

**PEOPLE OF THE PHILIPPINES, PLAINTIFF APPELLEE, VS. CIRIACO BAZAR, ANICETO TAGBACAULA, ALEXANDER TAGBACAULA, ROMULO ANGCAP, LOPITO COLLANTES AND MARCIAL RIBLE, DEFENDANTS-APPELLA...**

*G.R. No. L-41829. June 27, 1988*

Ponente: GRIÑO-AQUINO. J.

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**GRIÑO-AQUINO. J.**

Originally, all the six accused, named Marcial Rible, Aniceto Tagbacula, Ciriaco Bazar, Alexander Tagbacula, Romulo Angcap, and Lopito Collantes, appealed the decision of the Court of First Instance of Misamis Occidental convicting them of the crime of Attempted Robbery with Homicide and sentencing each of them to suffer the penalty of reclusion perpetua, to jointly and severally indemnify the heirs of the deceased Cristituto Florida in the sum of twelve thousand pesos (P12,000) without subsidiary imprisonment in case of insolvency, and to pay the costs. However, on different dates during the pendency of their appeal, Ciriaco Bazar, Alexander Tagbacula, Romulo Angcap and Lopito Collantes withdrew their appeals leaving only Marcial Rible and Aniceto Tagbacula to prosecute this case.

The information filed by the City Fiscal of Tangub City on November 11, 1974 against the accused-appellants alleged:

"The undersigned City Fiscal accuses Ciriaco Bazar, Salvador Humolad, Annie Tagbacula, Nonoy Tagbacula, Romulo Angcap, Lopito Collantes and Marcial Rible, of the crime of Robbery with Homicide, committed as follows:

"That on or about August 22, 1974, in Caniangan, Tangub City and within the jurisdiction of this Honorable Court, the abovenamed accused acting together and cooperating with one another pursuant to a common design, with intent of gain and with the use of force and violence upon persons, did then and there wilfully, unlawfully and feloniously steal, take and carry away one female pig, belonging to Cristituto Florida, worth P100.00 and on the same occasion when the accused were overtaken by the said Cristituto Florida, the accused acting together and cooperating with one another, did with the use of bladed weapons, stab, strike and hit the said Cristituto Florida, injuring the latter on several parts of his body, which injuries caused the death of the said Cristituto Florida, immediately thereafter.

"Contrary to Art. 294 and 248, of the Revised Penal Code."

The facts of the case, as culled from the decision of the trial court, are as follows:

On August 21, 1974 nine (9) persons named Ciriaco Bazar, Lito Hermoso, Toting Nazon, Salvador Humolod, Aniceto Tagbacula, Romulo Angcap, Lopito Collantes, Marcial Rible, and Alexander Tagbacula attended a dance at Barrio Hinocutan Tangub City. After the dance, at about 2:00 o'clock in the early dawn of August 22, 1974, instead of going home, they all proceeded to the house of Cristituto Florida at Barrio Caniangan to rob him

for they had heard that Cristituto had just sold a pig. The leaders of the group were Ciriaco Bazar and Lito Hermoso. They all agreed to divide the loot equally. Ciriaco Bazar was armed with a hunting knife, and a revolver belonging to Lito Hermoso. Lito carried a hunting knife. The other were armed with stones and pieces of wood.

Ciriaco Bazar and Lito Hermoso went under the house of Cristituto Florida and pulled a sow with four piglets to a distance of about 40 meters from the house, where their other companions stood. As Ciriaco Bazar and Lito Hermoso hauled the sow away, it squealed and roused the people in the house. As expected, Cristituto Florida came down from his house, followed by his son, Modesto Florida, 20 years old. However, upon seeing that his father was surrounded by several armed men, Modesto turned back and hid himself behind the bushes to watch his father. Ciriaco Bazar pointed his revolver at Cristituto and announced: "Noy it is not your life that we are interested, it is your money." "This is robbery, do not shout," Lito Hermoso added. Toting Nazon held Cristituto's left hand while Hermoso held his right hand. Cristituto struggled to free himself. Upon freeing his left hand, he stabbed Hermoso on the breast with his scythe. Aniceto Tagbacaula struck Cristituto on the left leg with a piece of wood while Hermoso stabbed him five (5) times with his knife. Toting Nazon also stabbed him twice with a hunting knife. Lopito Collantes and Alexander Tagbacaula squeezed the back of Cristituto's neck. Modesto watched helplessly as his father fell to the ground dead. While all these things were happening, Romulo Angcap and Marcial Rible held the squealing pig by its tether.

