PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTEMIO ORTALEZA Y PRADO, ACCUSED-APPELLANT.

G.R. No. 111549. July 05, 1996

Ponente: PADILLA, J.

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PADILLA, J.:

This case was certified to this Court by the Court of Appeals[1] conformably with Article VIII, section 5, paragraph 2(d) of the 1987 Constitution after finding that the proper imposable penalty for the offense committed is reclusion perpetua,[2] and not eighteen (18) to twenty (20) years of reclusion temporal,[3] as imposed by the trial court.

The facts of the case as found by the Court of Appeals are as follows.[4]

At around 9:30 in the evening of 1 May 1990 at Poblacion, Bani, Pangasinan, the spouses Edgar and Helen San Juan, together with their children, were awakened by a voice calling for Edgar. Having ascertained the caller as accused Artemio Ortaleza, Edgar allowed him and his companions (Bong Balin and Rodel Cortez) to go up the balcony of his house. Artemio then informed Edgar that Bong and Rodel wanted to spend the night at Edgar's house.

Rudy Balin, another companion of Artemio, did not go up the house but placed himself behind where Edgar was standing at the balcony, which was elevated by only about a foot from the ground. While the three (3) who went up the balcony were trying to engage Edgar in a conversation, Rudy suddenly attacked Edgar with a bolo from behind, hitting the latter on the left side of the face, causing Edgar to fall down on the floor of the balcony. Artemio then pinned Edgar down to the floor to allow Rudy to hack him some more, but Edgar wrestled himself free, jumped off the balcony, and scampered away.

The four (4) accused gave chase and caught up with Edgar about fifty (50) meters away from his house. Upon seeing the accused chase her husband, Helen hurriedly left their house with her two (2) children and proceeded to neighbor Eugenio Panitan's house. Helen pleaded with him to accompany her to her parents' house. As they were about to leave Eugenio's house, Bong and Rudy Balin arrived and tried to force their way into the house but they were not able to enter because Eugenio's wife blocked them and pushed back the door. She told them that Helen was not there. Before Bong and Rudy left, they warned Eugenio to keep quiet about what had happened because Edgar was already "finished" and they threatened to kill him and his family if he should start talking to anyone about the incident.

Soon after the Balin brothers left, Eugenio went to the house of barangay Tanod Patro Valdez and reported what Helen had related to him. On his way to Valdez' house, Eugenio saw the house of Edgar already on fire. Valdez and Helen's father likewise reported the incident to the authorities. The police arrived at about 10:00 in the evening of that same day. They found the residence of Edgar totally burned and after searching for the latter, they found his body in a kneeling position with several hack wounds, about sixty (60) meters away from his house.

The police thereafter proceeded to the house of accused-appellant Artemio Ortaleza which was nearby but were told by the latter's wife that appellant was asleep. They told her to wake him up. When Artemio eventually presented himself to the police, he was trembling, with bloodstains on his white shirt. When asked about the bloodstains, he could not give an answer and it was his wife who replied that those bloodstains were from the chicken they had killed for "pulutan" earlier in the day. Artemio denied any participation in the crime.

Accused Artemio Ortaleza offered a different version of the events.[5] He declared that he and his wife were already about to sleep when Rudy Balin called and pleaded with him to accompany them, namely, the three co-accused, to the house of Edgar which was about 150 meters away.[6] He agreed and did accompany them to Edgar's house. Upon request of the Balins, Artemio called for Edgar from outside and asked that they be allowed to go up. Edgar let them into his balcony and asked what they wanted. Bong Balin then asked him if they could spend the night in his house. At this juncture, Rudy Balin, who placed himself behind the victim, suddenly attacked Edgar with a bolo, hitting the latter on the right side of the head above the ear, causing him to fall down. Artemio declared that he then held Edgar to help him up, but the latter struggled hard eventually freeing himself. Edgar then jumped from the balcony and scampered away. Artemio declared that his act of helping the victim to stand up must have been misunderstood by Helen who wrongly perceived that he was trying to pin her husband down. Artemio also asserted that the fact that he did not flee is an indication of his innocence.

After trial, the Regional Trial Court, Branch 38, Lingayen, Pangasinan rendered a decision[7] dated 8 February 1991 convicting herein accused-appellant Artemio Ortaleza for the crime of murder. The trial court sentenced him to suffer the penalty of eighteen (18) years, eight (8) months and one (1) day to twenty (20) years of reclusion temporal, and ordered him to indemnify the heirs of the deceased in the amount of P30,000 by way of compensatory damages.

