PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE APELADO Y PALMORES, GERMAN BACANI ALIAS “ITI” AND ROBERT BACANI ALIAS “ALO”, ACCUSED, JOSE APELADO Y PALMORES AND GERMAN ...

G.R. No. 114937. October 11, 1999

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal by Jose Apelado and German Bacani from a decision convicting them of murder.[1] The information reads:

> "That on or about the 16th day of November 1989, at 11:30 o'clock P.M. at Barangay Quirino, Municipality of Solano, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill and treachery, taking advantage of superior strength and evident premeditation, did then and there wilfully, unlawfully and feloniously assault, hack and stab Rodolfo de Jesus with the use of a bolo and knives, inflicting mortal wounds on the different parts of his body causing his immediate death to the damage and prejudice of his heirs."

The evidence shows that at around 11:30 P.M. of November 16, 1989, at Barangay Quirino, Silawan, Solano, Nueva Vizcaya, the victim Rodolfo de Jesus was overtaken by Jose Apelado, German Bacani and Robert Bacani while walking in front of the house of Erlinda Quidayan. German cut his line of way. De Jesus asked him, "What is my fault to you?"[2] He raised his hands and prepared to fight. German hit his lower legs with a piece of wood. He fell down. The three surrounded him. German pulled out a knife and stabbed him at his legs and then at his throat. Apelado hacked him with a bolo using his left hand. De Jesus was hit twice - at the top of his head and nape. Robert thrust an ice pick at his back and side below the armpit. They then ran away and left him sprawled on the ground.

Luzviminda Padua witnessed the incident while standing under a star apple tree. She was then waiting for her husband. She was around fifteen (15) to twenty (20) meters away from the scene of the crime. She recognized the assailants as the place was illuminated by a fluorescent light.

Joseph Quidayan was another eye witness. He was awakened from his sleep because of his urge to urinate. He then heard the noise of the commotion outside. As they have no comfort room, he went out of his house and relieved himself on a wall. From a distance of three (3) meters, he saw Apelado hack de Jesus. He also saw Robert run toward their house. After de Jesus fell down, Apelado approached him and warned him to keep quiet.

Dr. Rexinor Agtarap conducted the autopsy of the victim. His examination revealed that the victim sustained four (4) fatal wounds. These were the hacking wounds on the head and the occipital, and the stab wounds on the upper and lower left lobe of the left lung.

Jose Apelado and German Bacani were subsequently arrested. Robert Bacani remained at large.

The accused-appellants offered the defense of denial and alibi. Jose Apelado, a brother-in-law of German and Robert Bacani, claimed that on November 16, 1989, he attended a fiesta at Barangay Quirino together with his wife and Jony Bacani. They returned to Solano at 10:30 P.M. and he immediately went to sleep. When he woke up at 6 A.M. of the following day, he was arrested by policemen from Solano. A certain Ulit Untalan was also taken to the police station for investigation.

A slipper which the police allegedly recovered from the scene of the crime was shown to them. Apelado was asked to wear it. It did not fit. He was released on the same day. Two weeks later, he was rearrested and detained for thirteen (13) days. One night, he was taken by policemen to Dapdap, Solano, Nueva Vizcaya. At 2 o'clock in the morning, he was asked to go to a mango plantation. While he was protesting, a barangay tanod came and intervened. Apelado claimed that the policemen were forcing him to admit that he killed the victim.

German Bacani was seventeen (17) years old[3] when the crime was committed. He claimed that he was at their house from 8 P.M. of November 16, 1989 up to 7: 15 A. M. of the following day. His brother, Robert, did not sleep in their house that day. He left their house at 7:15 A.M to attend school. When he returned home in the afternoon, he learned from his neighbors the death of de Jesus.

Two weeks after the incident, police officers came to their house and asked him if he has any knowledge about the crime. He denied any knowledge. Two months after, they arrested him.

On September 7, 1993, the trial court convicted Jose Apelado and German Bacani, viz:

> "WHEREFORE, the Prosecution having proved the guilt of the accused beyond reasonable doubt for the offense of murder, the Court hereby sentences accused Joselito Apelado y Palmores with reclusion perpetua and accused German Bacani y Ramos, in view of Article 68 of the Revised Penal Code, with an imprisonment of from 12 years and one day to 20 years of reclusion temporal and to solidarily pay the heirs of Rodolfo de Jesus the sum of P10,800.00 as actual damages, P50,000 pesos as civil indemnity, P10,000.00 as moral damages and P5,000.00 as exemplary damages. The bail bond of accused Apelado is hereby cancelled."[4]

The trial court found the existence of conspiracy among the assailants. Their method of attacking the victim showed a congruence and commonality of purpose. It ruled out treachery as it found that the victim was aware of the assault against him. The victim raised his hands and prepared for a fight. It also observed that the victim was able to ask a question to German Bacani before he was hit on the legs. It did not appreciate evident premeditation.

