

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRISPIN AURE Y RAQUEL AND ROMULO VILLENA Y PANIS, ACCUSED-APPELLANTS.

Ponente: DIY, J.

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DIY, J.:

On appeal is the Decision[1] dated November 9, 2009 rendered by Branch 13, Regional Trial Court (RTC) of Carigara, Leyte, 8th Judicial Region, in Criminal Case No. 4645 wherein both accused-appellants Crispin Aure and Romulo Villena[2] (“Crispin” and “Romulo”, for brevity) had been found guilty of the crime of Murder. The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, with the aggravating circumstances of treachery, nighttime and superior strength (use of gun) the Court found accused CRISPIN AURE y RAQUEL and ROMULO VILLENAS y PANIS, GUILTY, beyond reasonable doubt of the crime of MURDER, as charged under the information. There being no mitigating circumstance, both accused are hereby sentenced to suffer the maximum penalty of RECLUSION PERPETUA, and ordered to pay the civil indemnity in the amount of Fifty Thousand Pesos (PhP50,000.00) each, Fifty Thousand (P50,000.00) Pesos each as moral damages and exemplary damages in the amount of Twenty Five (PhP25,000.00) Pesos each, to the heirs of Nazareno de Guzman; and

Pay the Cost.

SO ORDERED.

The Antecedents

On May 8, 2006, an Information[3] was filed with the Regional Trial Court, docketed as Criminal Case No. 4645. The accusatory charge reads:

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That on or about the 25th day of March, 2006, in the Municipality of Tunga, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another with deliberate intent with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously shot [sic] one NAZARENO DE GUZMAN with the use of an unlicensed firearm which the accused have provided themselves for the purpose, thereby inflicting upon the latter the following wound, to wit:

Gunshot wound entrance about 0.5 cms. In diameter with contusion [sic] collar and inverted edges located at the fifth (5th) intercostal space, left mid-axillary line, directed straight about 12 cms. Into the thoracic cavity.

which wound cost the death of said Nazareno de Guzman.

CONTRARY TO LAW.

xxx

During arraignment, accused-appellant Romulo Villena proposed to plead guilty to the crime charged provided that his co-accused Crispin Aure would be released. However, said proposal was not appreciated by the court a quo. Instead the court a quo entered a plea of not guilty for both accused Crispin and Romulo.[4]

A pre-trial conference[5] was conducted on September 7, 2007. Thereafter, trial on the merits ensued.

Version of the Prosecution

To prove its case, the prosecution presented the following witnesses: Teresita D. Guzman ("Teresita", for brevity), Renato De Guzman ("Renato", for brevity), SPO1 Rufo Canendo, SPO4 Expedito Quebec, Dr. Crescente A. Uribe, and Chief Medico-Legal Officer PSI Angel A. Cordero.

The prosecution's version of the facts as culled from the records and testimony of its witnesses is as follows:

On March 25, 2006, at about 6:30 o'clock in the evening,[6] Nazareno De Guzman and his wife Teresita were having dinner inside their house located at Barangay San Vicente, Tunga, Leyte. Nazareno and Teresita were seated beside each other facing the window while their son Renato was just a meter away.[7] While Nazareno and Teresita were eating, gunshots were fired at them. The second shot hit Nazareno, causing him to fall to the ground.[8] Teresita saw Crispin holding a gun. She also saw him shoot Nazareno.[9] Teresita then lifted Nazareno up to let him stand and wake up but the latter no longer responded.[10] After Teresita learned that Nazareno already died, he told his eldest son Renato to ask help from Nazareno's brothers, Rico and Ronald.[11] Renato then ran out of the house and when he was already out of their house, Renato saw Romulo standing near their window.[12] Renato was able to get some help from Rico and Ronald, who later assisted them in taking his father to the hospital.[13] In court, Renato testified that he saw Crispin shoot his father.[14]

SPO1 Rufo Canendo, pursuant to the subpoena issued by the court a quo to bring the log book of PNP, Tunga, Leyte, identified the authenticity of the Certification issued by their office, which reflected entries no. 1147 and 1148 in their logbook, viz:[15]

ENTRY NO: 1147 TIME AND DATE: 252110H March 2006

EVENTS/INCIDENTS

One Ronald Pore Y Panis, 19 yrs old, single and a resident of Brgy. San Pedro, Tunga, Leyte reported to this police stn [sic] and alleged that about 7:00 o'clock in the evening of March 25, 2016 his elder half brother Nazareno P. De Guzman was shot to death by unidentified person. He further alleged that his brother was inside his house situated at Brgy. San Vicente, Tunga Leyte taking his supper when he was shot by an unidentified assailant.

