

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGER GENIAL AND RAUL SALVA, ACCUSED. RAUL SALVA, ACCUSED-APPELLANT.

G.R. No. 105692. December 07, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

The accused-appellant herein, Raul Salva, was convicted of murder by the Regional Trial Court, Branch 32, of Surigao City in Criminal Case No. 3394 thereof and was sentenced to suffer the penalty of reclusion perpetua and its accessory penalties, to indemnify the heirs of the victim, and to pay actual damages for burial expenses, as well as the costs.

This case goes back to an indictment for murder filed on April 16, 1991 against appellant Raul Salva and his co-accused, Roger Genial, wherein it was alleged -?

"That on the 1st day of March 1991, at or about 4:00 o'clock in the afternoon, in Brgy. Roxas, municipality of Mainit, province of Surigao del Norte and within the jurisdiction of this Honorable Court accused (Roger Genial and Raul Salva) conspiring, confederating and helping one another with all freedom, intelligence, criminal intent and intent to kill, did then and there voluntarily, unlawfully and felon(i)ously with treachery and evident premeditation attack, assault and stab Benjamin Amar inflicting upon the victim injuries which per post mortem report are described as follows:

'Stab Wound - located at the left 4th intercostal space, midclavicular line, measuring about 1.5 inches from the left nipple.

Abrasion, linear - located at the left hypochondriac region measuring about 1.5 inches in length.

Stab wound - located at the left portion of the back about 13 cm. below the subscapular region and 2 cm. from the verte(b)ral column, measuring about 1.5 cm. in length and 2.5 cm. in depth.

Contusion - hematoma - located at the left portion of the back about 20 cm. from the subscapular region and 2 cm. from the vertebral column.'

which injuries caused the immediate death of Benjamin Amar consequently inflicting as well actual, moral and compensatory damages in the sum of P80,000.00.

This killing is attended by the qualifying circumstance of treachery and the aggravating circumstances of evident premeditation and superiority."[1]

On pleas of not guilty[2] and after trial on the merits, appellant Salva was found guilty of murder while Genial was found guilty of slight physical injuries, and the following judgment was promulgated by the court below:

"WHEREFORE, the Court finds accused Raul Salva guilty beyond reasonable doubt as principal of murder under Art. 248 of the Revised Penal Code, the killing of the victim being qualified by treachery, and there

being no modifying circumstance to consider, hereby sentences him to reclusion perpetua and its accessory penalties; and to pay the costs. Raul Salva is ordered to indemnify the heirs of the victim Benjamin Amar in the sum of P50,000.00, and to pay actual damages for burial expenses of P13,389.00.

Accused Roger Genial is hereby found guilty beyond reasonable doubt of slight, physical injuries and is hereby sentenced to ten (10) days of arresto menor."^[3]

From the evidence of the prosecution, it appears that at about 4:30 P.M. of March 1, 1991 while the victim, Benjamin Amar, was walking along a street in Barangay Roxas, Mainit, Surigao del Norte, accused Roger Genial confronted Amar and asked "Why do (sic) you report me to the barangay captain?".^[4] Without waiting for an answer, Genial immediately boxed Amar hitting him on the left side of his face. Genial then grabbed the bolo which was tucked at the side of Amar and they grappled for its possession. While they were fighting, people started to mill around them.

Thereafter, Genial fell and Amar sat on top of him, while the former still continued to struggle. What transpired subsequently was recounted by prosecution witness Juan Paramo, Jr. in his testimony during the trial, thus:

"Q: And when Roger Genial fell down, what hap-pened next?

A: Then I saw Raul Salva stabbed (sic) the back of Benjamin Amar.

Q: Let us make this clear. You said Benjamin Amar and Roger Genial were grappling (with) each other and Roger Genial fell. When Roger Genial fell, where was Benjamin Amar?

A: He was at the top (sic) of Roger Genial.

Q: Was he sitting or standing?

A: He was sitting. Benjamin Amar was sitting on top of Roger Genial.

Q: While Benjamin Amar was sitting on top of Roger Genial, what were they doing aside from Benjamin Amar sitting on top of Roger Genial?

