

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY MONAGA, JESUS BARRIDO, AND BENHUR BANABAN, ACCUSED, BENHUR BANABAN, ACCUSED-APPELLANT.

G.R. No. L-39528. November 19, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

The accused Jimmy Monaga, Jesus Barrido, and Benhur Banaban were charged before the Court of First Instance of Iloilo with the crime of Murder committed, as follows:

"That on or about February 8, 1972, in the Municipality of Ajuy, Province of Iloilo, Philip-pines, and within the jurisdiction of this Court, the abovenamed accused conspiring, confederating, and working together, taking advantage of their superior strength and number and the night time to better realize their purpose, armed with long barrelled locally made shotguns (pugakhangs), with treachery and evident premeditation and a decided purpose to kill, did then and there willfully, un-lawfully and feloniously assault, attack and shoot one HERMINIO BALDERAS thereby inflicting upon him mortal wounds on the different parts of the body which caused his death thereafter."

After hearing the evidence adduced during the trial of the case, Judge Valerio V. Rovira found the said ac-cused guilty of the offense charged and sentenced "each of them to suffer an imprisonment of RECLUSION PERPETUA, with all the accessory penalties provided for by law, to indemnify, jointly and severally, Marina Balderas, Enri-que Balderas, Erlando Balderas, Wilfredo Balderas, and Herminio Balderas, Jr., the sum of P12,000.00 for the death of Herminio Balderas; the sum of P19,200.00 for loss of income; P10,000.00 for moral damages, and to reimburse them the amount of P2,200.00 for hospitalization, etc., and P500.00 for the coffin, and to pay the costs." Since one Danilo Banaban, who testified for the defense, admitted that he and his late cousin Jessie Demillo, alone, were responsible for the death of Herminio Bal-deras on the occasion complained of, the Court also ordered the Provincial Fiscal of Iloilo to immediately institute a criminal action against the said Danilo Banaban.

From the sentence, the accused appealed to this Court. However, sometime later, the accused Jimmy Monaga and Jesus Barrido withdrew their respective appeals.[1]

Under consideration is the appeal of the accused Benhur Banaban.

The inculpatory facts are as follows:

"x x x The spouses Herminio Balderas and Marina Balderas were tenants of Juanita Barrido in her riceland located in Piliwan, Ajuy, Iloilo. As such tenants, the spouses occupied the house of Juanita on her land under tenancy. In 1971, Juanita Barrido-Ledesma, elder sister of Jesus Bar-rido, and her husband went to Ajuy. Finding the portion of her land occupied by Herminio Balderas neglected, Juanita told the spouses that she would give them P800.00 if they vacate the land and her house. Herminio Balderas refused to vacate unless she would pay him P3,000.00 or settle the matter in the Court of Agrarian Relations. Jesus Bar-rido, younger

