

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FULGENCIO ORNOPIA, LENLI ORNOPIA, DULCISIMO BALATUCAN
ALIAS ZOSIMO & SIMO, ESTEBAN BALATUCAN AND
FRUCTUOSO PEPITO, DEFENDA...**

G.R. No. L-30837. May 30, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Appellants Fulgencio Ornopia, Lenli Ornopia, Dulcisimo Balatucan, Esteban Balatucan and Fructuoso Pepito were among twelve (12) accused, which included three John Does, sentenced to death by the Court of First Instance of Masbate, for the crime of robbery with homicide, the rest having been either acquitted, as in the case of Federico Arcillas and Bernabe Arnejo, or gone at large, like Benjamin Rivera and Procopio Bacunawa who failed to appear during the last part of the trial. Hence, the judgment of conviction is before this Court for review on appeal by the five (5) convicted accused.

In their appeal, appellants mainly sought to destroy the testimonies of the eye-witnesses who identified them as among the perpetrators of the dastardly crime, their defense during the trial being that of alibi. We could as well then quote from the People's Brief the statement of facts as narrated by state witnesses which, except only as to their alleged non-participation, appellants do not dispute, at least, as to how the crime was committed. Thus—

"Luciana Villaganas narrated that at about 6:30 p.m. on January 9, 1962, the Villaganases were gathered together in the house of the father of the family, Amario Villaganas, in Barrio San Jose, Municipality of Kawayan, Masbate. Among the members of the family in the main room of the house were Gaudencio Villaganas and his wife Reclita Rivera, Antonio Villaganas and his wife Elpidia Rivera. In the kitchen were Francisca Sanchez, the wife of Amario Villaganas, and her daughter Trinidad. In the main room were also several grandchildren, one of whom was being breastfed by Elpidia Rivera.

"Looking out the main door when a voice from outside bade "good evening," Amario Villaganas and his children Luciana and Gaudencio saw in the yard several persons who asked whether they were selling cigarettes. Luciana Villaganas said that "one was wearing a fatigue and I recognized the rest as Fulgencio Ornopia, Lenli Ornopia, Dulcisimo Balatucan, Fructuoso Pepito, Esteban Balatucan, and Procopio Bacunawa." (T.s.n. Stenog. Bajar, pp. 3-5)

"Continuing, Luciana Villaganas said that her father remarked, "So it is you Cio, come upstairs." The remark was addressed to Fulgencio Ornopia, but it was the man in fatigue, whom the Villaganases did not know, who came upstairs. As soon as this man was inside the house, he ordered, "Nobody will move. Where is your money?" The man must have been very nervous because he immediately fired at Amario Villaganas with a .45 caliber pistol and the shot was followed by other shots below the house. Luckily, Amario Villaganas was not hit by the first shot, nor by a second shot, whereupon he took hold of a bolo hanging from a post of the house with which he twice slashed at the gunman and once stabbed him. Gaudencio Villaganas and Trinidad Villaganas also managed to get hold of bolos with which they attacked the man in fatigue, who then slowly fell

downstairs. (Ibid., p. 7)

"When Amario Villaganas followed the man in fatigue downstairs, Luciana Villaganas heard Fulgencio Ornopia's voice saying, "Go ahead, Ban, shoot him," the name "Ban" apparently referring to Esteban Balatucan. The words were followed by another shot, and when Amario Villaganas came back to the room, he had a gunshot wound in the back. Asked by Luciana Villaganas who shot him, he replied that it was a companion of Fulgencio Ornopia. (Ibid., p. 8)

"Not hearing any more shots, Luciana Villaganas cautiously went downstairs and then dashed towards her own house nearby in order to fetch her children and hide them by a brook. Returning to her house to pick up some things, she found her father in the yard already dead. (Ibid.)

"When policemen arrived at the scene at about 9:00 o'clock in the evening, Luciana returned to her father's house where she saw her brother Antonio also dead in the yard near the kitchen post. (Ibid., p. 9)

"Her mother, Francisca Sanchez, was looking over the trunk and found that P150.00 and clothes worth P320.00 were gone from the trunk. Also missing were three cavans of palay. (Ibid., pp. 9-10, 31-32)

"Gaudencio Villaganas substantially corroborated his sister's testimony (t.s.n., Stenog. Bajar, pp. 12-17).

