

SECOND DIVISION

[G.R. No. 121764, September 09, 1999]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAUL H. SESBREÑO, ACCUSED-APPELLANT.

DECISION

QUISUMBING, J.:

On appeal is the decision dated August 15, 1995, of the Regional Trial Court, of Cebu City, Branch 18, in Criminal Case No. CBU-31733, finding herein appellant, Raul H. Sesbreño, guilty of the crime of murder and sentencing him to *reclusion perpetua*, for the death of one Luciano Amparado.

Appellant has been a practicing lawyer for over thirty (30) years. Admitted to the Bar on March 17, 1966,^[1] he has achieved prominence in Cebu. The victim, Luciano Amparado, was a porter of William Lines, Inc., a shipping company also based in Cebu.

On June 9, 1993, the Regional Director of the National Bureau of Investigation (NBI), Region 7, filed a complaint against Sesbreño. Taking into consideration the gravity and other circumstances of the offense, City Prosecutor Jufelinito R. Pareja created a committee of three assistant prosecutors to conduct the preliminary investigation.^[2]

On September 2, 1993, the committee charged Sesbreño with murder, allegedly committed as follows:

“That on or about the 3rd day of June 1993, at about 1:00 o’clock early dawn, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a firearm, with treachery and evident premeditation, with deliberate intent to kill, did then and there attack, assault, and shot one Luciano Amparado, hitting him at the vital parts of his body, thereby causing upon him the following physical injuries, to wit:

“SHOCK SECONDARY TO GUNSHOT WOUND OF THE CHEST, POSTERO-LATERAL ASPECT, RIGHT SIDE,”

as a consequence of which said Luciano Amparado died few hours thereafter.

“CONTRARY TO LAW.”^[3]

No bail was recommended. On September 2, 1993, appellant was arrested.

On September 3, 1993, the very day that the case was raffled to the trial court, appellant filed a Motion To Quash Warrant of Arrest And/Or to Grant Bail. The motion was treated as urgent and immediately set for hearing the next day. But the hearing did not push through due to the fact that it was Saturday, and there was no prosecutor available. The hearing on the bail application was then reset to September 6, 1993.^[4]

Subsequently, the prosecution filed an Opposition to the Urgent Application for Bail. It prayed the accused's application for bail be denied after a summary hearing; or, alternatively, the application be considered during the regular trial, after the arraignment of the accused.

The prosecution presented both testimonial and documentary evidence in connection with the said Opposition. Later, the trial court denied the application for bail in a Resolution dated December 28, 1993. It reads in part:

"After a careful analysis of the evidence adduced by the prosecution, the Court is of the well-considered view and so holds that the evidence against the accused is strong. As such the accused has lost his constitutional right to bail for it was determined after hearing that the evidence of guilt against him is strong. To forfeit the constitutional right to bail in capital offenses, it is enough that the evidence of guilt is strong (Pareja v. Hon. Amador E. Gomez, G.R. No. L-19733, July 31, 1962). The prosecution witnesses in the case at bar positively identified the herein accused as the author of the crime charged and that the weapon used in perpetrating the offense is the same as that owned by the accused as could be gleaned from their testimonies and more particularly that of the ballisticsian."^[5]

Before appellant could be arraigned, he dispensed with the services of his counsel.

Upon arraignment, appellant, acting as his own counsel, entered a plea of "not guilty" to the charge in CBU No. 31733 for Murder.

Trial on the merits ensued. Pursuant to Sec. 5, Rule 114 of the 1985 Rules on Criminal Procedure, the evidence presented at the bail hearings was automatically reproduced at the trial.

As summarized by the trial court the prosecution's version of the case is as follows:

"...Prosecution witness Christopher Yapchangco declared that while he and Luciano Amparado were walking along Almaciga St. (Exh. "L-2"), they saw Atty. Raul H. Sesbreño at the balcony of his house which was well-lighted (Exh. "L-1"). They passed by and as they walked along Almaciga St. at a distance of around 5 meters, more or less, from the gate of Atty. Raul H. Sesbreño, they heard the screeching sound of a gate coming from their back. Immediately, he turned his head towards his back and saw Atty. Raul H. Sesbreño standing in the middle of Almaciga St. in front of his gate and aiming his long firearm towards them. From where Atty. Sesbreño stood to the place of Christopher Yapchangco and Luciano Amparado were, there was nothing that could obstruct their view. Atty. Sesbreño first fired 2 shots and he continued to fire at them.

