

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TIMOTEO SABAL, ALIAS NINIONG, ANTONIO LASPONA, ALIAS DARIO, AND BEN SEPADA, ALIAS SANDY, ACCUSED, ANTONIO LASPONA, ACCUSED-APP...

G.R. No. 108084. August 14, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

The accused, Antonio Laspona, appealed to the Court of Appeals the decision of the Regional Trial Court of Toledo City convicting him of the murder of Sergio Dejas and sentencing him to suffer the penalty of imprisonment of ten (10) years and one (1) day of prision mayor to seventeen (17) years and four (4) months of reclusion temporal.

After deliberating on the appeal, the Court of Appeals ascertained that the proper penalty for the crime committed by the accused is reclusion perpetua, hence, pursuant to Section 13, Rule 124 of the 1985 Rules on Criminal Procedure as amended, it refrained from promulgating its decision. Instead, it certified the case to this Court for review and determination.

The information dated March 27, 1987 was filed by the City Prosecutor of Toledo City against the three accused named Antonio Laspona, Timoteo Sabal, and Ben Sepada, charging them with murder as follows:

The undersigned First Assistant City Fiscal of Toledo City, accuses Timoteo Sabal, Alias 'Niniong,' Antonio Laspona, Alias 'Dario,' and Ben Sepada, Alias 'Sandy,' of the crime of Murder, committed as follows:

That at around 2:00 o'clock dawn of the 7th day of December, 1986, at the Sitio of Old Bucao of Barangay Malubog, City of Toledo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill and each armed with a rifle, with evident premeditation and treachery conspiring, confederating and mutually helping one another did then and there taking advantage of their superior strength and nighttime suddenly and without warning willfully, unlawfully and feloniously fire and shoot from behind one Sergio Dejas, thereby inflicting upon him gunshot wounds at his head and body which resulted in his death.[1]

Only the accused, Antonio Laspona, was arrested and tried. His two co-accused, Timoteo Sabal and Ben Sepada, have remained at large.

The trial of Laspona in the lower court was delayed because he was erroneously released by the jail warden of Toledo City when a related case against him for violation of P.D. 1866 (Illegal Possession of Firearms and Explosives) was dismissed.

He was eventually re-arrested and pleaded "not guilty" upon arraignment on November 21, 1988.[2]

The facts of the case as established by the testimonies of the prosecution witness Marcelo Alcontin are as follows:

On December 7, 1986, a private meeting intended to foster "community unity"[3] was held in the house of Arcadio Engaling. The meeting was presided over by the accused, Antonio Laspona. Among those in attendance were: the three (3) accused, Laspona, Sabal and Sepada, with two (2) women companions named Eujanda Igloria and Mercedes Baribal. Also present were Arcadio Engaling, Diano Engaling, Ponciano Canio, Marcelo Alcontin and Rosendo Alcontin. The meeting started at around midnight and ended at about one o'clock in the morning. Just as the meeting was ending, Sergio Dejas and Fausto Abadiano, neighbors and relatives of Marcelo Alcontin, walked by with their cows. The three accused, who were then armed with rifles, followed Dejas and Abadiano. Their two women companions who were also armed with short firearms, ordered Rosendo and Marcelo Alcontin to follow the three accused. Marcelo and Rosendo Alcontin, who were both unarmed, obeyed out of fear. After they had walked some three hundred meters, they (Marcelo and Rosendo) heard gunshots. Marcelo Alcontin who was thirty to forty meters away from the accused, saw them fire their guns almost simultaneously in the direction of Dejas and Abadiano. Dejas fell and died instantly. Afterwards the three men and their women companions, as well as Marcelo Alcontin, spent the night in the house of Gregorio Benoya.

Based on the Necropsy Report of Dr. Jesus Cerna and marked as Exhibit "A" for the prosecution, the cause of death of the victim was attributed to two gunshot wounds in the head and body. Dr. Cerna further stated in his testimony that such wounds were caused by a high powered gun fired around two feet away from the victim, with the assailant to the left of the latter.

