

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GAUDENCIO CANDADO Y SARTE, REYNALDO SADIE Y MALANA, AND
MANUEL MAGLALANG Y MALDA, DEFENDANTS-APPELLANTS.**

G.R. No. L-34089. August 01, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Automatic review of the decision of the Circuit Criminal Court, Seventh Judicial District, Pasig, Rizal, in its Criminal Case No. CCC-VII-464- P.C., for Murder.

Gaudencio Candado y Sarte, Reynaldo Sadie y Malana and Manuel Maglalang y Malda were charged with Murder under an Amended Information, alleging that on September 1, 1970, the said accused conspiring and confederating together and mutually helping one another without justifiable cause, with deliberate intent to kill and with treachery aforethought and evident premeditation, hacked and stabbed to death Mario San Juan.

After due trial, the Circuit Criminal Court of Pasig, Rizal rendered a decision convicting said accused as charged and sentencing each of them to suffer the penalty of DEATH, with the corresponding accessory penalties, to indemnify the heirs of the deceased, Mario San Juan, in the sum of P12,000.00 jointly and severally, to pay the amount of P10,000.00 as moral damages and another P10,000.00 as exemplary damages, and to pay the costs.

The prosecution predicated its case on the testimony of Dario Nalagan, Alberto Fernandez, Rafael Atizado and Reynaldo Leyva.

Dario Nalagan, a Senior Medico-Legal Officer of the National Bureau of Investigation, testified that he performed a post mortem examination on the remains of one Mario San Juan y del Rosario on September 3, 1970 at about 11:00 a.m. upon the request of one Mrs. Felicitas Piñon, a sister of the deceased, and that he submitted Necropsy Report. No. N-70-1523 (Exhibit "A") and the diagram consisting of two (2) pages, showing the different injuries found on the body of the deceased (Exhibits "A-1" to "A-2").

He further testified that the deceased sustained eighteen (18) stab wounds on the different parts of the body which could have been caused by a sharp-single-bladed instrument like a "balisong" or similar instrument and twelve (12) hacking wounds, mostly found on the head, which could have been caused by either a single-bladed sharp instrument like a small bolo or a bayonet. He explained that there were at least two (2) kinds of instruments which were used to inflict the wounds on the deceased and that there were at least two (2) assailants. In connection with the stab wounds sustained by the deceased, one was on the right of the anterior chest, two on the left lower chest, and one on the right lower abdomen, while the remaining stab wounds were found on the back. The hacking wounds were mostly found on the left side and back of the head, one near the parietal-occipital region and one in the front cutting the nose and exposing the bone. Out of the eighteen (18) stab wounds sustained by the deceased, eight (8) were perforating wounds which practically caused the death of the deceased through hemorrhage and that either of the eight was fatal enough to cause the death of the victim. He also opined that it is possible that some of the wounds were sustained by the deceased while he was standing, and some were sustained when he was

already in prone position.

Nalagan identified the signatures appearing on Exhibit "A", aside from his own, as those of Dr. Brion and Dr. Sunico, also of the National Bureau of Investigation. He affirmed the authenticity and veracity of the said exhibit, and also Exhibits "A-1" and "A-2", and acknowledged them as his work by signing the same before the court.

Rafael Atizado, a police sergeant of the Pasay City Police Department, declared that while on duty in the night of September 1, 1970, he received an information from the Philippine General Hospital that a dead male person had been taken to the said hospital. With Reynaldo Leyva, he went to the hospital and there he saw a dead person, whom they could not identify, with several head and body wounds. The following morning, a certain Felicitas San Juan, sister of the deceased, came to their office to inform them that before the fatal incident in question, her brother left their house at Protacio Street, accompanied by two companions, one of whom she identified as Alberto Fernandez. Acting on said information, the Pasay City Police Department asked this sister of the victim to invite the two companions of her brother to said office for investigation. On September 5, 1970, she arrived with Alberto Fernandez and Manuel Tawatao. It was on that meeting that Alberto Fernandez told the police that two of the eight persons in the group who killed the victim were Gaudencio Candado and Reynaldo Sadie.

