

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CIELITO BULURAN Y RAMIREZ AND LEONARDO VALENZUELA Y CASTILLO, ACCUSED-APPELLANTS.*G.R. No. 113940. February 15, 2000*

Ponente: QUISUMBING, J.

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On appeal is the decision dated February 4, 1994, of the Regional Trial Court of Quezon City, Branch 95, convicting accused-appellants of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua, to pay solidarily the heirs of the deceased the amount of P50,000.00 as indemnity, and P8,000.00 as actual damages, and also to pay proportionately the costs.

Of the four suspected perpetrators of the crime, only two were arrested and tried, namely Cielito Buluran and Leonardo Valenzuela, now the appellants. The other two, Reynaldo Danao and Jaime Danao, remain at-large.

The facts, as gleaned from the records, are as follows:

On May 16, 1993, shortly before 7:15 in the evening, the Meyer family was celebrating the birthday of their mother at their residence in Area 4, Barangay Amaparo, Capri, Novaliches, Quezon City. It appears that Dominador Meyer, Jr., had an altercation with a cousin. The victim, Edilberto Meyer, Sr., tried to pacify them, and brought Dominador outside the house to cool-off. However, while the victim and Dominador, were talking outside their residence, Reynaldo Danao approached them and warned them not to make any trouble because the community was celebrating its fiesta. The victim denied making any trouble and said that the matter was a family problem. Suddenly, Reynaldo boxed the victim who also retaliated with a fistblow. The two exchanged blows and grappled with each other. Reynaldo managed to run away but returned after about two minutes.

Now, accompanied by his barkadas or gangmates (Cielito Buluran, Leonardo Valenzuela and Jaime Danao), Reynaldo was armed with a 12-inch stainless knife. Cielito had also a knife. Leonardo and Jaime each carried slingshots, with sharp-pointed arrows made of five-inch nails with abaca tails. Without warning, Reynaldo stabbed the victim at the left side of his lower back. All the while, his three companions were pointing and brandishing their weapons at the Meyer brothers and the other people present in order to prevent them from interfering. Cielito poked his knife at the Meyer brothers and stood guard to prevent other people from rendering help to the victim. Leonardo likewise held his slingshot against the Meyer brothers and prevented people from going near the victim by pointing his loaded slingshot at them. Thereafter, the four barkadas fled. The victim died that same night.[1]

On May 20, 1993, appellant Cielito Buluran and three (3) John Does were charged with the crime of murder under the following Information:[2]

I N F O R M A T I O N

"The undersigned accuses CIELITO BULURAN Y RAMIREZ of the crime of Murder, committed as follows:

"That on or about the 16th day of May, 1993, in Quezon City, Philippines, the above-named accused, conspiring, confederating with three (3) other persons, whose true identities, whereabouts and other personal circumstances of which have not yet been ascertained, and mutually helping one another, did then and there, wilfully, unlawfully and feloniously with intent to kill, qualified with treachery and evident premeditation, assault and employ personal violence upon the person of one EDILBERTO MEYER, SR Y JAVIER, by then and there stabbing him with the use of a deadly weapon (knife) hitting him at his back, thereby inflicting upon him serious and mortal wounds which was the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of the said Edilberto Meyer, Sr. y Javier.

"CONTRARY TO LAW.

"Quezon City, Philippines, May 19, 1993.

(SGD.) WILFREDO L. MAYNIGO
Assistant City Prosecutor"

The Information was later amended[3] when Leonardo Valenzuela was identified as one of the assailants. Upon arraignment, both accused entered pleas of not guilty.[4]

During trial, the prosecution presented three eyewitnesses to the stabbing incident, namely Artemio Avendaño, Jacinto Castillo, and Gloria Castillo.[5] All were neighbors of the victim. The prosecution likewise presented PO1 Roberto C. San Miguel of Station 2, Sangang Daan, Novaliches, Quezon City, who "invited" appellant Buluran to the precinct,[6] and Chief Inspector Florante F. Baltazar, the Medico-Legal Officer who conducted the autopsy on the victim. Baltazar testified that the cause of death was the "penetrating stab wound at the posterior left lumbar region." [7] The victim's widow, Mrs. Erlinda C. Meyer, testified as to the actual damages sustained as a result of the death of her husband.[8]

