

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RODOLFO MARAÑO, ET AL., ACCUSED. FELIX AVELLANA AND
CIRIACO NUELAN, JR., ACCUSED-APPELLANTS.**

G.R. No. L-38606. July 14, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Felix Avellana and Ciriaco Nuelan, Jr. appealed from the decision of the Court of First Instance of Camarines Norte, finding them and Rodolfo Maraño guilty of robbery with homicide and frustrated homicide, sentencing each of them to reclusion perpetua, and ordering them to indemnify the heirs of the deceased So Tao in the sum of P12,000 plus P2,000 for burial expenses, P30,000 as moral and exemplary damages and "the further amount of P2,000 for the medicine and hospitalization of Saw Lim" (Criminal Case No. 213). Maraño did not appeal.

Between nine and ten o'clock in the evening of Saturday, June 5, 1971 Maraño, a thirty-year old employee (masador) of the Saw Lim Bakery, located near the market of Felipe II Street, Daet, Camarines Norte, stabbed in that establishment his employer, Saw Lim, inflicting upon him wounds in the chest (Exh. D). Saw Lim did not die due to timely medical attendance.

After stabbing Saw Lim, Maraño allegedly took the sum of one thousand pesos which Saw Lim had placed on a table and which was to be used in paying the fourteen workers in his bakery. Then, Maraño stabbed in the chest So Tao de la Cruz, also known as Wilfredo and Maestrong Cawa, a nephew of Saw Lim who worked in the bakery as chief baker. So Tao died as a result of the stab wound which penetrated his lungs (Exh. A).

Maraño interposed the plea of self-defense. So Tao allegedly used a tear gas gun (Exh. G). The trial court did not give credence to Maraño's claim of self-defense. As already stated, it convicted him of robbery with homicide and frustrated homicide.

Maraño had resented the act of Saw Lim in terminating his employment in the bakery and in requiring him to sign a document attesting to his voluntary resignation and his receipt of P180 as separation pay.

The trial court, in convicting Avellana, 22, and Nuelan, 23, assumed that they were Maraño's co-conspirators. It found that "Nuelan and Avellana did not have anything to do with the stabbing of the deceased So Tao as well as Saw Lim". But it held that they were co-conspirators because, while Maraño was committing the assaults, Nuelan and Avellana allegedly posted themselves "at the door of the store" which was the only exit (pp. 49-50, Rollo). Like Maraño, Avellana and Nuelan were helpers in the bakery.

The issue in this appeal is whether Avellana and Nuelan had any complicity in the alleged robbery with homicide and frustrated homicide.

After a painstaking perusal of the record, we are convinced that their appeal is meritorious because the prosecution's insufficient evidence does not support the trial court's conclusion that they conspired with Maraño to commit robbery with homicide and frustrated homicide.

Without conspiracy, Nuelan and Avellana cannot be regarded as Maraño's particeps criminis. The trial court admitted, and it is shown in the prosecution's evidence, that Nuelan and Avellana did not actually take part in the stabbing of So Tao and Saw Lim and, for that matter, there is no evidence that they had any participation in the commission of the alleged robbery. There are some indications that Avellana and Nuelan might have been framed up because, after the stabbing of Saw Lim and So Tao, they filed with the labor regional office at Daet a claim for separation pay against Saw Lim (Exhs. J, K and Y). That could have infuriated Saw Lim.

Maraño and Avellana were tried first. Nuelan was given a separate trial because he was arrested when the trial of Maraño and Avellana was almost finished.

At the first trial, the prosecution's evidence against Avellana consisted of the testimonies of Medardo Madi and Anita Lim, the wife of Saw Lim. Madi testified that, after coming from the movie-house at around ten o'clock in the evening of June 5, 1971, he peeped into the bakery, which was already closed, and he saw Maraño stabbing So Tao while the latter was held by Avellana and another person.

At that same hearing Anita Lim testified that when Maraño was going to assault So Tao, Avellana and Nuelan "were trying to hold So Tao" (6 tsn December 20, 1971, Ocular Inspection) or Avellana and Nuelan "were behind" So Tao and that, after the stabbing, the three ran out of the bakery (6 tsn November 26, 1971).

Madi was not an employee in the bakery. He was an outsider. His story was that he peeped into an opening "about four inches wide" and saw Marano stabbing Saw Lim, and then So Tao, after which Maraño grabbed the bag containing the money and ran away. It was quite a remarkable coincidence that when he peeped into the bakery he witnessed the stabbing incident and the alleged taking of the money.

Madi did not testify at the separate trial of Nuelan. So, his testimony is not binding on Nuelan for lack of confrontation and cross-examination (Sec. 1[f], Rule 115, Rules of Court; Sec. 1[17], Art. III, 1935 Constitution; Sec. 19, Art. IV, 1973 Constitution).

The only relevant evidence against Nuelan is the testimony of Anita Lim that Nuelan and Avellana "were holding" So Tao when the latter was stabbed by Maraño (73 tsn February 1, 1972).

But that testimony cannot be given credence because, as already noted, at the prior trial of Avellana and Maraño, Anita Lim did not categorically testify that Nuelan and Avellana were holding So Tao when he was stabbed by Maraño. What Anita Lim testified was that when Maraño stabbed So Tao, Avellana and Nuelan were behind So Tao. That is different from saying that Nuelan and Avellana were holding So Tao when he was stabbed.

