

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN BARTOLAY, SOFRONIO BARTOLAY, CARLOS PEJO, FELICISIMO BARTOLAY, AND JESUS BARTOLAY, DEFENDANTS-APPELLANTS.**

*G.R. No. L-30610. October 22, 1971*

Ponente: REYES, J. B. L., J.

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**REYES, J. B. L., J.:**

This is an appeal by five (5) accused-appellants, namely, Juan Bartolay, Carlos Pejo, Sofronio Bartolay, Felicisimo Bartolay and Jesus Bartolay, from the judgment of the Court of First Instance of Masbate, in its Criminal Case No. 4577, convicting them of three (3) murders, qualified by abuse of superior strength, committed in the persons of the brothers Elias, Renerio and Galicano Espenilla.

In each case, the Court sentenced all the accused-appellants to life imprisonment (reclusion perpetua), with all accessory penalties prescribed by law, except as to appellant Juan Bartolay whom the Court gave the benefit of the mitigating circumstance of voluntary surrender, and imposed only a minimum of 10 years and 1 day of prison mayor and a maximum of 20 years of reclusion temporal. All were likewise sentenced to solidary payment of P6,000 in each case, in favor of the corresponding heirs of the victims. The case against Supremo Bartolay, also accused below, was dismissed, because he died during the trial.

A sixth accused-appellant, Periolo Villamor, withdrew his appeal, which was allowed by this Court on 7 January 1970.[1]

The evidence adduced by the prosecution and the defense concur in establishing the facts that -

"October 5, 1963 started for Juan Bartolay, a resident of Cametobetohan, Monreal, Masbate, with a pious note. It was a day he had chosen to have his child christened. He had chickens [sic, (a chicken)] and tuba for his guests to celebrate the occasion and at 9:30 o'clock in the morning, he, with his child and Justino Al-meniana, who stood as sponsor, went to the church at the poblacion of Monreal. They returned to Cametobetohan after the event. Lunch was served to the guests and the party was still joint on at 2:30 o'clock in the afternoon. By this time, emphasis was more on drinking than on any-thing else. A single glass was being passed around to the guests which was filled and refilled with tuba. It was at this point of the revelry when ..... pandemonium broke loose. .... When the hostilities ended, the three Espenilla brothers lay dead. .... .

"Dr. Claro Caluya, whose competency as a medico-legal expert was admitted, and who per-formed the autopsy on the bodies of the deceased, submitted a report of his findings:

**'ON GALICANO ESPENILLA**

'1. Contusion, right superciliary arch, lateral portion, right temporal region and right lateral side of frontal bone.

'2. Stab wound, stellate shaped, 1-1/2 cm. in diameter, penetrating right thoracic cavity, at the level of the third right inter-costal space, right mammary line, with fracture of the 3rd rib anteriorly and lacera-tion of the right

lung.

'3. Incised wound, 9 cm. long 5 cm. deep, right midaxillary line, at the level of the umbilicus.

'4. Contusions, about 4 cm. in diameter, left mammary line at the level of the 3rd intercostal space, anteriorly.

'ON ELIAS ESPENILLA

'1. Stab wound, 6 cm. long, penetrating thoracic cavity at the level of the 8th left intercostal space.

'2. Stab wound, 3 cm. long penetrating thoracic cavity at the level of the 8th left intercostal space, anterior axillary line, lacerating the heart.

'3. Stab wound, 3 cm. long, penetrating abdominal cavity, at midaxillary line 2-1/2 inches above level of umbilicus, with evisceration of the omentum.

'4. Incised wound, 9 cm. long, with linear abrasion 6 cm. long, back, 4 cm. deep, at the left scapular region.

'5. Stab wound, 3 cm. long, 5 cm. deep, left supraclavicular region.

'6. Incised wound, 5 cm. long, 3 cm. deep, left elbow.

'ON RENERIO ESPENILLA

'1. Stab wound, 3 cm. long, 2 cm. deep, at the level of the 4th left intercostal space parasternal line.

