

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNALDO “RENATO” DATUN, RONALD “OTIC” SEÑEREZ, ELVIS ESTOLOGA, PEDRO ESMAYA, JR., AND CONSTANTINO VEJO,

G.R. No. 118080. May 07, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Appellants attack the credibility of the two prosecution eyewitnesses because the head blow upon the victim, which was testified to by them, was not included in the death certificate. We hold however that a death certificate, unlike an autopsy report, establishes only the fact of death and the immediate, antecedent and underlying causes of such death. It cannot be used to deny other injuries sustained by the victim but not contained in said document.

In an Information dated June 25, 1992, Provincial Prosecutor Francisco G. Rivero charged the five accused with murder under Article 248 of the Revised Penal Code, as follows:[2]

“That on or about March 18, 1992, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, with treachery and with abuse of superior strength, with intent to kill, armed with bladed weapons and wooden clubs, did then and there willfully, unlawfully and feloniously attack, assault and stab one Anastacio Solidarios, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.”

Only the two accused-appellants, Reynaldo “Renato” Datun and Ronald “Otic” Señerez, were arraigned. Assisted by counsel, both entered a plea of not guilty. The other accused remained at large, having escaped a day after the killing of the deceased Anastacio Solidarios.

In its Decision[3] dated July 1, 1994, the Regional Trial Court[4] found accused-appellants guilty of the crime charged. The dispositive portion of the Decision reads:[5]

“IN THE LIGHT OF FOREGOING, the court finds accused Reynaldo Datun and (his) co-accused Ronald ‘Otic’ Se(ñ)erez guilty beyond reasonable doubt of the offense of Murder punishable under Article 248 of the Revised Penal Code. The court sentences both accused to suffer and undergo an imprisonment of RECLUSION PERPETUA, together with all the accessory penalties provided for by law and to pay the costs. There being no aggravating or mitigating circumstances, the penalty should be in its medium period Art. 64/1 R.P.C. and that is reclusion perpetua. PP vs. de Guzman (215 SCRA 375).

Both accused are ordered to indemnify jointly and severally the heirs of Anastacio Solidarios (in) the amount of P50,000.00 in accordance with the current case doctrines of the Supreme Court. Both accused are also ordered to pay jointly and severally the amount of P16,000.00 as actual damages to the heirs of Anastacio Solidarios.”

From the Decision of the trial court, accused-appellants interposed this appeal.

The Facts

Version of the Prosecution

In appellee's brief, the Solicitor General narrates the facts as viewed by the prosecution, *vide infra*:^[6]

"On March 18, 1992, at about 5:00 p.m., Anastacio Solidarios and Baltazar Nagallo took a pedicab on their way home to Barangay New Visayas, Sto. Tomas, Davao (TSN, March 23, 1993, p. 23). Upon reaching New Visayas, they walked towards the house of Anastacio Solidarios (Ibid.). On their way, they passed by a group of persons: namely, Reynaldo Datun, Oti(c) Se(ñ)erez, Elvis Estol(o)ga, Pedro Esmaya and Constantino Vijo Jr. (Ibid.; pp. 7 & 23). The group was having a drinking spree by the side of the road, around 40 meters away from Anastacio Solidarios' house (Ibid., p. 23). The group had been drinking 'tuba' to celebrate the inauguration of the newly installed water pump in that place (Ibid., p. 5). The group invited them to join the drinking session (Ibid., p. 24). Anastacio Solidarios and Baltazar Nagallo replied that they would proceed first to Anastacio's house to bring viands they were carrying at that time, but afterwards they would return to join them (Ibid.).

When Anastacio Solidarios and Baltazar Nagallo arrived at the house, Anastacio hanged his bolo on the wall and then went out to get the carabao and the goats (Ibid.). After that, Anastacio Solidarios returned to the house and sought his wife's permission to join the group having a drinking spree (Ibid.). When Anastacio Solidarios and Baltazar Nagallo arrived at the place where the group of Reynaldo Datun was, Anastacio commented that they can now get water nearby, because the installation of the water pump was completed (Ibid., p. 25). After Anastacio Solidarios said this, the group stood up and then surrounded him (Ibid., p. 7 & 25). Constantino Vejo Jr. struck Anastacio Solidarios on the right leg with a long wooden stick (Ibid., p(p). 8 & 25). Baltazar Nagallo tried to pacify them and pleaded (to) them not to harm Anastacio Solidarios, but his pleas fell on deaf ears (Ibid., p. 25). Anastacio's wife, Epifania, after being informed by Anita Cantalejo that her husband was surrounded by a group of men, immediately went to the place and found out that her husband was surrounded by five men armed with wooden sticks and bolos (Ibid., pp. 7-8). Epifania Solidarios shouted for help and also pleaded them (sic) not to harm her husband, but to no avail (Ibid.).

