

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO ROJAS, TEODORO VILLARIN, SOLOMON TOTOY, GREGORIO TUNDAG AND SINFROSO MASONG, DEFENDANTS-APPELLANTS.

G.R. Nos. L-46960-62. January 08, 1987

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PER CURIAM:

The people of Digon in Margosatubig, Zamboanga del Sur must still be talking every now and then of the strange killings that shook their barrio on that tragic morning of May 23, 1973, when three girls were slain, the youngest only five years old, under the most mystifying and shocking circumstances. Even now the townsfolk are probably still asking, not without a tinge of superstitious fear, the nagging, unanswered questions in this macabre case: Why? Why the blameless victims? And why the ruthless manner of their slaying?

Consider the carnage and the girls who fell before the bloodied knife: Zenaida Nastae, 21 years old, stabbed once to death, ears severed; Canda Carluman, 7 years old, stabbed once, hemorrhaging to death; and Mona Carluman, 5 years old, stabbed twice to death, ears severed.[1] These were Nature's creatures still on the threshold of their lives, and yet they were cut down in the innocence of their youth without mercy and without reason.

The day following the massacre, prodded perhaps by a sense not only of duty but also of outrage, a joint PC-police posse arrested seven persons in Barrio Talanusa, to wit: Teodoro Villarin, Saturnino Totoy, Solomon Totoy, Gregorio Tundag, Sinfroso Masong, Mohamod Esmael and Balbino Estrera, all suspected of the killings.[2] Found in their possession and confiscated were two home-made shotguns, one .38 caliber home-made pistol with two live bullets, five hunting knives with scabbards, an undershirt with Latin words arranged in a mystic design, a pair of trousers, four bottles of oil, and two human ears.[3] Wilfredo Rojas, their alleged leader, was arrested later in Malangas, also of Zamboanga del Sur, and turned over to the Margosatubig police.[4]

After investigation, all the suspects were charged with the murder of the above-named victims in three separate informations to which they all pleaded not guilty.[5] Later, on motion of the prosecution and over the objection of the other defendants, Esmael and Estrera were discharged so they could be used as state witnesses.[6] Every one of the remaining defendants was provided with counsel de oficio[7]. An extended trial followed and decision was finally rendered on January 27, 1975, convicting all of them and sentencing them to death.[8] The lone exception was Saturnino Totoy, who, because of the mitigating circumstance of minority, was meted out the lesser penalty of eight years and one day of prision mayor to fourteen years, eight months and one day of reclusion temporal.[9] All the accused were also held solidarily liable for the civil indemnity of P12,000.00, to be paid to the heirs of each of the three victims.[10]

The sentence of death has brought the case to this Court on automatic review. The records are voluminous. The accused-appellants are raising factual and legal questions which opposing counsel have discussed knowledgeably and with commendable spirit and earnestness. We shall rule upon these issues presently.

On the basis of the testimonial and documentary evidence presented at the trial, the following is substantially what happened before and during the tragic incident, as the lower court saw it.

Sometime in January 1973 there arrived in Barrio Talanusa, Margosatubig, Zamboanga del Sur, a stranger from Barrio Tuboran, Malangas, of the same province, bringing with him worldly wares and presumably also his own concept of the spirit. His name was Wilfredo Rojas. During his stay, he befriended the other accused, whom he taught to pray the "Our Father," the "Hail Mary," and the "I Believe," in profession of the Christian faith as he understood it. He also sold them on credit what he called "anting-anting" oil which, he claimed, would, when rubbed on their bodies, protect them from injury.[11]

Rojas returned to Talanusa in April of the same year, staying there for two weeks, and then again in May, joining his new-found friends as usual in drinking wine and in reciting the prayers he had taught them.[12] All this was leading to the tragic events that would transpire later that month by the sea in Digon.

On that fateful morning of May 23, 1973, Rojas and his companions went to the church in Talanusa, where they prayed, rubbed the amulet oil on their bodies, and girded themselves as if preparing for battle. Rojas was armed with a shotgun and a knife. Estrera also had a shotgun and a knife. Tundag carried a revolver and a knife. Esmael, Masong, Solomon Totoy and Saturnino Totoy were armed with knives. Villarin alone had no weapons. Rojas told them they were going to Digon.[13]

