

TENTH DIVISION

[CA-G.R. CR NO. 34808, May 20, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GARCIA Y GARCERA, ACCUSED-APPELLANT.

DECISION

PERALTA, JR., E. B., J.:

At bench^[1] is an Appeal^[2] from the May 12, 2010 Decision^[3] of the Regional Trial Court, Branch 55, Irosin, Sorsogon which adjudged the guilt of accused-appellant Romeo Garcia y Garcera for the felony of Homicide.

When arraigned with the assistance of counsel for the corresponding indictment,^[4] the accused reiterated his plea of innocence to the charge.^[5] After the pre-trial conference,^[6] trial ensued.

THE PEOPLE'S VERSION

Per Carlos Garcera's narration, around 4:30 o'clock in the morning of May 24, 1998, he and Manuel Garais slept at a waiting shed near Ester Gatón's house after they attended a fiesta. Carlos was roused from slumber when he heard Manuel scream: "ayaw son singaki" ("don't do that cousin"). Carlos, who slept two arms length from Manuel, saw accused Romeo Garcia. He observed that there was blood on the victim's body, who was lying face up while the accused was standing beside him with a bloodied bladed weapon on his hand. Out of fear, Carlos was speechless. He hurriedly fled the place after appellant left and went to the victim's father to report what transpired.^[7]

On cross-examination, he conceded that he did not see appellant actually stabbing the victim but emphasized that appellant was the only person standing alongside Manuel's foot with a stained bladed weapon.^[8]

Later, the victim's cadaver was examined by Dra. Rosana Barlin Galeria^[9] whose findings were reflected on her necropsy report:^[10]

TO WHOM IT MAY CONCERN:

This is a POST-MORTEM EXAMINATION ON the remains of MANUEL GARAIS, 35 years old, male, single and a resident of Barangay Balocau, Matnog, Sorsogon done in front of the Municipal Hall of Matnog, 10:15 a.m. of the 24th day of May 1998, Body is in the state of rigor mortis.

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PHYSICAL FINDINGS:

ABDOMEN: Stab wound, 2x1 cm, with 6 cm. depth, located above the umbilicus.

APPROXIMATE TIME OF DEATH: more than 6 hours.

PROBABLE CAUSE OF DEATH: Hypovolemic Shock from Internal Hemorrhage secondary to stab wound.

THE VERSION FROM THE DEFENSE

For its part, the defense, presented the testimonies of Venancio Gayon, Virginia Garra, Rebecca Garcia, and the accused.

Venancio Gayon testified that on May 24, 1998, the accused was in Virginia Garra's house in Barangay Sinibaran, Matnog, Sorsogon, which was more or less ten meters away from his house.^[11] When cross-examined, Venancio confirmed that the accused usually goes home to Virginia's house. He recalled that at 5:00 o'clock in the morning of May 24, 1998, he did not see the accused outside of Virginia's house when he swept his yard. He first saw the accused at 6:00 o'clock in the morning of the same day and they shared a beetle nut (*mama*). At about 8:00 o'clock in the morning, Venancio was surprised when he saw that the accused was arrested by members of the PNP.^[12]

Virginia Garra, a resident of Sinibaran, Matnog, Sorsogon and the aunt of the defendant's wife testified that the accused was temporarily staying in her house since the end of April, 1998 because his own house was devastated by a typhoon and his child was sick. Virginia was certain that the defendant was in her house on May 24, 1998 at 4:00 o'clock in the morning because he slept there the night before. According to Virginia, the accused woke at about 5:30 to 6:00 in the morning of May 24, 1998, chewed bettel nut, then left the house to go to her mother's house.^[13] During her cross-examination, Virginia clarified that appellant's prior abode in Balocawe was more than 2 kilometers away from where she resides in Sinibaran, Matnog, Sorsogon and could be reached for approximately more than an hour by foot.^[14] Virginia, a banana vendor by trade, recounted that on May 23, 1998 she slept at about 7:00 in the evening because she prepared "*puso*" or rice wrapped in coconut leaves to be sold at the pier. On May 24, 1998 she stopped selling because she assisted the accused and his wife following the defendant's arrest. Virginia also recalled that when she was about to get some sleep on the night of May 23, 1998, she saw the accused and his family were already about to sleep.^[15]

