

SECOND DIVISION

[G.R. No. 115006, March 18, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GREGORIO MARCOS @ JUNIOR, 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 of Santiago, Isabela (Branch 21), finding accused-appellant guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua* and to pay the complainant the amount of P55,000.00 as damages (P30,000.00 as indemnity for death and P25,000.00 for funeral expenses).

The information against accused-appellant alleged:

That on or about the 30th day of March, 1988, in the municipality of Ramon, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused together with John Does whose real identities are still to be determined, conspiring, confederating together and helping one another, with treachery and use of superior strength, did then and there wilfully, unlawfully and feloniously, with intent to kill suddenly and unexpectedly and without giving him a chance to defend himself, assault, attack and stab with a sharp pointed instrument one Vicente Reyes inflicting upon him a stab wound on the mid-epigastic region, inside, upward, reaching the right portion of the heart which directly caused his death due to internal hemorrhage.^[2]

The crime took place in the early evening of March 30, 1988 in the public Market at Barangay Oscariz in Ramon, Isabela.

The prosecution presented as an eyewitness Petronilo Jacinto, a farmer and long-time resident (31 years) of the barangay. He testified that the deceased Vicente "Boyet" Reyes was his close friend (*barkada*) and that on the said evening he and the deceased had some drinks with other friends (Rodring Nabong, Mario Mansayac, Mael Vinoya) in his house. According to Petronilo Jacinto, he left the group for a while to buy some ice at Mely's Canteen^[3] at the public market, about 20 meters from his house. Unknown to him, the deceased followed him. While he was at Mely's Canteen, he heard a commotion and the sound of breaking glass inside Geronima Barbero's restaurant and so went there and saw the deceased. He was seated alone at a table having beer. At another table were five men who were likewise drinking beer. In a while, an acquaintance, a certain Mamer, came by and they greeted each other. When he looked again inside the restaurant, he saw accused-appellant and two others holding the deceased as the latter was being stabbed. Petronilo said that he saw accused-appellant holding the deceased by the right hand for about 20

seconds. It is not clear from Jacinto's testimony how many persons stabbed Vicente Reyes. In his sworn statement (Exh. B),^[4] he stated that only one of the five stabbed the deceased. Jacinto said he wanted to help the deceased, but there were five assailants. When the latter fled, Jacinto called Mely Bulatao and others to take the deceased to the hospital. The deceased was taken to the hospital by his sister Wilma. Jacinto then called his friends and they all went after the assailants but lost them near the irrigation canal. Jacinto said he had not seen accused-appellant and the latter's companions before and that the next time he saw accused-appellant again was two years later at the hearing of the case in Ilagan.^[5]

Another witness for the prosecution was Geronima Barbero at whose restaurant the stabbing took place. She testified that at about six in the evening of March 30, 1988, while she was in her restaurant serving beer to four men, the deceased Vicente Reyes arrived. He wanted to buy three bottles of Beer Grande, but Barbero did not give him the beer because he had only P10.00. According to Barbero, the deceased thought the men drinking beer were making fun of him, possibly because of his embarrassment at not being given beer, and so he complained to her. But, Barbero said, she assured him that "they are not saying anything [against you]." One of the four was accused-appellant. She came to know him because earlier she heard accused-appellant asking his *bilas* (brother-in-law) Pedro San Pedro to join them drinking. Barbero personally knew Pedro San Pedro and she was later told by Pedro San Pedro and other people that accused-appellant's name is Gregorio Marcos, alias Junior. But Barbero did not actually see the stabbing. Mely Bulatao had come to invite her to a party, and she told Bulatao to wait for her. Barbero went over to Mely Bulatao's store, three meters from her restaurant. Two minutes after she had left her eatery, she said she saw people rushing out of her place and the deceased Vicente Reyes clutching his stomach, seriously wounded. Barbero said she ran to look for help. People hanging around the market responded. On April 6, 1988, Barbero executed a sworn statement (Exh. C)^[6] regarding the incident where she identified accused-appellant as among the group of men in her eatery at the time of the incident.^[7]

The autopsy report (Exh. E)^[8] on accused-appellant stated:

Autopsy Report

Name - Vicente Ablan Reyes

Age - 28

Address - Oscariz, Ramon, Isabela

C/S - Single

Occupation - Fisherman

Physical Appearance:

about 50 kilos, 5'3" height, cold body w/ slight rigor mortis

External Examination:

Head - no pertinent findings

Neck - no pertinent findings

Upper extremities - no pertinent findings

Chest - no pertinent findings

Abdomen - Penetrating wound on the med epigastric region about 2 inches in the medline right penetrating upward medially to the left

lower extremities - no pertinent findings

External examination

- Note - Head, neck, upper & lower extremities (no incision was made)
- Thoracic abdominal incision was made (y shape incision) showed plenty of black blood clot intra thoracic cavity and black blood fluid more on the lower portion, right lower lung to be punctured (black color w/ cloated blood [illegible])
- Heart - punctured wound in the right ventricle w/ no blood in the right auricle & ventricle, small amount of blood in both left auricle and ventricle.
- Diaphragm - was lacerated on right med portion about 2 inches long
- Abdominal cavity - shows little amount of blood clout & blood fluid in the epigastric region (none with med & hypogastric region)

Cause of Death - Internal hemorrhage (intra thoracic) due to stab wound penetrating the right ventricle.

[Sgd.]

BENITO S. ACOSTA

Resident Physician

Southern Isabela District Hospital

Santiago, Isabela

Medical Officer

His death certificate (Exh. D)^[9] stated he died because of "internal bleeding" caused by "stabbing wound."

The deceased's sister Remedios Lorenzo testified that the deceased was unmarried and had been living with her since he was six years old when their parents died. On that fateful day, March 30, 1988, a child came to their house to inform her about her brother's death. She learned that her cousin, Wilma Aspirin, had taken Vicente Reyes to the hospital in Santiago, Isabela, She spent P25,000.00 for his funeral, but the receipts for the same were burned when a fire occurred at her house.^[10]

On the other hand, accused-appellant interposed the defense of alibi. He testified that, at the time of the commission of the crime, he was in Barangay San Marcos, at the house of Fortunato Domingo; that he had been there since nine in the morning preparing food for the people attending a wake for the child of Domingo. They started serving dinner at five in the afternoon when the people returned from the cemetery in Oscariz. It takes three hours by walking and one hour by tricycle from the house of Fortunato Domingo in Barangay San Marcos to the cemetery in Barangay Oscariz. He denied he saw Pedro San Pedro on March 30, 1988.^[11]

To corroborate accused-appellant's claim, the defense presented Alfredo Domingo. Domingo testified that those who attended the interment finished eating dinner at the house of his cousin Fortunato Domingo at seven in the evening. He and accused-appellant went home together at eight. Their houses are only four meters apart; they have been neighbors since 1984.^[12]

On September 22, 1992, the trial court rendered its decision, finding accused-appellant guilty of murder. The trial court rejected accused-appellant's defense of alibi which it held could not overthrow "the positive identification [of accused-appellant] made by Geronima Barbero and Petronilo Jacinto." It found the killing attended by abuse of superior strength but ruled out treachery because in its view the killing was made in the heat of the moment, after an altercation, and it was not apparent that the method of attack was chosen by the assailants without risk to themselves. The dispositive portion of the trial court's decision reads:

WHEREFORE, in the light of the foregoing considerations the Court finds the accused Gregorio Marcos GUILTY beyond reasonable doubt of the crime of murder and hereby sentences him to a penalty of reclusion perpetua. The accused is also ordered to pay to the complainant Remedios Lorenzo the total amount of Fifty Five Thousand Pesos (P55,000.00) as damages.^[13]

Hence, this appeal. Accused-appellant contends:

THE LOWER COURT ERRED IN NOT FINDING THE EVIDENCE OF THE PROSECUTION INSUFFICIENT TO PROVE THE GUILT OF THE APPELLANT BEYOND REASONABLE DOUBT.^[14]

As already stated, the trial court rejected the defense of alibi of accused-appellant on the ground that he had been positively identified by Petronilo Jacinto and Geronima Barbero.

To be sure, Barbero did not see accused-appellant and his group assault the deceased. She could not, therefore, have "positively identified" accused-appellant as the assailant. Indeed, she only said that accused-appellant and four others took some beer in her restaurant; that the deceased Vicente Reyes must have been embarrassed when Barbero did not give him beer because his money was not enough and took offense at the actions of accused-appellant's group whom he thought was making fun of him; that she later saw Vicente Reyes clutching his stomach obviously in pain and seriously wounded. But she did not see who in the group actually attacked the deceased because she said she had stepped out of her restaurant to go over to Mely Bulatao's canteen. Her testimony alone is insufficient to prove that accused-appellant and his companions conspired to kill the deceased.