

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO PALON, DEFENDANT-APPELLANT.

G.R. No. L-33271. February 20, 1984

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This case is before us on automatic review of the decision of the Circuit Criminal Court, Fifth Judicial District finding Romeo Palon guilty beyond reasonable doubt of the crime of robbery with homicide and sentencing him to death.

Accused-appellant Romeo Palon was charged in an information which reads:

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"That on or about the 1st day of June, 1970, in the municipality of Plaridel, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the said accused Romeo Palon, together with one Edwin Banatlaog, who is still at large, conspiring, confederating and mutually helping one another did then and there wilfully, unlawfully and feloniously, with intent to kill and by means of violence and intimidation take, rob and carry away with them a tricycle, described as follows:

Make - KAWASAKI, 125 cc and painted black all over

Plate No. MC - 24226 (Philippines-1969) Engine No. F-113451

Side Car - Plate No. T-160 (Plaridel), Bulacan-1970) and painted red

valued at P3,000.00, belonging to one Perfecto Gatmaitan Cruz to the damage and prejudice of the latter with the said sum of P3,000.00; that simultaneously and on the occasion of the commission of the said robbery, the said accused, with intent to kill, pursuant to their conspi-racy, did then and there attack, assault and stab with a balisong knife the said Perfecto Gatmaitan Cruz, hitting him in the different parts of his body and which directly caused the death of the said Perfecto Gatmaitan Cruz.

"That in the commission of this crime, the following aggravating circumstances were present, to wit: taking advantage of superior strength and nocturnity.

"Contrary to law."

The prosecution presented evidence to prove the following:

"At about 9:00 o'clock in the evening of June 1, 1970, while Leonardo de la Cruz and other tricycle drivers, one of whom Perfecto Cruz y Gatmaitan, the victim, were taking shelter from the rain at the Esso Gas Station at Banga, Plaridel, Bulacan, accused Romeo Palon, approached said Leonardo de la Cruz in Order to hire his tricycle. (pp. 1-2, tsn, Sept. 17, 1970, Cruz). Because of the rain and his tricycle not being pro-vided with a canvas ('Trapal'), he refused so that said accused approached the victim Perfecto Cruz, who consented and left with the accused (p. 2, id.). The tricycle owned and driven by the victim proceeded to Tabang, Plaridel,

Bulacan, with the accused and his companion Epifanio Flores, alias Edwin Banatlaw, as passengers. (p. 5, tsn, Sept. 23, 1970, Ramirez).

"Upon reaching the 'Sabana' of Tabang, Plaridel, the accused and his companion 'repeatedly' stabbed said owner and driver of the tricycle, and forcibly took the vehicle from his possession and loaded said victim in the said vehicle. Accused Romeo Palon drove the tricycle with the victim and his companion and proceeded to Plaridel, Bulacan; upon reaching Sta. Rita, Guiguinto, Bulacan, when victim saw some people by the roadside he kicked the handlebar of the vehicle causing the same to bump a post. (p. 6, id.)

"At that moment, one Victor E. Reyes, a policeman of Guiguinto, Bulacan, who was conversing with others by the roadside where the accident happened, saw the same, so that he approached the place to investigate (p. 8, t.s.n., Sept. 17, 1970). While said policeman was approaching he saw a person run away from the tricycle towards the darkness, and at the same time heard and saw the victim near the tricycle pleading for his help and telling him that he was stabbed by the person who ran away and another who was near the tricycle. (id.). He immediately approached the accused, the other fellow pointed to by the victim and searched him for weapon finding a balisong about half meter away from him (pp. 9 & 14, id.). Said policeman sought the help of other people in bringing accused to the Guiguinto municipal building and the victim was brought to the Santa Maria General Hospital in Bulacan, for treatment, and then to the Jose Reyes Memorial Hospital in Manila, where he died on June 2, 1970 (p. 1, Rec.)

"Dr. Prospero Cabayanan, a medico legal expert of the National Bureau of Investigation conducted an autopsy on the body of the victim, Perfecto Cruz, on June 2, 1970 and found on said body multiple stab wounds in the chest and abdomen (Exh. 'D', p. 4, Dec.)."

