

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMING SILONG, BOY SA-OY, REGO DARAGOS, ESTER ALABAT, ELNORA PADILLA, ROGER REMOJO, METRING CATURSE, RUDY CATURSE, EDUARDO PIS...

G.R. No. 110830. May 23, 1994

Ponente: MELO, J.

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MELO, J.:

An information for murder with frustrated murder was filed against herein accused for the ambush-killing of Angel Ellaga, Alejandro Camahalan, Cesario Davis, Gildo Doguitom, and Zosimo Ellaga, and for inflicting wounds on Ceferino Asocinas (who died later after the filing of the information) and Miguel Alcopera, "in a concerted act in mutually helping each other and taking advantage of their superior strength with intent to kill by means of treachery and with evident premeditation" (p. 5, Rollo).

Only Jesus "Bebe" Comaling, Timoteo Alabat (alias "Toming"), Carlos Relativo, Antonio Amahan, Rufo "Boy" Pangilinan, and Teodulo Abuyas were apprehended and brought to trial. The other accused are still at large.

Upon arraignment, all apprehended accused, pleaded not guilty, and following trial on the merits, the court a quo, the Honorable Josephine K. Bayona presiding, rendered its decision on September 7, 1992 disposing:

WHEREFORE, the prosecution having proved the guilt of all these accused beyond a reasonable doubt, the accused JESUS "Bebe" COMALING, TIMOTEO ALABAT alias "Toming", ANTONIO AMAHAN, RUFO (Roco) PANGILINAN alias "Boy", TEODULO ABUYAS and CARLOS RELATIVO, are found by this Court GUILTY of MULTIPLE MURDER WITH FRUSTRATED HOMICIDE as charged and each is sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of ALEJANDRO CAMAHALAN, Cesario Davis, Angel Ellaga, Zosimo Ellaga, Miguel DOGUITON, jointly and severally, the amount of FIFTY THOUSAND (P50,000.00) PESOS each without subsidiary imprisonment in case of insolvency and to pay the costs.

The records will show that all the herein accused have been detained since the time of their respective arrests. The Court grants them full credit for their preventive imprisonment, provided that they abide by all the rules and regulations imposed by Article 29 of the Revised Penal Code.

(pp. 48-49, Rollo.)

From said decision, only Jesus "Bebe" Comaling, Timoteo Alabat, and Antonio Amahan have appealed and pray for the reversal of said judgment on the ground that the trial court erred in rejecting their alibis and in finding them guilty of multiple murder beyond reasonable doubt.

The facts of the case, as summarized by Solicitor General Raul I. Goco, Assistant Solicitor General Magdangal M. de Leon, and Associate Solicitor Ethel U. Odrunia, are as follows:

On April 21, 1988, a group of sixteen (16) copra laborers went to the coconut land of a certain Sergio Baltazar,

located in the mountains of Barangay Manarog, Javier, Leyte, to gather coconuts for the making of copra. The copra laborers were divided into two (2) groups. The first group consisted of six (6) persons while the second group called the "Tiklos" group consisted of ten (10) persons (tsn., J. Zamora, June 26, 1991, pp. 11-13; tsn., D. Azucenas, July 26, 1989, p. 4).

The following day, April 22, 1988, at about 8:00 a.m., the first group consisting six (6) persons were gathering coconuts which were already harvested. In the meantime, the second group of ten (10) persons were then on their way to the land of the Baltazars, passing through the land of a certain Rufino Cua (tsn., F. Narca, Sept. 5, 1989, pp. 4-6; tsn., J. Alcoser, Oct. 9, 1990, p. 17; tsn., J. Zamora, June 26, 1991, pp. 5-7).

