

THIRD DIVISION

[G.R. No. 119007, October 04, 1996]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMULO SORIA Y GALLETES, ACCUSED-APPELLANT.**

D E C I S I O N

DAVIDE, JR., J.:

Accused-appellant Romulo Soria appeals from the decision^[1] of the Regional Trial Court of Cagayan (Tuguegarao), Branch 2, of 7 March 1994 in Criminal Case No. 2091 finding him guilty beyond reasonable doubt of the crime of murder as charged in an information^[2] whose accusatory portion reads as follows:

That on or about April 7, 1992, in the Municipality of Solana, Province of Cagayan, and with the Jurisdiction of this Honorable Court, the said accused, Romulo Soria y Galletes alias Mol, armed with a gun, with intent to kill, with evident premeditation and with treachery did then and there wilfully, unlawfully and feloniously attack, assault and shoot one, Patricio M. Reyes, inflicting upon him several gunshot wounds on the different parts of his body which caused his death.

The case originated in the Municipal Circuit Trial Court (MCTC) of Solana-Enrile, Cagayan, with the filing on 15 April 1992 of a criminal complaint for murder against the accused. The complaint was supported by the sworn statements of the victim's mother, Aurea Reyes, and of the victim's first cousin, Felix Bago; the post-mortem findings of Dr. Anastacia Taguba, the Municipal Health Officer of Solana, Cagayan, who conducted a post-mortem examination of the body of the victim; and the certificate of death of the victim.^[3] Finding after appropriate preliminary investigation that the offense charged was committed and that the accused was probably guilty thereof, the MCTC forwarded the record of the case to the Office of the Provincial Fiscal, which subsequently filed the foregoing information.^[4]

The accused entered a plea of not guilty at his arraignment on 2 March 1993.^[5] Since he waived pre-trial,^[6] trial on the merits ensued with the prosecution presenting as its witnesses Felix Bago, Aurea Reyes, and Dr. Anastacia Taguba. For its part, the defense presented the accused, Leonardo Bago, Nazario Mabborang, and Juanito Balubal.

The prosecution's version, as culled from the testimonies of the witnesses, is as follows:

In the evening of 7 April 1992, Aurea Reyes and her two children, one of whom was Patricio Reyes, were at the house of her sister (the mother of Felix Bago). They had been invited to have dinner there. The Reyeses and the Bagos had already finished eating when, suddenly, the door opened and accused Romulo Soria appeared

carrying a gun. At a distance of about two to three meters, the accused aimed his gun at Felix, who was then sitting near Patricio. Without much ado. He fired his gun but missed his target, as the latter hurriedly hid himself behind a post. The accused fired again. This time Felix "dived to the floor." Patricio followed suit, but, unfortunately, he was hit on the arm. Felix managed to go out of the house and then broke into run. The accused chased him and fired several times. To his luck, Felix was not hit. The accused forthwith returned to the house of the Bagos and shot Patricio, who was then "lying on the floor, face upwards." Patricio drew his last breath on that same evening. The autopsy revealed that the multiple gunshot wounds on his head and on the left side of his chest caused his death.

The accused tried to cloak the truth in alibi, and the trial court summarized his testimony in this wise:

In the afternoon of April 7, 1992, Leonardo Bago called him to slaughter a dog in their house at Basi, Solana, Cagayan. Two dogs were butchered because there [would] be a conference of barangay officials in their house. After butchering the dogs, he cooked the meat, and finished cooking about 7:00 or 8:00 P.M. Leonardo Bago and Juanito Balubal helped him butcher and cook food. They finished serving food to the visitors about 11:00 P.M. When the visitors left, he went home. He does not know the time when he left Bago's house. The following morning he and his three brothers Romeo Soria, Pedro Soria and Jose Soria were picked up by policeman Mat Battung and brought to the townhall for investigation. After arriving at the townhall Aurea Reyes was called to identify the person who killed his son and she said she did not know. Likewise Aurea Reyes told the police that none of them committed the crime. He was not subjected to any paraffin tests but only his three brothers. After the investigation they were sent home, but after five (5) days he was again investigated. This time Aurea Reyes implicated him in the killing of her son.^[7]

The trial court gave full credence to the testimony of Aurea Reyes, who was the only eyewitness to the actual shooting of Patricio Reyes by the accused and who could not have failed to identify the accused at that time, since the room was lighted with a fluorescent bulb and she knew the accused "very well." It rejected the accused's defense of alibi because he failed to prove that it was physically impossible for him to have been at the crime scene at the time of the commission of the offense. The house of Leonardo Bago where the accused was is only "3 kilometers' to the house of Felix Bago where the crime was committed. Besides, it had its own doubts on the presence of the accused in the house of Leonardo Bago.

As to whether treachery attended the commission of the crime, the trial court's answer is in the affirmative; thus:

The facts established by the prosecution consist of two stages: The first stage consists of the sudden opening of the door of the house of Felix Bago by Romulo Soria and immediately thereafter the accused shot Felix Bago. It was the first gun report. Felix Bago dived to the floor followed by Patricio Reyes. Another gun report. This time Patricio was hit on his arm because he called for his mother. Felix Bago escaped and went out of the house. Soria chased Felix Bago outside. When the accused failed

to hit Felix outside, he came back to the house of Felix Bago. This was the second stage. Upon entering the house, the accused saw Patricio Reyes lying on the floor, face upwards and fired his gun, killing Patricio Reyes. Aurea Reyes was two (2) meters hiding under the table when she witnessed the shooting of her son.