brother of Juanita, on several in-stances tried to persuade the spouses to vacate the house and land of his elder sister. Herminio refused to vacate the house and land. By use of force or intimidation Jesus Barrido succeeded in driving away the spouses Herminio Balderas and Marina Balderas from the house of his sister, but they continued to occupy the land. Benhur Bana-ban, also a tenant of Juanita Barrido, lost his female carabao. Benhur and his son Danilo Bana-ban suspected Herminio Balderas to have stolen it. When they confronted Herminio, he told them that they would get the carabao if they pay him P50.00. The matter was brought to the Barrio Captain and then to the Mayor of Ajuy before whom Herminio Balderas, Benhur Banaban, Barrio Captain Celso Yap appeared. Herminio admitted having asked Benhur P50.00 but he did it in a jest for he was drunk at that time. On January 25, 1972 the cara-bao was found dead, tied to a tree in the mountain of the barrio of Pedaga, Ajuy. The following morn-ing, January 26, Celso Yap, Benhur Banaban and his son Danilo Banaban went to Mayor Jose Rojas, Jr. of Ajuy and reported what they found. The Mayor sent Pat. Ben Sason to call for Herminio Balderas who came with the policeman. Herminio promised before the mayor that he would pay Benhur Banaban P400.00 for the carabao on February 1, 1972. Herminio tried to borrow this amount from Jesus Barrido but the latter refused to lend him the amount. Hermi-nio did not pay the P400.00 as promised before the mayor. So the mayor sent his policemen - Pat. Ben Sason, Pat. Subanas and Pat. Wilson Paragona - accompanied by Jesus Barrido to call for Herminio Balderas. They found him in the store of Norman Alejan in Punta Equi, Culasi, Ajuy, drinking beer with T/Sgt. Nicolas Belicano of the Constabulary. Herminio refused to go with them although they told him that he was under arrest for theft of large cattle, coconut and for refusing to vacate the house and land of Juanita Barrido. He told T/Sgt. Belicano that if he would go with Jesus Barrido and his com-panions, he would be killed by them. T/Sgt. Beli-cano asked Jesus Barrido for a warrant of arrest. They had none. The sergeant told Jesus Barrido and his companions not to arrest Herminio for they had no authority to make arrest without any warrant of arrest. That night, Herminio Balderas slept in the house of T/Sgt. Nicolas Belicano in Culasi, Ajuy, Iloilo. At about 8:45 in the evening of February 8, 1972, while Herminio Balderas was walking along the road with his child on his right shoulder, fol-lowed by his wife Marina Balderas, he was ambushed, shot and wounded by Jesus Barrido, Benhur Banaban, Danilo Banaban, Jimmy Monaga, and two other uniden-tified men, near the bodega of Mr. Blancaflor in Piliwan, Ajuy, Iloilo. He was immediately brought to the Iloilo Mission Hospital in the City of Ilo-ilo where Dr. Salvador Aguirre examined him and operated on him for the following injuries: Gun-shot wounds - 8.5 cms. x 9.5 cms. at the left lum-bar region (entrance), pellets spread at his side, entering the abdominal cavity, left, passing thru several loops of small and large intestines; the greater curvature of the stomach is severed. (Exh. 'A'). On February 13, 1972, at 11:15 p.m. Hermi-nio Balderas died in the Iloilo Mission Hospital (Exh. 'B'). He was survived by his wife, Marina Balderas, and four minor children, namely: Enrique, age 9 years, Erlando, age 8 years, Wilfredo, age 5, and Herminio, Jr., age 2 years old."[2]

The defense of the appellant Benhur Banaban is alibi and anchored on the testimony of his son Danilo Banaban that he (Danilo) was the one who shot Herminio Balderas on the night of February 8, 1972, resulting in the latter's death, and that the accused Jimmy Monaga, Jesus Bar-rido, and Benhur Banaban had nothing to do with the death of the said Herminio Balderas. The appellant, in this appeal, vigorously assails the trial court for not giving weight and credence to the testimony of the said Danilo Banaban although the written admission of Danilo Banaban (Exh. 2-Monaga and Banaban) is a declaration against in-terest within the purview of Section 32, Rule 130 of the Revised Rules of Court and, hence, more reliable and trustworthy.

The contention is untenable. The rejection by the trial court of the testimony of Danilo Banaban that he alone is responsible for the death of Herminio Balderas is in accord with the physical facts. Thus, the trial court said:

"The Court cannot believe the testimony of Danilo Banaban that now he is the only person who actually shot, wounded and killed Herminio Balde-ras. According to him, immediately after the in-cident he surrendered to the Chief of Police of Ajuy in his office. He was right away lodged in jail. There is no competent evidence to prove this claim. He should have produced the book in the office of the Chief of Police showing the re-cord of arrests, the police blotter showing the record of events of February 8 or 9, 1972, where the alleged surrender of

