

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JHONIE POLANGCO AND JESSIE POLANGCO, ACCUSED-APPELLANTS.*G.R. No. 108175. December 26, 1995*

Ponente: FRANCISCO, J.

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Charged and prosecuted for the murder of Luis Dorao are the herein appellants Jhonie Polangco and Jessie Polangco, while two other accused and appellants' companions, namely, Esmir and Isagani, both surnamed Miguel, remain at large. After almost two years of legal proceedings, the trial court[1] handed its decision, dated September 3, 1992, convicting the appellants of the crime charged and sentencing them to suffer the penalty of reclusion perpetua, and to jointly and severally indemnify the heirs of the victim in the amounts of P50,000.00 for moral damages; P90,000.00 for funeral expenses and P204,000.00 for loss of the victim's earning capacity.[2] Appellants are now before us pleading for their acquittal based on the following errors allegedly committed by the trial court, to wit: (1) in finding the presence of conspiracy on the part of the appellants relative to the killing of the victim, (2) in failing to give evidentiary weight to appellants' defenses and evidence, and (3) in finding appellants guilty beyond reasonable doubt of the crime of murder.[3]

The facts as correctly summarized by the trial court are as follows:

"On December 28, 1990, at around 10:30 o'clock in the evening, Adriano Agustin, Isagani Castillo and Juanito Hora were in front of the house and within the yard of Adriano Agustin in Poblacion East, Asingan, Pangasinan, drinking beer while they were seated on the ground. There was then an occasion, a Christmas dance in a nearby dancing hall about 15 meters away from where they were drinking. About 20 minutes later, Luis Dorao arrived and, when they invited him, he joined them in drinking beer. Luis Dorao had not yet finished drinking one bottle of beer when four persons — namely, Isagani Miguel, Jhonie Polangco, Esmir Miguel, and Jessie Polangco — arrived, each armed with a small pointed bolo, except Jessie Polangco who was carrying a piece of lead pipe. Jessie Polangco asked Luis Dorao, "Who boxed me?", and Luis answered, "I was not the one". He said further that it was his brother. (Tsn, June 24, 1991, pp. 5-7).

"Thereafter, Jessie Polangco struck Luis Dorao with the steel pipe, but did not hit him, and, instead, hit Jhonie Polangco on the left upper forehead, injuring the latter who, however, did not fall down. Jhonie Polangco accused Luis Dorao of having struck him and said, "we will kill him." (Tsn, supra, p. 18, 20-21).

"Then, the four (Isagani Miguel, Jhonie Polangco, Esmir Miguel and Jessie Polangco) ganged up on Luis Dorao. Jhonie Polangco stabbed him on the left side of his body. Isagani Miguel stabbed Luis Dorao on the upper part of his neck, right side. As Luis Dorao was about to run away, Esmir Miguel stabbed him also. Jessie Polangco hit him with the steel pipe, (Tsn, supra, pp. 8-10.).

"As a consequence of the foregoing attack on the person of Luis Dorao, he suffered eleven (11) stab wounds and an abrasion on the chest, resulting in his death."[4]

In this appeal, appellants assert that the prosecution failed to establish that conspiracy attended the murder of the victim. It is their contention that conspiracy should be convincingly and clearly proved. They argue that failure to

prove the pre-conceived plan to kill the victim, as well as their agreement to commit and execute the crime, and their participation thereto warrant an acquittal. We are not persuaded.

For conspiracy to exist, the evidence need not establish the actual agreement which shows the pre-conceived plan, motive, interest or purpose in the commission of the crime.[5] It is a rule that although there is no direct evidence of prior agreement to commit the crime, conspiracy may be inferred from the acts of the appellants before, during and after the commission of the crime which are indicative of a joint purpose, concerted action and concurrence of sentiments.[6] The record is replete with these. First, the four accused, which include the two appellants, arrived together at the scene of the killing. Second, all of them were armed: accused Esmir and Isagani Miguel, and appellant Jhonie Polangco were armed with small bolos, while appellant Jessie Polangco was armed with a steel tube. Third, all four felons almost simultaneously ganged up on the victim, stabbing and hitting him on the different parts of his body. Fourth, they chased and prevented the victim from escaping the assault. Fifth, not a single member of the group exerted any effort to pacify or halt the other from inflicting harm to the victim. Sixth, they threatened and warned the victim's friends within the vicinity of the crime scene not to assist or meddle in the affair, or else they will also be killed. And seventh, all of them hurriedly left the crime scene after their successful assault against the victim. These circumstances eloquently reveal their acts before, during and after the fatal incident which convincingly prove the community of design and purpose to assault and inflict mortal harm to the victim. Conspiracy among the appellants and the two other accused who are still at large was therefore sufficiently and undoubtedly established.