The defense evidence on the other hand, consisted solely of the denials and alibi of the accused Antonio Laspona, to wit:

x x x the accused claimed that at the time of the alleged killing early in the morning of December 7, 1986, he was then at his house at Cambang-ug, Toledo City; that he does not know Virgilio Dejas who executed an affidavit implicating him nor Rosendo Alcontin; that he does not know where Bucao is, the place where the killing occurred, nor is he aware that his residence, Cambang-ug, is only a few kilometers away from Bucao.[4]

After trial, the court a quo, in a decision dated March 21, 1991, convicted Laspona of murder. It found that:

x x x. The prosecution witness Marcelino Alcontin positively identified that Antonio Laspona whom he saw was one among those who shot Sergio Dejas and Fausto Abadiano. The said witness was at a distance of around 30 to 40 meters and as a matter of fact they were together with the accused who was following the victim. Further, the witness personally knows the accused even before the incident.

While evidence as to the identity of the accused as the person who committed the crime should be carefully analyzed, the court has consistently held that where conditions of visibility are favorable and the witness does not appear to be biased against the man on the dock, his other assertions as to the identity of the malefactor should normally be accepted. This is more so where the witness is the victim or his near-relative because these people usually strive to remember the faces of the assailants. *People vs. Alvarez*, G.R. 70446, 31 Jan. 89. There is no doubt as to the testimony of the prosecution witness who positively identified Antonio Laspona as one among those group of armed men he met at the house of Arcadio Engalin wherein a meeting was held and with whom he was together after the meeting when they were requested to accompany them and who followed the victim Sergio Dejas and Fausto Abadiano.

Between the positive declaration of the prosecution witness and the negative statement of the accused the former deserves more credence. *Pp. vs. Macabenta*, G.R. 72476, 14 Feb. 89. Were the culprits positively identify (sic) by reliable witness the defense of alibi must be established by full, clear and satisfactory evidence, *Pp. vs. Alvarez*, G.R. 70446, 31 Jan. 89. Considering the modern means of transportation nowadays, a distance of around 30 kilometers between the place where the appellant to be and where the crime was committed does not rule out of

the possibility of appellants being at the latter place when the crime was committed. Pp. vs. Abaya, G.R. 77980, 27 Feb. 89. The testimony of the prosecution witness Marcelino Alcontin that he actually saw the accused Antonio Laspoña together with his co-accused shooting with the use of a long firearm or rifle to Arsenio* Dejas was corroborated by the testimony of Dr. Jesus P. Cerna who testified that the deceased were shot with the high powered firearm. By the concerted way a crime was committed the existence of the previous conspiracy among the other co-accused appears beyond any doubt by reason of which all of them regardless who actually shot at the two victims are equally liable.

There is also present the qualifying circumstance of treachery. The sudden shooting with the use of a high powered rifle of an unarmed victims (sic) which ensured the commission of the killing without any risk to the accused constitutes treachery. Pp. vs. Johnny Basadres, L-36383, 17 April 84.[5]

*Should be Sergio.

The dispositive part of the decision reads:

WHEREFORE, in view of the foregoing consideration after finding the accused GUILTY beyond reasonable doubt of the crime of MURDER under Art. 248 of the Revised Penal Code and after applying the indeterminate sentence law it is hereby sentence of this Court that the accused suffers the penalty of Ten (10) Years and One (1) Day of prision mayor to seventeen (17) Years and Four (4) Months of reclusion temporal and to indemnify the heirs of the offended party the amount of Thirty Thousand (P30,000.00) Pesos. However, the accused is given full credit of his preventive imprisonment provided that he comply with the rules and regulations of a convicted prisoner. As to the other co-accused Timoteo Sabal and Ben Sepada let the case be archived until they are arrested.[6]

Laspoña appealed to the Court of Appeals[7] assigning the following errors:

1. The findings of the trial court are contrary to the evidence presented by the prosecution.
2. The trial court erred in holding that treachery was present in the case at bar.

After a thorough evaluation of the evidence on both sides, the Court of Appeals rendered a seven-page decision dated November 27, 1992, affirming the conviction of the appellants but modifying the penalty and the indemnity awarded. The dispositive portion of the decision (which the appellate court did not promulgate) reads:

WHEREFORE, except for the penalty imposed and the increase of indemnity to P50,000.00, We AFFIRM the judgment of conviction of the court a quo. Considering however, that the proper imposable penalty in this case is Reclusion Perpetua, by virtue of Section 13, Rule 124 of the New Rules on Criminal Procedure as amended, We hereby certify this case and elevate the entire records thereof to the Supreme Court for review.[8]

After a careful examination of the records, we find no reason to disturb the factual findings of the trial court, as affirmed and adopted by the Court of Appeals. The eyewitness account of Marcelo Alcontin pointing to appellant Laspona as one of the three armed men who killed Dejas, was found by the trial court to be positive and credible. The identity of the persons who fired at Sergio Dejas and his companion (Abadiana) was sufficiently established by the evidence for the prosecution.

