

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AVELINO ATENCIO, CONRADO CARDENAS AND ANTONIO GALLO, ACCUSED-APPELLANTS.

G.R. Nos. L-67721-22. December 10, 1987

Ponente: NARVASA, J.

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NARVASA, J.:

In Criminal Case No. 850 of the Court of First Instance of Northern Samar, Avelino Atencio, Conrado Cardenas and Antonio Gallo were found guilty beyond reasonable doubt of the murder of Leonardo Franzuela, and were each sentenced to suffer the penalty of reclusion perpetua, with the accessory penalties of the law, and to indemnify the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency. In Criminal Case No. 851 -- which was consolidated with Criminal Case No. 850 -- Atencio and Cardenas were also found by the same Court guilty beyond reasonable doubt of the murder of Isidro Moreno, for which they were each condemned to suffer another, penalty of reclusion perpetua, with the accessory penalties of the law, and to indemnify the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency.[1]

The convictions, pronounced in a consolidated decision rendered on July 11, 1983, were predicated upon the following factual findings:

"In a house situated in the corner of Del Pilar and Magsaysay Sts. in the poblacion of Catarman, N. Samar, just across the Exel Theater, two families stay. Accused Avelino Atencio and his family reside in the kitchen of said house while the deceased Leonardo and his family reside in the main house. The residence of both is separated only by a wall partition. A meter away from said house is a travelling store where Isidro Moreno stay(s).

"At about 7:00 o'clock in the evening of October 11, 1978 Avelino Atencio, Antonio Gallo and Conrado Cardenas went downstairs from the other end of the house where Avelino Atencio is residing.

"Antonio Gallo parted from his two companions and went towards the door of the house where spouses Leonardo Franzuela and Pascualita Dalmacio were staying. Leonardo Franzuela was then sitting at the door of their house. Pascualita Dalmacio was then at the window of their former travelling store trying to call her children to partake their supper. Upon reaching the door of the house Antonio Gallo immediately slashed Leonardo Franzuela who was sitting at the door of the house hitting the latter on the forehead. Leonardo Franzuela fell down.

"Almost simultaneously, Conrado Cardenas and Avelino Atencio approached the travelling store where Isidro Moreno was. Conrado Cardenas pulled out Isidro Moreno from the door of the travelling store and Avelino Atencio immediately stabbed Isidro Moreno hitting the latter on the chest. Isidro Moreno slumped down.

"Avelino Atencio and Conrado Cardenas went to the place where Antonio Gallo and Leonardo Franzuela were grappling for the possession of the bolo. They helped Antonio Gallo and took turns in stabbing Leonardo

Franzuela. Antonio Gallo and Leonardo Franzuela while in the process of grappling for the possession of the bolo fell down and at this moment Antonio Gallo pulled out a small bolo locally known as 'depang' from his leg and stabbed Leonardo Franzuela.

"While in this act policemen Riatas and Cablay arrived and Conrado Cardenas and Avelino Atencio scampered away and while in the process of scampering away Avelino Atencio lost hold of his bolo which was picked up by the policemen. The policemen overtook Antonio Gallo while he was still on top of Leonardo Franzuela. The bolo and another small bolo known as 'depang' were taken by the police including that bolo dropped by Avelino Atencio. Antonio Gallo was brought outside the fence by the policemen and Leonardo Franzuela who was left fallen on the ground was taken to the hospital including Isidro Moreno. Leonardo Franzuela died on the way so with Isidro Moreno.

" * * *. "1

All the accused perfected an appeal from the consolidated verdict.² Antonio Gallo has however since escaped from jail.³ Hence, his appeal should be as it is hereby dismissed, conformably with the provisions of Section 8, Rule 124 of the Rules of Court of 1964 and the 1985 Rules on Criminal Procedure.

Both appellants argue that the Trial Court erred in (1) holding that all three accused conspired to kill the two victims in both cases; (2) convicting them in the two cases; and (3) not acquitting them.⁴ They insist that the prosecution witnesses who identified them and described the slaying of Franzuela and Moreno were mistaken or lying; they could not have done the heinous deed ascribed to them because they were not there at the place and time of the commission of the crime.