Danilo Banaban to the Chief of Police was entered, and the police blot-ter for all the days that Danilo Banaban was alle-gedly confined in the Municipal Jail of Ajuy. Pat. Ben Sason of Ajuy, testifying for the accused Jesus Barrido, said that the death of Herminio Balderas was investigated by the police department of Ajuy, but the person who shot him is not yet known. The Court finds and so holds that Danilo Banaban did not surrender to the police of Ajuy and he was never under detention in the Municipal Jail of Ajuy for the death of Herminio Balderas."^[3]

Indeed, the assumption of penal responsibility by Danilo Banaban appears to be an afterthought. As pointed out by the Solicitor General:

"x x x Danilo Banaban is the eldest of ten chil-dren of appellant Benhur Banaban. The youngest was nine months old at the time he took the stand (pp. 115, 121, id). He was living with his pa-rents and was under their custody (p. 78, tsn., Oct. 16, 1973). In the ordinary course of events, appellant Benhur Banaban was the breadwinner of his brood and had to eke out an additional in-come for whatever little education his children could get. It would not be strange, indeed, that Danilo's mother prevailed upon him to take full responsibility of the crime. In clearing his father, Danilo had to include appellant Jimmy Monaga and Jesus Barrido because they were in-dicted with his father as co-conspirators. Otherwise, things might not augur well for appellant Benhur Banaban."^[4]

The provisions of Section 32, Rule 130 of the Re-vised Rules of Court finds no application in the instant case. The said section reads:

"SEC. 32. Declaration against interest. – The declaration made by a person deceased, or outside of the Philippines, or unable to testify, against the interest of the declarant, if the fact asserted in the declaration was at the time it was made so far contrary to declarant's own interest, pecuniary or moral, that a reasonable man in his position would not have made the de-claration unless he believed it to be true, may be received in evidence against himself or his successors in interest and against third persons."

As the rule provides, the declaration to be submitted in evidence as an exception to the hearsay rule, must be that of a person, either deceased, outside of the Philip-pines, or unable to testify. In the instant case, however, Danilo Banaban was available as a witness and was, in fact, presented in court and testified for the appellant.

The appellant further contends that the trial court erred in convicting him as co-principal in the commission of the offense charged despite the absence of evidence of conspiracy.

The contention is without merit. While there may be no evidence of agreement of direct conspiracy, the unity of purpose and community of design among the appellant and his co-accused in the killing of Herminio Balderas is clearly inferred from the acts of the accused proven by evidence. Thus, Marina Balderas declared that she saw the appellant together with his co-accused Jimmy Monaga and Jesus Barrido, and three other persons sitting by the roadside as she and her deceased husband were on their way to the house of Salvador Ballener, where they were staying, after coming from the house of Florenia Aspero. She was able to recognize them because the lights of the tractor inside the bodega of Porfirio Blancaflor were turned on and directed towards the road where the appel-lant and his companions were seated. Then, when her hus-band was about 11 brazas from them, the accused Jimmy Monaga shot her husband with a home-made shotgun, commonly known in the locality as a "pugakhang", hitting him in the right side. Then, the accused Jesus Barrido shot her husband in the forearm, also with a "pugakhang", followed by the appellant Benhur Banaban who missed because her husband had run away.^[5] Florenia Aspero also declared that five minutes after the deceased Herminio Balderas and Marina Balderas had left her house, she heard three successive gunshots. She went towards the road and saw the appellant Benhur Banaban, Jimmy Monaga, and Jesus Barrido running along the road, coming from the bodega of Porfirio Blancaflor. They were all carrying home-made shotguns. The accused Jimmy Monaga was ahead and when he was abreast of her, Jimmy

Monaga asked to buy some cigarettes, but she refused, telling him to go on his way as she heard shouts. She went to the place where the shouts were coming from and saw Herminio Balderas lying on the roadside bleeding. She asked Herminio Balderas what happened and the deceased told her that he was shot by Jimmy Monaga and his companions.[6] She was able to recognize the appellant and his companions when they passed by her because the light of their Petromax lamp reached the roadside.[7] Finally, Dr. Gregorio Parra stated that the deceased suffered injuries caused by shotgun pellets.[8]

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through the physical volition of one or all, proceeding severally or collectively. It is also a settled law that "conspiracies need not be established by direct evidence of acts charged, but may and generally must be proved by a number of indefinite acts, conditions and circumstances which vary according to the purpose to be accomplished. The very existence of a conspiracy is generally a matter of inference deduced from certain acts of the persons accused, done in pursuance of an apparent criminal or unlawful purpose in common between them. The existence of the agreement, or joint assent of the minds need not be proved directly." [9] Upon the premises, conspiracy had been established in the killing of Herminio Balderas.

