

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONALD ESTORCO Y DE LUNA, BUTCH BALLESTEROS, HENRY JUGUILON Y NARVASA AND PETER DOE, ACCUSED

G.R. No. 111941. April 27, 2000

Ponente: BUENA, J.

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BUENA, J.:

This is an appeal from the Decision of the Regional Trial Court of Dagupan City, Branch 44, in Crim. Case No. D-10756, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Ronald Estorco y de Luna guilty beyond reasonable doubt as principal of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, and in view of the presence of the generic aggravating circumstances of superior strength and cruelty without being offset by any mitigating circumstance, and pursuant to law, hereby sentences Ronald Estorco y de Luna to suffer the penalty of Reclusion Perpetua and to pay the costs.

"Accused Ronald Estorco is hereby ordered to indemnify the heirs of the deceased in the amount of P50,000.00.

"Accused is also ordered to pay the amount of P18,050.00 representing actual expenses and P100,000.00 as moral damages plus attorney's fees in the amount of P10,000.00.

"SO ORDERED." [1]

On December 24, 1991, at 5:30 in the afternoon, Rodrigo Alvendo, 21 years old, his brother Rogelio Alvendo, 17 years old, and their cousin Vicente Alvendo, 17 years old, were in the carnival ground (peryahan) on A.B. Fernandez Street, Dagupan City, betting on the rollets (running light game). Rogelio, trying to get acquainted with one of the ladies/attendants in the game, was talking with the latter when Ronald Estorco came and told the former that it is prohibited to talk with the lady. Rogelio asked the lady if it was really prohibited to talk with her, and the latter answered it was not. So Rogelio continued talking with her. Estorco got mad. He drew a fan knife and intimidated the group of Rogelio. Estorco called up one companion and both of them threatened Rogelio, et al. Thereafter, Estorco left again. When he returned after a few minutes, he had two more companions. Estorco made a sign of stabbing by positioning his hand forward. One of Estorco's companions boxed Rodrigo; another one, Butch Ballesteros, stabbed Rodrigo, and then Estorco's companions converged on Rodrigo. Rogelio was not able to do anything because Estorco was holding his arm and was poking the fan knife on him. Rodrigo, upon being able to free himself from Estorco's companions, ran. Rogelio was also able to extricate himself from Estorco. However, as Rogelio followed his brother Rodrigo, the latter fell down. When Rogelio touched his brother's pulse, it was no longer beating. So he ran toward the police station and informed the police on what transpired, telling the police that his brother was stabbed. Three policemen went with him to the place where his brother was stabbed. Seeing that Ronald Estorco was still standing in the place, he pointed to him. Ronald Estorco was apprehended. Rodrigo was brought to the hospital but was pronounced dead on arrival.

In an Amended Information,[2] appellant Ronald Estorco y de Luna, together with Butch Ballesteros, Henry Juguilon and Peter Doe, was charged with murder. The Amended Information reads:] Court

"That on or about the 24th day of December, 1991, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RONALD ESTORCO y de Luna, BUTCH BALLESTEROS, HENRY JUGUILON y Narvasa and PETER DOE, Butch Ballesteros being then armed with a knife, with treachery, abuse of superior strength and with intent to kill one RODRIGO ALVENDO, confederating together, acting jointly and helping one another, did then and there, willfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by BUTCH BALLESTEROS stabbing and hitting RODRIGO ALVENDO on vital parts of his body with the said weapon, while PETER DOE and HENRY JUGUILON y Narvasa held him thereby causing his death shortly thereafter due to 'Cardio Respiratory Arrest, Massive Intrathoracic, intra-abdominal hemorrhage and multiple stab wounds' as per Autopsy Report issued by Dr. Tomas G. Cornel, of the City Health Department, this city, to the damage and prejudice of the legal heirs of said deceased, RODRIGO ALVENDO, in the amount of not less than FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages. Jlexj

"Contrary to Article 248 of the Revised Penal Code."

Upon arraignment, appellant pleaded not guilty. As the other accused were at large, a separate trial against accused-appellant Ronald Estorco was conducted.