Early the next morning, Warlito Enomar reported the killing to the Chief of Police of Tangub City who sent Pfc. Boca and Pfc. Quioco to Caniangan to investigate. The police officers were informed by Modesto and his mother, Honorata Florida, that nine persons, namely, Ciriaco Bazar, Aniceto Tagbacaula, Alexander Tagbacaula, Toting Nazon, Marcial Rible, Salvador Humolod, Lito Hermoso, Romulo Angcap, and Lopito Collantes robbed them and killed Cristituto. First to be arrested by the peace officers were Marcial Rible, Aniceto Tagbacaula, Salvador Humolod, and Romulo Angcap. Being informed that Lopito Collantes and Alexander Tagbacaula escaped to Jimenez, a town 40 kilometers away from Caniangan, Pfc. Quioco proceeded to the place and arrested them there. Ciriaco Bazar went into hiding but was arrested on August 24, 1974 at Baloc, Tangub City, after having killed Lito Hermoso in Bo. Owayan. Toting Nazon was never apprehended.

Antonio Y. Ausa, the Rural Sanitary Inspector, examined the body of Cristituto Florida. He found eleven (11) injuries on his body, namely, five (5) stab wounds; four (4) incise wounds; and (1) contusion and one (1) abrasion.

The appellants, in their brief, alleged that the trial court erred:

- In finding the accused guilty of the offense charged upon the unbelievable, concocted and fabricated testimonies of the state witness Salvador Humolod and Modesto Florida, son of the deceased.
- In finding that the accused conspired to commit the crime.

There is no merit in the appellants' allegation that the trial court erred in giving credit to the state witness Salvador Humolod, and Modesto Florida, son of the victim, because they allegedly contradicted each other. Appellants pointed out that while Humolod testified that he was 8 meters from the house of Cristituto Florida when the latter was killed, Modesto Florida declared that Humolod was 37 meters away from the house when his father was attacked. An examination of the transcript of Humolod's testimony reveals that he was at a distance of 8 meters from Cristituto's house when he threw stones at it and nine (9) meters from the spot where the deceased was killed. The pertinent portion of his testimony reads as follows:

A.

While I was at a distance of eight meters away from the house of Totong Florida, that was that distance when I threw stone to the house of Cristituto Florida, x x x

Q.

Now, the place where Totong Florida was stabbed is about the distance of 50 meters from the house, is that correct?

A.

In my estimate, Sir, the distance to the place where they brought the pig from the house of Totong Florida is about 50 meters and Totong Florida followed the path of the pig. My estimate of that distance wherein Cristituto Florida was stabbed was about 40 meters from his house.

Q.

How far were you to the place where the deceased Totong Florida was stabbed by Toting Nazon and Lito Hermoso?

A

As I approached them at the time when Totong Florida was stabbed by the two, I estimated the distance as from this seat to the corner wall of this courtroom.

INTERPRETER:

Which has an estimated distance of about nine meters.

A.

After the two stabbed Totong Florida, I left the place, (t.s.n., January 6, 1975, pp. 11-12.)

On the other hand, Modesto Florida testified that:

Q.

How far, therefore, was Humolod to your house at the time when you saw your father was assaulted?

A.

About 37 meters, Sir, to our house.

Q.

You are sure of that, Mr. Florida, that Salvador Humolod was in a distance of about 37 meters from your house when you saw your father was being assaulted by the four persons you have just mentioned?

A.

I am sure of that, Sir.

Q.

And that was also the first time you saw Humolod when he was already at that distance of 37 meters away from your house?

A.

Not yet, Sir.

Q.

When for the first time did you see Humolod that evening?

A.

The first time that I saw Salvador Humolod when I went down the house was that he was about 20 meters away from our house.

Q.

And from that 20 meters where you saw Salvador Humolod for the first time, he walked farther to a distance of 37 meters to go nearer to the place where your father was assaulted?

A

Yes, sir. (t.s.n., January 20, 1975, p. 53.)

There is no inconsistency between Modesto's and Salvador's testimony because they spoke of different distances. Humolod testified on his distance from Cristituto when the latter was attacked, while Modesto spoke of Humolod's distance from the house when his father was attacked. In any case, complete uniformity in details would have been a bad of untruthfulness and lack spontaneity. The slight contradictions, on the other hand, strengthen the sincerity of their testimonies. (People vs. Egas, 137 SCRA 188; People vs. Manalo, 135 SCRA 84; People vs. Villamil, 135 SCRA 610; People vs. Canoy, 137 SCRA 365; People vs. Pacabes, 137 SCRA 158)

Neither did the trial court err in finding that there had been a conspiracy among the accused to rob the deceased. It relied on the testimony of the state witness Salvador Humolod which is quoted below:

"Q.

