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FIRST DIVISION

[G.R. No. 121736, December 17, 1997]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAPAL MIDTOMOD, ACCUSED-APPELLANT.
D E C I S I O N

BELLOSILLO, J.:

This case was certified to us for review by the Court of Appeals pursuant to the second paragraph of Sec. 13, Rule 124, of the Revised Rules on Criminal Procedure. [1]

Usalim Aplan, Sapal Midtomod, his brother Gido (also known as Dido), Idu Pagayao and Israpil Liposin were charged with murder for the violent death of Ciriaco Ronquillo on the night of 26 November 1985 at Bgy. Inac, Mlang, Cotabato. [2] However, only Usalim Aplan and Sapal Midtomod were tried as Idu Pagayao was never apprehended while Israpil Liposin and Gido Midtomod escaped while on bail and recognizance, [3] respectively.

The prosecution presented two principal witnesses, namely, Danny Baron and Arthur Ronquillo, nephew and son of the deceased, respectively. Felisa Ronquillo, the widow, who was with her husband on the night of the murder, died before she could be presented as a witness for the prosecution.

Danny Baron testified that he saw Gido Midtomod outside the house of his uncle, the deceased Ciriaco Ronquillo, at six o'clock in the evening of 26 November 1985 while he was on his way home located a few meters away. Gido Midtomod even asked him where he was going and whether he was coming back. [4] On the other hand, Arthur Ronquillo testified that in the evening of 26 November 1985 he was walking about a meter away towards the house of his parents Ciriaco and Felisa Ronquillo to take care of some animals when he heard the words, "Where is the money? Give it to me!" to which a voice, which he recognized to be that of his father, answered, "I have no money because my rice was not yet paid (for) by Villasor." Nervous, Arthur did not go inside the house but peeped instead through a hole in the wall to see what was going on. He saw five (5) Muslims surrounding his father and recognized them to be their farm laborers Sapal Midtomod, Usalim Aplan, Gido Midtomod, Idu Pagayao and Israpil Liposin. Suddenly, Idu Pagayao and Sapal Midtomod stabbed his father. As he was afraid to come forward because he was outnumbered by his father's armed assailants, Arthur ran towards his brother's house but it was too late. They found their 78-year old father already dead, bathed in his own pool of blood, with four (4) stab wounds in his body. [5]

Both accused denied they killed Ciriaco Ronquillo. They invoked alibi. They claimed they were in their respective houses in Mlang, Cotabato at the time of the killing of Ciriaco. Two (2) of their neighbors Tinumiguez Dagindangan and Lando Gombilan, were presented in the defense of the accused.

On 30 October 1990 the trial court found both accused guilty beyond reasonable doubt of murder for the killing of Ciriaco Ronquillo [6] and imposed upon them an indeterminate prison term of ten (10) years and one (1) day of prision mayor as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum. [7] The trial court accorded great evidentiary weight on the eyewitness account and positive identification by Arthur Ronquillo that Sapal Midtomod stabbed his father while Usalim Aplan stood nearby. The defense of alibi was rejected because neither of the accused was able to show that it was impossible for them to be at the scene of the crime at the time of its alleged commission since their respective houses were only half a kilometer away from that of the deceased [8] and could be negotiated in five (5) minutes by tricycle. [9]

The accused filed a joint notice of appeal. [10]

On 31 March 1993 the Court of Appeals affirmed the conviction of Sapal Midtomod but ordered the acquittal of Usalim Aplan. The appellate court reasoned that, as opposed to the positive identification of Sapal Midtomod as one of those who stabbed Ciriaco Ronquillo, no evidence was presented to show how Usalim Aplan participated in the murder other than that he was one of those who surrounded Ciriaco when the latter was being stabbed which, however, could not be considered as sufficient to prove that he was part of the conspiracy to kill the victim. Hence, the Court of Appeals rendered judgment [11] the dispositive portion of which reads:

WHEREFORE, the appealed judgment is REVERSED insofar only as accused-appellant USALIM APLAN is concerned x x x and another one hereby ACQUITTING said accused-appellant. Let the Presiding Judge of the Regional Trial Court (Branch XVI) of Kabacan, Cotabato and the Provincial Warden, of the Provincial Jail, Inac, Kidapawan, Cotabato be immediately sent a copy each of herein Decision, for the immediate release of accused-appellant USALIM APLAN, unless he is being detained for some other lawful cause or causes.