It has been ruled time and again that when the issue hinges on the credibility of witnesses, vis a vis, the accused's denials, the trial court's findings with respect thereto are generally not disturbed on appeal. For the trial court had the advantage of observing first hand the demeanor of all the witnesses who testified before it and of testing their credibility and truthfulness through cross-examination.[9]

Petitioner's contention that the testimony of the lone eyewitness conflicts with the findings of Dr. Jesus P. Cerna

is not borne out by the records.

Dr. Cerna testified that the first wound inflicted on the victim, caused by a high powered caliber firearm, was located on the chest, right side, and the possible position of the assailant was more on the left side of the victim. The second wound, according to the doctor, was located on the left temporal region with the bullet exiting through the right occipital region. Dr. Cerna added that "the probable position of the assailant they were (sic) obliquely facing the victim more on the latter's left side." Considering the probable position of the assailant when each of the shot was fired at the victim, petitioner concludes that "[t] could never be possible that the assailant were (sic) at the back of the deceased x x x."

Contrary to what petitioner would like to convey, an examination of the records does not reveal any finding or testimony that the victim was shot at the back. The lone eyewitness Marcelo Alcontin never claimed that the victim was shot at the back. Nor was there a finding by the trial court to this effect. Consequently, there is no basis for petitioner to suggest any inconsistency between the testimony of prosecution witness and that of the doctor.

As to petitioner's argument that the prosecution witness could not have been able to see the persons firing at the victim from a distance of 30 to 40 meters because it was nighttime, prosecution witness Marcelo Alcontin categorically stated that it was not so dark at the vicinity of the crime and that the place was a clear open space. We quote the testimony of prosecution witness Marcelo Alcontin:

FISCAL CAVADA:

Q

Up to what time did the meeting last on December 7, 1986?

A

The meeting lasted up to 1:00 o'clock dawn.

Q

After the meeting where did you and your group proceed?

A

After the meeting it was very timely that the merchants had passed by.

Q

Who were those merchants?

A

Sergio Dejas and Fausto Abadiano.

Q

Why do you know them?

A

Because they were my neighbors and also my relatives.

Q

Why did you say that they were businessmen what were they doing at that time?

A

Because they were bringing along with them cows.

Q

And do you know before that incident that they were in the business of buying and selling cows?

A

Yes, I knew them already (sic).

Q

Now, after the businessmen passed by your place but after your meeting what did your companions do upon seeing these persons who were businessmen?

A

When the two persons passed by immediately after Antonio Laspona and Ben Sepada left followed by Timoteo Sabal.

Q

How about you what did you do?

A

We were afraid.

Q

Why?

A

We were afraid because we do not know what they would do because they followed the businessmen.

Q

Can you tell the Court if these persons Antonio Laspona, Timoteo Sabal and Ben Sepada carried any arm or weapon?

A

Yes.

Q

What was Antonio Laspona carrying?

A

Antonio Laspona was bringing a rifle.

Q

How about Timoteo Sabal?

A

Rifle also.

Q

How about Ben Sepada?

A

Ben Sepada also brought rifle at that time.

Q

How about the two women companions where were they when the two businessmen passed by?

A

The two women companions also followed together with us.

Q

When you said us who were they?

A

I and Rosendo Alcontin and the two women they were fully armed.

Q

What were these two women armed (with)?

A

Short firearm, revolver.

Q

How about you and Rosendo did you have any weapon with you?

A

No.

Q

Why did you follow these three Timoteo Sabal, Antonio Laspona and Ben Sepada?

A

Because we were told to follow by the two women.

Q

Did you voluntarily follow?

A

We followed because if we will not obey the instruction we might be killed.

Q

Up to what distance from the place where you left did you follow the two businessmen or how far from the place where you held the meeting?

A

(Witness pointing to a place outside the courtroom which is the Public Market of Toledo City which is estimated to be 300 meters).

Q

When you reached that distance of about 300 meters can you tell the Court if any unusual incident happened?