Did all the members of the group agree to proceed towards the house of Cristituto Florida?

"A. Yes, sir.

"Q. What was the purpose of going to the house of Cristituto Florida?

"A. Our purpose in going to the house of Cristituto Florida was to rob him because on that day, he sold a pig.

"Q. Who was the recognized leader of your group?

"A. Ciriaco Bazar and Lito Hermoso.

"Q. Upon whose suggestion or idea was it to rob Cristituto Florida?

"A. At the start. Sir, it was Lito Hermoso and Ciriaco Bazar who had agreed to rob Totong Florida. They were the two only who agreed at that time, however, when we were already near the house of Totong Florida, we in the group concurred to what we will do at that time ... to what they will do at that time.

"Q. You said that your purpose was to rob him because he sold a pig during that day, was there any agreement among you how the loot should be divided?

"A. We agreed, Sir.

"Q. How would it be divided?

"A. That we will divide the loot equally among us." (t.s.n., December 10, 1974, pp. 6-7.)

However, there is no evidence that the band which was armed with knives, a revolver, stones and a piece of wood likewise conspired to kill Cristituto. Bazar precisely apprised the deceased that they were not after his life, but only after his money. Still, Humolod testified clearly that because the victim resisted and inflicted a wound on Hermoso, the latter stabbed Cristituto five (5) times and Nazon also stabbed him twice (pp. 22-23, t.s.n.. January 6. 1975). The sanitary health officer found five (5) stab wounds and four (4) incise wounds, one (1) contusion and one (1) abrasion on the body of the deceased.

Did a conspiracy to kill the deceased spontaneously arise when he resisted the robbers?

"There is conspiracy when the acts committed by the accused taken collectively, result from concerted and associated action, although if each circumstance is considered separately, it might no show confederation, but when linked together, the circumstances that in themselves are inconclusive, may when taken as a whole, show apparently isolated acts springing from a common object and have in view the promotion of a common purpose." (Wharton's Criminal Evidence, Vol. I, pp. 284-288.)

The evidence shows that when Cristituto came down from his house, Ciriaco Bazar pointed his revolver at him and demanded his money. Lito Hermoso held the victim's right hand while Toting Nazon held his left hand. Nevertheless, Florida was able to free his left hand and stabbed Lito Hermoso on the breast with his scythe. Aniceto Tagbacaula struck his left leg with a piece of wood. Toting Nazon stabbed him with a hunting knife. Lito Hermoso stabbed him with a knife five (5) times. Lopito Collantes and Alexander Tagbacaula squeezed his neck to strangle him. Romulo Angcap and Marcial Rible stood by, holding the pig which they had dragged from its pen under Florida's house.

Since the robbery was committed by a band, all the members of the band are presumed to be conspirators or co-principals also in the assaults committed by the band unless he who claims to be a non-conspirator proves that he attempted to prevent the assault. Article 296 of the Penal Code provides:

"Article 296. Definition of a band and penalty incurred by the members thereof. — When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such unlicensed firearm.

"Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same. (As amended by Republic Act No. 12.)"

There is no evidence showing that the herein appellants, Marcial Rible and Aniceto Tagbacaula attempted to prevent the killing of Cristituto Florida. Therefore, they are equally guilty of his death at the hands of their companions.

"When the commission of the crime of robo con homicidio (robbery with homicide) has been proven, all those who take part as principals in the commission of the robbery are guilty of the complex crime of robbery with homicide, unless it appears that they endeavored to prevent the commission of the homicide." (U.S. vs. Macaladlad, et al., 9 Phil. 1; People vs. Patricio, 79 Phil. 227; People vs. Carunungan, 109 Phil. 534.).

Appellant's contention that the uncorroborated testimony of Salvador Humolod, was insufficient to prove the conspiracy, is without merit. "The rule that the statement of a conspirator relating to the conspiracy is not admissible in evidence unless the conspiracy is first shown by other independent evidence, applies only to an admission in an extrajudicial confession or declaration but not to testimony given directly in court where the defendants have the opportunity to cross-examine the declarant." (People vs. Nierra, 95 SCRA 1; People vs. Serrano, 105 Phil. 531; People vs. Dacanay, 92 Phil. 872.)

WHEREFORE, based on all the foregoing considerations, the appealed decision is affirmed in toto.

**SO ORDERED.**

Narvasa (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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