The accused-appellant admits being present when the victim was being stabbed but claims that the crime was committed by his companion and he had no part in the crime which resulted in the tricycle driver's death. The defense's evidence is summarized as follows:

"Accused Romeo Palon in this case is a native resident of Barrio San Nicolas, Gapan, Nueva Ecija, 27 years of age, married and works as helper in a billiard hall in the town of his residence. In the afternoon of June 1, 1970, accused and one Epifanio Flores alias 'Edwin Bulataw' boarded a Baliwag Transit bus in Gapan, Nueva Ecija, bound for Cavite province in order to look for a better paying employment there. On the way to their destination they passed Plaridel, a Municipality of Bulacan, where they alighted to take their supper in one of the restaurants there (pp. 1-4, t.s.n., Oct. 5, 1970).

"In the course of their meal Epifanio Flores alias 'Edwin Bulataw' ordered two (2) bottles of gin or 'cuatro cantos', of which the accused drank one-half (1/2). Before Epifanio Flores could consume his share of the gin, he asked accused's permission to go to some place from which he later returned riding in a tri-cycle. Epifanio Flores invited the accused to ride in the tricycle as they will go to Barrio Tabang in Plaridel, Bulacan (pp. 5-7, t.s.n., Oct. 5, 1970).

"On their way to Tabang, Plaridel, accused fell asleep because of the gin he drank, but was awakened later on due to a heated discussion between Epifanio Flores and the tricycle driver who had stopped at a place the exact location of which accused does not know because it was his first time to see the place. Accused inquired of Epifanio Flores why he was quarreling with the tricycle driver, but instead of answering Epifanio Flores ordered the accused to drive the tricycle. When accused asked why, Epifanio Flores told him angrily not to ask anymore questions otherwise 'I will stab you' (pp. 8, 9, t.s.n., October 5, 1970). Accused noticed then that Epifanio Flores was holding the tri-cycle driver by the nape and pointing a knife at him (p. 9, t.s.n., id.).

"From a reclining position inside the sidecar of the tricycle the accused went down and drove the tricycle as ordered by Epifanio Flores. The tricycle driver and Epifanio Flores meanwhile got inside the sidecar (pp. 9, 19, t.s.n., October 5, 1970). As the accused was driving the tricycle he heard pleas for mercy coming from inside the sidecar and he saw Epifanio Flores stabbing the tricycle owner several times. Frightened by what he saw,

accused thought of running away and he involuntarily loosened his grip on the handle bar of the tricycle, causing the tricycle to collide against a post, and turning turtle as a consequence. The impact of the collision threw the accused on the ground, with his shoulder blade hitting the ground first, as a result of which accused lost all consciousness and did not know what happened afterwards (pp. 9-10, t.s.n., October 5, 1970)."

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The appellant raised the following six (6) assignments of errors:

I

THE TRIAL COURT ERRED IN HOLDING THAT CONSPIRACY HAS BEEN DULY ESTABLISHED BY THE PROSECUTION IN THE TRIAL OF THIS CASE, AND IN CONSIDERING CONSPIRACY AS AN AGGRAVATING CIRCUMSTANCE IN THIS CASE.

II

THE TRIAL COURT ERRED IN HOLDING THAT THE AGGRAVATING CIRCUMSTANCE OF NIGHTTIME WAS ESTABLISHED BY THE PROSECUTION THE TRIAL OF THIS CASE, AND IN APPRECIATING SAID CIRCUMSTANCE AGAINST THE ACCUSED IN THE JUDGMENT OF CONVICTION RENDERED IN THIS CASE.

III

THE TRIAL COURT ERRED IN HOLDING THAT THE CRIME COMMITTED IN THIS CASE WAS ATTENDED BY THE GENERIC AGGRAVATING CIRCUMSTANCE OF CRAFT IN THE COMMISSION THEREOF, AND IN APPRECIATING SAID CIRCUMSTANCE AGAINST THE ACCUSED IN THE JUDGMENT OF CONVICTION RENDERED IN THIS CASE.

