

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUDY PUEBLAS AND ROGELIO CORTEZ, ACCUSED-APPELLANTS.

G.R. No. L-32859. February 24, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

An appeal from the Decision of the Court of First Instance of Misamis Occidental, Branch II, finding appellants, Rudy Pueblos and Rogelio Cortez, guilty of Murder, sentencing them to reclusion perpetua, and ordering them to indemnify, jointly and severally, the heirs of Jacinto Mirafuentes in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The Information recites:

"That in the evening of January 16, 1970, at Kiniangan (Caniangan), Tangub City and within the jurisdiction of this Honorable Court, the above-named accused acting together and cooperating with one another pursuant to a common design, with intent to kill and with evident premeditation, treachery and with the use of superior force, did then and there wilfully, unlawfully and feloniously shot several times one Jacinto Mirafuentes with a firearm, hitting the latter on different parts of his body and causing serious and fatal wounds thereat, which injuries caused the immediate death of said Jacinto Mirafuentes, all in violation of Article 248 and in relation to paragraphs 1 and 5 of the same, of the Revised Penal Code.

Tangub City(for Ozamis) March 16, 1970."

The evidence of the prosecution, on which conviction was predicated, shows the following:

"At approximately 7 o'clock in the evening of January 16, 1970, in Barrio Caniangan, Tangub City (Misamis Occidental), Jacinto Mirafuentes went down from his house to answer the call of nature (p. 18, t.s.n., Sess. of April 27, 1970). Once down, Cresencia Sarte, Mirafuentes' wife, heard appellant Pueblos call her husband telling him that they would not do him any harm (p. 33, *ibid*). Being apprehensive, Sarte followed her husband down, and upon reaching the ground, she heard a shot and saw her husband running in front of her pursued by appellants Rudy Pueblos and Rogelio Cortes (pp. 18-19, *ibid*), the latter carrying a gun (p. 21, *ibid*). Almost immediately thereafter, three more shots rang out in quick succession (p. 19, *ibid*). She then ran towards her neighbors' houses for help and asked them to accompany her to the place where the shooting occurred, telling them in the process that her husband had been shot by Rogelio Cortes and Rudy Pueblos (p. 22, *ibid*). Upon reaching the place, they found Mirafuentes already dead (p. 22, *ibid*).

As antecedent, it was also shown during the trial and the same is admitted by appellant Pueblos (p. 36, Sess. of April 30, 1970)-that Pueblos and one Agapito Eje were charged upon complaint of the deceased Jacinto Mirafuentes for attempted murder (Criminal Case No. OZ-728, CFI, Misamis Occidental), in connection with a stabbing incident on May 14, 1969 (p. 37, t.s.n., Sess. of April 27, 1970). Maria Mirafuentes, the mother of the deceased, testified that Rudy Pueblos sought the settlement of this case and the agreed amount was P300. The amount was promised to be delivered on January 17, 1970. However, despite the sale by appellant Pueblos of a carabao for P150.00, the entire amount could not be raised (p. 37, t.s.n., Sess. of April 28, 1970). On January

16, 1970, appellant Pueblos went to the cockpit of Caniangan during the barrio fiesta, but lost (p. 5, *ibid*). On this occasion too, appellant Pueblos who was with his co-accused Cortes, was observed up to 6 o'clock in the afternoon, or barely one hour before the killing, to have a revolver tucked in his waist (pp. 7-8, *ibid*). Both accused directed belligerent stares at the deceased who was also present in the cockpit (p. 6, *ibid*). That same night, Mirafuentes was slain at approximately 7 o'clock. (t.s.n., p. 18, 1970)."[1]

The autopsy conducted on the victim showed 3 gunshot wounds on the chest, the occipital, and the sacral region, respectively (Exhibit "A").

Appellants, who are brothers-in-law, interposed the defense of alibi. They claimed that they were eight kilometers away from the crime scene; that on January 16, 1970, at about 5:30 in the afternoon, they left the cockpit at Barrio Caniangan for Tangub City together with Pfc. Charlie Laurie; that they arrived at Labuyo at 6:30 in the evening by hiking; that shortly thereafter, they took a motor cab and reached Tangub City at 7:00 in the evening and that they proceeded to a Chinese restaurant where Municipal Judge Solidario T. Agot was also eating at that time.

