

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAXIMO TABADERO, EULOGIO TABADERO, AND RAYMUNDO DE LA
CRUZ ALIAS RAMON, ACCUSED, MAXIMO TABADERO AND EULOGIO
TABADERO, ACC...**

G.R. No. L-39966. July 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

APPEAL from the decision of the Court of First Instance of Isabela, finding the appellants guilty of the crime of MURDER for the killing of Dominador Manaligod, and sentencing each of them to suffer the penalty of reclusion perpetua and to indemnify, jointly and severally, the heirs of the victim the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate costs.

It is not disputed that the deceased Dominador Manaligod was shot and killed by eight (8) armed men, reputed to be members of the NPA, in Barrio San Salvador, Echague, Isabela, at about 6:00 to 7:00 o'clock in the morning of July 10, 1971. The Municipal Health Officer of Echague, Isabela, who performed an autopsy on the cadaver, certified to the following:

"Autopsy Findings

Name DOMINADOR MANALIGOD

Age 27 years old

Civil Status Married

Place Nilumisu, Echague, Isabela

Date July 10, 1971

(1) Gunshot wound at the chin (Mandible) going upward and backward piercing the tongue base of brain and coining out of the occipital region with brain and part of bone severed.

(2) Gunshot wound at the right arm shattering the humerus.

(3) Gunshot wound at left of the back piercing scapular bone and hitting the heart.

(4) Gunshot wound at the right lumbar region and coming out of abdomen near the navel with intestines protruding.

All injuries were fatal."^[1]

After an investigation, it was learned that Maximo Tabadero, Eulogio Tabadero, and Raymundo de la Cruz alias "Ramon" had sought the aid of the NPA in the killing of the deceased because the deceased allegedly poisoned the carabao of Raymundo de la Cruz alias "Ramon", and also refused to vacate the land of Eulogio Tabadero. Consequently, a criminal complaint for Murder was filed with the Municipal Court of Echague, Isabela, against Eulogio Tabadero, Maximo Tabadero, Ramon de la Cruz, and the eight (8) members of the NPA, and after the

usual preliminary investigation, an information was filed with the Court of First Instance of Isabela against Maximo Tabadero and Eulogio Tabadero only.[2] On January 5, 1972, however, the information was amended to include Raymundo de la Cruz alias "Ramon", as defendant.[3]

Upon arraignment, the accused Maximo Tabadero and Eulogio Tabadero entered a plea of "Not Guilty." [4] Raymundo de la Cruz alias "Ramon", however, was not arraigned in view of the manifestation of the Provincial Warden that the said accused was acting queerly. The Court, instead, ordered him committed to the National Mental Hospital branch at Tuguegarao, Cagayan, with directions that periodic reports on his condition be made.[5]

In view of the mental illness of the accused Raymundo de la Cruz alias "Ramon", the accused Maximo Tabadero and Eulogio Tabadero asked for, and were granted, a separate trial. Per request of the said accused, the case was also transferred to Branch V of the court at Echague, Isabela, where it was docketed as Criminal Case No. V-126.[6] After trial, judgment was rendered finding the accused guilty as charged and sentenced accordingly.[7] Hence, the present recourse.

Meanwhile, on September 2, 1974, a final report on the physical and mental condition of the accused Raymundo de la Cruz alias "Ramon", stating that the said accused had recovered from his illness and was now fit to stand trial, was submitted to the court. In view thereof, the said accused was arraigned on October 1, 1974, and he entered a plea of "Not Guilty." [8] However, he later manifested an intention to change his plea to that of "guilty" so that the said accused was re-arraigned on December 18, 1974, after which he pleaded guilty to the charge,[9] and the trial court sentenced him to suffer the penalty of 17 years, 4 months, and 1 day of reclusion temporal, and to indemnify, jointly and severally with Maximo Tabadero and Eulogio Tabadero, the heirs of Dominador Manaligod in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate part of the costs.[10]

Counsel for the appellants now claims that the trial court erred: (1) in giving credence to the testimony of Avelina Liban, wife of the deceased Dominador Manaligod, in her second version of the case instead of the first version; (2) in not finding that the accused were victims of personal grudge and suspicion on the part of the prosecution witnesses; (3) in not finding that it was physically impossible for the accused to be at the scene of the crime because of the distance of their place at the place of the crime; and (4) in finding that there was conspiracy between the herein accused and the eight NPAs.

