

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
REUBEN PIMENTEL Y DEQUIS, FRANCISCO CABALBAG Y CAPA
ALIAS PARAN, PABLO LAZO Y APALES, ARSENIO AQUINO Y CANLAS
AND TONY DOE...**

G.R. No. L-47915. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision dated May 31, 1977, of the then Court of First Instance of Baguio and Benguet, finding the accused Reuben Pimentel y Dequis, Francisco Cabalbag y Capa alias Paran, and Pablo Lazo y Apales guilty beyond reasonable doubt of the crime of Murder with assault upon an agent of a person in authority and sentencing them to the penalty of reclusion perpetua with all the accessory penalties provided for by law, and to pay jointly and severally the sum of P12,000.00 to the heirs of the victim Corporal Benito Benabese for six years, two months and twelve days and to pay equally their proportionate share of the costs. On the other hand, the lower court acquitted Arsenio Aquino y Canlas (CFI Decision, Rollo, pp. 4-57).

The factual background of this case as found by the trial court is as follows:

On the night of March 19, 1971, the Baguio Police Department Strike Force composed of Corporal Benito Benabese as head, Pat. Manuel Ano, Pat. Reynaldo Talastas, Pat. Anis Minong and Pat. Eddie Alcedo, who were commissioned to check and apprehend persons carrying illegally possessed firearms and other deadly weapons in nightclubs, cocktail lounges and liquor stores, went to the Vista Nightclub, arriving there at about 11 o'clock in the evening (CFI Decision, Rollo, pp. 5-6; Brief for Appellee, p. 5).

Shortly thereafter, Cpl. Benabese, accompanied by Pat. Ano approached a table, where accused Francisco Cabalbag and a certain Tony were seated with two hostesses conversing and drinking. Cpl. Benabese asked the two men to stand up so that he may frisk them for hidden guns. When the two, Cabalbag and Tony, stood up and were searched, no firearm was found. However, Cpl. Benabese invited both Cabalbag and Tony to go outside with him, which they did, followed by the other members of the Strike Force (CFI Decision, Rollo, pp. 6 and 32; Brief for Appellee, pp. 5-6).

Outside, near the main door of the club, an exchange of words between Cpl. Benabese and Cabalbag ensued, in the course of which Cpl. Benabese angrily said to Cabalbag, "Sica ti maysa nga aglo koloko ditoy" (You are one of those creating trouble here), to which the latter replied, "Saan, manong" (No, brother), in a soft voice. Nevertheless, Cpl. Benabese slapped Cabalbag and boxed him several times (CFI Decision, Rollo, pp. 6, 8 and 32; Brief for Appellee, p. 6).

Cabalbag sent Tony to look for accused Reuben Pimentel at the nearby Tropical Nightclub, even as accused Pablo Lazo was coming out of the Vista Nightclub, probably to find out what was happening outside, but he was confronted by Benabese who was reentering the Club, saying, "Sica met ti maysa" (You are also one of them).

Lazo answered "Saan, Manong" (No, brother). Benabese then went inside the club while Lazo went outside (CFI Decision, Rollo, p. 8; Brief for Appellee, p. 6).

After a while, accused Pimentel, armed with a gun tucked in his waistline, followed by Tony, Johnny Gallardo, PC Capt. Maristela and Sgt. Quijencio, arrived at the premises of the Vista Nightclub. Promptly, Cabalbag apprised Pimentel as to what Benabese did to him (CFI Decision, Rollo, pp. 6 and 20).

Upon seeing the arrival of Pimentel's group, Pat. Ano sent Pat. Minong to look for Cpl. Benabese probably to warn him, but Pat. Minong could not find him (CFI Decision, Rollo, pp. 6 and 20). A few minutes later, Cpl. Benabese, holding his "Zig" firearm, suddenly reappeared outside and, on seeing Pimentel, asked what the latter wanted. Pimentel replied, "Awan met, manong." Nevertheless, Cpl. Benabese cocked his "Zig" firearm and pointed it in the direction of Pimentel (CFI Decision, Rollo, pp. 7, 8 and 28). Whereupon, Lazo, who joined the Pimentel group, grabbed the muzzle of the "Zig" firearm with his left hand and held the chamber thereof with his right hand. Cpl. Benabese and Lazo struggled for the possession of the "Zig" firearm. Pat. Ano quickly joined them by holding said firearm with his right hand (CFI Decision, Rollo, pp. 7, 8, 28 and 30).