"The facts narrated above gave rise to the charge of robbery with multiple murder against appellants." [1]

In their brief, appellants first assail the manner the information had been amended with the first information accusing only one person and four "John Does," the second, excluding said known accused, and the third and last amended information including again the same known accused among a total of twelve (12) accused, three of whom were unknown. Obviously, appellants mean to show how far from certain, definite and positive the herein appellants were identified as among the malefactors. They also point to the amendment as to the value of the things stolen to P500.00 from the original allegation of only P150.00 in cash, and some articles of clothing and sacks of palay.

As to the value of the things stolen, it is specified in the information that aside from the cash of P150.00, clothings worth P320.00 and three (3) sacks of palay valued at P30.00 each were stolen, bringing up to a total value of all the things stolen to P500.00.

It is also disclosed by the records that the amendments as to who participated in the commission of the crime resulted from their names becoming known definitely to the police authorities, particularly Chief of Police Bungay, when given by the state witnesses who at first only knew some by mere nicknames, such as "Cio," although they knew them by their faces. The inclusion of the rest of the accused was on the basis of the sworn statement of Fructuoso Pepito (Exh. T, p. 23, Record) and that of Federico Arcillas (Exh. U, p. 17-18, Record).

Very revealing are the contents of the sworn statement of Fructuoso Pepito which show that at about 4:00 p.m. of January 9, 1962, Pepito was invited to join Fulgencio Ornopia, Lenli Ornopia, Procopio Bacunawa, Esteban Balatucan, Dulcisimo Balatucan and three (3) others whom Pepito did not know, one of whom was in fatigue uniform. Pepito named those armed, one with a .45 caliber pistol, another with a carbine and a third with a revolver. Federico Arcillas was picked up in Tiwasan, Kawayan, Masbate, and he (Arcillas) and Pepito were the ones who acted as lookout during the commission of the crime. Arcillas' sworn statement tallied with that of Pepito except that he added that one of the three (3) unknown persons was armed with a garand and Esteban Balatucan, with a bolo.

With the foregoing sworn statements, it was but to be expected that the informations had to be amended as more participants in the crime became known to the Chief of Police.

In assailing the positiveness with which they were identified among the culprits, appellants point to the fact that Luciana Villaganas, one of the eye-witnesses, named only Fulgencio Ornopia, Dulcisimo Balatucan and Lenli Ornopia, mentioning also the man in fatigue. So did Gaudencio Villaganas, another eye-witness. Appellants now wonder why aforementioned witnesses later identified all the accused.

The State offers the explanation, which We consider plausible and satisfactory, that at the time the crime was being committed, the witnesses recognized the faces of appellants but did not know their names. Gaudencio testified that he knew Fulgencio Ornopia, Dulcisimo Balatucan, Procopio Bacunawa because he had seen them at Mactan.[2] As to Lenli Ornopia and Fructuoso Pepito, he saw them talking to his brother Antonio Villaganas, one of the deceased, who was at the kitchen just before the crime was committed, although at the time, he did not know their names.

Luciana Villaganas had also seen at Mactan Fulgencio Ornopia with his companion including Fructuoso Pepito, Procopio Bacunawa, Dulcisimo and Esteban Balatucan, and others. She therefore recognized them during the commission of the crime, although she did not know their full names. Thus she was able to state at what specific spots in the yard were the appellants, including the man in fatigue, and that Fructuoso Pepito and Lenli Ornopia were talking to his brother, Antonio, at the kitchen yard.

The fact is that neither Luciana and Gaudencio Villaganas stated in their sworn statement that the persons whose names they mentioned were the only ones who committed the crime. Hence, that they were able to identify in court all the accused is not at all strange as to be wondered at, and certainly, does not affect the certainty and definiteness with which they identified appellants as among the perpetrators of the crime. They have not been shown to be with any evil motive to falsely testify against appellants for so serious a crime as that charged.[3] Unsuspecting, the head of the family, the slain Amario Villaganas, welcomed the appellants when, by an act of craft, they approached his house asking to be allowed to buy cigarettes, if any they had for sale. If, therefore, they pointed an accusing finger at appellants, the state eye-witnesses, Luciana and Gaudencio Villaganas, did so only out of a sincere and honest desire that just punishment be meted to them as the real and actual killers of two loved ones, a father and a brother.

