

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE TORREFIEL, ACCUSED-APPELLANT.

G.R. No. 115431. April 18, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Accused-appellant Jose Torrefiel; Hilario Masgong alias "Mark"; Casiano Masgong alias "Manny"; Saturnino Suyod alias "Ka Eddie"; Jerry Delicano alias "Ka Cocoy"; Luciano Solanoy, Jr., alias "Ka Balot"; Noel Semira alias "Ka Nido"; Ricky David alias "Ka Macky"; and Alex Francisco alias "Ka Jing," were charged in Criminal Cases Nos. 2909 and 2910 for Murder and in Criminal Case No. 2911 for Robbery before the Regional Trial Court, Branch 8, Kalibo, Alklan. These cases were, upon agreement of the parties, jointly tried, since they arose from the same incident and involved the same parties. The trial proceeded as against the accused-appellant Jose Torrefiel only, the rest of the accused having remained at large.

After trial, the court a quo convicted accused-appellant[1] in each of the cases, the dispositive portions of which are quoted hereinbelow:

In Criminal Case No. 2909 for Murder:

"WHEREFORE, this Court finds the accused, Jose Torrefiel, guilty beyond reasonable doubt of the crime of murder and hereby sentences the accused to a penalty of imprisonment of Seventeen (17) years, Four (4) months and One (1) day to Eighteen (18) years and Eight (8) months.

The accused is hereby ordered also to indemnify the family of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of damages. x x x"[2]

In Criminal Case No. 2910 for Murder:

"WHEREFORE, this Court finds the accused, Jose Torrefiel, guilty beyond reasonable doubt of the crime of murder and hereby sentences the accused to a penalty of imprisonment of Seventeen (17) years, Four (4) months and One (1) day to Eighteen (18) years and Eight (8) months.

The accused is hereby ordered also to indemnify the family of the victim the amount of FIFTY THOUSAND PESOS (P50,000.00) by way of damages. x x x"[3]

In Criminal Case No. 2911 for Robbery:

"WHEREFORE, this Court finds the accused Jose Torrefiel guilty beyond reasonable doubt of the crime of Robbery and sentences the accused to suffer the penalty of Twelve (12) years and One (1) day to Fourteen (14) years and Eight (8) months. x x x."[4]

Accused-appellant Jose Torrefiel, appealed to the Court of Appeals. After considering the evidence and the law involved, the Court of Appeals affirmed the judgment of conviction in all the cases but refrained from entering judgment in Criminal Cases Nos. 2909 and 2910 for murder, having ascertained that the proper imposable penalty

for each of said crimes is reclusion perpetua, and instead, certified these two (2) cases to us for final determination pursuant to Section 13 of Rule 124 of the 1985 Rules on Criminal Procedure.

The facts as correctly summarized by the prosecution in its Brief are as follows:[5]

"On May 26, 1989 at about 5:00 o'clock in the morning at Barangay Naligusan, Ibajay, Aklan, Realidad Mangilog woke up early to prepare their breakfast. Her husband Leopoldo Mangilog and her son Reynaldo were about to join her downstairs, when someone knocked at the kitchen backdoor (TSN, March 21, 1990, pp. 3-4).

It was Leonardo who opened the door. When the door was opened appellant Jose Torrefiel armed with a bolo and a hand gun entered the house first followed by Masiano Masgong, Hilario Masgong, Alex Francisco, Saturnino Suyod and Noel alias "Nido" in that order, who were all armed with long firearms. (TSN, Ibid., p. 5)

The group greeted Leopoldo as "How are you 'Tay'?" to which the latter answered "as usual." Leopoldo even served the newcomers with coffee, but because the coffee was not sufficient for them, Realidad asked Hermogenes Calizo, who was then the errand boy of the Mangilog (sic), to buy coffee from the store. (TSN, Id., pp. 5-6).