In the ensuing scuffle, the three drifted toward the lobby of the club. Pimentel, with drawn gun pointed at Cpl. Benabese's back, followed them there. Cabalbag also followed, as well as his other companions. Soon, Pat. Ano heard a shot, while Tony, for his part, seized his (Ano's) carbine which the latter held in his left hand, so much so that Pat. Ano released his hold on the "Zig" firearm in order to hold on to his carbine until he and Tony, in the course of their struggle for the possession of the carbine, reached outside (Sic). There, Tony let go the carbine and ran away (CFI Decision, Rollo, pp. 8, 12 and 29).

Outside, Pat. Ano heard two more shots followed by successive shots from the "Zig" gun. When the reports of gunfire had ceased, Pat. Ano saw Pimentel and his group, including Cabalbag and Lazo come out of the nightclub. Cabalbag was then carrying the "Zig" firearm of Cpl. Benabese, while Pimentel was holding his gun. When Pat. Ano shouted at them to leave the "Zig" gun, Cabalbag dropped the same on the ground. Pat. Ano then retrieved it and went back inside the Vista Nightclub only to see Cpl. Benabese sprawled on the floor dead (CFI Decision, pp. 12, 44-45). Pimentel, Cabalbag, Tony and Lazo proceeded to the Tropical Nightclub, about 100 meters away from the Vista Nightclub, and there the first three boarded a taxi driven by Arsenio Aquino and went away while Lazo stayed and drank a bottle of beer (CFI Decision, Rollo, pp. 31, 33, 44 and 45).

For that killing, Reuben Pimentel, Francisco Cabalbag, Pablo Lazo, a certain Tony Doe (who is still at large) and Arsenio Aquino were charged with the crime of murder in an information dated April 20, 1971 with the then Court of First Instance of Baguio and Benguet. The information reads as follows:

"That on or about the 19[th] day of March, 1971, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court the accused REUBEN PIMENTEL Y DEQUIS, FRANCISCO CABALBAG Y CAPA alias PARAN, PABLO LAZO Y APALES and TONY DOE, conspiring, confederating and mutually helping each other, with intent to kill, and with treachery as well as by employing means to weaken the defense, with cruelty of the victim, did then and there willfully, unlawfully and feloniously attack, assault and shoot several times BENITO BENABESE on the occasion of the latter's performance of his official duties as a duly appointed-and qualified Corporal of the Baguio City Police Department, the said accused knowing him to be such an agent of a person in authority, thereby inflicting upon the said BENITO BENABESE multiple gunshot wounds on the head, neck and torso which directly caused his death; and

"That the accused ARSENIO AQUINO Y CANLAS, having knowledge of the commission of the crime alleged in the next preceding paragraph hereof, and without having participated therein as a principal or an accomplice, did then and there willfully, unlawfully and feloniously take part in said crime after the commission thereof by assisting in the escape of the principal accused REUBEN PIMENTEL Y DEQUIS,

FRANCISCO CABALBAG Y CAPA alias PARAN and TONY DOE with the use of the taxicab bearing Body No. BBC 23 which the said ARSENIO AQUINO Y CANLAS was then driving.

"CONTRARY TO LAW."

On arraignment, accused Reuben Pimentel, Francisco Cabalbag, Pablo Lazo and Arsenio Aquino entered their respective pleas of "not guilty" (Rollo, pp. 65 and 66).

After trial, the lower court rendered its decision finding the accused Reuben Pimentel, Francisco Cabalbag and Pablo Lazo guilty beyond reasonable doubt of the crime of Murder with assault upon an agent of a person in authority while Arsenio Aquino was acquitted (Rollo, pp. 56-57).

