

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REMIGIO MATURGO, SR., REMIGIO MATURGO, JR. AND ADELIO HIPOLITO, ACCUSED, REMIGIO MATURGO, JR., APPELLANT.

G.R. No. 111872. September 27, 1995

Ponente: PADILLA, J.

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PADILLA, J.:

In an information dated 6 September 1988, Remigio Maturgo, Sr., Remigio Maturgo, Jr., and Adelio Hipolito were charged before the Regional Trial Court of Manila, Branch 12, in Criminal Case No. 88-68712, with the crime of murder, committed as follows:

"That on or about January 26, 1988, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping one another, did then and there wilfully, unlawfully and feloniously with intent to kill and with treachery and evident premeditation on the victim who is [sic] alone and unarmed, attack, assault and use personal violence upon one Ricardo Olivo, Jr., by then and there shooting him several times with a gun, hitting him at the back and at the head, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death thereafter [sic].

Contrary to law."[1]

At the arraignment, accused Remigio Maturgo, Jr. and Adelio Hipolito pleaded not guilty to the charge. Accused Remigio Maturgo, Sr. was not arraigned as he was at large. Policeman Albert Casimiro, an alleged co-conspirator who did the actual shooting of the victim, was charged and tried for homicide before a General Court Martial under the Office of the Police Legal Advocate Command. He was subsequently convicted for homicide with the attendant circumstance of incomplete self-defense and sentenced to suffer the penalty of imprisonment from two (2) months and one (1) day to four (4) months of arresto mayor in its medium period.

After trial, the Regional Trial Court of Manila, Branch 12 rendered judgment[2] on 28 February 1992, the dispositive part of which reads:

"WHEREFORE, premises considered, this Court hereby finds the accused, Remegio Maturgo, Jr. and Adelio Hipolito guilty beyond reasonable doubt of the crime of Murder and accordingly, sentences them as conspirators to suffer the penalty of RECLUSION PERPETUA and to solidarily pay to the heirs of Ricardo Olivo, Jr. the sum of THIRTY THOUSAND (P30,000.00) PESOS, with the accessory penalties provided for by law and to pay the costs.

For accused Remigio Maturgo, Sr., for failure to submit himself to the jurisdiction of this Court, let his case be archived until further Order.

SO ORDERED."[3]

Acting on the motion for reconsideration filed by accused Hipolito, the trial court re-examined the testimonies of witnesses and found that there was really no conspiracy between Hipolito, on the one hand, and the two (2) other

accused, on the other hand, in the commission of the crime. In an order on 26 May 1992, the trial court reduced the culpability of accused Hipolito from murder to less serious physical injuries. Hipolito was held liable for his individual participation, and not as conspirator, in the crime.[4]

Appellant Maturgo, Jr. has appealed his conviction for murder, raising the following issues:

"I

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANT REMIGIO MATURGO, JR. CONSPIRED WITH OTHER ACCUSED IN THE KILLING OF THE VICTIM RICARDO OLIVO, JR.

II

THE LOWER COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER.

III

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF PROSECUTION WITNESSES.

IV

THE LOWER COURT ERRED IN NOT ACQUITTING ACCUSED-APPELLANT REMIGIO MATURGO, JR. ON REASONABLE DOUBT."[5]

The prosecution and the defense gave different versions of the events that transpired on 26 January 1988. The facts of the case, as summarized by the prosecution, are as follows:

"On January 26, 1988, around 7:30 in the evening, while prosecution witness Romeo Ignacio was washing his jeep at Nilampas St., Dagupan, Tondo, Manila, he saw his wife in front of a group of men, wiping her body with a towel. So he scolded her at once, shouting, 'Be, ang kapal naman ng mukha mo, diyan ka pa nagpupunas ng katawan sa harapan ng kalalakihan' (TSN, April 26, 1989, p. 4). It so happened, however, that at the time he uttered those words, the wife of Pat. Albert Casimiro was coming out of their house (Ibid.). She must have felt insulted by Ignacio's words and reported the incident to her husband, Pat. Casimiro, who thereupon went out and immediately kicked Ignacio's back. When Ignacio asked Pat. Casimiro why the latter kicked him, the latter replied, poking a gun at him: 'Putang-ina mo, pipiliin mo ang lolokohin mo, pipiliin mo ang babastusin mo!' (Id., p. 5). Pat. Casimiro's father-in-law, accused Remigio Maturgo, Sr., however, pacified Pat. Casimiro, saying 'That's enough, excuse that guy' and both left the place (Ibid.).