A

Yes.

Q

What have you observed that happened?

A

There were gunbursts.

Q

Coming from whom?

A

From them. (Witness pointing to the persons sitting in the courtroom).

Q

You pointed to a person in the courtroom and you said coming from them. To whom do you refer to?

A

Antonio Laspona.

Q

Antonio Laspona and his companions or Antonio Laspona alone?

A

The three of them caused the firing of the guns.

Q

At whom or what direction did the firing point (sic)?

A

It was pointing to the victims.

Q

Who were these victims?

A

Sergio Dejas and Fausto Abadiano.

Q

How far were you when they started firing at the two businessmen?

A

(Witness pointing to a distance from the witness stand estimated to be around 30 to 40 meters).

Q

Now were you able to see the persons firing at that distance when it was nighttime?

A

They can be seen because it was not so dark.

Q

What is the place a valley or a mountain area?

A

It was an open space. It was already cleared.

COURT:

Q

What time was that when you heard the firing?

A

After 1:00 o'clock dawn.

Q

Can you tell the Court if you saw what was Ben Sepada carrying or using when he fired (at) these two persons?

A

It was a rifle.

Q

Do you have any idea of its caliber?

A

I do not know what caliber was that kin(d) of rifle?

Q

While having a meeting did you already see Antonio Laspona carrying the rifle?

A

Yes.

Q

How about Timoteo Sabal?

A

Just the same.

Q

How about Ben Sepada?

A

Yes.

Q

And when you saw them in the clear area firing at the two businessmen can you tell the Court if you saw what happened to these two businessmen?

A

Yes.

Q

What happened to Sergio Dejoras?

A

He fell down.

Q

How about the other one, Fausto Abadiano?

A

Fausto Abadiano was bringing a lamp.

Q

Did you have an occasion to see Dejoras after he fell down?

A

Yes.

Q

What was the nearest distance from him when you saw him lying down?

A

Not so far but he can be seen clearly.

Q

Did you know what actually happened to that person Dejoras?

A

As I believed Dejoras died instantly.[10]

As the three accused attacked Dejas and his companions suddenly from behind and without provocation, taking advantage of their superiority in numbers and weapons, while their victims were unarmed, the trial court and the Court of Appeals correctly determined that the crime committed by them was murder with abuse of superior strength.

The other modifying circumstances of treachery, evident premeditation and nighttime, mentioned in the information, were correctly disregarded by the appellate court for lack of sufficient proof.

The existence of a conspiracy was properly appreciated by the trial court and Court of Appeals, it having been sufficiently shown that the three accused acted in concert in firing their rifles almost simultaneously at the two men.[11] There being a conspiracy, evidence as to who among the three accused actually and fatally hit the victim, Sergio Dejas, is not necessary.[12] The act of one is the act of all.

Murder, under Article 248 of the Revised Penal Code, is punishable by reclusion temporal to death since no aggravating nor mitigating circumstances were proven, the medium period of the penalty which is reclusion perpetua should be imposed on the accused.[13]

WHEREFORE, the Court finds the accused, Antonio Laspoña, GUILTY beyond reasonable doubt of the crime of murder and hereby sentences him to suffer the penalty of reclusion perpetua and to indemnify the legal heirs of the deceased, Sergio Dejas, in the sum of P50,000.00 for his death and to pay the costs. The accused shall be credited in the service of his sentence for the full period of his preventive imprisonment.

SO ORDERED.

Padilla, (Chairman), Davide Jr., Bellosillo, and Hermosissima, Jr., JJ., concur.

[1] Original Records, p. 3-A.

[2] Id., at 11.

[3] Id., at 63.

[4] TSN, Delica, January 24, 1991, pp. 1-4; Rollo p. 5.

[5] Original Records, pp. 29-B-29-D.

[6] Id. at 29-D.

[7] CA-G.R. No. 11611.

[8] Rollo, p. 9.

[9] People v. Baltazar Estreña, Jr., G.R. No. 104906, October 27, 1992.

[10] TSN, 31 July 1989, pp. 4-7; Rollo, pp. 66-73.

[11] People v. Caldito, 182 SCRA 66.

[12] People v. Obando, 182 SCRA 95.

[13] People v. Muñoz, 170 SCRA 107; People v. Deslate, 192 SCRA 644.

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