

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. JAMES ARHIS (AS PRINCIPAL BY INDUCEMENT), JESUS SATURNINO ALIAS JESS AND HENRY DEL ROSARIO DIZON (AS PRINCIPALS BY DIRECT PARTICIPATION...

G.R. No. L-48711. October 10, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision of the Court of First Instance of Baguio and Benguet, Br. III, finding appellants, James Arhis and Henry Dizon guilty beyond reasonable doubt of the crime of Murder qualified by treachery, evident premeditation, and abuse of superior strength.

Co-accused Jesus Saturnino pleaded guilty to the aforesaid offense charged in the information, and was sentenced accordingly. Trial proceeded against James Arhis and Henry Dizon, with Jesus Saturnino as the principal witness for the prosecution.

In a decision dated March 30, 1978, in the aforesaid criminal case, the trial court convicted James Arhis and Henry Dizon of Murder. The dispositive portion of the decision reads: -

PREMISES CONSIDERED, and after a thorough perusal and study of the record of this case, plus the evidence submitted by the prosecution and defense as contained in the transcript of steno-type notes, this court in the exercise of its sound judicial discretion finds the herein accused JAMES ARHIS and HENRY DEL ROSARIO DIZON guilty beyond reasonable doubt of the crime charged against them in the Information, and hereby sentences them to suffer the penalty of RECLUSION PERPETUA with all the accessory penalties provided for by law, and to indemnify the heirs of the deceased victim Baldasan Tiongan the sum of P12,000.00, and to pay the costs. The herein accused are further ordered to pay the sum of P21,000.00, which is the actual expenses incurred by the heirs during the wake up to the time the deceased Baldasan Tiongan was buried.

SO ORDERED. (p. 34, Rollo)

From the said judgment, James Arhis and Henry Dizon interposed the present appeal.

The facts established by the prosecution and accepted by the lower court as basis for the decision are summarized as follows:

In the morning of November 20, 1974, Jesus Saturnino was in his residence located at 93 Ferguson Road, Baguio City, when appellant Arhis, who was in his house about five yards away, whistled for the former to come over. (Tsn., p. 70) Saturnino joined Arhis and after a brief chat they proceeded to Arhis' mother's house in Rimando Road where they took lunch and a siesta. (Tsn., pp. 70-71, 82). When they woke up Arhis started discoursing on a planned robbery and drew a sketch showing directions on how to reach the house of Baldasan Tiongan, the accused's intended victim. (Tsn, pp. 71-73). But because the sketch drawn up by Arhis could hardly be

understood, Saturnino made a copy of the same which the former took but later returned to the latter. (Tsn., pp. 73-82, 115, 181; see Exh. "B") Arhis then asked Saturnino to go to the house of a certain Atty. Palaganas and instructed him to tell Atty. Palaganas to hold the filing of an estafa case against Arhis until the following day. Saturnino did as he was instructed. (Tsn., pp. 153-154).

The next morning Arhis, as usual, whistled for Saturnino to come over. When Saturnino arrived he was asked by Arhis, "Where is your companion?" to which Saturnino replied, "You wait, I will call him." Saturnino left to fetch appellant Henry Dizon. When Saturnino saw Dizon, he asked the latter where he was going. Dizon replied that he intended to go to work but that he could not because he had no money for bus fare. Saturnino informed Dizon that they had a mission, so he invited Dizon and they both headed towards Arhis' house. (Tsn., pp. 82-84) When they got there, Arhis took them to his room where he gave them a briefing on their mission to rob and, if necessary, to kill Baldasan Tiongan. (Tsn., pp. 84-85) Thus Arhis instructed them how to get to Baldasan's house, using the sketch drawn, to hit the old man if he fought back and what to steal from him, and showed them the escape route. He even gave them knives as their armament and P1.25 for their jeepney fare. (Tsn., pp. 85, 88, 89; see Exhs. "A" & "C"). The conspirators also agreed among themselves that if they could steal money and goods equivalent to P10,000.00, the amount of P8,000.00 would be deposited in a bank while the rest will be divided among themselves. (Tsn., p. 192) After they left Arhis' house Saturnino and Dizon tried to raise additional money. When they could not get any, Dizon pledged his wristwatch for an extra P5.00. Thereafter, the two proceeded on their way to Baldasan Tiongan's house in Ucab, Itogon. (Tsn., pp. 89-90)

Having reached their destination, a one-storey bungalow, Dizon and Saturnino, armed with knives, approached the old man who was seated on a round chair in the balcony. The old man was Baldasan Tiongan. Dizon and Saturnino pretended to inquire from Baldasan whether he knew the house of a certain Enrique Flores, to which the old man replied that he did not. Thereafter, Saturnino requested Baldasan for a drink of water. Baldasan obligingly directed Saturnino to a jar of cool drinking water. (Tsn., pp. 95-96) Having had his fill, Saturnino got hold of two glasses, filled them with water and gave them to Dizon and Baldasan. After handing the glasses, Saturnino espied an empty family-sized coke bottle lying near where Dizon was seated. He asked Baldasan if he could have it and the old man agreed. Saturnino took the empty coke bottle and gave it to Dizon; then he retrieved the empty drinking glasses and took them back to the kitchen. As he stepped out of the kitchen, Saturnino saw Dizon strike Baldasan once at the nape with the empty coke bottle. (Tsn., pp. 96-97) Stunned, Baldasan went down the steps of the balcony. He stopped to pick up stones with which to fight his attackers, but Saturnino stabbed him on the breast. As Baldasan backed up shouting for help, Saturnino repeatedly stabbed him. Saturnino stopped only when he heard voices coming from the top of the hill seemingly responding to Baldasan's shouts for help. (Tsn., 97-98, 101)

