

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BENNIE SOTES Y CUNAHAP AND DEOGRACIAS APE,
ACCUSED-APPELLANTS.**

G.R. No. 101337. August 07, 1996

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The eighteenth day of May of every year is a special day for the residents of Sitio Lawis Barangay Alimango, Escalante, Negros Occidental. On this day, they celebrate their annual fiesta with the usual fanfare and day-long festivities. On May 18, 1989, however, their annual celebration was marred by a revolting tragedy. Virgilio Lumayno, Sr., a resident of Sitio Lawis, was killed by three barangay mates during the evening dance party.

As early as nine in the evening of the said date, many residents gathered at the dance hall of Sitio Lawis to watch the coronation of the sitio's queen and "princessitas" and/or to attend the dance party. Among those who came early were Simplicio Abibas and Flocerfida Sante.[1]

At around ten that same evening, Deogracias Ape alias "JoeJoe," a civilian guard at a fishpond owned by Rogello Ramos, entered the dance hall brandishing his revolver. When Virgilio Lumayno, Sr., a volunteer peace-keeper at the dance hall, saw this, he approached Ape and told him not to publicly wave his handgun as this might frighten the guests thereat. Apparently irked by Lumayno's admonition, Ape grumbled, then walked away and went out of the dance hall.[2]

Around twelve midnight to one-thirty early morning of May 19, 1989, the coronation of the fiesta's queen and "princessitas" was had.[3]

After the coronation, the dance hall was again cleared for dancing. Between one-thirty to two in the morning, Ape reentered the dance hall. This time, he was accompanied by Bennie Sotes and a certain alias "Buroburo," his co-guards at the fishpond. Both were armed with long firearms, Sotes with an M-16 armalite rifle and "Buroburo" with a single shot rifle.[4] Sotes and "Buroburo" went directly to where Lumayno was while Ape positioned himself at the gate of the dance hall. Without any warning, Sotes whipped Lumayno's forehead with the barrel of his M-16 rifle. "Buroburo," on the other hand, struck Lumayno's abdomen with the butt of his rifle. As Lumayno staggered, Sotes hit him again on his left shoulder with the butt of his armalite. With his hands up, Lumayno tried to run away but he was shot in the back, just above the waistline, by "Buroburo." Lumayno fell to the ground face down. "Buroburo" shot him again, this time hitting his buttocks. Sotes then poked his armalite at the now motionless Lumayno and fired but the bullet jammed thus prompting him to draw a revolver from his waist and shoot Lumayno at the back of his head.[5]

While Sotes and "Buroburo" were assaulting Lumayno, Ape, as stated, positioned himself at the gate of the dance hall. He aimed his gun at the stunned people around, who either scampered for cover or stayed inside the dance hall. (Abibas and Sante were among those who stayed inside despite the incident). He warned them not to intervene in the fight,[6] otherwise, he would shoot them.

Confident that Lumayno was dead, the trio quickly left the crime scene. Concerned residents of Sitio Lawis then came to Lumayno's aid but were too late. After finding him lifeless, they notified his wife of his tragic death.

The post-mortem examination of Lumayno's cadaver conducted by Dr. Josephus Jubal revealed the following findings, to wit:

GUNSHOT WOUNDS;

1) Head - Entrance wound - nuchal area; Exit - none.

2) Lumbar area right - Entrance wound - right lateral flank;

Exit wound - lower back.

* Severing psoas muscles blood vessels and Lumbo-Sacral vertebra.

* Contusion-Hematoma:

1) Forehead

2) Epigastric area.[7]

On July 5, 1989, an information for murder was filed against Bennie Sotes, Deogracias Ape alias "Joe Joe" and one alias "Buroburo" before the Regional Trial Court of San Carlos City, Negros Occidental, Branch 58. The indictment[8] reads:

That on or about the 19th day of May, 1989, in the municipality of Escalante, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the first above-named accused, in company of his co-accused Joejoe Ape and another one, whose true name is still unknown and herein designated only as Alias "BUROBURO," both of whom are still at large, armed with M16 rifle, a single shot rifle with M16 ammunitions and a revolver, conspiring, confederating and mutually helping one another, with evident premeditation and treachery, taking advantage of their superior strength, with intent to kill, did then and there, wilfully, unlawfully and feloniously attack, assault, strike, hit and shoot one VICENTE LUMAYNO, SR., thereby inflicting multiple injuries upon the body of the latter, which caused the death of said victim.