ENTRY NR: 1148 TIME AND DATE: 260730H March 2006

One Teresita De Guzman y Lausin, 36 yrs old, married and a res [sic] of Brgy. San. Vicente, Tunga, Leyte reported to this police stn [sic] alleging that on or about 6:30 o'clock in the evening of March 25, 2006 at the above-mentioned place while they were about to eat their supper and she was sitting beside her husband (Nazareno De Guzman), a certain Crispin Aure also of same place shot her husband three times with the use of a short firearm hitting the left side of his body. She further alleged that several days before the incidents her husband told her that should there be anything bad happened to him it should be Crispin Aure and his relatives who should be blamed for they are suspecting him as the one who killed Victor Villena months ago.

SPO4 Expedio Quebec testified in court that on March 25, 2006, he conducted an investigation at the house of the victim, Nazareno, together with a certain Gardi. That as a result of his investigation, a complaint was filed by their OIC, Police Inspector Efren Agda.[16]

Based on the Medico-Legal Autopsy Report,[17] the cause of death of Nazareno was “shock and hemorrhage, intrathoracic due to gunshot wound of the left chest hitting the lung and the vertebra”.

Version of the Defense

The defense presented both accused-appellants, Crispin Aure and Romulo Villena, as well as Agnes Villena.

Both accused denied the commission of the crime and interposed the defense of alibi.

In the evening of March 25, 2006, at about 7 o'clock in the evening, Crispin arrived at the house of his mother located at Brgy. San Vicente, Tunga, Leyte, from Tacloban.[18] Upon arrival of Crispin at his mother's house, he changed his clothes because they were wet from the rain, and then ate some food. Thereafter, Crispin went upstairs and did not leave the house that night.[19]

On March 25, 2006, Romulo arrived at the house of his uncle, Felix Villena, located at Brgy. Tuba, Jaro, Leyte at about 9 o'clock in the morning.[20] Romulo was hired by his uncle Felix to process the coconuts into copra.[21] At around 4 o'clock in the afternoon on that same day, after Romulo finished his work, he and his uncle had a drinking spree.[22] At about 9 o'clock in the evening, Romulo asked permission from his uncle if he could go home, but his uncle did not permit him to do. Romulo then spent the night at Felix's house and went home the next day.[23]

On November 9, 2009, the court a quo rendered the assailed Decision[24] finding accused-appellants guilty beyond reasonable doubt of the crime of Murder, qualified by treachery, nighttime, and abuse of superior strength.

On December 1, 2009, a Notice of Appeal[25] was filed by both accused-appellants.

Accused-appellants filed their Appellants' Brief[26] on May 20, 2011 assigning the following errors - -

A.

THE COURT A QUO FAULTED IN RULING THAT THERE WAS CONSPIRACY BETWEEN ACCUSED-APPELLANTS.

B.

THE COURT A QUO IS LIKEWISE IN ERROR IN HANDING DOWN A CONVICTION BASED ON POSITIVE IDENTIFICATION.

C.

THE COURT A QUO ERRED IN APPRECIATING TREACHERY, NIGHTTIME, AND ABUSE OF SUPERIOR STRENGTH.

D.

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

In their Brief,[27] accused-appellants strongly assert that the prosecution failed to discharge the task of positively identifying accused-appellants as the assailants. They argue that it was improbable for Teresita and Renato to

have identified the assailants since it was already evening when the killing of Nazareno took place and that the only source of illumination was a kerosene lamp.

Furthermore, both accused-appellants aver that the court a quo erred in ruling that the killing of Nazareno is qualified by treachery, nighttime, and abuse of superior strength. First, there is no clear showing that the attack upon the person of Nazareno was sudden. Second, nighttime was not alleged in the information. Third, mere use of firearm is not considered as an abuse of superior strength under the law. Fourth, even if nighttime and abuse of superior strength may be appreciated as aggravating/qualifying circumstances, the same are absorbed by treachery.

On the other hand, the People of the Philippines, through the OSG, refutes every argument raised by both accused-appellants and recommends that We affirm the challenged decision with the following modifications:

- That the exemplary damages awarded be increased to the Thirty Thousand Pesos (Php30,000.00);
- That in addition, temperate damages of Twenty Five Thousand Pesos (Php25,000.00) be awarded; and
- That accused-appellants be directed to pay interest on all damages at the legal rate of six percent (6%) from the date of finality of this judgment until the amounts awarded shall have been fully paid.

