

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHNSON SO, ZOSIMO GRACILLA, NEPTALE GIVERA, ARTURO DIAZ AND MOISES GARALDE, ACCUSED, NEPTALE GIVERA, ACCUSED-APPELLANT.

G.R. Nos. L-39504-06. January 30, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Neptale Givera, Johnson So, Zosimo Gracilla, Arturo Diaz and Moises Garalde were charged before the then Circuit Criminal Court of Sorsogon under three (3) separate informations, two (2) of which are for murder - for the death of Mayor Luis de Castro and Esteban Gracilla, docketed as Criminal Cases Nos. CCC-X-21 and CCC-X-22, and one (1) for frustrated murder, for shooting Pat. Ofelio Geronga, docketed as Criminal Case No. CCC-X-23.

After arraignment and trial, the five (5) named accused were found guilty beyond reasonable doubt of the crimes charged against them. The dispositive portion of the decision reads:

"WHEREFORE, the Court finds all the accused guilty beyond reasonable doubt in

"(a) Criminal Case No. CCC-X-21-Sorsogon and hereby sentences Johnson So, Zosimo Gracilla, Arturo Diaz, Moises Garalde and Neptale Givera to the penalty of DEATH; to indemnify the heirs of the deceased Luis G. de Castro in the amount of one hundred fifty thousand pesos (P150,000.00), jointly and severally; and to pay the costs;

"(b) Criminal Case NO. CCC-X-22-Sorsogon and hereby sentences Johnson So, Zosimo Gracilla, Arturo Diaz, Moises Garalde and Neptate Givera to the penalty of DEATH; to indemnify the heirs of the deceased Esteban Gracilla in the amount of fifty thousand pesos (P50,000.00), jointly and severally; and to pay the costs; and in

"(c) Criminal Case No. CCC-X-23-Sorsogon and hereby sentences Johnson So, Zosimo Gracilla, Arturo Diaz, Moises Garalde and Neptale Givera to suffer imprisonment of from six (6) years and one (1) day of prison mayor as minimum, to twelve (12) years also of prison mayor as maximum; and to pay the costs. The victim Ofelio Geronga is deemed to have waived his rights to civil indemnity and none is provided for him.

"In Criminal Case No. CCC-X-23-Sorsogon let the accused Neptale Givera be credited fully with the period of his detention if said accused promises in writing that he will abide by all rules and regulations while serving sentence in said case.

"Considering that the helpfulness of the accused Neptale Givera to the prosecution and to the Court mentioned above comes under 'similar or analogous circumstances' provided for under paragraph 10 of Article 13 of the Penal Code, the Court is of the opinion that said accused is entitled to executive clemency consisting in the commutation of death penalty to life imprisonment." (pp. 140-142, Rollo)

Accused Johnson So, Moises Garalde, Arturo Diaz and Zosimo Gracilla escaped during the jailbreak on January

22, 1974. However, Johnson So, Moises Garalde and Arturo Diaz died in an encounter with the Philippine Constabulary authorities on February 10, 1974. No mention is made whether Zosimo Gracilla is still alive or not. The least that can be said is, he is at-large.

Considering the death penalty imposed upon the accused, the cases are now before Us on automatic review, but only with respect to Neptale Givera.

Prosecution evidence shows that about one o'clock in the afternoon of November 17, 1970, then Mayor Johnson So of Matnog, Sorsogon, accompanied by armed policemen and bodyguards were seen in a car going to Bulan, Sorsogon. Upon reaching Bulan, Mayor So and his armed companions proceeded to the house of the victim, Mayor Luis de Castro of Bulan. They entered the compound through the gate which was open and went inside the victim's house. Johnson So, together with Jose Geva and Amancio Garcera went up the house, and upon seeing Mayor de Castro at his office-library at the second floor of the house, uttered: "What did you do at our house? This is your end now. You, animal," following which he (So) fired two successive shots at Mayor de Castro who died instantly. Esteban Gracilla and Dioscoro Maceda who were then in conference with Mayor de Castro immediately ran out of the house. They were followed by So, Jose Geva and Amancio Garcera who fired successive shots at Esteban Gracilla causing the latter to fall dead at the main door of the ground floor.

During the shooting, herein appellant Neptale Givera, Arturo Diaz, Moises Garalde and Zosimo Gracilla were in the driveway standing guards with their long guns, walking back and forth. After having shot their victims, Mayor So and his group boarded their car and proceeded to the office of the Chief of Police of Bulan. They left the place and went to the Diamond Bakery along Roque Street, and alighted from their car. They deployed themselves with long-barrel guns ready for an encounter. Mayor So then shouted: "Where are you now policemen, who are brave, your mayor is already dead." Upon seeing Pat. Ofelio Geronga at a distance, Mayor So ordered the latter to come. He told Geronga to kneel and when the latter refused, So fired at him causing him to fall upon being hit.

Thereafter, the group boarded their car and went to the direction of the national highway.

Pat. Ofelio Geronga was brought to the hospital by Olivio Gemena, a tricycle driver. Geronga survived due to the timely medical assistance given him.

