

## SECOND DIVISION

[ G.R. No. 118331, May 03, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
RODRIGO AGSUNOD, JR. Y BIBAY, ACCUSED-APPELLANT.**

### D E C I S I O N

#### **QUISUMBING, J.:**

This is an appeal from the decision<sup>[1]</sup> dated September 28, 1994 of the Regional Trial Court of Tuguegarao, Cagayan, Branch 5, in Criminal Case No. 6180 convicting accused-appellant Rodrigo Agsunod, Jr. y Bibay of the crime of Murder attended by the qualifying circumstance of abuse of superior strength, and sentencing him to suffer the penalty of *reclusion perpetua* with the accessory penalties provided under Article 41 of the Revised Penal Code, to pay the heirs of the victim P50,000.00 as indemnity and to pay the costs.

Appellant Rodrigo B. Agsunod, Jr. is a farmer, married, a father of five children, and a resident of Nabbotuan, Solana, Cagayan. At the time of the incident, the victim Rodolfo D. Sebastian, was a municipal councilor, and a resident of Barangay Parog-Parog,<sup>[2]</sup> Solana, which is about a thirty-minutes walk from Nabbotuan. The victim's son, Reymundo<sup>[3]</sup> Sebastian, who witnessed the killing, is a member of Civilian Armed Forces Geographical Unit (CAFGU) attached to the Philippine Army Detachment at Callilliauan,<sup>[4]</sup> Solana.

The facts as found by the Office of the Solicitor-General,<sup>[5]</sup> which we find to be duly supported by the records, are as follows:

"At about 6 o'clock in the evening of July 7, 1992, appellant Rodrigo Agsunod, Jr. and his five (5) companions, who wore fatigue uniforms and were armed with armalite rifles, arrived at the house of Rodolfo Sebastian, a barangay councilman, in Barangay Parug-Parug, Solana, Cagayan. Appellant inquired from Raymundo Sebastian, son of Rodolfo Sebastian and a CAFGU member, as to the whereabouts of his father. After being told that Rodolfo was not around, appellant waited a while. Later, appellant called Raymundo and asked him to accompany them to the house of Ex-Barangay Captain Evaristo Julian which was located nearby. Raymundo was forced to accompany appellant and two (2) of his companions.

Upon arrival at the house of Evaristo Julian, the group entered and found Evaristo taking supper with his family. Appellant asked Evaristo to bring out his guns. Evaristo Julian answered that his firearms were all licensed, that his .38 caliber pistol was in the custody of the PNP of Solana, Cagayan, and that only a .22 caliber rifle was left in his possession. Appellant asked to see the rifle. Evaristo brought it out. Thereupon, the

group left taking with them Evaristo's .22 caliber rifle (TSN, November 10, 1993, p. 6; TSN, November 24, 1993, pp. 4-7).

The group returned to the house of Rodolfo Sebastian. There, they saw Rodolfo Sebastian, who had just arrived, conversing with appellant's three (3) other companions in the yard of his house. Upon seeing appellant and his armed companions, Rodolfo Sebastian rushed towards his house. Instantaneously, appellant fired at Rodolfo Sebastian using Evaristo's .22 caliber rifle. The bullet grazed Rodolfo's chest. Wounded, Rodolfo Sebastian nonetheless tried to reach his house but appellant's companions fired their armalite rifles at him killing Rodolfo Sebastian on the spot. (TSN, November 10, 1993, pp. 6-10; TSN, November 17, 1993, pp. 3-15).

Ten (10) months later, or on May 27, 1993, appellant was arrested in Tuguegarao, Cagayan by operatives of the Philippine Army (PA) Detachment in Calilauan, Solana, Cagayan. Thereupon, appellant was brought to the PA Detachment in Calilauan where he was positively identified by Raymundo Sebastian and Purificacion Sebastian as among the killers of Rodolfo Sebastian. In that confrontation, Raymundo Sebastian and Purificacion Sebastian came to know for the first time that appellant's name was Rodrigo Agsunod, Jr. (TSN, November 17, 1993, p. 6; TSN, April 21, 1994, pp. 6-10)"

Among the assailants, only appellant was identified and arrested. Hence, in an Information dated July 1, 1993, Provincial Prosecutor Alejandro A. Pulido III charged Rodrigo B. Agsunod, Jr. with the crime of Murder, committed as follows:

"That on or about July 7, 1992, in the Municipality of Solana, Cagayan, and within the jurisdiction of this Honorable Court, the said accused Rodrigo Agsunod, Jr. y Bibay, together with several John Does, who were not identified, armed with guns, conspiring together and helping one another, with intent to kill, with evident premeditation, with treachery, taking advantage of superior strength, and with the aid of armed men, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one, Rodolfo Sebastian, inflicting upon him several gunshot wounds on the different parts of his body which caused his death.