Thereafter, Ricardo Olivo, Jr., alias 'Boy Pilay' arrived at the scene. Upon learning about what happened, he went near the door of Pat. Casimiro's house and asked Pat. Casimiro why the latter kicked Ignacio. However, Martina Olivo, the mother of Ricardo, pulled his son away, to prevent him from having an altercation with the policeman (Ibid; March 16, 1989 p. 7). Ricardo Olivo, Jr., went home but in his anger, he threw a bottle of 7-up in front of the Maturgos' residence where Pat. Casimiro also resides (Ibid.). Immediately, Pat. Casimiro came out of his own house and uttered invectives against the Olivos while his brother-in-law, appellant Maturgo, Jr., came out and hit the victim, Ricardo, with a stone (Id., April 26, 1989, p. 7; March 16, 1989, p. 7). A scuffle ensued between them, and when Pat. Casimiro boxed Olivo's mother who was trying to mediate (Id., April 26, 1989, p. 6), Ricardo was able to run away towards Malong St. At that time, Pat. Casimiro's gun fell. Accused Remigio Maturgo, Sr., the policeman's father-in-law, picked it up, returned it to his son-in-law and ordered the latter to shoot the victim (Id., p. 8). Pat. Casimiro and appellant thereupon chased Ricardo, Pat. Casimiro firing shots at the victim who ran towards Prudencia St., then returned to Malong St., running in a zigzag course. But upon reaching the corner of Malong and Prudencia St., the victim was clubbed by accused Adelio Hipolito with a piece of wood (Id., March 16, 1989, p. 42). Said accused was then sitting on a push cart

in front of his house and upon seeing Ricardo being chased by his first cousin, Pat. Casimiro, immediately stood up and hit the victim's head with a piece of wood (Id., April 26, 1989, pp. 8-9; May 9, 1989, pp. 8-9).

Pat. Casimiro who was by then nearer the victim, shot the victim and finally hit the middle portion of his back (Id., April 26, 1989, p. 9). Ricardo fell on the ground in the middle of two stores along Malong St., which was then brightly illuminated by light coming from the stores and from a lamppost (Id., p. 10). After the victim fell, appellant clubbed the victim's head and face (Id., p. 9). Prosecution witness Godofredo Retanan, who had seen the victim being chased and shot, immediately called for a vehicle and brought the victim to the hospital, where he later died due to 'gunshot wound and hemorrhage, and meningeal, severe traumatic' (Id., March 16, 1989, pp. 12-13; February 17, 1989, p. 6)."[6]

On the other hand, according to appellant, the facts of the case are the following:

"On January 26, 1988, sometime in the afternoon of that date, the victim Ricardo Olivo, Jr., a.k.a. 'Boy Pilay' was drinking with Romeo Ignacio and a certain Mang Dodong. Olivo's group was drinking in front of his house. Olivo's house happened to be beside the house of his relatives, the Maturgos. Witness Eugene Castillo was there in front of the Maturgo's house at about 3:00 or 4:00 o'clock in the afternoon playing chess with a friend.

At about 6:00 in the evening, witness Lourdes Sulit was near the house of Aling Manding, near the river, at Prudencia Street viewing television.

Meanwhile, Pat. Albert Casimiro, the son-in-law of the Maturgos, was at home at the Maturgo residence at 1552 Prudencia St., Tondo, Manila. While he was preparing food for dinner, he asked his wife to buy a bottle of coke. When his wife came back, she told him that when she went to the store, Ignacio molested her two times. Casimiro went out and upon seeing Ignacio, he asked him why he molested his wife. Ignacio just laughed and answered him in 'pabalang'. Casimiro became angry. Casimiro told him not to repeat it because something might happen to him. Then he went inside with his wife and continued supper. That was about 6:00 o'clock in the evening.