We find no merit in the appeal. The inculpatory facts are as follows:

"Gregorio Manaligod, a native of Payak, Jones, Isabela, has an 8-hectare homestead in barrio San Salvador, Echague, Isabela. He cultivated this farm with his two sons, Dominador Manaligod and Faustino Manaligod. He built his house thereon and his son Faustino also his house at about 30 meters away from the house of his father. Adjacent to this homestead of Gregorio Manaligod is the 12-hectare homestead of Nicanor Liban. Both homesteads were already titled. Dominador Manaligod married Avelina Liban, the daughter of Nicanor Liban. After their marriage Dominador Manaligod cultivated a portion of the homestead of his father-in-law. He also built his house on this portion. Subsequently, Nicanor Liban mortgaged his homestead to the bank. Before the loan was paid, Nicanor Liban sold the land to Eulogio Tabadero who assumed the mortgage. The latter, being now the owner of the land, asked Dominador Manaligod to vacate the premises. Dominador at first refused because he had just cleared at the time the portion being cultivated by him. In the meantime, Faustino Manaligod was hired by somebody as a logger and so he left San Salvador. Before he left, he turned over his house and carabao to his brother Dominador Manaligod. Because Eulogio Tabadero persisted in driving out Dominador from the land Tabadero bought, Dominador and his family left their house and went to live in the house vacated by his brother Faustino, which was on the land of his father and which was only 30 meters away from the house of the latter.

"Sometime prior to July 10, 1971, the carabao of Raymundo de la Cruz alias Ramon, one of the accused herein, died. De la Cruz suspected Dominador Manaligod of having poisoned the carabao. So he lodged a complaint against Dominador in the Office of the Chief of Police of Echague. The Chief of Police, however, told the complainant to report the matter to the veterinary because the police could not determine the cause of the death of the carabao.

"In the afternoon of July 9, 1971, eight (8) members of the New People's Army (NPA) passed by the houses of Dominador Manaligod and Gregorio Manaligod and went direct to the house of Eulogio Tabadero where they slept for the night. The houses of Eulogio and his son Maximo Tabadero were about 300 meters away from the houses of Dominador and Gregorio Manaligod. On the following morning, July 10, 1971, between 6 and 7 o'clock, Gregorio Manaligod, while he was under his house, saw the eight NPAs, together with the three accused, Maximo Tabadero, Eulogio Tabadero and Raymundo de la Cruz alias Ramon, again passed by his house and proceeded direct to the house of his son Dominador Manaligod, about 30 meters away. After they had passed by, Gregorio Manaligod tried to follow them from a distance. He saw that upon reaching the house of his son, the eight NPAs waited in front of the house while the three accused went up the house. Dominador Manaligod, his wife Avelina Liban and their children were then taking their breakfast. Without talking, the three accused held Dominador and brought him down the house. When they have reached the yard, they delivered Dominador to the NPAs and then stepped aside. Immediately thereafter the NPAs shot Dominador. His wife, Avelina Liban tried to go to her husband but the NPAs pointed their guns at her and so she retreated back to her house. Gregorio Manaligod, who was then only about 20 meters away, also witnessed the shooting of his son. After the shooting, the three accused ran away, followed by the NPAs. Gregorio Manaligod, for fear of his life, also ran back to his house." [11]

The initial testimony of Avelina Liban, which counsel for the appellants term as the "First Version," is that Raymundo de la Cruz alias "Ramon" was the only one who went up their house and brought down her husband to the waiting members of the NPA who, thereafter, shot and killed him. The "Second Version" is that the three accused, Maximo Tabadero, Eulogio Tabadero, and Raymundo de la Cruz alias "Ramon" were together in bringing down her husband. Counsel for the appellants insists that the "First Version" is more credible and should be made the basis of the judgment since the witness stuck to her testimony that only De la Cruz went up their house although she was warned by the Fiscal to tell the truth and was treated as a hostile witness.