The Ruling of the Court

The appeal is partially granted.

We are guided by the precept laid down by the following Supreme Court:

It would be a serious mistake to send an innocent man to jail where such kind of doubt hangs on to one's inner being, like a piece of meat lodged immovable between teeth.[28]

After a judicious study of the records at hand, We are fully convinced that there is sufficient ground to reverse or deviate from the findings of the court a quo only in so far as accused-appellant Romulo Villena is concerned.

At the outset, it is worthy to emphasize that no less than Section 14, Article III of the Constitution mandates:

Section 14. (1) x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx.

(Emphasis Ours)

The principal effect of the guarantee of presumption of innocence is that no person shall be convicted unless the prosecution has proved him guilty beyond reasonable doubt.²⁹ Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. Nevertheless, the burden of proof still rests on the State. The accused, if he so chooses, need not present evidence. He merely has to raise a reasonable doubt and whittle away from the case of the prosecution. The constitutional presumption of innocence demands no less.[30]

After a painstaking review of the records and the transcripts of stenographic notes, We are not fully convinced with moral certainty that accused-appellant Romulo Villena conspired with accused-appellant Crispin Aure in killing Nazareno. With a cloud of doubt continuously hovering, Our mind cannot rest easy.

This Court is even perplexed why the court a quo found accused-appellant Romulo Villena as a co-conspirator when as a matter of fact there was no mention in the testimony of the witnesses as to how accused-appellant

Romulo Villena conspired and participated in the killing of Nazareno. As a matter of fact, the presence of accused-appellant during the incident is even vague as there was no mention at all in the testimony of the eyewitnesses that they actually saw accused-appellant Romulo Villena at the scene of the incident or as to what he was doing at the time of the incident. The testimony of SPO1 Rufo Canendo was positive and clear that only the name of accused-appellant Crispin Aure came out as the assailant of Nazareno De Guzman during the time said police officer conducted an investigation immediately after the incident.[31]

Even if this Court could surmise into the findings of the court a quo that Romulo Villena was standing by the window outside the house of Nazareno, still, We find no clear and sufficient evidence to deduce the existence of conspiracy between both accused-appellants. There is even no iota of evidence that leads to the direction that both accused-appellants conspired with each other in killing Nazareno. Mere passive presence of accused-appellant Romulo Villena at the scene of the crime does not ipso facto constitute conspiracy.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It is fundamental for conspiracy to exist that there must be unity of purpose and unity in the execution of the unlawful objective.[32]

As a rule, conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime.[33] Direct proof, however, is not essential to establish conspiracy. Since by its nature, conspiracy is planned in utmost secrecy it can rarely be proved by direct evidence.

Consequently, the presence of the concurrence of minds which is involved in conspiracy, may be inferred from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proven that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert means is proved. That would be termed an implied conspiracy.[34]

Nevertheless, mere knowledge, acquiescence, or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy, but that there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Conspiracy must be established, not by conjectures, but by positive and conclusive evidence.[35]

Thus, mere presence of accused-appellant Romulo Villena at the scene when the crime was perpetrated is not by itself indicative of the existence of conspiracy between him and accused. In a long line of decisions,[36] the Supreme Court has held that mere presence at the scene of the crime, without more, does not imply conspiracy.

Be that as it may, although accused-appellant Romulo Villena was present when the crime was perpetrated, still it bears stressing that the prosecution has failed to establish that there was a conscious criminal design existing between accused-appellants Romulo Villena and Crispin Aure. In fine, the prosecution failed to discharge its burden to prove and establish conspiracy.

As to accused-appellant Crispin Aure, it is axiomatic before our Courts that positive identification by a prosecution witness of the identity of the perpetrator in a crime is entitled to greater weight.[37] This Court finds no cogent reason to set aside the testimony of the prosecution witnesses who positively and categorically identified accused-appellant Crispin Aure to be the one who shot the victim.

The contention of accused-appellants that it was not plausible for witnesses to have identified the assailant of Nazareno through the darkness of the night with only a kerosene lamp as a source of illumination deserves scant

consideration. It has also been consistently ruled in prior cases before the High Court that an illumination produced by a kerosene lamp is sufficient to allow identification of persons.[38] We also note that the eyewitnesses and accused-appellant Crispin Aure were no strangers to each other.