After a few minutes the victim Ricardo Olivo, Jr. a.k.a. 'Boy Pilay' came. While Casimiro and his wife were eating, Olivo went to the first step of the stairs of the elevated one-storey house.

Olivo was forcing Casimiro to come out and was asking him why he got angry at Ignacio and what Casimiro had done to Ignacio. Ricardo Olivo uttered invectives to Casimiro such as 'Putang-ina mo, Pat. Casimiro, lumabas ka rito, mag-usap tayo'. Casimiro could tell that Olivo was drunk because his voice was not in a normal way. Casimiro did not mind him much because they were eating. Remigio Maturgo, Jr. a.k.a. Joel Maturgo was also inside the house.

Martina Olivo, the mother of the victim, arrived and pulled Olivo, Jr. causing the latter, who was lame, to fall and causing his chin to hit a stone. Olivo's chin was bloodied when he stood up. As a result, Boy Olivo got angry and he and his mother quarreled, just in front of the house where Olivo and his companions had drank. Olivo was asking his mother why she was pulling him. Then, Olivo, Jr. again uttered invectives against Casimiro like 'putang-ina mo bakla, pulis patola ka lang, hindi ka uubra sa akin'. Casimiro continued eating and ignored Olivo because Olivo was drunk.

Olivo asked one of his companions to buy beer and he drank some more near the river, in front of the house. They were about 9 to 10 arms length from Casimiro's door. They were drinking on the sidewalk of the street. After consuming all, he threw the empty bottles at Casimiro's house. The window jalousies were hit. Casimiro stood from where he was sitting and although his wife and his mother-in-law prevented him, Casimiro went out of their house.

The moment Romeo Ignacio saw Pat. Casimiro step out of his house, he ran away. While Casimiro was coming out from his house, Olivo threw a bottle of beer at him but he was able to evade. Casimiro asked Olivo

why he was doing that but instead of giving an answer, he pulled out his bladed instrument and delivered a thrust at him. Casimiro, who was able to evade, pulled out his gun and fired upwards to scare Olivo.

In the meantime, Casimiro's father-in-law, Maturgo, Sr. was outside sitting on the iron railings, the railings before the river. From the railings to the door of the house is about 7 to 10 arms length. Maturgo, Sr. was pacifying Olivo and Casimiro, as they were having an altercation near where he was sitting.

Olivo continued thrusting the weapon at Casimiro and ignored his warning shot.

Joel Maturgo was then in front of the house, at the door. He was coming out of the house and was approaching Casimiro.

Olivo was bigger than Casimiro. He was also swaying his weapon. Joel Maturgo then picked up a stone and threw it at Olivo, so that he may not stab Casimiro, but he did not hit Olivo. When Olivo delivered his second thrust, Casimiro thought that he was hit at the stomach. When Olivo swung the knife, he lost his balance because he was lame and that caused him to fall and to turn his back towards Casimiro. That was when Casimiro fired at Olivo. Olivo stood up and started to run. Casimiro was very sure that he hit Olivo when he firsts shot at him because Olivo ran away.

Casimiro followed him because he wanted to bring Olivo to the hospital, but because he feared that someone might follow him and stab him, he desisted and requested the people to bring Olivo to the hospital. Olivo ran from Linampas corner Prudencia towards Malong. Olivo fell at Malong street. The shooting occurred at about 7:00 to 8:00 o'clock in the evening.

The kitchen knife was found by elements of the police from Station 7 and it was Casimiro who brought it to the Homicide Section."^[7]

After carefully going over the testimony of each witness, the Court accords credence to the prosecution's evidence. The evidence for the defense is replete with inconsistencies sufficient to cast doubt on its veracity. To illustrate, the allegation of the defense that the victim was shot outside Casimiro's house along Linampas street is incongruous with its allegation that he fell along Malong-Perfecto street which is a block away from Linampas street. It can hardly be expected that the victim could run that far considering that the shot was fatal and the victim was lame. The prosecution's evidence that the victim was shot along Malong street and fell a few meters therefrom (along Malong-Perfecto street), is more consonant with human experience.