The contention is without merit. Avelina Liban, the widow of Dominador Manaligod, had indeed, initially declared that only De la Cruz went up their house and fetched her husband and did not mention the herein appellants as the companions of the said De la Cruz, but it was because she was observed by the trial court to be acting under fear, "not necessarily from telling the truth but something else like fear from the NPA's." Courts are not bound to accept or reject the whole of the testimony of a witness. They may believe one part and disbelieve the other part of the testimony. If there are conflicts in the testimony which cannot be so reconciled as to admit of every witness swearing the truth, the Court adopts that testimony which it believes to be true, taking into consideration the general character of the witness, his manner and demeanor on the stand while testifying, the consistency or inconsistency of his statements, their probability or improbability, his ability and willingness to speak the truth, his intelligence and means of knowledge, his motive to speak the truth or swear a falsehood. [12] In adopting the "Second Version", the trial court took all these circumstances into consideration, hence, We find no reason to disturb the findings of the trial court.

At any rate, the verdict against the appellants is not based upon the testimony of Avelina Liban alone. Gregorio Manaligod, whose house is about 30 meters away from the house of the deceased, also declared that he saw the actual shooting of Dominador Manaligod. The trial court found his testimony to be positive and direct not only with respect to the shooting of the deceased, but also as to the identities of the killers. The trial court said:

"The defense counsel states that 'there is no direct evidence showing the manner of how the late Dominador

Manaligod met his death except the testimony of Avelina Liban, wife of the deceased.' This is not true. Gregorio Manaligod, the father of the deceased, saw the actual shoot-ing of his son. His testimony is positive and direct not only with respect to the shooting of his son but also as to the identities of the killers. He testified at the trial that he was under his house between 6 and 7 o'clock in the morning of July 10, 1971 when he saw eleven (11) persons pass by his house. Eight (8) of these persons were armed with guns and he recognized them to be NPAs. One of them was Esteban Dangalay, former barrio captain of Caniguin, Echague. Another was Commander Rolly, whom he had previously seen as leader of the group of NPAs that held a previous meeting in their barrio. The other three persons who accompanied the 8 NPAs that morning of July 10, 1971 were without guns. He knew them very well. They were Maximo Tabadero, Eulogio Tabadero and Raymundo de la Cruz. After these 11 persons passed by his house, Gregorio Manaligod tried to follow them from a distance. He saw that these 11 persons walked direct toward the house of his son Dominador Manaligod, about 30 meters away from his house. He saw that these 11 persons stopped in front of the house of his son and then the three unarmed persons, the Tabaderos and Raymundo de la Cruz went up the house of Dominador Manaligod, brought him down and delivered him to the 8 NPAs. Maximo and Eulogio Tabadero and Raymundo de la Cruz then stepped aside about five meters away from Dominador Manaligod, and immediately thereafter, the NPAs shot to death Dominador Manaligod. Gregorio Manaligod was about 20 meters away when he saw all these incident happen. After the shooting, the Tabaderos and Raymundo de la Cruz ran away, followed by the NPAs. Gregorio Manaligod also ran back to his house to save himself."[13]

Where there is irreconcilable conflict in the testimony, the appellate court will not reverse the judgment of the lower court where the evidence of the prevailing party, if considered by itself, without the contradictory statements of another witness, is clearly sufficient to sustain the verdict.

The appellants claim, under their second assignment of error, that they were included in the information because of the personal grudge Avelina Liban and Gregorio Manaligod harbored against them when they suspected the late Dominador Manaligod of having poisoned the carabao of De la Cruz due to the refusal of the said Dominador Manaligod to vacate the land of Eulogio Tabadero.

There is no merit in the contention. Under the circumstances obtaining in the case, it is more probable that the accused had borne a grudge against the deceased than for the witnesses for the prosecution to bear a grudge against the accused. Thus, in the case of the carabao of the accused De la Cruz, the accused suspected the deceased Dominador Manaligod of having poisoned the said carabao and reported the incident to the police authorities. The Chief of Police, however, rejected his complaint and referred him to a veterinarian because they had no means of ascertaining the cause of death of the carabao. The fact that De la Cruz had reported the incident to the police, together with their suspicion that Dominador Manaligod had poisoned the carabao is, to our mind, not sufficient reason to motivate Avelina Liban and Gregorio Manaligod to implicate the accused in the killing of Dominador Manaligod, because no further action was taken by the police against the said Dominador Manaligod. On the other hand, De la Cruz, unable to obtain redress of grievances from the lawful authorities, sought justice from the NPA, whose members were holding periodic meetings in their barrio, and, true to form, the NPA administered its brand of justice and killed Dominador Manaligod.