The Trial Court rejected appellants' defense and opined:

"... In the face of the testimony of eyewitness, Cresencia Sarte, who was in a position to see and who actually saw what had happened, the defense of alibi must fail. Besides, there is a strong motive on the part of the accused, Rudy Pueblos, to murder Jacinto Mirafuentes. Rogelio Cortez is the brother-in-law of Rudy Pueblos. There was a pending criminal case against Rudy Pueblos in which Mirafuentes was the complainant. He was an important witness in this case. Jacinto would not settle this case if not paid P300.00 and the date of the trial was approaching fast. He must get rid of this witness. The identity of the two accused, in the commission of the crime is well established.

There was conspiracy between the two accused in the commission of the crime. They are brothers-in-law. They were in the scene together. They both chased Jacinto Mirafuentes after he was shot for the first time.

Treachery qualified the commission of the crime, aggravated by nocturnity."

Before us, appellants have made the following Assignment of Errors:

I

"The Lower Court erred in convicting the accused to terms of life imprisonment.

II

"The Lower Court erred in convicting the accused on the basis of the lone uncorroborated testimony of witness who was biased and not credible.

III

"The Lower Court erred in disregarding the defense of alibi of the accused."

Appellants assail the findings of treachery, conspiracy, and the appreciation of the aggravating circumstance of nocturnity.

A review of the evidence confirms that treachery and conspiracy attended the commission of the crime. There is treachery when the offenders, in committing the crime, employ means, methods or forms in the execution without risk to himself arising from the defense which the offended party might make.[2] In the case at bar, the gun used in the killing was most probably a .38 caliber revolver.[3] An unarmed victim, such as the deceased, was powerless to defend himself against such a high-powered weapon. The victim was caught off guard by that

seemingly casual conversation when appellant Pueblas called the deceased "To" and the latter asked, "What do you want?". The former in turn replied, "We are not going to steal"[4] , after which a shot rang. And even if the attack were frontal, considering the gunshot wound on the chest, still treachery may be appreciated.[5] The gunshot wound on the sacral region of the victim also shows that he was gunned from behind, possibly when he was running away from appellants, who were thus free from any danger that the victim might defend himself.

Conspiracy is also established by the following particulars, taken together. Appellants are brothers-in-law. Appellant Pueblas was facing a criminal charge for having stabbed the deceased on a previous occasion. Pueblas sought to have the said case settled but could raise only half the amount. Appellants were together at the cockpit in the afternoon prior to the killing. Appellant Cortez had a gun tucked on his waist. Appellants directed dagger looks towards the deceased, who happened to be there at the time. Appellants left the cockpit together towards nightfall. The stabbing incident occurred soon thereafter at around 7 P.M. Appellants were seen together chasing the deceased immediately after a shot was heard. All these indicate not only ill-feelings against the deceased but also a motive and a shared design to accomplish a criminal objective. Conspiracy need not be established by direct proof; it may be inferred from acts of the appellants.[6] It exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution[7] , as indubitably shown herein.

Next, appellants assail the credibility of Cresencia Sarte, widow of the deceased, in view of her admission that she harbored resentment against appellants. This admission will not, however, affect her credibility since this is a natural reaction for a wife who witnessed the killing of her husband, the latter having also been a victim of stabbing by appellant Pueblas on a previous occasion, and having had a past altercation with appellant Cortez in a gambling game in 1969.

That Cresencia was a lone uncorroborated witness neither detracts from her testimony which is sufficient to sustain conviction since it was credible[8] , as the Trial Court had found, and which we affirm. Her identification of the appellants is not open to doubt as she knew them both. Rudy Pueblas was a neighbor, while she used to see Cortez often in the public market. They went past her as they chased the deceased. There was also ample illumination that night as there was a moon that was almost full.

Appellants' argument that it was improbable for Cresencia to have identified appellants considering that at 7:00 in the evening of January 16, 1970, the moon was more or less 80 degrees from the western horizon is not well taken for, as the Solicitor General points out, citing Weather Bureau records, the size of the moon disc was 62% of full moon thus affording enough illumination. As Cresencia and Oswaldo Mirafuentes had testified, the moon was at 9 o'clock position and almost round. Appellant Pueblas himself admitted that there was a moon.[9] Besides, if identification of persons is possible even by the light of stars[10] , with more reason that one could identify persons by moonlight.

