

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE REBULADO, PRIMITIVO REBULADO AND ROGELIO SALES, DEFENDANTS-APPELLANTS.

G.R. No. L-42987. March 04, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the June 16, 1975 Decision of the then Court of First Instance of Camarines Sur, Tenth Judicial District, Branch I, presided by Hon. Delfin Vir. Sunga, finding accused-appellants guilty beyond reasonable doubt of the crime of Murder and sentencing accused-appellant Vicente Rebulado to suffer the penalty of reclusion perpetua; and applying the In-determinate Sentence Law, Primitivo Rebulado and Rogelio Sales were each sentenced to suffer the penalty of Ten (10) Years and One (1) Day of prision mayor, as minimum, to Seventeen (17) Years and Four (4) Months of reclusion temporal, as maximum; to indemnify the heirs of the late Rodolfo Servillon in the sum of P20,000.00, jointly and severally; and to pay the costs.

In an Information dated December 16, 1969, Provincial Fiscal Edmundo S. Alberto charged accused-appellants with the crime of Murder, allegedly committed as follows:

"That on or about the 3rd day of November, 1969, at approximately 6:30 o'clock in the morning, in the barrio of San Ramon, municipality of Nabua, province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, said accused, conspiring and confederating together and mutually help-ing one another with intent to kill and with evident premeditation and treachery, did then and there wil-fully, unlawfully and feloniously assault, attack and stab with a kitchen knife and strike with pieces of wood one Rodolfo Servillon, thereby inflicting upon the latter fatal wounds on the different parts of his body which directly caused the death of the said Rodolfo Servillon."

All of the accused-appellants pleaded not guilty at the arraignment.

As summarized in the People's Brief, the facts of the case are as follows:

"At about 6:30 in the morning of November 3, 1969, Edmundo Gallarte, Lorenzo Avila and Rodolfo Servillon, all residents of San Ramon, Nabua, Camarines Sur, on their way to harvest palay, dropped at the store of Juana Tretasco Gallarte, a resident of the same place, to light their cigarettes (pp. 25, 26, TSN, April 6, 1970; pp. 59, 60, TSN, Dec. 14, 1970).

"After lighting his cigarette, Rodolfo Servillon sat on a table (p. 26, TSN, Id.). Several minutes later, Vicente Rebulado, Primitivo Rebulado and Rogelio Sales arrived at the store (p. 60, TSN, Dec. 14, 1970). While Rodolfo Servillon was seated on the table, Vicente Rebulado went behind Servillon, and without any warning, stabbed the latter hitting him on the right side of the lumbar region (pp. 26, 32, TSN, Apr. 6, 1970).

"While trying to run away after he was stabbed, Servillon was hit on the left forearm by Primitivo Rebulado, and on the back by Rogelio Sales, who were each armed with a piece of wood. Servillon, however, was able to run away from his attackers who pursued him, but gave up after they failed to catch up with him (pp. 30, 31 &

34, TSN, Id.). Edmundo Gallarte and Lorenzo Avila followed Servillon, and caught up with him when the latter was walking in a zigzag manner, and brought him to the house of Alejo Beranza. Servillon was then taken to the clinic of one Dr. Belmonte (pp. 35, 36, TSN, Id.).

Upon advice of Dr. Belmonte who administered emergency treatment on the critically injured Servillon, the latter was brought to the Camarines Provincial Hospital where he was operated on (p. 67, TSN, Dec. 14, 1970).

Medical findings on his (Servillon's) body reveal that he sustained two wounds: (1) a 'stab wound on the lumbar region, right penetrating abdomen, perforating ascending colon, lacerating lower pole of right kidney, massive hematoma posterior peritoneum', and (2) 'external lesions consisting of abrasions, anterior aspect upper third left forearm.' The stab wound was the fatal one which caused Servillon's death, due to Massive Internal Hemorrhage (pp. 3, 4, 5, 6, 8, 9 & 10, TSN, Apr. 6, 1970; Exhs. "B" & "C", pp. 2 & 4, Rec.).

At about 8:00 o'clock in the morning of November 3, 1969, a report that a certain Rodolfo Servillon was stabbed by Vicente Rebulado, was received in the Office of the Chief of Police of Nabua, Camarines Sur. Upon the order of the Chief of Police, the suspect Vicente Rebulado was arrested and brought by Police Lt. Teofisto Ayuma to the said Chief of Police who conducted an investigation. Vicente Rebulado gave a written statement (Exh. "D") which was sworn to before Juan Ballecer, Municipal Judge of Nabua, Camarines Sur (p. 55, TSN, Apr. 6, 1970).

