

THIRD DIVISION

[G.R. No. 130643, January 16, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NESTOR SEDUCO, ACCUSED-APPELLANT.**

D E C I S I O N

VITUG, J.:

Two criminal indictments were filed against Roberto Millamina, Juan Sasi, John Sasi and Nestor Seduco for the crime of murder and attempted murder, viz:

"Criminal Case No. 46363:

"`The Provincial Prosecutor of Iloilo, through the undersigned accuses ROBERTO MILLAMINA alias `Pakit,' JUAN SASI, JOHN SASI and NESTOR SEDUCO of the crime of Murder, committed as follows:

"That on or about March 23, 1996, in the Municipality of San Joaquin, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with firearm of unknown caliber and bolos, with deliberate intent and decided purpose to kill, conspiring, confederating and mutually helping one another, with treachery, taking advantage of superior strength, with insult or in disregard of respect due to the offended party, on account of his rank, being a member of Sangguniang Bayan of the Municipality of San Joaquin, Province of Iloilo, such fact being known to all of the accused, did then and there willfully, unlawfully and feloniously attack, assault, shoot and hack NOE A. SELIBIO, with the mentioned weapons accused were then provided that time inflicting gunshot wounds and hacked wounds on said Noe A. Selibio which caused his death thereafter.'

"Criminal Case No. 46364:

"`The Provincial Prosecutor of Iloilo, through the undersigned accuses ROBERTO MILLAMINA alias `Pakit,' JUAN SASI, JOHN SASI and NESTOR SEDUCO of the crime of Attempted Murder, committed as follows:

"That on or about March 23, 1996, in the Municipality of San Joaquin, Province of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with firearm of unknown caliber and bolos, with deliberate intent and decided purpose to kill, conspiring, confederating and mutually helping one another, with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot DAVID M. SELIBIO with the mentioned weapons accused were then provided at that time, thus commencing the commission of a crime of murder directly by overt

acts but did not perform all the acts of execution which should produce the offense of Murder by reason of some cause or accident other than the accused spontaneous desistance."^[1]

Nestor Seduco surrendered to the authorities. He entered a plea of "not guilty" when arraigned. The three other accused remained at large.

The case for the prosecution. -

On 23 March 1996, around seven o'clock in the morning, David Selibio, a member of the Sangguniang Bayan, was at Barangay Igdagmay, San Joaquin, Iloilo, together with Noe Selibio and Rommel Española, to attend the town *fiesta* on the invitation of the Barangay Captain. While walking along a pathway in the hilly part of the barangay, they were suddenly shot at. At a distance of about eight meters, accused Roberto Millamina, firing a homemade shotgun, shot and hit Noe Selibio. David Selibio who was about two meters away from Noe instinctively "jumped over a slope." He could see from where he sought cover Juan Sasi, Nestor Seduco, and John Sasi, armed with bolos and shotguns, surge in and strike Noe with their bolos. David fled from the scene and proceeded to the house of the Barangay Captain. He, together with his cousins, went back to the ambush-site and brought Noe, now severely wounded, to the hospital. On their way, Noe uttered, "*Daw mapatay ako*" (I'm about to die), adding, when asked, that Roberto had shot him while Juan, John and Nestor delivered hacking blows on him. Noe did not make it to the hospital alive.

Rodolfo Monserrate, Jr., was in the house of Barangay Captain Selibio of Igdagmay, San Joaquin, Iloilo, at about seven o'clock in the morning of 23 March 1996 when he saw the malefactors suddenly appear from the rice paddy rushing towards Noe Selibio and David Selibio. From a distance of about fifty to sixty meters, he saw Roberto Millamina fire a shot at Noe Selibio. When Noe fell, John Sasi and Nestor Seduco rushed in to finish Noe.

Dr. Tito Doromal conducted an autopsy on the body of Noe and testified that the hack wounds inflicted on the victim were not as fatal as the pellet wounds he took.

The family of the deceased incurred P8,000.00 for the services of the funeral parlor and P500.00 for church services.

The case for the defense. -

The defense had its own version of the incident.

"In the evening of March 22, 1996, accused Nestor Seduco and his wife Grace Seduco were sleeping at their house, at Barangay Lanka, a mountainous barangay of San Joaquin, Iloilo some 21 kilometers away from the town proper;

"At about 4:30 o'clock in the morning of March 23, 1996, they were awoken by Rene Sasi informing them that Albert Millamina cousin of accused Roberto Millamina and Tomas Sasi cousin of accused Juan Sasi, were killed in the eve of the fiesta of Brgy. Igdagmay, San Joaquin, Iloilo, some twelve (12) kilometers away from Bgy. Langka, San Joaquin, Iloilo;

"As member of the peace maker of San Joaquin, Iloilo, accused Nestor Seduco decided to go to Brgy. Igdagmay, San Joaquin, Iloilo in order to verify what had really happened;

"Accused reached Brgy. Igdagmay, San Joaquin, Iloilo at about 7:00 o'clock in the morning, climbing up and running down the hills and mountains;

"Upon reaching a higher hill, he saw downhill, four persons walking which he later identified as Noe Selibio, David Selibio, Pablo Sambayan and their daughter, walking towards barangay proper of Brgy. Igdagmay, San Joaquin, Iloilo; Suddenly, there were two (2) armed persons who were later identified as Noberto Millamina also known as Roberto Millamina alias `Pakit' and Juan Sasi appeared in front of the four (Taberna, August 22, 1992, pp. 5-9);

"Then, Noe Selibio and David Selibio were told by Roberto Millamina and Juan Sasi to stop while Pablo Sambayan later joined by his wife Concepcion Sambayan and their daughter were allowed to go;