The group of appellant Torrefiel did not even touch or taste the coffee served them by Leopoldo. Instead, appellant, Casiano Masgong and Satur Suyod aimed their guns at Leopoldo and started shooting him to death (TSN, Id., p. 6).⁶ Simultaneous to the shooting of Leopoldo inside the house by the group of appellant was the shooting and stabbing of Reynaldo who was then taking a bath inside the bathroom located outside of the house by the other members of the group who did not enter the house. (TSN. id., p. 7)

After the killing of Leopoldo and Reynaldo, the accused ransacked the house and took P500.00 cash, wrist watch, kitchen wares, grocery items, chickens and guitar. (TSN, Id., p. 10)

Before the accused left the house of the victims, they even fired their guns at random. They were blaming the victims to be responsible to the incident why the military was running after them. They were also telling the people along the road that the fish is okay and could be ready to be butchered (Id., p. 11).

Accused-appellant invoked the defense of alibi, claiming that at about 7:00 o'clock in the morning of May 26, 1989, he was at the house of Barangay Captain Benedicto Puod in Barangay Agbalogo, Makato, Aklan, which can be reached in an hour and a half (1 1/2) from Barangay Naligusan, Ibajay, Aklan, the scene of the incident. He had gone on vacation to Barangay Agbalogo on May 22, 1989 and attended the fiesta on May 25, 1989. He had remained in the said barangay since then upon the advice of his wife not to return to Barangay Naligusan, Ibajay, Aklan, appellant's place of residence, as the situation there was somewhat hot.[7] Benedicto Puod confirmed appellant's claim as to his whereabouts in the morning of May 26, 1989, recounting that he and appellant were, indeed, together drinking alcoholic drinks from 7:00 to 11:00 o'clock in the morning on the occasion of the birthday of his child.[8] In addition, Pedro Tosio as a witness testified as to the presence of appellant at his house in Barangay Agbalogo in the morning until about 5:00 o'clock in the afternoon of May 25, 1989, the day of the fiesta, declaring further that he also saw appellant pass by his house on May 26, 1989.[9]

In his appeal, accused-appellant interposed the following assignment of errors:

I

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER IN CRIMINAL CASE NO. 2909.

II

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF MURDER IN CRIMINAL CASE NO. 2910.

III

THE LOWER COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME OF ROBBERY IN CRIMINAL CASE NO. 2911.[10]

On the first and third assignment of errors, accused-appellant maintains his defense of alibi, stressing that, not being around at the time and place of the incident as he was at Barangay Agbalogo, Makato, Aklan, he could not have murdered Leopoldo Mangilog and robbed the Mangilogs of their personal belongings.

We are not persuaded.

It is well-settled that the defense of alibi cannot prevail over the positive identification of the accused.[11] Furthermore, for alibi to prosper, the accused must establish not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the scene of the crime at the time of its commission.[12]

That accused-appellant had been positively identified as one of the culprits by prosecution witness Realidad Mangilog cannot be doubted. The Mangilogs and the accused-appellant had known each other for years as neighbors. Accused-appellant whose parents reside in Barangay Agbalogo, Makato, Aklan, established residence in Barangay Naligusan, Ibajay, Aklan when he got married to a resident there. Since his house is only about one hundred and fifty (150) meters away from that of the Mangilogs, there were occasions when accused-appellant would visit the Mangilogs, usually for coffee, and that Leopoldo Mangilog would also go to the accused-appellant's house. Indeed, eyewitness Realidad Mangilog knows the accused-appellant so well that she could not have been mistaken in identifying appellant as one of those armed men responsible for the death of her husband and son on that fateful morning of May 26, 1989. She testified thus:

"Q.

When your husband open (sic) the door, was there somebody who got inside?

A.

Yes, sir.

Q.

Where were you at that time?

A.

I am (sic) at that time at the door dividing the sala and the dining room.

xxx xxx xxx

Q.

Were you able to recognized (sic) those persons who entered your house?

A.