In a desperate but futile attempt to gain their acquittal, appellants adverted to the trial court alleged error in not giving due weight and credit to the testimony of dismissed Municipal Judge Conag that in the confrontation between the accused and the witnesses for the prosecution, the latter were not able to identify the former as the perpetrators of the crime.[4] We see no error as imputed to the trial court which very aptly made the observation, with respect to this claim of appellants, that if the witnesses had really told the municipal court that the accused were not the ones who committed the crime, Judge Conag would have right then and there dismissed the case, instead of transmitting the records thereof to the Court of First Instance with his explicit finding that there was a prima facie case, and that the accused were probably guilty of the crime charged. What would have been extant in the record is the fact of the alleged confrontation in which the witnesses failed to identify the accused as the authors of the crime charged. The fact is, as testified to by Chief of Police Bungay, there was never any confrontation of witnesses and accused before Judge Conag. In a police lineup, after the accused had been arrested, the witnesses identified the accused, and so Chief Bungay amended the information. Thereafter, because they waived their right to preliminary investigation before the Municipal Judge, appellants were forthwith brought to Masbate.[5]

Likewise futile and unavailing is appellants' attempt to show that the trial court erred in not discarding the written admission of Fructuoso Pepito in the same way that it discarded the written admission of Federico Arcillas, claiming that said admission of Pepito is "the only remaining evidence as far as complicity of Procopio Bacunawa, Federico Arcillas, Esteban Balatucan and himself (Fructuoso Pepito) is concerned." Even if the

admission of Fructuoso Pepito were discarded, there still, and in fact, is the main evidence against appellants, the eyewitnesses' testimony of Luciana and Gaudencio Villaganas who saw Pepito talking to their brother Antonio Villaganas. No similar testimony was given as against Federico Arcillas.

There can be no doubt as to appellants' guilt in the commission of the crime, even if no testimony was given as to who actually fired the fatal shots. The concerted acts of all the accused, not to mention Pepito's sworn statement, clearly show beyond doubt the community of design that actuated appellants in committing the crime. By this concerted way the crime was committed, the existence of a previous conspiracy among the appellants appears beyond any doubt. By reason of which, all of them, regardless of who actually shot at the two victims, which the evidence points to at least Fulgencio Ornopia and Lenli Ornopia as the gun wielders, they having been found positive for nitrates on being subjected to a paraffin test, are equally liable.[6] In the expert testimony of Liwayway R. Manio, a forensic chemist of the National Bureau of Investigation,[7] she explained that a firecracker exploding while being held by a person, as both the aforementioned appellants claim to have each been made "to hold a firecracker which exploded on their hands while in the custody of the law,"[8] will not show a similar pattern of contamination of the hands as that caused by a firing of a gun the nature of the specks being also different.[9] The conspiracy already alluded to will not confine the liability to the actual triggermen, but will make all those involved therein similarly liable as principal, for being a co-conspirator, for the felonious acts committed pursuant to the conspiracy.

WHEREFORE, no reversible error having been committed by the trial court in finding the appellants guilty of the crime of robbery with homicide with the attendance of aggravating circumstances of nighttime, dwelling and craft, except as to its having fixed the amount of indemnity at P6,000.00 which should be, as it is hereby raised to P12,000.00, the judgment appealed from, modified as herein indicated, should be affirmed in all other respects. However, for lack of the required number of votes, the death penalty should be, as it is hereby reduced to reclusion perpetua. No costs.

SO ORDERED.

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

[1] pp. 3-5, People's Brief, p. 81, Rollo.

[2] p. 14, t.s.n. Bajar.

[3] People vs. Valera, 90 SCRA 400, People vs. Moises, 66 SCRA 151, People vs. Borbano, 76 Phil. 702.

[4] pp. 6, 17, Appellant's Brief.

[5] p. 130, t.s.n. Bajar.

[6] People vs. Compacion, 93 SCRA 334; People vs. Cabiling, 74 SCRA 285; People vs. Mita, 108 Phil. 788; People vs. Mangulabnan, 99 Phil. 992.

[7] Exh. J and K, pp. 238 and 240, Record.

[8] p. 20, Appellant's Brief.

[9] p. 46, t.s.n., Bajar.

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