IV

THE TRIAL COURT ERRED IN CONSIDERING THE TESTIMONIES OF BUENAVENTURA ESPIRITU, VICTOR E. REYES AND ANTONIO RAMIREZ AS FORMING PART OF THE RES GESTAE IN THIS CASE, AND IN CONVICTING THE ACCUSED OF THE CRIME CHARGED AGAINST HIM ON THE STRENGTH ALONE OF THE SAID TESTIMONIES.

V

THE TRIAL COURT ERRED IN HOLDING THAT THE NARRATION MADE BY PERFECTO CRUZ, THE VICTIM IN THIS CASE, OF THE INCIDENTS LEADING TO HIS INJURY AND SUBSEQUENT DEATH, CONSTITUTES HIS DYING DECLARATION OR FORMS PART OF THE RES GESTAE OF THE CASE.

VI

THE TRIAL COURT ERRED IN NOT ACQUITTING THE ACCUSED IN THIS CASE ON THE GROUND THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The six assigned errors can be summarized into two basic issues, namely: whether or not there was conspiracy as found by the trial court; and, whether or not the crime actually committed was robbery with homicide as charged in the information and found by the trial court.

It is the rule that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere

conjectures but must be established as a fact. The same degree of proof required to establish the crime is necessary to support a finding of the presence of conspiracy, that is, it must be shown to exist as clearly and convincingly as the commission of the offense itself (*People v. Custodio*, 47 SCRA 289).

At the same time, for evidence of conspiracy to be clear and convincing it is not essential that there be eyewitnesses testifying to the actual conversation, agreements, and acts of the accused as they conspired together to commit the offense. (*People v. Cercano*, 87 SCRA 1). Conspiracy can also be established from the various circumstances attending the commission of the offense. Direct proof of conspiracy is not necessary. It may be inferred from the circumstances surrounding the commission of the offense (*People v. Molleda*, 86 SCRA 667); or from the mode or manner in which the offense was perpetrated (*People v. Ruiz*, 93 SCRA 739); or from facts and circumstances, which taken together, indicate that the assailants cooperated and labored to the same end (*People v. Bernales*, 94 SCRA 604); or from a number of facts done in pursuance of a common unlawful purpose (*People v. Aguel*, 97 SCRA 795).

Accused-appellant Palon does not deny his presence during the stabbing which led to the death of tricycle driver Perfecto Cruz. He admits that he and Epifanio Flores together boarded a Baliwag Transit Bus at his town of Gapan, Nueva Ecija. Palon claims that their purpose was to go to Cavite province to look for jobs. The records show that instead of proceeding all the way to Manila and from there to Cavite, the two decided to get off at Plaridel, Bulacan although again, Palon claims that their purpose was only to eat supper.

The accused-appellant alleged in his testimony that Flores suddenly invited him after their meal to go to Barrio Tabang in Plaridel, Bulacan on a hired tricycle, which we find rather strange for two persons on their way to Cavite allegedly to look for jobs, and who only stopped to eat supper. The testimony of Palon shows that he was conveniently asleep from drinking too much gin when Flores started quarreling with the victim. And when Flores stabbed Cruz, Palon stated he had been ordered by his traveling companion to drive the tricycle or be stabbed himself.

We see no error in the trial court's not giving credence to the appellant's testimony which would lay all the blame on Flores while Palon was allegedly a mere frightened witness to the crime committed by his companion. We respect the trial court's findings on credibility of witnesses. The records show that it was Palon who hired the tricycle from Perfecto Cruz when the first driver (Leonardo dela Cruz) he approached declined because it was raining and his tricycle had no canvas ("Trapal"). Two knives were found by Sgt. Victor Reyes with one balisong thrown about one-half meter from Palon even as Flores ran away and the other knife was recovered later some distance farther. There were thirteen (13) stab wounds on the body of the victim - in the chest, mammary region, abdomen, back, left arm, elbow, forearm, hand and thigh. The accused-appellant was apprehended only because the victim kicked the handlebar or steering mechanism of the tricycle when he saw some people on the roadside thus causing the vehicle to swerve into a post and turn turtle.