In the recent case of PP VS. PERALTA 193 SCRA 9, the Supreme Court held that there is treachery where the victims were shot thru the window suddenly. Likewise, the PP VS. ALFARO 83 Phil. 85, PP VS. UNTONG 106 Phil. 1160, PP VS. MOSQUERADO 107 Phil. 62, where the accused shot the victim when the latter opened the door of his house and focused his flashlight on the accused, there being no risk to the accused and the victim did not expect the attack suddenly made upon him was considered by the Supreme Court to have been attended with treachery.

In the case at bar Romulo Soria entered the house of Felix Bago, suddenly pushed the door of the house and fired upon Felix Bago who was not hit because he dived to the floor. On the second firing although Patricio Reyes dived, [he] was hit in the arm. [T]he accused returned after he failed to hit Felix Bago and fired at Patricio Reyes, [who was then] wounded and bleeding, with his back to the floor and his face upward. Analogous to the instant case is the case of PP VS. CASA 92 Phil. 1082, where the attack was sudden and unexpected and the deceased was lying unconscious and therefore helpless. Treachery was appreciated in this case.^[8]

Hence, in its decision of 7 March 1994, promulgated on 11 March 1994, the trial court decreed as follows:

WHEREFORE, finding the accused Romulo Soria y Galletes guilty beyond reasonable doubt of the crime of Murder as defined and penalized under Art. 248 of the Revised Penal Code, he is hereby sentenced to reclusion perpetua with all the accessories of law and to indemnify Aurea Reyes the following amounts:

1. P50,000.00 for the death of Patricio Reyes;
2. P45,000.00 for actual and compensatory damages;
3. P50,000.00 as moral damages; and
4. To pay the costs.^[9]

On 21 April 1994, the accused filed a motion for the reconsideration of the decision^[10] alleging therein that the trial court erred in not considering the testimony of his witnesses, in relying solely on the witnesses for the prosecution, and in convicting him; and that "new evidence" show that there is doubt regarding the identity of the perpetrator of the crime. The so-called "new evidence" consist of the affidavits,^[11] both dated 20 April 1994, of Ponciano Reyes and Aurea Reyes, parents of the victim, wherein in they declared that they were not convinced that it was the accused who killed their son. Aurea further declared that although she saw at close range the man who shot her son, she was not very certain if indeed the man was the accused.

In its order of 13 June 1994,^[12] the trial court denied the motion for reconsideration for lack of merit; thus:

Now, coming to the retraction of Aurea Reyes that she entertains doubts as to the identity of the killer of her son. The affidavit of retraction or repudiation was ratified by no less than the defense counsel of Romulo Soria.

Recantation or retraction of witnesses is a settled issue especially so after the accused had already been convicted by the trial court. Philippine jurisprudence is abundant of cases, where the Supreme Court said and ruled that recantation or retraction should not be given probative value. In PP VS. CRUZ, 208 SCRA 326, the Supreme Court said retraction can easily be secured from poor and ignorant witnesses, usually for monetary considerations. Likewise, in PP VS. LOSTE, 210 SCRA 614, recantation made by a prosecution witness after conviction of the accused is unreliable and deserves scant considerations. This ruling is reiterated in PP VS. FLORES, 211 SCRA 622, where the High Court held that retraction is an afterthought which should not be given probative value. This ruling was further reinforced in PP VS. LOGRONIO, 214 SCRA 519, where the High Court said that retractions are generally unreliable and are looked upon with considerable disfavor by the court.

On 30 June 1994, the accused filed a motion for new trial^[13] based on newly discovered evidence, which consist merely of the affidavits of Aurea Reyes and Ponciano Reyes mentioned in the motion for reconsideration. Photocopies thereof were attached to the motion.

Finding no cogent and valid reason to set aside or reconsider the decision, the trial court denied the motion for new trial in its order of 19 August 1994.^[14]

On 9 September 1994, the accused filed a Notice of Appeal^[15] wherein he announced that he is appealing to the Court of Appeals from the order of 19 August 1994. In view thereof, the trial court transmitted the record of the case to the Court of Appeals, which, however, forwarded it to this Court on account of the penalty imposed. We accepted the appeal on 5 June 1995.

In his brief, the accused makes the following assignment of errors, which we quote *verbatim*; thus:

ASSIGNMENT OF ERRORS

1. THAT RESPONDENT, HON. ABRAHAM Y. PRINCIPE, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH II, TUGUEGARAO, CAGAYAN COMMITTED ERRORS IN DENYING ACCUSED-APPELLANT ROMULO SORIA Y GALLETES MOTION FOR NEW TRIAL;

2. THAT RESPONDENT, HON. ABRAHAM Y. PRINCIPE, PRESIDING JUDGE REGIONAL TRIAL COURT, BRANCH II, TUGUEGARAO, CAGAYAN HAS ERRED IN CONVICTING ACCUSED-APPELLANT ROMULO SORIA Y GALLETES WITHOUT CONSIDERING THE SWORN STATEMENTS OF WITNESS AUREA M. REYES AND PONCIANO M. REYES WHEREIN THEY