Together, these eight then proceeded to their destination, about a half-hour's walk away. Arriving at the seashore where the massacre was soon to take place, they immediately surrounded the copra kiln to prevent escape of the persons in the enclosure. In the "tapahan" were Zenaida Nastae, the eldest in the group, and the Carluman sisters, Dalma, Canda, Mona and Lina, their ages ranging from ten years to one. Rojas approached Zenaida and pretended to be looking for a person named Yoyong, continuing in casual conversation when he received a negative answer. The girls did not appear to be apprehensive as yet. Suddenly and without warning, Solomon Totoy fired at Dalma, but his gun jammed. Rojas then pulled out his knife and swung at Zenaida, fatally wounding her in the left side of her body with one stab. The second victim was Canda, whom Rojas stabbed (or shot?) in the head, resulting in her bleeding to death. Rojas finally turned on the smallest girl in the group, the terrified Mona, whom he stabbed twice in the stomach and in the back, also killing her. It is not certain when this actually happened — whether before or after they had died — but to make the gory crimes even more bizarre, the ears of Zenaida and Mona were severed, by whom it is also not clear. At any rate, after the butchery was done, Rojas ordered the group to run, and run they did together from the bloody sands.[14]

They had not reckoned with Dalma who, with her sister Lina, had escaped the killing by fleeing to the nearby sea and hanging on to a log until the men had left.[15] She would live to tell about the terrible bloodbath she had seen and survived and to point to the accused as the brutal killers.

It was Dalma and the two state witnesses, Esmael and Estrera, who supplied the details in the above narration[16] Although there are a number of inconsistencies in their testimony, due probably to the general confusion that characterized the incident, we accept the factual findings of the trial judge. The trial judge has a superior competence in this regard. After all, as we remarked in an earlier case,[17] it is the trial judge who has the opportunity to observe the witnesses and assess their demeanor, to mark every nuance of tone or pause of hesitation or flush of face, and to determine, by the totality of his impressions and the plausibility of their testimony, if what they are saying should be rejected or believed.

The trial judge described Dalma as sincere and straight-forward, relating her story without hesitation and sticking to it despite rigid cross-examination.[18] The naivete of the ten-year old girl was especially impressive and, together with her detailed remembrance of her harrowing experience, convinced the court that she was telling the truth. As for state witnesses Esmael and Estrera, while it has been argued that their testimony came from a polluted source, they being themselves co-conspirators with the accused, it is noteworthy that their own respective

accounts of the tragedy were consistent with each other and tallied essentially with Dalma's narration.[19]

Thus settling the factual issues, we now address ourselves to the several legal questions raised by the accused-appellants in their assignment of errors. Specifically, they claim that the lower court erred in finding that there was a conspiracy among them; in imposing upon them collectively the sentence of death; and in considering against them the aggravating circumstances of cuadrilla, dwelling and evident premeditation.[20] Additionally, Solomon Totoy challenges his supposed confession on the ground that it was taken in violation of the Bill of Rights.[21]

A conspiracy exists when two or more persons come to an agreement to commit a crime and decide to commit it.[22] While it is desirable that the conspiracy be proved by direct evidence, like an express understanding among the plotters affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence only.[23] Thus, to repeat established doctrine, where the accused move in concert toward a common purpose, conspiracy may be inferred from their joint acts and design, without need of direct evidence of the criminal agreement.[24] We have held in many cases that the conduct of the accused before, during and after the commission of the crime, are circumstances that can show whether or not there was a conspiracy among them.[25]

In the case at bar, it is not disputed that the accused, in the morning of the killings, gathered at the church in Talanusa and observed what might be compared to the ceremonies of warriors before a battle: prayers for victory, anointing with oil against injury and death, and girding for combat.[26] Surely, one does not make such solemn preparations if the destination were a harmless party, as claimed by the accused.[27] The record shows that Rojas, the "commander" as he was called, simply told the group they were going to Digon, but he did not have to spell out their mission. If only because of the formidable arsenal they were carrying, the accused could not but have known that their object was more sinister than merrymaking and drinking and feasting at a social gathering. There was certainly a more deadly purpose, and all of them were aware of this.

It has been established that upon their arrival in the "tapahan" at Digon at about eleven o'clock of that fatal morning, the accused immediately positioned themselves around the copra kiln enclosure, surrounding it to prevent the five girls inside from leaving.[28] One wonders why, if they were not acting in concert, they at once so placed themselves as to form a ring around the structure in a veritable siege of their defenseless and unsuspecting prey. Notably, every one took his spot as if by prearrangement, without need of the leader assigning to them their respective positions, in what some — if they had a sense of the occult — would call a circle of death.

