

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL AGDA AND ROMY GELINA, ACCUSED-APPELLANT.

G.R. No. L-36377. January 30, 1982

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

At about 10:00 p.m. of November 30, 1969, at the poblacion, Municipality of Dolores, Province of Eastern Samar, during a drinking party he attended, Antonio Quitarior was stabbed causing his death a few minutes later.

As a result, an information charging Noel Agda and Romy Gelina of murder dated February 24, 1970, was filed with the Court of First Instance of Samar, Branch VIII, as follows:

"That on or about the 30th day of November, 1969, in the evening, in the poblacion, municipality of Dolores, province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another with intent to kill and with evident premeditation and treachery, did, then and there wilfully, unlawfully and feloniously, attack, assault strike and stab one ANTONIO QUITORIO, with a blunt instrument and a sharp bladed weapon, with which the said accused have conveniently provided himself for the purpose, thereby inflicting upon the said ANTONIO QUITORIO, stab wounds on his body, which wounds directly caused his death.

"Contrary to law."[1]

After arraignment, plea of not guilty[2] and trial, the lower court on its decision dated November 20, 1972, convicted the accused Noel Agda and Romy Gelina, with dispositive portion as follows:

"Considering all the foregoing, accused Noel Agda and Romy Gelina, both as principals, are found guilty beyond reasonable doubt of the crime of Murder charged against them. Wherefore this Court hereby imposes upon each of them a penalty of Reclusion Perpetua; to indemnify the heirs of Antonio Quitarior, deceased, in the amount of P12,000.00; to pay the costs of this suit and to suffer other accessory penalties provided by law.

"So Ordered."[3]

Both the accused appealed on December 16, 1971.[4] Acting on appellant Noel Agda's motion for withdrawal of his appeal, this Court granted the same on July 6, 1981.[5]

The version of the prosecution is:

In the evening of November 30, 1969, at around 9:00 p.m. Victor Almazan and Paulino Beros went to the house of Toribio Crisologo located at Tumaginting, Dolores, Eastern Samar, to attend a drinking spree wherein they were invited. At the ground floor of the said house, Almazan and Beros saw seated around a table and already drinking Antonio Quitarior, Roly Eclipse, Joaquin Robin, Placer Afable and Todo Baldonesa.[6] The two joined the group upon invitation by Antonio Quitarior.[7] While the group was drinking, accused Noel Agda and Romy Gelina arrived. Both also joined in the drinking.[8]

After both accused Agda and Gelina drank their second glass of tuba, they asked permission to leave.[9] At that moment, just before the two accused left their seats, witness Victor Almazan went outside the house to urinate.[10]

While Almazan was urinating outside, his attention was attracted by a noise. Looking towards the direction of the noise, Almazan saw Noel Agda stab a person who apparently fell on the ground and whom Almazan did not recognize at that time. He saw Noel Agda run away together with Romy Gelina.[11]

Immediately after urinating, Almazan rushed to the side of the fallen person who was then in the act of rising up and proceeding to enter the door of the house, pressing a hand on his abdomen. Almazan, recognizing the identity of that person, said - "It is you Mano Tony." The victim Antonio Qutorio replied - "Yes, I am stabbed by Noel Agda." [12]

Before the victim Antonio Qutorio could reach his seat at the table, and immediately after uttering those words, he fell down on the floor. Seeing the victim in that condition, those seated around the table dispersed. Victor Almazan and Paulino Beros attended to the victim. Then, Almazan ran to fetch Dr. Procopio Necito, Jr. Before the doctor and Almazan arrived, the victim Antonio Qutorio expired. He died without moving from the spot where he fell and without uttering any other word except his last aforementioned statement.[13]

Witness Paulino Beros corroborated the testimony of witness Almazan. He declared that as soon as the two accused asked permission to leave, both left the drinking table. When the two accused reached the door, both tarried a while, and called for the victim Antonio Qutorio. Antonio also left the table and joined the two accused at the door.[14] Witness Beros saw the three - the two accused and the victim - go outside the house passing through the door.[15] Beros remained at the table and did not see what happened outside the house. After the lapse of more than three minutes from the time the three went out of the house, witness Beros saw the victim Antonio Qutorio staggering as the latter attempted to reach his seat at the table, holding a part of his abdomen. Beros heard the victim Antonio say - "I am stabbed by Noel Agda." After uttering those words, Antonio fell to the floor. Thereafter he died.[16]

Both witnesses Almazan and Beros declared that Antonio Qutorio was already dead when the doctor arrived. A few minutes later, Chief of Police Jaime Camacho arrived with one policeman.[17] After a cursory examination of the spot outside the house where the victim Qutorio was stabbed, the doctor and the Chief of Police directed that the cadaver be brought to the Puericulture Center for autopsy. After the autopsy the remains of the victim was brought to his house.[18]

