

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ERNESTO MAGNAYON Y SANTOS, ACCUSED-APPELLANT.

G.R. No. L-32074. May 03, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of the decision rendered by the defunct Circuit Criminal Court of Manila which sentenced Ernesto Magnayon y Santos to suffer the penalty of DEATH.

On October 16, 1969, an information was filed with the aforesaid court charging Hernando Abuyo y de la Merced, Ernesto Magnayon y Santos, Rogelio Barrientos y Ascano and Elmer Monica of the crime of murder alleged to have been committed as follows:

"That on or about June 13, 1969, at nighttime purposely sought to better accomplish their criminal design, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two others whose true names, identities and present whereabouts are still unknown and helping one another, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one WILFREDO GUERRA Y RAMIREZ by then and there shooting him with a firearm, thereby inflicting upon the latter a mortal gunshot wound on the right eyebrow which was the direct and immediate cause of his death several hours thereafter."

Magnayon alone was tried because his co-accused had not been apprehended. After trial, the court rendered a decision dated January 6, 1970, with the following dispositive portion:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by abuse of superior strength and there being proven the aggravating circumstances of evident premeditation and nighttime, offset only by the mitigating circumstance of voluntary surrender, sentences him to DEATH; to indemnify the heirs of the deceased as follows: P12,000.00 for the death of the deceased; P10,000.00 for exemplary damages; P10,000.00 for moral damages, all amounts to bear interest until they shall have been fully paid; and to pay the costs.

"Exhibit F-1, the firearm in question, is hereby confiscated in favor of the State."

Magnayon's counsel filed a motion for reconsideration with the following prayer:

"PREMISES CONSIDERED, it is most respectfully prayed that the decision rendered by this Honorable Court dated 6 January 1970, promulgated 10 January 1970, be reconsidered and set aside, and that another decision be made in lieu thereof, acquitting the accused from the offense charged."

On March 6, 1970, the trial court issued an amended decision this time with the following dispositive portion:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by evident premeditation and there being proved the aggravating circumstances of abuse of superior strength and nighttime, offset only by the mitigating circumstance of voluntary surrender, sentences him to

DEATH; to indemnify the heirs of the deceased as follows: P12,000.00 for the death of the deceased; P10,000.00 for exemplary damages; P10,000.00 for moral damages, all amounts to bear interest until they shall have been fully paid; and to pay the costs.

"Exhibit F-1, the firearm in question, is hereby confiscated in favor of the State."

It should be noted that in the original decision abuse of superior strength was cited as the qualifying circumstance, whereas in the amended decision the qualifying circumstance is evident premeditation; in the original decision the aggravating circumstances were evident premeditation and nighttime, whereas in the amended decision they are superiority and nocturnity.

The People's version of the facts is as follows:

"Bad blood existed between the accused on the one hand and Wilfredo Guerra and Constancio Canarias, Jr., on the other hand, as a result of which the latter two, on several occasions before June 13, 1969, chased the former with dart and slingshot. (Exh. F; p. 31, t.s.n., Dec. 5, 1969). In retaliation, the accused conspired with one Hernando Abuyo to kill Guerra. At a basketball game held on June 12, 1967, the accused pointed Guerra to Abuyo. (pp. 32-34, t.s.n., Dec. 5, 1969) As the accused related in his statement (Exh. F) of July 15, 1969 to the police:

31. T:

Ikaw ba ay may nalalamang kagalitan o samaan ng loob nitong si Nini [Hernando Abuyo] at Willie [Wilfredo Guerra]?

S:

Wala po akong alam.

32. T:

Ito ba namang si Willie ay kakilala si Nini?

S:

Nakikilala po ni Nini si Willie, pero si Willie ay hindi kakilala ni Nini.

33. T:

Bakit nangyari ang gayon?

S:

Dahil po sa nuong magkaruon ng laro ng basketball sa Sulucan, nuong Independence Day, June 12, 1969, ay malayo nuon si Willie na makita ko, kung kaya naman itinuro ko kay Nini na iyon ika ko si Willie at si Tanching [Constancio Canarias, Jr.]

34. T:

Bakit mo naman naituro kay Nini sila nuong pagkakataon na iyon?

S:

Dahil po sa madalas gawin sa akin nina Tanchong at Willie na ako ay habulan nila ng pana.

