

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MODESTO DE ROXAS Y RAZON @ “MODY,” MARIO DE ROXAS Y RAZON AND PROTACIO ALILIO Y DEL MUNDO @ “TACIO”, ACCUSED. PROTACIO ALILIO...

G.R. No. 106783. February 15, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Protacio Alilio appeals from a decision of the Regional Trial Court, Branch 5 of Lemery, Batangas, finding him guilty of murder.

Protacio Alilio was charged, along with his nephews Modesto R. de Roxas and Mario R. de Roxas, with murder and unintentional abortion in an information which read as follows:

"That on or about the 24[th] day of June, 1988, at around 3:00 o'clock in the afternoon, at Barangay Payapa Ilaya, Municipality of Lemery, Batangas, and within the jurisdiction of this honorable court, the above-named accused, conspiring, and confederating together, acting in common accord and mutually helping one another armed with bolos and a bladed and pointed instrument, with treachery, evident premeditation, and abuse of superior strength, did then and there willfully, unlawfully, and feloniously attack, assault, and stab with said weapons, suddenly, and without warning, one Criselda Mundin y Enriquez who at the time was in her third month of pregnancy, thereby inflicting upon her multiple stab wounds on the different parts of her body which directly caused her death and as a further consequences thereof, the fetus inside her womb died.

Contrary to law." [1]

Only Protacio Alilio stood trial as his two (2) accused nephews were never apprehended.

After trial, the trial court found Alilio guilty of murder. The judgment, in its dispositive part, reads as follows:

"WHEREFORE, the Court finds accused Protacio Alilio y del Mundo @ "Tacio" guilty beyond reasonable doubt of having committed the crime of murder qualified by abuse of superior strength, and appreciating the aggravating circumstance of disregarding the sex of the offended party against the accused, the Court hereby imposes on said accused Protacio Alilio the penalty of reclusion perpetua together with all accessory penal[ties] under the law, and to pay the heirs of the deceased Criselda Mundin an indemnity in the amount of P50,000.00.

SO ORDERED." [2]

Appellant Alilio assigns the following as alleged errors of the trial court:

1. The trial court erred in considering that there was conspiracy in the killing of Criselda Mundin.
2. The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of murder.

The relevant facts as found by the trial court, basically upon the evidence of the prosecution, may be outlined in the following manner:

On 24 June 1988, at around 3:00 in the afternoon, in Barangay Payapa, Ilaya, Lemery, Batangas, principal prosecution witness Mario Carolino was in the house of his brother when he heard a woman screaming and crying for help. He went out of the house and proceeded to the highway some five (5) meters away. There he saw his first cousin Criselda Mundin running towards him while being pursued by Modesto de Roxas, Mario de Roxas and appellant Protacio Alilio. All three (3) were armed, two (2) with bolos and the third with a bladed and pointed instrument.

Criselda Mundin, already bloodied and bleeding, ran towards Mario Carolino and then stumbled and fell face down to the ground. As she lay prostrate by the roadside, her three (3) pursuers caught up with her. Protacio Alilio shouted "Sige, patayin mo na. Utasin mo na," while Mario de Roxas joined with "Sige, patayin mo na." Modesto de Roxas thereupon delivered three (3) stab blows at the back of the prostrate Criselda. She jerked and writhed and rolled on the ground. Modesto de Roxas stabbed her once more as she lay face up on the ground. The autopsy subsequently conducted on Criselda Mundin showed that a total of sixteen (16) stab wounds and one (1) hack wound had been inflicted upon her. [3]

Mario Carolino approached the three (3) men and tried to stop the assault upon the fallen woman. He spoke to them: "Huwag naman, babae iyan." Appellant Alilio and Mario de Roxas thereupon turned to face Mario Carolino and threatened to attack him too. Stricken with fear, Mario Carolino fled towards the house of the barangay captain to seek help. The barangay captain, however, was not at home and Mario Carolino returned to the scene of the crime where people were already milling around the dead Criselda Mundin. Her three (3) attackers had gone. The whereabouts of Modesto and Mario de Roxas remained unknown, while Protacio Alilio fled to Bicol. Alilio was, however, apprehended by the police some seven (7) months later in Batangas City.