Testifying further, Sgt. Atizado stated that Gaudencio Candado and Reynaldo Sadie were arrested on September 5, 1970 and September 7, 1970, respectively, and both were investigated by his office. He also stated that according to his findings, Candado used a bolo in killing the victim. For further verification, he went to the place of the incident to conduct further investigation but could not find anybody willing to give any information.

Reynaldo Leyva, an Investigator of the Pasay City Police Department, substantially corroborated the testimony of Rafael Atizado, and in addition he declared that he was not able to find the bolos and knives that were used in the commission of the crime.

The testimony of Alberto Fernandez, 21 years of age, a driver, which is the main prop of the case of the State, is as follows: On September 1, 1970, at about 7:00 o'clock in the evening, he, Mario San Juan and Manuel Tawatao, a tricycle driver, were walking along Aurora Street, Pasay City on their way to a bakery to inform another friend, a certain Leo, who was working therein, about the forthcoming confirmation of a child of Fernandez whom Leo was supposed to be the godfather. As they were about five (5) meters from the bakery, they saw the group of Gaudencio Candado alias "Godong", Reynaldo Sadie alias "McCoy", Manuel Maglalang alias "Boy Bara", Nardong Bungal, Pamboy and three others drinking wine at the window sill of the bakery. It was then showering. But apparently apprehensive that these persons, who already appeared drunk, may inflict harm upon them, they desisted from entering the bakery and instead attempted to walk away. It was at this juncture when he heard one of the group say "ayun" and then suddenly somebody hacked the back of Mario San Juan. Upon looking back, he saw Gaudencio Candado, Reynaldo Sadie and "Boy Bara" holding bolos. He held San Juan in order to help him but the group continued to attack them. When San Juan was hacked for the second time, he urged his companions to run away. This they did, but San Juan, who was already wounded, stumbled and was overtaken at the corner of Facundo St. by Candado, Sadie, "Boy Bara" and "Nardo". The three -- Candado, Sadie and "Bungal" continued to hack and stab the victim. He and Tawatao, who were both unarmed, could not do anything while they watched in horror and frustration, as San Juan was hacked and stabbed by his assailants. Thereafter the assailants turned their attention on Alberto Fernandez and Manuel Tawatao. The two, upon seeing the group going after them, ran for their lives. They went to Libertad Street to look for a mobile patrol but they found none. As it was then raining heavily and the streets were flooded, they went home. Fernandez told Tawatao to go to the house of the sister of the deceased to inform her about the fact that befell her brother.

The defense of the accused is alibi. Jaime San Pedro testified that on September 1, 1970, at about 6:00 o'clock

p.m. while buying bread in a bakery at Aurora Street, Pasay City, he noticed a group of eight (8) men, four (4) of whom were drinking wine. He knew some of them only by their aliases as "Nardong Bungal", "Ding Oxo" and "Bombay". As he was waiting for his change, he heard a man with two companions standing in the middle of the street, challenging the group of "Nardong Bungal" to a fight. He saw one of the three stab "Nardong Bungal" and all of a sudden the four companions of "Nardong Bungal" chased the three with their bolos and later saw the four overtake and hack and stab the three men. Sometime later, when he was on his way home, he saw many people staring at a man lying on the street bathed with blood.

Leon Santos Jr., a patrolman of the Pasay City Police Department, testified that at about 6:00 o'clock in the evening of August 13, 1970, he was informed that a certain "Boy Hapon" and Maximo Beneng were trying to stage a riot at Silva Street. On the basis of that information, he and Pat. Remorin waited for the two but they did not appear. On September 2, 1970, he investigated a certain "Nugnug" who saw the incident of September 1, 1970 and obtained the information that "Boy Hapon" and "Mariong Bawang", together with another companion, were walking along Aurora Street and that "Nardong Bungal" and "Edeng" were the only perpetrators of the crime.

Alberto Fernandez, a witness for the prosecution, was presented by the defense only to state that on September 1, 1970, he did not report the matter to the Pasay City Police and did not at once tell the incident to the sister of the deceased for fear that she might be shocked.