Because of the variance in Anita Lim's testimony, Nuelan's counsel de oficio appropriately remarked that at the separate trial she "improved her testimony and sang a new tune". Maybe, because the prosecution could not present Madi as a witness, the testimony of Anita Lim was made to conform to what Madi had testified at the earlier trial in order to remedy the deficiency in the prosecution's evidence.

At the separate trial of Nuelan, the prosecution introduced a new witness named Loreto Guadalupe who allegedly overheard at a certain store a conversation among Maraño, Nuelan and Avellana regarding their intention to file with the Department of Labor a claim for separation pay. The trial court used that flimsy testimony as a basis for concluding that there was a conspiracy among the three accused to commit robbery with homicide and frustrated homicide.

Guadalupe did not testify at the earlier trial of Maraño and Avellana. He was not listed as a prosecution witness. His presentation at the separate trial of Nuelan seemed to be an afterthought just as the presentation of Madi, who did not testify at the preliminary examination conducted by the municipal judge, was an afterthought. Guadalupe's

testimony is not binding on Avellana.

Other circumstances show the weakness of the prosecution's case against Avellana and Nuelan.

It should be noted that in the sworn statement of Anita Lim to the police dated June 7, 1971, or two days after the killing, she did not definitively implicate Avellana and Nuelan in the stabbing of So Tao de la Cruz, as may be seen from her declaration, quoted below:

"T. Sino naman itong palaging kasama ni Maraño? (Who were the constant companions of Maraño?). - S. Si Felix Avellana at saka Ciriaco Nuelan.

"T. Noon bang gabing saksakin iyong asawa mo at pamangkin mo, ay magkasama ba ang tatlong ito? (That night when your husband and your nephew were stabbed, were these three together?).- S. Iyong po si Felix Avellana ay umalis at iyong isa ay hindi ko alam kung saan siya. (Felix left and the other one I do not know where he was".) (p. 2, Exh. 1-A-Nuelan).

Anita Lim was confronted at the trial with the apparent discrepancy between her testimony and her statement to the police but she did not clarify nor straighten it out (79 tsn February 1, 1972).

Because her statement did not directly implicate Avellana and Nuelan, the acting chief of police on June 10, 1971 filed in the municipal court of Daet a complaint for homicide against Maraño only. Robbery was not included in the complaint. (Criminal Case No. 4066).

At the preliminary examination of that case, Anita Lim was interrogated by the municipal judge. She did not make any accusation against Avellana and Nuelan. She just declared that Maraño stabbed So Tao and her husband, Saw Lim (pp. 11-12, Record of Criminal Case No. 213).

It is also noteworthy that Nuelan gave a statement to the Daet police on June 7, 1971 or at the same time and in the same room as Anita Lim. During that police investigation, Nuelan identified Anita Lim and pointed to her so that the investigator could see her. From Nuelan's statement, it can be gathered that he had nothing to do whatsoever with the stabbing of So Tao (pp. 3-4, Record of Criminal Case No. 213).

Police Lieutenant Ricardo M. Abilgos was present when Nuelan and Anita Lim gave their statements. Anita Lim could have then and there apprised Abilgos that Nuelan was a co-conspirator of Maraño if it were true, as she testified at the separate trial, that Nuelan and Avellana held So Tao while he was being stabbed by Maraño. She did not implicate Nuelan at all although she admitted that she saw Nuelan at the police station (72-73, 75 tsn February 8, 1972).

Nuelan did not conceal himself after the stabbing. According to his statement, he visited Saw Lim at the Lourdes Hospital. After the Daet fiesta, Anita Lim paid Nuelan his wages for the week ending on June 5, 1971 (62 tsn) February 7, 1972).

On the other hand, according to Avellana, he was the one who reported to the police the stabbing of Saw Lim and So Tao. That testimony was not contradicted or rebutted.

Right after the stabbing, the police investigated the workers in the bakery. They informed Patrolman Ananias Sulpa that Maraño was the culprit: "Si Maraño daw" (14 tsn December 20, 1971).

Rogelio Manapat, Marcial Serrano and Marcial Ramos, workers in the bakery, gave their statements to the police on June 7, 1971 or at the same time as Nuelan and Anita Lim. Those workers did not implicate Avellana and Nuelan and did not mention any robbery. They mentioned only the stabbing of So Tao and Saw Lim. Maraño himself repeatedly denied that he acted in conspiracy with Nuelan and Avellana. He declared that the two had

nothing to do with the stabbing of So Tao and Saw Lim.

It was when the case for homicide was elevated to the Court of First Instance that the fiscal found after the preliminary investigation that the crime committed was robbery with homicide and frustrated homicide and that a certain Medardo Madi was an alleged eyewitness to the commission of that offense.

On the witness stand, both Avellana and Nuelan denied any complicity in the alleged robbery with homicide and frustrated homicide. Nuelan, a student of radio technology, made a sketch of the combination store and bakery and indicated therein the place where he was when the stabbing occurred (Exh. 2). That sketch gave a patina of veracity to his denial of guilt.

WHEREFORE, for insufficiency of evidence and on the ground of reasonable doubt, the trial court's judgment of conviction against defendants-appellants Nuelan and Avellana is reversed and set aside and they are hereby acquitted. Costs de oficio.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

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