Moreover, this Court has no reason to disturb the findings of the trial court as to the credibility of the prosecution witnesses. The trial court is the best judge to assess the demeanor of witnesses. Hence, its findings as to credibility of witnesses should be accorded respect by this Court in the absence of some fact or circumstance of weight and substance which, if considered, would have altered the result of the case.^[8]

As regards the issue of conspiracy, it is a fundamental rule in criminal law that in order to establish conspiracy, "two or more persons must be shown to have come to an agreement concerning the commission of a felony".^[9] Such agreement does not require a mutual arrangement for an appreciable length of time but may be made at the time the crime is committed. It is shown by the acts of two or more accused demonstrating the same purpose and unity in its execution.

In the present case, appellant Maturgo's first act of hitting the victim with a piece of adobe stone was an instinctive reaction to victim's thrust against his (appellant's) brother-in-law, Casimiro. The acts of Casimiro and Maturgo, Jr. in hitting Olivo were not preceded by any agreement to attack Olivo. Nor was there any signal from Casimiro for appellant Maturgo, Jr. to kill Olivo. But from the time that Casimiro and Maturgo Jr. chased Olivo, both had already one purpose in mind, to kill the victim. Casimiro fired four (4) shots, the fourth hitting Olivo at the back. The shooting was witnessed by appellant Maturgo, Jr., who was following Casimiro closely. And

instead of aiding the fallen man, Maturgo, Jr. aggravated the victim's plight by hitting him with stones on the head and face. This act is not compatible with one who pleads innocent to a conspiracy. What appellant should have done to extricate himself from criminal conspiracy was to perform an overt act to dissociate or detach himself from the unlawful plan to commit the felony.[10]

In the direct-examination of witness Romeo Ignacio on 26 April 1989, he testified:

"Q

You said that Albert Casimiro shot again Olivo, was he hit?

A

His last shot hit Olivo, sir.

Q

What part of the body of Olivo was hit?

A

At the middle portion of his back, sir.

Q

Now, after that what happened?

A

Olivo fell to the ground and after that Joel Maturgo clubbed him.

Q

What part of the body was hit by Joel Maturgo when he clubbed Ricardo Olivo?

A

Head and face, sir. And Ricardo Olivo just turned his head towards the person who clubbed him."[11]

This testimony is a confirmation of Ignacio's statement given to the police authorities on 30 January 1988, four (4) days after the shooting incident. In his sworn statement, Ignacio said:

"S : x x x Pagkaabot, pinaputukan ho ni ABET si RICARDO, siguro mga apat ng beses. Panghuling putok ho, bumagsak si RICARDO. Pagbagsak, pinagpapalo ng kahoy ng pinsan ni ABET na si RODELIO HIPOLITO at nitong JOEL MATURGO. Binagsakan ng bato at ang sabi, 'TAPUSIN KA NA, ABUSO KA NA!'"[12]

It can be well said that at the time Casimiro was chasing Olivo with a gun on hand, appellant Maturgo, Jr. acknowledged Casimiro's motive, acquiesced in it and forthwith participated in achieving the common purpose. Thus, after Olivo fell to the ground, appellant Maturgo, Jr. attacked him with stones on the head and face.

Under the circumstances, there is proof beyond reasonable doubt that appellant Maturgo, Jr. conspired with Casimiro to kill Olivo.

With regard to the second issue raised by appellant in this appeal, the Court finds no evidence whatsoever showing the existence of treachery or evident premeditation.

The lower court, without stating any reason for the appreciation of the two (2) aggravating circumstances above mentioned, convicted appellant for murder. The protagonists in a criminal case, especially the accused, should be

clarified on the findings of the trial court, and the basis for its decision. Judges should bear in mind that decisions are written essentially for litigants who are usually unfamiliar with technical terms. In any case, aggravating circumstances must be proved as fully as the crime itself. Any doubt as to their existence must be resolved in favor of the accused.