Gaudencio Candado, one of the accused and a rig driver by occupation, totally denied his involvement in the crime. He stated that on September 1, 1970, he drove his calesa from past 4:00 o'clock in the afternoon until 9:00 o'clock in the evening plying the Libertad corner Taft Avenue-Bangkal, Makati route; that he knew Alberto Fernandez for they formerly belonged to the same gang and it was Fernandez who put the tatoo marks on his (Candado's) body; that Alberto Fernandez testified against him because he implicated Fernandez before the CIS as the one who stabbed his friend, Manuel Pasawa, on August 25, 1970.

Reynaldo Sadie also denied any participation in the crime. He declared that on September 1, 1970, at around 8:00 o'clock in the morning, he was in Baclaran; at 1:00 o'clock p.m. he was in the Municipal Court at Las Piñas as a witness in the killing of one Amor and at 7:00 p.m. he was in the Pasay City market making sausages with his brother and a companion named Danny. After finishing his work, he went home to Pinagbarilan, Pasay City. He knew Alberto Fernandez alias "Boy Hapon" because on August 25, 1970, Fernandez saw him at Pinagbarilan and accused him (Sadie) of spreading the news that they were enemies, which he denied. That on this day, Fernandez stabbed Manuel Pasawa in the elbow and he (Sadie) helped Pasawa get to the hospital. He claimed further that he did not see Maglalang the whole day of September 1, 1970.

Manuel Pasawa, a former driver and admittedly a member of Sputnik gang, declared that he was stabbed by "Boy Hapon" on August 25, 1970 at Pinagbarilan, Pasay City and that Reynaldo Sadie brought him to the Philippine General Hospital for treatment.

Domingo Sadie, meat vendor, attempted to bolster Reynaldo Sadie's alibi that from 5:00 o'clock in the afternoon of September 1, 1970 until 8:00 or 9:00 o'clock in the evening, Sadie helped him in making sausages in the Pasay City market.

Benito Alcaraz, rig driver, was also presented to support Gaudencio Candado's alibi that the latter drove his rig on September 1, 1970 from 3:00 o'clock in the afternoon up to past 8:00 o'clock in the evening at Libertad Street, Pasay City.

Jose Paredes, patrolman, of Makati, testified that on September 1, 1970 at about 10:00 o'clock in the evening, he was on board a Marikina Valley bus bound for Baclaran. While still in the bus, a group of men who were all

armed with pistols and knives, boarded the bus in front of the Magallanes establishment in Highway 54. When two of the group saw his cap identifying him as a Makati policeman, they pointed their guns at him and one pointed a knife at his back. The group then divested the passengers of their money and watches. His wrist watch and service pistol were taken from him by the holduppers. He claimed that he was not able to use his gun because he was outnumbered and his pistol was not loaded. He recognized Alberto Fernandez as one of the robbers because Fernandez was the one talking to the driver and the last one to alight from the bus. When he learned that the Quezon City Police arrested a holdupper and given information by the Pasay City Police, he went to the Pasay City Jail where he identified Alberto Fernandez as one of the holduppers who held up the Marikina Valley bus. He knew also that "Boy Hapon" is the alias of Alberto Fernandez.

Manuel Sararana, Police Sergeant of the Makati Police Department, testified that on December 8, 1970, he investigated Alberto Fernandez in connection with the robbery in band which occurred at 10:00 o'clock in the evening of September 1, 1970 in Makati, Rizal.

Manuel Maglalang claimed that he did not know of a person by the name of Mario San Juan. He also denied participation in the stabbing of San Juan, explaining that he was in Barrio Lacmit, Arayat, Pampanga, with a friend, Manuel Guese, in the house of Aling Obing from August 27, 1970 and only re-turned to Manila on September 6, 1970. He, however, admitted that he has known Alberto Fernandez since 1967; that he and Fernandez were both members of Sigue-Sigue gang; that he was involved in a robbery case wherein he was sentenced to one year imprisonment; that he did not know Candado before but he had met Sadie once, only he could not remember when; that Fernandez pointed to him as one of those responsible for the killing of Mario San Juan because Fernandez got mad at him when he refused to join the group of Fernandez in robbing tourists and Fernandez suspected him as the one who reported the matter to the police; that another reason why Fernandez was mad at him was his resignation as member and leader of the Sigue-Sigue gang.