Contrary to law.[9]

On arraignment held on August 9, 1989, accused Bennie Sotes entered a plea of "not guilty" to the offense charged.[10] Deogracias Ape, however, was arrested later on and was arraigned only on February 7, 1990. He, likewise, entered a plea of "not guilty." [11] "Buroburo" remains at large.

After trial, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, FINDING the accused Deogracias Ape and Bennie Sotes, both GUILTY of the crime of Murder punished under Art. 248 of the Revised Penal Code, the Court hereby sentences them to LIFE IMPRISONMENT to indemnify the heirs of the deceased the sum of P30,000.00 and to pay costs of suit.

The .38 cal. revolver surrendered by accused Bennie Sotes to the INP, San Carlos City, is hereby confiscated as instrument of the crime and shall be disposed with in accordance with law.

SO ORDERED.[12]

Obviously aggrieved by the ruling, the accused interposed the present appeal predicated on this sole assignment of error, viz:

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS DEOGRACIAS APE

AND BENNIE SOTES Y CUNAHAP GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.[13]

We affirm the findings of the trial court and sustain the conviction of herein appellants.

Reviewing the records, we find that the prosecution has proved beyond doubt that the appellants and a certain "Buroburo" killed Virgilio Lumayno, Sr. They were positively identified by two eyewitnesses - Simplicio Abibas and Flocerfida Sante. The testimonies of these two eyewitnesses corroborate each other in all material and relevant aspects. The same are clear, straightforward, categorical and consistent, without any tinge of falsehood or sign of fabrication.

Appellants put in issue the credibility and competency of the two eyewitnesses. It is well established that the trial court's calibration of the credibility of witnesses could not be disturbed on appeal since said court is in a better position to decide the question, having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value, which, if considered, could alter and affect the result of the case.[14] In the case at bar, we find no reason to depart from this rule given the trustworthiness of the testimonies of the witnesses.

As we have mentioned earlier, eyewitnesses Simplicio Abibas and Flocerfida Sante positively identified the appellants and a certain "Buroburo" as the malefactors. In her testimony, Flocerfida Sante narrated the events that transpired that late night clearly and in a detailed fashion, thus:

"X X X X X XXX

Q.

On May 19, 1989, at 2:00 o'clock dawn, can you recall where were you?

A.

I was at the dance hall.

Q.

Where is this dance hall located?

A.

Sitio Lawis, Brgy. Alimango, Escalante, Negros Occidental.

Q.

Why did you go in that place?

A.

Because my daughter was one of the candidates for princessita.

X X X X X XXX

Q.

Could you tell us, more or less, what time in the evening did the coronation start?

A.

Twelve o'clock (12:00) in the evening.

Q.

Up to what time was the coronation finished?

A.

About 1:30.

Q.

After the coronation could you tell us if there was still a dance?

A.

Yes, sir.

Q.

At about 2:00 o'clock dawn of May 19, 1989, where were you?

A.

I was still there because we were watching the dance.

Q.

While you were watching the dance, could you recall of any unusual incident?

A.

Yes, Sir.

Q.

Will you please tell the Honorable Court what was the unusual incident about?

A.

I saw the 2 accused, Bennie Sotes and Buroburo who entered the dance hall and mauled Virgilio Lumayno, Sr., while Joejoe Ape was already at the gate when the 2 accused entered the dance hall.

xxx xxx xxx

Q.

Will you please demonstrate to us, how Bennie Sotes mauled Virgilio Lumayno Sr.?

A.