From the aforesaid judgment of conviction, only accused Cabalbag and Lazo appealed while Pimentel did not. Cabalbag, however, later withdrew his appeal (Rollo, p. 171, Brief for Plaintiff-Appellee, p. 4). Accused Pablo Lazo now assails the decision against him and submits that the trial court erred: (1) in making its findings of conviction based on mere inferences and probabilities; (2) in finding that conspiracy attended the commission of the crime charged; (3) in finding that the qualifying circumstance of treachery attended the commission of the crime charged; and (4) in finding accused-appellant guilty beyond reasonable doubt of the crime charged (Rollo, p. 155, Brief for Accused-Appellant, pp. 6-7).

The appeal is impressed with merit.

I

It has been held that, in this jurisdiction, it is a fundamental rule that conclusions and findings of fact by the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons because the trial court is in a better position to examine real evidence, as well as to observe the demeanor of the witnesses while testifying in the case (*People v. Grefiel*, 125 SCRA 108 [1983]; *Chase v. Buencamino*, 136 SCRA 381 [1985]; *People v. Fernandez*, 124 SCRA 248 [1983]; *Olangco v. Court of First Instance of Misamis Oriental*, 121 SCRA 338 [1983]; *Minuchechi v. Court of Appeals*, 129 SCRA 479 [1984]).

However, while the foregoing is the established rule, the same does not apply where the lower court overlooked certain facts of substance and value that if considered, would affect the result of the case (*People v. Royeras*, 130 SCRA 265 [1984]).

Admittedly, in the case at bar, there were no eyewitnesses to the shooting incident. There was no direct evidence presented and the trial court relied mainly on its inferences from a web of circumstances which were interpreted against the appellant. However, close scrutiny of the records shows, that the conclusion reached appears contrary to the evidence presented.

The trial court stated that what probably happened on that fateful night of March 19, 1971, could be surmised in brief and simple terms, as follows: that there was a scuffle for the possession of the "ZIG" firearm being held by the victim Cpl. Benabese, which was formerly pointed at Reuben Pimentel, one of the accused. Appellant Lazo was holding the muzzle of the gun while Patrolman Ano was holding its chamber. Due to their collective strength, the three persons above-mentioned were pushed inside the Vista Night Club followed by Reuben Pimentel who was holding a gun pointed at the back of Cpl. Benabese and by Francisco Cabalbag. Suddenly, there was a gun report followed by successive ones, then rapid firing. After the firing stopped the body of Benabese was found dead, riddled with bullets. Reuben Pimentel came out of the club with gun in hand while Francisco Cabalbag was in possession of the "Zig" firearm of Cpl. Benabese. Appellant Lazo and one Tony Doe likewise came out of the Vista Night Club as part of the group of Reuben Pimentel and Francisco Cabalbag (Decision, Crim. Case No. 243

(142), Rollo, pp. 43-47).

From these set of facts and circumstances, the trial court deduced that Cpl. Benabese was shot at the back successively by Reuben Pimental and when the deceased released his hold on his "Zig" Cabalbag picked the gun and pumped the body of said deceased full of lead. The conclusion reached was that the crime committed by Pimentel, Cabalbag and Lazo was murder (Ibid.). Thus, despite the findings of the trial court that it was Pimentel and Cabalbag who pumped the body of the victim with lead, appellant Lazo to whom no overt act could logically be attributed in the killing, was convicted together with the others, on the theory that he conspired and acted in common accord as to render him liable for the acts of his co-accused.

The Court ruled in *People v. Drilon, Jr.* (123 SCRA 79 [1983]) as follows:

"While it is true that direct proof is not essential to prove conspiracy, for it may be established by facts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the crime charged, nevertheless, the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy, which is, proof beyond reasonable doubt.

"The mere presence of appellant at the scene when the crime was perpetrated x x x is not by itself indicative of the existence of conspiracy between them. As this Court said in *People v. Ibañez* (77 Phil. 664) 'x x x the accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. It is not enough that there be a relation between the acts done by the principal and those attributed to the person charged as co-principal or accomplice, it is, furthermore, necessary that the latter, with knowledge of the former's criminal intent, should cooperate with moral or material aid in the consummation of the crime.'"

In the case at bar, certain facts may be cited to show that there was no common design to kill, much less a justification for the deduction that appellant Lazo was one of the conspirators who had knowledge of the criminal design of his co-accused and that he cooperated with moral or material aid in the consummation of the crime.