In this appeal, accused-appellants contend:

I

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

II

THE FINDINGS AND CONCLUSIONS OF THE LOWER COURT ARE NOT SUPPORTED BY THE FACTS AND EVIDENCE.

The appeal is without merit.

In assailing the credibility of prosecution witness Luzviminda Padua, accused-appellants contend that it was impossible for her to see the victim urinate after he was hit above the legs by German Bacani. Her narration that

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German stabbed the throat and the legs of the victim while Apelado simultaneously hacked his head with a bolo defies reason. Padua is called biased as she worked as a laundry woman of the victim's family. Joseph Quidayan is also assailed as an incredible witness. For not mentioning the Bacanis, they contend that Quidayan did not really see the incident.

The credibility of witnesses is generally for the trial court to determine. The reason is that it had seen and heard the witnesses themselves and observed their demeanor and manner of testifying.[5] Its factual findings therefore command great weight and respect.[6] These findings can only be overturned if the trial court overlooked facts of substance and value that, if considered, might change the result of the case.[7]

Appellants capitalize on the alleged testimony of Padua that she saw the victim urinate after he was hit on the legs. The allegation is inaccurate for she testified as follows:

> "Continuation of Cross Examination by Atty. Castro:
>
> Atty. Castro: So, you want to tell this court that when Rodolfo de Jesus was hit by Herman (sic) Bacani, the victim Rodolfo De Jesus urinated?
>
> A Yes, sir.
>
> Q And you saw the urination?
>
> A I did not see but because he fell down that is why I concluded that he urinated , sir.
>
> Q So that the pain that was felt by Rodolfo De Jesus was merely your conclusion?
>
> A Yes, sir.
>
> Q And in the same manner his act of urinating because of that pain was merely your conclusion?
>
> A Yes, sir."[8]

Also, Padua explained what she meant when she said the victim was attacked simultaneously. Thus:

> "Atty. Castro:
>
> Q So, we are now very certain from you that the actions of all the accused namely, Herman (sic) Bacani, Joselito Apelado and Robert Bacani inflicted the wounds first, followed by Apelado with his hacking woods (sic) and followed by Robert Bacani with his stab wounds, is that correct?
>
> Court:
>
> That is after the hit made by the wood?
>
> Atty. Castro:
>
> Yes, your Honor. That was successive not simultaneously, that is my question.
>
> A Simultaneously , sir.
>
> Court:
>
> Q How can that be simultaneous, madam witness, when you stated that he was bending his body at the time that he was hacked at the head, while this Robert Bacani hit him when he was already lying on the ground. Can you explain to the Court why you are stating that this happened simultaneously?
>
> A When Herman (sic) Bacani hit Rodolfo de Jesus on his 2 shins, it was followed by the hacking of Joselito Apelado at his head and at the back of his head and was again followed by a thrust of ice pick by Robert

Bacani, sir."[9]

That Padua served as laundry woman of the victim's family will not erode her credibility. This Court has ruled that the relationship of witnesses to the victim, although by mere affinity or employment, can even render their testimonies more worthy of belief as it would be unnatural for them who are interested in vindicating the crime to implicate persons other than the real culprits.[10]

On the other hand, Quidayan did not testify on the participation of German and Robert Bacani because he did not see the whole incident. A review of his testimony shows the following:

1. About the time of the incident, he was awakened by his urge to urinate;[11]

2. He heard a commotion while still inside his house;[12]

3. While urinating in front of his house, he saw accused-appellant Apelado hack Rudy de Jesus;[13]

4. From the time he woke up and up to the time he saw accused-appellant Apelado hack the victim, twenty minutes (20) elapsed.[14]

It is clear that Quidayan could not have seen the whole incident. This is the reason why he did not testify about the participation of the Bacanis. His candidness cannot but bolster his credibility.

Appellants cannot also unduly magnify the instances when Padua failed to respond directly to the questions propounded her. This was attributed by the trial court to her nervousness and inexperience in court proceedings.[15] At any rate, minor inconsistencies in the testimonies of witnesses do not diminish the value of their testimonies.