Rebecca Garcia, the defendant's wife, claimed that they temporarily resided at Virginia's house in Brgy. Sinibaran because their child was sick and that she and the accused had planned to bring their ailing child to a "*quack*" doctor. Rebecca recounted that on May 23, 1998 at 6:00 o'clock in the evening, the accused reached Virginia's house and stayed home to take care of their sick child. On May 24, 1998, as Rebecca arrived from the poblacion, she was shocked to see the arrest of the accused.^[16] When cross-examined, Rebecca revealed that she and the defendant slept at about 10:00 o'clock in the evening of May 23, 1998. She roused from slumber at 5:30 o'clock the following morning to prepare herself before going to the town proper of Matnog. She recalled that the defendant was already awake by the time she woke as he was taking care of their sick child.^[17]

Romeo Garcia also sat on the witness stand and declared that in May, 1998, he had been residing for one month at Virginia's house in Brgy. Sinibaran. Per his approximation, the distance from Sinibaran to Balocawe, if one will pass the poblacion from Balocawe, was 2 kilometers and the distance from the poblacion to Sinibaran was another 2 kilometers; that in walking to Balocawe from Sinibaran, one will pass a hilly portion. He recounted that in the morning of May 23, 1998, he went to Brgy. Balocawe to attend to his carabao. In the evening, he slept at about 9:00 o'clock and woke at 6:00 o'clock in the morning of May 24, 1998. He remained in Brgy. Sinibaran with his family until May 24, 1998.^[18] On cross-examination, the accused admitted that while he was residing in Virginia's house, he would sometimes also stay at his house located in the upper mountain part of Brgy. Balocawe because he had work in that place; that the distance from his house in Brgy. Balocawe was 1 ½ kilometers away from where the Manuel was stabbed; and that it would take him 5 hours by foot from Virginia's house in Brgy. Sinibaran to Brgy Balocawe if he will pass the hilly mountain.^[19]

The accused further testified that on May 23, 1998, he left the house of Virginia at 7:00 o'clock in the morning and reached the upper portion of Brgy. Balocawe at about 10:00 o'clock in the morning for his carabao. Later, he went to the center of Balocawe to buy cigarette. At about 12:00 o'clock in the afternoon, he also attended a fiesta celebration in Brgy. Calibag, Matnog, Sorsogon upon a friend's invitation. He left the party at about 3:00 o'clock in the afternoon to go home. He also passed by and ate at the residence of Ester Gaton, who, at the time, was celebrating her son's birthday. At about 5:00 o'clock in the afternoon he went home to Sinibaran aboard a tricycle. He arrived at Virginia's house in Sinibaran at past 6:00 o'clock in the evening.^[20]

After trial on the merits, the court *a quo* rendered its decision, the dispositive portion of which disposition reads:^[21]

*"WHEREFORE, premises considered, accused ROMEO GARCIA having been found GUILTY beyond reasonable doubt of the offense of HOMICIDE defined and penalized in Article 249 of the Revised Penal Code as amended, absent any mitigating or aggravating circumstance, he is hereby sentenced to suffer the indeterminate penalty of Ten (10) years and One (1) day of **Prision Mayor**, as Minimum, to Seventeen (17) years and Four (4) months of **Reclusion Temporal**, as Maximum, and to indemnify the heirs of the deceased Manuel Garais in the amount of Php 7,500.00 as actual damages; another Php 50,000.00 as civil indemnity for his death, and also Php 50,000.00 as moral damages. And to pay costs. (Emphasis Supplied)*

SO ORDERED."