"The following day, June 13, 1969, at about 10:00 o'clock in the evening, the accused, together with Diosdado Barrientos and Hernando Abuyo went to De Jesus St. in Pandacan, Manila where they found Wilfredo Guerra. With stones in his hand the accused challenged Guerra and Constancio Canarias, Jr. to a gun duel ('Lumaban na kayo nang barilan'). A shot then rang and Guerra fell on the ground. (t.s.n., pp. 13-22, Dec. 4, 1969) Thereafter, the accused and his two companions ran toward a waiting vehicle and fled.

"There appears an uncertainty as to the identity of the gunman. Constancio Canarias, Sr., after much prodding, identified the gunman as Diosdado Barrientos. (Id., p. 23). So did Lelio Pedrigosa, another prosecution witness, identify Barrientos, as the one who shot Guerra. (Id., pp. 42-43). On the other hand the accused said it must be Hernando Abuyo because he saw Abuyo draw a gun and he later heard gunshots. The accused claimed that he did not know Abuyo had a gun and that when he saw Abuyo pull the gun he turned away. (t.s.n., pp. 14-17, 37-38, Dec. 5, 1969). But the identity of the gunman is of secondary concern as the appeal here concerns only the liability of the accused, the other parties responsible for the crime still being at large. At any rate, the evidence for the prosecution is to the effect that the companions of the accused Ernesto Magnayon were Diosdado Barrientos and an unidentified person (t.s.n., p. 19, Dec. 4, 1969), while the evidence for the defense is to the effect that Magnayon's companions were Hernando Abuyo and an unidentified person nicknamed Pedong. (t.s.n., p. 23, Dec. 5, 1969). As the trial court pointed out 'whoever was the actual gunwielder, the fact remains that accused Magnayon was with him.' (p. 168, rec.)

"On the basis of these facts, Ernesto Magnayon, Hernando Abuyo, Rogelio (Diosdado) Barrientos and Elmer Mojica were accused of murder. The information charged that the accused, purposely seeking nighttime to facilitate the commission of the crime and 'conspiring and confederating together with two others whose true names, identities and present whereabouts are still unknown and helping one another, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault and use of personal violence upon one Wilfredo Guerra y Ramirez by shooting him with a firearm, thereby inflicting upon the latter a mortal gunshot wound on the right eyebrow which was the direct and immediate cause of his death.' Trial proceeded with respect to accused Magnayon only inasmuch as all his co-accused are still at large." (Brief, pp. 2-5.)

Appellant's counsel assigns the following errors in respect of the trial court's decision:

"1. THE LOWER COURT ERRED IN DECLARING THE EXISTENCE OF 'CONSPIRACY' AMONG THE ACCUSED IN THIS PARTICULAR CASE.

"2. THE PROSECUTION FAILED TO SHOW THAT NIGHTTIME WAS PURPOSELY SOUGHT TO INSURE THE COMMISSION OF THE CRIME OR FOR THE PURPOSE OF IMPUNITY, HENCE, THE LOWER COURT ERRED IN CONSIDERING NIGHTTIME AS AGGRAVATING CIRCUMSTANCE.

"3. THAT THE INTERVAL OF TIME BETWEEN THE 'CHASING' AND THE 'SHOOTING' WAS CONTINUOUS AND SO SHORT THAT THERE WAS NO TIME OR SUFFICIENT PERIOD FOR MEDITATION AND REFLECTION, HENCE, THE LOWER COURT ERRED IN RULING THE PRESENCE OF EVIDENT PREMEDITATION AS AN AGGRAVATING CIRCUMSTANCE.

"4. THE PROSECUTION FAILED TO SHOW THAT ACCUSED WERE PHYSICALLY STRONGER AND THERE WAS AN ABUSE OF SUCH SUPERIORITY, HENCE, THE LOWER COURT ERRED IN DECLARING THE PRESENCE OF ABUSE OF SUPERIOR STRENGTH AS AN AGGRAVATING CIRCUMSTANCE.

"5. THE LOWER COURT ERRED IN DENYING ACCUSED-APPELLANT'S MOTION FOR

RECONSIDERATION DATED 24 JANUARY 1970.

"6. THE LOWER COURT ERRED IN DECLARING THAT WHEN ON JUNE 12, 1969 ACCUSED-APPELLANT POINTED THE DECEASED TO HIS CO-ACCUSED ABUYO AS THE PERSON WHO USE TO CHASE HIM, SUCH ACT AMOUNTED TO EVIDENT PREMEDITATION.