In his statement to the police, Vicente Rebulado narrated the circumstances surrounding the stabbing of Rodolfo Servillon. He stated that he was arrested for the stabbing of Rodolfo Servillon; that he was the one who stabbed Servillon; that he stabbed Servillon at about 6:30 in the morning of November 3, 1969, because while he (Rebulado) was on his way home to San Antonio, Ogbon, Nabua, Camarines Sur, at about 7:00 o'clock in the evening of November 2, 1969, after he came from the house of Rosy Bagasbas, of San Ramon, Nabua, and whom he was courting, Rodolfo Servillon emerged from a dark place and hit him (Rebulado) with a piece of wood; that he was hit on the left ear with a piece of wood, and on the stomach, with a fist blow; that Servillon assaulted him because he (Servillon) was also courting Rosy Bagasbas that he returned to the house of Rosy Bagasbas and told the latter and her mother what happened to him; that Rosy Bagasbas and her mother escorted him until he reached a safe place before reaching home; that upon waking up the following morning (Nov. 3, 1969), he related the incident to his father; that his father told him that they settle the case amicably; that he did not want any settlement because he wanted to take revenge on Servillon; that he, together with his father, his brother Primitivo Servillon and his brother-in-law Rogelio Sales went to look for Rodolfo Rebulado; that they found Servillon, together with Raymundo Gallarte and Lorenzo Avila, in the store of Juana Tretasco Gallarte, in San Ramon, Nabua, Camarines Sur; that when he saw Servillon seated at the store, he (Vicente Rebulado) without saying any word, approached and stabbed Servillon who thereafter ran away but while running was met and struck by Primitivo with a piece of wood; that his brother-in-law Rogelio Sales stood by and watched what was happening; that after the incident (Vicente Rebulado) went home together with his father, his brother Primitivo, and brother-in-law Rogelio Sales (Exhs. "D", "D-1", "E-2", pp. 11-13, Rec.)."

The defense of accused-appellants Rogelio Sales and Primitivo Rebulado is alibi, while accused Vicente Rebulado is self defense.

Accused-appellant Rogelio Sales denied any participation in the crime. He testified that at the time of the commission of the crime, he was working on the riceland of Felix Cuadro; that he does not know the persons of deceased Rodolfo Servillon, Edmundo Gallarte and Lorenzo Avila; that he denies the statements of Gallarte and Avila pointing him as one of the accused, and does not know any reason why they would incriminate him in the tragic incident; that he is the brother-in-law of his co-accused Primitivo and Vicente Rebulado who have been living with him in his house for the last six years; and that he was arrested while plowing the ricefield of Felix Cuadro at about 9:00 o'clock in the morning of November 3, 1969 (TSN, Hearing of Dec. 19, 1972, Ibid., pp. 153-169).

Felix Cuadro corroborated the testimony of Rogelio Sales. He added that he met Rogelio on his way to look for laborers to plow and harrow his field at four (4:00) o'clock in the morning of November 3, 1969 riding on a carabao; that he was taken to the house of Rogelio's father who was still sleeping, but he was able to engage their services that same morning; that after the father and son took their breakfast, they all left at about 7:00 o'clock the same morning to the ricefield and started to work immediately; that he went home to take his breakfast and to prepare the food for lunch; and that when he returned to the field at about 10:00 or 11:00 in the morning, Rogelio was no longer there and his father informed him that he was arrested by a policeman (TSN, Hearing of Dec. 19, 1972, *Ibid.*, pp. 134-152).

Likewise, accused-appellant Primitivo Rebulado denied participation in the killing of Rodolfo Servillon. He testified that he went to the cemetery of Nabua, Camarines Sur on November 2, 1969 at 5:00 o'clock p.m., for the All Souls Day celebration; that his purpose was to see friends and "barkadas" and to visit his dead cousins and relatives, but he was able to name only one and forgot the others; that past 12:00 o'clock midnight of November 3, 1969, he went and slept at the hut of Moises Paranal; that past 6:00 o'clock in the morning of November 3, 1969, he was awakened by Moises Paranal in order to attend the 6:30 mass in the chapel of the cemetery; and that they both went home past 8:00 o'clock a.m. on the same date (TSN, Hearing of July 17, 1972, *Ibid.*, pp. 123-130; and Hearing of March 5, 1974, *Ibid.*, pp. 203-217).

