

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARCILLO MANLOLO, ACCUSED-APPELLANT, ROMULO GARCIA, ACCUSED.

G.R. No. L-40778. January 26, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by defendant-appellant Arcillo Manlolo from the judgment of the Court of First Instance, Branch XXX (Pasay City) (now known as the Regional Trial Court (RTC)) in Criminal Case No. 990-P, convicting the said defendant-appellant and one of his co-accused, Romulo Garcia, of the crime of homicide with two (2) aggravating circumstances of nighttime and band, sentencing them to suffer the penalty of reclusion perpetua, and ordering them to pay the heirs of the deceased Cipriano Manuel the sum of P12,000.00 jointly and severally.

The information alleging conspiracy, charged defendant-appellant Arcillo Manlolo, Romulo Garcia and Alfonso Militante with the crime of homicide allegedly committed on May 7, 1972 with Cipriano Manuel as the victim.

Trial was conducted by Judge Santiago Ranada who, however, died before judgment could be rendered in the case. Judge Jose C. Campos, Jr. who substituted for Judge Ranada, decided the case on the basis solely on what appeared on the record.

One of the three accused, Alfonso Militante, was at large and was never brought to trial, which therefore proceeded against defendant-appellant Manlolo and accused Garcia only. On December 12, 1974, appellant Arcillo Manlolo filed a notice of appeal (p. 256, Record).

On December 19, 1974, Romulo Garcia filed a "Motion to Reconsider, Set Aside Decision, and/or Reopen the Case" on the following grounds:

a)

That the evidence is insufficient to warrant the conviction of the accused;

b) That circumstances exist that necessitate clarification by witness so that the interest of justice may be subserved (p. 258, Rec.)

The Motion to Reconsider, Set Aside Decision and/or to Reopen the case was granted by the trial court on December 20, 1974, in an order which reads as follows:

"Finding the reasons for the motion to set aside the decision and reopen the case, and it appearing that the case was tried by the former presiding Judge of Branch XXVII and raffled to this court rendering the decision and finding merit in the allegation that the testimonies of the two prosecution witnesses are conflicting, the motion is well taken.

"Wherefore, the decision dated November 13, 1974 is withdrawn and set aside and the case is reopened for the purpose of re-taking of the testimony of witness Severino Perito and Felicito Mediona. It is understood that

their former testimonies shall not in any case be taken into account during the direct or cross-examination of said witnesses at the hearing for retaking their testimonies. Let the date of hearing be set.

SO ORDERED."

(pp. 3-4, Plaintiff-Appellee's Brief)

Because of this Order for a new trial for Romulo Garcia, the instant case concerns only the appeal of Arcillo Manlolo on the following issues.

1. Has conspiracy been established under the evidence of record?
2. Is defendant-appellant Manlolo criminally liable for the fatal stabbing of Cipriano Manuel?
3. May the aggravating circumstance of nighttime be appreciated although it was not shown that it was purposely sought to secure advantages?
4. In the absence of clear evidence that more than three armed men acted together, may the aggravating circumstance of band be appreciated?
5. Would it be correct to impose the penalty of reclusion perpetua for the crime of homicide simply because of the concurrence of two aggravating circumstances?
6. May aggravating circumstances proved at the trial but not alleged in the information be considered to qualify the killing to murder?
7. Should the Indeterminate Sentence Law be applied where the imposable penalty is reclusion temporal?

The trial court found that:

"In the evening of May 7, 1972, Severino Perito, Felicito Mediona and Cipriano Manuel went to Villaruel Street, Pasay City, on the occasion of the local community fiesta as guests of Baltazar Manuel, a cousin of Cipriano. At about 11:30 in the evening of the same date when the three were on their way home, upon reaching the corner of Villaruel and Harrison Streets, someone threw a big rock at the group. The stone hit Perito on the head and as his companions came to assist him, a group of five persons coming from behind the police outpost rushed at the trio. One of these, the accused Romulo Garcia, stabbed Manuel hitting him on the chest, while the others started throwing rocks at the trio. At the same time, another person stabbed Perito and hit him on the right thigh. Upon seeing Manuel fall down, Perito and Mediona fled and ran towards the church to get a vehicle. When they were about to ride a jeep, a mobile unit of the Pasay City Police Department arrived. Perito and Mediona immediately reported to the policemen and the mobile unit proceeded to the scene of the crime and apprehended some of the accused. In the meantime, Perito and Mediona brought the wounded Manuel at the Philippine General Hospital where he was operated on and treated. Upon his release from the operating room, Manuel was given by the attending physician a 50-50 chance to live. In spite of the medical

assistance given at the PGH, Manuel died the next day. On May 8, at about 6:45 in the morning, Sgt. M. San Juan, an investigating officer at the Pasay City Police Department, took down the statement of Severino Perito (Exh. 1-Manlolo). Earlier, at about 5:30 in the morning, same investigator took down the statement of Felicito Mediona (Exh. 2-Manlolo). The Necropsy Report No. N-72-885 issued by Dr. Orlando V. Salvador, Medico-Legal Officer, NBI, who took an autopsy on the body of the deceased Cipriano Manuel, stated as cause of death: shock secondary to stab wound of the chest." (pp. 98-100, Rollo)

Both defendant-appellant Manlolo and accused Garcia did not deny their presence at the scene of the crime, but the two, who did not deny being with the group that assaulted the victim, denied having stabbed Manuel. This is a case wherein the two (2) defendants were accusing each other as the perpetrator of the crime and pointing to each other as the person who stabbed the deceased.