Artemio appealed his conviction to the Court of Appeals, arguing that the trial court erred in finding that he conspired with his co-accused in killing Edgar, and in convicting him for the crime of murder despite the failure of the prosecution to prove his guilt beyond reasonable doubt.

The Court of Appeals affirmed the judgment of conviction against Artemio and, after finding that the proper imposable penalty for murder is reclusion perpetua and not reclusion temporal as imposed by the trial court, certified the case to this Court.

The Court finds no compelling reason to disturb the findings of the trial court and Court of Appeals.

We cannot bring ourselves to agree with the accused's version of the incident. His account of the events of 1 May 1990 is not only self-serving, but his story is simply hard to believe.

Accused-appellant would like us to believe that he did not have a drinking spree with his three (3) co-accused who are still at large. This he tried to do by claiming that the latter came to his house at around 9:30 in the evening of the day of the incident when he and his wife were already about to sleep.[8] This is contrary to the testimony of Pfc. Cecilio Dollaga, the police officer who investigated the case, who testified that accused Artemio smelled of liquor when he confronted the latter at his house shortly after Dollaga received the report of the killing.[9] Dollaga also testified that when asked about the bloodstains in his shirt, the accused could not give an explanation and it was his wife who answered that the bloodstains were those of the chicken they had killed for "pulutan" during their drinking session. Such a reply from Artemio's wife is a virtual admission that Artemio indeed had a drinking spree with his three (3) co-accused which lasted from around ten in the morning until three in the afternoon of the day of the incident.[10]

As regards Artemio's claim that his three (3) co-accused came to his house only at around 9:30 in the evening of

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that fateful day and asked him to accompany the latter to the house of the victim, this line of defense is quite preposterous. To accept this argument is to conclude that Artemio's three (3) co-accused must have been so hopelessly stupid as to take someone as a witness to their dastardly act of murder. This defense simply does not deserve any credence. The Court of Appeals' decision on this score is highly enlightening. It said:

> ". . . (I)t seems perplexing why the Balin brothers would take him (Artemio) along to witness a killing when he could eventually testify against them. The brothers concerned could have called for Edgar San Juan themselves, they being second cousins. If, as claimed by the accused-appellant, the Balin brothers told him that they wanted to spend the night at Edgar's house, there was no explanation why he did not suggest that they sleep instead at the house of his brother Kadong Ortaleza, whose house was much nearer and whose wife is a sister of the Balin brothers."[11]

Needles to say, the positive and forthright declarations of the prosecution witnesses are more worthy of credit that the mere uncorroborated and self-serving denials of the accused.[12]

Accused-appellant would also have us believe that when the victim fell to the floor after the latter was struck in the head with a bolo by Rudy, he (appellant) helped the victim to stand up,[13] controverting the prosecution's claim that he pinned down the victim. We are convinced. In her testimony, the wife of the victim categorically stated that from their house's window, she saw accused Artemio pin the victim down to the floor, thus allowing Rudy the opportunity to hack the victim some more.[14] Helen further testified that she positively saw the accused-appellant, while holding a bolo, run after the victim when the latter scampered away after the first hit.[15] We find no reason not to believe the testimony of the victim's wife. More than anyone else, it is the wife who wants justice for her husband. It is therefore inconceivable that she will implicate a neighbor who, as advanced by the defense, did not harm but helped her husband in such a situation, Further, the defense failed to show any reason or ill motive on Helen's part to cast doubt on her testimony against accused Artemio.

