

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EPIFANIO GAYON, ARTURO GAYON AND MAXIMO GIVERA, ACCUSED-APPELLANTS.

G.R. No. 116228. March 13, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

EPIFANIO GAYON, ARTURO GAYON and MAXIMO GIVERA were convicted of murder qualified by treachery and evident premeditation by the Regional Trial Court of Quezon City and sentenced to reclusion perpetua plus the accessory penalties provided by law, to indemnify the heirs of Eusebio Gardon P100,000.00, and to pay the costs.[1]

The records show that in the morning of 2 May 1993 accused Arturo Gayon, Maximo Givera and Eusebio Gardon were having a drinking spree behind Eusebio's house. They were later joined by Epifanio Gayon. At two o'clock in the afternoon a commotion coming from the direction of those drinking was overheard by Eusebio's daughter Milagros Gardon who was then watching television inside their house. When she looked out she saw her father being teased by his drinking partners, punched in the stomach and flicked at the earlobes. This spectacle prompted her to get her father and bring him inside the house to protect him from his unruly companions. Arturo, Maximo and Epifanio then left.

Two hours later Epifanio Gayon returned accompanied by Cesar Gayon. They hurled stones at the house of Eusebio who at the time was asleep in the living room. They shouted at him to come out; they threatened to kill him. Worse, Epifanio forced himself into the house and dragged the sleeping Eusebio out. Eusebio who was too drunk recovered his bearings only when he was mauled and stoned by Cesar Gayon. Furious, Eusebio chased Epifanio and Cesar towards the bridge where Maximo Givera and Arturo Gayon were waiting. All four — Cesar, Maximo, Arturo and Epifanio — surrounded Eusebio with Arturo crying out, "patayin na iyan!" Maximo then pulled out his balisong[2] and stabbed the hapless Eusebio. They left him sprawled on the ground; he died on the spot. The autopsy report stated that a penetrating stab wound piercing the left ventricle of his heart was the fatal wound which caused hemorrhage, hypotensive shock and death.[3]

Epifanio Gayon and Arturo Gayon were apprehended on 6 May 1993 while Maximo Givera surrendered on 13 May 1993. Cesar Gayon was never arrested.

Accused Epifanio Gayon, Arturo Gayon and Maximo Givera invoke alibi. According to Epifanio, at two o'clock in the afternoon of 2 May 1993 he stopped drinking and headed for home where he remained for the rest of the day. Arturo on the other hand claimed that at the time of the incident he was at his pigpen feeding his hogs while Maximo said he went home when the scuffle started for fear he might be hurt.

On 6 June 1994 the trial court found the three (3) accused guilty as charged. They now come to us on appeal contending mainly that the court a quo erred: (a) in giving weight to the testimonies of prosecution witnesses Milagros Gardon, Melinda Delfin and Laura Gardon; (b) in totally discrediting the testimonies of the witnesses

for the defense as self-serving and too inconsistent; and, (c) in holding that there was conspiracy and treachery.

Accused-appellants argue that the testimonies of prosecution witnesses are doubtful for being marred by inconsistencies. They point out that despite being drunk and having been mauled the victim, according to the prosecution witnesses, still managed to run after the ones stoning him; that despite the relative distances of the witnesses, vis-a-vis the bridge where the victim was stabbed, they still managed to see the 'twisting' movement made by Maximo when he stabbed Eusebio; and, there was a discrepancy between the testimonies of Milagros Gardon and Melinda Delfin on how the victim came out of the house.

These inconsistencies and contradictions are too insignificant to merit attention. Not all persons who witness an incident may have the same impressions as they are likely to disagree on minor details. So long as they concur on material points their credibility will be sustained.[4]

At any rate, there is no proof that the witnesses for the prosecution deliberately falsified their testimonies. They were blood relatives of the deceased. Milagros and Laura, both surnamed Gardon, were daughters of the deceased while Melinda Delfin was a niece. As such, they are much interested in vindicating the wrong done to a member of their family by seeing to it that the perpetrators of the crime are brought to justice.

Furthermore, it is well-settled that the appellate court will not interfere with the conclusions of the trial court concerning the credibility of witnesses unless there are substantial facts and circumstances which the trial court overlooked, misunderstood or misapplied and which when considered would probably alter the outcome of the case.[5] This principle is not without good reason. Trial courts have vastly superior advantages in ascertaining the truth and in detecting falsehood as they have the opportunity to observe the manner and demeanor of witnesses while testifying.[6]

Accused-appellants likewise contend that the court a quo should have instead given credence to the testimonies of the defense witnesses. But their testimonies, as borne by the records, establish nothing but alibis and bare denials. The Court has consistently ruled that denials and alibis unsubstantiated by clear and convincing evidence are negative and self-serving which deserve no weight in law and cannot be given greater evidentiary weight over the testimonies of credible witnesses who testify on affirmative matters.[7]

Appellants failed to prove convincingly that it was physically impossible for them to be at the locus criminis at the time of the killing. Epifanio Gayon's house was only 50 meters away from that of the victim while Arturo Gayon's pigpen, where he allegedly was at the time of the incident, was only 100 meters away from the scene and Maximo Givera lived in the same neighborhood.[8]

In an effort to corroborate their alibi the appellants presented two (2) witnesses, namely, Patricia Santos, daughter of Arturo Gayon and niece of Epifanio Gayon, and Raffy Cabael, a friend of Epifanio Gayon. But alibi is generally unavailing if it is merely corroborated by an immediate relative or a friend. Appellants could have easily presented witnesses from among disinterested parties. At any rate, alibi is worthless in the face of positive identification by the prosecution witnesses.[9]

Appellants maintain that there was no conspiracy as it was only Maximo Givera who wielded the knife while the others were unarmed and did not hold the victim when he was fatally stabbed. We do not agree. Conspiracy need not be proved by direct evidence of a prior agreement to commit the crime. It may be deduced either from the mode and manner in which the offense was committed or from the acts of the accused themselves pointing to a community of interest or concerted action.[10]

The participatory acts of the appellants -- Epifanio and Cesar stoning the victim's house, Epifanio dragging the victim out of his house and mauling him, Epifanio and Cesar luring the victim towards the bridge where their

co-conspirators were waiting in ambush, they surrounding the victim, and Arturo Gayon shouting, "patayin na iyan" -- were all aimed at one and the same objective, i.e., the liquidation of Eusebio Gardon.