The post mortem examination conducted by Dr. Nacito, Jr. indicates that the victim Antonio Qutorio suffered a stab wound at the "anterior abdominal wall" and by a "sharp pointed instrument" as the edges of the wound were clean.[19] The victim died of "excessive hemorrhage secondary to abdominal aorta and intestinal injuries due to stab wound at about 3/4 inch long, located at about 1 inch above and lateral to the umbilicus, abdomen, left, and penetrating the abdominal wall." [20] According to the doctor, the victim also had an injury at the lower lip which may have been caused by a fist blow.[21] Dr. Nacito Jr. issued the death certificate showing the time of the infliction of the injury on the victim to be at 10:00 p.m. and death occurred at about 10:30 p.m.[22]

The version of the defense is:

Both of the accused interposed the defense of alibi. They claim that they arrived at the drinking spree in the house of Toribio Crisologo at past 6:30 p.m. that evening of November 30, 1969, and they left the place at around 7:00 p.m. They were not in that place when the victim Qutorio was stabbed and killed at past 10:00 p.m. After leaving the house of Toribio Crisologo, the two proceeded to another drinking spree in the house of Francisco Magro,

about 500 meters from the house of Crisologo, arriving in the house of Magro at about 8:00 p.m. From 8:00 p.m. the two engaged in drinking with Francisco Magro, the latter's wife and son until 2:00 a.m. Both accused slept in the house of Magro, leaving only the following morning.[23]

The lower court's decision of conviction against the accused Noel Agda is no longer an issue as appellant Noel Agda was allowed by the Court to withdraw his appeal.[24]

The issue of credibility of witnesses for the prosecution and the defense has been decided by the trial court, and no error can be detected in its ruling. Thus, the trial court, ruled:

"The testimonies of prosecution witnesses Almazan and Beros appear to be clear and positive, inspite of rigid cross-examination they were subjected to, and the attempt of defense witnesses to destroy their credibility. Almazan clearly identified these two accused because he is acquainted with them, and he affirmed having seen the persons with the aid of the beam of light coming from within Crisologo's house. He saw Noel Agda actually stab the deceased Quitariorio, and after which both perpetrators fled away. In the cases of People vs. Sanchez and People vs. Del Prado, et al., Nos. L-13335 and L-13336, Nov. 29, 1960, the Supreme Court said 'the defense of alibi which is easy to concoct, cannot prevail over the clear and positive testimonies establishing the identities of the perpetrators.'"[25]

The trial court's conclusion that treachery is definitely proven in this case can hardly be questioned.[26] Both accused were the nephews of the victim, and the latter never suspected that he would be stabbed when he went with the accused outside the house. The attack was sudden and unexpected, leaving the victim without any means of defending himself.[27]

As to the liability of appellant Romy Gelina as co-conspirator, the prosecution, represented by the Solicitor General, and the defense are in accord with the conclusion that no evidence of conspiracy exists in this case.[28]

The only incriminating evidence against appellant Romy Gelina are: He arrived and left the drinking spree together with accused Noel Agda. Romy Gelina was standing nearby when witness Almazan saw Noel Agda stab Quitariorio. Both Agda and Gelina ran away after the stabbing.[29] It is not true, as nothing appears in the record, that when appellant Romy Gelina ran away after the stabbing he was holding a thing that was "black and looked like a horn." [30]

There is no evidence of appellant Gelina's direct participation in the stabbing.[31]

Although no formal agreement is necessary to establish conspiracy and said conspiracy may be inferred from the circumstances attending the commission of the crime, yet conspiracy like any other ingredient of the offense, must be established by clear and convincing evidence. There must be evidence of intentional participation in the transaction with a view to the furtherance of the common design and purpose.

The incriminating evidence against appellant Romy Gelina is not sufficient to establish conspiracy as correctly concluded by both the prosecution and the defense. Without conspiracy, appellant Romy Gelina cannot be considered liable as he had no direct participation in the crime. The presumption of innocence in favor of the appellant has not been successfully overwhelmed by evidence beyond reasonable doubt to establish his guilt.

WHEREFORE, and upon recommendation by the Solicitor General, the decision dated November 20, 1972 in Criminal Case No. 22, by the Court of First Instance of Eastern Samar, Branch VIII, Oras, is hereby MODIFIED, REVERSING and SETTING ASIDE the judgment of conviction against appellant Romy Gelina, and entering another for his ACQUITTAL on the ground of reasonable doubt, with costs de oficio.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur. Aquino, J., see attached dissent.

[1] p. 1, Original Record, Criminal Case No. 22, CFI of Eastern Samar, Branch VIII.

[2] p. 5, rollo.

[3] p. 244, Original Record.

[4] p. 247, Id.

[5] p. 110, rollo.