The same is true with the refusal of the deceased to vacate the parcel of land which he was then cultivating. The refusal of Dominador Manaligod to vacate the land of Eulogio Tabadero is not sufficient reason for Avelina Liban and Gregorio Manaligod to testify falsely against the appellant. On the other hand, the refusal of Dominador Manaligod to vacate the land would prejudice the appellants, sufficient for them to seek the aid of the NPA in ejecting Dominador Manaligod from their property.

As their third assignment of error, the appellants contend that the trial court erred in finding that it was physically

impossible for the accused to be at the scene of the crime because of the distance of their place to the scene of the crime.

The appellants interposed the defense of alibi. The appellant Maximo Tabadero testified that at about 6:00 to 7:00 o'clock in the morning of July 10, 1971, he and his father and co-appellant, Eulogio Tabadero, were in his house in barrio San Salvador, Echague, Isabela, building a camarin. His house is about a kilometer away from the house of the deceased Dominador Manaligod. Ricardo Faelma and Leonardo Lamarca, corroborated his testimony. Counsel for the appellants argue that since the house of the appellant is about a kilometer away from the scene of the crime, it was physically impossible for them to be at the scene of the crime when the crime was committed.

The contention is devoid of merit. The distance of one (1) kilometer between the houses of the appellants and the scene of the crime, which distance can be traversed in a matter of minutes, could not have precluded the appellants from perpetrating the crime and returning to the vicinity of their abode as if they had done nothing.

Finally, counsel for the appellants contend that there is no conclusive evidence to prove conspiracy between the appellants and the members of the NPA in the killing of Dominador Manaligod.

There is no merit in the contention. The record positively shows that the appellants were seen in the company of the eight (8) members of the NPA the day before the killing of Dominador Manaligod in going to the house of the appellant Eulogio Tabadero where the said members of the NPA slept during the night. Then, they were seen again together with the same members of the NPA in the morning of July 10, 1971, coming from the house of Eulogio Tabadero and going towards the house of Dominador Manaligod. The evidence is also clear that upon reaching the house of Dominador Manaligod, the appellants, together with their co-accused De la Cruz, went up the house of Dominador Manaligod and brought him down to the waiting members of the NPA who then executed him. These acts of the appellants proved that they had conspired with the members of the NPA in the killing of Dominador Manaligod. The fact that the said members of the NPA slept in the house of Eulogio Tabadero that night, immediately preceding the killing of Dominador Manaligod, in the morning, indicates that the participation of the appellants in the commission of the crime was voluntary.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through the physical volition of one or all, proceeding severally or collectively. It is also a settled law that "conspiracies need not be established by direct evidence of the acts charged, but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purpose to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparently criminal or unlawful purpose in common between them. The existence of the agreement or joint assent of the minds need not be proved directly."^[14]

Under the circumstances, the trial court did not commit an error in finding the appellants active participants in the killing of Dominador Manaligod and in sentencing them to suffer the penalty therefor.

WHEREFORE, the judgment appealed from should be, as it is hereby, **AFFIRMED**. With costs against the appellants.

SO ORDERED.

Barredo, (Chairman), Aquino, Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

[1] Exh. "A", Original Record, p. 2.

- [2] Original Record, p. 42.
- [3] Id., p. 62
- [4] Id., p. 79.
- [5] Id., pp. 73-76.
- [6] Id., p. 83.
- [7] Id., p. 269.
- [8] Id., p. 306.
- [9] Id., p. 327.
- [10] Id., pp. 333-339.
- [11] Id., pp. 270-273.
- [12] People vs. Lasada, 18 Phil. 90.
- [13] Original Record, pp. 279-280.
- [14] People vs. Belen, 118 Phil. 880.

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