Manuel Guese, a friend and provincemate of accused Manuel Maglalang, testified that he knows the latter, being his friend; that Maglalang stayed in their house in Barrio Lacmit, Arayat, Pampanga, from August 27, 1970 and left for Manila on September 6, 1970.

It is not disputed that Mario San Juan died of stab wounds on September 1, 1970 at about 7:30 p.m. and that a post mortem examination performed on his body on September 3, 1970 by Dario Nalagan, a Senior Medico-Legal Officer of the NBI, showing that the deceased sustained eighteen (18) stab wounds which could have been caused by sharp single-bladed instrument like a "balisong" on different parts of the body and twelve (12) hacking wounds, which could have been caused by either a single-bladed sharp instrument like a bolo or bayonet, mostly found on the head, and that anyone of the eight out of the eighteen stab wounds which perforated the ascending colon, the upper and lower lobe left lung, the lower lobe of the right lung, the right kidney and right lobe of the liver caused the death of the deceased through hemorrhage, and that all these wounds could have been inflicted by no less than two (2) persons.

Since all the appellants put up the common defense of denial and alibi, the issue is one of credibility. On this point, appellants were positively identified as among the perpetrators of the crime by Alberto Fernandez. The trial court was convinced of the trustworthiness and credibility of Fernandez' testimony. We agree with the findings of the trial court that the evidence for the prosecution is sufficient to sustain a conviction for the commission of the crime with which the accused were charged. The positive identification of the three accused as among those who attacked Mario San Juan by means of bolos and knives by Alberto Fernandez, who himself barely escaped injury by the skin of his teeth, appears more credible than the denials and alibis of the three accused, which alibis were not established by full, clear and satisfactory evidence. His narration of the manner in which the victim was attacked by the appellants finds corroboration in the testimony of Dario Nalagan of the NBI, who testified that the

victim has suffered no less than eighteen (18) stab wounds, twelve (12) hacking wounds and was attacked by two or more assailants.

As repeatedly pronounced by this Court, alibi is generally a weak defense since it is easy to concoct. For this reason, the courts view it with caution and accept it only when proved by positive, clear and satisfactory evidence.[1] And for alibi to prosper, it is not enough to prove that defendant was somewhere else when the crime was committed. It must likewise be demonstrated that it was physically impossible for him to have been at the scene of the crime at the time.[2] And since the defense of alibi raises an issue of fact that hinges on credibility, and the credibility of an alibi depends to a great extent on the credibility of the witnesses who seek to establish it, the relative weight which the trial judge assigns to the testimony of said witnesses must, unless patently and clearly inconsistent with the evidence on record, be accepted. For, as is well recognized, his proximate contact with those who take the witness stand places him, compared to appellate Justices, in a more competent position to discriminate between the true and the false.[3]

The defense of alibi, of the accused cannot be given weight. The factors of distance, time and means of travel do not preclude the possibility for the accused to be at the scene of the crime at the time it was committed. Both Gaudencio Candado, who claimed to be plying the Libertad, Pasay City-Bangkal, Makati route, and Reynaldo Sadie, who claimed to be at the Pasay City market, could easily have gone to Aurora Street, a place not so remote. The alibi of Manuel Maglalang that he was in Arayat, Pampanga when the crime was committed does not, likewise, preclude the probability of his presence in Pasay City on September 1, 1970, considering the distance between Arayat, Pampanga and Pasay City and the facility of transportation between the two places. Further, the defense of alibi cannot merit credence where the corroborative witnesses for the defense have a clear interest in the fate of the accused, being close relatives and friends, and especially where their presence and participation in the occurrence have been established by the positive testimonies of eyewitnesses.[4]