Luciano Amparado was hit and asked that he be brought to the hospital. There was no other person who shot except Atty. Sesbreño (TSN, Cabatingan, 9/27/93). Another Prosecution witness Rizaldy Rabanes testified that from his house to the house of Atty. Sesbreño, there was nothing that could obstruct the view (TSN, page 12, Arnaez, 9/29/93). At about 1:00 o'clock dawn on June 3, 1993, he heard two (2) shots. He saw two (2) persons running towards his house. He then saw Atty. Raul Sesbreño standing at the middle of Almaciga Street fronting his gate and aiming his firearm and firing in succession at the two (2) persons whom he recognized as Christopher Yapchangco and Luciano Amparado. Yapchangco was running in a zigzag manner on the right side of Almaciga St. while Luciano Amparado was running in the same manner on the left side of the road. His house was hit by a bullet and his child was almost hit. Later, Christopher Yapchangco helped the wounded Luciano Amparado by carrying him on his shoulder. While Yapchangco was carrying Luciano Amparado, he saw Erwin Parune and Demeter Encina following them and helped Yapchangco by holding the feet of Luciano Amparado..."[6]

The principal defense of the accused is outright denial. He alleged that while he was present at the place and time of the incident in question, it was not he who shot the victim but an unidentified person. His version of the incident was summarized by the trial court as follows:

"...[O]n June 3, 1993 at past midnight he heard noises coming from the store of his wife. He roused from bed and peeped through the window overlooking the store. He saw that the door of his wife's store was already forced open and three persons jumped down over the fence from the store carrying bags loaded with stolen items. Outside the premises of his house by the roadside right in front of the store, he saw Luciano Amparado and Christopher Yapchangco obviously acting as look out (sic). He went down bringing along a sharp Samurai sword which was the only weapon available in his possession at that time as his .38 cal. Revolver was left in his office. He opened the gate of his house to confront the robbers and shouted at them to return the stolen goods by saying: "Hoy, iuli nang inyong kinawat." Three of the robbers who turned out to be Erwin Parune, Demeter Encina and Juanito Tanghian started to run towards Lutao-lutao when Luciano Amparado told them to run away by saying "SIBAT". He attempted to block the three but Luciano Amparado shouted to him, saying : "Ayaw na sila babagi. Dugay na baya ming nagdumot batok nimo kay nagpasaka ka ug mga kaso batok kanamo". Then Luciano Amparado shot him twice using a .22 caliber pistol. He was not hit. The third time that Luciano squeezed the trigger, the pistol did not fire. He surmised that Luciano must have ran out of bullets or that his pistol jammed. He was not hit because he ducked down to the ground behind the trunk of a decorative palm tree. Seeing Luciano Amparado forcing open his gun, he stood up but Christopher Yapchangco shot him with an Indian Pana. He ducked down again. He saw Luciano Amparado and Christopher Yapchangco walked (sic) fast towards Lutao-lutao. The companions of the two, namely, Erwin Parune, Demeter Encina, Juanito Tangihan, Boy Rabanes and others threw stones at him but failed to hit him because he ducked down on the same spot where he ducked down

when Luciano Amparado shot him with a .22 cal. pistol. At the corner of Tugas-Alamaciga Streets an unidentified person with a companion shouted: "Hoy, aya ni iapil ug bato kay wal miy labot", followed by the word "Ayay". The said unidentified person who was standing at the elevated portion of the gutter of corner Almaciga-Tugas Streets who was taller than Luciano Amparado, shot Luciano Amparado two times xxx hitting him on the right side below the armpit."^[7]

After the parties had rested their respective case, the trial court rendered the assailed judgment, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the accused, Raul H. Sesbreño, guilty beyond reasonable doubt, as principal, for the crime of Murder, defined and penalized by Article 248 of the Revised Penal Code, and sentences him to suffer the penalty of RECLUSION PERPETUA, with the inherent accessory penalties provided by law; to indemnify the heirs of the deceased, Luciano Amparado, in the amount of P50,000.00; and to pay the costs.

