

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE ANTONIO, MANUEL ANTONIO, AND ROMEO ANTONIO, ACCUSED.
VICENTE ANTONIO AND MANUEL ANTONIO, ACCUSED-APPELLANTS.**

G.R. No. 118311. February 19, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court of Nueva Vizcaya, Branch 30, finding accused-appellants Vicente Antonio and Manuel Antonio, together with Romeo Antonio, guilty of murder in connection with the killing of Edgardo F. Hernandez on December 26, 1989 and sentencing them to suffer the penalty of reclusion perpetua and to pay the heirs of Hernandez damages and attorney's fees. The other accused, Romeo Antonio, was also convicted but he escaped before the promulgation of the sentence and has remained at large.

The information in this case alleged

That at around 8:00 o'clock in the evening of December 26, 1989, at Sitio Alindayo, Almaguer North, Bambang, Nueva Viscaya, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with evident premeditation and abuse of superior strength and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon Edgardo F. Hernandez, inflicting upon him mortal wounds which directly caused his death, to the damage and prejudice of his heirs.

The commission of the offense was attended by the aggravating circumstance of "nighttime."

CONTRARY TO LAW.[1]

Named as accused in the information were Vicente Antonio, Romeo Antonio, Manuel Antonio, and T/Sgt. Wilfredo Bala, a member of the Philippine Army. However, as the prosecution failed to secure Presidential waiver of military jurisdiction over T/Sgt. Bala, he was eventually dropped as accused before the Regional Trial Court.

Three witnesses for the prosecution claimed to have seen the killing.

The first was Zacarias Hernandez, who testified that at around 8 o'clock in the evening of December 26, 1989, in Almaguer North, Bambang, Nueva Vizcaya, while on his way home from a birthday party, he met the victim, Edgardo Hernandez. After stopping by a store to buy cigarettes, he and Edgardo proceeded home. After a while, Zacarias said that he heard a gunshot and when he looked around to determine where it came from, he saw T/Sgt. Wilfredo Bala, with a rifle pointed at them, who cursed them saying, "vulva of your mother." Frightened, Zacarias said he ran to his brother's house, for which reason Vicente, Manuel, and Romeo pelted him with stones, one of which hit him on the head.[2]

The second witness was Rosalinda Reyes, who was in Zacarias' house at the time of the incident. She heard the

gunshot[3] and ran towards the direction of the sound. She saw accused-appellant Manuel and accused Romeo take turns in boxing and kicking the victim while accused-appellant Vicente Antonio was strangling the latter.[4] She heard the victim shouting in Ilocano, "I will not fight you, Manong Enteng," referring to accused-appellant Vicente Antonio,[5] but all three men did not relent. She wanted to help him but Sgt. Bala pointed his rifle at her.[6] Rosalinda said she later learned that Edgardo had died that same evening.[7]

The third witness was Feliciana Napao, also a resident of Almaguer North. She said that she went outside her house because she heard a gunshot.[8] She claimed she heard another shot and Edgardo Hernandez saying, "I will not fight you Manong Enteng, Romeo and Manuel Antonio." [9] Feliciana said her daughter, Rosalinda Reyes, ran towards Edgardo, who asked her to help him.

Antonio Lucas, a police officer at Bambang, Nueva Vizcaya, testified that he and other members of the Philippine National Police found the victim lifeless on the ground some 15 meters away from an electric post near the place where the mauling was committed.[10] He also noticed 3 pairs of sandals and 1 sandal (without its pair) near the scene of the crime.[11]

The death certificate prepared by the Municipal Health Office of Bambang gave asphyxia due to "strangulation and suffocation" as the victim's cause of death.[12]

Accused-appellant Vicente Antonio claimed he acted in self-defense. He said that, on the night in question, he was on his way to irrigate his ricefield when he met the victim and Zacarias Hernandez, who blocked his way.[13] Vicente told them, "I think you are under the influence of liquor," to which statement the two replied, "Even if we are under the influence of liquor, do you have any complain[t]?" [14] Vicente demanded to know, "Why are you so arrogant?" [15] Thereafter, according to accused-appellant, Edgardo tried to hit him with a bolo, but he was able to parry the blow with his shovel. As the victim tried to charge him, Vicente tried to hit him with the shovel but missed. Edgardo then jumped to the ricefield.[16]

According to accused-appellant, Zacarias attempted to pick up a stone but when Zacarias saw he had a shovel, he ran away.[17] Vicente picked up some stones and hurled them at Zacarias, although he did not actually see which part of the latter's body was hit.[18] Just then, according to accused-appellant, Edgardo tried to strike him with a wooden club, but Edgardo missed him. As he turned to Edgardo, shovel in hand, Edgardo stepped back pleading, "I will not fight you Manong." [19] According to accused-appellant, he, therefore, ordered Edgardo to drop the wooden club to the ground and to raise his arms so that he could frisk him.[20]

