THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARQUILLOS TABUSO Y SISTER @ BULAG, ACCUSED-APPELLANT.

G.R. No. 113708. October 26, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Appeal interposed by accused Arquillos Tabuso from the Decision of Branch 14 of the Regional Trial Court of Manila, finding him guilty of murder in Criminal Case No. 92-108854.

Filed on August 5, 1992 by Assistant City Prosecutor Orlando Ana-Siapno, the Information indicting accused Arquillos Tabuso y Sister @ Bulag, alleges:

> "That on or about July 29, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with three others whose true names, identities and present whereabouts are still unknown, and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ROBERTO BUGARIN Y PIGAR by shooting the latter with a gun hitting him on the right armpit and right shoulder, thereby inflicting upon the latter mortal gunshot wounds which were the direct and immediate cause of his death thereafter."[1]

With the accused entering a negative plea on October 22, 1992, upon arraignment with the assistance of Atty. Bonifacio Macabaya, trial ensued with the prosecution presenting Arturo Cortes, Renato Datingginoo, Rosalinda Datingginoo, Cesar Bugarin, Marcial Cenido and Dr. Rowena Asuncion, as its witnesses.

For the defense, the accused took the witness stand as the lone witness on his behalf.

Testified on by its witnesses, the version of the prosecution runs as follows:

On July 29, 1992, at 8:40 o'clock in the evening, Renato Datingginoo passed by the group of Arnold Mendoza, accused Arquillos Tabuso and some other companions in an alley, on his way to Sevilla Street, Tondo, Manila, to buy food. He (Renato) heard Tabuso utter "nandiyan na si Dagul" (TSN, December 10, 1992, p. 6). Referred to as Dagul was the deceased Roberto Bugarin.

When he (Renato Datingginoo) was near the store, he heard two (2) gunshots coming from the direction of the said alley. He went back to the alley and met one Banong who uttered, "Utol, wala iyon, binanatan lang si Dagul" (TSN, December 9, 1992, p. 10). Banong is Arnold Mendoza's brother. He heard another gunshot. Thereafter, he saw Arnold Mendoza, Banong, Arquillos Tabuso and another person hurriedly coming out from the alley, and proceeding to their house.

Then, Renato went to the place where the incident happened, near his house, and he saw Roberto Bugarin lying prostrate on the ground, stiffening (naninigas, nakatumba, nangingisay) (TSN, December 9, 1992, p. 12). Thereafter, he brought him to the Mary Johnston Hospital. At around 10:00 o'clock in the evening, he learned that Bugarin died.

Rosalina Datingginoo testified that she and her uncle Amado Bugarin, heard two gunshots, on July 29, 1992, at 8:40 o'clock in the evening, while they were in the house of Rebecca Ty, her sister. Her uncle closed the door so as not to get involved in the case. Somebody knocked at the door and when her uncle opened it, it turned out that the person knocking was Rolando Bugarin. She saw Arnold Mendoza shoot Bugarin twice and the latter lay on the floor of her aunt's house. Mendoza, Tabuso and their two companions hurriedly escaped from the scene of the crime.

Dr. Rowena Asuncion of Mary Jonhston Hospital examined the victim and found him with two gunshot wounds in the lungs, one on the right posterior axillary line with no point of exit, and the other at the right midcalf of the thoracic line. Before declaring Bugarin dead, at 8:55 o'clock in the evening of the same day, doctors inserted a tube in his throat to force air into his lungs and to supply oxygen to the patient. They also inserted an intravenous line to his extremities.

Cesar Bugarin, bereaved father of the deceased, claimed that he gave P5,000.00 to his lawyer as downpayment for the P10,000.00 attorney's fees agreed upon. He also spent P3,000.00 for the cemetery arrangements, P9,000.00 for the services of Don Bosco Funeral Parlor, P2,562.00 for transportation expenses, P26.00 for coffee, P36.00 for sugar, P104.00 for orange juice, P100.00 for biscuits and P100.00 for peanuts and green peas. He experienced anxiety by reason of his son's death and suffered moral damages, as a result.

Accused put up the defense of alibi.