'2. Stab wound, 2-1/2 cm. long, subcutaneous deep at the level of the 5th left intercostal space, parasternal line.

'3. Stab wound, 2 -1/2 cm. long, penetrating left thoracic cavity, with fracture of the 4th left rib, mid-axillary line at the level of the 4th LICS.

'4. Stab wound, 7 cm. long, 6 cm. deep, at the level of the 8th left intercostal space, left anterior axillary line.

'5. Stab wound, 9 cm. long, right subcostal region with evisceration of the intestine.

'6. Stab wound, 5 cm. long, 8 cm. deep anterior portion distal end of the right thigh.

'7. Incised wound, 5 cm. long, 3 cm. deep, postero-medial side, middle of left arm.

'8. Lacerated wound, 2 cm. long, right parietal region, with contusion.

'9. Lacerated wound, 2 cm. long, right posterior parietal region.

'10. Contusion, right temporal region.'

"On October 9, 1963, Juan Bartolay surrendered a dagger and a bolo and gave a written statement to the police, Exhibit 'E'. When the case was pending trial, a report was made by the Provincial Warden through the Provincial Fiscal that the accused Supremo Bartolay[2] died in the Provincial Hospital on August 28, 1964, at 8:45 in the morning." [3]

Juan Bartolay's statement laid the blame on his brother Supremo Bartolay (Exhibit Folder, page 3) and the latter confessed to the killing of the Espenilla brothers in the statement Exhibit "2" (Exhibit Folder, page 10).

The version of the prosecution as to the circumstances surrounding the fight that ensued following the drinking spree and culminating in the triple-death tragedy varies from that presented by the defense.

According to Urcosino Baconawa, the lone eyewitness for the prosecution who testified on said circumstances, the three Espenilla brothers arrived at Juan Bartolay's house at about 2:30 p.m. and were given food and drinks

(tuba). Galicano Espenilla burst into song and when he finished Carlos Pejo challenged Elias Espenilla, asking "Are you the brave one?" Elias gave a negative answer and went down the house; but he was met by Carlos Pejo, who stabbed Elias on the left breast with a dagger (Exhibit "C"). Thereupon, the five Bartolays, bearing clubs, with Periolo Villamor, armed with a bolo, simultaneously fell upon Elias and attacked him. On seeing this, Elias' brothers, Renerio and Galicano Espenilla, went to his aid, but the five Bartolays, with Pejo and Villamor, pounced together upon Renerio and Galicano and killed them (t.s.n., 7 September 1964, pages 15-19).

Juan Bartolay and his brother in law, Carlos Pejo, testified that during the baptismal party, Juan was passing tuba around to the guests. Elias Espenilla objected to Carlos Pejo (who cooked the food) drinking ahead of Periolo Villamor, but disregarding the objection, Carlos drank the tuba anyway. Forthwith, Elias boxed Carlos in the face. According to the latter, he was first challenged by Elias, who asked Carlos if Carlos was the brave one from Bagacay. When Carlos denied it, his face was struck by Elias. Juan tried to pacify them, and made the two shake hands. Elias then pressed hard the hand of Carlos, and when the latter protested he was boxed a second time. Carlos jumped out of a window; but Renerio and Galicano Espenilla went down and struck the fugitive, causing him to fall un-conscious. Juan followed and stabbed Elias a number of times. When Elias' two brothers tried to retaliate, they were hacked by Supremo Bartolay, while Carlos Pejo struck Renerio Espenilla with a piece of wood (t.s.n., 10 May 1968, pages 39-43; 22 May 1968, pages 4-15).

Juan Bartolay further testified that the prosecution's lone eyewitness Baconawa had run away when Juan stabbed Elias Espenilla; that Jesus, Felicisimo and Sofronio Bartolay had not attended the baptismal party, and that the brothers Espenilla were known trouble makers. These as-assertions appear uncontradicted.

The brothers Jesus, Felicisimo and Sofronio Bartolay all denied attending Juan's baptismal party, having stayed at their respective dwellings some six (6) kilometers away from Cametobetohan (t.s.n., 22 May 1968, pages 15-18; 18-25; 26-31).

We agree with counsel de oficio that it was error for the lower court to have accepted unqualifiedly the version of the lone eyewitness for the prosecution, Urcosino Baconawa. His declaration that Carlos Pejo insultingly challenged Elias Espenilla appears contrary to the customary hospitality of Filipinos: the Espenilla brothers had been invited, not by the Bartolays but by the baptismal sponsor, Justina Almeñana and Pejo had no reason to provoke a guest. In this regard, the defense version of the challenge incident appears more probable. Moreover, Baconawa's assertion that all seven (7) accused jointly attacked and slew the three Espenilla brothers is not credible, and is seriously infirmed by the autopsy findings. Baconawa declared that Sofronio, Felicisimo and Jesus Bartolay were armed with clubs; hence they could not have contributed to the death of Elias Espenilla who died of stab and incised wounds, without suffering any contusions. Similarly, Renerio Espenilla, who suffered only one contusion in the temple, besides stab wounds, could not have been set upon and hit by the three Bartolays who were armed with clubs. At most, one of these three could have hit Renerio, but the evidence fails to disclose who of the three hit him. Appellant Carlos Pejo also admitted that he clubbed Renerio (t.s.n., 22 May 1968, page 8). Similarly, Galicano Espenilla's corpse exhibited only two contusions, one in the head and one in the chest, so that, at the most only two (assuming one blow for each assailant) could have caused the contused injuries, but again the record is blank to which the three Bartolay's above-named could have been the culprit.

The alibis of Jesus, Felicisimo and Sofronio Bartolay are supported by the testimony of Juan Bartolay that the said three of his brothers had not been at his house on the fatal day. While weak in themselves, yet when coupled with the improbabilities and uncertainties of the prosecution evidence and the absence of adequate roof of conspiracy, the alibis suffice to raise reasonable doubts as to the responsibility of the three above-named appellants. In *People vs. Fraga*, G.R. No. L-12005, 31 August 1960, 109 Phil. 241, it was held that "(t)he rule that alibi must be satisfactorily proven was never intended to change the burden of proof of criminal cases; otherwise, we will see

the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." [4]

Excluding Jesus, Felicisimo and Sofronio Bartolay, there remain the appellants Juan Bartolay and Carlos Pejo (besides Supremo Bartolay, who died before the trial ended, and Periolo Villamor, who withdrew his appeal). Juan admitted having stabbed Elias Espenilla repeatedly; while Carlos testified that he did hit Renerio Espenilla with a club and later Supremo Bartolay stabbed Renerio also (t.s.n., 22 May 1968, page 8). Whether they also participated in attacking the other victim (Galicano Espenilla) remains unclear. Galicano could well have fallen victim to the other assailants not before Us now (Supremo Bartolay and Periolo Villamor). While prosecution witness Baconawa may have witnessed the combat between the accused and the deceased, the confusion and excitement made his identification of the assailants of each of the Espenilla brothers unreliable, as has been previously shown. Baconawa certainly did not witness the entire episode, for, as he declared in his affidavit to the police (Criminal Case Record Wrapper, page 3), "while there was a commotion, I ran away because I was afraid"; and to the question as to how he was able to know that the three victims were killed, he answered, "At about 6:00 o'clock in the afternoon I was informed by other people".

On the strength of the testimony of Baconawa, the trial court found each and every one of the accused to have conspired to kill the three Espenilla brothers, and found them guilty of three murders. Having found Baconawa's testimony (that all the seven original accused attacked jointly the victims) unreliable because such testimony appears contrary to the physical facts, revealed by the autopsy, We find the alleged conspiracy unacceptable. This Court has held, in consonance with the Supreme Court of Spain, that to establish common responsibility "it is not sufficient that the attack be joint and simultaneous; it is necessary that the assailants be animated by one and the same purpose", and that a conspiracy must be shown to exist as clearly and convincingly as the crime itself. [5] In the case at bar, the fracas arose spontaneously, the details are confused and the participation of each assailant uncertain. Juan Bartolay, by his own admission, repeatedly stabbed Elias Espenilla and the injuries received by the latter are consistent with his having been attacked by Juan alone; nor is there adequate and clear evidence that Juan attacked any of the other victims. Similarly, Carlos Pejo, upon recovering from the blow received from Elias Espenilla, admitted striking and felling down Elias' brother, Renerio, whom Supremo Bartolay stabbed later on. Dr. Claro Caluya, Jr., who conducted the autopsy, found that Renerio died of cerebral hemorrhage (t.s.n., 10 February 1965, page 5). It is not shown that Carlos turned on any of the other Espenillas. In the absence of clear proof, We must give Juan and Carlos the benefit of reasonable doubt, and hold them individually responsible for the injuries inflicted by them. Consequently, the allegation of their taking advantage of superior strength is not warranted, and in the absence of any other qualifying circumstance, each can only be held guilty of one homicide, with the mitigating circumstance of voluntary surrender. For both gave themselves up to the Acting Chief of Police Magdaraog, of Monreal, Masbate, as certified by the latter on the back of the warrant of arrest (Record, page 8).

WHEREFORE, the decision under review is hereby modified in part and reversed in part, as follows:

1. Juan Bartolay is found guilty of homicide, for the death of Elias Espenilla, with one (1) mitigating circumstance (voluntary surrender); he is, therefore, sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prison mayor to fourteen (14) years and eight (8) months of reclusion temporal, with the corresponding accessory penalties, and, to indemnify the heirs of Elias Espenilla in the amount of P12,000.00; he is, however, acquitted of the deaths of Renerio Espenilla and Galicano Espenilla, for lack of proof of his guilt thereof beyond reasonable doubt.
2. Carlos Pejo is found guilty of homicide, for the death of Renerio Espenilla, with one (1) mitigating circumstance (voluntary surrender), and is sentenced to suffer the indeterminate penalty of six (6) years and one

(1) day of prison mayor to fourteen (14) years and eight (8) months of reclusion temporal, with the corresponding accessory penalties, and to indemnify the heirs of Renerio Espenilla in the amount of P12,000.00; he is, however, acquitted of the charge of causing the death of Elias Espenilla and Galicano Espenilla, for lack of proof of his guilt beyond reasonable doubt.

3. Sofronio Barrelay, Felicisimo Bartolay and Jesus Bartolay are acquitted, for lack of proof of their guilt beyond reasonable doubt, of the deaths of Elias Espenilla, Renerio Espenilla and Galicano Espenilla.

4. In view of the foregoing findings, it is recommended that the penalty of life imprisonment imposed upon accused Periol Villamor, who withdrew his appeal, should be commuted by His Excellency, the President of the Philippines, to a term of imprisonment similar to those imposed herein upon Juan Bartolay and Carlos Pejo, with the indemnity to be paid by him to the heirs of Galicano Espenilla, as fixed by the Court of First Instance.

No costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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[1] Rollo, page 74.

[2] One of the seven (7) accused in the information.

[3] Decision, pages 1-4.

[4] Reiterated in *People v. Bulawin*, G.R. No. L-30069, 30 September 1969, 29 SCRA 710. See also *People vs. Pulmones*, 61 Phil. 680, 688.

"It is true that frequently the defense of alibi deserves little consideration and is easily fabricated and is shown by the evidence to be untrue, but the defense of alibi is not always false and without merit ....."

[5] *People vs. Caballero*, 53 Phil. 585, 596; *People vs. Tividad*, G.R. No. L-21469, 30 June 1967, 20 SCRA 549; *People vs. Vicente*, G.R. No. L-26241, 21. May 1969, 28 SCRA 247; and cases cited therein.

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