Appellant Neptale Givera's defense is denial and alibi. He claims that at the time the murder took place on November 17, 1970, he was on his way to Matnog from the capital town of Sorsogon after serving a subpoena to Fiscal Augusto Daria. In fact, he presented Municipal Judge Mayorico Gallarosa of Matnog and Fiscal Augusto Daria to support his alibi.

Appellant Neptale Givera, in his appeal, claims that the trial court erred (1) in taking judicial cognizance of the purported positive identification of accused Givera and in not finding reasonable doubt upon an examination of the whole proof; (2) in failing to consider and appreciate the highly suspicious and disturbing circumstances surrounding the reporting, investigation and prosecution of accused Givera strongly indicating that he has been the victim of injustice and oppression; and (3) in finding accused Givera guilty of the crimes charged and imposing double death penalty. (pp. 482-483, Rollo)

We are not persuaded. As found by the trial court prosecution witnesses, namely: Narsal Gigantoni, Serena Monzales, Jesus Cerillo, Teresita Galarosa and Pedro Espela testified that appellant Givera was in the company of Johnson So. Thus,

1. Narsal Gigantoni testified that he saw appellant Givera among those inside the car of Mayor So when they passed Kilometer 13 going to Bulan from Matnog.

"Q While you were there at the store of that Ramon Gigo at Kilometer 13, Gate, Bulan, Sorsogon, please tell

this court whether you had occasion to see the accused Mayor So?

A Yes, sir.

Q Where did you see him?

A When they passed by Kilometer 13 going to Bulan from Matnog I saw them.

Q What were they riding at?

A A red car of Mayor So.

Q Why did you know that that is the car of Mayor So?

A I always see that car being used by him.

Q When you saw Mayor So inside his red car at that time were there companions inside the car?

A Yes, sir.

Q Did you recognize his companions?

A I recognized them.

Q If you see those companions again will you be able to recognize them?

A Yes, sir.

Q Please look around the courtroom and see if those companions on November 17, 1970 are present in court and if they are, please point to them.

A (The witness pointing to Gracilla, Diaz, Neptale Givera and Garalde) (tsn., pp. 6-7, December 21, 1972 hearing)

2. Serena Monzales saw appellant walking back and forth in the driveway of the house of the victim, Mayor Luis de Castro that afternoon of November 17, 1970.

"Q Now, where were you in relation to these decorative holes of the walls of the house of Mayor de Castro.

A I was at the corner near the door leading to the other kitchen.

Q Since you hid yourself for cover how were you able to observe the persons of the other accused who were outside, namely: Zosimo Gracilla, Moises Garalde and Arturo Diaz.

A It was because that part where I was hiding myself I could see towards the garage where Zosimo Gracilla was standing and Arturo Diaz was going back and forth and Moises Garalde and Neptale Givera were also walking." (tsn., p. 46, September 1, 1971 hearing)

3. Jesus Cerillo declared that he saw appellant Givera and Diaz near the gate of the house of the slain mayor.

"Q You stated that you saw defendant So get off that red car and followed by these two persons in Exhibits 'A' and 'B'. What else did you see?

A Zosimo Gracilla.

Q Who else, if you saw any?

A (The witness pointing to Neptale Givera and Arturo Diaz)

Q You stated that defendant So followed by the persons in Exhibits 'A' and 'B' went up. What did you do when they were already going up?

A When Johnson So and his companions went up I ran to the kitchen and stood up near the door and then I saw the other two companions stand-ing at the gate so what I did was to immediately make my exit at the door of the kitchen and started running away?

Q Which one of these defendants now in court did you see standing by the gate at the moment you were going out the door of the kitchen?

A (Witness pointing to Neptale Givera and Arturo Diaz)." (tsn., pp. 18-19, September 7, 1971 hearing)

4. Teresita Galarosa was at the victim's residence at the time of the incident and she saw Givera walking back and forth carrying a long-barrel gun.

"Q You stated that when you saw Mayor So going up the house of Mayor de Castro with two companions you ran to the kitchen with the intention of going out of the house but you saw three companions of Mayor So walking back and forth with long-barrel gun. My question is this: Since Mayor So and his two companions were already inside the house with the three companions going back and forth outside, where was the seventh companion, if you know?

A He remained there at the main entrance of the house of Mayor de Castro sometimes moving a little farther from the place where he was previously standing and that man whom I saw was that short fellow with a big abdomen or belly.

Q Would you recognize that man standing by the door stout with a belly?

A I do not know his name but if I see him again I will be able to recognize him.

Q Will you look around the courtroom and see if there is anybody here who is that man who was standing by the door?

A The witness after looking around the courtroom answers: 'He is here.'

Q Will you please point to him?

A (The witness pointing to a man who answers to the name of Zosimo Gracilla).

Q How about those three companions of Mayor So who were walking back and forth outside of the house, would you recognize them?

A I do not know their names also but if I see them again I can recognize their faces.

Q Look around here in the court-room and see if those men that you saw on the afternoon of November 17, 1970 are inside the courtroom?

A They are here.

Q Will you please point to them one by one?

A (The witness points to Moises Garalde, Neptale Givera and Arturo Diaz).