Appellant Alilio raised the defenses of alibi and denial. He testified that on 24 June 1988, at about 2:00 in the afternoon, he was at a chapel located at Arendatis, Payapa, Ilaya, Lemery. With him were the three (3) brothers Modesto, Mario and Maximo de Roxas, and two (2) others named Polo Camson and Andres Umali. Alilio claimed that they were celebrating the feast of St. John the Baptist and were feasting on noodles and drinking Ginebra San Miguel purchased from the store of Criselda Mundin some 30 arm-lengths away. At about 3:30 o'clock, Modesto de Roxas left the group to go to the store of Criselda. Not long after, Alilio continued, he saw Maximo de Roxas being chased and then shot in the back with a shotgun by Jobani (probably Giovanni) Mundin, husband of the victim Criselda Mundin. Appellant Alilio and Polo Camson went to help the fallen Maximo de Roxas and lifted him and started their way to the hospital. Maximo de Roxas, however, died on the way and Alilio and Polo Camson brought the dead Maximo de Roxas to the house of Maximo's grandfather.

When he reached home, appellant Alilio continued, his uncle told him that he, Protacio, together with Mario de Roxas and Modesto de Roxas, had been entered in a police blotter as suspects in the slaying of Criselda Mundin. Upon advice of his uncle, Protacio Mundin left Batangas, went to Bicol where he stayed for about seven (7) months. Eventually he returned to Batangas City and there was arrested by the police.

Faced by the two (2) conflicting versions of the facts presented by the prosecution and by the accused Protacio Alilio, the trial judge chose to give credence to the version of the prosecution. It is too well-settled to need much documentation that the evaluation by the trial judge of the credibility of the witnesses and the ascribing of evidentiary weight to their testimony is well-nigh conclusive upon an appellate court, barring patent arbitrariness in arriving at his conclusions. [4] This Court has consistently, on the basis of reason and experience, sustained the factual findings of the trial court considering that that court was in a better position to assess the evidence before it

and to view the witnesses as they gave their testimony. [5]

The testimony of Mario Carolino to the effect that he had recognized the three (3) accused pursuing and catching up with the luckless Criselda is not in itself incredible and improbable. For physical proximity to the situs of the assault upon Criselda as she lay on the ground, which assault had been carried out in broad daylight, gave Mario Carolino ample opportunity to see and recognize the three (3) appellants. Indeed, he was threatened by Alilio and the other two (2) accused when Mario approached the three (3) and tried to dissuade them from continuing the deadly assault on the fallen Criselda.

The Court notes that the testimony of eye-witness Mario Carolino was straightforward and candid, and unshaken on cross-examination by the defense counsel. That testimony was the same story given by Mario Carolino to the municipal policemen when they arrived on the scene of the crime shortly after Criselda Munding had been slain. There Mario Carolino declared that he had seen Criselda Munding attacked by the three (3) accused and that he knew and had recognized the three (3). He made his statements immediately after the commission of the crime when he had not had time or opportunity to fabricate an untruth. Finally, no evil motive had been shown by the defense that would have moved Mario Carolino to testify falsely against appellant Protacio Alilio and the latter's two (2) nephews. The fact that eye-witness Mario and victim Criselda were first cousins is not by itself a ground either for rejecting eye-witness' testimony or diminishing the weight that is otherwise properly ascribable to such testimony.

Appellant Alilio tries to belittle the testimony of Mario Carolino, arguing that it was improbable that only Mario had heard the cries of Criselda Munding for help and had seen the slaying, since the scene of the slaying was shortly thereafter filled with people. Appellant's argument is simply a non sequitur. Mario Carolino never claimed that only he had heard the desperate cries of Criselda Munding nor that only he had seen the accused stabbing away at Criselda as she lay on the ground. It is also well-settled that the testimony of a single eye-witness is sufficient to support a conviction so long as such testimony is found to be clear and straightforward and worthy of credence by the trial court. [6]

The denial and alibi of appellant Alilio are simply inadequate to overcome the positive identification of appellant Alilio and his two (2) nephews as the malefactors. Denials and alibis are fabricated with ease and rebutted only with difficulty. [7] Simple denials, like alibis, are inherently weak defenses and cannot prevail over the positive testimony of credible witnesses that the accused had committed the crime charged. [8] It is a well-known doctrine that the defense of alibi can prosper only if it be shown that it was physically impossible for the accused to have been at the scene of the crime or within its immediate vicinity. [9] This the appellant failed to prove.

Appellant Alilio maintains that the elements of conspiracy had not been established satisfactorily by the prosecution and that the prosecution had not shown that he, Protacio Alilio, had actually and personally participated in the stabbing and hacking unto death of Criselda Munding.

To establish conspiracy, it is not, of course, necessary that direct proof of previous agreement to commit the felony be submitted. Proof of concerted action on the part of the accused, demonstrating a common design and objective, is quite sufficient. [10] Where conspiracy is adequately shown, the precise modality or extent of participation of each individual conspirator becomes secondary; the applicable rule is that the act of one conspirator, is the act of all of them.

