

SECOND DIVISION

[G.R. No. 105961, October 22, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIFICO SUMAOY, JOHN DOE, PETER DOE AND RICHARD DOE,
ACCUSED. PACIFICO SUMAOY, 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 2, Tagum, Davao in Criminal Case No. 7245, finding accused-appellant Pacifico Sumaoy guilty of murder and sentencing him to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of the deceased, Zandro Vargas, in the sum of P30,000.00 and to pay the costs.

Accused-appellant was convicted for the killing on July 9, 1988 of Zandro Vargas, a boy 16 years of age, in Tagum, Davao. Wilbert Vargas, the victim's brother, and Patricio Jacobe, Jr. identified accused-appellant Pacifico Sumaoy as the assailant, together with three others who have remained unidentified and at large.

The prosecution presented four witnesses: Wilbert Vargas, Patricio Jacobe, Jr., Enriqueta Vargas and Dr. Jose Lopez.

Patricio Jacobe, Jr. testified that he worked as a pin boy in a billiard hall on Roxas Street, Tagum, Davao. At 5:45 p.m. of July 9, 1988, he left the billiard hall to have some beer at the Pacing's Carinderia on Sobrecary Street. Afterward, he went back to the billiard hall, passing by the J Spot Carinderia at the corner of Roxas and Sobrecary Streets, where he saw the deceased Zandro Vargas talking to accused-appellant Pacifico Sumaoy. Three other men were with them but Jacobe did not recognize the three.

Upon reaching the billiard hall, Patricio Jacobe, Jr. piled some billiard balls, then went out and stood on the sidewalk. He was startled by the sound of a gunshot. When he turned to find out where the sound came from, he saw Zandro Vargas running towards Roxas Street with his right arm bleeding. Zandro Vargas tried to seek refuge at the Try Me beauty parlor, but he was overtaken by accused-appellant who dragged him towards a waiting tricycle. Accused-appellant had a gun. The accused-appellant and three other men then boarded the tricycle taking Zandro Vargas with them. Jacobe allegedly heard one of accused-appellant's companion say that they were taking Zandro to the hospital. Later that evening Jacobe learned that Zandro was found dead in a kangkong field near the Davao Visayan Village.

The other prosecution witness, Wilbert Vargas, is the brother of the deceased. Wilbert testified that at 6:00 p.m., on July 9, 1988, while he was talking to a friend on Roxas Street near the public market, he was told that his brother Zandro was

being beaten up in a carindaria at the corner of Roxas and Sobrecary Streets. Wilbert immediately proceeded to the J Spot Carindaria. He saw accused-appellant aiming his gun at Zandro as the latter was running away. Accused-appellant shot Zandro Vargas, hitting the latter in the forearm, and causing him to fall on his knees. Zandro Vargas was then dragged by accused-appellant and three unidentified men towards a tricycle. Wilbert Vargas saw his brother loaded onto the tricycle "like a pig," with Zandro's feet hanging out. Wilbert tried to come to the aid of his brother but accused-appellant pointed his gun at him, causing him to run home in fear.

Wilbert Vargas told his parents what had happened to his brother. They searched for Zandro. They went to Mangga, Davao and there learned from Jose Montilla, the driver of the tricycle which accused-appellant Sumaoy and his companions hailed, that Zandro had been killed and that his body had been dumped in a kangkong field in Visayan Village, Tagum, Davao. Wilbert and his parents proceeded to the place indicated and there found Zandro's dead body.

Wilbert Vargas identified Pacifico Sumaoy as one of the assailants. Wilbert testified that he recognized Sumaoy because the latter was assigned to the military detachment in the Diwalwal mining area where Wilbert used to work. Dr. Jose Lopez, Municipal Health Officer of Tagum, who examined the body of Zandro Vargas, issued a death certificate. Under questioning by the prosecutor, Dr. Lopez testified as follows:

Q: You said you placed your findings in the certificate of death, please read the findings, Doctor.