Counsels for the accused assailed the credibility of the testimony of Alberto Fernandez for being uncorroborated and claimed that he could not be an eyewitness to the incident as he was at that time robbing passengers of a Marikina Valley bus along Epifanio de los Santos Avenue, Makati, Rizal. To support this claim, Pat. Jose Paredes of the Makati Police, allegedly one of the victims of the robbery, appeared as a witness and identified Alberto Fernandez as one of those who had robbed him. But the testimony of this witness does not belie Fernandez' allegation that he was an eyewitness to the incident. The record reveals that the robbery was allegedly perpetrated at 10:00 o'clock in the evening while the slaying of Mario San Juan was committed at 7:00 o'clock that same evening. Even the testimony of Jaime San Pedro, a defense witness, strengthens and reinforces Alberto Fernandez' testimony when he stated that on September 1, 1970 at about 6:00 o'clock in the evening, when he went to a bakery at Aurora Street, Pasay City to buy bread, he noticed eight (8) persons at the bakery, four (4) of whole were drinking wine; that while he was waiting for his change, he heard one of the three persons in the middle of the street challenging the drinking group to a fight; that one of the three stabbed "Nardong Bungal" and the four (4) chased the three with bolos on their hands; and that on his way home he was among those who saw a prostrate man on the street bathed with blood. If Alberto Fernandez was not among the three in the middle of the street, how could he narrate vividly the sequences of the incident, from the time his group left the house of the victim's sister up to the time he and Tawatao fled to Libertad Street?

Concerning the uncorroborated testimony of Alberto Fernandez, this Court has already ruled that in the determination of values and credibility of evidence, witnesses are to be weighed and not numbered. The testimony of only one witness, if credible and positive and if it satisfies the court beyond reasonable doubt, is sufficient to convict.[5]

We find from the circumstances the attendance of treachery in the commission of the crime. The attack was

deliberate as shown by the fact that the accused had previously armed themselves with bolos and knives. It was sudden and unexpected and without warning and without giving an opportunity to the victim to defend himself or repel the initial assault. It is evident from the record that the deceased was hacked and stabbed while his back was turned toward the accused, as he was then in the act of running away. Appellants made sure that the victim could not defend himself by surrounding him and inflicting the wounds upon him by turns. We have held in various cases that a sudden and unexpected attack under circumstances which render the victim unable to defend himself by reason of the suddenness and severity of the attack constitutes alevosia. The circumstance of treachery qualifies the killing as murder.[6]

Counsel for appellants Candado and Maglalang contended that conspiracy has not been proven by positive and convincing evidence and since Alberto Fernandez cannot positively identify the persons who actually inflicted the wounds of the deceased, it was an error for the trial court to convict the appellants on a mere surmise or conjecture. Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[7]

The agreement of which the law speaks is not limited to one which is written or otherwise expressly or directly made prior to the commission of the crime.[8] It is not necessary that the parties, for an appreciable time prior to the commission of the crime, had actually come together and agreed in express terms to enter into and pursue a common design.[9] It is enough for it to exist that, at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances.[10] While conspiracy to commit a crime must be established by positive evidence, direct proof is not required. Such kind of proof is seldom available because of the nature of conspiracy, which is planned in utmost secrecy. Circumstantial evidence, provided it is competent and convincing, will therefore be sufficient to establish conspiracy.[11]

The Solicitor General cited the following circumstances as an indication that the accused acted in concert and in pursuance of the same objective:

“1. On September 1, 1970 at about 7:00 o'clock in the evening, the group of the deceased did not reach their destination, the bakery located at Aurora St., Pasay City, because they tried to avoid the group of the defendants who were then drinking at the bakery;

“2. While the deceased' group was turning back, they were spotted by the defendants who simultaneously said 'ayun-ayun' (tsn, p. 5, Dec. 1970);

“3. When the deceased had turned his back from defendants' group, he was hacked on the head (tsn, p. 8, Dec. 28, 1970);

“4. In spite of the wound, deceased tried to run but the defendants chased him until he fell down at Facundo St., Pasay City;

“5. Helpless and unarmed, the defendants swarmed on the deceased and 'they were like Indians because they were going around' (the deceased) (tsn, p. 6, *ibid.*); and

"6. The deceased sustained eighteen (18) stab wounds and eleven (11) hacking wounds." (Appellee's Brief, pp. 13-14.)