After Constantino Vejo Jr. struck Anastacio Solidario(s) with a wooden stick, Pedro Esmaya immediately followed it with a wooden club, hitting Anastacio at the back of his neck (Ibid., p. 8). This caused Anastacio to fall down (Ibid., pp. 9 & 25). After Anastacio Solidarios fell down, Elvis Estol(o)ga stabbed him on the chest, Oti(c) Se(ñ)erez stabbed him on the left side of his body and Reynaldo Datun hacked his head with a bolo (Ibid., pp. 8, 9 & 25). After ganging up on Anastacio Solidarios, the group ran away laughing (Ibid., pp. 9 & 26). After the group left, Epifania Solidarios went to her husband and touched his breast, but she discovered that he was no longer breathing (Ibid., p. 9). Baltazar Nagallo, together with some neighbors, helped bring the victim's body on the side of the road to bring him to the hospital (Ibid., p. 26). But it was too late because Anastacio Solidarios was already dead (Ibid.).

Only Reynaldo Datun and Oti(c) Se(ñ)erez were brought to court, because the other members of the group remain at large."

Version of the Defense

Accused-appellants interposed alibi and non-participation. The details of their defenses are narrated in the appellants' brief as follows:^[7]

"Accused Renato Datun testified that on March 18, 1992, he was one of those who constructed a water pump in their barangay. His companions are (sic) as follows: Elvis Estologa, Pedro Esmaya, Vicente Saringo, Toto Dagohoy, Melchor Cantalejo, x x x , Vicente Espinosa and Domingo Uy. That Constantino Vejo joined them during the inauguration. They finished the installation of the pump at around 2:00 o' clock in the afternoon and afterwards, they ate and drank 'tuba' (coconut wine), and they finished drinking at around 5:00 o' clock

in the afternoon. Afterwards, he went home and did not go out anymore from his house. He merely heard a shout that there was (a) quarrel and he later learned about the death of Anastacio Solidarios the following day. The one who informed him was his neighbor Vicente Saringo, who also informed him that he will (sic) be included in the case. Later, he was fetched by councilor Rudy Buador, a policeman named Tikboy and Nilo Terocio and was brought to Police Headquarters at Sto. Tomas. He was investigated by the Chief of Police, Tacgos, and when the complainant arrived, he was included in the complaint and later on he was detained in jail. (TSN, August 4, 1993, pp. 4-7)

Accused Ronald Se(ñ)erez testified that at around 4:00 o' clock in the afternoon of March 18, 1992, he was invited by Elvis Estologa in the inauguration of the pump. They ate fish as their 'pulutan' while drinking tuba. At around 5:00 o' clock in the afternoon, Anastacio Solidarios suddenly arrived and made a charge and challenged the people in the group. That it was Elvis Estologa who responded to the challenge by telling 'one of us is brave', and Anastacio got mad and ran after Elvis who ran away towards his house. When Elvis Estologa came out bringing also his one (1) foot long knife, Vejo struck Solidarios and Elvis Estologa stabbed Solidarios. Vicente Espinosa hacked the victim at the back. Pedro Esmaya also struck the victim. That he was 10 meters away looking at the trouble (sic) doing nothing. Afterwards, he went home when Anastacio Solidarios was already dead. (TSN, Oct. 6, 1993, pp. 4-8)"

The Issues

Appellants impugn the trial court's Decision for the following alleged errors:[8]

I

The trial court erred in not acquitting appellant Renato Datun alias 'Reynaldo' of the crime of murder on ground of reasonable doubt.

II

The trial court erred in convicting appellant Ronald 'Otic' Se(ñ)erez of the crime of murder instead of the lesser offense of homicide."

The Court's Ruling

The appeal is devoid of merit.