There is no evidence that when Solomon Totoy suddenly attempted to shoot Dalma, the rest of the group was surprised, objected or remonstrated. Nobody stopped Rojas when he started killing the astonished and terrified victims. There was no protest either when the ears of Zenaida and Mona were cut off on Rojas's orders and wrapped in leaves for safekeeping.[29] Everything was done apparently according to a preconceived design. The group knew beforehand what was going to happen for, indeed, they had planned it that way. In fact, as a final touch, after the massacre was over, Rojas ordered the men to run, and obediently they did, fleeing the scene of the crimes at the same time and together.[30]

It is the above acts of the accused, and not necessarily the testimony of Esmael and Estrera as co-conspirators, that have established the conspiracy. These two state witnesses merely corroborated the principal account given by the unhesitant Dalma, who had seen everything and told it in every harrowing, unforgettable detail.

The conspiracy having been established, it must now visit equal punishment on all the conspirators, on the legal theory that the act of one is the act of all.[31] This is settled jurisprudence. There is no need to harp on it. Indeed, even if it be argued that some did less than the others, it cannot be denied that their very participation in the

conspiracy added to its strength, emboldened the actual killer, and contributed to the success of the common design. In the eyes of the law, each conspirator is a co-principal and equally guilty with the other members of the plot.[32]

It is true that in *People v. Nierra*,[33] this doctrine was relaxed in favor of the two accused who, although adjudged as co-conspirators, were nonetheless held to be accomplices only and so entitled to a lesser penalty than that imposed on the other defendants. In that case, however, the participation of one was limited to introducing the killer to the other plotters and delivering the murder weapon to him and the other merely acted as look-out while the crime was being committed. In the instant case, however, every one of the accused acted in concert and was present at the scene of the crime while it was being committed and as an equal partner of the rest performed his designated part to complete its execution.

There is no question that the killings were committed with treachery, to qualify the crimes to murder. Treachery exists when the offender commits any crime against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[34] In the instant case, the offended parties were young defenseless girls confronted by eight full-grown men armed with guns and knives who, to make a surprise attack, pretended to be looking for someone. Three bloody corpses, the victim of their guile and their superior strength and number, attested to the success of their wicked plot.

We reject the finding by the trial court of dwelling and band as separate aggravating circumstances.[35] Even the Solicitor General believes that dwelling should not have been considered because the "tapahan" in which the murders were committed was a separate structure and did not form part of the building where the victims were residing.[36] As for band, it is unquestionable that *cuadrilla* is absorbed by treachery since its employment was consciously adopted to insure the execution of the plot without risk to the criminals, by reason of their number, let alone their strength, from any defense the offended parties might make.[37]

But evident premeditation is another matter and is correctly appreciated as an aggravating circumstance that will increase the penalty. The rule is that under normal conditions, when the conspiracy is directly established with proof of the attendant deliberation and selection of the method, time and means of executing the crimes, the existence of evident premeditation may be taken for granted.[38] In case of implied conspiracy, however, there must be proof as to how and when the plan was hatched and the time that elapsed before it was carried out, so it can be determined if the accused had sufficient time between its inception and its fulfillment to dispassionately consider the commission of the crime and its consequences.[39] As this Court has repeatedly held, there should be a showing that the accused had the opportunity for reflection, that he had the chance to weigh the pros and cons of the deed he was planning, and that he nonetheless persisted in carrying out his criminal design.[40]

From the facts found by the lower court, there was such a showing. It would appear that the plan to murder the girls was conceived perhaps as early as during the meetings in April and May between Rojas and the other members of the group, or at the very latest when they all assembled in the church at Talanusa before they made the trip to Digon. Even as they were mouthing their prayers, they had already made up their minds, or perhaps were only affirming a decision reached earlier, to kill the girls in Digon. They knew then where they were going. They knew what they were going to do. Between the time they left the church in Talanusa and until they arrived in Digon - a good thirty minutes' walk over a two-kilometer stretch during which they would have had nothing in mind but their mission - they had sufficient time to reflect on the acts they were about to commit, to consult their conscience on the justification for the crime they were planning, and to desist, if they wanted to, from carrying out their deadly purpose.

Coming now to Solomon Totoy's extrajudicial confession which he asks us to invalidate, all we have to do is test it against the requirements of Article IV, Section 20, of the 1973, Constitution. This statement was obtained from him on May 28, 1973. It is therefore covered by *Magtoto v. Manguera*[41] and other subsequent cases[42] holding that this section should be given only prospective operation from January 17, 1973, when that Constitution was ratified.