Q By the way, you said that after Mayor So and his two companions went up the house of Mayor de Castro you ran to the kitchen and then to the bathroom. How long from the time that Mayor So and his two companions went up the house did you hear the first two shots?

A I was still in the act of running into the kitchen when I heard the two shots.

Q And how about the succeeding shots that you heard upstairs after the first two shots, when did you hear those shots?

A A little while after I heard the two shots I heard again the successive shots." (tsn. pp. 28-29, November 29, 1972 hearing)

5. Pedro Espela recognized Givera by face and identified him in court as among those who alighted from the red car of Mayor So. Further, he said that Givera stayed near the red car holding his gun at high point.

"Q Will you please go down the rostrum and touch these companions of Mayor So whom you recognized to be with him on November 17, 1970.

A The witness points to Zosimo Gracilla, Moises Garalde, Neptale Givera and Arturo Diaz).

Q All in all, how many companions did Mayor So have at that time when you saw him get off that red car?

A There were seven in all.

Q When Mayor So got off the car what did you observe on his movements?

A What I observed after Mayor Johnson So and companions alighted, they loaded their guns.

x x x x x x x x

Q This accused who gave his name as Neptale Givera how did he position himself, where did he go?

A He was just standing near the car.

Q Will you show the Honorable Court how he held his gun?

A He was also holding it like this, in highpoint position." (pp. 10-13, tsn., September 8, 1971 hearing)

On the other hand, Judge Gallarosa appeared to be a partial witness. The shooting incident occurred a little past one o'clock in the afternoon; whereas Judge Gallarosa testified that it was between three and four o'clock that afternoon when appellant Neptale Givera handed him a letter from Fiscal Augusto Daria wherein the fiscal said that he could not come for the trial of the case. Said letter was not filed with the records of said case. Further, Judge Gallarosa admitted on cross-examination that then Secretary of Justice Vicente Abad Santos wired him to explain why he had been unnecessarily issuing subpoena for Johnson So's appearance in Matnog on weekends only to postpone the hearing, thus enabling said accused to enjoy holidays from jail.

The testimony of Fiscal Daria was found incredible by the trial court. Thus,

"The circumstances surrounding the alleged service of the 'subpoena' which normally should serve to make a credible story especially because the same was bolstered by a Fiscal's testimony, became connected with so many inexplicable details that made the same quite incredible. Firstly, while the accused himself admitted that he had been to the Fiscal's office at two o'clock in the afternoon of November 16, 1970, precisely to serve the same, he did not even do so even thru another Fiscal or other personnel therein present, on the pretext that he did not know that such service could be made that way even in the absence of Fiscal Daria. The court cannot believe that a policeman who had been in office from five to 6 years and who had performed similar missions before could be so ignorant about such a simple matter.

"Secondly, while the accused allegedly secured for himself the certificate of appearance for November 17, he did not get another one for November 16, claiming that it could have embarrassed the Fiscal if he asked for it since the latter was absent. The above reason is specious and irrelevant and gives room for suspicion as to the actual date of the alleged service, if the same was done at all.

"Thirdly, the Municipal Judge declared that the Fiscal's motion for postponement for the trial had not been attached to the record of the case, and so the motion itself or a secondary evidence thereof could not be produced. Such a vital link could make the 'service' credible if produced; its suppression rendered the matter more incredible. Properly speaking, the writ in question was not a subpoena but a mere notice of hearing." (p. 531, Rollo)

It has been the consistent ruling of this Court that "the matter of assigning values to the testimony of witnesses is best performed by trial judges because they, unlike appellate judges, can weigh such testimony in the light of the demeanor, conduct, and attitude of the witnesses at the trial, and their findings of fact may not be overturned unless there is a showing that in making the factual findings, the trial court had overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case (People vs. Abejuela, 92 SCRA 503)."

It is clear from the evidence presented that there was conspiracy among the five accused in the execution of the crimes charged. Their conduct before, during, and after the commission of the crimes are circumstances showing the presence of conspiracy. There was oneness of purpose when Mayor So and his companions entered the house of Mayor de Castro and suddenly fired his (So) gun at him, then chased Esteban Gracilla and fired at him until he fell dead to the ground. Meanwhile, the other accused, including herein appellant Givera, stood guard at the gate ready to repel any resistance on behalf of the fallen mayor. Thus, their conduct reveals coordination of efforts and community of design to kill and to inflict serious wounds upon their victims. Conspiracy being present, the liability of one is likewise the liability of the rest.

WHEREFORE, the judgment of the trial court in Criminal Cases Nos. CCC-X-21, CCC-X-22 and CCC-X-23 is hereby AFFIRMED, with the modification that for lack of the necessary votes appellant Neptale Givera should suffer the penalty of reclusion perpetua in each of the first two cases. With costs.

SO ORDERED.

Teehankee, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Fernando, C.J., concurs in the result.

Aquino, J., concurs in the result as to accused Zosimo Gracilla and Neptale Givera. Death extinguished the criminal liability of accused So, Diaz and Geralde. The two reclusion perpetuas are subject to the 40-year limit.

Makasiar, J., joins J. Aquino in his concurrence.

Abad Santos, J., no part.

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