Witness is demonstrating to us, how Bennie Sotes whipped the barrel of the armalite to Virgilio Lumayno, Sr., and Buroburo struck Virgilio Lumayno, Sr., with the barrel of his gun.

xxx xxx xxx

Q.

In the course of the mauling, what did Virgilio Lumayno, Sr., do when being mauled by the 2 accused?

A.

He attempted to run but he was shot by Buroburo at the back of his waistline.

xxx xxx xxx

Q.

What happened to Virgilio Lumayno, Sr.?

A.

He fell down and when he was on the ground he was shot again and was hit at the buttocks.

Q.

Who fired the second shot?

A.

Buroburo.

Q.

After he was hit by Buroburo, what did Virgilio Lumayno, Sr. do?

A.

Bennie Sotes fired his armalite to Virgilio, but it stucked up so he got his gun from his waist and shot Virgilio which was hit at the upper right side of his nape.

xxx xxx xxx

Q.

Could you tell us where is this Virgilio Lumayno, Sr. now?

A.

Already dead.

Q.

Could you tell us, if you know, what was the cause of his death?

A.

Gunshot wounds.

xxx xxx xxx

Q.

Is it not that when the melee begun, the people scampered?

A.

The people ran away.

Q.

When these people ran away, you were also one of them who ran away in this incident? Is it not?

A.

I was not able to run because my daughter was there and carrying a bag so I have to stay.[15]

The foregoing testimony of Flocerfida Sante was substantially corroborated by another eyewitness, Simplicio Abibas, who testified in this wise:

Q.

Could you recall as to where were you in the evening of May 18, 1989?

A.

Yes, sir.

Q.

Where were you in the evening of May 18, 1989?

A.

I was there at about 9:00 o'clock.

Q.

You said, "I was there". Where?

A.

At the dance hall.

Q.

Where is that dance hall situated?

A.

Sitio Lawis, Brgy. Alimango, Escalante, Negros Occidental.

Q.

What was your purpose in going to the dance hall?

A.

I was there because my grandson was one of the escort of the princessitas.

xxx xxx xxx

Q.

While at the dance hall, you said you went there. What time?

A.

About 9:00 o'clock after supper.

Q.

When you were there, did you have any chance to see or meet the accused, Deogracias Ape alias Joejoe?

A.

Yes, sir.

Q.

What was he doing when you first saw him?

A.

He was doing foolishness at the dance hall.

Q.

What was he doing?

A.

He was holding a revolver and brandishing it.

Q.

x x x, what happened while Deogracias Ape alias Joejoe was brandishing his revolver?

A.

Virgilio Lumayno, Sr., advised him to stop.

Q.

After that what happened next?

A.

He grumbled.

Q.

Where did he go?

A.

I don't know.

xxx xxx xxx

Q.

Were there no policemen at that time?

A.

No, sir.

Q.

Were there unusual incident that happened after the barangay captain went home (after the coronation)?

A.

Yes, Bennie Sotes, Joejoe Ape and Buroburo went to the dance hall.

Q.

When you said Joejoe Ape, Bennie Sotes and Buroburo, you mean the 3 accused in this case?

A.

Yes, sir.

Q.

When you entered the dance hall, what did you see on these 3 accused, Bennie Sotes, Joejoe Ape and Buroburo?

A.

They went inside the dance hall with firearms.

Q.

When you said, "they went inside the dance hall carrying firearms", do you know the firearms they were carrying?

A.

Yes, sir.

Q.

What was the firearm of Bennie Sotes?

A.

Armalite.

Q.

How about Deogracias Ape, what was he carrying?

A.

A revolver.

Q.

How about the accused Buroburo?

A.

Witness is demonstrating the firearm Buroburo is carrying which is more or less 2-1/2 feet in length.

Q.

When these 3 accused entered the dance hall, could you tell us, where did Deogracias Ape station himself?

A.

Deogracias Ape stayed at the gate of the dance hall.

Q.

What was his weapon?

A.

A revolver.

Q.

How about Bennie Sotes?

A.

An armalite.

Q.