I can recognized (sic) Jose Torrefiel leading the group and Masiano Masgong alias Manny, Alex Francisco followed by Satur or Saturnino Suyod and the other one was Noel Semira alias Nido."[13]

Moreover, the two other prosecution witnesses, Coreto Maguirang and Hermogenes Calizo, confirmed the presence of accused-appellant in Barangay Naligusan, Ibajay, Aklan at the time of the incident in question. Maquirang testified that while he watched over his carabao which was grazing on May 26, 1989 at around 5:00 o'clock in the morning, he saw the appellant and his group as they passed by him from a distance of about ten (10) meters heading towards the direction of the house of Leopoldo Mangilog in Barangay Naligusan, Ibajay, Aklan.[14] He could not be mistaken as to appellant's identity since he had on several occasions seen appellant together with the same group of armed men.[15] Calizo, on the other hand, claimed that he had seen appellant face to face in the house of the Mangilogs that same morning of May 26, 1989 shortly before the subject incident occurred since at that time he was living in said house. He only happened to be sent out by Realidad Mangilog to buy coffee so he did not get to see the actual killing of Leopoldo and Reynaldo Mangilog.[16]

It is significant to note that no improper motive can be imputed to Realidad Mangilog as would make her testify falsely against accused-appellant; hence her testimony is worthy of full faith and credit.[17]

Evidently complementing the positive identification of accused-appellant as one of the perpetrators of the crimes charged is his failure to prove that it was physically impossible for him to be at Barangay Naligusan, Ibajay, Aklan at the time of the incident, assuming that his claim that he went to the house of Barangay Captain Puod at 7:00 o'clock in the morning of May 26, 1989 was true. As testified to by appellant himself, it would take just one and a half (1 ½) hours to reach Barangay Naligusan, Ibajay, Aklan from Barangay Agbalogo, Makato, Aklan. Needless to state, it would not at all be impossible for appellant to be at Barangay Agbalogo at 7:00 o'clock in the morning or some two hours after the crimes were committed at Barangay Naligusan.

In his second assignment of error, accused-appellant contends that he had nothing to do with the killing of the victim Reynaldo Mangilog, obviously relying on the testimony of Realidad Mangilog to the effect that Reynaldo Mangilog was shot and stabbed to death by the members of appellant's group who stationed themselves outside the house.

This contention we also find untenable, conspiracy being clearly manifest in this case as was correctly found by the Court of Appeals. For collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime[18] as only rarely would such an agreement be demonstrable since in the nature of things criminal undertakings are rarely documented by agreement in writing.[19] Conspiracy may be inferred from the acts of the accused immediately prior to, during and right after the shooting of the victim which indicate their common intention to commit the crime.[20]

The record shows that: (1) all the accused which include accused-appellant arrived together at the scene of the killings; (2) they were all fully armed; (3) three of them simultaneously shot to death Leopoldo Mangilog, while an undetermined number shot and stabbed to death Reynaldo Mangilog; (4) the attack on the two victims was executed simultaneously; and (5) the accused's statement to the effect that the victims were responsible for the fact that the military men were running after them. This tends to establish a motive on their part to kill the victims. All these indubitably indicate a concerted effort on the part of the accused on a common design to kill the victims.

Conspiracy having been adequately shown, all the accused are answerable as co-principals regardless of the degree of their participation.[21] In fact, it is not necessary to ascertain the individual participation in the final liquidation of the victims[22] or to ascertain the precise modality or extent of participation of each individual conspirator as the applicable rule is that the act of one conspirator is the act of all of them.[23] It hardly matters, therefore, that accused-appellant did not actually participate in the killing of Reynaldo Mangilog or of Leopoldo

Mangilog.

As alleged in the informations and as correctly observed by the Solicitor General, the killing of the victims was qualified by treachery. Leopoldo Mangilog was shot while he was serving the accused coffee or shortly thereafter. Reynaldo Mangilog, on the other hand, was shot and stabbed to death while he was taking a bath. It may be added that the victims were naturally unarmed at that time and their execution was done so early in the morning, that is, when they had practically just awakened. Under the circumstances, the victims were clearly not in any position to defend themselves from the sudden and unexpected attack of the accused.[24] These circumstances are

manifestly indicative of the presence of the conditions under which treachery may be appreciated, i.e., the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and that said means of execution was deliberately or consciously adopted.[25]