Primitivo Rebulado's testimony was corroborated by Moises Paranal who was on vigil for his deceased sister and brother-in-law. However, Paranal testified that Primitivo Rebulado had no immediate relative to watch in the cemetery that night; and that it is only now that he disclosed that he and Primitivo were together at the cemetery when the crime was committed, and hence, could not have participated with his co-accused Vicente Rebulado and Rogelio Sales in the commission of the crime (TSN, Hearing of Apr. 11, 1973, pp. 105-123).

Vicente Rebulado, on the other hand, in an obvious attempt to exculpate his co-accused appellants, testified that he and deceased Rodolfo Servillon were alone when the incident that led to the latter's death occurred; that he killed Servillon because on November 1, 1969, after he visited Rosie Bagasbas, the girl they were both courting, Servillon warned him that if he ever goes back to the girl's house, Servillon will kill him; that at 6:30 in the morning of November 3, 1969, while he was passing the store of Juan Gallarte Tretasco, he was called by Servillon who was at the store and who asked him where he was going; that he told Servillon that he was going to visit Rosie Bagasbas; that Servillon boxed him but he was not hit; Servillon then got a piece of wood to arm himself; that he also got a piece of wood and was able to disarm Servillon with his first strike; that they then fought and the deceased Servillon took his scythe which was on the table; that he was able to get his stainless knife and stabbed Servillon; that Servillon ran away after having been hit, and he decided to go home; and that on the way, he surrendered to a policeman who was looking for him after identifying himself (TSN, Hearing of Aug. 8, 1973, *Ibid.*, pp. 170-199).

The trial court, in a decision dated June 16, 1975, found all the accused guilty as charged with the crime of Murder. The decretal portion of the said judgment reads:

"WHEREFORE, the Court finds the accused Vicente Rebulado, Primitivo Rebulado and Rogelio Sales guilty beyond reasonable doubt of the crime of Murder, hereby sentences the accused, Vicente Rebulado the Penalty of Reclusion Perpetua (Life); applying the Indeterminate Sentence Law hereby sentences each of the accused Primitivo Rebulado and Rogelio Sales to suffer the penalty of, from TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, to indemnify the heirs of the late Rodolfo Servillon in the sum of P20,000.00, jointly and severally and to pay the costs."

Accused-appellants Primitivo Rebulado and Rogelio Sales appealed the decision of the trial court, while accused

Vicente Rebulado chose to serve his sentence.

From the records of this case, it appears that only accused-appellant Rogelio Sales has been apprehended and detained at the Provincial Jail of Camarines Sur, in Naga City. Appellant Primitivo Rebulado could no longer be found (Ibid, p. 51).

The Brief for Appellant Rogelio Sales, submitted by his counsel de oficio appointed by this Court, raised the following issues:

I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED ROGELIO SALES AS CO-CONSPIRATOR OF VICENTE REBULADO.

II

THE LOWER COURT ERRED IN SENTENCING ACCUSED ROGELIO SALES TO IMPRISONMENT, INDEMNITY AND COSTS.

The instant appeal is devoid of merit.

Conspiracy in the case at bar is established by the positive testimonies of the prosecution witnesses Raymundo Gallarte and Lorenzo Avila pointing to acts done in concert by the accused to carry out an unlawful design: that all three accused arrived together at the store where the victim was seated together with the prosecution witnesses. Soon thereafter, accused Vicente Rebulado went behind Rodolfo Servillon and stabbed the latter. As Servillon was about to run away, he was hit with a piece of wood on his left forearm and on the back by Primitivo Rebulado and Rogelio Sales, respectively. Notwithstanding the assault on his person, Rodolfo Servillon was able to run away pursued by his assailants who failed to catch up with him. Rodolfo Servillon was later brought to the Pro-vincial Hospital where he succumbed to the injuries inflicted upon him. These facts taken together establish beyond reason-able doubt that appellants acted in concert with a common design. Hence, the act of one conspirator is the act of all.