But, accused-appellant claimed, as he was about to do so, the victim pounced on him and so they wrestled. Edgardo tried to pick up the wooden club but accused-appellant tackled him and succeeded in getting the club. As Edgardo embraced him, accused-appellant clubbed him. Accused-appellant claimed that the victim grabbed his genitals causing him to loosen his grip on the club.[21] As the victim bit accused-appellant's fingers, he plastered the victim's mouth and nose with mud.[22] Then accused-appellant said he heard something in the victim's throat break and he thought to himself, "I think, I have really killed someone." [23]

Accused-appellant Manuel Antonio interposed alibi. He claimed that he was at home in the evening of December 26, 1989, and that he had no part in the killing of Edgardo Hernandez.

After trial, the lower court found accused-appellants guilty. The dispositive portion of its decision, dated August 3, 1994, reads:

WHEREFORE, finding the accused, VICENTE, ROMEO and MANUEL, all surnamed ANTONIO guilty beyond reasonable doubt of the crime of "Murder", they are hereby sentenced to suffer the penalty of "RECLUSION PERPETUA" with all the accessories imposed by law and to indemnify the heirs of the

deceased jointly and severally the sum of P50,000.00 as actual damages; P20,000.00 as moral damages; P10,000.00 as attorney's fees and to pay costs.

The accused, VICENTE ANTONIO, being a detention prisoner and having signed the agreement required of detention prisoners under Art. 29 of the Revised Penal Code as amended by R.A. 6127, is credited with the whole period of his preventive suspension in the service of his sentence.

SO ORDERED.[24]

Hence, this appeal by Vicente Antonio and Manuel Antonio.

Accused-appellants contend that:

- THE LOWER COURT ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF ZACARIAS HERNANDEZ, FELICIANA NAPA0 AND DAUGHTER ROSALINDA HERNANDEZ;
- THE LOWER COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY AMONG THE THREE ACCUSED-APPELLANTS IN CAUSING THE VICTIM'S DEATH BY STRANGULATION;
- THE LOWER COURT ERRED IN FINDING THAT THERE WAS "TAKING ADVANTAGE OF SUPERIOR STRENGTH" BY THE ACCUSED-APPELLANTS TO QUALIFY THE CRIME TO MURDER;
- THE LOWER COURT ERRED IN NOT ACQUITTING VICENTE ANTONIO ON THE GROUND OF SELF-DEFENSE;
- THE LOWER COURT ERRED IN CONVICTING THE OTHER TWO APPELLANTS, MANUEL AND ROMEO ANTONIO OF THE CRIME OF MURDER ON THE ERRONEOUS FINDING THAT THEY CONSPIRED WITH CO-ACCUSED VICENTE ANTONIO IN CAUSING THE VICTIM'S DEATH BY STRANGULATION;
- THE LOWER COURT ERRED IN CONVICTING APPELLANTS MANUEL AND ROMEO ANTONIO. AS TO THEM, THERE IS ABSENT THAT QUANTUM OF PROOF NECESSARY OR SUFFICIENT TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE;
- THE LOWER COURT ERRED IN FAILING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER IN FAVOR OF APPELLANT VICENTE ANTONIO;
- ASSUMING WITHOUT ADMITTING THAT APPELLANTS MANUEL AND ROMEO ANTONIO ALSO BOXED AND KICKED THE VICTIM WHILE APPELLANT VICENTE ANTONIO WAS STRANGULATING THE VICTIM ON THE GROUND, THE LOWER COURT ERRED IN NOT HOLDING THEM RESPONSIBLE ONLY FOR THEIR INDIVIDUAL ACT OR PARTICIPATION (BOXING AND KICKING).

These contentions are without merit.

First. Accused-appellants contend that prosecution witness Zacarias did not say (1) whether T/Sgt. Bala alone or all of the accused-appellants attacked the victim; (2) whether several stones were thrown at him or only one stone hit him while he was running away from them; (3) whether T/Sgt. Bala (who was ten meters away from accused-appellants) actually joined accused-appellants in mauling the victim. They further contend that Zacarias could not remember whether he left the victim behind with T/Sgt. Bala when he ran, or the victim himself ran to the ricefield.

The trial court correctly found that Zacarias Hernandez positively identified accused-appellants, accused Romeo Antonio, and T/Sgt. Bala as the persons who attacked him and the victim on the night of December 26, 1989. In a forthright manner, this witness told the court:

Q: Do you know who stoned you?

A: Yes, sir.

Q: Who threw stones to you?

A: Those three persons (Witness pointing to those 3 persons whom he tapped their shoulders [a] while ago).

Q:

How do you know that these 3 persons whom you just mentioned or just identified [a] while ago were the one[s] who threw stones at you?