Accused theorized that he was taking care of his child in his house at No. 50 Sampaloc Street, Camarin, Caloocan, when the killing complained of happened. On July 31, 1992, WPD Officers invited him to the UN Detachment Office and asked him about Mendoza's whereabouts. To his surprise, one Renato Reyes and another woman identified him, after which, they incarcerated him for being a relative of Arnold Mendoza.

On August 9, 1993, Judge Inocencio D. Maliaman of the Regional Trial Court a quo found the evidence for the prosecution sufficient to support a judgment of conviction and disposed, thus:

> "WHEREFORE, finding the accused Arquillos Tabuso Y Sister guilty of the crime of murder as charged in the information, defined and penalized under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer RECLUSION PERPETUA with all the accessory penalties provided by law. He is further sentenced to indemnify the heirs of the deceased in the amount of P50,000.00 for the death of the victim and P14,928.00 as consequential damages and to pay the costs.

In the service of the sentence, the accused is entitled to the provision of Article 29[2] of the Revised Penal Code, as amended."[3]

Undaunted, the accused found his way to this Court via the ordinary appeal at bar. To buttress his protestation of innocence and plea for acquittal, appellant theorized:

I

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ACCUSED-APPELLANT CONSPIRED WITH ARNOLD MENDOZA IN THE MURDER OF ROBERTO BUGARIN.

II

THE TRIAL COURT GRAVELY ERRED IN TOTALLY REJECTING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

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III

THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED-APPPELLATNT (sic) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE NECESSARY QUANTUM OF EVIDENCE.[4]

The pivot of inquiry being factual and evidentiary, credibility of the witnesses assumes extreme importance. Records on hand indicate that the sole basis of appellant's conviction is his alleged conspiracy with Arnold Mendoza and some others.

"Conspiracy exists when two or more persons come to an agreement on the commission of a felony and decide to commit it." (People v. Manuzon, 277 SCRA 550) In a number of cases, this Court ruled that "similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt." (People v. Andal, 279 SCRA 474, 476)

"The mere presence of a person at the scene of the crime does not make him a co-conspirator." (People v. Ortiz, 266 SCRA 641, 643) "Assumed intimacy between two persons of itself does not give that much significance to the existence of criminal conspiracy." (People v. Gomez, 270 SCRA 432)

"Conspiracy certainly transcends companionship." (supra) "Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required." (People v. Alas, 274 SCRA 310, 311)

A careful examination and appreciation of the attendant facts and circumstances show that the witnesses were categorical in their narration that it was Arnold Mendoza who killed Rolando Bugarin. The People placed heavy reliance on Renato Datingginoo's testimony that Tabuso acted as a lookout, which conclusion must have been arrived at when Tabuso uttered "Nandiyan na si Dagul" and from the fact that the assailants (including Tabuso) fled.

The Court thoroughly examined the transcript of stenographic notes and nothing can be deduced from the testimony of Renato Datingginoo that accused Arquillos Tabuso conspired with Mendoza and some others in killing Bugarin. He (witness) testified:

> "FISCAL PINEDA:
>
> Do you know what these people were doing when you pass by?
>
> WITNESS:
>
> They were standing as if they were waiting for someone, Sir.
>
> FISCAL PINEDA:
>
> What happened when you pass by their group as if they were waiting for somebody else?
>
> WITNESS:
>
> When I pass by their group, I heard Arquillos Tabuso saying 'nandiyan na si Dagul', sir.
>
> FISCAL PINEDA:
>
> This Tabuso you are referring to is he the same person charged of homicide?
>
> WITNESS:

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Yes, Sir, as far as I know, Arquillos Tabuso is merely a look out xxx" (TSN, December 9, 1992, pp. 6-7)

"WITNESS:

I did not notice what happened, so I just pass (sic) by their group and proceeded to Sevilla St. and while going to Sevilla St., I heard a gunshots, (sic) sir.

FISCAL PINEDA:

How far are (sic) you from Tabuso when he utter (sic) the words "nandiyan na si Dagul"

WITNESS:

More or less 2 meters away, sir.

FISCAL PINEDA:

You said you proceeded to a place when you are (sic) going to buy foods and you said you heard 2 gunshots, is that correct?

WITNESS:

Yes, sir. xxx" (TSN, December 9, 1992, p. 8)

"ATTY. HERNANDEZ:

Do (sic) you know if said Arquillos Tabuso has (sic) any relation to Arnold Mendoza?

