

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HADJI JAID HASIRON, ACCUSED-APPELLANT. POKONG ABDULMUTALIB AND JERRY HAYUDINI (AT LARGE).

G.R. No. 100797. October 15, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Appellant Hadji Jaid Hasiron together with Pokong Abdulmutalib and Jerry Hayudini were charged with Robbery with Homicide in an Information dated 4 January 1990. Only appellant Hasiron was in fact arrested and hence was the only person arraigned under the information which read:

“The undersigned 2nd Assistant Provincial Prosecutor of Sulu, accuses POKONG ABDULMUTALIB, JERRY HAYUDINI, AND HADJI JAID HASIRON, for the crime of Robbery with Homicide, defined and penalized under Articles 293 and 249 of the Penal Code, committed as follows:

That on or about 7:00 o'clock in the evening of Thursday, December 28, 1988, at the vicinity of Kasanyangan Village, Municipality of Patikul, Province of Sulu, Philippines, and within the jurisdiction of this Honorable Court, the aforementioned accused conspiring together and mutually helping one another, armed with a handgun, did then and there willfully, unlawfully and feloniously with treachery and evident premeditation, shot Patrolman Abdulmonim Aspi, INP, which caused his instantaneous death, thereafter, the above-mentioned accused with intent to gain and after killing the victim divested him of his issued firearms one (1) Caliber 38 Revolver Squires Bingham with Serial No. 954314 and one (1) M-16 Armalite Rifle with Serial No. 053791 to the damage and prejudice of the heirs of the victim and the government.

ALL CONTRARY TO LAW.”[1]

The other two (2), Pokong Abdulmutalib and Jerry Hayudini, have to date remained at large.

Hasiron pleaded not guilty. After trial, he was found guilty as charged and sentenced to suffer reclusion perpetua in a decision dated 11 April 1991 the dispositive portion of which read:

“WHEREFORE, judgment is hereby rendered finding the accused Hadji Jaid Hasiron guilty beyond reasonable doubt as co-principal of the crime of robbery with homicide and without any mitigating or aggravating circumstances sentences him to suffer the penalty of death. However, since the death penalty is already abolished by the 1987 Constitution, his appropriate penalty would now be reclusion perpetua or life imprisonment, with the accessory penalties provided for by law to indemnify the heirs of the late Pat. Abdulmonim Aspi the sum of P10,000.00 representing his proportionate share without subsidiary imprisonment in case of insolvency and to pay the cost.

SO ORDERED.”[2]

At the trial, the prosecution presented Aliya Aspi, Garma Aspi, wife and sister of the victim Abdulmonim Aspi respectively, and one Barlie Tiblan, whose testimonies on the aggregate tended to establish the following facts:

Around 6:00 o'clock on the evening of 28 December 1988, appellant Hasiron together with Pokong Abdulmutalib and Jerry Hayudini went to the house of the deceased Abdulmonim Aspi. They asked to see Abdulmonim but were informed by Garma that the former was sleeping. Appellant and his companions then told Garma that they would return later. At around 7:00 o'clock that same evening, the trio returned and again asked to see the victim. Abdulmonim, after being apprised who his three (3) visitors were, went out of his house, followed by his wife Aliya, to talk to them. After the four (4) had been talking for a while, Pokong suddenly shot Abdulmonim twice on the chest. Abdulmonim fell on the ground and Pokong shot him again, this time in the head. Jerry Hayudini then entered the house and forthwith got the deceased's M-16 Armalite. Appellant for his part snatched the service pistol which was tucked in the victim's waist. The three (3) men then fled together from the scene. Abdulmonim was brought to the IPHO-Sulu Hospital but was declared dead on arrival. The family took the body home and washed and cleaned it in preparation for burial.