"SO ORDERED."^[8]

Before us, appellant raises now the following assignment of errors:

1. THE TRIAL COURT GROSSLY ERRED IN NOT FOLLOWING THE PROCEDURE FOR RAFFLE OF CASES PER SECTION 7, RULE 22, RULES OF COURT.
2. THE TRIAL COURT GROSSLY ERRED WHEN HON. ARRIESGADO REFUSED TO DISQUALIFY HIMSELF FROM TRYING THIS CASE WHILE, IN COMPARISON, HE INHIBITED HIMSELF IN TRYING OR HEARING THE COMPANION CASE, CBU-31734.
3. THE TRIAL COURT GROSSLY ERRED IN DISREGARDING OR IGNORING EVIDENCES OF SUBSTANCE AND IMPORTANCE WHICH, IF CONSIDERED, WOULD ALTER THE RESULTS OR DECISION IN THIS CASE.
4. THE TRIAL COURT ERRED IN RELYING ON SPECULATIONS, SURMISES OR CONJECTURES IN ARRIVING AT ITS CONCLUSIONS WHICH ARE CONTRADICTED BY THE EVIDENCE ON RECORD.
5. THE TRIAL COURT ERRED IN FAILING OR REFUSING TO CONSIDER THE REASONS OF THE ACCUSED-APPELLANT THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND THE SHADOW OF A SINGLE DOUBT OR FAILED TO TRAVERSE THE CONSTITUTIONAL AND STATUTORY PRESUMPTION OF INNOCENCE OF

THE ACCUSED.

6. THE TRIAL COURT ERRED IN REFUSING TO RESOLVE THE MOTION TO STRIKE OUT THE TESTIMONY OF MONICA AMPARADO WHICH WAS NOT SUBJECTED TO CROSS-EXAMINATION.
7. THE TRIAL COURT ERRED IN REFUSING TO DISQUALIFY THE PRIVATE PROSECUTORS FROM APPEARING IN THIS CASE DUE TO THE NON-PAYMENT OF FILING FEES FOR CIVIL CLAIMS FOR DAMAGES AND SINCE MONICA AMPARADO DID NOT ENGAGE THE LEGAL SERVICES OF THE PRIVATE PROSECUTORS.
8. THE TRIAL COURT ERRED IN ADMITTING PROSECUTION EVIDENCE NOT PROPERLY IDENTIFIED IN OPEN COURT AND NOT SUBJECTED TO CROSS-EXAMINATION.
9. THE TRIAL COURT GROSSLY ERRED IN NOT APPLYING PAR. 1, SECTION 12, BILL OF RIGHTS, 1987 CONSTITUTION, IN RELATION WITH PAR. 2, SECTION 14, ARTICLE III, CONSTITUTION (ON RIGHT TO BE HEARD "BY HIMSELF AND COUNSEL"), PAR. C, SECTION 1, RULE 115, RULES ON CRIMINAL PROCEDURE (RIGHT TO "DEFEND IN PERSON AND BY COUNSEL AT EVERY STAGE OF THE PROCEEDINGS FROM THE ARRAIGNMENT TO THE PROMULGATION OF THE JUDGMENT"); AND SECTION 7, RULE 116, RULES ON CRIMINAL PROCEDURE.
10. ASSUMING WITHOUT ADMITTING THAT THE PENAL CONVICTION OF THE ACCUSED IS NOT A REVERSIBLE ERROR, STILL, THE TRIAL COURT GROSSLY ERRED IN NOT TAKING INTO ACCOUNT SECTION 19(1), ARTICLE III, CONSTITUTION ABOLISHING THE DEATH PENALTY and IN NOT APPLYING THE JURISPRUDENCE IN PEOPLE vs. ALCANTARA, 163 SCRA 788-789; PEOPLE vs. NOLASCO, 163 SCRA 629-630 AND PEOPLE vs. MABUHAY, 185 SCRA 681.
11. THE TRIAL COURT GROSSLY ERRED IN CONCLUDING THAT TREACHERY AND EVIDENT PREMEDITATION WERE PROVEN BY THE PROSECUTION EVEN IF THERE IS NO EVIDENCE TO SUPPORT SUCH CONCLUSION OR THAT THE SAME WAS BASED ON SPECULATIONS, SURMISES AND CONJECTURES OR ASSUMPTIONS WITHOUT EVIDENTIARY SUPPORT.

In addition, appellant also submits the following for consideration of the Court: