

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX MOZAR AND BAROTOLOME MOZAR, DEFENDANTS-APPELLANTS.

G.R. No. L-33544. July 25, 1984

Ponente: CUEVAS, J.

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CUEVAS, J.:

Felix Mozar and Bartolome Mozar, together with Mallorico Mozar (who pleaded GUILTY upon being arraigned and was thereafter accordingly sentenced)[1] were charged with and prosecuted for MURDER before the defunct Court of First Instance of Surigao del Norte under Criminal Case No. 4330, for allegedly having conspired, confederated and mutually helped one another in attacking and stabbing Rudy Salino thereby inflicting upon him physical injuries which caused the death of the latter.

Tried after pleading "NOT GUILTY" upon arraignment, they were convicted as charged and thereafter sentenced to reclusion perpetua with all the accessories prescribed by law; to indemnify the heirs of the victim Rudy Salino, jointly and severally, in the sum of P8,000.00 with no subsidiary imprisonment in case of insolvency; and to pay two-thirds (2/3) of the costs.

They now come before US, through the instant appeal, assailing the aforesaid judgment of conviction contending among others, that the trial court erred (1) in giving credence to the testimony of Alfredo Anuario, the prosecution witness; (2) in finding that conspiracy existed among the three accused; (3) in considering nighttime, abuse of superior strength and treachery to have attended the commission of the crime; and (4) in failing to consider the mitigating circumstances of passion and obfuscation and voluntary surrender in favor of the appellants.

The prosecution's version of the stabbing incident as summarized by the Hon. Solicitor General in the appellee's brief[2] runs thus -

"Early in the morning of October 25, 1969, the body of Rudy Salino was found slumped face down, on the floor of a boat locally known in Surigao del Norte as "baroto", somewhere at Lake Mainit. The boat containing Salino's body was towed by Barrio Captain Jimmy Salino and Pat. Ernesto Salino from the lake to barrio Mansayao where Pat. Cresencio Belbar of the Mainit Police Department had stationed him-self and waited for the body for initial investigation (tsn, page 14, August 20, 1970). Belbar took note of the general appearance of the cadaver and drew a sketch (Exh. "C", folder of exhibits) thereby showing the location of the inflicted wound after which he had it brought to the house of Maximo Salino where a post-mortem examination was conducted by Dr. Felixberto Dumadag (tsn, pp. 14-15, *ibid*; pp. 68-70, August 21, 1970).

Events that transpired earlier reveal that at about seven o'clock in the evening of October 24, 1969, Rudy Salino, accompanied by Alfredo Anuario, was riding on a "baroto" bound for the poblacion of Mainit from Mansayao to buy medicine for his ailing child (tsn, pp. 91-93, August 21, 1970). The two were paddling the boat with Anuario steering the same. After negotiating some two hundred yards from Mansayao, the two met Felix Mozar, Bartolome Mozar (appellants herein) and Mallorico Mozar (convicted ahead) from the opposite direction. Coming to a hailing distance with each other, Rudy Salino, the victim, greeted Felix Mozar and asked the latter where they were going. Instead of giving an answer to Salino's greeting, the Mozars steered

their own "baroto" nearer to that of Salino and Anuario. At a standing position, Felix Mozar, now within reach of Salino, suddenly hurled a spear at the latter, hitting him in the abdomen. At this juncture, and taking Felix Mozar's sudden attack as a cue, Bartolome Mozar and Mallorico Mozar jumped into and boarded Salino's boat and started hitting him with weapons in their hands, consisting of a paddle and a bolo, respectively. Alfredo Anuario, gripped with fear and sensing something drastic might happen to him, jumped over-board and swam to the nearest shore which was some sixty meters away. He then ran straight to his house which was about half a kilometer away. After regaining his composure, he reported the matter to Maximo Salino, father of the victim (tsn, pp. 94-97, August 21, 1970)."

The defense, on the other hand, thru the combined testimonies of Felix Mozar, Bartolome Mozar and Conrado Palasan, sought to establish -

"x x x that sometime past 5:00 p.m. of October 24, 1969, Felix Mozar accompanied by his sons Bartolome and Mallorico, went out in his boat to Lake Mainit at a spot called Haponan Sili, a fishing ground, to find out if his fishing net which he had previously laid out, had some catch. Of the three, only Mallorico Mozar carried a bolo. Mallorico Mozar was sitting at the front, Felix Mozar at the middle, while Bartolome Mozar was steering; that they reached Ha-ponan Sili at about 6:30 p.m. but could not find the fishing net at the spot where it was laid. After looking around for some time, Mallo-rico Mozar pointed to two persons who were also riding in a boat and coming towards their direction; that they steered their boat towards the other boat Mallorico Mozar saw, and at a distance of about 30 meters from each other, they recognized the occupants of the other boat to be Rudy Salino and Alfredo Anuario; that the other boat carrying Rudy Salino and Alfredo Anuario suddenly turned back, and it was at that time that they saw in the boat of Rudy Salino and Alfredo Anuario the fishing net of Felix Mozar, the ones marked as Exhibit "D" and "D-1"; that they gave chase to the boat of Rudy Salino and Alfredo Anuario; that they overtook the other boat, and one fathom before they actually overtook the other boat, Alfredo Anuario dived into the water and swam towards the nearest shore; that before Alfredo Anuario actually dived into the water, Felix Mozar called out at the two, Rudy Salino and Alfredo Anuario, but the latter did not answer; that instead, as the two boats edged near each other, Rudy Salino struck Felix Mozar with a paddle; that Felix Mozar was hit at the left wrist, which blow rendered him unconscious; that a medical cer-tificate (Exh. "3") was issued by Dr. Dumadag on account of this injury; and that at this instance, Mallorico Mozar began hitting Rudy Salino with his bolo and all that he, Felix Mozar, in his unconscious state, could hear was the sound of the blows hitting Rudy Salino."

The prosecution's case against the appellants gravitates principally upon Alfredo Anuario, an admitted companion of the victim on the fatal night of the incident in question, whose testimony have been heavily relied upon by the trial court. This witness testified that at about 7:00 o'clock in the evening of October 22, 1969, he was requested by the deceased Rudy Salino to go with him to the town of Mainit for the purpose of buying medicine for the latter's child who was then afflicted with fever. He agreed and they used a boat locally known as "baroto", which the two of them paddled in proceeding to their destination. On their way and after having travelled about 200 meters, they met another "baroto". On board this "baroto" were accused Felix Mozar and his two sons, Mallorico and Bartolome. After the two "barotos" came nearer to each other and at a point where they were merely about two fathoms from each other, Rudy Salino asked Felix Mozar where he was going. Felix Mozar did not answer. Instead, he immediately stood up, grabbed something "as small as a thumb but about one fathom long", and thrust it against Rudy Salino who was then sitting at the time, and almost simultaneously shouted, "son of a bitch". Rudy Salino was hit at the stomach. It was at that moment when Mallorico Mozar and Bartolome Mozar boarded Salino's "baroto" and started hacking Rudy Salino, but could not tell what instruments were used by them. Because he was afraid that he may be involved, he immediately dived into the water and swam ashore.[3]

The pertinent portion of his testimony particularly inculpatory against Mallorico and Bartolome Mozar, runs thus -

"Q: After Rudy Salino was hit by the thrust of Felix Mozar, what happened if there was any?

A: Mallorico Mozar and Bartolome Mozar immediately went to our boat and started hacking the victim Rudy Salino.

Q: What instrument was used by Mallorico Mozar if you still remember?

A: What I know is that they were hacking Rudy Salino.

Q: What else happened?

A: Because I was afraid that they will include me, I immediately dive into the water.

Q: After you dive into the water, what did you do?

A: I went or I swam to the shore."[4]

x x x x x

Q: Did you observe what instrument was used by Bartolome Mozar in attacking the late Rudy Salino?

A: Mallorico Mozar was bringing a bolo while Bartolome Mozar was bringing a paddle.

Q: Did you see what Bartolome Mozar do with the paddle?

A: (Witness demonstrated as if he was holding with his right hand the paddle and immediately rode to their boat' ".[5]

Considering the hazy and vague narration that characterized Anuario's declaration - particularly with respect to the manner of attack and instruments used - the issue that presents itself for a preemptive resolution is this - Where was Anuario at the time the victim was allegedly assaulted by the appellants?

From his direct testimony, he would like us to believe that he was beside the victim inside the latter's "baroto" when the appellants ganged up and assaulted the victim. Cross examined however on this same point, his admission reads as follows:

"Q: You said you dived into the water and swam to the shore, was in this occasion that Felix Mozar uttered those words in an angry manner?

A: Not yet.

Q: Did you not dive from the boat immediately when Felix Mozar was already in your boat?

A: That was at a time when Felix Mozar stood up when they were already near and said, 'son of a bitch' and then thrust the instrument to the body of Rudy Salino.

Q: So you were already at the lake when you heard those words uttered by Felix Mozar, 'You are a son of a bitch'.

Fiscal Mantilla:

Misleading, Your Honor, We object.

Court:

Objection sustained.

Atty. Egay:

Q: Now, you said that after diving from the boat, you swam to the shore?

A: When Rudy Salino was hit in the abdomen, I immediately jumped to the water.

Q: And when you jumped into the water, you swam back to barrio Mansayao, is that correct?

A: I swam towards the barrio with a distance of 40 meters from the barrio Mansayao."[6]

Redirect examination of this witness was undertaken by the prosecution. But his aforesaid damaging admission to the effect that "When Rudy Salino was hit in the abdomen, I immediately jumped to the water" which contradicts his previous statement on direct examination on the same point, was never amplified much less explained. In fact, there was not even a mere attempt, to show why and how he was still able to see and witness the hacking (not stabbing) of the victim by appellant Bartolome and Mallorico Mozar when, as admitted by him, right after the victim Salino was hit in the abdomen, he (Anuario) immediately jumped to the water.

Against that backdrop, we are far from convinced that Anuario actually saw what he narrated before the trial court - the hacking of the victim by Mallorico to which appellant Bartolome was allegedly a participant.

But what appears to have totally demolished Anuario's credibility on this specific point - hacking by Bartolome and Mallorico of the victim - is the nature of the injuries sustained by the victim. Post-mortem examination conducted upon the cadaver of the victim by Dr. Dumadag, Jr. failed to reveal any wound produced by hacking. On the contrary, what this medico-legal witness found were one (1) punctured wound, twelve (12) stab wounds, and abrasions. Certainly, if the victim was continuously hacked by appellants Bar-tolome and Mallorico as claimed by Anuario, it is inconceivable as to why no hack wounds have been sustained by the victim. For to hack is to cut with repeated or regular blows; to severe with repeated blows or to cut with blows.[7] The character of said injuries together with the afore-described circumstances unerringly point to the inevitable conclusion - that Anuario was no longer at the scene of the incident when the victim was allegedly attacked by Mallorico and appellant Bartolome.

Another factor which adds credence to this view is the fact that Anuario suffered no injury whatsoever. . . . Not even a scratch or minor bruises. If he was still beside the victim inside the latter's 'baroto' when the victim was attacked, we see no reason as to how he could miraculously escaped injury when he too could be a suspect in the taking of Felix Mozar's fishing net.

Aside from this Alfredo Anuario, no other eye witness appeared to have been presented by the prosecution. The only inculpatory evidence then left against appellant Bartolome Mozar is that coming from Dr. Felixberto Dumadag, Jr., the Municipal Health Officer of Numancia, Surigao del Norte, who conducted an autopsy on the cadaver of the victim. After dwelling at length on the various injuries found by him in the course of his autopsy examination, this witness concluded that from the nature of the injuries sustained by the victim, more or less, three (3) kinds of instruments may have been used by the victim's attackers, namely: (1) a blunt instrument causing abrasions in the xyphoid process of the sternum; (2) a sharp pointed instrument that caused the punctured wound; and (3) a sharp bladed instrument which caused the multiple stab wounds.[8] On his conclusion, there can be no quarrel with this medical examiner since his aforesaid conclusion appeared to be supported by the very nature of the injuries sustained by the victim. For instance, the punctured wound on the right part of the chest just below the nipple which is two inches therefrom,[9] could have been caused by sharp instrument; the rest of the other injuries under Item Nos. 4, 5, 6, 7, 8, 10, 11, 12, 14 and 15, by a sharp bladed instrument; and those appearing under Item Nos. 9 and 13 which are abrasions on the thorax, by a blunt instrument. That three kinds of instruments may have been used by the victim's attackers, do not however conclusively establish the number of participants responsible for inflicting the injuries found upon the body of the victim. At most, it could merely serve as a basis for concluding, but not conclusive, that more than one person may have inflicted the said injuries.

But since Mallorico Mozar had already pleaded guilty thereby owning sole responsibility for the killing of the victim, then who between Felix and Bartolome must or could be made additionally liable for the victim's death? While the finger of suspicion points to both or either one of them, suspicion alone however strong could not amount to proof beyond reasonable doubt sufficient enough to serve as a basis for conviction. The presumption of innocence in favor of the appellant Bartolome Mozar cannot be said to have been overwhelmed by the necessary quantum of evidence prescribed by law.[10]

But may not appellant Bartolome be held criminally liable because of the charge of conspiracy? Our answer is in the negative. Settled is the rule that proof of previous agreement to commit the crime is not necessary for conspiracy may be deduced from the facts and circumstances surrounding the commission of the offense. Concert of action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the fatal wound may determine complicity.[11] And where conspiracy is duly established, the role played by each conspirator is of no moment.[12] Conspiracy, however, must be established by positive evidence and conviction pursuant thereto must be founded on facts, not on mere inferences and presumption.[13] In the case at bar, other than conjectures and assumptions, no satisfactory and convincing evidence exists as to what appellant Bartolome Mozar had done that will warrant a conclusion of his being in conspiracy with appellant Felix Mozar. There being no conspiracy, criminal liability of the appellants must be individual and separate.

Having disposed of the imputation against appellant Bartolome Mozar, we now come to the case of Felix Mozar. Similar to that of Bartolome, the People's case against Felix Mozar centers also on the testimony of Alfredo Anuario. But whereas we could not swallow 'hook, line and sinker' Anuario's version with respect to the participation of appellant Bartolome, we find his narration with respect to Felix credible enough. Reliance on the portion of his testimony with respect to Felix Mozar's role in the killing of the victim, does not violate any rule of evidence whatsoever. For the fact that a witness may have lied at one instance on certain point does not make his entire testimony totally incredible and therefore inadmissible.

"It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, it is not required that the whole of their uncorroborated testimony be rejected, but such portions thereof deemed worthy of belief may be credited." [14]

Anuario's testimony that upon Felix Mozar's 'baroto' approaching that of the victim's, Felix stood up, grabbed something, and then immediately thrust it against Rudy Salino [15] appeared undiscredited despite extensive and piercing cross-examination. Anuario at that time was still with the victim inside the latter's 'baroto'. Anuario's story with respect to Felix's role finds ample and vivid corroboration in injuries marked as Item No. 2 appearing in Exhibit "A" [16] which is a punctured wound "at the right side of the stomach towards the right part of the chest just below the nipple about 2 inches therefrom". As testified to by Dr. Dumadag, Jr. this wound is fatal considering its depth and location and the vital organs in that region. It is enough to produce death. It is a punctured wound caused by a sharp pointed instrument inflicted by one who must have stationed himself in front of the victim. [17] This is the injury produced by the sharp pointed instrument hurled by appellant Felix at the victim.

Aside from being positively identified, enough motivation exists on the part of appellant Felix Mozar to "deliver the works" on the victim in an attempt to get even with the latter. The loss of his fishing net on that fatal night in question is not merely an isolated one. He was the victim of previous losses before and believing that the deceased was likewise the perpetrator of and/or has something to do with his present and earlier losses, and feeling aggrieved by the affront against his property right, he has chosen to take the law unto his hands thereby penalizing

the victim without recourse to legal and judicial processes. It is but fitting and proper therefore that he should suffer the consequences of such transgressions to impart upon him that ours is a society of laws and not of men.

In his attempt to exculpate himself from criminal liability, Felix Mozar claimed that he was not able to inflict any wound upon the victim because when they overtook him, the latter immediately struck him thereby hitting him at his left wrist thus rendering him unconscious. In support of his assertion Felix Mozar submitted a medical certificate (Exh. "C") issued by Dr. Felixberto Dumadag, the same physician who conducted the autopsy of the victim, which states that a certain Felix Mozar

"was inflicted with CONTUSION AND SWELLING at the left wrist region; and that

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said physical injury will require medical attendance for less than one (1) week."

Appellant Felix Mozar's aforesaid entreaty failed to persuade us. On the contrary, the injury described in the aforesaid medical certificate hardly supports his story that the blow delivered against him knocked him down to unconsciousness. We therefore find his excuse too lame a pretense as to warrant belief in it.