Contrary to law."

Arraigned on October 20, 1993, appellant, duly assisted by counsel *de officio* Atty. Antonio N. Laggui, entered a plea of NOT GUILTY. Trial on the merits ensued.

The prosecution presented three (3) witnesses: (1) Purificacion Sebastian, the wife of the victim, and (2) Reymundo Sebastian, the son of the victim, who both witnessed the killing, and (3) Evaristo Julian, the former barangay captain, who corroborated the testimonies of the eyewitnesses as to the events leading to the killing.

On December 17, 1993, appellant, through counsel, filed a Motion for Leave to file Demurrer to Evidence, which was granted. The Demurrer<sup>[6]</sup> alleged that that the prosecution failed to prove conspiracy; that the shooting of the victim by the

accused is doubtful; and that there was no proof of cause of death of the victim nor was there a police report of the incident, hence accused was entitled to an acquittal. The prosecution duly filed its Opposition to the Demurrer. In the meantime, on February 9, 1994, Atty. Antonio N. Laggui manifested in open court that he was withdrawing as counsel *de officio* on the ground that he and accused could not agree on the theory of the defense, and the court appointed Atty. Raul S. Morales as counsel *de officio* for the accused. Trial continued for the reception of evidence.

The defense presented the following as witnesses: (1) Rodrigo B. Agsunod, Jr., accused-appellant himself, who claimed that he was at home "resting" on the night of July 7, 1992;<sup>[7]</sup> (2) Angelito Dieza, who testified that he had a drinking session with appellant until around 5:00 o'clock in the afternoon of July 7, 1992;<sup>[8]</sup> (3) Gloria Agsunod, the wife of appellant, who likewise testified that appellant never left their house on the night of the incident since he was stone drunk at that time;<sup>[9]</sup> (4) Balbina Viernes, who testified that she went to the house of the appellant on the night of the incident where she heard appellant's wife berating him for getting drunk;<sup>[10]</sup> and (5) Fatima Macatuggal, Special Investigator of the Commission of Human Rights, who testified that their office conducted an investigation in connection with the death of the victim but later archived the case because the perpetrators were allegedly unidentified members of the New People's Army.<sup>[11]</sup>

On September 28, 1994, the trial court rendered a decision<sup>[12]</sup> finding accused Rodrigo B. Agsunod, Jr., guilty as charged. The trial court found that conspiracy existed among the appellant and the other John Does, and that the killing was attended by abuse of superior strength which qualified the killing to murder. Finding no mitigating or generic aggravating circumstances, the trial court imposed the penalty of *reclusion perpetua*. The dispositive portion of the decision states:

"WHEREFORE, the court finds accused Rodrigo Agsunod, Jr. y Bibay guilty beyond reasonable doubt of the crime of Murder and sentences him to suffer the penalty of *Reclusion Perpetua* together with the accessory penalties provided for in Art. 41 of the Revised Penal Code and to pay the heirs of Rodolfo Sebastian a civil indemnity of Fifty Thousand (P50,000.00) Pesos and to pay the cost."

On October 4, 1994, appellant filed a Notice of Appeal<sup>[13]</sup> from the aforesaid decision. Appellant claims that the trial court gravely erred in:

- I. ... CONVICTING ACCUSED-APPELLANT OF MURDER DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.
- II. ... GIVING FULL WEIGHT AND CREDENCE TO THE CONFLICTING, UNBELIEVABLE, IMPROBABLE, AND INCONSISTENT TESTIMONIES OF THE PROSECUTION WITNESSES.

The resolution of this appeal hinges on the determination of credibility of the testimonies of the prosecution witnesses. Appellant contends that a careful perusal of the testimonies of the prosecution witnesses would show these are not only tainted with glaring inconsistencies but are likewise unbelievable and improbable, *viz*:

(1) Reymundo Sebastian testified that when appellant went to their house, he was carrying an armalite. Appellant argues that he could not have carried the armalite, and fire at the victim with the "borrowed" .22 cal. rifle.