The said provision categorically states that "any person under investigation for the commission of an offense shall have the right to remain silent and to counsel and to be informed of such right." The record does not show that this requirement was observed. On the contrary, there merely appears in the opening paragraph of the said confession the vague statement that:

"The affiant has been informed of his rights under the Constitution of the Republic of the Philippines, and under the state of Martial Law, and the nature of the investigation, and without violence, intimidation, force nor reward the affiant declared as follows:

"xxx

xxx

xxx"

This surely does not suggest compliance with the constitutional mandate. The rights which Totoy was entitled to know were not specifically communicated to him. Being informed of his "rights under the Constitution of the Republic of the Philippines" did not mean he was informed particularly of his right to remain silent and to be assisted by counsel during his custodial investigation. He was not told he did not have to answer if he did not feel like answering. He was not told he had a right to be assisted by counsel. He was not given a chance to retain counsel *de parte* if he wanted to, and neither was he offered the services of counsel *de officio*. Not knowing about his right to counsel, he could not have waived it; and in any case, the waiver, to be valid, would have needed the assistance of counsel under the ruling announced in *People v. Galit*,[43] which is still the prevailing doctrine notwithstanding the reservations of some members of this Court.

In fine, what we see here is a superficial observance of the requirements of the Bill of Rights through a mere recitation by rote of the sacramental advise, which was inadequate to begin with. There was no sincere effort or desire to apply the guarantees of Section 20 that could have protected the suspect from the rash and uncounseled statements he subsequently made, knowing no better. That statement is, of course, not admissible against him.[44]

We end on this note of perplexity and regret. From the legal viewpoint, motive need not be established as long as the defendants have been directly identified, as in this case.[45] Even so, the townspeople of Margosatubig, mindless of such legal niceties, are probably still musing over that bloody attack on that pleasant morning in May thirteen years ago when three young girls perished by the seashore in Digon at the hands of eight intruders.

Was there perhaps a ritual killing on that tragic shore? There are those who suggest the hand of a fanatic religious group animated by a deadly hostility to Muslims, including innocent girls and children like the victims in this case.[46] Others see hidden meanings in the Latin inscriptions and cryptic designs on the shirt Rojas was wearing that fateful morning when, as one possessed, he slew and slew and slew.[47] The severed ears are especially intriguing and could perhaps reveal an esoteric purpose behind the savage knives the killers wielded in cold blood against their innocent prey. Still the question probes and lingers: Why? The answer lies in the warped mind of the stranger from Tuboran who came with his magic amulet oil and taught his believing followers to pray with him — and kill.

All the accused-appellants are guilty of the three crimes of murder, qualified by treachery and aggravated by

evident premeditation. Rejected as aggravating circumstances are band, because it is already absorbed by treachery; dwelling, because the "tapahan" was not part of the victims' residence; and cruelty, because it has not been shown that the ears of the two victims were severed while they were still alive.

WHEREFORE, as above modified, the judgment of conviction is affirmed and the sentence of death is imposed on all the accused-appellants for each of the murders. The civil indemnity, for which they are solidarily liable, is increased to P30,000.00 for the heirs of each of the victims. No costs.

SO ORDERED.

Teehankee, C.J., Feria, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, Paras, and Feliciano, JJ., concur.

Yap, J., on leave.

[1] Exhibits "N", "O", "P", "Q", "R", "S".

[2] Decision, pp. 9-10, 34, 75.

[3] Ibid., pp. 35-38, 75-76.

[4] Id., pp. 35, 60, 75.

[5] Id., pp. 4, 77.

[6] Id., pp. 4-5.

[7] Id., p. 4.

[8] Id., pp. 105-109.

[9] Id.

[10] Id.

[11] Id., p. 81; tsn, pp. 35-40, Oct. 24, 1973; pp. 7-12, Oct. 25, 1973.

[12] Decision, p. 82; tsn, pp. 41-46, Oct. 24, 1973.

[13] Decision, pp. 82-83, tsn, pp. 49-50, 56-59, Oct. 24, 1973, pp. 13-20, Oct. 25, 1973.

[14] Decision, pp. 72-74, 80, 91; tsn, pp. 46-48, 72-75, Oct. 24, 1973; pp. 22-27, Oct. 25, 1973; pp. 5-11, 19, 28-36, Oct. 31, 1973; pp. 5-8, Jan. 15, 1974.

[15] Decision, pp. 73-74.

[16] Ibid., pp. 5, 12-30.

[17] People v. Baao, G.R. No. 68574, July 7, 1986.

[18] Decision, pp. 73-74.

[19] Ibid., pp. 12-30; 77-78, 93-94.

[20] Rollo, pp. 250-251.

[21] Ibid., pp. 417-418.

[22] Revised Penal Code, Art. 8; People v. Ogapay, 66 SCRA 209; People v. Alonzo, 73 SCRA 484; People v. Alvis, 122 SCRA 815.

