."^[20] When she turned her attention back to her husband, he was already dead.^[21]

The postmortem examination conducted on the victim by Dr. Imelda P. Piz, resident physician at the Ramon Tabiana Memorial District Hospital in Cabatuan, Iloilo, showed that the victim died of cardiac tamponade secondary to rupture of the right ventricular heart and thoracic aorta due to multiple gunshot wounds on the chest.^[22]

The examination conducted by Zenaida Sinfuego, a forensic chemist for the Integrated National Police in Camp Delgado, Iloilo City, showed that the left and right hands of both appellant and Efren Robles were positive for gunpowder residue (nitrates) as reflected in Chemistry Report No. C-045-87.^[23]

Denying the accusation and proffering alibi, appellant claimed that on November 2, 1987, at around 7:00 p.m., he had dinner with his wife and children at their house in Barangay Acao, Cabatuan, Iloilo,^[24] following which or at around 8:00 p.m., he went to sleep.^[25]

Appellant's wife, Cleofas Sara, corroborated him.^[26]

Discrediting appellant's denial and alibi in favor of the positive and categorical testimony of Felipe and Benjamin that they saw appellant squatting and holding a short firearm several meters away from the victim, Branch 27 of the Iloilo City RTC convicted appellant of Murder by decision^[27] of October 17, 1991 the dispositive portion of which is quoted *verbatim*:^[28]

WHEREFORE, in view of the foregoing, the court hereby sentences the accused BERNARDO SARA to suffer the penalty of imprisonment of Seventeen (17) years, Four (4) months and One (1) day of *Reclusion Temporal* as minimum to Twenty Five (25) years, Nine (9) months and Eleven (11) days to *Reclusion Perpetua* as maximum; Directing said accused to indemnify the heirs of the deceased Paterno Morcillo the amount of Thirty Thousand (P30,000.00) Pesos; To pay attorney's fees in

the amount of P5,000.00; Coffin and burial and actual expenses in the amount of P11,000.00; And costs.

On appeal to the Court of Appeals, appellant assailed the verdict of the trial court on four (4) grounds: [29] (a) the trial court erred in giving full faith and credence to the patently incredible, fabricated, unreliable, inconsistent if not contradictory testimonies of the prosecution witnesses; (b) the trial court erred in not disregarding the results of the paraffin test conducted on the person of the accused-appellant as the same was not conclusive; (c) the trial court erred in not giving evidentiary and exculpatory weight to the evidence adduced by the defenses; and (d) the trial court manifestly erred in rendering a verdict of conviction despite the fact that the guilt of accused- appellant was not proved beyond reasonable doubt.

Finding no reversible error in the factual findings of the trial court, the Court of Appeals, by Decision of September 8, 1995,[30] affirmed the conviction of appellant but modified the penalty imposed to *reclusion perpetua*. The dispositive portion of the appellate court's decision reads, quoted *verbatim*:[31]

WHEREFORE, the judgment appealed from is AFFIRMED with *modifications* as to *penalty* and *civil indemnity*. Accused-appellant *Bernardo Sara* is hereby sentenced to suffer the penalty of *reclusion perpetua*. The civil indemnity awarded to the heirs of deceased Paterno Morcillo is hereby increased to P50,000.00. (Emphasis, underscoring and italics in the original)

In an August 30, 1999 Resolution,[32] the appellate court certified the case to this Court for review in accordance with Section 13, Rule 124, par. 2 of the Rules of Criminal Procedure.

This Court afforded appellant the opportunity to file an additional brief[33] in which he assigns the following errors:[34]

I.

THE COURT OF APPEALS ERRED IN NOT DISCARDING THE PATENTLY INCONSISTENT, NAY CONFLICTING STATEMENTS OF THE PROSECUTION WITNESSES ANENT THE SUBJECT INCIDENT WHICH WERE TOTALLY IGNORED BY THE TRIAL COURT.

II.