First Issue: Participation of Appellant Datun

Appellant Datun argues that the testimonies of Prosecution Witnesses Epifania Solidarios (the widow of the deceased) and Baltazar Nagallo that he hacked the victim on the head are not supported by the postmortem examination. Dr. Dominador Tenchavez, who had allegedly conducted the postmortem examination, testified that there were two fatal stab wounds inflicted on the victim -- one in the chest and the other in the middle portion of the back.[9]

Appellant's argument fails to convince us.

In the first place, contrary to the allegation of appellants, there was no postmortem examination conducted on the deceased. What Dr. Tenchavez testified to were his entries in the certificate of death, particularly the cause of the death of Anastacio.[10] On the other hand, Witnesses Epifania Solidarios and Baltazar Nagallo testified on the participation not only of Appellant Datun but also of the other accused, describing in detail all the injuries inflicted upon the deceased. A death certificate establishes the fact of death and its immediate, antecedent and underlying causes. It cannot be used to contravene the existence of other or further injuries sustained by the deceased.[11] Thus, the two prosecution witnesses' testimony that Appellant Reynaldo Datun had hacked the

victim's head cannot be deemed as incredible on the basis of the later finding attributing the immediate cause of death to the stab wounds and not to such wound on his head. That the victim sustained a wound on the head as a result of Appellant Reynaldo Datun's hacking is not necessarily inconsistent with the entry in the death certificate showing that death was caused by two stab wounds. The indelible fact is that the prosecution was able to establish the victim's death, and that such death occurred after the concerted hackings and stabbings perpetrated by the appellants and their companions. Besides, whether or not it was specifically Appellant Datun who had hacked the head of the victim and inflicted a fatal injury is of no moment. Conspiracy having been duly proven (as will be discussed later), the acts of his co-accused were also his. Equally well-accepted is the corollary rule that where conspiracy has been established, evidence as to who among the accused delivered the fatal blow is not necessary. All the conspirators are liable as co-principals regardless of the extent and character of their participation, because the act of one is the act of all.[12]

Additionally, in the present case, the defense of alibi cannot prosper over the positive identification of the prosecution eyewitnesses. Witnesses Solidarios and Nagallo positively identified Appellant Datun as the one who had hacked the head of the deceased.[13] Being easy to fabricate and difficult to disprove, alibi cannot prevail over and is worthless in the face of the positive identification of the appellant.[14] Also, appellant alleges he was only 50 to 60 meters away from the place where the victim was slain. To rebut the prosecution's strong and positive evidence, appellant should have demonstrated that he could not have been physically present at the place of the crime, or in its vicinity, at the time of its commission.[15]

Second Issue: Was There Conspiracy Among the Accused?

Appellant Señerez contends that there was no conspiracy. According to him, the five accused, including himself, were drinking tuba near the road because they were celebrating the installation of a new water pump; they were not there to kill the victim. He further contends that "some of the accused started to alternately hit the victim when the latter commented that since the pump is (sic) already completed, they could get water as it (the pump) is (sic) already very near." Appellant Señerez argues that this comment of the victim "angered" the five accused, who successively attacked him. Appellant further argues that, assuming that there was conspiracy, treachery was not proven because "the victim has (sic) the chance to defend himself" when the victim's wife "shouted for help" and when "Baltazar Nagallo was trying to pacify the five accused before the victim was killed." Neither could abuse of superior strength have been present because the attack on the victim "was done alternately, one after the other." [16]

Appellant's contention that there was no conspiracy to kill the victim because the attacks were successive or alternate and not simultaneous, is legally flawed. Direct proof of a previous agreement to commit a crime is not necessary to show conspiracy. It may be deduced from the mode, method and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[17]

In the case at bar, conspiracy was proven as clearly as the crime itself. Conspiracy was shown to exist when the appellants and their companions surrounded the victim[18] and, without a word, hacked and stabbed him to death.[19] After ganging up on the helpless victim, the appellants and their companions ran away, insolently laughing and leaving the victim gasping for life.[20] Appellants' misdeeds before, during and after the incident belie their claim that the attack on the victim was a result of independent, individual acts. The victim's statement that preceded the concerted attack was in no way offensive. Appellants were wrong in insinuating that they had been duly provoked. What they considered as provocation was a mere innocent statement. The victim merely commented that the installation of the water pump was already completed making it easier for them to fetch water. No person would normally be provoked by that statement. Obviously and clearly then, the hacking and

stabbing of the defenseless victim without any provocation clearly established appellants' concerted criminal intent. Indubitably, the concert of action and unity of purpose reveal the conspiracy that makes each of the accused equally liable.[21] One who joins a criminal conspiracy adopts, in effect, the criminal designs of his co-conspirators, and he can no longer repudiate the conspiracy later after it has materialized.[22] Since conspiracy has been established, all the conspirators are liable as co-principals, regardless of the extent of their participation because in the contemplation of law, the act of one is the act of all.[23]

