

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REY SALISON, JR., TIRSO ANDIENTE, RUFINO DIGNARAN AND LEONILO FEDILES, ACCUSED, REY SALISON, JR., ACCUSED-APPELLANT.

G.R. No. 115690. February 20, 1996

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellant Rey[*] Salison, Jr., alias "Loloy," appeals from a judgment in Criminal Case No. 21805- 91 of the Regional Trial Court of Davao City, Branch 16, which imposed upon him the penalty of reclusion perpetua for the murder of one Rolando Valmoria.

The information filed against appellant and the co-accused Tirso Andiente, alias "Sano," Rufino Dignaran, alias "Jongjong"; and Leonilo Fediles, alias "Ondoy," alleges:

That on November 30, 1990 in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, confederating and mutually helping one another, with abuse of superior strength and with intent to kill, willfully, unlawfully and feloniously mauled and pummeled with hard wood one Rolando Valmoria. Serious and fatal injuries were inflicted which subsequently caused the death of Rolando Valmoria on December 4, 1990.[1]

Upon arraignment, appellant Rey Salison, Jr., assisted by counsel de oficio, entered a plea of "not guilty." [2] Trial then proceeded only against him, because his three other co-accused were and, still are, at large. On November 26, 1993, the trial court rendered a decision with the following decretal portion:

WHEREFORE, finding the accused Rey Salison guilty beyond reasonable doubt of the crime of MURDER punishable under Article 248 of the Revised Penal Code, with no modifying circumstance present, the Court has no other alternative but to impose the proper penalty of "reclusion perpetua," the same being the medium period within the range of the penalty imposable and to pay the cost(s); to indemnify the offended party (in the amount P50,000.00 as compensatory damages and P7,270.70 as actual damages.[3] (Corrections in parentheses ours.)

In the present appeal, herein appellant contends that the trial court erred (1) in finding that there was proof beyond reasonable doubt that the accused conspired with his co-accused in killing the victim, (2) in not holding that accused is only responsible for the injuries that he actually inflicted on the victim, and (3) in admitting in evidence the alleged "dying declaration" of the victim, as well as the "agreement" between the parents of the accused and the victim.[4]

During the trial, the prosecution presented seven witnesses, a picture of the pieces of wood[5] used by the accused in killing the victim, receipts of expenses incurred in the hospital for the treatment of said victim,[6] a written declaration of the victim after the incident,[7] and a written agreement between the parents of appellant and the victim.[8]

The evidence of record reveals that at around 8:00 o'clock in the evening of November 30, 1990, witness Maria Magdalena Ayola saw appellant Salison approach the victim, Rolando Valmoria, who was then watching television in a store at Cory Village, Agdao, Davao City. Salison placed his arm around Valmoria's shoulder and brought him behind a neighbor's house where there was a mango tree. There, appellant Salison boxed Valmoria in the abdomen.[9]

During the fistfight between Salison and Valmoria, the three other accused Andiente, Dignaran and Fediles suddenly appeared and joined the fight and simultaneously attacked Valmoria. It was then when witness Emilia Fernandez approached them that the three co-accused disappeared, leaving Salison and Valmoria behind. Fernandez was able to separate Salison from Valmoria. However, the three co-accused returned and started to maul Valmoria again, with Salison rejoining the three in assaulting the victim.[10]

When Valmoria fought back, accused Salison, Fediles and Andiente picked up pieces of wood and started to hit Valmoria at the back on his nape, and on the rear part of his head, Valmoria fell to the ground and, upon finding a chance to do so, he stood up and ran towards his house which was a few meters away. The assailants followed Valmoria but failed to further hit the victim because Valmoria was able to hide inside his house. All of the accused shouted for Valmoria to come out but the latter refused, causing his four assailants to hit the walls and windows of the Valmoria residence. During this time, the victim remained seated inside the house. Shortly thereafter, Valmoria started to complain of dizziness and pain in his head which was bleeding at that time.[11]

Consequently, at the request of Valmoria, his parents accompanied him to the house of witness Patricia Alcoseba, the purok leader. The victim asked Alcoseba to write down his declaration regarding the incident explaining that if he should die and no witness would testify, his written declaration could be utilized as evidence.