The charge against the appellants is that of MURDER, the attack or the assault being allegedly attended by treachery and evident premeditation. We agree with the trial court that treachery was present despite the attack being frontal and/or face to face since it was so sudden and unexpected and without the victim being afforded the opportunity to defend himself against said attack.[18] As regards evident premeditation, the evidence on hand failed to show elements thereof having attended the commission of the offense in the case at bar.[19] The encounter between the victim and his assailants was merely accidental. It occurred while the latter was merely searching for the missing fish net. Similarly, nighttime not having been intentionally sought for in order to better accomplish their criminal design,[20] may not be considered to have aggravated the criminal liability of the offenders.

Anent appellant's fourth assignment of error, the lower court committed no error in discarding voluntary surrender. For while it is true that after the commission of the offense, appellant Felix Mozar went to the Municipal Building of Mainit yet he did so for purposes of surrendering his son, Mallorico, and not to submit himself to the authorities (in connection with the killing of the victim) which is one of the essential requisites of voluntary surrender.[21]

With respect to passion and obfuscation, it must be brought by causes naturally producing in a person powerful excitement such that he loses his reason and self-control thereby diminishing the exercise of his will power.[22] The act producing the obfuscation must not be far removed from the commission of the crime by a considerable length of time, as in the instant case, during which the accused might have recovered his normal equanimity and to preclude a realization of the wrongfulness of the act taken.[23] As correctly pointed out by the prosecution, appellant's loss of his fishing net and paraphernalia occurred long before the killing of the victim. The trial court therefore correctly disregarded said mitigating circumstances in favor of the appellant.

In its judgment of conviction, the court a quo ordered an indemnification of P8,000.00. That should now be increased to P30,000.00.[24]

WHEREFORE, and except as thus modified, the judgment appealed from is hereby AFFIRMED but only insofar as appellant Felix Mozar is concerned; and REVERSED with respect to appellant Bartolome Mozar, who is hereby ACQUITTED, his guilt not having been proved beyond reasonable doubt.

It appearing that Bartolome Mozar is detained, his immediate discharge from custody is hereby ordered unless held for some other offense or offenses. SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Aquino, J., no part.

[1] 17 years, 4 months and 1 day to 20 years of Reclusion Temporal per Decision dated June 2, 1970 but later modified to 12 years of Prison Mayor to 20 years of Reclusion Temporal per Order dated June 18, 1970.

[2] Plaintiff-appellee's brief - pages 5, 6 and 7.

[3] Pages 91, 92, 93 & 94, TSN, Hearing of August 21, 1970

[4] Page 96, Ibid

[5] Page 96, TSN, Hearing of August 21, 1970

[6] Page 109, TSN, Hearing of August 21, 1970

[7] Webster Third International Dictionary, 1976 Edition, p. 1018.

[8] Page 59, TSN, Hearing of August 21, 1970.

[9] Item No. 2, Exhibit A.

[10] People vs. Agda, 111 SCRA 330.

[11] People vs. Yu, 80 SCRA 382; People vs. Tirol, 102 SCRA 558

[12] People vs. Pamilgan, 102 SCRA 578

[13] People vs. Marquez, 109 SCRA 91

[14] People vs. Malillos, NO. L-26568, July 29, 1968, 24 SCRA 133, 139-140; People vs. Mabuyo, NO. L-29129, May 8, 1975, 63 SCRA 532.

[15] Page 94, TSN, Hearing of August 20, 1970

[16] Post-mortem Report

[17] Page 38, TSN, Hearing of August 20, 1970

[18] People vs. Valdemorro, 102 SCRA 121; People vs. Verges, 105 SCRA 744

[19] People vs. Roncal, 79 SCRA 509

[20] People vs. Paga., 79 SCRA 520; People vs. Ang, 108 SCRA 267

[21] People vs. Hanasan, 29 SCRA 534

[22] US vs. Salandanan, 1 Phil. 464; US vs. Diaz, 15 Phil. 123

[23] People vs. Pareja, 30 SCRA 163

[24] People vs. de la Fuente, 126 SCRA 518; People vs. Garden, G.R. NO. L-58172, May 28, 1984; People vs. Tumaliwan, G.R. NO. L-58818, June 22, 1984

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