It is undisputed that from the outset, aggression had always been on the side of the victim. All the witnesses both of the prosecution and the defense are of one accord in their testimonies that Cpl. Benabese slapped and boxed Cabalbag without provocation on the part of the latter who was frisked for hidden firearms and was found to have none. And then later, the records likewise reflect that even after Cabalbag returned with Pimentel and company for a supposed confrontation with the deceased and the latter asked Pimentel what he wanted, Pimentel was still able to mildly answer "Awan, met, Manong" thereby belying any intention to have a bloody confrontation with the victim. Nonetheless, Cpl. Benabese cocked his firearm and pointed it in the direction of Pimentel to which appellant Lazo immediately reacted by holding the muzzle of the "Zig" firearm while Pat. Ano helped him by holding the chamber. Together they tried to wrestle the gun away from the victim to avert tragic consequences. Indeed, it is inconceivable how the trial court failed to consider that appellant Lazo instead of supposedly helping the criminals to perpetrate the crime was actually helping the law enforcers to prevent it.

It is also evident under the circumstances that what transpired was not in accordance with a preconceived plan but was brought about by the actuations of the victim himself. In fact, it is uncontroverted that in the ensuing scuffle for the possession of the "Zig" firearm, appellant Lazo, Pat. Ano and Cpl. Benabese were pushed inside the Vista Night Club. Otherwise stated, appellant found himself inside the nightclub, not by choice but by the chain of events which were beyond his control. In the same manner, Lazo cannot be blamed for the situation which was Benabese's own creation nor for the actuations of Pimentel and Cabalbag which apparently caused the tragic consequences. If the victim was rendered helpless under the circumstances, it cannot be attributed to any fault on the part of Lazo but on the former's own team who just watched the events and did nothing to help him.

Other circumstances strongly relied upon by the trial court to show conspiracy and in convicting appellant are as follows:

Alleged Fact No. 1 —

After Cabalbag had been boxed by Cpl. Benabese, the former ran away and after a few minutes returned to the Vista Night Club with several companions, namely: Reuben Pimentel, Pablo Lazo, Johnny Gallardo and many others he could not identify (Decision of the Court of First Instance, Rollo, p. 50).

The foregoing fact was narrated in the testimony of Patrolman Reynaldo Talastas, whose recollection of what transpired that evening was not only vague and inaccurate but also in contradiction with what appears on the records.

He could not even remember from what time to what time he was on duty that night (TSN, Criminal Case No. 243 (142), Hearing of April 25, 1974, p. 885), nor what caliber of firearm he was using (Ibid., p. 886) or whether or not it was Benabese or the team who frisked Cabalbag and whether or not Benabese picked him up. Finally, he admitted that because of the length of time that had elapsed, he could not remember with exactitude the incidents that happened that night (Ibid., p. 903).

Surprisingly, the trial court found the aforesaid testimony more credible and gave it more weight than the testimony of Patrolman Ano, the witness for the prosecution whose testimony was forthright and accurate. He specified without hesitation the persons who returned with Cabalbag and Pimentel as Sgt. Quijencio, Johnny Gallardo and Capt. Maristela. Unlike witness Talastas, he never said that there was anyone he could not identify nor that appellant Lazo was with them (TSN Criminal Case No. 243 (142) Hearing of December 28, 1971, p. 28). Furthermore, Pat. Ano was standing near the doorway when Pimentel and his company arrived at the La Vista Night Club (Decision, p. 23). On the other hand, Talastas admitted in his testimony that he was 10 to 15 meters away while Pat. Ano was right beside Cpl. Benabese (TSN Criminal Case No. 243 (142) Hearing of April 25, 1974, p. 908). Surely Pat. Ano, a prosecution witness who had no reason to lie in favor of the accused and who was standing right at the scene of the action would be more credible than Talastas who was observing from a distance and who by his own admission took cover at the first burst of gunfire.

