331 Phil. 491

THIRD DIVISION

[G.R. No. 118320, October 15, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO CABODOC Y ESTRADA, ACCUSED-APPELLANT.

D E C I S I O N

DAVIDE, JR., J.:

Accused-appellant Rodolfo Cabodoc was tried for the crime of murder in Criminal Case No. 537-91 of the Regional Trial Court of Lipa City, Branch 12, under an information whose accusatory portion reads as follows:

> That on or about the 28th day of May, 1991, at about 4:30 o'clock in the afternoon, at Sitio Mainit, Barangay Pulanbato, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife (balisong), with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said weapon one Randy Pendel y Galang, suddenly and without warning, thereby inflicting upon the latter the following wounds, to wit: 1). 2.5 cm. incised penetrating wound 9th ICS mid-axillary line left directed upward 2). 5 cm. incised wound nipple line perforating the pericardium and left ventricle (6 cm. Length) perforating the left lungs (lower lobe 8 cm. Length), which directly caused his death.[1]

The accused filed a petition for bail and reinvestigation.[2] The motion for investigation was denied on 18 November 1991.[3]

At his arraignment on 20 February 1992, the accused entered a plea of not guilty, and the court forthwith set the case for pre-trial and hearing of the petition for bail.[4] At the hearing of the said petition, the prosecution presented as its witnesses Virgilio Galang; Danilo Matira; PO2 William Perez of the Philippine National Police of San Juan, Batangas; Alejandro Pendel; and Dr. Marilyn Tejada. The prosecution then rested its case for purposes of the petition for bail.

In its order of 31 January 1994,[5] the trial court denied the petition for bail, having found that the evidence of guilt against the accused was strong. At also denied on 7 March 1994[6] the accused's motion to reconsider[7] the order denying the petition for bail.

On 8 March 1994, the prosecution manifested that it would offer no further evidence and moved that it be allowed to adopt the evidence it had presented during the hearing of the petition for bail. Since the defense did not object, the trial court granted the motion. Upon the other hand, the accused, through his *counsel de parte,* Atty. Ernesto Maiquez, offered to change his plea of not guilty to the crime

charged to that of guilty to the lesser offense of homicide. The prosecution objected, and the trial court denied the offer. Thereupon, Atty. Maiquez waived the presentation of evidence on behalf of the accused and rested the case for the defense.[8]

The facts narrated by the witnesses of the prosecution are concisely summarized in the Brief for the Appellee submitted by the Office of the Solicitor General as Follows:

> On May 28, 1991, at about 5:00 a.m., Danilo Matira and victim Randy Pendel went to the house of Lucy Razon at Sitio Mainit, Barangay Pulangbato, San Juan, Batangas to attend a fiesta. There were many people at that house. At about 12:00 noon, appellant arrived and ate at the house of Lucy (TSN, Mar. 8, 1993, pp. 22-25). At about 1:00 p.m., appellant opened his balisong and uttered the words "I will kill him (refering to Randy Pendel)." At that time, appellant was about two (2) arms stretch away from Pendel (TSN, Mar. 8, 1993, pp. 26-27). Matira took the balisong away from appellant. Later, Matira returned the balisong to appellant who then left the place (TSN, March 8, 1993, pp. 27-28).
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> At about 4:30 p.m. of the same day (i.e., May 28, 1991), Virgilio Galang was walking along the road at Sitio Mainit. Galang then saw Pendel walking inside the fence of the house of Renato Samarita. Galang called and invited Pendel to walk with him. At that point, Galang suddenly saw appellant coming from behind Pendel with an open balisong (TSN, Mar. 8, 1993, pp. 4-6). Pendel happened to turn and thus face appellant ("napaharap") (TSN, Mar. 8, 1993, 6, 18). Appellant suddenly stabbed Pendel with his balisong, hitting him (Pendel) on the left side of the chest (TSN, Mar. 8, 1993, p. 6). Pendel stepped backwards with his arms raised until he reached a "santol" tree. Appellant again stabbed Pendel with the balisong, hitting Pendel once more on the left side of the chest (TSN, Mar. 8, 1993, p. 7). As Pendel fell down near the "santol" tree, appellant tried to stab him for the third time. However, appellant's balisong hit the "santol" tree instead which cause it to break. Appellant then ran outside the fence of Samarita and fled to the south, taking with him the handle of his balisong the blade or pointed portion of appellant's balisong was left on the "santol" tree (TSN, Mar. 8, 1993, p. 8). The people on the vicinity shouted that help be extended to Pendel. Pendel was brought to San Juan Emergency Hospital for treatment (TSN, Mar. 8, 1993, p. 9). He was operated on but died during the operation (TSN, Nov. 16, 1993, p. 22).
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> Meanwhile, PO2 William Perez who was then in the house of his brother-in-law, which is about six (6) meters away from the place of the incident, heard the shouts of the people and went to the place of the incident (TSN, July 27, 1993, p. 7). When PO2 Perez reached the placed of the incident, the people pointed to appellant who was then running as the one who stabbed the victim (ibid, p. 6). PO2 Perez arrested appellant. Matira arrived and handed to PO2 Perez a balisong (Exh. "C") and told him that "this is the balisong taken at the scene of the incident" (TSN, July 27, 1993, p. 4).

