

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIPE CARIÑO, PABLO RAMOS AND MARTIN USON, DEFENDANTS AND APPELLANTS.

G.R. NO. L-33608. February 12, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Nature of the Case

An appeal by the accused, Felipe Cariño, Pablo Ramos and Martin Uson, from the judgment of the Court of First Instance of Pangasinan finding them guilty beyond reasonable doubt of the crime of murder, and sentencing them as follows:

"WHEREFORE, this Court finds the accused, Felipe Carino, Pablo Ramos and Martin Uson, guilty beyond reasonable doubt of the crime of murder, defined and penalized under Art. 243 of the Revised Penal Code, and hereby imposes upon each one of the said accused the penalty of reclusion perpetua; to indemnify jointly and severally the heirs of the deceased, Onofre Evangelista, in the sum of P12,000.00 and to pay the costs."

Statement and Facts of the Case

I. Version of the Prosecution:

On July 20, 1969, at around 2:00 o'clock in the afternoon, at Barrio Lasip, Municipality of Malasiqui, Province of Pangasinan, the deceased, Onofre Evangelista alighted from a jeep parked in front of the store of one Eleuterio Dizon, with some companions, namely, his son Gerardo Evangelista, his brother Clemente Evangelista, a friend Federico Obero and two other persons from Bautista, Pangasinan. Accused Felipe Carino, who was drinking wine in the store with the other two accused, Pablo Ramos and Martin Uson, called for Onofre Evangelista who responded to the call and went near the three accused. Felipe Carino handed over to Onofre Evangelista a glass of wine to drink, but when the latter was about to drink the wine, Carino boloed him at the left hand and before Onofre could run, he was again hit for the second time by Carino on the right hand. Onofre Evangelista started to run towards the house of one Gorio Cano and at this precise moment accused Pablo Ramos went under the house of Eleuterio Dizon and got a rifle and handed it over to Felipe Carino. After Ramos had given the rifle to Carino, the three accused, Felipe Carino, Pablo Ramos and Martin Uson, ran also towards the house of Gorio Cano with Ramos and Uson having drawn bolos in their hands. Upon reaching the house of Cano, Felipe Carino saw Onofre Evangelista with the latter's back turned towards the window and Carino fired a shot at Onofre Evangelista, hitting him on his back. The gunshot wound thus inflicted caused his death. This version of the prosecution is supported by the testimonies of Gerardo Evangelista, Clemente Evangelista and Federico Obero.

II. Version of Appellants:

On the other hand, Felipe Cariño, Pablo Ramos and Martin Uson denied having any participation in the death of Onofre Evangelista. Felipe Cariño claims that on the date and at the time of the incident he was in the field cutting grass and did not see Onofre Evangelista in the afternoon of July 20, 1969. Pablo Ramos testified that in the

afternoon of that fatal-day he was at home taking care of his child. A friend of his, Santiago Viray, paid him a visit in his house and he did not go out the whole afternoon. Santiago Viray corroborated the statement of Pablo Ramos about his visit. Martin Uson testified that in the afternoon of July 20, 1969, he was at barrio Landas, Municipality of Mangaldan, Pangasinan, forty-five minutes ride to Malasiqui, visiting an uncle, Jose Uson, who corroborated Martin Uson's testimony.

After hearing, the court a quo convicted all the three accused, Felipe Carino, Pablo Ramos and Martin Uson, of murder as charged and they were sentenced as previously indicated. Hence this appeal by all of them.

The three appellants maintain that the lower court erred in:

- (1) Convicting them of murder on the basis of evidence riddled with serious doubts and incredibility;
- (2) Not accepting their defense of alibi based on lack of positive identification during the investigation conducted by the Chief of Police of Malasiqui and the Philippine Constabulary on July 20, 1969;
- (3) Holding that there was conspiracy among the accused; and
- (4) Finding that there was treachery in the commission of the crime.

Discussion

I.

The first issue to be resolved is whether the accused were convicted on the basis of evidence allegedly riddled with serious doubts and incredibility.