Alleged Fact No. 2 —

Prior to the shooting incident, Pablo Lazo, as per the evidence presented by the prosecution, was also accosted by Cpl. Benabese and the latter said, "Sica met ti maysa" which in English means "You are one of them." But Pablo Lazo answered, "Saan Manong", which means "No brother". (Ibid., p. 52).

Ironically, this incident which by no stretch of the imagination can be viewed as an indication of conspiracy among appellant Lazo and the Pimentel group and which occurred a few seconds after Benabese slapped Cabalbag, (Rollo, p. 85) only serves to prove that appellant was not with the group when they arrived and was standing all the while by the doorway since the slapping incident. At the same time it proves the truth of Lazo's own testimony that he was at the club since 11:00 p.m. that evening (TSN Crim. Case No. 243 (142) Hearing of May 27, 1974, p. 917) as it was around that time when said incident occurred.

Alleged Fact No. 3 —

When Pimentel, Cabalbag, Lazo and a certain Tony Doe came out of the Vista Night Club, they were seen headed for the Tropical Night Club. (Ibid., Rollo, p. 53).

It will be noted that from the Tropical Night Club, while accused Pimentel, Cabalbag and Tony Doe boarded a taxi driven by Arsenio Aquino and went away, Lazo stayed and drank a bottle of beer. (TSN pp. 929-930, May

27, 1974). This testimony of Lazo was corroborated by the testimony of said taxicab driver that the three people who boarded his taxi were Pimentel, Cabalbag and Tony Doe and that while they were cruising he was told to stop by a police patrol but he could not obey because Tony Doe will shoot him (TSN, pp. 971-974, June 10, 1974).

It is well established that an accused's flight from the scene of the crime and his act of hiding himself until he was arrested, are circumstances highly indicative of guilt. (People v. Vengco, 127 SCRA 250 [1984]; People v. Millarpe, 134 SCRA 555 [1985]). In the case at bar, appellant Lazo did not flee with the others, instead he stayed behind and calmly drank a bottle of beer.

The Solicitor General argued that appellant stayed and drank beer probably to dissipate his fear and at the same time to set up a clever (but futile) advance defense of innocence by not fleeing and hiding himself from justice (Brief for plaintiff-appellee, p. 14).

Such contention is untenable. Besides being based on inferences which are inherently improbable, appellant is placed in an unusual situation where he is presumed guilty, whether he flees or stays.

Equally inconsistent is the claim that if appellant were innocent, he would have made himself available to the police and revealed what actually happened. It must be noted that the deceased was a policeman and his team was present when the incident happened so that notification was totally unnecessary. Similarly, appellant cannot be expected to surrender himself to the police when he was not aware of having done anything wrong.

Alleged Fact No. 4 —

The testimony of the victim's wife that about eight to ten days prior to the killing of her husband, their residence was riddled by gunmen with bullets and that her husband told her that it was done by nobody else but Pimentel and his followers (Decision, CFI, Rollo, pp. 53-54).

Apart from the fact that the foregoing testimony is obviously hearsay and not admissible in evidence, it will be noted that even Mrs. Benabese did not mention the name of appellant as one of those gunmen who riddled their house with bullets (TSN, pp. 669, 680-702, Oct. 4, 1972; Oct. 11, 1972). Furthermore, there is no evidence showing that Lazo was seen or known to be in the company of Pimentel, Cabalbag or Tony Doe. In fact Pimentel has an unrebutted testimony that he came to know Lazo before the date of the incident, only because he sometimes ate in the latter's carinderia (TSN pp. 1075-1976, Aug. 29, 1974).

In resume, the prosecution was not able to prove the existence of conspiracy. There might have been provocation by the victim against the accused Cabalbag and Pimentel but not against appellant Lazo so that retaliation on the part of the latter is out of the question. Neither was it able to establish the requisite sufficiency in order that circumstantial evidence may be the basis for conviction, namely: (1) there is more than one circumstance; (2) the facts from which the inferences are derived must be proven; and (3) the combination of all the circumstances is such as to produce a conviction of guilt beyond reasonable doubt (People v. Cruz, 134 SCRA 513 [1985]).

PREMISES CONSIDERED, appellant Pablo Lazo is hereby ACQUITTED on reasonable doubt and is ordered RELEASED immediately.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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