

PEOPLE OF THE PHILIPPINES, PLAINTIFF-RAPPELLED, VS. JOSE BITOON, SR., BERNARDO BITOON, JOEBEL BITOON, AND ROGER DEPEÑO, ACCUSED-APPELLANTS.

G.R. No. 112451. June 28, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision[1] of the Regional Trial Court, Branch 14, Roxas City, convicting accused-appellants Jose Bitoon, Sr., Bernardo Bitoon, Joebel Bitoon and Roger Depeño of murder and sentencing each of them to suffer the penalty of reclusion perpetua, to pay the sum of P50,000.00, as civil indemnity to the heirs of the victim Jesus Charlie T. Cadiz, and P27,450.00, as actual damages and costs.

On May 16, 1989, Assistant City Prosecutor Henry B. Avelino of Roxas City filed with the Regional Trial Court, Roxas City, an information charging accused-appellants with murder, alleging:

"That on or about the 8th day of June, 1988, in the city of Roxas, Philippines, and within the jurisdiction of this Honorable Court, at nighttime purposely sought to better accomplish their criminal designs, said accused, conspiring and confederating together and mutually helping one another, with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one JESUS CHARLIE T. CADIZ, by then and there alternately clubbing, striking and hacking respectively the latter on the different parts of the body with the use of lead pipes and a fighting bolo, thereby inflicting upon him mortal wounds, to wit:

- Lacerated wound with contusion located at the right occipitoparietal region, measuring 5 cm. in length;
- Contusion with abrasion located at the anterior axillary line right side measuring 3 cm. long;
- Abrasion located at the left side of the back scapular region measuring 8 cm. long and 1 1/2 cm. wide;
- Defused abrasion located at the anterior axillary line 4 cm. below the left axilla measuring 3 cm. long and 7 cm. wide;
- Slashing wound located at the medial aspect of the right thigh involving the skin, tissues, muscles and femoral blood vessels measuring 15 cm. in length 5 1/2 cm. deep, gaping;
- Slashing wound located at the left sole measuring 3 1/2 cm. in length 2 1/2 cm. wide which were the direct and immediate cause of his death thereafter."[2]

At their arraignment, accused-appellants pleaded not guilty to the crime charged[3] and, accordingly, trial ensued.

The facts showing the treacherous killing of Jesus Charlie Cadiz are as follows:

At about 8:00 in the evening of June 8, 1988, which, incidentally, was Jesus Charlie's birthday, Ellano Aducal, Jesus Charlie Cadiz, Roberto Quirao and Pedro Derayo were trekking the road of Bgy. Lanot to buy beer in a nearby store. As the group passed by the Bitoon residence which is located at the side of the road,

accused-appellant Joebel Bitoon suddenly jumped on and struck Jesus Charlie on the head with an iron pipe. Jesus Charlie tried to run away; accused-appellant Bernardo Bitoon gave chase and also swung an iron pipe on Jesus Charlie's head. Jesus Charlie fell face down. At this point, accused-appellant Jose Bitoon appeared and with a fighting bolo in hand, delivered a hacking blow on the right thigh of Jesus Charlie. Accused-appellant Jose Bitoon was to inflict another hacking blow on Jesus Charlie but the proximity of accused-appellants Joebel Bitoon and Bernardo Bitoon prevented accused-appellant Jose Bitoon from doing so. Eleno Depeño (Roger Depeño's father) who was at his house watching the incident shouted "kill him." Accused-appellants Joebel Bitoon and Bernardo Bitoon then continued wielding their iron pipes on Jesus Charlie who was already lying flat on the ground. Thereafter, accused-appellants fled to their respective homes. Accused-appellant Roger Depeño was watching the other accused-appellants carry out their deadly assault.

After the accused-appellants left, witness Arturo Abaracoso carried Jesus Charlie's body to the house of his grandfather. They rushed Jesus Charlie to the hospital where the attending doctor pronounced him dead on arrival.

Both prosecution witnesses Ellano Aducal and Arturo Abaracoso recognized the accused-appellants as Jesus Charlie's assailants because the crime scene was illuminated by two fifty (50)-watt light bulbs from the Bitoon and Blancaflor residences. Ellano Aducal knew all the accused-appellants very well since their houses are just fifty (50) meters away from his welding shop where Jesus Charlie worked. Accused-appellant Jose Bitoon is the father of accused-appellants Joebel Bitoon and Bernardo Bitoon, while accused-appellant Roger Depeño is Jose Bitoon's brother-in-law. Witness Arturo Abaracoso's wife and accused-appellant Jose Bitoon are second cousins. More, Jesus Charlie is a nephew of Arturo Abaracoso's wife.

An autopsy on Jesus Charlie Cadiz at the hospital showed that the victim's body bore six (6) wounds. Four (4) of these wounds are found on the head, chest, back and armpit which were caused by a blunt instrument, possibly a lead pipe. The other two (2) are slashing wounds located at the right thigh and left sole apparently caused by a sharp bladed instrument. The right thigh wound, according to Dr. Rafael Almalbis, Jr., who conducted the autopsy was the fatal injury inflicted on Jesus Charlie Cadiz since it caused profuse bleeding leading to severe hemorrhage. Even if Jesus Charlie had been given prompt medical attention, he would not have lasted ten (10) minutes. Jesus Charlie's death was due to "shock secondary to hemorrhage due to slashing wound, right thigh." [4]

In their defense, accused-appellant Jose Bitoon interposed self-defense, while accused-appellants Joebel Bitoon, Bernardo Bitoon and Roger Depeño each had an alibi to tell.

Accused-appellant Jose Bitoon stated [5] that at about 8:00 p.m. of June 8, 1988, he was in the ceiling of his house repairing nipa thatches. Moments later, Jesus Charlie who was armed with a jungle bolo arrived and began destroying merchandise posters and billboards attached to their store. Jesus Charlie thereafter ascended the stairway, cut down the trunk of the guava tree and challenged accused-appellant Jose Bitoon to come down. Accused-appellant Jose Bitoon descended from the ceiling and when Jesus Charlie pushed the door and was about to enter the house, he struck the latter with a "dos por dos" wooden stick on the head. When Jesus Charlie fell on the ground, Jose Bitoon grappled for the possession of the bolo. Accused-appellant Jose Bitoon finally got hold of the bolo and then delivered two (2) hacking blows on Jesus Charlie, hitting him on the sole of the left foot and on the right thigh. Jesus Charlie was able to run in the direction of his house which was about one hundred (100) meters away from Jose Bitoon's residence. Accused-appellant Jose Bitoon did not pursue Jesus Charlie anymore. He just threw the bolo away. Two (2) hours after the incident, the police apprehended accused-appellant Jose Bitoon. He claimed sole responsibility for all the injuries sustained by Jesus Charlie, as the other accused-appellants were not at the scene when the incident occurred.

Accused-appellant Joebel Bitoon testified [6] that from 3:00 p.m. to 9:30 p.m. of June 8, 1988, he was at the house

of Vicente Ame located at Dorado Subdivision, Roxas City, which is about seven (7) kilometers away from his house, attending the birthday celebration of Vicente's son. He left the Ame residence at around 9:30 p.m., boarded a tricycle and arrived at his house fifteen (15) minutes later. Upon reaching home, his father Jose Bitoon and brother Bernardo Bitoon were not there. Accused-appellant Joebel Bitoon later on learned from his mother of the incident that transpired at around 8:00 p.m. and that his father Jose Bitoon had been taken to the police station.

Accused-appellant Bernardo Bitoon claimed[7] that since the afternoon of June 8, 1988, he and his girlfriend Lilibeth Potato were together at the latter's house which was just one (1) kilometer away from the Bitoon residence. They were having a very pleasant conversation and he even helped in constructing a pigpen. He stayed there for the night upon the request of Lilibeth. Accused-appellant Bernardo Bitoon left Lilibeth's house at around 6:00 o'clock in the morning of the following day and arrived at his house by foot in less than thirty (30) minutes. There, he noticed the dilapidated billboards of their store and the guava tree that Jesus Charlie had been chopped-off. Her mother also informed him of the incident between his father accused-appellant Jose Bitoon and Jesus Charlie Cadiz.

Accused-appellant Roger Depeño, for his part, claimed[8] that at the time of the incident he was attending a meeting among members of the Theater Club in front of Mount Carmel Church in Roxas City. The meeting ended at around 9:45 p.m., then he boarded a tricycle which brought him to his house in Bgy. Lanot. The travel time was about thirty (30) minutes.

On June 1, 1993, the trial court rendered decision rejecting the defenses interposed by the accused-appellants. It found that the aggravating circumstances of nighttime, evident premeditation and treachery attended the commission of the crime, without the benefit of any mitigating circumstance. The decretal portion of the decision reads:

"WHEREFORE, the court finds accused Jose Bitoon, Sr., Joebel Bitoon, Bernardo Bitoon and Roger Depeño guilty beyond reasonable doubt of the crime of Murder as charged in the information as defined and penalized under Article 248 of the Revised Penal Code. Accordingly, there being no mitigating circumstance proven during the trial to offset the aggravating circumstances of night time and evident premeditation, aside from the qualifying circumstances of treachery, the accused are supposed to be meted with death penalty but because of the non-imposition of the same under the new constitution, the court reduces the penalty to Reclusion Perpetua and, by way of indemnity under the existing jurisprudence, to pay the heirs of Jesus Charlie Cadiz the amount of Fifty Thousand (P50,000.00) Pesos plus Twenty Seven Thousand Four Hundred Fifty (P27,450.00) Pesos as actual damages and to pay the costs.

"SO ORDERED.

"Done in open court on June 1, 1993.

"SALVADOR S. GUBATON

"Judge"

Hence, this appeal.

Before the Court, accused-appellants plead for their acquittal, claiming that the trial court erred:

- in disregarding their claim of self-defense, and alibi,
- in finding that there was conspiracy, and
- in not appreciating the mitigating circumstances of passion and obfuscation, sufficient provocation, immediate vindication of a grave offense and voluntary surrender.

We find accused-appellants' conviction in order.

Accused-appellant Jose Bitoon's plea of self-defense cannot prosper. The rule is that upon pleading self-defense, the burden of evidence shifts to the accused to prove by clear and convincing evidence the elements of the plea before he can avail himself of the benefits of this justifying circumstance.[9] And foremost of its elements is unlawful aggression on the part of the victim.[10]

In this case, accused-appellant Jose Bitoon, not Jesus Charlie Cadiz, was the aggressor. On cross-examination, accused-appellant Jose Bitoon admitted that he hacked Jesus Charlie on the right thigh when the latter was lying on the ground. Thus,

"Q: When you hacked Charlie Cadiz, were you standing?

A: Yes, sir.

Q: Considering that Charlie Cadiz was lying on the ground and you were standing at the time you hacked him with a bolo, there was no danger on your person, am I correct?

A: Yes, sir. None.

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Q: Not contented with hacking his right thigh, you hacked him again, am I correct?

A: Because he keeps on moving and that was the reason why I hacked him on the sole of his left foot."[11]

Granting that Jesus Charlie made the initial unlawful aggression, it had certainly ceased from the moment he fell on the ground, and Jose Bitoon's offensive stance of hacking Jesus Charlie twice put him in the place of the aggressor.[12] Thus, when an unlawful aggression had ceased to exist, the one making a defense had no right to kill or injure the former aggressor.[13]

The claim of self-defense is further belied by the presence of six (6) wounds on different parts of Jesus Charlie's body. It is an oft-repeated rule that the nature and number of wounds inflicted by the accused are constantly and unremittingly considered important indicia which disprove a plea for self-defense.[14] Instead, they indicate a determined effort to kill the victim.[15]

Neither will the alibi of accused-appellants Joeel Bitoon, Bernardo Bitoon and Roger Depeño prosper. Their presence at the crime scene and participation in the beating of Jesus Charlie on that fateful night of June 8, 1988 were aptly detailed by prosecution eyewitnesses Ellano Aducal and Arturo Abaracoso, both of whom knew the accused-appellants very well. We have held consistently that alibi cannot prevail over the positive identification of the accused by credible eyewitnesses who have no ill-motive to testify falsely.[16]

Moreover, for alibi to be believed, the accused must prove not only that he was at some other place at the time the

crime was committed, but that it was likewise physically impossible for him to be at the crime scene or its immediate vicinity.[17] Considering that the longest travel time between the places Joebel Bitoon, Bernardo Bitoon and Roger Depeño allegedly were and the vicinity of the Bitoon residence where Jesus Charlie was assaulted was only thirty (30) minutes, there was no physical impossibility for them to be present at that specific place where Jesus Charlie was manhandled. Thus, where it was possible for the accused to have been at the crime scene even as he claimed that he was elsewhere at the time of the killing, the defense of alibi must fail.[18]

Contrary to accused-appellants' claim, conspiracy existed in this case. It has been established by the testimonies of prosecution witnesses Aducal and Abaracoso that the accused-appellants Jose Bitoon, Bernardo Bitoon and Joebel Bitoon, in an apparently orchestrated move, took turns in inflicting serious injuries on Jesus Charlie, while Roger Depeño acted as look-out to insure the success of the criminal act. Their actions clearly and convincingly showed a unity of purpose, that is, a concerted effort to bring about the death of Jesus Charlie. "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." [19]

On the issue of the mitigating circumstances of passion and obfuscation, sufficient provocation, vindication of a grave offense and voluntary surrender, none of these will benefit accused-appellant Jose Bitoon. This is so because these circumstances are anchored on his plea of self-defense which stands discredited in light of the more credible version of the prosecution on the circumstances surrounding Jesus Charlie's death. We, therefore, will not disturb the findings of the trial court on the credibility of the witnesses presented by the State. "The matter of evaluating the credibility of witnesses depends largely on the assessment of the trial court. Appellate courts rely heavily on the weight given by the trial court on the credibility of a witness as it had a first-hand opportunity to hear and see the witness testify." [20]

The trial court is correct in finding that treachery attended the killing of Jesus Charlie. The accused-appellants waited in ambush before clubbing and hacking to death the unsuspecting and defenseless victim. Treachery is present when the attack comes without warning, is sudden and unexpected and the victim is not in a position to parry the assault.[21] Moreover, the deadly nature of the weapons used, the treacherous manner of the assault and the number and location of the wounds inflicted upon the victim conjointly demonstrate a deliberate and determined assault with intent to kill.[22]

We disagree, however, with the trial court's appreciation of evident premeditation. To establish this aggravating circumstance, it must be shown that there was a period sufficient to afford full opportunity for reflection and a time adequate to allow the conscience of the actor to overcome the resolution of his will[23] The record fails to disclose convincing proof of this.

The trial court also erred in considering the aggravating circumstance of nighttime. Nighttime could not be appreciated where, as in this case, no evidence was presented showing that nocturnity was specially sought by the accused or taken advantage of by him to facilitate the commission of the crime or to ensure his immunity from capture.[24] Nighttime also cannot be considered if it is shown that the place was adequately lighted.[25] In this case, the crime scene was illuminated by the two fifty (50) watts light bulbs from the Bitoon and Blancaflor residences.

Even if we rule out the trial court's findings on the existence of evident premeditation and nighttime, reclusion perpetua would still be the penalty to be imposed on the accused-appellants. Under Article 64 of the Revised Penal Code, when the penalties prescribed by law contain three periods, the penalty in its medium period shall be imposed when there are neither aggravating nor mitigating circumstances present. At the time the crime was committed (in June 1988) murder was penalized under Article 248 of the Revised Penal Code by reclusion

temporal in its maximum period to death, the medium period of which is reclusion perpetua.

WHEREFORE, the Court hereby AFFIRMS in toto the decision of the trial court in Criminal Case No. V-2881 convicting accused-appellants Jose, Joebel and Bernardo, all surnamed Bitoon, and Roger Depeño, of murder under Article 248 of the Revised Penal Code, for the killing of Jesus Charlie Cadiz, sentencing each of them to suffer the penalty of reclusion perpetua, and jointly and severally to indemnify the heirs of the deceased in the amount of P50,000.00, plus P27,450.00, as actual damages and to pay the costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Criminal Case No. V-2881, Judge Salvador S. Gubaton, Rollo, pp. 88-102.

[2] Rollo, p. 5.

[3] Appellant Joebel Bitoon Bitoon was arraigned on May 23, 1990. Records, p. 149. Appellants Jose Bitoon, Sr., Bernardo Bitoon and Roger Depeño were arraigned on an earlier date. Records, p. 152.

[4] tsn, May 23, 1990, pp. 4-11.

[5] tsn, October 20, 1992, pp. 439.

[6] tsn, October 6, 1992, pp. 4-13.

[7] tsn, November 5, 1992, pp. 4-23.

[8] Ibid.

[9] People vs. Cañete, 287 SCRA 490.

[10] People vs. Panes, 278 SCRA 357.

[11] tsn, October 20, 1992, p. 22.

[12] People vs. Ganzagan, Jr., 247 SCRA 220; People vs. Binondo, 214 SCRA 764.

[13] People vs. Alconga, 78 Phil. 366.

[14] People vs. Daquipil, 240 SCRA 314.

[15] People vs. Rivero, 242 SCRA 354.

[16] People vs. Pallarco, 288 SCRA 151; People vs. Pili, 289 SCRA 118; People vs. De Guzman, 289 SCRA 470.

[17] People vs. Anonuevo, 262 SCRA 22; People vs. Castillo, 289 SCRA 213; People vs. Umali, 242 SCRA 17.

[18] People vs. De Guzman, 289 SCRA 470.

[19] People vs. Sancholes, 271 SCRA 527, 544-545, citing People vs. Gregorio, 255 SCRA 380; People vs. Carizo, 233 SCRA 687.

[20] People vs. Dela Cruz, 276 SCRA 191, 197.

[21] People vs. Isleta, 264 SCRA 374; People vs. Sancholes, supra.

[22] People vs. Gregorio, supra; People vs. Sancholes, supra.

[23] People vs. Albao, 287 SCRA 139; People vs. Cordero, 217 SCRA 1, People vs. Salvador, 217 SCRA 826; People vs. Rivera, 221 SCRA 647; People vs. Buela, 227 SCRA 534.

[24] People vs. Marra, 236 SCRA 565.

[25] People vs. Rosario, 246 SCRA 658.

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