"Noe Selibio and David Selibio were interrogated by Roberto Millamina and Juan Sasi about the death of Albert Millamina and Tomas Sasi that happened in the eve of the fiesta. During the interrogation Juan Sasi and Roberto Millamina were aiming their guns at Noe and David Selibio;

"They were likewise asked about their identities and after it was ascertained that Noe Selibio was the person they were looking for, Roberto Millamina alias `Pakit' squeezed the trigger of his gun (homemade shotgun) aiming at Noe Selibio, however the gun did not fire; Noe Selibio was about to move away raising his arms, however Juan Sasi shot him and Noe Selibio was hit in his chest and he fell to the ground. Roberto Millamina alias `Pakit' (a disabled with small arm and shoulder) cocked again his homemade shotgun but still, it did not fire; then he put his gun to the ground held the victim Noe Selibio by the neck got his bolo and hacked Noe Selibio on his neck and other parts of his body; Juan Sasi was just on guard watching Roberto Millamina hacking Noe Selibio because Noe Selibio was fatally wounded;

"During the interrogation, accused Nestor Seduco was already clapping his hands as warning, in order that the two will not harm David and Noe Selibio, however despite his shout and warning Juan Sasi shot Noe Selibio and Roberto Millamina hacked Noe Selibio;

"Thus accused Nestor Seduco ran towards the two (2) in order to stop Roberto Millamina from further hacking Noe Selibio, however they did not heed him, consequently, he ran towards the barangay proper and shouted to other people to hide because he could no longer prevent the two (2) Roberto Millamina and Juan Sasi;

"Thereafter, the assailants went to the barangay proper of Brgy. Igdagmay following Nestor Seduco; after they left the place, the body of

Noe Selibio was brought to the hospital and later was pronounced dead, accused Nestor Seduco on the other hand went home at Brgy. Lanka, San Joaquin, Iloilo;

"In the afternoon of March 23, 1996, accused Nestor Seduco learned that news spreading in the town of San Joaquin, Iloilo, that he was responsible in killing Noe Selibio, thus he went to the town in order to clear his side; however on his way to the town somewhere at Brgy. Siwaragan, San Joaquin, Iloilo he met the policemen of San Joaquin, Iloilo and was invited to go to the police station where he was detained (Tabud, August 26, 1996, pp. 1-2)."^[2]

After a protracted trial, the trial court rendered a decision finding accused Nestor Seduco guilty beyond reasonable doubt of murder; it concluded:

"WHEREFORE, premises considered and in the light of the facts obtaining and the jurisprudence aforesaid, judgment is hereby rendered finding the accused Nestor Seduco **GUILTY BEYOND REASONABLE DOUBT** of the crime of Murder in Criminal Case No. 46363 hereby sentencing the aforesaid accused to a penalty of **RECLUSION PERPETUA** and further condemning said accused to indemnify the heirs of the deceased Noe Selibio the sum of P8,500.00 actual damages and P50,000.00 as death compensation. The same accused, Nestor Seduco, is hereby acquitted in Criminal Case No. 46364 for Attempted Murder for failure of the prosecution to prove his guilt beyond reasonable doubt.

"The accused Nestor Seduco, who is presently detained, is entitled to full credit of his preventive suspension. Issue an alias order of arrest for the other accused Roberto Millamina, Juan Sasi and John Sasi who remained at-large up to the present time. The Warden of the Iloilo Rehabilitation Center is ordered to remit the person of the accused Nestor Seduco to the National Penitentiary at the earliest opportunity."^[3]

An appeal was timely interposed to this Court; accused-appellant contended in his appeal brief that -

"1. The trial court erred in finding that accused Nestor Seduco is liable of the crime charged because his bare denial is weak and becomes weaker by the positive identification of the prosecution eyewitnesses, despite the fact that the testimonies of the purported eyewitness are grossly and materially inconsistent and presented just to implicate accused Nestor Seduco to the crime because the real perpetrators Roberto Millamina and Juan Sasi are at large;

"2. The trial court erred in finding that accused Nestor Seduco participated in killing the victim Noe Selibio despite the fact that accused even attempted to stop Juan Sasi and Roberto Millamina from firing and hacking the victim Noe Selibio;

"3. Granting arguendo that accused Nestor Seduco participated in killing the victim Noe Selibio, the trial court erred in not finding that accused is merely an accomplice."^[4]

The appeal is bereft of merit.

Accused-appellant was positively identified by witnesses David Selibio and Rodolfo Monserrate, Jr., to have been one of the assailants of Noe Selibio. The two eyewitnesses, whose testimony was unblemished by major flaws, categorically pointed to accused-appellant Nestor Seduco as having delivered hacking blows on Noe Selibio. No ill motive on the part of the eyewitnesses was shown that would have impelled them to implicate accused-appellant.

David Selibio testified:

"Q Please tell us what was that unusual thing that happened?

"A We were way laid by four (4) persons.

"Q And do you know these four (4) persons who way laid you?

"A Yes, Sir. They were Norberto Millamina, alias Paquit, Juan Sasi, Nestor Seduco and John Sasi.

"Q Why do you know these four (4) persons?

"A I knew them when the incident happened?

"Q Is this Millamena in the Courtroom?

"A No Sir.

"Q How about Juan Sasi?

"A No Sir.

"Q What about Jun Sasi?

"A No Sir.

"Q Who is inside the Courtroom?

"A Nestor Seduco.

"Q Can you identify Nestor Seduco?

"A Yes, Your Honor. (witness stepped down in the witness stand and went to the accused bench pointing to a person who when asked what his name was, he answered he is Nestor Seduco).

"x x x x x x x x

Q After Norberto Millamena shot Noe Selibio, what happened?