Appellants maintain that in convicting them the trial court leaned heavily on the testimonies of Gerardo Evangelista, a ten year old son of the deceased, and on those of Clemente Evangelista, a brother, and Federico Obero, a friend, of the deceased, that they actually saw Felipe Cariño first offered a glass of wine to the deceased, Onofre Evangelista, and then when the latter was about to drink it the former boloed him at the right hand and before Onofre could run, he was again hit for the second time by Cariño on the right hand; that at this juncture Pablo Ramos went under the house of Eleuterio Dizon and got a rifle and handed it over to Felipe Cariño who used it in shooting Onofre Evangelista. They claim that if said eye-witnesses were really present, their natural reaction or first impulse would have been to go to the defense of Onofre Evangelista, a relative and friend, and outnumbering Felipe Cariño, they could have fought Felipe Cariño or any of the accused and deter them from doing further harm; that there would have been a concomitant turmoil, and there being no commotion brought about by the alleged aggression, the entire evidence casts grave doubts on the veracity of the alleged presence of all the said witnesses during the incident. Assailing the story of said three eye-witnesses, the defense claims that it is shot through and through with inconsistencies rendering it unreliable and, therefore, should be rejected as unworthy of credence.

Upon the other hand, the prosecution maintains that the said companions of Onofre Evangelista could not have gone to his defense, even if they were minded to, because Pablo Ramos and Martin Uson were armed with bolos, while accused-appellant Felipe Carino had along firearm. It further points out that if there are discrepancies in the testimonies of the three witnesses, these were only on some trivial matters and can be reconciled.

Appellants' contention is without merit. The evidence may not show that the three eye-witnesses, who were relatives and friend of Onofre Evangelista, put up some resistance for the defense of the victim, but this circumstance does not establish that these witnesses were not present when the incident happened. In *People vs. Tania*,^[1] where the issue is identical to the one at bar, this Court ruled:

"x x x it is not easy to draw a hard and fast rule as to how a person would react under an unusual situation. While one might preserve his equanimity and perform what is expected of him, others might get frantic and powerless to move to the victim's rescue."

As to the discrepancies in the testimonies of Gerardo Evangelista, a 10 year old son of the deceased, Clemente Evangelista, a brother, and Federico Obero, a friend, of the deceased, while it is true that their testimonies have some flaws and inconsistencies, it is equally true that the same refer only to minor details which do not destroy credibility.[2] In *People vs. Fontanilla*,[3] this Court ruled:

"It is conceded that the testimony of Fe Castro suffers from some inconsistencies; these, however, could be attributed to her minority (she was barely 16 years old at the time of the trial), lack of education (she had reached only grade III), perceptibly low intelligence, and to the understandable partiality of a litigant to her cause. On the whole, we find that the complainant's testimony is credible and convincing. x x x"

Time and again this Court has ruled that where the issue is one of credibility of witnesses, appellate courts will generally not disturb the findings of the trial court, considering the better position of the latter to decide the question for having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.[4] This exception does not obtain here.

II.

The second issue to be resolved is whether or not the lower court erred in rejecting the appellants' defense of alibi based on alleged lack of positive identification during the investigation conducted by the peace officers. Appellants maintain that since no one in the whole barrio of Lasip, Malasiqui, Pangasinan, where the incident happened, including the three prosecution witnesses, came out in the open and volunteered to declare that he saw or knew who killed Onofre Evangelista, when the peace officers conducted an investigation in connection with the death of Onofre Evangelista, this circumstance lends credence to their defense of alibi. They further argue that as the store owner, Eleuterio Dizon, denied that there was any untoward incident that had happened in his store on the date and time when Onofre Evangelista was supposed to have been attacked by appellant Felipe Cariño with a bolo, there could not have been such aggression against the deceased by appellants.

Appellants insist that by their testimonies during the trial they were able to prove clearly their respective whereabouts when the incident happened and their alibis should have been accepted by the trial court.