The prosecution also presented Rodolfo S. Ismael, Clerk II of the IPHO-Sulu Hospital, to identify the death certificate as well as the signature of Dr. Rashid Chin, resident physician at the Sulu Hospital. The death certificate indicated the cause of the death as gun shot wounds, more particularly described as follows: "(P)oint of Entry (R) Temporo-Parietal area. Point of Exit (L) Temporal area. Point of Entry (R) Parasternal area." [3]

Appellant, upon the other hand, tried to raise the defense of alibi. Appellant and his wife, Langka Asibon, both claimed that they were together the whole day of 28 December 1988 tending their store in a nearby public market and that they went home together after closing their store at the end of the day. They also testified that appellant did not leave their home that night.

Appellant is now before this Court alleging that:

- "1. The trial court erred in holding that accused--appellant Hadji Jaid Hasiron conspired with the two (2) other accused Pokong Abdulmutalib and Jerry Hayudini to rob patrolman Abdulmonim Aspi who was killed on the occasion thereof.
2. The trial court erred in concluding that "the other one" referred to by prosecution witness Mrs. Aliya Aspi was accused-appellant Hadji Jaid Hasiron who took the service pistol of her husband patrolman Abdulmonim Aspi.
3. The trial court erred in not giving credence to the defense of alibi raised by accused appellant Hadji Jaid Hasiron considering that the evidence for the prosecution clearly failed to establish his presence at the scene of crime at the time of its commission; and
4. The trial court erred in finding the accused?appellant guilty beyond reasonable doubt of the crime of robbery with homicide." [4]

Appellant claims that the trial court erred when it found the existence of conspiracy among the culprits, that finding not being based on positive and convincing evidence. [5]

There is conspiracy when two or more persons come to an agreement to commit a crime and decide to commit it. [6] Conspiracy, however, need not be established by direct evidence of an agreement among the conspirators, but may be proven through a series of acts done in pursuance of a common unlawful purpose. [7] The trial court's findings show that there was indeed a community of design evidenced by concerted acts of the three (3) accused:

"From the very start when the trio, the accused Hadji Jaid Hasiron, Jerry Hayudini and Pokong Abdulmutalib, went out to look for Pat. Abdulmonim Aspi there was already an agreement among them to confront the victim for something. They knew whom they were looking for and where to look for him. When they reached Pat. Abdulmonim Aspi's house, all the three of them went inside the house but when they were informed that Pat. Abdulmonim Aspi was still asleep, they immediately left but promised to return. When they did return about

7:00 that evening, Pat Abdulmonim Aspi was already awake and in answer to their call said Pat Abdulmonim Aspi went out of his house and the trio were able to talk to Pat. Abdulmonim Aspi, and when Pokong Abdulmutalib shot Par. Abdulmonim Aspi, the accused Hadji Jaid Hasiron and Jerry Hayudini stood by. Nobody moved to dissuade or stop him. Then Jerry Hayudini went inside the house to get the victim's armalite in one of the rooms while the accused Hadji Jaid Hasiron took the service pistol tucked to the waist of Pat. Abdulmonim Aspi. Then they also fled together after accomplishing their violent mission.”[8]

Admittedly, appellant did not himself deliver the fatal shots, but the culprits' collective action showed a common intent to commit the criminal act. Appellant is therefore properly held liable for the acts of his co-accused.[9] In *People v. Solis, et al.*,[10] the Court stressed that “whenever a homicide has been committed as a consequence, or on the occasion, of a robbery, all those who took part therein are liable as principals of the crime of robbery with homicide, although some did not actually take part in the homicide, unless it clearly appears that they endeavored to prevent the homicide.”[11] In the present case, appellant did not exert any effort to stop Pokong from killing the victim. Appellant, moreover, actively participated in the crime by divesting the victim of his handgun tucked in his waist.

Appellant, however, argues that there was no evidence that appellant and his companions' motive was to rob the victim, contending that “if their real motive were to commit robbery, they should have done it when they first went to the house of the victim” as it “would have been easier for them then to execute the unlawful act considering that the victim was then sleeping and they were already inside the house.”[12]

In *People v. Tolentino*,[13] the Court held that it is immaterial that homicide preceded the robbery where robbery was the real motive of the culprits. In the instant case, there is no reasonable doubt that a principal (though not necessarily the only) objective of the malefactors was to take away the firearms in the possession of the deceased policeman. They evidently knew that Abdulmonim had a firearm in his house, apart from the handgun tucked in his waist; Jerry Hayudini promptly and unerringly went inside the Aspi house and secured the M-16 armalite, while appellant pulled out the handgun from Abdulmonim's waist.