Thus, it is not fanciful to emphasize that even under less favorable circumstances a familiar face would considerably reduce any error in identifying the assailant.[39] It bears stressing that it is the most often and natural reaction for victims of criminal violence to strive to ascertain the appearance of their attackers and observe the manner in which the crime was committed.[40]

Therefore, accused-appellant Crispin Aure's defense of denial and alibi is not worthy of belief. It is an oft-quoted doctrine that positive identification prevails over denial and alibi. Alibi cannot prevail over the positive identification of the accused-appellant as the perpetrator of the crime.[41]

For the defense of alibi to prosper, accused-appellant must establish that: (a) he was in another place at the time of the commission of the offense; and (b) he was so far away that he could not have been physically present at the place of the crime, or its immediate vicinity, at the time of its commission.[42] Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." [43]

In the instant case, accused-appellant Crispin Aure and his witness Agnes Villena even confirmed that the latter was at his mother's house in Brgy. San Vicente, Tunga, Leyte at the time of the incident. Said house is located just a few meters away from the house of Nazareno. There is thus the possibility that accused-appellant Crispin Aure was physically present at the place of the crime.

Anent the qualifying circumstance of treachery, We find that the court a quo is correct in appreciating such circumstance in its ruling. Article 248 of the Revised Penal Code, as amended under Section 6 of Republic Act No. 7659, provides:

Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death, if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity;
- In consideration of a price, reward, or promise;
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
- With evident premeditation;
- With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

The qualifying circumstance of treachery has been clearly defined as follows:

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to

himself arising from the defense which the offended party might make.[44] To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and (b) that the offender consciously adopted the particular means of attack employed.[45]

It has been further held that:

Treachery is present when two conditions concur, namely: (a) that the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (b) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.

The essence of treachery lies in the attack that comes without warning, and the attack is swift, deliberate and unexpected, and affords the hapless, unarmed and unsuspecting victim no chance to resist or escape, thereby ensuring its accomplishment without the risk to the aggressor, without the slightest provocation on the part of the victim. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate. Treachery may also be appreciated when the victim, although warned of the danger to his life, is defenseless and unable to flee at the time of the infliction of the coup de grace.[46]

It is indubitably clear from the testimony of the eyewitnesses that treachery is attendant in the killing of Nazareno De Guzman. The testimonies of both eyewitnesses were positive, clear and credible that the attack upon the person of Nazareno De Guzman was so sudden and swift that he had no opportunity to escape, defend himself or retaliate. Nazareno De Guzman was at a very vulnerable position as he was having dinner when a gunshot was fired against him. Unquestionably, Nazareno was unsuspecting that any harm would come along his way. We also note that accused-appellant Crispin Aure consciously ensured that his attack would be accomplished in manner that there is no risk to himself in getting in any form of danger.

However, the court a quo erred in appreciating the qualifying circumstances of nighttime and abuse of superior strength. A reading of the information shows that the qualifying circumstances of nighttime and abuse of superior strength were not alleged in the information. Verily, it is elementary in Our rules and criminal justice system that qualifying circumstances must be expressly and specifically alleged in the information. Otherwise, they cannot be considered by the trial court.[47]

We thus sustain the conviction of accused-appellant Crispin Aure for the crime of Murder as well as the penalty imposed upon him. The penalty for murder absent any aggravating or mitigating circumstance is reclusion perpetua.[48]

Nevertheless, in line with current jurisprudence,[49] We increase the award of civil indemnity to the heirs of the deceased Nazareno De Guzman on account of his murder committed by accused-appellant Crispin Aure from Fifty Thousand Pesos (Php50,000.00) to Seventy-five Thousand Pesos (Php75,000.00). We likewise increase the award of exemplary damages from Twenty-five Thousand Pesos (Php25,000.00) to Thirty Thousand Pesos (Php30,000.00). Moreover, the award of Twenty-five Thousand Pesos (P25,000.00) as temperate damages in murder cases is proper when no evidence of burial or funeral expenses is presented before the trial court.[50]

IN VIEW WHEREOF, the Court hereby ACQUITS accused-appellant ROMULO VILLENA of the crime charged, with costs de oficio. Accordingly, the Court orders the immediate release of accused-appellant Romulo Villena unless he is held for other lawful causes. The Director, Bureau of Corrections, shall report to this Court his/her compliance herewith within five (5) days from notice.