At the trial of the case, Alcoseba presented the written and signed declaration of Valmoria and she affirmed what was written in the declaration, testifying as follows:

PROSECUTOR DAYANGHIRANG III:

Q

Mrs. Alcose(b)a, on November 30, 1990, where were you?

A

I was in our house.

Q

Where?

A

At Cory Village.

xxx

Q

After you heard that there was trouble in Cory Village, what happened next, if any?

A

I noticed that the mother and father of Rolando Valmoria helped Rolando Valmoria in walking towards my house.

Q

When they arrived (at) your house, what happened next?

A

When they arrived (at) the house, the father requested that his son be allowed to sit on our chair.

Q

And what happened next after that?

A

At that time Rolando Valmoria was sitting on the chair and he was so weak and his neck and head slumped on the chair and the Valmorias requested me that he has something to say and requested it to be written and he stuttered in talking.

Q

What did you do after the victim requested you?

A

I obeyed. I obeyed the request and I got a ballpen and paper.

Q

Then what happened next?

A

He related to me as to who started the trouble as to who struck him first, the second and the third.

Q

Now Mrs. Alcosse(b)a, while the victim was narrating to you, what did you observe about his condition?

A

I observed that he was so weak and he was in pain and I believed at that time he was dying.

Q

Did the victim utter the words to that effect that he was dying?

A

Yes, sir. He told me by saying "I believe that I will die."

Q

What else?

A

Because he said that he felt a terrible pain on his head.

Q

Did he tell you the reason why he requested you to make a declaration in writing?

A

He told me that if anybody will testify regarding my death this declaration of mine could be utilized as evidence.

xxx

Q

Showing to you this statement, what a relation is this one (sic) to the one you said which is the statement of the victim?

A

Yes, this is the one.

xxx

Q

There is a printed name. . . a signature over the printed name Rolando Valmoria, "ang guibunalan/ pasyente," whose signature is this?

A

That is the signature of Rolando Valmoria.

COURT:.

Q

When the victim signed that document, was he sitting?

A

Yes, sir.

Q

After the victim signed that document what happened next?

A

They left and they went to the detachment.

xxx

Q

What happened to this piece of paper after the victim signed this?

A

I gave it to the mother.

Q

So you did not keep that piece of paper?

A

No, sir. I gave it to them so they will be able to use it.

Q

Before they left your house you gave that piece of paper to the mother?

A

At that time I did not give that declaration first to the mother because they were attending to their son.

Q

When did you give that document to the mother?

A

When Rolando Valmorja died.

xxx

Q

At the time you were taking this statement, from the victim did he tell you the persons who were responsible for his injuries?

A

Yes, sir.

Q

Who?

A

Rufino Dignaran, Jr. alias Jongjong and the second is Loloy Salison and the third one is name(d) Tirso and the fourth, I cannot remember the name of the fourth person who hit the victim yes, now I remember, it's Leonilo Fediles.

Q

You wrote that statement (o)n a piece of paper?

A

Yes, sir.[12] (Corrections and emphasis supplied.)

After making that declaration in the house of witness Alcosoba, Valmorja and his parents proceeded to the hospital where he was X-rayed and treated for his head injuries. Subsequently, the victim was allowed to go home. However, at 4:00 o'clock the following morning, he started to convulse and was rushed to the hospital. After three days there, Valmorja died.[13]

The prosecution likewise presented Dr. Edmundo Visitacion, Jr. who had conducted the necropsy which established the cause of death of Valmorja indicated in the post mortem certificate: He explained that the head injury sustained by the victim was caused by "a blunt external trauma probably made by a solid object and this trauma caused the subdular hemorrhage." [14]

On December 12, 1990, the parents of the victim and those of the accused Salison and Dignaran entered into a

written agreement for the refund of hospital expenses of Valmoria. However, no reimbursement was actually made.