The facts, as culled by the trial court from the evidence which it found to be credible, are as follows: Lexjuris

"Rogelio Alvendo, 17 years old and a resident of Reyes Street, testified that on December 24, 1991 at 5:30 in the afternoon, he and his brother Rodrigo Alvendo and his cousin Vicente Alvendo were inside the carnival ground at A.B. Fernandez Avenue, Dagupan City. They were betting on a rollet game. While he was talking with a lady, Ronald Estorco approached him. Ronald Estorco told him that it is prohibited to talk with her. The woman answered, it is not prohibited, and so he continued talking with her. Ronald Estorco got mad and drew a fan knife and intimidated them. Then Ronald Estorco called for one companion and both of them threatened them after which Ronald Estorco left. Few minutes thereafter, Ronald Estorco and two companions arrived. At this juncture, one of Estorco's companion boxed his brother Rodrigo Alvendo. He was not able to do anything because Ronald Estorco poked a fan knife to him. He saw Butch Ballesteros stab his brother Rodrigo Alvendo. The other companions of Ronald Estorco went near. When his brother ran, he followed and saw him fall. He touched his pulse and the same is no longer moving. So he ran toward the police station and informed the police on what transpired, telling the police that his brother was stabbed. Three policemen went with him to the place where his brother was stabbed. Seeing that Ronald Estorco (was) still standing in the place, he pointed to him. Ronald Estorco was apprehended. The other companions of Ronald Estorco were no longer at the place. When asked to identify him, he pointed to the person of Ronald Estorco. (6-16, tsn, April 20, 1992).

"Vicente Alvendo testified that on December 24, 1991 at 5:30 in the afternoon while he, together with his cousins Rogelio Alvendo and Rodrigo Alvendo were at the carnival ground roaming and sometimes betting, and Rogelio was talking with a lady, a man approached Rogelio saying that talking to that girl is not allowed. After that, the man left. Upon his return after ten minutes, the man with a companion returned. They tried to scare them by drawing out their fan knives. Then the first man left but when he came back, he had two companions, at which time he made a sign of stabbing by positioning his hand forward. He moved backward. One of them boxed his cousin Rogelio, and the other stabbed Rodrigo while the first man that approached him poked a fan knife on the side of Rogelio Alvendo. He moved backward. His cousin Rodrigo Alvendo extricated himself and ran away. His cousin Rogelio was (also) able to escape and ran away after which, he (Vicente Alvendo) went to his uncle and both went to the carnival ground to see his cousin who was stabbed. They brought Rodrigo Alvendo to the hospital. (2-9 tsn April 24, 1992).

"Vicente Alvendo identified Ronald Estorco as the same person who poked a knife at the side of his cousin and

who boxed and stabbed his cousin Rodrigo (Ibid, p. 10)

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"Dr. Tomas Cornel testified on the autopsy report he conducted on the corpse of Rodrigo Alvendo on December 24, 1991 at about 7:30 in the evening. He reduced the autopsy in writing. The autopsy report is reproduced as follows:

Republic of the Philippines

City of Dagupan

CITY HEALTH DEPARTMENT

MEDICO-SECTION

AUTOPSY REPORT[3]

Date: December 25, 1991

Name of Deceased: Rodrigo B. Alvendo

Age: 21 yrs. old

Date & Time of Death: December 24, 1991, about 5:30 p.m.

Sex: Male

Place of Death: Nueva St., Dagupan City

Height: 5'4"

Nationality: Filipino

Civil Status: Single

Occupation: Student

Address: # 1 Reyes St., Dagupan City

Agency Requesting Autopsy: DCPS-PNP

Date & Time of Autopsy: December 24, 1991 at 7:30 p.m.

Place of Autopsy: Funeraria Dagupan, Dagupan City

EXTERNAL FINDINGS

1. Stab wound, along the parasternal line, left, level of the 4th intercostal space, left, 1" x ½" penetrating. The edge of one side of the wound is sharp and pointed.

2. Stab wound, along the paramedian line, right, level of the 6th intercostal space, right, 1" x ¼", penetrating. The edge of one side of the wound is sharp and pointed.

3. Stab wound, along the nipple line, right, level of the 6th intercostal space, right, 1" x ½" penetrating. The edge of one side of the wound is sharp and pointed.

4. Stab wound, along the posterior axillary line, right, level of the 6th intercostal space, right, ½" x ¼", penetrating. The edge of one side of the wound is sharp and pointed.

5. Incised wound 1" x ½" x ¼", shoulder, right. The edges of both sides of the wound were sharp and pointed. justice

6. Incised wound, middle 3rd, anterior aspect, forearm, left, 2" x ¼" x ¼"

INTERNAL FINDINGS

Massive intrathoracic and intra-abdominal hemorrhage with perforation of the left auricle of the heart. The lower lobe of the right lung was perforated. Perforation of the right lobe of the liver. Perforation of the small intestine.

Cause of Death: Cardio Respiratory Arrest Massive Intrathoracic And Intra-abdominal Hemorrhage

Due to: Multiple Stab Wound

Autopsy Performed by: (Sgd.) TOMAS G. CORNEL, M.D.

Name

Asst. City Health Officer Position"

Among others, Dr. Cornel testified that stab wound number 1 is fatal because the organs in this area are the heart and lungs; stab wound number 4 also involved some vital organs and is also fatal; wound number 5 is a superficial wound located at the right shoulder; that wound number 6 is also superficial; and that with the internal findings, the chance of survival is very remote.[4]

The appellant interposed the defense of alibi. Ronald Estorco testified that he was a show boy; that at 5:00 o'clock in the afternoon of December 24, 1991, his employer, Bebot de Luna, told him to buy fish and firewood so he left for the Centromart. Upon returning to the carnival ground, he delivered the fish and firewood to the cook Cristina Coquia. He then noticed many people coming near a dead person, which was 2½ meters from where he was standing. He was immediately apprehended and he was shocked because he knew that he had no fault. He was able to return to the carnival grounds at around 6:00 o'clock in the afternoon and that at around 5:30 o'clock in the afternoon, he was still buying fish and firewood.[5]

Defense witnesses Merlin Prado, Cristina Coquia, and Esperanza Burguillos, all co-workers of appellant at the carnival, testified and corroborated the testimony of appellant that at 5:30 in the afternoon of December 24, 1991, the latter was not in the carnival grounds as he was buying fish and firewood.

After trial, the court rendered a Decision convicting appellant, the dispositive portion of which was heretofore quoted.

Hence, the instant appeal.

Appellant ascribes to the trial court the following assignment of errors:

1. The Honorable lower court gravely erred in finding the accused Ronald Estorco guilty as principal of the crime of murder.
2. The Honorable lower court also seriously erred in giving credence to the testimonies of Rogelio Alvendo and Vicente Alvendo.
3. The Honorable lower court likewise gravely erred in not giving weight to the testimonies of defense witnesses Merlin Prado, Cristina Coquia, Esperanza Burguillos and accused Ronald Estorco.
4. The Honorable lower court further committed serious error in considering the aggravating circumstances of superior strength and cruelty.
5. The Honorable lower court furthermore seriously erred in not acquitting the accused of the crime of murder.

On the first assigned error, appellant alleges that the evidence for the prosecution is bereft of any showing of treachery and abuse of superior strength because assuming that the incident happened as claimed by the prosecution, there was, however, prior altercation between the accused on the one hand, and Rogelio Alvendo on the other hand, regarding a certain lady, so that the threat allegedly made by the accused would have put the group of Rogelio Alvendo on guard; and that the alleged fact that accused returned and the other companions followed after a few minutes could not be characterized as unexpected or sudden as to make the attack treacherous. Appellant also contends that in order to appreciate *allevosia*, it must clearly appear that the method of assault

adopted by the aggressor was deliberately chosen with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed might make.

Appellant's contentions are without merit.

The trial court did not err in ruling that appellant Estorco is guilty as principal in the crime of murder qualified by treachery.

While a victim may have been warned of a possible danger to his person, in treachery, what is decisive is that the attack was executed in such a manner as to make it impossible for the victim to retaliate.[6] In the case at bar, while Rodrigo, et al. may have been warned of a possible danger to their persons, the attack from appellant Estorco and companions was executed in such a manner as to make it impossible for Rodrigo, et al. to retaliate. Upon Estorco and his companions' return, one man suddenly boxed Rodrigo which was immediately followed by stabbing by Estorco's other companion. Estorco, meanwhile, held Rogelio, which made it impossible for the latter to help his brother or to retaliate. As for Rodrigo who was unarmed, it was also impossible for him to retaliate because he had to fight at least two men who were armed with fan knives. Moreover, the attack was carried out with such suddenness that the victim Rodrigo Alvendo was totally unable to defend himself. As for Vicente Alvendo, he was also not able to help his cousins because all of the accused were armed with a weapon, thus: EsmmÓ is

"Q You did not try to help your companions being held by the companions of Ronald Estorco?

A No more because all of them were armed with a weapon, I might be included as a victim." [7]

The fifth assigned error which is closely related to the first assigned error will be discussed next. Esmsôâ

Appellant alleges that the trial court invoked conspiracy to link the appellant to the crime of murder. Appellant however contends that on the whole evidence adduced by the prosecution, there is no iota of evidence to prove such conspiracy.

Appellant's contention is not meritorious.

The trial court did not err in convicting the appellant. Even if appellant did not himself stab the victim, he is equally guilty as Butch Ballesteros and the others because there was conspiracy in the commission of the crime. Where there is conspiracy, the act of one is the act of all and every one of the conspirators is guilty with the others in equal degree.[8] That there was conspiracy in the commission of the crime is clear from the following evidence adduced by the prosecution: Appellant Estorco prohibited and warned Rogelio Alvendo against talking with the lady at the running light game. As Rogelio continued to talk with the lady, appellant summoned the other accused. He instigated the stabbing of Rodrigo by making a signal to stab the victim Rodrigo Alvendo, while appellant himself held Rogelio and poked a knife on the latter, thus preventing Rogelio from helping his brother. At the same time, appellant's co-accused converged on Rodrigo who thereby sustained six (6) stab wounds. From the foregoing facts, it is clear that conspiracy existed. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[9] The aforesaid coordinated acts and movements of the co-conspirators adequately show conspiracy to harm or kill the victim Rodrigo Alvendo. Mseä sm

Being interrelated, the second, and third assigned errors will be discussed jointly.

Appellant contends that the testimonies of Vicente Alvendo and Rogelio Alvendo contradict each other in that while Rogelio claimed that his brother Rodrigo Alvendo was stabbed by Butch Ballesteros, Vicente Alvendo on

the other hand claimed that it was Rogelio Alvendo who was stabbed as he in fact tested the pulse of Rogelio Alvendo, and that Rodrigo Alvendo was only boxed.

The Court is not persuaded.

The alleged contradiction is a clerical/typographical error appearing on pages 7-8 of the TSN taken on April 24, 1992, which was properly corrected and initialed by the stenographer who submitted the said transcripts of stenographic notes. At any rate, it is clear that Rogelio was not stabbed but was only held by the appellant and in fact, it was Rodrigo who died of stab wounds.

Appellant also alleges that Rogelio contradicted himself because he stated in his affidavit that only one person stabbed Rodrigo but in his testimony before the court, he said that Henry Juguilon was one of those who stabbed him, and therefore Rogelio's testimony should not be given credence. Kyleä

The appellant's contention is not tenable.

Whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight. Moreover, affidavits taken ex parte are inferior to testimony given in court, the former being invariably incomplete and oftentimes inaccurate due to partial suggestions or want of specific inquiries.[10] Thus, such alleged discrepancy between the statement in the affidavit and those made on the witness stand would not discredit the declarant-witness Rogelio Alvendo.[11]

Appellant also alleges that the prosecution's claim that appellant Estorco had a participation in the commission of the crime is negated by the presence of the accused immediately after the alleged killing. According to appellant, if he had a guilty conscience and played a role as imputed to him, he could have fled and escaped or eluded the police authorities. Appellant also contends that his testimony that he was buying fish and firewood at the time of the incident was amply corroborated by the declarations of Merlin Prado, Cristina Coquia and Esperanza Burguillos, whose testimonies were given in a straightforward, direct and convincing manner. Kycalrâ

The Court is not persuaded.

Accused-appellant tries to cast doubt on the veracity of the testimonies of the witnesses for the prosecution. It must be borne in mind, however, that "resort to appellate review to reverse the findings thereon of the trial court would generally elicit a rebuff from the superior court where no perceivable gross error bordering on misapprehension of the facts could be readily gleaned from such factual conclusions." [12]

As to who between the prosecution and the defense witnesses are to be believed, the trial court's assessment thereof enjoys a badge of respect for the reason that the trial court has the advantage of observing the demeanor of the witnesses as they testify,[13] unless found to be clearly arbitrary or unfounded. The rationale for this doctrine, as explained in *People vs. Cayabyab*[14] is that "the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict." [15]

The Supreme Court finds no cogent reason to disturb the findings and assessment of the trial court as to the

credibility of the witnesses because the trial court did not overlook any such material fact, nor did it commit any palpable error in its assessment of the testimonies of the prosecution and defense witnesses.

The record of the case is replete with evidence showing that accused-appellant Estorco was positively, categorically and consistently identified by prosecution witnesses Rogelio and Vicente Alvendo as the person who prohibited and warned Rogelio Alvendo against talking with the lady at the running light game; as the person who summoned the other accused and who instigated the stabbing of Rodrigo by making a signal to stab the victim Rodrigo Alvendo; and that appellant himself held Rogelio and poked a knife at the latter. Appellant failed to show ill motive on the part of the said prosecution witnesses to testify against the former. Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over alibi and denial which, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[16] If the defense fails to prove that a witness was moved by any improper motive, the presumption is that he was not so moved and his testimony is entitled to full faith and credit.[17]

The accused's denial and alibi cannot possibly be given more probative weight than the clear and positive identification provided by no less than two credible eyewitnesses.[18] Well-entrenched is the doctrine that for alibi to prosper, the defendant must prove not only (1) that he was somewhere else when the crime was committed, but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[19]

In the case at bar, appellant allegedly left for the Centromart to buy fish and firewood at around 5:00 o'clock in the afternoon. From appellant's own admission, the place where he allegedly bought fish and firewood could be reached from the carnival ground where the crime was committed in only thirteen (13) minutes.[20] Thus, it was not physically impossible for him to have been at the scene of the crime at the time of its commission, making his defense of alibi unavailing. As to appellant's claim that his alleged participation in the commission of the crime is negated by his presence immediately after the killing, suffice it to state that "non-flight is not conclusive proof of innocence." [21]

As to the fourth assigned error, the trial court indeed erred in considering the generic aggravating circumstances of superior strength and cruelty.

When treachery qualifies the crime of murder, as in this case, the generic aggravating circumstance of abuse of superior strength is necessarily included in the former.[22] Where treachery qualifies the crime to murder, it absorbs abuse of superior strength and the latter cannot be appreciated even as a generic aggravating circumstance.[23]

Cruelty may not also be appreciated as a generic aggravating circumstance for lack of evidence. In *People vs. Sion*, [24] this Court held that it is error to appreciate the generic aggravating circumstance of cruelty based solely on the fact that the victim was stabbed thrice – cruelty cannot be appreciated in the absence of any showing that the accused, for their pleasure and satisfaction, caused the victim to suffer slowly and painfully and inflicted on him unnecessary physical and moral pain.

This Court, however, holds, as heretofore discussed that the trial court did not err in finding the accused-appellant guilty beyond reasonable doubt of the crime of murder.

The crime of murder is punishable by the penalty of reclusion temporal in its maximum period to death.[25] In the absence of mitigating or aggravating circumstances, the proper imposable penalty is the medium period of said penalty or reclusion perpetua.[26]

WHEREFORE, for lack of merit, the instant appeal is dismissed and the appealed Decision is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

- [1] Original Record, pp. 152-163.
- [2] Original Record, p. 173.
- [3] Exh. "C", p. 98, Original Record.
- [4] TSN, June 1, 1992, pp. 6-10.
- [5] TSN, July 8, 1992 pp. 4-7.
- [6] People vs. Javier, 269 SCRA 181; People vs. Valles, 267 SCRA 103.
- [7] TSN, May 14, 1992, p. 10.
- [8] People vs. Quinones, 183 SCRA 747.
- [9] People vs. Sancholes, 271 SCRA 527.
- [10] People vs. Oliva, 282 SCRA 470; People vs. Castro, 276 SCRA 572.
- [11] cf. People vs. Traverro, 276 SCRA 301.
- [12] People vs. Nalangan, 270 SCRA 234, 238.
- [13] Amper vs. Sandiganbayan, 279 SCRA 434.
- [14] 274 SCRA 387, 400-401.
- [15] People vs. de Guzman, 188 SCRA 407, cited in People vs. Cayabyab, 274 SCRA 387, 401 and People vs. Talingting, 281 SCRA 91, 98.
- [16] People vs. Javier, 269 SCRA 181.
- [17] People vs. Salvame, 270 SCRA 766; People vs. Carreon, 282 SCRA 544.
- [18] People vs. Salazar, 277 SCRA 67.
- [19] People vs. Baniel, 275 SCRA 472
- [20] TSN, July 8, 1992, p. 11
- [21] People vs. Quijada, 259 SCRA 191.
- [22] People vs. Violin, 266 SCRA 224.
- [23] People vs. Sancholes, 271 SCRA 527.
- [24] 277 SCRA 127.
- [25] Art. 248, Revised Penal Code.
- [26] Art. 64(1), Revised Penal Code; People vs. Matubis, 288 SCRA 210, 224.

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