In proof of this defense of alibi, Cardenas and his witness, Jorge Dublas, gave testimony that on October 10, 1978, a day before the murders were perpetrated in the poblacion of Catarman, Cardenas had been invited by Dublas to go to Barangay Cabayhan to help harvest the rice on the latter's land, which is 12 kilometers away; that Cardenas had accepted the invitation and gone to Cabayhan in the morning of October 11, after breakfast, actually arriving there at about 8 o'clock in the morning; that on October 12, he (Cardenas) had met the son of Antonio Gallo, who asked him to go to the poblacion as Antonio Gallo was in the hospital.¹

Atencio, on the other hand, testified that on the day of the killings, he was not at his residence but in that of his aunt, Anastacia de la Cruz, in the poblacion's Canlubang District, his aunt being ill at that time; he had stayed at his aunt's house up to 9 o'clock in the evening; and when Patrolman Amado Velarde had gone to his house to investigate him in connection with the murders, he was already asleep,² a fact also attested to by his witness, Eleodoro Collamar.³

The appellants' defense of alibi must fail. The established doctrine is that for such a defense to be sustained it must affirmatively appear not only that the accused was at some other place at the time of the perpetration of the offense but also that the circumstances are such as logically to generate the conclusion that it was physically impossible for him to be present at the scene of the crime at the time of its commission.⁴ Moreover, the defense must be rejected in the face of positive identification of the perpetrators by otherwise credible witnesses.⁵ Apart from the fact that the appellants had been definitely and directly identified by two (2) eyewitnesses, Pascualita Franzuela and Rogelio Moreno, the record fails to disclose any adequate proof of circumstances rendering it impossible for either Cardenas or Atencio to be at the site of the crime when it was committed. The house of Atencio's ailing aunt, where he claims he was at the time, was only a kilometer away.⁶ And as regards Cardenas, his testimony that in the morning of that fatal day, October 11, he was at a locality 12 kilometers distant does not, without more, demonstrate that in the evening of that day, which is the time when the offense was actually perpetrated,⁷ it was physically impossible for him to have been at the crime scene.

The appellants impugn, too, the eyewitnesses' credibility, grounded on their supposed bias, the first being the widow of one of the victims, Leonardo Franzuela, and the second, a son of the other victim, Isidro Moreno. Their arguments cannot also be accorded any cogency or persuasiveness. The fact of relationship by consanguinity or affinity, standing alone, obviously cannot have any effect on the credibility of a witness, it being at best indicative merely of a need for a little more care in the appraisal of his testimony. But it is apparent that by any rational standard, that relationship alone cannot justify withholding or diminution of credit to a witness. The testimony of such a witness must be judged on its own merits, and if not otherwise destroyed or neutralized by other more credible evidence on record or any other revealed intrinsic defect, it may and should be given credit.⁸ In the case at bar the Court a quo found "the testimony of the prosecution witnesses ** (to be) clear and positive and not contrary to the ordinary course of events and things."⁹ This assessment this Court will uphold on the basis of its own review of the record, as well as in light of the well settled rule that where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case.¹ Of such an oversight, it might be added, there is absolutely no indication in the record.

There is, to be sure, the appellants' further claim that the testimony of the widow, Pascualita Franzuela, is colored by her resentment against Atencio resulting from his refusal to vacate the house occupied by him despite the former's demand therefor. The rejection of this claim by the Court a quo has not been shown to be incorrect. Furthermore, as the Trial Court observes, the evidence given by Pascualita is corroborated on material points by other witnesses, including Patrolman Pedro Raitas.²

Gallo's attempt to exculpate his co-accused by owning sole responsibility for the killings was also properly cast aside by the Trial Court because clearly and completely at odds with the recorded proofs.

The Trial Court's conclusion of the existence among the accused of a conspiracy to kill the victims also has to be confirmed. It is justified by the evidence. The community of purpose, the unity of design in the acts simultaneously or contemporaneously performed by the defendants, has been satisfactorily shown. The three accused, Antonio Gallo, Conrado Cardenas and Avelino Atencio, together went to the houses of the victims; without warning they launched a simultaneous attack against their unsuspecting prey with bladed weapons, Gallo assaulting Leonardo Franzuela, and Cardenas and Atencio pouncing upon Isidro Moreno; and after Isidro had been laid low, Cardenas and Atencio had both gone to the assistance of Gallo who was showing more fight than Isidro.³ Corroboration is furnished by the fact that Franzuela's wounds had been caused by two different weapons.⁴ Proof of such a concerted action, along with corroborative collateral events, should suffice to prove conspiracy among the persons shown to have participated therein.⁵

The Trial Court's characterization of the killings as murder is also proper. There is sufficient evidence of alevosia, considering that the attack on the victims was sudden and unexpected, carried out in such a manner as to permit the attainment of the appellants' nefarious objective without risk to themselves arising from any defense that the victims might make.⁶

In fine, no error has been shown in the judgment of the Court a quo save only a minor one, and that is its failure to appreciate in favor of Conrado Cardenas the mitigating circumstance of voluntary surrender. It declined to credit Cardenas with it simply on the ground that his surrender took place after eleven (11) days from the issuance of the warrant for his arrest.⁷ Evidently overlooked however was that the surrender was not only voluntary and made before a person (or an agent of a person) in authority, but was also done before Cardenas had been actually arrested, and that therefore, all the elements constitutive of the mitigating circumstance were present.¹ This modifying factor should have been taken into account in the imposition of the penalties on Cardenas.