[23] People v. Alcantara, 33 SCRA 812; People v. Colman, 103 Phil. 6; People v. Mejia, 55 SCRA 453; People v. Candado, 84 SCRA 508; People v. Cercano, 87 SCRA 1; People v. Roncal, 79 SCRA 509.

[24] People v. San Luis, 86 Phil. 485; People v. Tian, 77 Phil. 1090; People v. Saulog, 74 Phil. 536; People v. Ging Sam, 94 Phil 139; People v. Aset Kindo, 95 SCRA 533; People v. Padilla, 132 SCRA 682.

[25] People v. Serrano, 136 SCRA 399; People v. Tawat, 126 SCRA 362; People v. Ramos, 122 SCRA 138; People v. Pajenado, 69 SCRA 172; People v. Villanueva, 128 SCRA 488; People v. Ong, 108 SCRA 267; People v. Cabiltes, 25 SCRA 112; People v. Timbol, G.R. Nos. 47471-73, Aug. 4, 1944.

[26] Decision, pp. 82-83, 91.

[27] Rollo, p. 294; tsn, p. 30, Aug. 30, 1974; pp. 13, 29, July 25, 1974; p. 11, July 26, 1974; p. 6, Oct. 29, 1974.

[28] Decision, p. 91; tsn, p. 5, Oct. 31, 1973

[29] tsn, pp. 100-105, Oct. 25, 1973

[30] tsn, pp. 14, 27, 105-106, Oct. 25, 1973.

[31] People v. Timbang, 74 Phil. 295; Gardines v. Magsalin, 73 Phil. 114; People v. Alonzo, 73 SCRA 484; People v. Cristobal, Jr., 91 SCRA 71; People v. Guillermo, 93 SCRA 315; People v. Compacion, 93 SCRA 334; People v. Cazano, 95 SCRA 146; People v. Villason, 115 SCRA 716; People v. Disney, 120 SCRA 637; People v. Loreno, 130 SCRA 311.

[32] People v. Ipil, 27 Phil. 530; People v. Sumayo, 70 SCRA 488; People v. Candado, 84 SCRA 508; People v. Cercano, 87 SCRA 1; People v. Ruiz, 93 SCRA 739; People v. Loreno, *supra*.

[33] 96 SCRA 1.

[34] Revised Penal Code, Art. 14, par. 16.

[35] Decision, pp. 103-104.

[36] Consolidated Brief for Plaintiff-Appellee, p. 14.

[37] People v. Mori, 55 SCRA 382; People v. Abeline, 1 Phil. 568; People v. Sangalang, 58 SCRA 737.

[38] People v. Cornejo, 28 Phil. 457; People v. Larion, 2 Phil. 176; People v. Maquiraya, 14 Phil. 243; People v. Tumbag, 74 Phil. 295.

[39] People v. Custodio, 97 Phil. 698; People v. Mendoza, 91 Phil. 58; People v. Moro, 101 Phil. 1226; People v. Peralta, 25 SCRA 779; People v. Pareja, 30 SCRA 693; People v. Garcia, 94 SCRA 14.

[40] People v. Alvarez, 3 Phil. 24; People v. Carillo, 77 Phil. 579; People v. Gil, 13 Phil. 530; People v. Ruiz, 93 SCRA 716; People v. Resurreccion, 94 SCRA 696; People v. Perez, 102 SCRA 352; People v. Valerio, Jr. 112 SCRA 208; People v. Camano, 115 SCRA 559; People v. Paculba, 124 SCRA 383; People v. de la Fuente, 126 SCRA 518; People v. Diva, 25 SCRA 468; People v. Ardica, 55 SCRA 245; People v. Remolete, 56 SCRA 66; People v. Cardenas, 56 SCRA 631; People v. Abletes, 58 SCRA 241.

[41]63 SCRA 4.

[42] People v. Peña, 80 SCRA 589; People v. Jimenez, 71 SCRA 186; People v. Lachica, 132 SCRA 230; People v. Puda, 133 SCRA 1.

[43]135 SCRA 465; People v. Hon. Luis Sison, *supra*; People v. Pascual, Jr., 109 SCRA 192; People v. Quizon, G.R. No. 68603, June 25, 1986.

[44] Constitution, Art. IV, Sec. 20.

[45] People v. Guba, 42 SCRA 109, People v. Madera, 57 SCRA 349; People v. Pajenado, 69 SCRA 172; People v. Araja, 105 SCRA 133; People v. Bernat, 120 SCRA 918; People v. Abadilla, 121 SCRA 268; People v. Demetrio, 124 SCRA 914.

[46]Decision, pp. 79, 81-82, 95-96.

[47]Ibid., pp. 83-91.

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