All of a sudden, a group of about thirty three (33) armed men ambushed the copra laborers and rained bullets on all of them. The volley of shots came from the upper level of the terrain and were aimed at the group which was below it. Some of the laborers ran for cover behind coconut trees but the others were not so lucky. After the firing ceased, some members of the group were fatally shot, among whom were Alejandro Camahalan, Angel Ellaga, Zosimo Ellaga, Gildo Doguiton, and Cesario Davis. Some were killed on the spot while Ceferino Azucenas died later in the hospital (tsn., D. Azucenas, July 26, 1989, pp. 5-6; tsn., F. Narca, Sept. 5, 1989, pp. 6-8; tsn., J. Alcoser, Oct. 9, 1990, pp. 17-18; tsn., J. Zamora, June 26, 1991, pp. 6-8).

Those who were able to run for cover and survived the ambush saw and positively identified some of the ambushers.

Witness Dominga Azucenas, who was the wife of the victim Ceferino Azucenas, was about twenty (20) meters away from the perpetrators of the crime when she saw appellant Antonio Amahan carrying a carbine rifle, co-accused Carlos Relativo carrying an armalite rifle, appellant Timoteo Alabat carrying a garand rifle and co-accused Rufo Pangilinan carrying a homemade shot gun, all of them spraying bullets on the hapless victims (tsn., D. Azucenas, July 26, 1989, pp. 6-8, 18).

Witness Felipe Narca, one of the laborers who survived the incident, was only fifteen (15) meters away from the group of ambushers when he positively saw appellants Jesus "Bebe" Comaling, Timoteo Alabat alias "Toming", and Antonio Amahan, and co-accused Carlos Relativo, Rufo Pangilinan and Teodulo Abuyas spraying bullets on the laborers. He was familiar with appellants since they were his neighbors in Barangay Binulho and he knew them since childhood (tsn., F. Narca, Sept. 5, 1989, pp. 3-4, 8-9).

Witness Joel Alcoser, who was only ten (10) meters away from the ambushers, positively saw appellants Jesus Comaling, Timoteo Alabat and Antonio Amahan, and co-accused Carlos Relativo and Rufo Pangilinan as among those who fired shots at them. He had known appellants for a long time already (tsn., Joel Alcoser, Oct. 9, 1990, pp. 16-22).

Witness Johnny Zamora, immediately after the shots were fired, looked up and recognized some of the ambushers, among whom were appellants Jesus "Bebe" Comaling, Antonio Amahan, Timoteo Alabat, and co-accused Rufo Pangilinan, Carlos Relativo and Teodulo Abuyas, as they were only about ten (10) to fifteen (15) meters away from him. They were carrying firearms like carbines, garands, and M-16 armalite rifles. He recognized the firearms they were carrying as he used to be a member of the Alsa Masa. After firing the shots, the ambushers stood up and calmly walked away (tsn., J. Zamora, June 26, 1991, pp. 6-9).

After the ambush, witnesses Joel Alcoser and Johnny Zamora went to Barangay Binulho, Javier, Leyte to notify the family of the victims regarding the incident. Thereafter, they informed Patrolmen Papalid and Culaban and the barangay captain regarding the ambush and the identity of the culprits. Then, the policemen proceeded to the scene of the crime (tsn., J. Alcoser, Oct. 9, 1990, pp. 21-22; tsn., J. Zamora, June 26, 1991, p. 9).

Copra gatherers Alejandro Camahalan, Cesario Davis, Angel Ellaga, Zosimo Ellaga and Gildo Doguiton were confirmed dead as a result of the ambush (Exhs. "A" to "J", Records, pp. 19-23, 131-135).

(pp. 4-8, Appellee's Brief.)

The only defense interposed by accused-appellants is alibi. Accused-appellants Comaling and Alabat testified that on April 22, 1988, they were in Mamono, Barangay Maslog, Baybay, Leyte, together with other persons, working at the landholding of Arnulfo Banoc; that they left their residence in Barangay Bitanjuan, Baybay, Leyte at about seven-thirty in the morning of that day and stayed at their place of work until 4 o'clock that afternoon; and that at no time on that day did they leave their place of work. Accused-appellant Amahan, for his part, testified that he spent the night of April 21, 1988 in the house of one Guillermo Pestadero in Sitio Hurubsan, Brgy. Binulho, Javier, Leyte and stayed there until eleven in the morning of the following day or April 22, 1988, the day of the ambush.