Of note also is the fact that Cresencia had revealed the names of the appellants as the culprits to her neighbors to whom she rushed for help immediately after the killing. And even granting that the testimony of the Barrio Captain that when the incident was first reported to him by Barto Pedrito he was told that the killers were not yet known[11] , yet, she did reveal appellants' identities to the Barrio Captain early the next morning. Besides, the Barrio Captain also testified that he did not ask Pedrito who had killed the deceased.[12]

That in her testimony she had said that it was Cortez who had shot her husband but in her sworn statement she named Pueblas is no index of inconsistency since she maintained all along that both appellants had killed her husband because she saw both of them chasing her husband, with Cortez carrying a gun.[13] The other discrepancies pointed out by the defense refer to minor details, which are usual among witnesses narrating startling events and do not affect her overall credibility.[14]

Relative to the defense of alibi to the effect that at the time of the commission of the crime, appellants were at Tangub City, some 8 kilometers away from the scene of the crime, the rule is basic that the same cannot prevail against the positive identification of the accused:[15]

The testimonies of Pfc. Charlie Laurie and Municipal Judge Solidario Agot corroborating the alibi cannot be sustained since they appeared to be biased witnesses. For one thing, if it were true that appellants were with Pfc. Laurie at the time of the commission of the crime, it is strange that he did not immediately or within reasonable time give his co-officers this vital information. For another, on Judge Agot's part, he was appellants' Counsel-de-officio before the City Court wherein he filed a motion for the reduction of bail, and again before the Court of First Instance, where he had moved to qualify the bondsmen.[16]

Moreover, appellants failed to prove that it was physically impossible for them to have been at the scene of the crime at the time it was committed. Tangub City is only 8 kilometers away from Barrio Caniangan and is accessible by motorized cab. It is settled that, for alibi to prosper, it is not enough to prove that the accused were somewhere else when the crime was committed but it must be likewise be demonstrated that it was physically impossible for them to have been at the scene of said crime at the time of the killing.[17]

Treachery being present, and there being no other modifying circumstances since it has not been established that nighttime was purposely sought to facilitate the commission of the offense, besides the fact that, if present, it would be absorbed in treachery, the crime is Murder and the penalty imposable is reclusion perpetua.[18]

WHEREFORE, the judgment appealed from is hereby affirmed except as to the civil indemnity, which is hereby increased to P30,000.00.[19]

Costs against accused-appellants Rudy Pueblas and Rogelio Cortez.

SO ORDERED.

Teehankee, (Chairman), Plana, Relova, and Gutierrez, Jr., JJ., concur.

[1] pp. 1-3, People's Brief.

[2] Revised Penal Code, Article 14, paragraph 16, *People vs. Casalme*, 17 SCRA 717 (1966); *People vs. Noble*, 77 Phil. 93 (1946); *People vs. Pengzon*, 44 Phil. 224 (1922).

[3] p. 9, t.s.n., April 27, 1970.

[4] p. 26, *ibid*.

[5] *U.S. vs. Cornejo*, 28 Phil. 457 (1914); *U.S. vs. Pengzon*, *supra*; *People vs. Noble*, *supra*.

[6] *People vs. Muñoz*, 107 SCRA 313 (1981).

[7] *People vs. Sy*, 113 SCRA 207 (1982).

[8] *People vs. Sope*, 75 Phil. 811 (1946).

[9] p. 42, t.s.n., April 30, 1970.

[10] *People vs. Vacal*, 27 SCRA 24 (1969).

[11] p. 8, t.s.n., April 29, 1970.

[12] p. 5, *ibid*.

[13] pp. 21, 36, t.s.n., April 27, 1970.

[14] People vs. Verzo, 65 SCRA 324 (1975).

[15] People vs. Mercado, 97 SCRA 232 (1980).

[16] pp. 73, 75, t.s.n., May 29, 1970.

[17] People vs. Alcantara, 33 SCRA 812 (1970).

[18] Article 248, in relation to Article 67, Revised Penal Code.

[19] People vs. de la Fuente, G. R. Nos. L-63251-52, December 29, 1983.

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