[6] pp. 3-4, 26-27, t.s.n.

[7] pp. 4, 27-28, Id.

[8] pp. 5-6, 28-29, Id.

[9] pp. 6, 29-30, Id.

[10] pp. 6-7, 23, Id.

[11] pp. 7, 16-20, Id.

[12] pp. 7-8, 17-18, Id.

[13] pp. 8-10, 13, 20-21, Id.

[14] pp. 29-31, Id.

[15] p. 31, Id.

[16] pp. 31-35, Id.

[17] pp. 9-10, 13, 34-35, Id.

[18] pp. 10-11, 35-36, 47, Id.

[19] p. 48, Id.

[20] Exh. "A", p. 5, Original Record; p. 50, t.s.n.

[21] Exh. "B", p. 4, Original Record; p. 51, t.s.n.

[22] Exh. "B", p. 4, Original Record; p. 49, t.s.n.

[23] pp. 142, 156-165, t.s.n.

[24] p. 110, rollo.

[25] p. 8, Decision; p. 241, Original Record.

[26] p. 10, Decision; p. 243, Original Record.

[27] p. 10, Appellee's Brief.

[28] pp. 4-6, Appellants' Brief; pp. 6-8, Appellee's Brief.

[29] pp. 5-6, 7, 28-29, 30, 15-16, t.s.n.

[30] p. 7, Appellee's Brief.

[31] p. 7, Id.

DISSENTING OPINION

AQUINO, J.:

I dissent. In the evening of November 30, 1969, in Barrio Tumagingting, Dolores, Eastern Samar, Victor Almazan, Jr., 25, an elementary school teacher, and Paulino Beros, Jr., 26, a radio technician, were drinking tuba on the ground floor of the house of Toribio Crisologo. Also present at that party were Antonio Qutorio, 34 (a farmer, Almazan's brother-in-law), Rudy Eclipse, Joaquin Robin, Placer Afable and Todo Baldonesa.

Later, Noel Agda, 19, a student, and Romeo Gelina (first cousins) arrived and participated in the drinking bout. They were the nephews in the second degree of Antonio Qutorio (they called him Mano Tony).

Beros testified that after drinking two glasses of tuba, Agda and Gelina told Qutorio that they were leaving. Almazan also stood up and went out to urinate in the yard. When Agda and Gelina reached the door, they stopped. Agda called Qutorio and the three went out of the house (29-31 tsn). The three emerged on the yard when Almazan was urinating in that place.

Almazan testified that while urinating he heard a noise and when he looked towards the place where the sound emanated, he saw Agda stabbing Qutorio after the latter had fallen on the ground. Gelina was standing nearby. Then, Agda and Gelina ran away (7, 16). Almazan was only two to three meters away from the scene of the stabbing (15). The place was illuminated by the light coming from a hasag (20).

Qutorio was able to rise and reenter the house, followed by Almazan who asked Qutorio what happened. Qutorio answered that he was stabbed by Agda. After giving that answer, Qutorio collapsed on the floor (8, 18). He died shortly thereafter. Qutorio had a mortal stab wound in the abdomen. He had also a wound in the lower lip which contributed to his death (51 tsn).

It should be noted that, while Almazan in his testimony did not implicate Gelina in the killing of Qutorio, Almazan in his sworn statement before the municipal judge three days after the incident said that when he turned around to ascertain what caused the noise or sound (hagaltak), which he heard while urinating, he saw "Gelina holding" "a blunt instrument" (p. 6, Record).

During the preliminary examination, Almazan testified before the municipal judge that the blunt instrument which Gelina was holding was "a carabao horn," "in the form of a bolo but small and pointed" "about ten inches (long) excluding the handle" (p. 10, Record). That testimony was the basis for including Gelina in the information as a co-conspirator of Agda. They waived the second stage of the preliminary investigation (p. 35, Record).

The trial judge said that, according to Almazan, Gelina was holding a blunt, black object which looked like a horn (p. 235, Record). Defense counsel says that that observation is not borne out by the record. But, as noted above, it is supported by Almazan's affidavit and testimony before the municipal judge.

While Agda testified during the trial to plead an alibi, Gelina availed himself of his constitutional right to remain silent.

In my opinion, the record proves beyond doubt that Gelina struck Qutorio with a carabao horn, thus inflicting

upon him the wound in his lower lip and causing him to fall to the ground. In turn, Agda stabbed once the prostrate victim.

Agda and Gelina went together to the place where the drinking bout was held. They left the place together. They were the two persons who were with Qutorio when he was mortally wounded. It could not be that Gelina was a mere passive spectator when his first cousin, Agda, stabbed their uncle, Qutorio. The two were together when they fled from the scene of the crime.

I vote for the affirmance of the trial court's judgment imposing reclusion perpetua on Gelina.

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