

THIRD DIVISION

[G.R. No. 132171, May 31, 2000]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VIRGILIO GOMEZ, ACCUSED-APPELLANT.**

D E C I S I O N

GONZAGA-REYES, J.:

Appeal from the decision of Branch 10 of the Regional Trial Court of Antique^[1] convicting accused-appellant of the crime of murder, on the basis of an Information the accusatory portion of which provides:

That on or about the 22nd day of March, 1993, in the Municipality of Valderrama, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a knife, with intent to kill, treachery and cruelty, did then and there, willfully, unlawfully and feloniously attack, assault and stab with said knife one Jesus Sidayon thereby inflicting (a) fatal wound on his body which caused his death shortly thereafter.

With the qualifying circumstances of treachery and cruelty.

Contrary to the provisions of Article 248 of the Revised Penal Code.^[2]

After arraignment and trial, the trial court rendered the decision herein appealed from which convicted accused-appellant of murder, qualified by treachery, but ruled out for being unsubstantiated the allegation of cruelty. The dispositive portion of said decision thus reads:

WHEREFORE, in view of all the foregoing, the Court finds the accused, Virgilio Gomez, guilty beyond reasonable doubt of the felony of Murder and there being no other mitigating or aggravating circumstances attending the commission of the offense, imposes upon him the penalty of Reclusion Perpetua with all the accessory penalties provided for by law, and to pay the heirs of the victim the amount of P12,594.00 as actual damages and P50,000.00 as indemnity for the death of the deceased Jesus Sidayon.

In meting out the judgment of conviction, the trial court relied on the testimony of the lone eyewitness, Romulo Roquero, which it found to be more credible than the defense of alibi set up by the accused.

Romulo Roquero testified that at 9 o'clock in the evening of March 22, 1993, he was entertaining several guests, namely Juan Roquero, John Jacaba, the accused Virgilio Gomez and the victim Jesus Sidayon at his house in Barangay Bungsod, Valderrama, Antique. It was the barangay fiesta, and he personally invited the victim and the

accused, both of whom he knew since childhood,^[3] to be his guests that night. Roquero recalled that while they were drinking, the accused excused himself and went out of the house. Thirty minutes later, he came back and just as the victim was about to take a drink stabbed him and fled. Siddayon turned around once, went out of the house and collapsed a few meters away.^[4] Roquero and some other persons then put Sidayon on a hammock and rushed him to the hospital, where he died about twenty minutes later.^[5]

When questioned as to the details of the stabbing, Roquero stated that he recalled the victim to be seated, his left side facing the door through which the accused entered to stab him.^[6] The victim was hit on the stomach, but Roquero could not recall at which side.^[7] He also could not tell how long the knife used was, but he noted that the wound was "through and through",^[8] and that the weapon bore through the stomach and exited at the lower back.

Prior to the stabbing incident and while they were all drinking, Roquero did not recall the victim and the accused having exchanged a word with each other, as he was the one who was talking to the victim Jesus Sidayon.^[9] He did not know the motive of the accused for stabbing the victim.

The medico-legal officer, Dr. Lallaine Pagunsan, who conducted an autopsy upon the body of Jesus Sidayon, testified that the victim died of "hypovolemic shock due to injury of major (blood) vessels".^[10] Although what was inflicted was a single stab wound, it was delivered with such strength^[11] that it went through the small intestine and exited at the lower back, and it was fatal because it hit the small intestine --- a vital organ, causing profuse bleeding. A major artery, the abdominal aorta, was ruptured.^[12] The doctor also noted that when the victim arrived in the hospital, his intestines were out;^[13] he was restless and could not communicate anymore.^[14] He died five to ten minutes upon arrival at the hospital.^[15] The doctor noted no abrasions or similar signs of struggle on the body of the victim.^[16]

For his part, the accused maintained that on March 22, 1993 he was at Baluarte, Iloilo City where he resided with his family and worked in the furniture shop of Leonardo Bolante. In his testimony, it was established that although he was born in Bago City, Negros Occidental, he and his family moved to Bungsod, Valderrama, Antique when he was around seven years old. He left Valderrama for Iloilo City in 1981,^[17] when he was about 18 years old, and denies having gone back since. Although he did know Jesus Sidayon, accused claimed that the last time he saw him was in 1981 before he left Valderrama; he came to know of Sidayon's death only in January 1995 when he was arrested to answer for it.

To corroborate the alibi, the defense presented the accused's employer, Leonardo Bolante, who testified that the accused worked for him from 1991 to 1995, and on March 22, 1993 was working with him at his furniture shop in Baluarte, Iloilo City. The trial court, however, noted certain inconsistencies in Bolante's testimony in that while he claimed that none of his workers were absent from January to April 1993, he also admitted that the accused did not have perfect attendance as he would occasionally go on "half-day" or be absent on Sundays. Neither did Bolante keep a time record or logbook to keep track of the workers' attendance. The trial court also

noted that the accused was employed on a "pakiao" basis, and was thus not required to report to work during regular working hours.

The trial court found the testimonies and documentary evidence of the prosecution to be consistent and credible on all substantial matters. It upheld Roquero's lone eyewitness account for being "clear, convincing, and straightforward, mentioning details of the incident that could not have been fabricated."^[18] It also took Roquero's positive identification of the accused at face value, there being no showing that his testimony was motivated by ill will upon the accused, as in fact the accused was the witness's friend. It also noted that Roquero's account of the details of the stabbing coincided with the findings of Dr. Pagunsan in her autopsy report.

On the other hand, the trial court found accused's alibi wanting in credibility, the defense not having established that it was physically impossible for him to have been at the scene of the crime. In its decision, the trial court stated that "Barangay Bungsod, Valderrama, Antique where the incident happened is only a couple of hours away by land transport from Iloilo City where the accused claimed he was on March 23, 1993."

In this appeal, accused-appellant reiterates the arguments in his Motion for Reconsideration dated April 22, 1997 before the trial court, thus: (1) contrary to the finding of the lower court, it was physically impossible for the accused-appellant to have been in Bungsod, Valderrama, Antique on the night in question inasmuch as the average travel time, using public transportation, from Iloilo City to Bungsod is six hours; (2) the lower court erred in finding no ill motive on the part of eyewitness Romulo Roquero despite the fact that if Roquero had not come up with an explanation for the death of Jose Sidayon, he would very likely have been the next suspect; and (3) the lower court failed to consider the conspicuous circumstance that the prosecution presented one eyewitness only despite the killing's having taken place in the presence of a number of onlookers.^[19]

We see no merit in the arguments raised by accused-appellant.

On the first assigned error, the defense insists that in light of Leonardo Bolante's testimony that accused was working in Iloilo City on March 22, 1993, the accused could not possibly have left in the afternoon of the same day to be at the scene of the crime by evening, considering the average travel time of six hours. Thus, the defense contends that the trial court should have taken mandatory judicial notice of the geographical distance of Bungsod, Valderrama, Antique from Iloilo City.^[20] To this, the trial court in its Order dated September 25, 1997 replied:

A careful review of the transcript of stenographic notes taken during the hearings of this case revealed that there was nothing in the record that would show that it was physically impossible for the accused to be present at the scene of the crime at the time it was committed, the second requisite for the defense of alibi to prosper. It was incumbent upon the accused to prove this second element. This matter, however, was only raised by the accused for the first time in his Motion for Reconsideration dated April 22, 1997, in reaction to the observation made by the Court in its decision dated April 2, 1997. This Court cannot