To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the conspiracy. That overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime or by exerting moral ascendancy over the other co-conspirator by moving

them to execute or implement the conspiracy. [11] In the instant case, contrary to his pretense, appellant Alilio was not merely present when Criselda was ruthlessly slain. Protacio Alilio was one of the three (3) men seen brandishing bolos and a bolo-like instrument and pursuing the already wounded and bleeding Criselda Mundin. When the fleeing Criselda stumbled to the ground and the three (3) pursuers caught up with her, Modesto de Roxas promptly stabbed her on the back. Appellant Protacio Alilio made no effort to stop Modesto. Instead, he yelled at Modesto de Roxas to finish off the luckless Criselda. When eye-witness Mario Carolino tried to intervene, the appellant and accused Mario de Roxas threatened to kill him. Thus, while Mario Carolino had not stated that appellant Protacio Alilio had actually stabbed or hacked at Criselda Mundin, it was quite clear that Protacio Alilio had acted in concert with his nephews Modesto and Mario de Roxas. [12]

We consider that the trial court acted correctly in finding that the qualifying circumstance of abuse of superior strength had attended the killing of Criselda Mundin. There is no doubt that there was great variance in the relative physical condition of the appellants and of the victim: three (3) men all armed with bladed and pointed weapons had wounded, chased and assaulted an unarmed woman. Her body bore seventeen (17) wounds, mute testimony of the vengeful fury and brutality of the deadly attack upon her. [13] That attack had been moved by the belief of the attackers that Criselda's husband had earlier chased and shot to death Maximo de Roxas, brother of Mario and Modesto and nephew of appellant Alilio.

The trial court, however, erred in holding that the killing was attended by disregard of the sex of the victim. We consider that this aggravating circumstance was absorbed by the qualifying circumstance of abuse of superior strength. [14] While the information charged the three (3) accused with murder with unintentional abortion, the Solicitor General conceded that the pregnancy of Criselda Mundin at the time of her slaying had not been established by clear evidence. The medical examiner, Dr. Herminigildo de Claro, testified that he did not make a thorough examination of the victim but that he had found indications consistent with pregnancy or the existence of a tumor. [15] It is thus not necessary for the Court to determine whether murder with unintentional abortion may be held to exist under the circumstances of this case.

WHEREFORE, the decision of the trial court finding appellant Protacio Alilio guilty beyond reasonable doubt of murder is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Romero, Melo, Vitug, and Francisco, JJ., concur.

[1] Rollo, pp. 4-5.

[2] Trial Court Decision, p. 8; Rollo, p. 126.

[3] TSN, 15 October 1990, p.10.

[4] *People vs. Mohado*, 227 SCRA 94 [1993].

[5] *People vs. Domingo*, 226 SCRA 156 [1993]; *People vs. Gerona*, 227 SCRA 547 [1993]; *People vs. Balajadia*, 225 SCRA 22 [1993]; *People vs. Peligro*, 225 SCRA 65 [1993].

[6] *People vs. Alay-ay*, 224 SCRA 62 [1993]; *People vs. Aldeguer*, 184 SCRA 1 [1990]; *People vs. Vargas*, 184 SCRA 254 [1990].

[7] *People vs. Devaras*, 205 SCRA 676 [1992]; *People vs. Martinado*, 214 SCRA 712 [1992]; *People vs. Sagadsad*, 215 SCRA 641 [1992].

[8] People vs. Ylarde, 224 SCRA 405 [1993]; People vs. Rivera, 207 SCRA 198 [1992]; People vs. Rebulado, 206 SCRA 763 [1992]; People vs. Escamillas, 208 SCRA 441 [1992]; People vs. Danico, 208 SCRA 472 [1992]; People vs. Villanueva, 211 SCRA 403 [1992].

[9] People vs. Penillos, 205 SCRA 546 [1992]; People vs. Madrid, 210 SCRA 196 [1992]; People vs. De Paz, 212 SCRA 56 [1992]; People vs. Pugal, 215 SCRA 247 [1992].

[10] People vs. Pajarit, 214 SCRA 678 [1992]; People vs. Martinado, 214 SCRA 712 [1992]; People vs. Villalosos, 209 SCRA 304 [1992]; People vs. Talla, 181 SCRA 133 [1991]; People vs. Guevarra, 179 SCRA 325 [1989].

[11] People vs. Peralta, 25 SCRA 759 [1968].

[12] C.f. People v. Umbrero, 196 SCRA 821 (1991).

[13] People vs. Francisco, G.R. No. 106097, 21 July 1994; People vs. Bigcas, 211 SCRA 631 [1992]; People vs. Castor, 216 SCRA 410 [1992].

[14] People vs. Punzalan, 203 SCRA 364 [1991].

[15] TSN, 15 October 1990, p. 43.

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