A: I recognized their faces because there was a light, sir.

Q:

When you ran away towards the house of your brother, were there other persons or person left with Edgar Hernandez aside from Wily Bala and the 3 persons whom you just identified?

A: No more, sir.

Q:

Are you telling the Court that it was only these people, these 3 people, and Willy Bala were left behind with Edgar Hernandez?

A: Yes, sir.[25]

It is true that Zacarias was uncertain whether one or several stones were thrown at him and whether accused-appellants were actually joined by T/Sgt. Bala later on in attacking Edgardo Hernandez. This fact does not detract from his testimony positively identifying accused-appellants as their assailants, which is corroborated by the testimonies of the other prosecution witnesses, Rosalinda Reyes and Feliciano Napao. As the Solicitor General says:

. . . Fear gripped his person when Sgt. Bala aimed a gun at them and when appellants started pelting them with stones causing him to run for his life. As a result, he did not see every detail that the defense wanted him to narrate. A confused and agitated mind cannot be expected to pay attention to every detail that was happening. Saving one's life is [a] primal human instinct that takes precedence over all other concerns. But suffice to reiterate here that in his testimony, Hernandez is clear and positive in pointing to appellants and Sgt. Bala as

the persons who attacked them.

The fact that appellants were ten (10) meters away from Sgt. Bala at the start does not negate the fact that they were together in attacking the victim later on. Ten (10) meters is not a great distance to preclude appellants' participation in the murder of the victim, considering that it was established that the victim ran to the ricefield while being pursued by appellants. The testimony made by Hernandez that the victim was left behind when he ran away is not inconsistent with the established fact that the victim later ran towards the ricefields...[26]

Nor did the trial court err in giving credence to the testimonies of Rosalinda Reyes and Feliciano Napao. That the victim was a boarder of Napao's son, Rodrigo Reyes, and the owner of the land being tilled by the latter are not sufficient reasons not to believe this witness. Time and again we have said that mere relationship of a witness to a party, without more, cannot impair the witness' credibility.[27]

No reason or motive has been shown for us to doubt the truthfulness of Rosalinda Reyes and Feliciano Napao. They positively identified accused-appellants, together with T/Sgt. Bala, as the perpetrators of the crime. Like Zacarias Hernandez, they pointed to accused-appellants as the persons who attacked Edgardo Hernandez and they were positive they were the assailants because they know them, they being their neighbors. Rosalinda Reyes testified:

Q

How do you know that the persons whom you mentioned maltreated Edgar Hernandez?

A

Yes, because they were the ones whom I saw. sir.

Q

Why were you able to see the maltreatment being done to Edgar Hernandez, where were you when the maltreating was taking place?

A

When I heard the gun shot I went outside and I went near them, sir.

. . . .

Q

And you said that Edgar Hernandez is being maltreated by Manuel Antonio, Vicente Antonio, Romeo Antonio and Sgt. Bala is that correct?

A Yes, sir.

Q. Who among the four did you see maltreating Edgar Hernandez?

COURT:

Three among the four?

A Romeo Antonio, Vicente Antonio and Manuel Antonio, sir.

Q The incident happened at night time isn't it?

A Yes, sir.

Q How were you able to identify those persons maltreating Edgar Hernandez when it was night time?

A Because there was a light on the post at that time sir.

. . . .

Q

You said that Edgard Hernandez was maltreated by Manuel Antonio, Vicente Antonio and Romeo Antonio, if you will see these persons will you be able to identify them?

A Yes, sir.

Q

Will you kindly look around the court premises and find out if there are those persons whom you mentioned and try to point to them if they are present?

A They are in Court, sir.

Q Will [you] kindly point to them?

A The three of them, sir.

COURT:

You state the attire of those persons pointed out.

A

That one wearing a stripe[d] T-Shirt is Manuel Antonio, the one wearing a white T-shirt is Vicente Antonio and the third person wearing a stripe[d] polo is Romeo Antonio, sir.

COURT:

You now connect the identity of those persons.

FISCAL:

May I pray that the persons pointed to by the prosecution witness stand and state their names.

COURT:

Ask their names.

COURT INTERPRETER:

The person described by the witness to be wearing a stripe[d] T-shirt who when asked by the Court to identify himself state his name as Manuel Antonio, the same Manuel Antonio who is one of the accused. Same is true with the second person described by the witness whose attire is to be the same with Vicente Antonio and who when asked by the Court to identify himself state that he is Vicente Antonio same person who is one of the accused, and the third person is Romeo Antonio and who when asked by the Court identified himself as no other than Romeo Antonio who is the third accused in this case.[28]

While Feliciano Napao stated:

PRIVATE PROSECUTOR:

Q - When you saw Edgar Hernandez lying down, did you see other persons near Edgar Hernandez?

A - Those who were mauling him.