There can be no logical explanation for all the above circumstances except that Palon and Flores conspired to commit the crime and that the two worked together towards its accomplishment. When Sgt. Victor Reyes left the people he was talking with and approached the overturned tricycle, Cruz immediately and spontaneously asked for help saying he was held up. And while he was being rushed to a hospital in a futile attempt to save his life, Cruz told policeman Antonio Ramirez that he had pleaded with the two assailants to get his tricycle and his earnings but to allow him to be left behind.

One additional point on this matter. It is incorrect to assert, as accused-appellant Palon did, that conspiracy was taken into consideration as an aggravating circumstance by the trial court in imposing the penalty. Only three aggravating circumstances were taken into consideration, two of which were alleged in the information, namely:

nocturnity and abuse of superior strength, and another not alleged but proven during the trial, that is, craft. Conspiracy does not aggravate the penalty to be imposed as it is not one of those mentioned in Article 14 of the Revised Penal Code. It only determines the criminal responsibility of the perpetrators of the crime, that is, whether it is individual or collective. In this case, conspiracy having been proven, each of the conspirators is liable for all the crimes committed in furtherance of the conspiracy since the act of one is the act of all. There is, in other words, collective criminal responsibility.

The other issue refers to the sufficiency of evidence to prove the crime of robbery with homicide. The victim told Sgt. Reyes that he had been held up. Considering that he had just been repeatedly stabbed and was suffering from thirteen (13) wounds that turned out to be mortal, the trial court correctly considered the spontaneously blurted remarks as part of the *res gestae*. It is not correct to say that the words were a natural reaction on the part of the victim to attract attention. Cruz was able to get the attention of the group by the roadside when he kicked the handlebar of the tricycle causing the vehicle to turn towards the side, hit a post and fall on its side. If he had not been robbed, he would have stated that he was stabbed or knifed or hurt. And yet the *res gestae* statement was that he was held up. The *antemortem* declarations of the accused, even as a mere *res gestae*, have a strong probative value. (*People v. Lariosa*, 106 SCRA 369).

Furthermore, when the stabbing took place, it was no longer Perfecto Cruz driving his vehicle. Accused-appellant Palon was already in possession and driving it. The argument that Cruz was still on board the vehicle, had not yet relinquished possession and, therefore, there was no asportation is puerile. The two culprits were already running off with his tricycle. Cruz had absolutely no more control over it. He was forcibly pushed inside the sidecar with a knife pointed at him. And while the tricycle was being driven by accused-appellant Palon and, by the appellant's own statements, Cruz was repeatedly stabbed inside the sidecar.

The records show no other motive for the crime except robbery. The fact of driving off with the tricycle and with the driver and his earnings shows the consummation of the robbery. And the words of the victim that he had been held up prove beyond doubt that robbery was in fact committed.

As regards the contention that the aggravating circumstance of nighttime should not be appreciated, this Court held in *People v. Garcia* (94 SCRA 14), that there are two tests of nocturnity as an aggravating circumstance: the objective test, under which nocturnity is aggravating because it facilitates the commission of the crime and the subjective test, under which nocturnity is aggravating because it was purposely sought for by the offender. The two are to be applied in the alternative. Hence, even if accused-appellant Palon and Epifanio Flores did not purposely and specifically seek to commit the felony of robbery with homicide in the evening of June 1, 1970, nocturnity may still be appreciated as an aggravating circumstance since the same undeniably facilitated the commission of the preconceived crime.

Lastly, the contention that since "craft" was not included as one of the aggravating circumstances in the information, the same should not have been considered, is erroneous. A generic aggravating circumstance like craft or fraud not alleged in the information may be proven during the trial over the objection of the defense and may be appreciated in imposing the penalty (*People v. Martinez Godinez*, 106 Phil. 597). Considering the facts of this case and the applicable provisions of law, the penalty of death was correctly imposed. However, for want of the necessary number of votes, this Court is constrained to reduce the penalty to reclusion perpetua.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision of the trial court appealed from is hereby AFFIRMED with the modification that the penalty of death is reduced to reclusion perpetua.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Relova, JJ., concur.

Aquino, J., in the result.

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