GRANTING FOR THE SAKE OF ARGUMENT THAT THE ACCUSED-APPELLANT IS GUILTY, NONETHELESS, THE TRIAL COURT ERRED IN CONVICTING HIM OF MURDER SINCE THE QUALIFYING CIRCUMSTANCE OF TREACHERY IS WANTING, HENCE, THE PENALTY IMPOSED UPON HIM MUST BE ACCORDINGLY REDUCED.

The resolution of the case hinges on (1) whether the evidence for the prosecution established the guilt of appellant beyond reasonable doubt; and (2) if in the affirmative, whether the proper penalty was correctly modified by the appellate court.

In affirming the conviction of appellant, the appellate court relied, as did the trial court, mainly on the testimony of Felipe and Benjamin, particularly their positive identification of appellant.

Appellant bewails, however, the brushing aside of his defense of alibi despite the existence, so he claims, of conflicting statements in the testimonies of the prosecution witnesses, he highlighting the following instances: Felipe's testimony during cross-examination that he saw appellant and Efren Robles in the balcony of the victim's house,^[35] whereas on further cross-examination, he declared that he saw appellant and Robles at the tambi or back porch;^[36] Felipe's testimony that his sister Lianisa was inside the house during the incident but he did not know what she was then doing,^[37] whereas in his sworn statement, Felipe stated that Lianisa was urinating at the tambi or back porch;^[38] Felipe's testimony that a short firearm was used in shooting his father, ^[39] whereas in his sworn statement he stated that he did not know the kind of firearm was used; ^[40] Felipe's testimony that there was a grudge between appellant and his father,^[41] whereas in his sworn statement he stated that he did not know of any reason or motive behind his father's murder,^[42] Benjamin's testimony during cross-examination that he was lying down, preparing to go to sleep when he heard the dogs barking,^[43] whereas on further cross-examination, he declared that he and Felipe were playing and teasing each other; ^[44] Benjamin's testimony that he saw appellant at the side of a coconut tree when he shot the victim,^[45] whereas in Felipe's testimony, he declared that he saw appellant and Efren Robles in the balcony of their house;^[46] Benjamin's testimony that he did not know of any reason or motive for the killing of his father,^[47] whereas in Felipe's testimony, he stated that there was a grudge between appellant and his deceased father; ^[48] Virginia's testimony that she and the victim were in the balcony talking with each other when the dogs started barking,^[49] whereas in Felipe's^[50] and Benjamin's^[51] testimonies they declared that she was inside the house; and Virginia's testimony that Felipe and Benjamin told her that they saw another person aside from appellant but that they could not recognize him,^[52] whereas both Felipe^[53] and Benjamin^[54] stated that Efren Robles was with appellant during the incident.

The appeal is bereft of merit.

Appellant was positively identified as the assailant by two credible eyewitnesses. The victim's son Felipe testified, thus:^[55]

Q: **But do you know how did your father die?**

A: **He was shot.**

Q: **Do you [know] who shot your father?**

A: **Yes, sir.**

Q: **Can you inform the court who shot your father?**

A: **Bernardo Sara.**

Q: **If this Bernardo Sara is inside the courtroom, can you point him out?**

A: **Yes, sir. (Witness pointing to a person inside the courtroom who, when asked, answered by the name of Bernardo Sara.)**

Q: Before your father died, how long have you known this Bernardo Sara?

A: Everyday.

Q: In other words, everyday, you met this Bernardo Sara?

A: Yes, sir.

x x x

Q: You said that your father was shot by Bernardo Sara. Can you inform the Court where were you when your father was shot by Bernardo Sara?

A: On the window.

Q: How far were you from the place where your father was at that time, when he was shot?

A: About three arms length.

Q: Now, when Bernardo Sara shot your father, what happened to him?

A: He fell down.

Q: **How did you happen to recognize that time that it was Bernardo Sara who shot your father?**

A: **I saw him.**

Q: How far were you from Bernardo when he shot your father?

A: About 9 arms length. (Emphasis and underscoring supplied)

And the victim's other son, Benjamin, testified thus: ^[56]

Q: When your father went downstairs, what did you do if you did anything?

A: I looked out of the window.

Q: When you looked out of the window, can you see the place where your father was at that time?