Appellant now interposed the present appeal where he invoked *alibi* as a defense.^[22]

He argued that he was at home in Brgy. Sinibaran, which was two to three kilometers from the *locus criminis* in Brgy. Balocawe, at the time of the stabbing incident.^[23] He likewise challenged the trial court's reliance on the testimony of Carlos given the delay in the execution of his sworn statement only in October, 1998 or some four months after the stabbing incident.^[24] He also questioned Carlos'

identification of him because: (1) the prosecution failed to prove if the place where the stabbing incident transpired was well-lighted, which fact was crucial considering that the incident occurred at around 4:30 o'clock in the morning; and (2) Carlos was intoxicated at the time of the incident which condition precluded identification of the person who stabbed Manuel.^[25]

For the appellee, the Office of the Solicitor General (OSG) argued that appellant's guilt was proven beyond reasonable doubt and prayed for the affirmance in toto of the appellant's judgment of conviction.^[26]

We can hardly agree with appellant's submissions on appeal.

Elements of Homicide Established

To reiterate, appellant was charged with, and convicted for Homicide under Article 249 of the Revised Penal Code:

Art. 249-Homicide- Any person, who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article shall be deemed guilty of homicide and be punished by reclusion temporal.

For a successful prosecution relative to homicide, it is crucial to establish:^[27] (1) that a person was killed; (2) that the accused killed that person without any justifying circumstance; (3) that the accused had the intention to kill, which is presumed; and (4) that the killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

All these elements are obtaining and duly established in this case.

First , it was established per Dra. Galeria's necropsy report^[28] that Manuel was killed by a stab wound above his *umbilicus*:^[29]

Atty. Gojol:

Q: On said date May 24, 1998, have you come across or examine (sic) a person by the name of Manuel Garais?

A: I did not know the victim personally but the police rold (sic) me to examine the body of one called Manuel Garais.

Q: Did you actually examine the body of Manuel Garias?

A: Yes.

Q: Attached to the record of this case particularly on page 17 thereof is a necropsy report issued by Dr. Rosanna Galeria, would you please look over the same and tell us if that is the necropsy report you prepared?

A: Yes, this is my report.

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Q: You said that the person you examined is Manuel Garais as

told to you by the policemen. Could you describe to us the condition of that person now subject of this necropsy report at the time you came upon him for the purposed of examination?

A: The body I saw at that time was in the state of rigor mortis with stab wound 2x1 cm. deep with 6 cm. depth located above the umbilicus.

Q: Could you explain to us what is meant by in the state of rigor mortis?

A: Rigor mortis is the state of the body when death have occurred more than 3-6 hours, when the body or muscles is rigid.

Q: You mean to tell us that Manuel Garais is already dead?

A: Yes.

Q: And your physical findings states abdomen stab wound, 2x1 cm. 6 cm. depth, will you again explain in layman's parlance this finding?

A: I examined the body with stab wound 2x1 cm horizontal, the depth is 6cm. located above the umbilicus. It means weapons that is narrow was used on the victim (sic) will cause the (sic) death . The 6 cm. depth which is around 2 ½ inches narrow and long.

Q: What is the other term of umbilicus which is the location of the stab wound, what part of the body?

A: If you divide the abdomen into four, it is near the center.

Q: That is where the stab wound is located?

A: Yes.

Q: Based on this findings, what could have cause this stab wound, 2x1cm. with 6cm depth?

A: It could be caused by a narrow and long sharp instrument.

Q: Could it be a knife or a balisong in local parlance?

A: May be.

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Q: We would like to request that the physical findings be marked as Exh. A-2 and the portion of the necropsy report started after the finding from the words approximate time of death" "more than 6 hours" probable cause of death", please explain in laymans (sic) terms this finding?

A: Because of the wound in the abdomen there was a massive hemorrhage which cause the hypovolemic shock.