The Division Clerk of Court is DIRECTED to immediately cause the ENTRY OF JUDGMENT in this case with respect to the acquittal of accused-appellant Romulo Villena pursuant to Section 1(a) of Rule VII of the 2009 Internal Rules of the Court of Appeals.

On the other hand, the portion of the Decision dated November 9, 2009 rendered Branch 13, RTC of Carigara, Leyte, convicting accused-appellant CRISPIN AURE of murder for which he is to suffer the penalty of reclusion perpetua is hereby AFFIRMED with MODIFICATIONS, as follows:

(1) Accused-appellant Crispin Aure is ordered to pay the heirs of the deceased Nazareno De Guzman of Seventy-five Thousand Pesos (Php75,000.00) as civil indemnity, Fifty Thousand Pesos (Php50,000.00) as moral damages, and Thirty Thousand Pesos (Php30,000.00) as exemplary damages; and

(2) Accused-appellant Crispin Aure is further ordered to pay the private offended parties or their heirs interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of finality of this judgment until the foregoing awards shall have been fully paid.

SO ORDERED.

Delos Santos (Chairperson), and Maximo, JJ., concur.

[1] Records, pp. 114 – 132.

[2] Also referred to in the records as “Rumulo Villena”.

[3] Records, p. 1.

[4] Records, p. 18.

[5] Ibid., pp. 23 - 24 (Pre-trial Order dated September 7, 2006).

[6] TSN, October 19, 2006, p. 3.

[7] TSN, October 17, 2006, p. 2 & October 19, 2006, pp. 3 & 9.

[8] TSN, October 19, 2006, p. 4.

[9] Ibid.

[10] Ibid., p. 5.

[11] Ibid., p. 6.

[12] TSN, October 9, 2007, pp. 10 – 11.

[13] Ibid.

[14] Ibid., p. 5

[15] TSN, January 31, 2008, pp. 2 – 5.

[16] TSN, February 27, 2008, pp. 2 – 11.

[17] Records, p. 166.

[18] TSN, April 21, 2009, p. 7.

[19] TSN, March 16, 2009, p. 5 and April 21, 2009, p. 8.

[20] TSN, September 8, 2009, pp. 4 – 5.

[21] Ibid., p. 5.

- [22] Ibid., p. 8.
- [23] Ibid., pp. 8 – 9.
- [24] Supra, Note 1.
- [25] Records, p. 134.
- [26] Rollo, pp. 9 – 27.
- [27] Ibid.
- [28] People of the Philippines vs. Lejano, G.R. No. 176389, G.R. No. 176389.
- [29] Bernas, J.G., The 1987 Philippine Constitution: A Comprehensive Reviewer, 2006 ed., p. 148.
- [30] People of the Philippines vs. Tapeda, G.R. No. 100354, May 26, 1995; Section 2, Rule 133, Revised Rules of Evidence.
- [31] TSN, February 27, 2008, pp. 7 – 8.
- [32] Orodio vs. Court of Appeals, G. R. No. L-57519 September 13, 1988.
- [33] People of the Philippines vs. Bokingo, et al., G.R. No. 187536, August 10, 2011.
- [34] Supra, note 37.
- [35] Ibid.
- [36] San Juan vs. People of the Philippines, G.R. No. 177191, May 30, 2011; People of the Philippines vs. Hilario, G.R. No. 123455 January 16, 1998.
- [37] People of the Philippines vs. Cedon, G.R. No. 101117 June 15, 1994.
- [38] People of the Philippines vs. De La Peña, Jr., G.R. No. 183567, January 19, 2009.
- [39] Ibid.
- [40] People of the Philippines vs. Clidoro, G.R. No. 143004, April 9, 2003.
- [41] Ibid.
- [42] Ibid.
- [43] People vs. Mosquera, G.R. No. 129209, August 9, 2001.
- [44] Article 14, paragraph 16, Revised Penal Code.
- [45] People of the Philippines vs. Olaso and Angelio, G.R. No. 197540, February 27, 2012, citing People v. Campos and Acabo, G.R. No. 176061, July 4, 2011.
- [46] People of the Philippines vs. Nugas, G.R. No. 172606, November 23, 2011.
- [47] Catiis vs. Court of Appeals, G.R. No. 153979, February 6, 2006.
- [48] People of the Philippines vs. Torres, G.R. No. 190317, August 22, 2011.
- [19] People of the Philippines vs. Mores, G.R. No. 189846, June 26, 2013.
- [50] People vs. De Jesus, G.R. No. 186528, January 26, 2011.

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