That there was unity of purpose was made more evident by the fact that when Eusebio chased appellants the latter ran away only to lead him to the bridge where Maximo and Arturo were waiting, which was part of their concerted criminal design. It seems a little strange that they had to run when they could have easily overcome any attempt at retaliation then and there owing to their superiority in number and the weakened condition of the victim whom they had just mauled. Obviously it was in pursuance of a prior agreement to entice Eusebio to run to the bridge where the other two awaited them. Appellants could not have acted the way they did were they not co-conspirators.

Nonetheless we agree with accused-appellants that the trial court erred in finding that treachery attended the killing. For treachery to be present, two (2) conditions must concur: (a) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the means of execution were deliberately and consciously adopted.[11] The first condition was not present. It was adequately proved by the defense that nobody held the deceased when he was stabbed by appellant Givera. His body and hands were not restricted hence it could not be said with reasonable certainty that the means of execution employed by the assailants gave him no opportunity to defend himself. The conclusion that Cesar Gayon held the arms of the victim when the latter was stabbed is not supported by any scintilla of evidence. The prosecution witnesses unanimously testified that the only participation of the other appellants was to surround the victim.[12] Furthermore, when Eusebio was attacked he was already forewarned of the hostile attitude of his erstwhile drinking partners. Yet he chose to be courageous, albeit foolhardy, by chasing his attackers instead of seeking refuge in his house. Thus the attack against him could not be described as sudden, unexpected and unforeseen.[13]

Neither are we convinced that the aggravating circumstance of evident premeditation attended the killing of Eusebio. While this circumstance was sufficiently alleged in the Information the same was not adequately proved during the trial. As it has been repeatedly held, evident premeditation cannot be appreciated in the absence of any direct evidence on record showing that appellants meditated and reflected on their intention to kill the victim.[14] Much less can it be presumed from mere lapse of time; it must be proved beyond reasonable doubt like the crime it qualifies.[15]

However we hold that the crime was committed with abuse of superior strength which qualified the killing to murder. To take advantage of superior strength is to purposely use excessive force out of proportion to the means available to the person attacked to defend himself.[16] In order to be appreciated it must be clearly shown that there was deliberate intent on the part of the malefactors to take advantage thereof.[17] In the instant case, the conclusion that accused-appellants purposely used their superior and combined strength to their advantage is bolstered by the fact that they regrouped and surrounded their quarry as soon as he reached the bridge. This show of force indicates an unmistakable intention to overwhelm the victim and forestall any possibility of resistance, if not retaliation, on his part.[18]

WHEREFORE, the judgment appealed from is MODIFIED. We instead find accused-appellants EPIFANIO GAYON, ARTURO GAYON and MAXIMO GIVERA guilty beyond reasonable doubt of MURDER committed with grave abuse of superior strength and imposes upon each of them the penalty of reclusion perpetua with the accessory penalties provided by law, and ordering them to indemnify the heirs of the deceased Eusebio Gardon in the amount of P100,000.00. Costs against accused-appellants.

SO ORDERED.

Padilla, (Chairman), Vitug, Kapunan, and Hermosisima Jr., JJ., concur.

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- [1] Decision penned by Judge Maximiano C. Asuncion, RTC-Br. 104, Quezon City.
- [2] A native fan knife about 16 inches long.
- [3] TSN, 27 September 1993, pp. 11-14; Exh. "C."
- [4] People v. Somooc, G.R. No. 100921, 2 June 1995, 244 SCRA 731
- [5] People v. Sanchez, G.R. No. 103299, 17 August 1993, 250 SCRA 14.
- [6] People v. Magaluna, G.R. No. 66755, 23 January 1992, 205 SCRA 266
- [7] People v. Gamiao, G.R. No. 91492, 29 January 1995, 240 SCRA 254.
- [8] Records, pp. 106-107.
- [9] People v. Ledesma, G.R. No. 105958, 13 November 1995, 250 SCRA 166.
- [10] People v. Cabrera, G.R. No. 105922, 1 February 1995, 241 SCRA 28.
- [11] People v. Silvestre, G.R. No. 109142, 29 May 1995, 244 SCRA 479
- [12] TSN, 7 July 1993, pp. 42-43; id., 30 August 1993, p. 25; id., 12 September 1993, p. 22
- [13] People v. Lopez, G.R. No. 112448, 30 October 1995, 249 SCRA 610.
- [14] People v. Soldao, G.R. No. 80225, 31 March 1995, 243 SCRA 119
- [15] People v. Halili, G.R. No. 108662, 27 June 1995, 245 SCRA 340
- [16] People v. Casingal, G.R. No. 87163, 21 March 1995, 243 SCRA 37.
- [17] People v. Escoto, G.R. No. 91756, 11 May 1995, 244 SCRA 87.
- [18] People v. Develos, No. L-18866, 31 January 1966, 16 SCRA 46.

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