A: They were grappling for the possession of a bolo.

x x x

Q: This Raul Salva you mentioned, where was he while Roger Genial and Benjamin Amar were grappling (for) possession of the bolo?

A: At the back of Benjamin.

Q: And after that, what happened next?

A: Then he stabbed Benjamin Amar.

x x x

Q: After that, what happened next, after stab-bing Benjamin Amar at the back?

A: Then he pulled and stabbed him.

(Witness indicating the front of his breast.)

x x x

Q: After the stabbing on the chest or in front of the body of Benjamin Amar, what happened next?

A: Raul Salva ran away.

x x x

Q: How about Roger Genial?

A: He was there in front.

Q: And after that what happened next?

A: Then Roger Genial left Benjamin Amar who was already down."[5]

Another prosecution witness, Pepino Tecson, had theretofore given testimony of the same tenor as the aforequoted narration of Paramo, particularly on how Amar was stabbed by Salva, in all its material parts and with substantial details.[6]

The victim was later brought to the Mainit Medicare Hospital where he died. Dr. Lourdes Alabat of said hospital, who performed the post mortem examination, attributed the victim's death to "severe internal and external hemorrhage secondary to stab wounds."[7]

The prosecution likewise presented the victim's widow, Wella Ellazo Vda. de Amar, who testified on the expenses she incurred for the burial of her husband and other miscellaneous expenses in connection therewith, aside from the factual bases for her claim for moral damages.[8]

The defense, on the other hand, presented a different account. To sustain the pleas of not guilty of both accused at their arraignment, Genial declared in open court that he stabbed Benjamin Amar allegedly in self-defense and further claimed that Raul Salva had nothing to do with the death of Amar. Genial also claimed that he went to Eleodoro Francisco, a barangay councilman, in order to surrender.[9]

The defense also presented Station Commander Edinio Canangcaan who confirmed the testimony of Genial that he went to Francisco after the stabbing incident and thereafter readily surrendered to the arresting officers. Canangcaan also testified that the victim was a violent person who had stabbed a woman in a separate incident in April, 1990.[10]

Appellant Salva and defense witness Benigno Namilit, for their part, concurred in their version that on March 1, 1991, at around 4:30 P.M., they were together in a ricemill, looking for ricefield workers, when they saw Amar calling Genial. As Genial approached Amar, the latter suddenly hacked Genial who, however, was able to evade the blow. It was during the time when Genial and Amar were wrestling for the possession of the bolo that Salva and Namilit "ran away because they were afraid of the incident."[11]

The trial court declared that "after weighing the merits of the respective claims, the court finds and holds for the prosecution. First, at least three prosecution witnesses, namely: Pepino Tecson, Juan Paramo, Jr. and Bonifacio Mota identified Raul Salva as the person who stabbed Benjamin Amar. x x x. Furthermore, there was no showing that the prosecution witnesses had harbored any grudge or personal resentment against the accused. On the contrary, they clearly appeared to have testified in the interest of truth and justice x x x."[12]

The court a quo additionally observed that it was quite obvious that Roger Genial was being made the "fall guy" in view of his claim of self-defense which, if accepted, would exculpate both accused. It noted that any admission that Salva participated in the stabbing would be fatal to the posture of self-defense put up by Genial. It accordingly concluded that said claim appeared to be a "last-ditch ploy" to completely evade criminal responsibility for the death of Benjamin Amar, hence it must be disallowed.[13]

However, the lower court also rejected the People's allegation of conspiracy since, in its own words, "the record is

bereft of facts and circumstances indicative of a conspiracy between the accused. There was no showing that they were seen together at the rice mill before the incident. Although both were in the vicinity of the rice mill, there was no testimony that they were in the same group. It was only during the actual stabbing that Raul Salva appeared apparently from nowhere to participate in the fray between Amar and Genial." [14]