Alibi is one of the weakest defenses that can be resorted to by an accused, not only because it is inherently weak and unreliable but also because it is easy of fabrication without much opportunity at checking or rebutting it (*People vs. Devaras*, 205 SCRA 676 [1992]; *People vs. Martinado*, 214 SCRA 712 [1992]; *People vs. Calope and Torres*, G.R. No. 97284, January 21, 1994).

For alibi to offset the evidence of the prosecution showing his guilt, the accused must establish not only that he was somewhere else when the crime was committed but also that it was physically impossible for him to have been at the scene of the crime at the time it was committed (*People vs. Penillos*, 205 SCRA 546 [1992]; *People vs. Rendoque*, 205 SCRA 783 [1992]). Accused-appellants, by their own admission, were only about one and a half (1 1/2) to three (3) kilometers away from the site of the ambush, and, therefore, it was clearly not physically impossible for them to be present at the scene of the crime at the time it was perpetrated.

Furthermore, alibi cannot prevail over the positive identification of the accused by prosecution witnesses (*People vs. Catubig*, 205 SCRA 643 [1992]; *People vs. Rendoque*, 205 SCRA 783 [1992]). In the case at bench, no less than four (4) witnesses positively identified accused-appellants as among the ambushers. These four witnesses, Domingo Azucenas, Felipe Narca, Joel Alcoser, and Johnny Zamora, were with the group of copra laborers who were ambushed and were present at the scene and time of the ambush. They could have been killed or at least wounded, together with the other victims of the ambush, had these witnesses not succeeded in gaining cover behind coconut trees, from which shelter, they clearly saw and recognized the ambushers who were only meters away. Among the ambushers were accused-appellants whom the witnesses recognized with absolute certainty as accused-appellants were residents of neighboring barrios and have been known to the witnesses since childhood. Said witnesses positively, categorically, and unhesitatingly identified accused-appellants as among the ambushers. The record does not disclose that said witnesses were impelled by ill motives to impute to accused-appellants the commission of the grave crime of murder. Consequently, their testimony should be given utmost evidentiary weight.

Accused-appellants impugn the testimony of said prosecution witnesses, citing alleged inconsistencies therein, which nonetheless pertain only to minor and trivial matters and cannot impair the credibility of the witnesses. Moreover, inconsistencies and discrepancies on minor details serve to strengthen the credibility of the prosecution witnesses (*People vs. Buka*, 205 SCRA 567 [1992]).

Finally, accused-appellants contend that not one of the qualifying circumstances of treachery, abuse of superior strength, and evident premeditation alleged in the information was proven. The evidence on record does not support the contention of accused-appellants. On the contrary, the evidence clearly shows that accused-appellants and their unapprehended cohorts (there were 33 ambushers in all) waited in ambush from the vantage point of an elevated place, for the victims and their companions. Accused-appellants were fully armed with M-16 rifles, armalites, shotguns, carbines, garands, and M-203s. The victims and their fellow copra laborers were unarmed,

completely oblivious of the impending danger awaiting them. While the victims and their companions were gathering coconuts, accused-appellants and their co-accused suddenly and without warning, fired, initially killing Angel Ellaga, Alejandro Camahalan, Cesario Davis, Gildo Doguiton, and Zosimo Ellaga, and wounding Miguel Alcopera and Ceferino Asocinas (who later died in the hospital where he was brought). Plainly, under the foregoing facts, the existence of treachery cannot be gainsaid. There is treachery when the offender commits any of the crimes against persons, employing means, methods, and forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might take (*People vs. Devaras*, 205 SCRA 676 [1992]). The means employed by accused-appellants and their co-accused undoubtedly insured the execution of the crime without any risk to themselves. They were all armed and they waited in ambush for the victims, who if it must be repeated, were unarmed and utterly unaware of the impending danger awaiting them.