Appellants arguments cannot be sustained. It should be noted that on the date the crime was committed, the Police Department of Malasiqui was under P.C. control and, consequently, the Malasiqui Police could not conduct an investigation thereof as the P.C. took over the case. Because of the seemingly lukewarm and passive attitude of the P.C., the aggrieved family of the victim went to the Provincial Fiscal's office of Lingayen for assistance. That their misgivings about the P.C. had some foundation in fact, is strengthened by the intervention of the N.B.I. which effected the arrest of appellants Pablo Ramos and Martin Uson more than one year later, or on October 8, 1970, while appellant Felipe Cariño submitted himself for trial only on December 14, 1970.

It may be true that no one was bold enough to give immediately any information regarding Onofre Evangelista's death at the time when the peace officers conducted an investigation at the scene of the crime. It should not be overlooked, however, that the appellants were not arrested immediately and were all roaming around. Hence witnesses were afraid to talk and declare against them. The delay of a witness in revealing to the authorities what he knows about a crime does not render his testimony false. The delay may be explained by the natural reticence of most people and their abhorrence to get involved in a criminal case.[5] In *People vs. Lao Wan Sing*,[6] this Court said:

"The reaction of human beings under given circumstances, do not follow an inflexible pattern. Not all persons react in the same manner when subjected to the same stress. Some are timid and are more susceptible to fear than others; that of being implicated or molested with inquisitorial investigations, or of being objects of revenge on the part of criminals or their relatives, is not a rare psychological phenomenon among the educated as well as among the ignorant. x x x"

As to appellants' alibi, the rule is well settled, to the point of being trite, that the defense of alibi must be received with utmost caution,[7] for it is one of the weakest defenses that can be resorted to by an accused, especially if there is direct testimony of an eyewitness duly corroborated by that of others.[8] It is worthless in the face of positive identification of the culprit by the prosecution witnesses.[9] Besides, the short distances between the places where the three appellants claimed to be and where the crime was committed are such that it does not preclude the possibility of their being at the latter place at the time of the killing. It is not enough to prove that appellants were somewhere else when the crime was committed, but must demonstrate that it was physically impossible for them to have been at the scene of the crime at the time it was committed.[10] This they have failed to do so.

The testimony of Eleuterio Dizon denying appellants' presence in his store is unbelievable and cannot prevail over the positive and convincing testimonies of the prosecution witnesses.

III.

The third issue to be resolved is whether or not the trial court erred in holding that there was conspiracy among the accused. They contend that the only inculpatory fact imputed by the prosecution to appellants Pablo Ramos and Martin Uson is that Pablo Ramos handed over a firearm to Felipe Cariño after the latter had allegedly boloed Onofre Evangelista, while appellant Martin Uson allegedly uttered the words "We will finish him"; that these acts do not constitute conspiracy which must be proved as clearly and as convincingly as the commission of the crime itself.

But the prosecution maintains that the common purpose or design of the appellants to take away the life of Onofre Evangelista is evident and was clearly proven. It argues that if the appellants did not conspire to kill the deceased, there was no reason why appellants Pablo Ramos and Martin Uson did nothing to prevent appellant Felipe Cariño from hacking the deceased in the store of Dizon and later firing at him in the house of Cano. On the contrary, it claims that they actively participated in Felipe's evil deed, Pablo Ramos giving a rifle to Felipe and Ramos and Uson drawing their bolos and both chasing the deceased. Upon arrival of the deceased at Cano's house they stood guard to prevent him from escaping.

Appellants' contention that there was no conspiracy among them cannot be accepted. The following facts appear to have been duly established to show conspiracy: (a) that the three appellants were together inside the store of Eleuterio Dizon when Felipe Cariño called for Onofre Evangelista and offered the latter a glass of wine; (b) that after Felipe Cariño had delivered the two bolo blows to Onofre Evangelista, Pablo Ramos went under the house of Dizon to get a rifle, a deadly weapon, and handed it over to Felipe Cariño; (c) that just after Ramos had handed the gun over to Carino, the three appellants pursued the fleeing Onofre Evangelista, Pablo Ramos and Martin Uson with drawn bolos while appellant Felipe Cariño with a gun on hand; and (d) that upon reaching the house of Gorio Cano where Onofre Evangelista had taken refuge, Pablo Ramos stationed himself on the west side of the house while Martin Uson proceeded to the east side, both still having their bolos drawn and ready to attack Onofre Evangelista in case he would attempt to escape, until Felipe Cariño shot dead Onofre Evangelista. These acts of appellants Pablo Ramos and Martin Uson during the execution of the criminal plot by Felipe Cariño adequately show that the three acted in conspiracy and leave no room for doubt as to the existence of their unity of purpose and action. While conspiracy to commit a crime must be established by positive evidence, direct proof is not

essential as by its nature it is planned in secrecy. Consequently, competent and convincing circumstantial evidence will suffice to establish it.[11]