On the other hand, the lone defense witness was appellant Salison himself who merely denied having killed the victim. He testified that on that day, together with his friends Andiente, Dignaran, Fideles and a certain Andy, he was visiting his girlfriend, a certain Neneng Edpalina, when he heard Valmoria and Andiente shouting at each other. He tried to pacify the two but the victim told him not to interfere because he had nothing to do with them. Then he saw Valmoria, Andiente, Dignaran, Fediles and a certain Andy engaged in a fistfight. He was trying to stop the group from fighting when witness Fernandez came and told him not to interfere.

He then left and while he was on his way home, he heard somebody shout "agay," so he went back and saw Andiente holding a piece of wood while Valmoria was running towards his house. He had just grabbed the piece of wood from Andiente when two CAFGU's arrived and arrested him, Andiente, Dignaran and Fediles. All of them were subsequently released after the investigation.[15]

The errors imputed to the trial court may be consolidated and narrowed down to the question of credibility of the prosecution witnesses, the existence of conspiracy in the commission of the crime, and the evidentiary weight of the dying declaration, as well as of the written agreement of the parents of the victim and the accused.

In the instant case, the lower court held that:

The testimony of the prosecution's witnesses were clear, strong and convincing to deserve full faith and credence. As against the pure denial of the accused of his direct participation as a conspirator, the positive, clear and straightforward declaration of the prosecution's witnesses must prevail. No motive or reason has been shown why they would falsely impute to the accused the commission of such a grave crime. The accused Rey Salison has no quarrel or bickering with the prosecution's witnesses. In fact, two of the prosecution's witnesses are friends of the mother of Rey Salison. These prosecution's witnesses declared that they saw (that) the accused Rey Salison together with the other accused participated in boxing and mauling Rolando Valmoria with pieces of wood)[16]

We agree with the findings of the trial court giving full faith and credit to the witnesses for the People. The uncorroborated testimony of appellant can not prevail over the positive declarations of the prosecution's witnesses. In fact, there were three eyewitnesses, with no ill motives whatsoever, who testified against appellant and confirmed Salison's direct participation in the commission of the crime.

The defense did not present any evidence to support the denials of appellant. The putative girlfriend of

Salison, who was allegedly with him on that day, was not presented to confirm that fact and thereby prove that he did not participate in the fight between his co-accused Andiente and the victim. His testimony pinpointing Andiente as the killer was only a convenient way to avoid liability since Andiente remained at large and could not refute Salison's testimony imputing the crime to him.

Moreover, denial is a self-serving negative evidence that can not be given greater weight than the declaration of credible witnesses who testified on affirmative matters.[17] Definitely, therefore, the case of the Government has outweighed and overwhelmed the evidential ramparts of the defense.

Appellant's assertion that conspiracy has not been established is belied by the eyewitness accounts submitted by the prosecution. The manner by which the killing was executed clearly indicated a confederacy of purpose and concerted action on the part of the accused. Prosecution witness Magdalena Ayola, who saw the entire incident, testified on this point, thus:

Q

During that time were they alone? The two of them?

COURT:

A

When Salison brought Valmoria under the mango tree, they were only 2 but later, alias Sano, Fediles and alias Ondoy and alias Jong-jong boxed Valmoria.

xxx

PROSECUTOR MANDALUPE:

Q

In other words aside from accused Salison alias Loloy who first boxed Rolando Valmoria, other three persons joined Salison and also boxed Rolando Valmoria?

A

Yes, sir.

xxx

COURT:

Q

Did you see the 3 come from the bushes? A Yes, sir.

A

Yes, sir.

Q

Where were you during the time when these three appeared from the bushes?