After telling Dizon that the situation was delicate, Saturnino and the former ran away from the scene as fast as they could. (Tsn., p. 101) But they were foiled in their attempt to escape, as the rescuers who arrived at the house and those who were in the vicinity of their escape route caught up with and apprehended them. (Tsn., pp. 103-105) The culprits were thus arrested and first brought to the hospital where they were treated for minor wounds and then to the fiscal's office where they confessed to their participation in the crime and also pointed out Arhis as the mastermind of the whole incident. (Tsn., pp. 105-107-108; see Exhs. "H" and "P")

Post-mortem findings on the cadaver of Baldasan Tiongan reveal that he sustained five fatal stab wounds in the body and had a hematoma at the back of the head. (Tsn., pp. 142-144; see Exh. "J")

During the trial, Arhis admitted having had a previous business transaction with Baldasan in Ucab, but denied having caused the latter's murder.

Dizon, on the other hand, denied on the witness stand the truth of his extrajudicial confession claiming that: he had no knowledge of the plan to rob and kill Baldasan; and it was not he who hit the old man with a bottle, but Saturnino.

Appellants, Dizon and Arhis, in their appeal, claim that the lower court erred: in finding that a conspiracy existed to commit the offense charged; in convicting Henry Dizon as a co-conspirator and/or principal in the offense of murder; and in failing to consider the facts and circumstances affecting the veracity and credibility of Jesus Saturnino's testimony.

We are not persuaded.

The lower court found Arhis and Dizon guilty of the offense charged. Its finding on the existence of a conspiracy should not be disturbed, not only because they are logical, but also because they are based on evidence appearing in the record.

Conspiracy among the three accused is easily discernible: from their conduct before, during and after the commission of the crime. Having been given a knife by Jesus Saturnino for self-defense, Dizon should have inquired from Saturnino what their "mission" was all about, as any normal person would have done. Indeed, the fact that he accepted the knife and hid it in his socks reinforces the trial court's conclusion that he was in conspiracy with Arhis and Saturnino and knew from the beginning what the purpose of the conspiracy was.

We may even disregard Dizon's extrajudicial confession, particularly his admission that he hit Baldasan at the nape with an empty bottle. But We cannot ignore Saturnino's testimony that Dizon indeed committed the aforementioned act. (Tsn., p. 96)

The appellants Henry Dizon and James Arhis admitted that they were short of cash; in fact Dizon had to pledge his wristwatch to raise an additional P5.00 for their fare (Tsn., 89-90) Arhis also had to ask Atty. Palaganas to hold the filing of an estafa case against him until the next day, so that in the meantime he could find some cash to avoid the criminal suit.

Arhis himself admitted that he had had a transaction with the deceased a few months before the killing where the latter received some P8,700.00 for old coins. (Tsn., pp. 489-498) This shows that Arhis knew that Baldasan had some money stashed somewhere in his house.

Moreover, since Saturnino and Dizon had never gone to Ucab, Itogon before Nov. 21, 1974, these two strangers could not have readily pinpointed the house of Baldasan, were it not for the sketch (Exh. "B") adverted to herein-above and which sketch had originally been drawn by Arhis.

The above facts and circumstances show convincing proof that Saturnino, Dizon and Arhis conspired to commit the crime, and are therefore all guilty of the crime of Murder.

Saturnino testified in court, and confirmed the material allegations of his own extrajudicial confession, where he pointed to Arhis as the mastermind and Dizon as a direct participant in the commission of the crime. The evidence on record supports the trial court's conclusion that Saturnino's testimony is credible and the fact that he is an ex-convict is not sufficient to destroy his credibility.

Appellant Dizon contends that assuming there was a conspiracy, such conspiracy existed only for the purpose of stealing from the deceased, but not for the purpose of killing him, and that, moreover, he desisted from participating in the killing. The rule is that all those who participate in the conspiracy are liable for the killing, unless there is proof that they tried to prevent it (see *People vs. Atencio*, 22 SCRA 88, and *People vs. Rogel*, 4 SCRA 807). In the case at bar, the testimony of Dizon that he tried to prevent Saturnino from stabbing Baldasan is

self-serving, uncorroborated, and does not merit serious consideration.

WHEREFORE, IN VIEW OF THE FOREGOING, the appealed decision is hereby AFFIRMED but the indemnity to the heirs of the deceased should be increased from P12,000.00 to P30,000.00.

SO ORDERED.

Feria, Acting C.J., (Chairman), Fernan, Alampay, and Gutierrez, JJ., concur.

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