"7. THE LOWER COURT ERRED IN NOT DECLARING THAT THE TESTIMONY OF THE PROSECUTION WITNESSES WERE INHERENTLY IMPROBABLE AND INCONSISTENT WITH HUMAN EXPERIENCE.

"8. THAT THE TESTIMONY OF THE PROSECUTION WITNESSES WERE INHERENTLY IMPROBABLE AND INCONSISTENT WITH HUMAN EXPERIENCE, HENCE, THE COURT BELOW ERRED IN GIVING DUE CREDENCE TO THE SAID TESTIMONIES INSTEAD OF DISREGARDING THE SAME.

"9. THE LOWER COURT ERRED IN NOT DECLARING THE TESTIMONY OF CONSTANCIO CANARIAS, SR., CARRIES THE TRADE MARK OF PERJURED TESTIMONY AND MOTIVATED BY AN EVIL MOTIVE.

"10. THE LOWER COURT ERRED WHEN IT FAILED TO DECLARE THE TESTIMONY OF THEMISTOCLES CELMAR ON THE ALLEGED DECLARATION (DYING) AS IMPOSSIBLE AND THAT THIS WITNESS WAS BRANDED A LIAR BY THE MEDICO LEGAL EXPERT.

"11. THAT THERE IS NO EVIDENCE TO SUPPORT THE FINDINGS OF THE LOWER COURT THAT:

(a) when the deceased saw the barrel of the gun facing his assailants including the accused, he immediately made a right turn in order to evade the shooting and in the course of the turning, he was immediately fired upon, hence, hitting him on the left occipital region of his head.

(b) what really happened was that accused Magnayon in order to avenge himself for having been always chased by the deceased and Canarias, Jr. (Exhibit F) conspired with his co-accused to kill the deceased.

HENCE, ERRED IN MAKING THE SAID CONCLUSION.

"12. THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT, HIS GUILT NOT HAVING BEEN PROVEN BEYOND REASONABLE DOUBT."

Encapsulating the numerous errors attributed to the trial court, the main issue in this appeal is the participation of the appellant in the killing of Wilfredo Guerra. We have to affirm the finding of the trial court not only because it is supported by the evidence on record but also because it was in a better situation to ascertain the truth considering that it observed directly the demeanor of the witnesses while they were testifying and noted the subtle nuances of their voices. Thus the trial court said, in appreciating the appellant's testimony: "But the very thing that discredit's Magnayon's testimony is the manner it was given. It lacks the candor, sincerity and spontaneity of a credible testimony."

Very briefly, We shall discuss the errors assigned seriatim:

The trial court found the accused to have conspired in the killing of Wilfredo Guerra. It said: "It is clear, therefore, that conspiracy can be inferred from the acts of Magnayon and his co-accused for all their acts point to a joint purpose and design as adjudged by what they have done which is the best index of their intention (People vs. Elmer Estrada, L-26103, January 17, 1968 [22 SCRA 111])."

Counsel for the appellant, on the other hand, quotes People vs. Mahlon, 92 Phil. 883 (1953) to the effect "that in order to sustain a conviction for conspiracy, evidence of actual cooperation, rather than mere cognizance,

acquiescence or approval of an unlawful act is required." (At p. 889.)

But in the instant case there was more than cognizance, acquiescence or approval; there was actual cooperation. The appellant had been feuding with the deceased Wilfredo Guerra and Constancio Canarias, Jr. as shown in his affidavit, Exhibit F, as follows:

"34. T.:

Bakit mo naman naituro kay Nini [Hernando Abuyo] sila [referring to Wilfredo Guerra and Constancio Canarias, Jr.] nuong pagkakataon na yon?

S.:

Dahil po sa madalas gawin sa akin ni Tanchong at Willie na ako ay habulan nila ng pana."

The deceased who was armed with a slingshot and a dart, according to the appellant, had even challenged him to a fight prior to the shooting. (TSN, Dec. 6, 1969, pp. 20-21.)

Upon the other hand, Hernando Abuyo who was identified by the appellant as the gunman did not know the deceased. For Abuyo to have shot the deceased could only be due to a common design between Abuyo and the appellant.