Article 248 of the Revised Penal Code prescribes the penalty of reclusion temporal in its maximum period to death for the felony of murder. The elimination of the capital punishment by the 1987 Constitution² wrought a change in that penalty, which must now be deemed to be reclusion temporal in its maximum period to reclusion perpetua. Pursuant to Article 77 of the Revised Penal Code,³ the minimum period of such a penalty is 17 years, 4 months and 1 day to 18 years and 8 months; the medium, 18 years, 8 months and 1 day to 20 years; and the maximum, reclusion perpetua. Now, in view of the appreciation in Cardenas' favor of the mitigating circumstance of voluntary surrender, the penalty prescribed shall be applied to him in the minimum period.⁴ Hence, the penalty properly imposable on Cardenas is 17 years, 4 months and 1 day to 18 years and 8 months of reclusion temporal in its maximum period. In the case of Avelino Atencio, the prescribed penalty shall be imposed on him in its medium period there being no mitigating or aggravating circumstance affecting his liability.⁵ Hence, the penalty properly imposable upon him is 18 years, 8 months and 1 day to 20 years, also of reclusion temporal in its maximum period. Applying, too, the provisions of the Indeterminate Sentence Law, the appellants should receive a penalty, the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code; and the minimum, within the range of the penalty next lower to that prescribed by the Code for the offense.⁶ The penalty next lower in degree to that prescribed (which is reclusion temporal in its maximum period to reclusion perpetua), is prision mayor in its maximum period to reclusion temporal in its medium period; this, in accordance with Article 61 of the Revised Penal Code pertinently declaring that "(w)hen the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale." Furthermore, the appellants' civil liability should be increased to P30,000.00 for each victim pursuant to established jurisprudence.

WHEREFORE, the judgment of the Court a quo is affirmed in toto as against Antonio Gallo. That judgment is also affirmed as regards Conrado Cardenas and Avelino Atencio, subject only to the modifications made necessary by the findings and considerations set forth in this opinion. Accordingly, for the two (2) murders of which Conrado Cardenas and Avelino Atencio have been found guilty beyond reasonable doubt as co-conspirators, they are sentenced as follows: (1) Conrado Cardenas, to two (2) indeterminate penalties of 14 years of reclusion temporal as minimum, and 18 years and 8 months of reclusion temporal, as maximum, with the accessory penalties of the law; and (2) Avelino Atencio, to two (2) indeterminate penalties of 16 years of reclusion temporal, as minimum, and 20 years of reclusion temporal as maximum, with the accessory penalties of the law. They are furthermore both solidarily sentenced to indemnify the heirs of Leonardo Franzuela in the sum of P30,000.00, and the heirs of Isidro Moreno in the same amount, without subsidiary imprisonment in the event of insolvency in either case, and to pay the costs.

Teehankee, C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] Rollo, pp. 30-31

1 Id., p. 25

2 Original record, pp. 141,145

3 Rollo, p. 80

4 Id., pp. 83-84

1 Id., p. 27

2 TSN, June 15, 1983, pp. 5-6

3 Id., pp. 2-5

4 E.g., Peo. v. Pielago, 140 SCRA 419, 423 (1985)

5 E.g., Peo. v. Sinaw-ay, 138 SCRA 221 (1985)

6 TSN, June 15, 1983, p. 2

7 Rollo, p. 27

8 See Carandang v. Cabatuando, et al., 53 SCRA 383; Peo. v. Surban, 123 SCRA 219

9 Rollo, p. 30

1 E.g., Peo. v. Canamo, 138 SCRA 141

2 TSN, July 27, 1979, pp. 23-24, found in folder of TSN, May 4, 1979

3 TSN, May 3, 1979, pp. 15-20

4 Id., pp. 10-11

5 See Peo. v. Pueblas, 127 SCRA 746

6 See Peo. v. Ponuelos, 1356 SCRA 501

7 Rollo, p. 30

1 See Peo. v. Canamo, 138 SCRA 141; Peo. v. Hanasan, 29 SCRA 534

2 Art. III, Sec. 19 [1]

3 The article provides inter alia that "Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules."

4 ART. 64 (2), Revised Penal Code

5 ART. 64 (1), Revised Penal Code

6 SEC. 1, Act No. 4103 as amended

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