In his third assignment of error, appellant claims that the trial court erred in not giving credence to his defense of alibi considering that the prosecution witnesses had failed to establish his presence at the scene of the crime in view of the inconsistencies in the witnesses' testimonies.[14] Appellant attacked Aliya Aspi's testimony asserting the presence of discrepancies between her direct testimony and her statements on cross-examination as to her exact whereabouts at the time of the shooting. Appellant claims that on her direct testimony she stated she was standing at the gate when the victim was shot, while on cross examination she testified that when she arrived at the gate her husband had already been shot.

We have examined Aliya Aspi's testimony and find no such discrepancy. She had constantly stated that she was standing at the gate when her husband was shot. Appellant selectively cited portions of Aliya Aspi's testimony on cross-examination in an attempt to prove a discrepancy; however, a more complete reading of the testimony shows that the witness was indeed in a position to have witnessed the crime, to wit:

“Q: Since you said earlier in your direct examination that your husband was shot at the chest and head, who by the way, shot your husband?

A: It was Pokong.

Q: When you were there at the gate, did you see any of the three of them carrying firearm?

A: I did not mind which of them was carrying firearm, but when I came out they shot my husband.

Q: In other words, you arrived at the gate and then your husband was shot?

A: Yes, sir.

Q: Since he was shot at his chest and head, where was he shot first since you saw the assailant as you said?

A: He was first shot at his chest.

Q: How many times?

A: Twice.

Q: Afterwards?

A: When he fell down he was shot at his head.

Q: What did the other two do?

A: One of them entered our house.

Q: In other words, at that span of time when your husband was called, you immediately followed?

A: I followed but not near them because they are the relatives and friends of my husband.

Q: How far did you stop from the house to them since you said you did not go near them?

A: I was at the gate.

Q: Then when you arrive, your husband was shot?

A: Yes, sir.”[15] (Underscoring supplied)

Appellant also argues that Aliya Aspi had failed positively to pinpoint appellant as the one who had taken the deceased's service pistol. We have carefully gone over her testimony and agree with the Solicitor-General that:

“[T]he context of the whole testimony of Aliya Aspi justifies no other conclusion than that she was referring to appellant when she used the term ‘other one.’ She identified Pokong Abdulmutalib as the person who shot her husband. She identified Jerry Hayudini as one who went inside her house and took her husband's Armalite rifle. Therefore, when she stated that the ‘other one’ took her husband's handgun, she was obviously referring to appellant since Abdulmutalib and Hayudini had no other companion except appellant.”[16]

Appellant also questions the testimony of Garma Aspi, sister of Abdulmonim, as biased citing *People v. Recimiento*.^[17] A careful reading of that case shows that the Court there concluded that the witnesses were biased not only on the basis of their relationship with the victim but also because one potential witness who was not a relative had thoughtfully been omitted instead of being presented in court, to wit:

“If Romeo had delivered as many stabs on vital part of the body of the deceased, Freddie Tabañag who was with Frisco and the latter's brother would have seen Romeo's participation in the killing. Why did not the prosecution present Tabañag as a witness instead of presenting only the two sons of the deceased? As we have earlier stated Tabañag, if presented may come out with the truth and say that only Esperidion had a hand in the killing.”[18] (Underscoring supplied)

The general rule is, of course, that family relationship does not by itself render a witness' testimony inadmissible or devoid of probative value.^[19] This rule must be applied here, for wife and sister testified they were eyewitnesses to the robbery and shooting. Appellant has not even hinted at any motive that the victim's wife and sister might have falsely to accuse him of so grave an offense.