Appellants next asseverate that the trial court failed to accord credence and evidentiary weight to their defenses. Appellant Jhonie Polangco denies any participation in the killing and asserts instead that he was the one assaulted by the victim, with the latter allegedly hitting him twice on the head with an iron pipe which caused him to fall down. While on the ground, he saw the victim flee albeit some persons were running after him. After recovering from his fall, appellant proceeded to the Barangay Captain and reported the incident. He was thereafter taken to the hospital by the Barangay Captain and by his brother and co-appellant Jessie for treatment. Appellant Jessie Polangco, for his part, denies noting anything unusual that happened on the night of December 28, 1990. He claims that at around 10:30 in the evening of that date, he was dancing in the house of Danilo Alicaycay where the party was being held. After staying for another hour, he insists that he went home and did not return to the dancing hall anymore.

Appellants' defenses materially rest on denial and alibi. Well-settled is the rule that greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[7] Similarly, it is firmly entrenched in our jurisprudence that the defense of alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime.[8] We quote with approval, in this connection, the trial court's observation:

"Jhonie Polangco's version to the effect that it was Luis Dorao who started the whole trouble, and it was Juanito Hora whom Luis Dorao was after and whom he unsuccessfully struck with a steel pipe is belied by Juanito Hora's testifying for the prosecution as an eyewitness in favor of the same Luis Dorao against the herein accused.

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"All the foregoing observations apply equally to the accused, Jessie Polangco. His claim of complete ignorance of what was happening and what had happened a few meters from where he was dancing that night of the incident is simply incredible, to say the least. His identification by the eyewitnesses, Juanito Hora and Isagani Castillo, whose presence at the scene of the crime was admitted by his co-accused and brother, Jhonie

Polangco, is positive and credible. He, it was, who brandished the steel pipe in company with (sic) his three co-accused who were each armed with a sharp, pointed small bolo, when they confronted Luis Hora, [should be Luis Dorao] who was then unarmed, and accused him of some past misdeed. And, it was he (Jessie Polangco) who swung his steel pipe at, but missed, Luis Dorao, and, instead, hit his brother, Jhonie Polangco, on the forehead, starting their concerted attack on Luis Dorao, wherein they ganged up on him, each stabbing him on different vital parts of his body. The fact of guilt of this accused is further shown by his flight, his denial notwithstanding. As shown in the Certification of the Police Blotter entries (Exh. 1), as early as on the night the crime was committed, he was already one of the suspects. However, the authorities could not find him until he was apprehended sometime in October 1991."^[9]

To bolster their languid defenses, appellants impugn the credibility of prosecution's witnesses as the latter failed to help the victim despite their presence in the vicinity of the crime scene. The fact that the witnesses were overcome by shock, they argue, supports their assertion that the witnesses failed to observe with clarity and certainty what actually transpired. Appellants also insist that it is highly improbable for them to commit the felony in such a place where they could be easily identified. We do not agree.

The trial court found that the version of the prosecution's eyewitnesses was spontaneous, clear, natural and logical. A meticulous review of the record discloses that the witnesses' credibility was untarnished all throughout the trial. Moreover, findings of the trial court on the credibility of witnesses are entitled to the highest degree of respect and will not be disturbed on appeal in the absence of any clear showing that it had overlooked, misunderstood, or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the appellants,^[10] as in this case. We note that it is but natural for these witnesses not to come to the victim's rescue for fear of their lives since they were threatened with harm should they do so. Self-preservation is still recognized as the most fundamental human instinct. The supposed incapability of the witnesses to recall with sufficient clarity what actually transpired is belied by the coherent, spontaneous, and clear testimonies of the eyewitnesses. The record, in fact, is bereft of any evidence to show improper motive for these eyewitnesses to maliciously implicate the appellants for a crime they have not committed unless it was true. There is no need to belabor the issue of the alleged improbability of committing the offense in a place where appellants could be easily identified, as the felony and their participation therein have been credibly and convincingly established. Appellants' last assigned error, at this juncture, loses force and relevance in view of the foregoing discussion.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto.

SO ORDERED.

Narvasa, CJ., (Chairman), Regalado, Puno, and Mendoza, JJ., concur.

[1] RTC, Br. 37, First Judicial Region, Lingayen, Pangasinan.

[2] Decision, p. 11; Rollo, p. 25.

[3] Brief for the Appellants, p. 1; Rollo, p. 34.

[4] Decision, p. 3; Rollo, p. 46.

[5] *Siton v. Court of Appeals*, 204 SCRA 473, 478 (1991).

[6] *People v. De Leon and Alarcon*, G.R. No. 110558, July 3, 1995.

[7] *People v. Andasa*, 206 SCRA 636, 641 (1992).

[8] People v. Pascua, 206 SCRA 628, 633 (1992).

[9] Decision, pp. 7, 9; Rollo, pp. 50, 52.

[10] People v. Acob and Silao, G.R. No. 114382, July 20, 1995.

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