In *People vs. Serante*, 152 SCRA 520 [1987]), this Court held:

"For conspiracy to exist it is enough that at the time the offense is committed, the participants had the same purposes and were united in its execu-tion as may be inferred from the attendant circum-stances. This court has repeatedly ruled that cons-piracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. (*People v. Catao*, 107 Phil. 861 [1960]; *People v. Estrada*, 130 Phil. 108; 22 SCRA 111; *People v. Al-cantara*, L-26867, June 30, 1970, 33 SCRA 812).

Conspiracy having been proved, the act of one conspirator becomes the act of all; and it is of no moment that not all the accused participated in the actual commission of every act constituting the crime (*People v. Paredes*, et al., 133 Phil. 633 [1968], 24 SCRA 635)."

The alibi of Rogelio Sales that he was working in the ricefield of Felix Cuadro in barrio San Antonio, Nabua, Camarines Sur at the time of the commission of the crime does not deserve slightest consideration. Barrio San Antonio is said to be about one (1) or two (2) kilometers from San Ramon of the same municipality where the crime took place. There is no physical impossibility for the accused-appellant Sales to be at the scene of the crime. In any event, the presence of accused-appellants Rogelio Sales and Primitivo Rebulado, as well as the prosecution witnesses Edmundo Gallarte and Lorenzo Avila at the scene of the crime, is confirmed by the statement (Exhibit "D") of accused Vicente Rebulado at the Nabua Police Department on November 3, 1969 at 8:30 a.m., barely two (2) hours after the incident, and subscribed and sworn to before Municipal Judge Juan

Ballecer which, among others, states:

"Q: Did you heed or follow the advice of your father to have this case settled with him (Servillon)?

A: No, because I wanted to take a revenge on him so I went to look for Rodolfo Servillon.

Q: When you were going to San Ramon, do you know who were with you?

A: Yes sir, they were my father Damian Rebulado, my brother, Primitivo Rebulado and my brother-in-law Rogelio Sales (Exhibit "D-4").

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"Q: Were you able to locate Rodolfo Servillon?

A: Yes sir, in the store of Juana Gallarte Tretasco at San Ramon, Nabua, Camarines Sur.

Q: What was Rodolfo Servillon doing at the said store?

A: He was just inside that store together with Lorenzo Avila and Raymundo Gallarte." (Exhibit "D-9", Record, p. 12).

It is a settled rule in this jurisdiction that alibi can-not prevail over the positive identification by the prosecution's witnesses of the accused as the perpetrators of the crime especially when there is no physical impossibility for the accused to be at the scene of the crime (People vs. Pecato, 151 SCRA 14 [1987]; People vs. Dava, 149 SCRA 582 [1987]; People vs. Inot, 150 SCRA 322 [1987]). In the face of the clear and positive testimonies of the prosecution witnesses regarding the participation of the accused in the commission of the crime, the defense of alibi assumes no probative value and is not credible (People vs. Serante, supra). Besides, there is no evidence to show that the prosecution witnesses who personally know all the accused as they come from the same place were actuated by any sinister motive to impute a crime so grave as murder to accused-appellants Rogelio Sales and Primitivo Rebulado. As a matter of fact, accused Vicente Rebulado, in his affidavit (Exh. D) admits that his co-accused appellants Rogelio Sales and Primitivo Rebulado were with him that fateful morning of November 3, 1969 when the offense complained of occurred.

Finally, it must be stated that the findings of facts of the trial court that has the privilege of observing the demeanor of witnesses while on the witness stand, and therefore can discern if these witnesses are telling the truth or not, must not be disturbed and should be given weight. There are no exceptions in the record that justify the acquittal of the accused-appellants (Amarante Heirs vs. Court of Appeals, et al., 155 SCRA 46 [1987]).

In view of the foregoing considerations, the trial court did not err in finding all the accused guilty beyond reasonable doubt of the crime of murder.

WHEREFORE, the judgment appealed from is Affirmed with the modification that accused-appellants Rogelio Sales and Primitivo Rebulado are hereby sentenced to reclusion perpetua without qualification as the Indeterminate Sentence Law is not applicable, among others, to persons convicted of an offense punishable with death penalty or life imprisonment and to those who shall have escaped from confinement or evaded sentence (Sec. 2 of the Indeterminate Sentence Law); and accused-appellants Rogelio Sales and Primitivo Rebulado are ordered to indemnify jointly and severally the heirs of the deceased Rodolfo Servillon in the amount of P50,000.00. No costs.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

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