Considering, therefore, that appellant's presence at the scene of the crime had been affirmatively established, his defense of alibi must fail.^[20]

Appellant tried to justify his flight from his home in Liang, Patikul, Sulu by claiming that he did so only upon the advice of his cousin who was then mayor of Patikul.[21] It has been the constant holding of this Court that flight is indicative of guilt.[22] If appellant were really innocent, the natural thing for him to have done was to surrender and clear his name as soon as possible, instead of hiding out in some remote place for a year.[23] Moreover, the mayor of Patikul apparently advised appellant to flee while he (the mayor) negotiated with the victim's family to exclude appellant from the complaint. If so, then the mayor himself very probably believed appellant to be guilty.[24]

The award of civil damages made by the trial court is not in accordance with law and recent jurisprudence. Under current jurisprudence, civil indemnity for death is set at P50,000.00.[25] The trial court, however, fixed appellant's civil liability at only P10,000.00, that amount "representing his proportionate share." [26] The trial court overlooked the rule in Article 110 of the Revised Penal Code that principals shall be "severally (in solidum)" liable among themselves.[27]

Also, the trial court was in technical error in stating that "the appropriate penalty is reclusion perpetua or life imprisonment." Reclusion perpetua and life imprisonment are not synonymous; they have differing juridical implications. The reference to "life imprisonment" should be disregarded as falsa descriptio.[28] The reference of the trial court to the death penalty as "already abolished by the 1987 Constitution" should be similarly disregarded. What the Constitution (Article III [19] [1]) does command is that the death penalty shall not "be imposed;" and "abolition" is not juridically the same thing as "non-imposition." [29]

WHEREFORE, the Decision of the trial court dated 11 April 1991 is hereby AFFIRMED with the following modifications: appellant's civil damages is INCREASED to P50,000.00; and the phrase "representing his proportionate share" and the term "life imprisonment" are DELETED from the dispositive portion of the decision. No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Nocon, and Campos, Jr., JJ., concur.

[1] Records, p. 1.

[2] Trial Court Decision, p. 22.

[3] Records, p. 12.

[4] Appellant's Brief, p. 1.

[5] Appellant's Brief, p. 7.

[6] Revised Penal Code, Article 8.

[7] *People v. Ancheta*, 148 SCRA 178 (1987); *Lozano v. Court of Appeals*, 193 SCRA 525 (1991).

[8] Trial Court Decision, p. 20.

[9] *People v. Repe*, 175 SCRA 422 (1989); *People v. Rojas*, 147 SCRA 169 (1987).

[10] 128 SCRA 217 (1984). See also *People v. Bartulay*, 192 SCRA 621 (1990), *People v. Salvador*, 163 SCRA 574 (1988); *People v. Santillan*, 157 SCRA 534 (1988).

[11] 128 SCRA at 228-229.

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

[13] 165 SCRA 490 (1988).

[14] Appellant's Brief, p. 11.

[15] TSN, 11 October 1990, pp. 23 and 24.

[16] Appellee's Brief, p. 33.

[17] 128 SCRA 95 (1984).

[18] 128 SCRA at 100.

[19] *People v. Bandoquillo*, 167 SCRA 549 (1988).

[20] *People v. Magdahong*, 176 SCRA 262 (1989).

[21] Appellant's Brief, p. 10.

[22] *People v. Lagahan*, 168 SCRA 346 (1989); *People v. Caluba*, 141 SCRA 371 (1986).

[23] See, generally, *People v. Ebor* (141 SCRA 286 [1986]) where the Court held that evasion of arrest for three (3) years is indicative of guilt.

[24] See Trial Court Decision, p. 19.

[25] *People v. Sison*, 189 SCRA 643 (1990).

[26] Trial Court Decision, p. 22.

[27] *People v. Tirol*, 102 SCRA 558 (1981); *People v. Ragas*, 44 SCRA 152 (1972).

[28] *People v. Baguio*, 196 SCRA 459 (1991). See, generally, *People v. Del Pilar*, 188 SCRA 37 (1990).

[29] See *People v. Benitez*, 202 SCRA 479 (1991); *People v. Badilla*, 185 SCRA 554 (1990); *People v. Deslate*, 192 SCRA 644 (1990); *People v. Muñoz*, 170 SCRA 107 (1989).

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