How about Buroburo?

A.

He was bringing along with him a long arm which is about 2 1/2 feet.

Q.

When Bennie Sotes and Joejoe Ape entered the dance hall, what transpired?

A.

They went to Virgilio Lumayno, Sr., and mauled him.

Q.

What did they use in mauling Virgilio Lumayno, Sr.?

A.

The barrel of the firearm.

Q.

Was Virgilio Lumayno, Sr., provided with weapon at that time?

A.

No, he has no gun.

Q.

x x x, in the course of mauling Virgilio Lumayno, Sr., what did you witness?

A.

What I saw with Joejoe Ape was a revolver.

Q.

x x x, what did Virgilio Lumayno, Sr., do when the accused Bennie Sotes and Buroburo mauled him because according to you, he was not provided with weapon at that time?

A.

He tried to defend himself with his hands up.

Q.

What else happened?

A.

Buroburo thrust the barrel of his gun and at the same time pulling the trigger.

Q.

Did the gun fire?

A.

Yes, sir.

Q.

Was Virgilio Lumayno, Sr., hit when the gun fired?

A.

Yes, he was hit at the back.

Q.

After Virgilio Lumayno, Sr., was hit at the back, what happened to Virgilio Lumayno, Sr.?

A.

Virgilio Lumayno, Sr., fell on the ground.

Q.

When he fell to the ground, what happened?

A.

He was shot again and was hit at the buttocks.

Q.

After Buroburo shot Virgilio Lumayno, Sr., and was hit at the buttocks, what did Virgilio Lumayno, Sr., do?

A.

Virgilio Lumayno, Sr., tried to get up but Bennie Sotes got his revolver and fired him at the head.

Q.

Was Virgilio Lumayno, Sr., hit?

A.

Yes, sir.

Q.

In what portion of his body was he hit?

A.

He was hit at the back portion of his head.

Q.

What happened to Virgilio Lumayno, Sr., when he was shot by Buroburo and was fired again by Bennie Sotes?

A.

He died.

Q.

While Bennie Sotes and Buroburo were mauling Virgilio Lumayno, Sr., and ultimately fired shots, where was Joejoe Ape?

A.

He was near them, and was preparing for a fire to anybody who will get near them.

Q.

How do you know that Joejoe Ape would fire a shot to anybody who will get near them?

A.

Because he shouted, "Don't intervene, anybody who is not involved."

Q.

Who shouted, "don't intervene, anybody who is not involved?"

A.

Joejoe Ape.[16]

The Court entertains no doubt that the two eyewitnesses actually saw how Lumayno, Sr. was slain and who performed the deed. Though there is no proof of a previous agreement by the three assailants to commit the crime, conspiracy is evident from the manner of its perpetration. It is a settled rule that conspiracy need not be proved by direct evidence of prior agreement on the commission of the crime as the same can be inferred from the conduct of the accused before, during, and after commission of the crime, showing that they acted in unison with each other, evincing a common purpose or design.[17]

From the detailed account of the eyewitnesses, appellant Ape, armed with a firearm, positioned himself at the gate of the dance hall ready to shoot anybody who would intervene while appellant Sotes and "Buroburo" were simultaneously attacking Lumayno, Sr. It is evident, therefore, that the presence of the accused as a group, each of them armed, undeniably gave encouragement and a sense of security and purpose among themselves.[18] Where conspiracy is established, the act of one is the act of all.

Similarly, there is nothing on the records to show why witnesses Sante and Abibas would falsely testify against the malefactors. In a vain attempt to discredit them, appellants contended that they are unreliable and untrustworthy witnesses because they are related to the victim. This argument has long been discredited by the Court. There is no provision of law that disqualifies relatives of a victim of a crime from testifying about the facts and circumstances of the crime.[19] Mere relationship of a witness to the victim, whether by consanguinity or affinity, does not necessarily impair his credibility as a witnesses;[20] neither does it impair his positive and clear testimony and render it unworthy.[21] On the contrary, relationship with a victim would deter a witness from indiscriminately implicating anybody to the crime. His natural and usual interest would be to identify the malefactor and secure his conviction to obtain true justice for the death of a relative.[22] This is specially so when the witnesses were present at the scene of the crime,[23] as in the case at bar.