With respect to accused-appellant SAPAL MIDTOMOD, the appealed judgment of conviction is AFFIRMED with the modification that said accused-appellant is sentenced to suffer imprisonment of reclusion perpetua. However, instead of entering judgment and pursuant to Section 13, Rule 124, of the Rules on Criminal Procedure, as amended, let the entire records of the above-entitled case be certified and elevated to the Honorable Supreme Court for review.

We first rule on the notice of withdrawal of appeal of accused Sapal Midtomod before resolving the merits of the case.

In a letter dated 28 August 1995 [12] filed with the Court of Appeals, Sapal Midtomod signified his intention to withdraw his appeal allegedly because he wanted to avail of the privileges granted to inmates by the Bureau of Prisons and eventually to ask for executive clemency. Meanwhile, in view of the decision of 31 March 1993, the Court of Appeals referred the matter to us. The request for withdrawal of his appeal was reiterated by appellant in a letter addressed to this Court dated 8 July 1996 saying, "I am agreed (that) I commit (ted) a sin in the sight of God and in the sight of the law of the land." [13]

We deny the plea of appellant for the withdrawal of his appeal. First of all, it was filed long after the Court of Appeals rendered its decision affirming his conviction and raising the penalty from an indeterminate prison term to reclusion perpetua. Appellant cannot conveniently claim that he was not aware of the appeal taken by his counsel to the Court of Appeals from the decision of the trial court. We are hardly persuaded that he only happened to know of the appeal after an adverse decision was rendered against him. Besides, as opposed to his feigned ignorance, appellant is chargeable with knowledge of the appeal because he, together with co-appellant Usalim Aplan, was informed way back on 13 August 1991 by the Court of Appeals of the elevation to that Court of the complete records of their appealed case and required them to file their appellant's brief. [14] Even without such personal notice, Sapal Midtomod was informed of the proceedings in the appellate court through notice to his counsel of record which, for all intents and purposes, is considered valid notice to him. [15]

The instant case is now before us, not by means of an appeal, but pursuant to the second paragraph of Sec. 13, Rule 124 of the Revised Rules on Criminal Procedure which mandates the Court of Appeals to certify those criminal cases which, in its opinion, merit the imposition of a penalty of reclusion perpetua or higher. The authority to review such cases thereby imposed upon this Court cannot be waived by appellant. Even if we are otherwise minded, we are still not inclined to exercise our discretion in favor of appellant since an error of the Regional Trial Court with respect to the penalty imposed would thereby go uncorrected. [16]

Now, on the merits. Accused-appellant offers the defense of alibi. He contends that at the time of the alleged commission of the crime, approximately six o'clock in the evening of 26 November 1985, he was in his house taking care of his child. He was there from four o'clock in the afternoon to seven o'clock in the evening.

The alibi was correctly rejected by the trial court as well as the Court of Appeals. For the proferred defense of alibi to prosper, there must be physical impossibility of the accused being present at the crime scene at the time of its commission. [17] In sharp contrast thereto, it was established that the house of herein appellant in Mlang, Cotabato, is only half a kilometer away from that of the deceased [18] at Bgy. Inac, Mlang, Cotabato, and may be reached in five minutes by tricycle. [19] Hence, it was not physically impossible for appellant to have been at the victim's house at the time of the murder. Secondly, appellant was positively and unwaveringly identified by Arthur Ronquillo as one of those who stabbed his father, the other being Idu Pagayao who is at large.

Alibi cannot prevail over the positive identification of the accused as one of the authors of the crime. [20] But appellant attempts to discredit the testimony of Arthur Ronquillo by contending that neither Felisa Ronquillo (wife of the deceased) nor Danny Baron mentioned having seen him at the scene of the crime in their respective sworn statements executed in the Police Station of Mlang Cotabato. In addition, appellant contends that it was highly irregular for Arthur Ronquillo not to have executed a sworn statement before the police considering that he, as an eyewitness to the alleged killing, appeared to be the best qualified witness for the prosecution.