The Court of Appeals appreciated abuse of superior strength, aid of armed men and evident premeditation as aggravating circumstances. These findings are factual and the rule is that findings of the Court of Appeals upon factual questions are conclusive and ought not to be disturbed unless shown to be contrary to the evidence on record,[26] and, in this case, there is no such showing. However, we believe, and so hold, that treachery absorbs the circumstances of abuse of superior strength and aid of armed men, as it appears that the accused saw to it that they were armed and far outnumbered the victims precisely to ensure the accomplishment of their criminal objective.[27]

Under Article 248 of the Revised Penal Code, the prescribed penalty for murder is reclusion temporal in its maximum period to death. Since we find accused-appellant guilty beyond reasonable doubt of the crime of murder qualified by treachery in Criminal Cases Nos. 2909 and 2910 and that the generic aggravating circumstance of evident premeditation was also attendant, the penalty of reclusion perpetua should be imposed in each case, applying Article 63 of the Revised Penal Code and considering the proscription against the imposition of the death penalty at the time the crimes were committed.

WHEREFORE, the decisions of the trial court are hereby **AFFIRMED** with the **MODIFICATION** that the accused-appellant is sentenced to suffer the penalty of reclusion perpetua for each case of murder (Criminal Cases Nos. 2909 and 2910).

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Penned by Judge Emma C. Labayen, RTC, Branch 8, Kalibo, Aklan.

[2] Decision of the RTC, Record, p. 205.

[3] Decision of the RTC, Record, p. 131.

[4] Decision of the RTC, Record, p. 106.

[5] Rollo, pp. 87-89.

[6] On further questioning, witness Realidad Mangilog named Satur Suyod, Casiano Masgong and Hilario Masgong as the persons who gunned down her husband and failed to mention the name of appellant as one of the assailants. (TSN, March 21, 1989, pp. 8 & 21)

[7] TSN, October 11, 1990, pp. 12-13.

[8] Id., p. 5.

[9] TSN, November 15, 1990, pp. 3-4.

[10] Appellant's Brief filed with the Court of Appeals, Rollo, pp. 25-26.

[11] *People v. Barte*, 230 SCRA 401, 408 [1994]; *People v. Dominguez*, 217 SCRA 170, 184 [1993]; *People v. Calope*, 229 SCRA 413, 421 [1994].

[12] *People v. Dominguez*, *supra*, 183; *People v. Cabuang*, 217 SCRA 675, 684 [1993], *People v. Agcaoile*, 206 SCRA 606, 612 [1992].

[13] TSN, March 21, 1990, pp. 4-5.

[14] TSN, March 20, 1990, p. 5.

[15] *Id.*, p. 8.

[16] TSN, September 18, 1990, pp. 4-5.

[17] *People v. Tabao*, 240 SCRA 758, 770 [1995]; *People v. Nitcha*, 240 SCRA 283, 293 citing *People v. Rostata*, 218 SCRA 657 [1993].

[18] *People v. Tami*, 244 SCRA 1, 22 [1995].

[19] *People v. Yabut*, 226 SCRA 715, 719 [1993].

[20] *People v. Umbrero*, 196 SCRA 821, 829 [1991]; *People v. Dalanon*, 237 SCRA 607, 619 [1994].

[21] *People v. Solon*, 244 SCRA 554, 562 [1995].

[22] *People v. Asuncion*, 179 SCRA 396, 401 [1989].

[23] *People v. De Roxas*, 241 SCRA 369, 377 [1995].

[24] *People v. Lualhati*, 234 SCRA 325, 332 [1994].

[25] *People v. Suitos*, 220 SCRA 419, 430 [1993]; *People v. Bernardo*, 222 SCRA 502, 508-509 [1993]; *People v. Verchez*, 233 SCRA 174, 183 [1994].

[26] *Mercado v. Court of Appeals*, 234 SCRA 98, 102 [1994].

[27] *People v. Amondina*, 220 SCRA 6, 11 [1993], citing *People v. Mori*, 55 SCRA 382.

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