(2) Purificacion Sebastian could not have identified the type of weapon used in shooting her husband since she did not have any military background;

(3) Evaristo Julian testified that appellant's group held hostage his grandchild, but Reymundo Sebastian never mentioned such fact in his testimony.

(4) While the Death Certificate of Rodolfo Sebastian was presented in evidence, appellant contends that this merely proved the fact of death, not the cause of death of the victim.

(5) While the incident occurred on July 7, 1992, the investigation was conducted only on May 31, 1993. The suspicious delay in reporting the incident to the authorities showed that the prosecution had no concrete evidence against appellant, who was merely a fall guy.

The inconsistencies alleged by appellant appear to be more imagined than real.

First, a review of the testimony of Reymundo Sebastian does not disclose that appellant was carrying an armalite rifle when he shot the victim with the .22 cal. rifle of Evaristo Julian. It was actually the companions of appellant who were carrying the armalite rifles. Purificacion Sebastian corroborated Reymundo's observation that appellant was armed with a .22 cal. rifle while the other five companions of appellant were armed with armalite rifles.<sup>[14]</sup>

Second, Purificacion Sebastian already explained that she was familiar with firearms because military soldiers often dropped by their house.<sup>[15]</sup>

Third, Evaristo Julian's testimony regarding the holding of his grandchild as hostage by appellant and his companions had no bearing on the killing of the victim, but in fact showed that Evaristo was coerced by appellant to hand over his .22 cal. rifle.

Fourth, the Certificate of Death of Rodolfo D. Sebastian<sup>[16]</sup> indicates the cause of death as "shock, multiple gunshot wounds on the body" which is consistent with the testimonies of the prosecution witnesses and the circumstances attending the killing of the victim. In this case, the *corpus delicti* was duly proven. *Corpus delicti* means the fact of a specific injury or loss sustained; and in murder, the fact of death is the *corpus delicti*.<sup>[17]</sup> *Corpus delicti* is the fact of the commission of the crime which may be proved by the testimony of eyewitnesses who saw it.<sup>[18]</sup> It has even been held that "[i]n a case of murder or homicide, it is not necessary to recover the body or to show where it can be found. There are cases like death at sea, where the finding or recovery of the body is impossible. It is enough that the death and the criminal agency causing it be proven,<sup>[19]</sup> to satisfy the requirement of *corpus delicti*.

Fifth, the delay in reporting the incident could be explained by the fact that accused and his companions were total strangers to the prosecution witnesses, who could not give out the names of the assailants, but only describe them. Delay in revealing

the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where such witness gives a sufficient explanation.<sup>[20]</sup>

Both Purificacion and Reymundo maintained that although they did not know the names of the suspects, they could readily identify them if they saw them again.<sup>[21]</sup> Knowing the identity of an accused is different from knowing his name. Hence, the positive identification of the malefactors should not be disregarded just because the name of the appellant was supplied to the eyewitness after the former was identified at the police station. For the weight of the eyewitness account is premised on the fact that the said witness saw the accused commit the crime, and not because he or she knew their names.<sup>[22]</sup>

Besides, no strong ill-motive was attributed to the prosecution witnesses to make this Court conclude that they wanted to have the wrong men callously sent to jail merely to avenge the killing of a loved one.

Lastly, Reymundo Sebastian testified in a categorical and straightforward manner as to the events leading to the death of his father. We quote: <sup>[23]</sup>

Q: (Prosecutor Sagucio) Do you recall where were you on the night of July 7, 1992?

A: Yes, sir.

Q: Where were you?

A: I was then in our house, sir.

x x x

Q: What were you doing in your house?

A: On the night of July 7 I was then actually repairing our radio, sir.

Q: When you were then repairing your radio in your house, do you recall if there is any unusual incident that transpired?

A: There is, sir.

Q: Will you tell this honorable court what was that event all about?

A: On the night of July 7, 1992, Rodrigo Agsunod and companions arrived in our house, sir.

Q: About what time when Rodrigo Agsunod and his companions arrived in your house?

A: Around 6:00 o'clock, sir.

Q: And how many were they including Rodrigo Agsunod?