Now, this appeal concerns Raul Salva only, since Roger Genial was sentenced to suffer ten days of *arresto menor* and was subsequently released on June 4, 1992. [15] Said appellant, in seeking reversal, imputes, errors to the trial court which may be consolidated into its allegedly having erred in (1) finding him guilty beyond reasonable doubt as a principal in the murder charge, although accused Roger Genial owned and admitted the killing of the victim; and (2) relying heavily on the prosecution witnesses notwithstanding the admission of the widow of the victim that she paid P700.00 to them so that they would testify. [16]

As is readily apparent, the verdict to be handed down in this case hinges on the issue of the credibility of the prosecution and defense witnesses. On this score, we start off with the trite but well-settled rule that on the matter of credibility of witnesses the findings of the trial court are given weight and the highest degree of respect by appellate courts. This is because logic and experience show that the former is in a better position to decide the question, having heard the witnesses themselves and observed their deportment during the trial. [17]

The testimonies of the three witnesses, Pepino Tecson, Juan Paramo, Jr. and Bonifacio Mota, who witnessed the crime a few meters away and in broad daylight, were clear and positive. They gave vivid descriptions on how appellant Salva stabbed Amar. They unerringly and unequivocally identified appellant as the perpetrator thereof. They all remained consistent under extensive cross-examination and their testimonies mutually corroborated the facts each of them narrated.

Appellant contends that the lower court erred in finding him guilty of the crime charged by relying heavily on the testimonies of prosecution witnesses who were allegedly paid P700.00 by the widow of the victim. Yet while it is true that Mrs. Wella Ellazo Vda. de Amar testified that she spent P700.00 for the witnesses, this matter was sufficiently clarified by her explanation that such amount was actually used "for fare and food expenses" of the witnesses during the trial of the case. [18]

Moreover, there was no evidence whatsoever of any ulterior or ill motives on the part of the witnesses to falsely testify against appellant. In fact, the trial court itself found that "there was no showing that the prosecution witnesses had harbored any grudge or personal resentment against the accused. On the contrary, they clearly appeared to have testified in the interest of truth and justice". [19] As this Court has ruled in a recent case, in the absence of ill will, it is hardly credible that these witnesses would prevaricate and cause damnation to one who had brought them no harm or injury. [20]

Appellant Salva denied participation in the crime, insisting that he was with defense witness Namilit and they both ran away because they were afraid. This claim hardly deserves any consideration because aside from the fact that Salva was positively identified by three eyewitnesses, the defense failed to show that after Salva supposedly left, it was physically impossible for him to have returned to the scene of the crime shortly thereafter. Furthermore, the prosecution presented witness Bonifacio Mota who testified that he did not see Namilit but that he saw "Bingbing Salem and Roger Genial" [21] with Salva on that fateful day. No sur-rebuttal witness was presented by the defense to counter said contention of Mota. All told, appellant's denial, therefore, cannot prevail over the positive and credible testimony of the prosecution witnesses that he committed the crime. [22]

Finally, a careful examination of the records shows that prosecution witnesses Paramo, Jr. and Mota clearly testified that appellant Salva used his left hand in stabbing Amar. [23] Genial, while claiming that he was the one who stabbed the victim, nevertheless admitted that he is right-handed. [24] This *faux pas* reveals the fact that it

was not Genial who stabbed Amar since the witnesses clearly established that the culprit is a left-handed person. Yet the defense utterly failed to explain these discrepancies, nor did appellant Salva attempt to establish that he is dextral, not sinistral, and thereby discredit the prosecution witnesses. As we held in *People vs. Hatton*,^[25] the fact that the accused is left-handed and the witness testified that assailant stabbed the victim with the right hand is not a trivial matter.

We agree with the lower court that the record is bereft of evidence or factual indications of a conspiracy between the accused. As we ruled in *People vs. Padrones, et al.*,^[26] conspiracy transcends companionship. For, conspiracy has as an essential ingredient the alleged association of all the accused in the planning and commission of the crime.^[27] In the case at bar, there is no evidence to show that Salva and Genial came to an agreement concerning the commission of a felony and thereafter decided to commit it. In the absence of a conspiracy, it is elementary that each of the accused is responsible only for the consequences of his own act.