For the defense, appellants denied any participation in the affray and testified that at the time of the incident, they were both asleep in their respective houses.[9] The father of appellant Buluran confirmed that his son was asleep in their house from 5:00 in the afternoon until the policemen came to arrest him at around 8:00 that same evening.[10] Manuel Valenzuela testified that his brother Leonardo, appellant herein, was drunk and asleep inside their house from 5:00 in the afternoon until the following day. Contrary to the version of the prosecution, Manuel testified that he saw a fight erupt between Reynaldo Danao on one hand, and the victim, one "Boyet," and one "Amang," on the other hand. The victim, Boyet and Amang stabbed Reynaldo three times with their knives. Reynaldo retaliated by stabbing the victim and fleeing afterwards. Thereafter, people from the Meyer house came out and started throwing empty bottles in front of the store, causing all the bystanders to scamper away. Manuel was even hit by a flying bottle at his left eyebrow, which left a scar, because he was mistaken for his brother. At around 7:45 a.m., Manuel tried to wake up his brother, appellant Leonardo Valenzuela, from his drunken stupor but the latter would not budge. Thereafter, Manuel went to the house of appellant Buluran, but Buluran was also drunk and asleep at that time.[11]

To bolster their version, the defense presented Dr. Feliciano Bornales, who testified that two (2) days after the incident, or on May 18, 1993, he treated one Reynaldo Danao for two stab wounds and an incised wound. Dr. Bornales testified that did not know who inflicted such wounds.[12]

On February 4, 1994, the trial court, finding conspiracy and treachery, rendered judgment[13] convicting appellants of murder. The dispositive portion of the judgment reads:

"WHEREFORE, the Court finds both accused Cielito Buluran y Ramirez and Leonardo Valenzuela y Castillo guilty beyond reasonable doubt of the crime of murder charged herein, defined and punished in Art. 248 of the Revised Penal Code, as principals in the commission thereof and, accordingly, they are hereby sentenced each

to suffer the penalty of reclusion perpetua; jointly and severally to indemnify the heirs of the deceased Edilberto Meyer, Sr. y Javier in the sum of eight thousand pesos as actual damages and in the further sum of fifty thousand pesos as death indemnity; and, to pay the proportionate costs, without prejudice to the application of Rep. Act No. 6127 in favor of each of them.

"SO ORDERED.

"Quezon City, Philippines, February 04, 1994." [14]

Hence, the present appeal. Appellants assign the following errors:

- THE COURT ERRED BY FAILING TO INQUIRE WHETHER APPELLANTS WERE REPRESENTED BY COUNSEL IN THE CUSTODIAL INVESTIGATION CONDUCTED BY THE POLICE WHICH LATER ON PRESENTED THEM FOR INQUEST TO THE CITY PROSECUTOR OF QUEZON CITY;
- THE COURT ERRED IN FAILING TO CONSIDER THE FACT THAT APPELLANTS WERE ARRESTED BY THE POLICE, WITHOUT ANY PRELIMINARY INVESTIGATION BY THE CITY PROSECUTOR;
- THE COURT ERRED IN CONVICTING THE APPELLANTS WHO INSTEAD ARE ENTITLED TO ACQUITTAL ON GROUNDS OF VIOLATION OF THEIR CONSTITUTIONAL RIGHTS AND PROCEDURAL RIGHTS TO DUE PROCESS WHICH DIVESTED THE COURT OF JURISDICTION.

In their consolidated brief, appellants contend that they were merely made the scapegoats for the killing. They insist they have no previous police record and should be presumed as law-abiding citizens. Moreover, appellants argue that their warrantless arrest and the lack of preliminary investigation render the criminal proceedings against them illegal for violation of their constitutional rights.

The Office of the Solicitor General, for the State, contends that conspiracy is the rope that binds appellants together, even though only Reynaldo Danao actually stabbed the victim. Further, any alleged irregularity in their arrest or the lack of preliminary investigation cannot be raised for the first time on appeal, since these irregularities should have been properly raised before arraignment.