> Dr. Marilyn M. Umali-Tejada of San Juan District Hospital, San Juan, Batangas, examined the cadaver of the victim and issued a Post-Mortem Examination, the pertinent portion of which reads:
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> Findings:
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> 1. 2.5 cm. incised penetrating wound 9th ICS mid-axillary line left
> directed upward.
> 2. 5 cm. incised wound nipple line perforating the pericardium and left
> ventricle (6 cm. length) perforating the left lungs (lower lobe 8 cm. length).
> 3. Hemothorax 4 liters
> 4. (+) Alcoholic Breath
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> Cause of Death:
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> Cardio Respiratory Arrest Secondary to Fatal Stabbed [sic] Wound" (Exh. "H"; Record, p. 25).[9]

Mr. Alejandro Pendel, father of the victim, testified that in connection with the death of his son, he spent P46,000.00[10] for hospital expenses,[11] funeral and burial expenses, and expenses during the nine-day novena, the 40th day, and the one-year anniversary.[12]

On 14 July 1994, the trial court promulgated a decision dated 14 June 1994[13] whose disposition against the accused reads as follows:

> WHEREFORE, the Court finds the accused, RODOLFO CABODOC y ESTRADA, guilty beyond reasonable doubt, as principal, of the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, with no aggravating nor mitigating circumstance, and sentenced [sic] him to suffer the penalty of RECLUSION PERPETUA and its accessory penalties, to indemnify the heirs of Randy Pendel in the amount of P50,000.00 for his death and to pay the amount of P46,00.00 as actual damages and the costs.

The trial court held that the killing was attended by the qualifying circumstance of treachery because the victim was unarmed and the attack was sudden, unexpected, without warning, and without provocation. It disregarded the qualifying circumstance of evident premeditation, which was also alleged in the information, because the prosecution "failed to show that the accused ha[d] a prior plan to kill Pendel."[14]

The accused in his brief submits the following assignment of errors:

A.

APPELLANT'S CONVICTION IS
NULL AND VOID FOR HAVING BEEN
RENDERED WITHOUT DUE PROCESS OF LAW

B.

THE LOWER COURT ERRED IN FINDING THAT
PROSECUTION SUCCEEDED IN PROVING
BEYOND REASONABLE DOUBT THAT
APPELLANT IS GUILTY OF THE
CRIME CHARGED

C.

ASSUMING THAT A CRIME WAS COMMITTED,
THE LOWER COURT ERRED IN FINDING
THAT THE SAME WAS AGGRAVATED
BY TREACHERY

I

The first assigned error is founded on the claim of the accused that he was not given an opportunity to be heard and to rebut the evidence for the prosecution, and that his previous counsel acted with impropriety when he arbitrarily waived the presentation of evidence for the defense. He then prays that he be granted a new trial to afford him his constitutional right to due process and to prevent a failure of justice.