The attendant circumstance of evident premeditation requires proof of:

- 1) the time when the offender determined to commit the crime;
- 2) an act manifestly indicating that the culprit had clung to his determination; and
- 3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act.[13]

The case at bench yields no specific evidence of previous deliberation to commit murder. The events which initiated the dispute among Casimiro, appellant and the victim were spontaneous, as shown in at least three (3) instances: (1) the kicking of Ignacio by Casimiro; (2) the confrontation between Olivo and Casimiro; and (3) the stoning of Olivo by Maturgo, Jr., Casimiro's and appellant's intent to kill the victim became manifest only when the former chased Olivo. This was patent from the fact that when Casimiro and appellant were chasing the victim, Casimiro was firing shots in Olivo's direction, while appellant did nothing to prevent Casimiro from succeeding in his design. In fact, appellant resolved to assist in committing the felony when he followed closely behind Casimiro who was then firing shots at the victim. The assault by appellant on Olivo after he (Olivo) fell was clearly indicative of appellant's intent to finish the victim. Nevertheless, such acts were not the product of mature deliberation. Moreover, no sufficient time had elapsed for the offenders to coolly and serenely think and deliberate on the meaning and consequences of what they planned to do, an interval long enough for their conscience and better judgment to overcome their evil desire and scheme.[14]

Neither can treachery be appreciated in this case against the accused-appellant. According to Article 14, paragraph 16 of the Revised Penal Code:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods, or 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 make."

The prosecution must prove that at the time of the attack, the victim was not in a position to defend himself and that the offender consciously adopted the particular means, method or form of attack employed by him.

In the case at bar, the attack was done in such a way that the victim had a chance to prepare for the assault, as in fact, he was the one who provoked Casimiro into going out of the house. Then, the victim knew that Casimiro had a gun with him during the altercation. The victim was sufficiently warned and was on guard at the time of the shooting. The fatal wound found at the back of the victim cannot be considered as indicative of treachery. "The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery." [15] Furthermore, no evidence was adduced to show that the accused reflected on the means, method and form of killing the victim.

Based on the foregoing premises, the Court finds that appellant Maturgo, Jr. is guilty beyond reasonable doubt of the crime of homicide, not murder.

WHEREFORE, the judgment of the trial court is modified and accused-appellant Remigio Maturgo, Jr. is convicted of the crime of HOMICIDE. Applying the Indeterminate Sentence Law, accused-appellant is hereby sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor to seventeen (17)

years and four (4) months of reclusion temporal. The award of Thirty Thousand Pesos (P30,000.00) to the victim's heirs is hereby increased to Fifty Thousand Pesos (P50,000.00) in accordance with prevailing jurisprudence.

SO ORDERED.

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

- [1] Original Records, p. 1.
- [2] Penned by Judge Sibanah E. Usman.
- [3] Rollo, p. 34.
- [4] Original Records, p. 269.
- [5] Rollo, p. 65.
- [6] Rollo, pp. 92-95.
- [7] Rollo, pp. 63-65.
- [8] People vs. Sulte, G.R. No. 109881, 18 May 1994, 232 SCRA 421.
- [9] People vs. Timple, G.R. Nos. 100391-92, 26 September 1994, 237 SCRA 68.
- [10] See People vs. Delos Reyes, G.R. No. 44112, 22 October 1992, 215 SCRA 63.
- [11] TSN dated 26 April 1989, p. 9.
- [12] Sworn statement of Romeo Ignacio submitted to Pfc. Salvador Fradejas on 30 January 1988.
- [13] People vs. Iligan, G.R. No. 75369, 26 November 1990, 191 SCRA 643.
- [14] People vs. Mendoza, et. al., 91 Phil. 64.
- [15] People vs. Ablao, G.R. No. 69184, 183 SCRA 658 26 March 1990.

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