

SECOND DIVISION

[G.R. No. 132159, January 18, 2001]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR GIVERA Y GAROTE, ACCUSED-APPELLANT.

D E C I S I O N

MENDOZA, J.:

This is an appeal from the decision^[1] of the Regional Trial Court, Branch 102, Quezon City finding accused-appellant Cesar Givera y Garote guilty of murder of Eusebio Gardon y Arrivas and sentencing him to suffer the penalty of *reclusion perpetua* with the accessory penalties prescribed by law, to indemnify the heirs of the deceased in the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs of the suit.

The information in this case, dated April 10, 1995, charged as follows:

That on or about the 2nd day of May, 1993, in Quezon City, Philippines, the said accused [CESAR GIVERA], conspiring together, confederating with EPEFANIO GAYON y GERALDE^[2] and ARTURO GAYON y GERALDE, and mutually helping one another who were charged with the same offense at the Regional Trial Court of Quezon City, Branch 104, and docketed as Criminal Case No. Q-93-44315, did, then and there, willfully, unlawfully and feloniously, with intent to kill, taking advantage of superior strength, with evident premeditation and treachery, attack, assault, and employ personal violence upon the person of EUSEBIO GARDON y ARRIVAS, by then and there stabbing him with a knife hitting him on the different parts of his body, and striking him with a piece of stone on the head, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of EUSEBIO GARDON y ARRIVAS.

CONTRARY TO LAW.^[3]

Accused-appellant pleaded not guilty during his arraignment on April 10, 1996, whereupon he was tried.

Accused-appellant's companions, namely Epifanio Gayon, Arturo Gayon, and Maximo Givera, were separately prosecuted and found guilty of murder by the Regional Trial Court, Branch 104, Quezon City in a decision, dated June 6, 1994, in Crim. Case No. Q-93-44315. The three were sentenced to suffer the penalty of *reclusion perpetua* with the accessory penalties prescribed by law, to indemnify the heirs of the deceased the sum of P100,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs of the suit. On appeal to this Court, the decision of

the trial court was affirmed with modification. The dispositive portion of the decision reads:

WHEREFORE, the judgment appealed from is MODIFIED. We instead find accused-appellants EPIFANIO GAYON, ARTURO GAYON and MAXIMO GIVERA guilty beyond reasonable doubt of MURDER committed with grave abuse of superior strength and imposes upon each of them the penalty of *reclusion perpetua* with the accessory penalties provided by law, and ordering them to indemnify the heirs of the deceased Eusebio Gardon in the amount of P100,000.00. Costs against accused-appellants.

[4]

For the prosecution, the victim's daughter Milagros Gardon and his niece Melinda Delfin were presented as witnesses. On the other hand, only accused-appellant testified in his defense.

The incident took place at about 4 p.m. on May 2, 1993 at Purok IV, Area 5, Laura St., Old Balara, in Diliman, Quezon City.

Milagros Gardon testified on direct examination:[5]

Q: Particularly about 4:00 p.m., were you at your residence at that time?

A: Yes, sir.

Q: And what were you doing there at that time?

A: I was in the house because I was watching my father, sir.

Q: What was your father doing at that time?

A: I let him go to sleep because he was a little bit drunk, and I was watching him so that he will not go outside.

Q: Why do you say you were watching him so that he would not anymore go out?

A: Because he was warned by [accused-appellant Cesar Givera] that if he goes outside, he will kill my father.

Q: At that time and place while you were watching your father, what else happened if any?

. . . .

A: [O]ur house was being stoned.

Q: Who was stoning your house? Could you tell us who was throwing stones to your house?

. . . .

COURT:

She mentioned that because her father was not coming out of the house, the accused started stoning the house.

Q: Who was stoning your house?

A: Cesar Givera, sir.

Q: Was he alone at that time?

A: They were in a group, sir, but he was the only one stoning the house. And the other one, who was already arrested, by the name of Onying went inside the house.

Q: You said a while ago that there was somebody with Cesar who went to your house, could you recall that somebody?

A: Onying [Epifanio Gayon], sir.

Q: You said he was already "nakakulong"?

A: Yes, sir.

Q: Now, what happened after this person Cesar and the other one Onying went inside the house?

A: Onying asked my father to go out of the house while Cesar was stoning the house. Onying led my father out of the house, and when they were already outside, Cesar was waiting for them. Then Cesar scampered away and my father followed him. Cesar caused my father to run after him until they reached the place where there was another person, and that person stabbed my father.

Q: So how many persons in all have you seen?

A: They were four in all, sir.

. . . .

Q: What did these 4 persons do when her father was with them if any?

. . . .

A: Cesar was stoning the house. Then Onying got my father from the house. Turing [Arturo Gayon] told the other one to stab my father while the one who stabbed my father was waiting under the bridge.

. . . .

Q: What happened to your father after you said he was stabbed or mauled?

A: After he was stabbed, the person who stabbed him ran away, sir.

On cross-examination, Milagros Gardon said: ^[6]

Q: Who else were with you at that time?

A: My brother and sister, sir.

Q: They were Laura Gardon and Leonardo Gardon, correct?

A: Yes, sir.

Q: And your father inside the house because he was already resting after having been from a drinking spree, correct?

A: Yes, sir.

. . . .

Q: And you were watching TV at that time, correct?

A: Yes, sir.

Q: And then suddenly you heard stones being thrown on the roof of your house, is that correct?

A: Yes, sir.

. . . .

Q: This Onying [Epifanio Gayon] suddenly entered your house, correct?

A: Yes, sir.

Q: He was alone when he entered your house, correct?

A: Yes, sir.

Q: How did he effect his entrance in your house?

A: He went inside directly, sir.

. . . .

Q: At that time were you in a position so as to see him actually effect his entrance through the front door?

A: Yes, sir.

Q: Why? Where were you at that time?

A: I was in the sala, sir.

Q: You were in the sala right next to your father, is that correct?

A: Yes, sir.

Q: And likewise with your two other companions Laura and Leonardo, they were situated right near to your father, correct?

A: Yes, sir.

. . . .

Q: Now, when this Onying entered the house, did he call out the name of your father if you can remember?

A: Yes, sir.

Q: And your father, did he give any response thereto?

A: Yes, sir.

Q: What was his response if any?

A: He asked Onying if he need anything. And Onying asked

him to go out with him.

. . . .

Q: And your father stood up and joined Onying in going out of the house?

A: Yes, sir.

. . . .

Q: Then you together with your two other companions got back to watching the television show is that correct?

A: No, sir.

Q: But you stayed inside the house, you and your two other companions?

A: No, sir.

Q: Now, thereafter you heard stones thrown again towards your house, is that correct?

A: Yes, sir.

Q: But just the same, you did not peep out through any opening of your house for safety?

A: We were already outside when they were stoning the house. We followed him outside.

. . . .

Q: Was Onying also hit by any of those stones?

A: No, sir. Only my father and my sister.

Q: What is the name of that sister of yours who was also hit?

A: Laura Gardon, sir.

. . . .

Q: And where was Laura hit?

A: At her left shoulder, sir.

Q: And how many stones if you know hit Laura?

A: Only one, sir, because while they were stoning they were running away.

Q: Who were these people running away?

A: Onying and Cesar, sir.

Q: Are you saying that Onying also stoned your father?

A: No, sir.

Q: Because he was right next by your father at that time, that is why he was not at all stoning your father, correct?

A: He was boxing him.

. . . .