We also note that the post mortem findings[16] of Dr. Agtarap support the testimonies of Padua and Quidayan. The characteristics of the wounds sustained by the victim show that different instruments were used in inflicting them.

Finally, as the accused-appellants were positively identified by two credible witnesses, their defense of alibi can not stand. They were not able to prove that it was physically impossible for them to be at the scene of the crime at the time of its commission. Barangay Quirino, where accused-appellant Apelado allegedly attended a fiesta, is only two (2) blocks[17] from Solano where the incident happened. The house of accused-appellant Apelado, where he claimed to have slept on the night when the crime was committed is about thirty (30) meters[18] away from the actual scene of the crime. The house of accused-appellant German Bacani where he allegedly stayed that time was only three (3) minutes[19] away.

As correctly held by the trial court, conspiracy was established by the prosecution. There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[20] To establish conspiracy, it is not essential that there be proof as to the previous agreement to commit a crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose.[21] In this instance, the fact that the assailants followed, overtook, surrounded and took turns in inflicting injuries to the victim show a common purpose.

Abuse of superior strength also attended the commission of the crime. This circumstance is appreciated when the aggressors purposely use excessive force out of proportion to the means of defense available to the person attacked.[22] In the case at bar, the aggressors who were all armed first hit the legs of their unarmed victim which caused him to fall kneeling. This was followed by a stab above the knee. Having deprived him of his means to stand or run, they took turns in inflicting mortal wounds on him. They left their victim with fifteen (15) external injuries and four (4) internal injuries.[23]

Neither treachery nor evident premeditation was present in the commission of the crime. Treachery is absent as the accused-appellants were not entirely risk free during their attack. As stated, the victim prepared to fight it out with the accused-appellants. Evident premeditation can not be considered for lack of evidence that accused-appellants preconceived the crime.

We hold, however, that German Bacani, is entitled to the privilege mitigating circumstance of minority under paragraph 2 of Article 68 of the Revised Penal Code. He was seventeen years old when he committed the crime. Thus, the penalty that should be imposed upon him should be one degree lower and in the proper period. Since there is neither aggravating nor mitigating circumstance present after qualifying the offense to murder, the maximum of his sentence should be within the medium period. Applying the indeterminate sentence law, the minimum of his penalty must be taken from the penalty next lower to that prescribed by the Code for the offense.

Lastly, the award of actual, moral and exemplary damages should be deleted. Actual damages must be duly proved. No proof was given that the victim's family spent ten thousand eight hundred pesos (P10,8000.00). Neither can moral damage be left to speculation. Exemplary damage is awarded in criminal offenses when the crime was committed with one or more aggravating circumstances. There is none in this case.

IN VIEW WHEREOF, the decision of the Regional Trial Court insofar as it finds accused-appellants guilty beyond reasonable doubt of murder is affirmed. The award of actual, moral and exemplary damages is deleted. Accused-appellant German Bacani is sentenced to an indeterminate penalty of 12 years of prision mayor as minimum to 17 years and 4 months of reclusion temporal as maximum. The decision is affirmed in all other respect. No costs.

SO ORDERED.

Pardo, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., (Chairman), and Kapunan, J., on official business abroad.

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[1] Crim. Case No. 1815, RTC Branch 27, Bayombong, Nueva Vizcaya.

[2] TSN, June 4, 1991, p. 13.

[3] TSN, August 25, 1992, p. 6

[4] RTC Decision, p. 6.

[5] People vs. Pasiona, 16 SCRA 212 (1966).

[6] People vs. Aranjuez, 285 SCRA 466 (1998).

[7] People vs. Mercado, 97 SCRA 232 (1980).

[8] TSN, September 26, 1991, pp. 9-10.

[9] TSN, June 6, 1991, pp. 15-16.

[10] People vs. Castillo, 261 SCRA 493 (1996).

[11] TSN, October 22, 1991, p. 2.

[12] Ibid., p. 4.

[13] Ibid., p. 3.

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[14] Ibid., p. 6.

[15] RTC Decision, p. 4.

[16] Records, p. 162.

[17] TSN, June 10, 1992, p.3.

[18] Ibid., p. 7.

[19] TSN, August 26, 1992, p. 3.

[20] Art. 8 (2), Revised Penal Code.

[21] People vs. Berganio, 110 Phil. 322 (1960).

[22] People vs. Moka, 196 SCRA 378 (1991).

[23] Supra, note 9.

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