On the appellants' defense of alibi and denial, it will suffice to say that said defenses cannot prevail over their positive identification by the eyewitnesses who had no improper motive to falsely testify against them[24] as we have mentioned above. Besides, there is no evidence to show that the alleged whereabouts of the appellants at the time of the killing were far enough to forfeit the possibility of their being at the scene of the crime.

One final note. The fallo of the assailed decision sentences the appellants to suffer the penalty of "life imprisonment" and to indemnify the heirs of Vicente Lumayno, Sr. the sum of P30,000.00. In view of recent jurisprudence[25] and Administrative Circular No. 6-A-92 amending Administrative Circular No. 6-92 dated October 12, 1992, the correct penalty should be reclusion perpetua in accordance with Article 248 of the Revised Penal Code. The indemnity of P30,000.00 should be increased to P50,000.00, likewise in line with established jurisprudence.[26]

WHEREFORE, the appeal is DISMISSED and the appealed decision is AFFIRMED with the modification that the appellants Bennie Sotes and Deogracias Ape are sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of Vicente Lumayno, Sr. the sum of P50,000.00. No costs.

SO ORDERED.

Padilla (Chairman), Vitug, and Hermosisima, Jr., JJ., concur.
Bellosillo, J., is on leave.

[1] TSN, March 13, 1990, pp. 8-9 and 38-39.

[2] Id., at 10-11 and 39-40.

[3] Id., at 11-12 and 40.

[4] Id., at 12 and 41.

[5] Id., at 12-16 and 42-44.

[6] Id., at 42 and 44.

[7] Exhibit "A," Original Records, p. 2.

[8] The Information was later amended and the name of Joe-Joe Ape was changed to Deogracias Ape.

[9] Original Records, p. A.

[10] Id., at 19-20.

[11] Id., at 63.

[12] Decision, p. 7; Original Records, p. 155.

[13] Appellant's Brief, p. 1; Rollo, p. 42.

[14] People of the Philippines v. Ferdinand Juan, G.R. No. 113710, March 7, 1996; People of the Philippines v. Marlo Rodico, G.R. No. 107101, October 16, 1995; People v. Repollo, 237 SCRA 476 [1994]; People v. Arce, 227 SCRA 406 [1993]; People v. Andasa, 206 SCRA 636 [1992].

[15] See Note 1, supra, pp. 8-18 & 28.

[16] Id., at 38-44.

[17] George Arceno v. People of the Philippines, G.R. No. 116098, April 26, 1996; People v. Zafra, 237 SCRA

669 [1994].

[18] Arceno v. People, see note 17 supra.

[19] People of the Philippines v. Abulkhair Patamama, G.R. No. 107938, December 4, 1995; Angelo v. Court of Appeals, 210 SCRA 402 [1992]; People v. De la Cruz; 207 SCRA 632 [1992].

[20] People of the Philippines v. Morales, 241 SCRA 267 [1994].

[21] People of the Philippines v. Felixberto Francisco, G.R. No. 99058, October 25, 1995.

[22] People of the Philippines v. Juan, see note 14, supra.

[23] People of the Philippines v. Jacolo, 216 SCRA 631 [1992].

[24] People of the Philippines v. Flores, 239 SCRA 83 [1994]; People v. Bongadilla, 234 SCRA 233 [1994]; People v. Lug-an, 229 SCRA 308 [1994].

[25] People of the Philippines v. Adronico Gregorio, G.R. Nos. 109614-15, March 29, 1996; People v. Ruelan, 231 SCRA 660 [1994]; see also cases mentioned therein.

[26] People of the Philippines v. Adronico Gregorio, see note 25 supra; People of the Philippines v. Felixberto Francisco, see note 21, supra, and People v. Sison, 189 SCRA 643 [1990].

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