Appellant denies conspiracy. According to appellant simultaneous action does not of itself demonstrate the concurrence of wills nor the unity of action and purpose which are the basis of the responsibility of two or more individuals and it is not enough that the attack be joint and simultaneous, it is necessary that the assailants be animated by one and the same purpose.

Let Us now examine the facts to determine whether or not the accused or assailants were animated by one and the same purpose. It has been proved during the trial that all the accused were together as a group near the police outpost at the corner of Villaruel and Harrison Streets, that one of them threw stones at the trio composed of Perito, Mediona and Manuel as they were walking along the street; that one of the stones thrown by the group of the accused hit Perito on the head; that when Manuel and Mediona approached Perito to assist him, the group rushed at the trio, with Garcia and Manlolo armed with knives; that at the same time that Garcia and Manlolo were assaulting Manuel and his companions, the others were throwing rocks and stones at their victims. The evidence established that appellant was one of the five persons who simultaneously rushed and surrounded the victim and his companions. Appellant was one of those who stabbed the victim. He and his group followed the victim and his companions when they retreated, and they fled together from the scene of the crime after pursuing the victims. Where the accused cooperated with the other co-accused in bringing about the death of the victim and the evidence showed that by their very acts during and after the commission of the crime, they were acting in concert, they are guilty of conspiracy. When the accused by their acts aimed at the same object, one performing one part and another performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in conspiracy (People vs. Zea 130 SCRA 77), wherein the act of one is the act of all. (People vs. Cortez, 57 SCRA 308, 318).

While the lower court did not state in its decision who stabbed the victim, the Court declared that "it had found that the two accused were participants in the assault and they were with the group that assaulted the victim." Both accused did not deny their presence at the scene of the crime. Neither did they deny having been with the group that assaulted the victims. Furthermore, the testimonies of the prosecution eye-witnesses, and Severino Espiritu (pp. 7 and 19, tsn., February 2, 1973), Felicito Mediona (pp. 18 and 43, tsn., February 21, 1973) established that appellant stabbed the victim. The most damaging evidence was the testimony of Matilde Dalida, a defense witness, who unerringly pointed to the appellant as the one who stabbed the victim on the chest (pp. 13-14, tsn., February 27, 1973). Such testimony was corroborated by the testimony of the other accused, Romulo Garcia, who also testified that it was the appellant who stabbed the victim (pp. 19-20, tsn., August 20, 1973).

We now come to appellant's next assignment of error. While we fully concur that the aggravating circumstance of nighttime is not present, we however find that the aggravating circumstances of band and abuse of superior

strength attended the commission of the crime. It has not been shown that accused or his companions purposely sought nighttime to better accomplish their purpose. On the other hand, it was shown by the evidence that more than five (pp. 18-19, tsn., February 22, 1973) or about ten persons (pp. 11-12, tsn., February 21, 1973) attacked the victim and his companions by stabbing them (pp. 11, 37, and 44, tsn., February 2, 1973; pp. 18-24, tsn., February 21, 1973). Noteworthy is the fact that previous to this, the group of the accused threw stones at the victim and his companions. Apropos to this, We held in the case of *People vs. Bautista* (28 SCRA 184) that there is an intention to cause death if the accused throws a stone at the victims, thus including stone under the term arms in the phrase "more than 3 armed malefactors acted together".

The evidence also shows that after Cipriano Manuel was stabbed, he fell. Severino Perito and Mediona then "rushed" Manuel away from the scene but the appellant and his companions followed the victim and his group. In following the victim, some of the companions of the appellant continued throwing stones at the victim and his companions (pp. 28-29, tsn., February 21, 1973; p. 39, tsn., February 21, 1973). Being superior in number and armed with knives and stones, appellant and his companions took advantage of their collective strength to overpower their relatively weaker victims who were not armed. It is therefore evident that the aggravating circumstances of band and abuse of superior strength were present in the commission of the crime.

In another assignment of error, appellant also claims that "the Court x x x erred in imposing upon defendant-appellant, Manlolo the penalty of Reclusion Perpetua in the crime of Homicide and in not applying the Indeterminate Sentence Law".

We find merit in his contention.

Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law in its maximum period. (Art. 64 par. 6 Revised Penal Code).

WHEREFORE, We find accused-appellant Arcillo Manlolo GUILTY. For the crime of homicide, the Revised Penal Code provides for the penalty of reclusion temporal (Art. 249, Revised Penal Code), considering however the presence of two aggravating circumstances, and considering further the Indeterminate Sentence Law, We hereby imposed an indeterminate sentence of 8 years and 1 day of prision mayor as minimum to 17 years, 4 months and 1 day of reclusion temporal as maximum, and to indemnify the heirs of the victim the sum of P30,000.00 conformably with established precedents.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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