The appellant also claims that he and his co-accused were convicted, not on the strength of the prosecution evidence, but on the weakness of their defense.

This contention is, likewise, without merit. The appellant and his co-accused have been positively identified as the assailants of the deceased Herminio Balderas and there is no convincing proof that the prosecution witnesses had a reason to testify falsely against the appellant. On the other hand, the appellant had a motive to kill the deceased Herminio Balderas. It appears that the carabao of the appellant was taken away by the deceased for ransom and when the carabao died, the deceased promised to pay the appellant the value thereof. However, he failed to fulfill his promise when it became due.

The appellant points out some contradictions and inconsistencies in the testimonies of the prosecution witnesses, but they are so inconsequential and miniscule as to impress the Court seriously.

With respect to the alibi of the appellant that he was in Sitio Dulang, Barrio Sto. Rosario, Ajuy, about 4 kilometers away from the scene of the crime, watching the palay of Isaac Cacho and that he learned of the victim's death only the following morning when his wife came and told him that their son Danilo had killed a person, suffice it to state that the appellant was positively identified as one of the perpetrators of the crime and there is no convincing proof that it was impossible for the appellant to be at the scene of the crime when it was committed.

On the whole, the issues raised by the appellant in his appeal involves the credibility of witnesses and the settled long-standing rule, where the issues raised hinge on the credibility of witnesses, is for the appellate tribunal to give due respect to the assessment of the facts made by the lower court, said court having had the opportunity not only of receiving the evidence, but also of observing the witnesses while testifying. This rule should not be overturned unless there is a showing that in making the disputed factual finding, the trial court had overlooked or failed to consider certain facts of weight and importance that could have materially affected the conclusion reached in the case.[10] In the instant case, there is no positive reason that would justify a reversal of the judgment appealed from.

It results that the trial court did not err in finding the appellant Benhur Banaban guilty of the crime of Murder. The appellant, however, is entitled to the mitigating circumstance analogous to, if not the same as, vindication of a grave offense committed by the deceased when the latter took away the carabao of the appellant and held it for ransom, and thereafter, failed to fulfill his promise to pay its value after the carabao had died.

The offense being attended by a mitigating circumstance without any aggravating circumstance to offset it, the imposable penalty is the minimum of that provided for by law. Applying the Indeterminate Sentence Law, the appellant should be, as he is hereby, sentenced to suffer an indeterminate penalty ranging from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum.

WHEREFORE, with the modification of the penalty imposed upon the appellant as above indicated, the judgment appealed from should be, as it is hereby, **AFFIRMED** in all other respects. The appellant should pay proportionate part of the costs.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Aquino, J., He vote to hold the appellant guilty as an accomplice. He should be sentenced to 6 years of prision correctional maximum, as minimum, to eleven years of prision mayor as maximum.

[1] Rollo, p. 223.

[2] Decision, pp. 13-16.

[3] Id., p. 13.

[4] pp. 9-10, Brief for the Solicitor General.

[5] pp. 23-26, t.s.n. of Feb. 16, 1973.

[6] pp. 62-64, t.s.n. of March 16, 1973.

[7] pp. 69-70, Id.

[8] p. 7, t.s.n. of January 25, 1972.

[9] *People vs. Belen*, 118 Phil. 880.

[10] *People vs. Sales*, G.R. No. L-29340, April 27, 1972, 44 SCRA 489.

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