The kernel issues thus raised are (a) whether the original counsel of the accused was incompetent or otherwise had committed gross negligence in waiving the presentation of the evidence for the defense, and (b) whether such incompetence of gross negligence can be a ground for new trial.

As to the first, the accused has no proof whatsoever of the incompetence of his previous counsel. The transcripts of the stenographic notes of the testimony of the prosecution witnesses show that the counsel for the accused lengthily cross-examined the witnesses to raise doubts on their credibility. As to gross negligence, all that the accused has against his former counsel is the following statement of the trial court in the decision:

> [T]he defense waived the presentation of its evidence. It did not even bother to present and/or offer the exhibits it had marked during the trial and merely submitted its case for decision (page 4, Decision).

These so-called exhibits which the defense had caused to be marked as Exhibits "1," "2," "3," and "4" were Exhibits "A," "B," "E," and "F," respectively,[15] of the prosecution, which the trial court admitted. The defense had them marked as its own during the cross-examination of the witnesses who testified thereon. Therefore, their offer in evidence by the defense was not even necessary. No substantial right of the accused was affected thereby. Presumably, his counsel had deliberately decided not to offer them in evidence as a matter of strategy to avoid being bound by all the contents therein which were in fact unfavorable to the accused, especially Exhibits "A" and "B," which were the sworn statements of witnesses Virgilio Galang and Danilo Matira, respectively, positively identifying the accused as the perpetrator of the crime.

The incompetence or gross negligence of the accused's original counsel cannot be deduced from the latter's decision not to present any evidence on behalf of the accused. In the absence of any evidence to support it, that deduction would be nothing more than an unadulterated speculation. In favor of the said counsel is the presumption that, as an officer of the court, he regularly performs the duties imposed upon him by his oath as a lawyer and by the Code of Professional Responsibility. It must be stressed in this connection that on 8 March 1994, after the prosecution had finally rested its case, the original counsel, without objection on the part of the accused, informed the trial court of the accused's desire to change his plea of not guilty to that of guilty to the lesser offense of homicide. The trial court promulgated its decision only on 14 July 1994. The accused had more than four months to rectify any perceived error of his counsel in waiving the presentation of evidence either by asking leave of court to withdraw the waiver or to secure the services of a new counsel who could take the appropriate action on the accused's behalf. The accused did not. Neither did he ask for a reconsideration of the judgment on ground of denial of due process.

The right to be heard by himself and counsel,[16] a personal right guaranteed by the Bill of Rights to an accused, just like any other personal right, may be waived.[17] The accused has not shown that the waiver of his right to present his evidence was improvident. It is even logical to conclude that the waiver was the product of a careful thought to obviate undue exposure of a weak case. Since he had solemnly announced through his counsel that he was willing to change his plea to that of guilty to the lesser crime of homicide, taking the witness stand in defense against the charge of murder in view of the rejection by the court of the offer might expose him to vigorous cross-examination, which might only enhance the evidence for the prosecution. His counsel might have thought that the evidence for the prosecution had only proved the crime of homicide, which, in fact, is the accused's thesis in the third assigned error.

It is, of course, to be conceded that if the accused had proved the gross incompetence or gross negligence of his original counsel, we would be prevailed to yield to his plea that he be granted a new trial under our pronouncement in *Jose vs. Court of Appeals,*[18] which the accused relies upon, to wit:

> Petitioner asserts, and correctly so, that the authority of respondent appellate court over an appealed case is broad and ample enough to embrace situations as the instant case where the court may grant a new trial or a retrial for reasons other than that provided in Section 13 of [] Rule [124], or Section 2, Rule 121 of the Rules of Court. While Section 13, Rule 124, and Section 2, Rule 121, provide for specific grounds for a new trial, i.e., newly discovered evidence, and errors of law or irregularities committed during the trial, Section 11, Rule 124 quoted above does not so specify, thereby leaving to the sound discretion of the court the determination, on a case to case basis, of what would constitute meritorious circumstances warranting a new trial or retrial.
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> Surely, the Rules of Court were conceived and promulgate[d] to aid and not to obstruct the proper administration of justice, to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispense justice, for otherwise, courts will be mere slaves to or