We are convinced that the foregoing circumstances clearly show that the appellants, who used bladed weapons and attacked the deceased unexpectedly, had conspired to commit the crime they were convicted of, thus rendering of no consequence the fact that not all the wounds inflicted by them one after the other were fatal.[12] In conspiracy, the act of any of the conspirators becomes the act of all the others and responsibility for the act will be borne by them equally regardless of the degree of their respective participation in the execution of the act.[13] Also, once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law, the act of one is the act of all. The foregoing rule is anchored on the sound principle that when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrongdoing is in law responsible for the whole, the same as though performed by himself alone.[14]

Appellants also contended that the aggravating circumstance of evident premeditation should not be appreciated in this case. There is an apparent oversight committed by the appellants on this point. The trial court did not find the attendance of this circumstance in its decision.

Considering that the aggravating circumstance of abuse of superior strength is absorbed in the qualifying circumstance of treachery,[15] it would be pointless to discuss whether or not under the circumstances of the case such aggravating circumstance also exists.

The generic aggravating circumstance of "aid of armed men" should not be applied in this case, considering that appellants, as well as those who cooperated with them in the commission of the crime in question, acted under the same plan and for the same purpose.[16]

There being no other modifying circumstance attendant, as the Solicitor General correctly observed, the lower court should have imposed the prescribed penalty in its medium period, i.e., reclusion perpetua.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, with the modification that appellants are hereby sentenced to suffer the penalty of reclusion perpetua.

Castro, C.J., Fernando, Teehankee, Barredo, Makasiar, Muñoz Palma, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

[1] People v. Orzame, et al., 17 SCRA 161, citing People v. Pasiona, L-18295, Feb. 28, 1966; People v. Bautista, L-17772, Oct. 31, 1962; and People v. Dayday, L-20806-7, Aug. 14, 1965.

[2] People v. Estrada, 22 SCRA 111, citing People v. Limpo, et al., L-13058, Jan. 28, 1961; People v. Pelagio, et al., L-16177, May 24, 1967.

[3] People v. Estrada, supra, citing People v. Constante, L-14639, Dec. 23, 1964; People v. Berdida, L-20183, June 30, 1966.

[4] People v. De Asis, 61 Phil. 384; People v. Susano, 10 SCRA 609.

[5] People v. Orzame, et al., supra, citing People v. Marasigan, 83 Phil. 427 and People v. Argana L-18448, Feb. 28, 1964.

[6] U. S. v. De Silva, 14 Phil. 413; U. S. v. Baoit, 15 Phil. 338; People v. Urita, et al., 108 Phil. 730; People v. Dacudao, 108 Phil. 839; People v. Dueñas, 2 SCRA 221; People v. Tila-on, 2 SCRA 653; People v. Gensola, 29 SCRA 483; People v. Tumulip, 60 SCRA 303.

[7] Article 8, Revised Penal Code.

[8] People v. Ging Sam, et al., 94 Phil. 139.

[9] People v. Carbonel, 48 Phil. 868; People v. Ging Sam et al., supra.

[10] People v. Binasing, 53 O. G. 2508; People v. Carduque, L-10133, July 31, 1958.

[11] People v. Peralta, 25 SCRA 759.

[12] People v. Reyes, et al., 17 SCRA 309.

[13] People v. Patricio, 79 Phil. 227; People v. Danan, 83 Phil. 252; People v. Bersamin, 88 Phil. 292; People v. Abrina, 102 Phil. 695.

[14] People v. Peralta, 25 SCRA 759; People v. Pareja, 30 SCRA 693.

[15] People v. Limaco, 88 Phil. 35; People v. Mori, 55 SCRA 382; People v. Veles, 58 SCRA 21; People v. Briosio, 37 SCRA 336.

[16] People v. Piring, 63 Phil. 546.

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