Likewise, under the established facts of the case, accused-appellants and their co-accused acted in conspiracy. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (*People vs. Villanueva*, 211 SCRA 403 [1992]). Conspiracy may be deduced from the mode and manner in which the offense was committed (*People vs. Dela Cruz*, 207 SCRA 632 [1992]), and the concerted acts of the accused to obtain a common criminal objective signify conspiracy (*People vs. Villanueva*, supra). The acts of accused-appellants, in the case at bench, as established by the evidence, show concerted action and unity of purpose manifestly indicating conspiracy - they waited in ambush for the victims and without warning, simultaneously fired at them.

Under the facts of the case and with accused-appellants having acted in conspiracy and with treachery and the victims having been killed not by one shot but by a volley of shots, each accused-appellant is guilty of as many separate crimes of murder as there are victims killed (*People vs. Pascual*, 81 SCRA 548 [1978]; *People vs. Johnny Lago*, G.R. No. 96090, March 30, 1993). Six persons were killed, namely Angel Ellaga, Alejandro Camahalan, Cesario Davis, Gildo Doguiton, Zosimo Ellaga, and Ceferino Asocinas (who died after the information was filed). However, only the killing of Ellaga, Camahalan, Davis, and Doguiton was charged in the information; the killing of Ceferino Asocinas was not charged in the information, only the infliction of wounds upon him was charged. Therefore, accused-appellants cannot be convicted of murder for the killing of Ceferino Asocinas but only of frustrated murder. Where there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved (Sec. 4, Rule 120, Rules of Court). The death of Ceferino Asocinas was a supervening fact and the prosecution could, and should have amended the information to allege the supervening fact of the death and killing of Ceferino (*Melo vs. People*, 85 Phil 766 [1950]). But it did not, so accused-appellants can be convicted only of frustrated murder for inflicting wounds on Ceferino and not for murder for his subsequent death. Therefore, each accused-appellant is guilty of five separate crimes of murder qualified by treachery and two separate crimes of frustrated murder.

The penalty for murder is reclusion temporal in its maximum period to death. There being no aggravating nor mitigating circumstances, the penalty that should be imposed upon accused-appellants for each murder should be the medium period of said penalty, or reclusion perpetua.

With regard the frustrated murder committed, pursuant to Article 50 of the Revised Penal Code, the penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principals in a frustrated felony. One degree lower to that imposed for consummated murder is ten (10) years and one (1) day of prision mayor to seventeen (17) years and four (4) months of reclusion temporal (*Reyes, L.B., The Revised Penal*

Code, Eleventh Ed., p. 991). Applying the Indeterminate Sentence Law, the minimum penalty that may be imposed shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense, or in case of frustrated murder the penalty next lower in degree is four (4) years, two (2) months and one (1) day of prision correccional to ten (10) years of prision mayor (Ibid., pp. 986, 991)).

Therefore, the penalty that should be imposed upon accused-appellants for the frustrated murder is four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to seventeen (17) years and four (4) months of reclusion temporal as maximum.

One last point, although accused-appellants were charged only with frustrated murder with regard to Ceferino Asocinas and as the Revised Penal Code does not specify the amount of civil liability, but because victim Ceferino subsequently died, the civil indemnity to be awarded to his heirs should be the same amount as that to be awarded to the heirs of the other dead victims.

WHEREFORE, the appealed decision is hereby modified as follows:

(a) Each accused-appellant is hereby found guilty beyond reasonable doubt of five (5) crimes of murder and each is sentenced to suffer five (5) penalties of reclusion perpetua;

(b) Each accused-appellant is hereby found guilty beyond reasonable doubt of two (2) crimes of frustrated murder and each is hereby sentenced to an indeterminate penalty of four (4) years, two (2) months, and one (1) day of prision correccional, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; and

(c) Accused-appellants are hereby ordered to pay the heirs of Angel Ellaga, Alejandro Camahalan, Cesario Davis, Gildo Doguitom, Zosimo Ellaga and Ceferino Asocinas, jointly and severally, the amount of P50,000.00 each, and to Miguel Alcopera, the amount of P20,000.00 likewise jointly and severally, as civil indemnity, without subsidiary imprisonment in case of insolvency.

Costs against accused-appellants.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Vitug, JJ., concur.

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