In our view, the issues here involve the alleged irregularity of appellants' arrest; the alleged violation of their constitutional rights during custodial investigation for lack of counsel; and the alleged invalidity of the proceedings in the trial court sans preliminary investigation. Considering these issues, we hold that:

First. Appellants are estopped from questioning the validity of their respective arrests since they never raised this issue before arraignment. Any objection involving a warrant of arrest or the acquisition of jurisdiction over the person of an accused must be made before he enters his plea, otherwise the objection is deemed waived. [15]

Second. There is no violation of the constitutional rights of the accused during custodial investigation since neither one executed an extrajudicial confession or admission. In fact, the records [16] show that appellant Cielito Buluran opted to remain silent during the custodial investigation. Any allegation of violation of rights during custodial investigation is relevant and material only to cases in which an extrajudicial admission or confession extracted from the accused becomes the basis of their conviction. [17] In this case, the basis of the conviction by the trial court was the testimonies of the three eyewitnesses, Artemio Avendaño, Jacinto Castillo, and Gloria Castillo. It is noteworthy that appellants never attempted to impeach their testimonies during trial. Neither do they assail the credibility of said witnesses on appeal.

However, in relation to the view of the Office of the Solicitor General that the right to counsel during custodial investigation can be waived by reason of failure to make a timely objection before plea, [18] we must stress that

there can be no valid waiver of the right to counsel unless such waiver is in writing and in the presence of counsel as mandated by Article III, Section 12 of the 1987 Constitution and the pertinent provisions of Republic Act No. 7438.[19]

Third. The failure to accord appellants their right to preliminary investigation did not impair the validity of the information nor affect the jurisdiction of the trial court.[20] While the right to preliminary investigation is a substantive right and not a mere formal or technical right of the accused, nevertheless, the right to preliminary investigation is deemed waived when the accused fails to invoke it before or at the time of entering a plea at arraignment.[21] It appearing that appellants only raised the issue of lack of preliminary investigation during appeal, their right to a preliminary investigation was deemed waived when they entered their respective pleas of not guilty.

Pursuant to the doctrine that an appeal in a criminal case opens the whole case for review (including penalty, indemnity and damages),[22] we shall now consider whether appellants were correctly found guilty of murder beyond reasonable doubt.

Unquestionably, and appellants do not allege otherwise, conspiracy attended the killing of the victim. Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence.[23] From the legal standpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[24] In this case, the presence of appellants, both armed with deadly weapons, at the locus criminis indubitably shows their complicity in the criminal design of Reynaldo Danao to kill the victim.

However, we find that no treachery attended the killing. On numerous occasions, we have held that where a killing was preceded by an argument or quarrel, then the qualifying circumstance of treachery can no longer be appreciated since the victim could be said to have been forewarned and could anticipate aggression from the assailants.[25] The previous boxing incident between the victim and Reynaldo Danao must have already put the victim on guard for further aggression or retaliation by Reynaldo Danao. Hence, treachery could not be appreciated as a qualifying circumstance in this case.

Moreover, the aggravating circumstance of evident premeditation alleged by the prosecution was not proved clearly and convincingly.[26] Considering that the attack was made about two minutes after the initial altercation,[27] it cannot be said that there was sufficient lapse of time between such determination to commit the crime and its execution so as to allow the assailants to reflect upon the consequences of their actions.[28]

We find, however, that the aggravating circumstance of abuse of superior strength attended the killing. "To appreciate abuse of superior strength as an aggravating circumstance, what should be considered is not that there were three, four or more assailants of one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. It is therefore necessary to show that the attackers cooperated in such a way as to secure advantage of their superiority in strength." [29] In this case, appellants and their companions purposedly gathered together and armed themselves to take advantage of their combined strength to ensure that Reynaldo Danao would be able to kill the victim without any interference from other bystanders. However, not having been alleged in the Information, abuse of superior strength can only be considered as a generic aggravating circumstance.[30]

Absent any qualifying circumstance, appellants should therefore be held liable only for the crime of homicide, attended by one aggravating circumstance. Consequently, the penalty should only be the penalty for homicide under Article 249 of the Revised Penal Code, which is reclusion temporal, and not reclusion perpetua. Applying the Indeterminate Sentence Law, each of the appellants should be sentenced to 8 years and one (1) day of prison mayor as minimum to 18 years of reclusion temporal as maximum.

As to the amount of damages, prevailing jurisprudence sets the indemnity for death in the amount of P50,000.00, which can be awarded without need of further proof other than the death of the victim.[31] The amount of P8,000.00 as actual damages should likewise be affirmed, the wife having presented a receipt (Exhibit "C") to support such claim.[32] In addition, there being one aggravating circumstance, exemplary damages in the amount of P20,000.00[33] may be awarded, pursuant to Article 2230 of the New Civil Code.