Appellant Senerez asserts as an alternative defense that he cannot be convicted for murder because there was no qualifying circumstance of treachery or abuse of superior strength that attended the commission of the crime.

Appellant's claim is without merit.

Treachery clearly qualified the killing to murder. Without any indication of their intent, they first surrounded the victim before they attacked him. Vejo struck the victim on the right leg. Nagallo and the victim's wife pleaded with the five accused to spare the victim from further harm. Unmoved by the pleas, Esmaya hit the victim on the nape which caused the latter to fall. Estologa and Appellant Senerez followed by stabbing the victim. The successive blows and stabs perpetrated by the five accused offered no opportunity for the victim to raise any defense at all. The victim might have been warned by his wife and Nagallo of the impending danger but these warnings came only after the initial attack of Vejo. Treachery is present "when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party may make." [24] The treacherous manner in which the five accused perpetrated the crime was shown by the sudden, deliberate and unexpected attack upon the unsuspecting Anastacio. The five accused almost simultaneously jumped on the victim, completely without warning, catching him by surprise and giving him no chance to put up a defense.[25] They surrounded him, affording him no opportunity to defend himself and escape from the blows directed at him.[26]

However, the aggravating circumstance of abuse of superior strength, manifested by the presence of five armed assailants against an unarmed victim, cannot be appreciated independently because it is considered absorbed in alevosia.[27]

WHEREFORE, in view of the foregoing, the appeal is hereby DISMISSED and the assailed Decision is AFFIRMED in toto.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Sometimes spelled as "Vijo" in the TSN and the Decision appealed from.

[2] Rollo, p. 2.

[3] In Criminal Case No. 92-141.

[4] 11th Judicial District, Branch 4, Panabo, Davao; presided by Judge Mariano C. Tupas.

[5] Rollo, pp. 28-29.

[6] Ibid., pp. 96-99.

[7] Ibid., pp. 49-51.

[8] Ibid., p. 51; original text in upper case.

[9] Ibid., p. 53.

[10] TSN, August 3, 1993, p. 3. The offer of testimony of Dr. Dominador Tenchavez was made in the following manner:

“The witness will testify on the Certificate of Death which he issued to Anastacio Solidarios and he will state the cause of death of the said victim, may we proceed, Your Honor?”

[11] See Municipal Form No. 103 (Revised in 1983), Certificate of Death; records, p. 5.

[12] *People vs. Salison, Jr.*, 253 SCRA 758, 770, February 20, 1996 citing the case of *People vs. Yabut*, 226 SCRA 715, September 27, 1993.

[13] TSN, March 23, 1993, pp. 7-9 & TSN, March 23, 1993, pp. 23-25.

[14] *People vs. Laurente*, 255 SCRA 543, 565, March 29, 1996.

[15] *People vs. Porras*, 255 SCRA 514, 526, March 29, 1996.

[16] Rollo, pp. 54-58.

[17] *People vs. Laurente*, supra, at p. 564.

[18] TSN, March 23, 1993, pp. 7 & 25.

[19] Ibid., pp. 8, 9 & 25.

[20] Ibid., pp. 9 & 26.

[21] *People vs. Vivas*, 232 SCRA 238, May 6, 1994.

[22] *People vs. Diadid*, 236 SCRA 45, August 30, 1994.

[23] *People vs. Apawan*, 235 SCRA 355, August 16, 1994.

[24] *People vs. Soldao*, 243 SCRA 119, 127, March 31, 1995.

[25] *People vs. Caritativo*, 256 SCRA 1, 13, April 14, 1996.

[26] *People vs. Patrolla, Jr.*, 254 SCRA 467, 475, March 7, 1996.

[27] *People vs. Caritativo*, supra at p. 14 citing *People vs. Liston*, 179 SCRA 415, November 15, 1989.

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