A

I was nearby because we were watching them.

Q

Were you alone watching them or you had a companion?

A

I had some neighbors with me.

xxx

PROSECUTOR MANDALUPE:

Q

After alias Sano, alias Jong-jong and alias Ondoy joined Salison in boxing Rolando Valmoria, what else did he do against the person of Rolando Valmoria?

A

Valmoria fought back and there was exchange of fist(icuffs) and Loloy Salison, alias Ondoy and alias Sano picked up some wooden pieces of wood (sic).

Q

After these three persons you mentioned picked up wood, what did they do after picking up the wood?

A

They struck Valmoria with the piece of wood.

xxx

Q

You said that you saw these 4 persons struck Rolando Valmoria many times while still under the mango tree. Can you tell the Honorable Court what part of the body of Rolando Valmoria was hit by the striking of wood by the 4 accused, if you can recall?

A

He was hit at his back and at the back of his head.[18]

From the aforesaid testimony, these simultaneous attacks on the victim proved the common intent of the accused to inflict fatal blows upon the victim.

Direct proof is not essential to prove conspiracy.[19] A conspiracy may be inferred without need of showing that the parties actually came together and agreed in express terms to enter into and pursue a common design.[20] For collective responsibility among the accused to be established, it is sufficient that at the time of the aggression all of them acted in concert each doing his part to fulfill their common purpose to kill the victim.[21]

Even if there is no direct evidence showing that all of the accused had a prior agreement on how to kill Valmoria, the doctrine is well-settled that conspiracy need not be proved by direct evidence of prior agreement to commit the crime. Very seldom would such prior agreement be demonstrable since, in the nature of things, criminal undertakings are only rarely documented by agreements in writing.[22]

It is equally a well-accepted corollary rule that where a conspiracy has been established, evidence as to who among the accused rendered the fatal blow is not necessary. All the conspirators are liable as co-principals regardless of the intent and the character of their participation, because the act of one is the act of all.[23]

What further strengthens the case of the prosecution was the declaration of Valmoria, made and signed by him right after the incident, as to who were responsible for the injuries he sustained. Appellant, however, maintains that said written statement, which was reduced into writing by witness Patricia Alcoseba and purporting to be a dying declaration, is inadmissible as evidence since it was in the Cebuano regional language and was not accompanied with a translation in English or Pilipino.

However, as correctly observed by the Solicitor General:

The records do not disclose that the defense offered any objection to the admission of the declaration. Thus, the defense waived whatever infirmity the document had at the time of its submission as evidence. The declaration can be translated into English or Pilipino as it is already admitted in evidence and forms part of the record.[24]

Also, while such statement was given, as in the nature of things they are generally in oral form, they are not thereby rendered inadmissible as they may even be communicated by means of signs. If the declarations have thereafter been reduced to writing and signed by the declarant, the writing is generally held to be the best

evidence, and it must be produced.[25]

More than once, this Court has taken into consideration documents written in a Philippine dialect, unaccompanied by the required translation but which had been admitted in evidence without objection by the accused.[26] In those instances, the Court merely ordered official translations to be made. It is true that Section 33, Rule 132 of the revised Rules of Court now prohibits the admission of such document in an unofficial language but we believe that in the interest of justice, such injunction should not be taken literally here, especially since no objection thereto was interposed by appellant, aside from the fact that appellant, the concerned parties and the judicial authorities or personnel concerned appeared to be familiar with or knowledgeable of Cebuano in which the document was written. There was, therefore, no prejudice caused to appellant and no reversible error was committed by that lapse of the trial court.

Also, the written declaration was duly presented during the trial and the person who reduced the victim's declaration into writing was thoroughly questioned by the court and the prosecutor, and cross-examined by the defense counsel. The witness was able to explain and discuss what was written in the declaration and how she came to prepare the same. Significantly, everything written in that declaration of the victim was confirmed by the Government's eyewitnesses. Appellant's argument regarding the inadmissibility of the declaration on a mere technicality would mean the loss of a vital piece of evidence that could yield the true facts and give retributive justice in the murder of Valmoria.