WITNESS:

Before the incident, I do (sic) not know, Sir.

ATTY. HERNANDEZ:

What about after the incident?

ATTY. MACABAYA:

We object, she is incompetent to answer?

ATTY. HERNANDEZ:

She is testifying.

COURT

Witness may answer.

WITNESS;

Yes, Sir, Arquillos Tabuso as a relation to Arnold Mendoza.

ATTY. HERNANDEZ:

What relation does (sic) he have?

WITNESS:

They were cousin, (sic) sir.

ATTY. HERNANDEZ:

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What about the three suspected men whom you saw hurriedly escape, (sic) will you look around if they were here now?

WITNESS:

They were not here, sir.

ATTY. HERNANDEZ:

Were you able to know the two men aside from Arquillos Tabuso after the shooting who hurriedly escape? (sic)

WITNESS:

No, sir. xxx" (TSN, December 16, 1992, pp. 6-11)

Generally, ineffectualness to entirely narrate the trivialities of the incident by the witness strengthens, as it negates rehearsed trial, however, in the case under scrutiny, the lapses in the testimony of Renato Datingginoo were not caused by the natural fickleness of his memory but rather the full account of what he witnessed. After a careful examination of the evidence, the Court is not convinced that Tabuso acted as a lookout when he uttered "Nandiyan na si Dagul".

Mere utterance of Tabuso of "nandiyan na si Dagul" did not evince commonality in criminal intent. There is a scant scintilla of proof of Tabuso's alleged role as a lookout. It was never proven by the People. Obviously, that Tabuso acted as a lookout is just a conclusion arrived at by Renato Datingginoo. It is barren of any factual or legal basis.

So, also, when he passed by the group of Mendoza in order to buy food, Datingginoo concluded that they were standing as if waiting for someone. He merely relied on inferences and did not really know what truly transpired. He had no hand in the situation. What is undisputed was that he only observed that all the culprits were standing near the alley. When he proceeded to Sevilla Street to buy food, he heard a gunshot and while buying food in the store, heard two (2) more gunshots.

To be sure, alibi and denial are weak defenses. But, the burden of proof in criminal cases lies with the prosecution.

"Well-entrenched is the rule that in order to sustain the conviction of an accused person, his guilt must be proven beyond reasonable doubt by the State with the prosecution relying on the strength of its evidence and not on the weakness of the defense." (People v. Almario, 275 SCRA 529)

What is more, when the accused testified on his behalf, he was consistent in his assertion that he did not know anything about the killing. According to him, he was invited by the WPD officers to the UN Detachment Office on July 31, 1992 and was put in jail when they failed to locate Mendoza who is his relative. Mendoza and appellant Tabuso are cousins. However, sole relationship does not necessarily make them conspirators, absent proof beyond reasonable doubt.

Finally, the prosecution further theorized that appellant acted as a lookout during the commission of the felony. But such a theory is incredible because Tabuso is known in Sevilla Street, Tondo, as "Bulag" or blind because of an eye defect. Considering his deformity, which is undisputed, the Court entertains great doubts over his ability or efficacy to perform the role of a supposed lookout.

Absent enough evidence to establish conspiracy, acquittal of accused-appellant is in order since his guilt has not been established beyond reasonable doubt. Verily, as Alfonso El Sabio was reputed to have said a long time ago

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and as cited by the late Justice Conrado V. Sanchez in People v. Cunanan, 19 SCRA 769, 784; “Mas vale que queden sin castigar diez reos presuntos, que se castigue uno inocente.”

WHEREFORE, the appealed judgment of conviction is REVERSED; and on the ground of reasonable doubt, accused-appellant Arquillos Tabuso y Sister @ Bulag is hereby ACQUITTED of the crime charged. With costs de oficio.

Let the Director of Prisons, NBP, Muntinlupa City, cause the immediate release of accused-appellant unless there be any other legal ground for his continued detention and report to the Court within ten (10) days the action taken by virtue hereof.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Records, p. 1.

[2] Period of Preventive imprisonment deducted from term of imprisonment. – Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners xxx.

[3] Decision, pp. 4-5, Rollo, pp. 16-17.

[4] Brief for Accused-Appellant, p. 1, Rollo, p. 35.

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