The lower court held that the stabbing to death of the victim by appellant Salva was qualified by treachery just because it was sudden and unexpected and calculated to insure its accomplishment without risk to the assailant. We do not agree.

For treachery to be appreciated, two requisites must concur, namely, (1) that at the time of the attack, the victim was not in a position to defend himself; and (2) that the offender consciously adopted the particular means, method or form of attack employed by him.^[28] The mere fact that the attack was sudden and unexpected does not show treachery, unless there is evidence that such form of attack was purposely adopted by the accused. There must be evidence showing that the accused reflected on the means, method and form of killing the victim.^[29] This cannot be said in a situation where the slayer acted instantaneously upon the advantage which resulted from the accidental fall of the person slain.^[30]

In the present case, the circumstances negate the hypothesis that appellant Salva reflected on the means that he adopted in killing the victim, hence *alevosia* evidently cannot be appreciated against him. Neither can the crime be qualified to murder just because the information alleges abuse of superiority. The evidence does not show that the two accused cooperated in such a way as to secure advantage from their combined strength.^[31] The fact that they did not conspire to kill the deceased implies that they did not jointly exploit their superior strength.^[32] With much more reason should evident premeditation be disregarded as no evidence was presented to prove any of its elements. Lastly, superiority and evident premeditation were alleged in the information only as aggravating, and not qualifying, circumstances.

It has always been our jurisprudential policy that circumstances which would qualify the killing to murder must be proved as indubitably as the crime itself. In the absence of any proven qualifying circumstance in this case, we hold that the crime committed by appellant is simple homicide, without any aggravating or mitigating circumstance attendant to its commission.

WHEREFORE, the judgment of the lower court is hereby MODIFIED and accused-appellant Raul Salva is declared guilty of the crime of homicide. He is hereby sentenced to serve an indeterminate penalty of ten years of prison mayor, as minimum, to seventeen years and four months of reclusion temporal, as maximum; to indemnify the heirs of the victim Benjamin Amar in the amount of P50,000.00; and to pay actual damages of P13,389.00 for burial and related expenses.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

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- [1] Original Record, 1.
- [2] Ibid., 17.
- [3] Ibid., 70; per Judge Diomedes M. Eviota.
- [4] TSN, July 31, 1991, 6.
- [5] TSN, September 24, 1991, 18-21.
- [6] Ibid., July 31, 1991, 3-11.
- [7] Ibid., September 24, 1991, 7.
- [8] TSN, September 25, 1991, 4-6.
- [9] Ibid., October 31, 1991, 12-14.
- [10] Ibid., id., 6-7.
- [11] TSN, October 30, 1991, 5-7, 15-17.
- [12] Original Record, 67-68.
- [13] Ibid., 68.
- [14] Ibid., 69.
- [15] Ibid., 79.
- [16] Brief for the Defendant-Appellant, 1-2; Rollo, 24-25.
- [17] *People vs. Kintuan*, 156 SCRA 195 (1987); *People vs. Trigo*, 174 SCRA 93 (1989).
- [18] TSN, September 25, 1991, 7.
- [19] Original Record, 68.
- [20] *People vs. Villagracia, et al.*, G.R. No. 94471, March 1, 1993.
- [21] TSN, December 16, 1991, 12.
- [22] *People vs. Pasiliao, et al.*, 215 SCRA 163 (1992).
- [23] TSN, September 24, 1991, 27; September 25, 1991, 10.
- [24] Ibid., October 31, 1991, 19.

[25] 210 SCRA 1 (1992).

[26] 189 SCRA 496 (1990).

- [27] *People vs. Ablao, et al.*, 192 SCRA 698 (1990).
- [28] *People vs. Estillore*, 141 SCRA 456, 460 (1986); *Bernabe vs. Bolinas, Jr., etc., et al.*, 18 SCRA 812 (1966).
- [29] *People vs. Tumaob*, 83 Phil. 738 (1949).

[30] People vs. Cañete, 44 Phil. 478, 481 (1923).

[31] People vs. Uy, et al., 206 SCRA 270 (1992).

[32] People vs. Ybañez, 56 SCRA 210 (1974).

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