Appellant likewise argues that the declaration made by the victim before the purok leader can not be considered as a dying declaration because it was not made by the deceased "under the consciousness of an impending death." As earlier narrated, at the time the deceased made the declaration he was in great pain. He expressed a belief on his imminent death and the hope that his declaration could be used as evidence regarding the circumstances thereof. A person would not say so if he believes he would recover and be able to testify against his assailants. At all events, assuming that declaration is not admissible as a dying declaration, it is still admissible as part of the *res gestae*,[27] since it was made shortly after the startling incident and, under the circumstances, the victim had no opportunity to contrive.

We are in conformity with the verdict of the lower court finding appellant guilty of murder since the killing was qualified by the circumstance of the accused having taken advantage of their superior strength. The victim was unarmed and defenseless at the time when all of the accused mercilessly bludgeoned his back and head with big pieces of wood. The number of assailants and the nature of the weapons used against the hapless victim show a notorious inequality of force between the latter and the aggressors, assuring a superiority of strength advantageous to Salison and his co-accused in the commission of the crime. The accused purposely used excessive force out of proportion to the means of defense available to the person attacked.[28]

Since no aggravating or mitigating circumstance was present in the case at bar, the trial court correctly imposed the penalty of reclusion perpetua, the same being the medium period in the range of the imposable penalty.

PREMISES CONSIDERED, the assailed judgment of the court a quo is hereby **AFFIRMED** in toto, with costs against accused-appellant Rey Salison, Jr.

SO ORDERED.

Romero, Puno and Mendoza, JJ., concur.

[*]His first name is "Roy" in some parts of the original record and transcripts.

- [1] Original Record, 1.
- [2] Ibid., 33.
- [3] Ibid., 115-116, rendered by Judge Romeo D. Marasigan
- [4] Brief for Accused-Appellant, 2; Rollo, 42.
- [5] Original Record, 6.
- [6] Ibid., 324-342.
- [7] Ibid., 319.
- [8] Ibid., 343.
- [9] TSN, March 25, 1991, 9-13.
- [10] Ibid., March 26, 1991, 56-59.
- [11] Ibid., Id., 59-60.
- [12] Ibid., February 17, 1992, 17-21.
- [13] Ibid., March 3, 1992, 13.
- [14] Ibid., March 3, 1992, 4.
- [15] Ibid., September 17, 1992, 7-15.
- [16] Ibid., Id., 114.
- [17] People vs. Carizo, et al., G.R. No. 96510, July 6, 1994, 233 SCRA 687.
- [18] Ibid., March 25, 1991, 13-17.
- [19] People vs. De La Cruz., G.R. No. 102063, January 20, 1993, 217 SCRA 283; People vs. Baello, G.R. No. 101314, July 1, 1993, 224 SCRA 218.
- [20] People vs. Camaddo, et al., G.R. No. 97934, January 18, 1993, 217 SCRA 162.
- People vs. Magalang, et al., G.R. No. 84274, January 27, 1993, 217 SCRA 571.
- [22] People vs. Magalang, ante.
- [23] People vs. Yabut, G.R. No. 85472, September 27, 1993, 226 SCRA 715
- [24] Brief for the Appellee, 15; Rollo, 95.
- [25] I Jones on Evidence, Sec. 335, at 616, 617.
- [26] See Ahag vs. Cabiling, 18 Phil. 415 (1911); People vs. Siojo, 61 Phil. 307 (1935).
- [27] People vs. Reyes, et al., 52 Phil. 538 (1928); People vs. Abboc, et al., L-28327, September 14, 1973, 53 SCRA 54, and cases cited therein.
- [28] People vs. Moka, et al., G.R. No. 88838, April 26, 1991, 196 SCRA 378.

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