In *People vs. Largo*,[12] this Court held:

"x x x To establish conspiracy, it is not necessary to prove previous agreement to commit a crime if there be proof that the malefactors have acted in concert and in pursuance of the same objective. This Court has repeatedly ruled that conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Their actions must be judged not by what they say, for what men do is the best index of their intention."

The lower court correctly found all the defendants guilty as principals as it is clear from the evidence that there was a previous concert of criminal design.[13] It being fundamental in case of conspiracy that the act of one is the act of the others, all the appellants should be held liable for the crime.[14]

IV.

The last issue to be resolved is whether or not there was treachery in the commission of the crime. Appellants maintain that granting, without admitting, that Onofre Evangelista was shot at his back, treachery was not present because the hacking allegedly began from a quarrel or exchange of words in the presence of many people, including relatives of the deceased. They argue that the alleged quarrel presupposes a direct confrontation and, although it ended in the killing of the deceased, it begun without alevosia. Hence they claim that the act of shooting the deceased on his back through the window cannot be considered as evincing a design to employ a method indicative of alevosia.

The evidence shows that the deceased had just alighted from his jeep upon being called by Felipe Cariño to the store of Eleuterio Dizon. While the deceased was drinking the glass of wine offered by Cariño, the latter immediately struck Onofre Evangelista with his bolo, hitting him on the left arm. Evangelista started to run, but again he was hit by Cariño on his right hand. When Onofre finally managed to run, he was pursued by the three appellants to the house of Gorio Cano where he had taken refuge and he was shot by Felipe Cariño while he had his back turned towards the window in the house of Cano. Although it is debatable whether there was alevosia when the deceased was attacked by Cariño while the former was drinking the wine offered by the latter, treachery was nevertheless present when Felipe Cariño shot Onofre Evangelista on his back when the latter had taken refuge in the house of Gorio Cano. The deceased was then defenseless as he did not anticipate the firing and was not in a position to evade the same or to offer any resistance to the assailant. Treachery does not connote the element of surprise alone. It exists when the offender, in the words of the law, employs means, methods or form which tend directly and specially to insure the execution of the offense, without risk to himself arising from the defense which the offended party might make.[15]

Treachery may not be present at the inception of the attack but if the attack is continued and treachery exists at the time of the consummation of the killing, the crime committed is not homicide but murder.[16]

FOR ALL THE FOREGOING, the judgment appealed from is hereby affirmed, with costs against the appellants.

SO ORDERED.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

[1] L-18514, April 30, 1966.

[2] *People vs. Hantig*, L-27431, August 21, 1969.

- [3] L-25354, June 28, 1968.
- [4] People vs. Dayday, L-20806, Aug. 14, 1965; People vs. Pasiona, L-18295, April 30, 1966.
- [5] People vs. Catao, 107 Phil. 869.
- [6] L-16379, December 17, 1960.
- [7] People vs. Supat, L-24466, March 19, 1968.
- [8] People vs. Bagasala, L-26182, May 31, 1971.
- [9] People vs. Berdida y Ingito, L-20183, June 30, 1966.
- [10] People vs. Herila, L-32785, May 21, 1973.
- [11] People vs. Alcantara, L-26867, June 30, 1970.
- [12] L-28106, August 18, 1972.
- [13] People vs. Unuh Bakang, L-20908, January 31, 1969.
- [14] People vs. Jamero, et al., L-19852, July 29, 1968.
- [15] People vs. Casalme, L-18033, July 26, 1966.
- [16] U.S. vs. Baluyot, 40 Phil. 385.

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