A: (Reading) - "I hereby certify that I have this 10th day of July 1988 performed an autopsy upon the body of the deceased Zandro Rinia Vargas and that the cause of death was as follows: Shock, irreversible, due to gunshot wounds located at (1) right frontal into cranial cavity exiting at right upper occipital; (2) right eyebrow exiting at left lower occipital; (3) left temporal (no exit); (4) right arm lateral going out at medial and going into right axillary into thoracic cavity (no exit)".

Q: Will you explain your findings to us, Doctor?

A: There were four (4) gunshot wounds found on the body of the victim No. 1 was at the right frontal (witness pointing at his middle forehead) going into the cranial cavity going outside (witness pointing at the back of his head); No. 2, at the right eyebrow (witness pointing at the middle of the right eyebrow) going out to the left lower occipital (witness pointing at the back of his head, left side near the ear); No. 3 wound is found at the temporal without exit (witness pointing at the left side of his head, a little above the left ear); and the No. 4 wound is found at the right arm lateral (witness pointing at his right-upper arm, outside) going at medial aspect then same bullet passed into the axillary region into the thoracic cavity, no more exit, the right-upper arm as entrance and exit inside of the right-upper arm and then going into the right chest (witness pointing at the right side of his body just about 3 inches below the armpit).^[2]

Accused-appellant denies participation in the killing of Zandro Vargas. He claims that the whole day of July 9, 1988 he was on duty as an enlisted personnel of the 1103rd Criminal Investigation Services (CIS) in Tagum, Davao. Accused-appellant identified a document signed by Technical Sergeant Ricardo Go called "Duty Detail" showing that accused-appellant was on duty from 8:00 a.m. of July 9, 1988 to 8:00 a.m. of July 10, 1988. Ricardo Go, Technical Sergeant, Philippine Constabulary and Team Leader of the Criminal Investigation service Command, Tagum, Davao, and Patrolman Narciso Vismanos, corroborated the accused-appellant's alibi.

On June 6, 1991, the Regional Trial Court of Tagum, Davao rendered a decision finding accused-appellant guilty of murder qualified by treachery. The trial court noted that accused-appellant Sumaoy shot Zandro while the latter was running away and held that the three bullet wounds sustained by Zandro in the head showed that he was shot while in a helpless and defenseless condition. The trial court appreciated the ordinary aggravating circumstance of taking advantage of public position against accused-appellant Sumaoy.

Accused-appellant Sumaoy has appealed from this decision of the trial court. He contends that the prosecution evidence does not fulfill the test of moral certainty necessary to support a judgment of conviction. He points out that no proof was presented as to the type of weapon used in the shooting of Zandro Vargas, and he challenges the testimony and credibility of witnesses Wilbert Vargas and Patricio Jacobo, Jr.

On the other hand, the Solicitor General, in representation of the prosecution, argues that the circumstances established by the prosecution, when taken together, constitute an unbroken chain leading to the inevitable conclusion that accused-appellant shot and killed Zandro Vargas. While there is no direct evidence showing that it was indeed accused-appellant who shot Zandro in the head, the Solicitor General claims that the testimonies of Wilbert Vargas and Patricio Jacobo that Zandro was last seen alive with accused-appellant and three other men clearly prove that no other person could have shot and killed Zandro Vargas than accused-appellant Pacifico Sumaoy.

We agree with the Solicitor General that the circumstantial evidence in this case establishes beyond reasonable doubt that accused-appellant shot and killed Zandro Vargas. These circumstances, as pointed out by the Solicitor General, are the following:

(a) Zandro was being mauled by appellant and his companions (p. 5, TSN, June 28, 1990);

(b) As Zandro was attempting to run, appellant drew his pistol and shot Zandro (pp. 5-6, Ibid);

(c) Zandro was hit on the arm (p. 6, TSN, Ibid and p. 8 TSN, July 13, 1990);

(d) Zandro fell on his knees (p. 6, TSN, June 28, 1990);

(e) Zandro was dragged towards a motorized pedicab by appellant (p. 6, TSN, June 28, 1990 and p. 8, TSN, July 13, 1990);