WHEREFORE, the appealed decision is AFFIRMED with MODIFICATIONS. Accused-appellants are hereby found guilty of the crime of Homicide, and sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum to eighteen (18) years of reclusion temporal as maximum, and to pay jointly and severally, the heirs of the deceased, the amount of P50,000.00 as indemnity, P8,000.00 as actual damages, and P20,000 as exemplary damages. Costs against appellants.

SO ORDERED.

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

[1] TSN, September 14, 1993, pp. 11-13; TSN, September 16, 1993, pp. 13, 15, 21; TSN, November 4, 1993, p. 6; Exhibit "I", Referral for Inquest.

[2] Records, p. 1.

[3] Id. at 14.

[4] Order dated July 15, 1993, Records, pp. 38-39.

[5] Gloria Castillo was presented as a rebuttal witness.

[6] TSN, September 13, 1993, pp.5-6.

[7] TSN, September 17, 1993, p. 6.

[8] TSN, September 16, 1993, pp. 4-5.

[9] TSN, October 7, 1993, pp. 8-9; TSN, October 14, 1993, pp. 7-8.

[10] TSN, September 30, 1993, p. 4.

[11] TSN, September 28, 1993, pp. 6-9, 12-14.

[12] TSN, November 9, 1993, pp. 3-4.

[13] Records, p. 107.

[14] Id. at 110.

[15] *People v. Patalin, Jr. et. al.*, G.R. No. 125539, July 27, 1999, p. 20; *People v. Tidula*, 292 SCRA 596, 611 (1998); *People v. Salvatierra*, 276 SCRA 55, 63 (1997); *Padilla v. Court of Appeals*, 269 SCRA 402, 417 (1997).

[16] Records, p. 4.

[17] *People v. Andres*, 296 SCRA 318, 337 (1998); *People v. Sabalones*, 294 SCRA 751, 790 (1998).

[18] Rollo, p. 142.

[19] An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the

Duties of the Arresting, Detaining, and Investigating Officers and Providing Penalties for Violations thereof. See also *People v. Muleta*, G.R. No. 130189, June 25, 1999, pp. 19-20; *People v. Bacor*, G.R. No. 122895, April 30, 1999, p. 15.

[20] *Gonzales v. Court of Appeals*, 277 SCRA 518, 525 (1997); *People v. Villanueva*, 265 SCRA 318, 322 (1996); *Go v. Court of Appeals*, 206 SCRA 138, 154 (1992).

[21] *Ibid.*

[22] *People v. Villablanca*, G.R. No. 89662, October 1, 1999, p. 9; *People v. Rabanag*, G.R. No. 130010, May 26, 1999; *People v. Medina*, 300 SCRA 98, 114 (1998); *Sumalpong v. Court of Appeals*, 268 SCRA 764, 775 (1997); also Section 11 of Rule 124 of the Revised Rules of Court.

[23] *People v. Patalinghug*, G.R. No. 125814-15, November 16, 1999, p. 18; *People v. Aquino*, G.R. No. 126047, September 16, 1999, p. 5.

[24] *Ibid.*

[25] *People v. Villanueva*, 265 SCRA 216, 225 (1996); *People v. Macalino*, 177 SCRA 185, 194 (1989).

[26] *People v. Basao*, G.R. No. 128286, July 20, 1999; *People v. Pallarco*, 288 SCRA 151, 169-170 (1998). *People v. Sumalpong*, 284 SCRA 464, 490 (1998).

[27] TSN, September 16, 1993, p. 21.

[28] *People v. Sambulan*, 289 SCRA 500, 515-516 (1998).

[29] *People v. Platilla*, G.R. No. 126123, March 9, 1999, p. 19.

[30] *People v. Platilla*, G.R. No. 126123, March 9, 1999, p. 20; *People v. Valeriano*, 226 SCRA 694, 708 (1993); *People v. Entes*, 103 SCRA 162, 168 (1981).

[31] *People v. Floro*, G.R. No. 120641, October 7, 1999, p. 12.

[32] *People v. Panaga*, G.R. No. 125967-70, May 5, 1999, p. 16.

[33] *People v. Bahenting*, G.R. No. 127659, February 24, 1999, p. 12.

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