As noted by the Court of Appeals in its decision under review:

> ". . . (I)t would have been expected of him (Artemio) to make a hysterical outburst when Rudy Balin hacked Edgar, expressing his remonstrance why the latter was attacked, or to frantically scamper away towards his home, or to even step back to avoid being hit by Rudy Balin's bolo. Surprisingly, rather than seek safety for himself, he even allegedly helped Edgar San Juan stand up notwithstanding the danger of his being wounded in the process if Rudy Balin had suddenly dealt a second blow upon Edgar San Juan. If he really wanted to help Edgar San Juan, he should have instead, prevailed upon or even pleaded with Rudy Balin to desist from further attacking the former."[16]

As to Artemio's assertion that his decision not to flee should militate in favor of his innocence, non-flight by itself does not necessarily indicate a clear conscience. It is true that in a good number of cases, flight of the accused has been taken as an admission of guilt.[17] However, as held in an equally good number of cases, the non-flight of the accused per se is not proof, much less a conclusive one, of the accused's innocence.[18] The defense of non-flight must be more so unavailing in the light of positive identification of the accused by an undisputably credible witness, the victim's wife, who has shown no ill motive to falsely testify against Artemio. In her testimony, the victim's wife categorically and forthrightly declared that she saw accused Artemio pin her husband to the floor and that Artemio, while holding a bolo, likewise participated in the chase of her husband.[19]

All told, the trial court correctly found accused Artemio Ortaleza guilty of the crime of murder.

Treachery as a qualifying circumstance was properly appreciated. Evidence shows that the victim was first hacked from behind by Rudy Balin who did not go up the balcony and surreptitiously placed himself behind the victim. The attack was unexpected and sudden thus giving the victim no whimper of a chance to defend himself.[20] The

victim was unarmed, conversing with the three (3) accused who went up his balcony, without any inkling whatsoever of the danger lurking from behind. Under the law, there is treachery when the accused commits the crime employing means and methods which in the execution thereof tend to insure such execution without risk to himself arising from the defense which the victim might make.

The evidence likewise shows that accused-appellant conspired with his three (3) co-accused in killing the victim. Earlier on that fateful day, accused Artemio had a drinking session with the three (3) co-accused. He went to Edgar's house with the group. It was he who called and talked to the victim before the killing. When Edgar fell down after the first blow from Rudy, accused-appellant pinned the victim down. When the latter ran away, appellant took part in the chase of the victim, holding a bolo this time. Conspiracy exists when the killing of the victim is characterized by a unity of purpose and design in the execution of the unlawful act.[21] Conspiracy may be inferred from the acts of the accused immediately prior to, or during and right after the attack on the victim.[22] It is clear that conspiracy attended the commission of the offense in this case.

The appropriate penalty as correctly held by the Court of Appeals and pointed out by the Solicitor General should be reclusion perpetua.[23]

WHEREFORE, the judgment of the Court of Appeals finding the accused-appellant ARTEMIO ORTALEZA y PRADO guilty beyond reasonable doubt of the crime of MURDER and imposing upon him the penalty of reclusion perpetua as well as the modification of the trial court's decision thereby increasing the award of indemnity to the heirs of Edgar San Juan from P30,000.00 to P50,000.00, is hereby AFFIRMED. Costs against accused-appellant.

SO ORDERED.

Bellosillo, Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Rollo, pp. 111-122.

[2] Pursuant to Section 13, Rule 124, New Rules on Criminal Procedure.

[3] Rollo, p. 38.

[4] Rollo, pp. 111-114.

[5] Rollo, pp. 34-36, p. 114.

[6] Testimony of Artemio P. Ortaleza, Rollo, pp. 34-35.

[7] Penned by Judge Antonio M. Belen.

[8] Testimony of Artemio Ortaleza, Rollo, p. 34.

[9] Testimony of Pfc. Cecilio Dollaga, Rollo, p. 33.

[10] Ibid.

[11] Rollo, p. 120.

[12] People v. Goce, G.R. No. 113161, 29 August 1995, 247 SCRA 780.

[13] Testimony of Artemio Ortaleza, Rollo, p. 34.

[14] Testimony of Helen San Juan, Rollo, p. 32.

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[15] Ibid.

[16] Rollo, p. 120.

[17] People v. Aliviado, G.R. No. 113782-84, 14 August 1995, 247 SCRA 300.

[18] People v. Amania, G.R. No. 108598, 21 September 1995, 248 SCRA 486.

[19] Testimony of Helen San Juan, Rollo, p. 117.

[20] People v. Halili, G.R. No. 108662, 27 June 1995, 245 SCRA 353.

[21] People v. Nacional, G.R. No. 111294-95, 7 September 1995, 248 SCRA 122.

[22] People v. Torres, G.R. No. 111289, 11 August 1995, 247 SCRA 212.

[23] People v. Dela Cruz, G.R. No. 68319, 31 March 1992, 207 SCRA 632.

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