The appellant claims that nocturnity should not have been considered as an aggravating circumstance because there was no proof that night-time was purposely sought to facilitate the commission of the crime. Upon the other hand, the design against Wilfredo and Constancio had been hatched as early as June 12, 1969 but the conspirators purposely waited until night-time of the next day to carry out their plan. Here is what the appellant said in Exhibit F:

"32. T:

Ito ba namang si Willie [Wilfredo Guerra] ay kakilala ni Nini [Hernando Abuyo]?

S:

Nakikilala po ni Nini si Willie, pero si Willie ay hindi kakilala si Nini.

33. T:

Bakit nangyari ang gayon?

S:

Dahilan po sa nuong magkaruon ng laro ng basketball sa Sulucan, nuong Independence Day, June 12, 1969, ay malayo nuon si Willie na makita ko, kung kaya naman itinuro ko kay Nini, na yon ika ko si Willie at si Tanchong [Constancio Canarias, Jr.].

34. T:

Bakit mo naman naituro kay Nini sila nuong pagkakataon na yon?

S:

Dahil po sa madalas gawin sa akin nina Tanchong at Willie na ako ay habulan nila ng pana.

35. T:

Kayo ba naman nitong kamag-anak mong si Willie at Tanchong ay mayruon samaan ng loob?

S:

Kami po ni Tanchong ang may samaan ng loob pero si Willie po ay wala, ngunit dahilan sa kami ni Tanchong ay magkagalit kung kaya si Willie ay galit din sa akin dahil sa sila ay magkaibigan. Ang totoo po nuon ay minsan ang aking jeep na minamaneho ay binato nila at nabasag ang salamin.

36. T:

Sinabi mo dito na ikaw ay nasa likuran lamang ni Nini nuon ng barilin niya si Willie, nasaang lugar kayo nuon?

S:

Duon po sa kanto ng Obrero at Jesus Ext., Pandacan.

37. T:

Si Willie naman nasaan nuon?

S:

Nanduon po sa may harapan ng bahay ni Aling Belang, bahay din ni Editha na kanyang nililigawan.

38. T:

Anong oras nuon, ng barilin ni Nini si Willie?

S:

Humigit kumulang po ay pasado alas 10:00 ng gabi, nuong ika 14 [13] ng Junyo, 1969."

The appellant faults the trial court for stating that the murder was qualified by evident premeditation. He claims that the interval between the chase and the shooting was continuous and so short that there was no time or sufficient period for meditation and reflection. It suffices to state that the conspiracy to kill had been hatched one day earlier as shown in the above-quoted portion of the appellant's sworn statement. Hence between June 12 and 13, the appellant and Abuyo had sufficient time to reflect on their action.

The appellant further faults the trial court for appreciating superiority. He claims that the prosecution failed to show that the accused were physically stronger and took advantage of their superior strength. The appellant's claim is not tenable. For pitted against the deceased and his lone companion were three men—the appellant, Abuyo and Barrientos—and one of them was armed with a .38 caliber Smith and Wesson snub nosed nickel-plated revolver.

The motion for reconsideration dated January 24, 1970, asked the trial court, as stated earlier in this decision, to set aside its judgment of conviction.

As We have also earlier stated We have to affirm the action of the trial court. Accordingly, the error which is

attributed to the trial court—that it erred in denying the motion for reconsideration—has no merit.

The 6th assignment of error which raises again the issue of evident premeditation has been discussed in the third assignment of error.

The 7th to the 12th assignments of error relate to the appreciation of the evidence by the trial court which upon examination of the record does not justify revision. They relate to minor details and ancillary matters given by prosecution witnesses which tend to show that their evidence is not completely congruent. But such lack of complete congruency in fact strengthens and fortifies their respective testimony.

An order of arrest with no bail was issued against the appellant on October 17, 1969. He surrendered voluntarily on October 23, 1969. He has been under preventive detention for more than thirteen (13) years. Some members of this Court including the ponente regard such prolonged detention as highly undesirable and have voted against the imposition of the death penalty.

WHEREFORE, the decision appealed from is hereby affirmed in all respects but for lack of the necessary number of votes it is modified as to the principal penalty which shall be reclusion perpetua instead of death. Costs against the appellant.

SO ORDERED.

Teehankee, Acting C.J., Concepcion Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova and Gutierrez, Jr., JJ., concur.

Makasiar and Aquino, JJ., in the result.

Fernando, C.J., on official leave.

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