Q - Who were these persons whom you saw mauling Edgar Hernandez?

A - VICENTE, ROMEO & MANUEL all surnamed Antonio.

Q - Do you know these persons, Manuel, Romeo and Vicente Antonio personally?

A - Yes, sir.

Q - Why do you know these persons, Vicente, Romeo and Manuel Antonio?

A - Because they are my neighbor[s].

Q - You stated that they were mauling Edgar Hernandez, who, among these 3 persons was mauling Edgar Hernandez?

A - The three (3) of them, sir.[29]

It has been held:

. . . [I]f there is nothing in the record to show that the prosecution witnesses were moved by any improper motive to accuse falsely the appellants of so grave a crime as murder, then the findings of the trial court as to the credibility must be respected.[30]

Absent any indication of a sinister scheme to prevaricate, the affirmative statements uttered by the People's witnesses showing accused-appellant's culpability must be respected inasmuch as positive declarations subordinate disclaimers emanating from the defense.[31]

Nor was there anything shown that would have impaired the power of observation of these witnesses. That there were bushes and trees near the electric post did not necessarily mean that the place was dark. There is no proof that because of these, identification of the protagonists was impossible. In the absence of evidence to this effect, the factual findings and conclusions of the trial court must be given great weight. In a number of cases, this Court generally accords the highest respect to the evaluation of the testimonies of eyewitnesses by the trial court.

Long settled in criminal jurisprudence is the rule that when the issue is one of credibility of witnesses, appellate courts will not disturb the findings of the trial court. This rule is justified by the fact that the trial court is in a better position to decide the question. Having the advantage of directly observing witnesses, "the trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt or innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply. The record will not show if the eyes have darted in evasion or looked down in confession or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict." [32]

Second. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. [33] Proof of a previous agreement to commit a felony is not necessary to establish conspiracy, it being sufficient that the acts of the accused, before, during, and after the commission of the felony, demonstrate its existence.

In the case at bar, the overwhelming evidence is to the effect that accused-appellants ganged up on the victim. While Vicente strangled the victim, [34] Manuel and Romeo boxed and kicked him. [35] All the while, T/Sgt. Wilfredo Bala stood guard, rifle in hand, ready to shoot anyone who tried to come to the rescue of the victim. [36] Clearly, the acts of accused-appellants showed a unity of the criminal design to kill Edgardo Hernandez. Manuel cannot be held liable solely for his individual acts of boxing and kicking the victim without negating the existence of the conspiracy. The act of one is the act of all. [37] Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals. [38]

Third. As already stated, Vicente Antonio claims that he acted in self-defense. The claim has no merit. Vicente Antonio, together with accused-appellant Manuel, was the aggressor in the case at bar. Absent an unlawful aggression, no self-defense may be successfully pleaded, whether complete or incomplete.

On the other hand, Manuel interposes the defense of alibi. This defense cannot prevail over the positive identification of accused-appellant by the prosecution witnesses. [39] Moreover, accused-appellant has not shown that his house, in which he was allegedly sleeping at the time of the incident, was so far away from the place where the crime was committed as to make it impossible for him to be physically present at the place where and time when the crime was committed. The fact remains that his home was in the same barangay (Almaguer North).

The essential requisites in order that the defense of alibi may be appreciated are: (a) to prove his presence at another place at the time of the perpetration of the offense and (b) to demonstrate that it would thus be physically impossible for him to be at the scene of the crime. The rule is likewise settled that for the defense of alibi to prosper, the requirement of time and place must be strictly met. [40]

Fourth. The crime, as correctly found by the trial court, is murder. While it appears that there was no evident premeditation, there being no evidence of the planning and preparation to kill Edgardo Hernandez, [41] we find that the killing was qualified by abuse of superior strength because the attackers cooperated in such a way as to secure advantage of their combined strength to perpetrate the crime with impunity. [42] As the trial court found:

. . . There were three of them, all able-bodied against one, all three accused doing their thing with impunity against the victim because their safety is guaranteed by Sgt. Wily Bala pointing his gun at anyone who dares approach and extend assistance. [43]

Accused-appellant Vicente Antonio contends that he should be given the benefit of the mitigating circumstance of voluntary surrender. The contention has no merit. This circumstance is considered if the following elements concur: (a) the offender has not been actually arrested; (b) he surrenders himself to a person in authority; and, (c) the surrender is voluntary.[44]

In the case at bar, it appears that on December 27, 1989, the police authorities went to the house of Sgt. Bala looking for accused-appellant Vicente Antonio and were told by Sgt. Bala that Vicente was inside the house although he was going to be surrendered to the authorities by Bala.[45] It would thus appear that accused-appellant was arrested before he could be surrendered. The mere intention to surrender is insufficient to claim the benefit of the mitigating circumstance of voluntary surrender. This case is similar to *People v. Umadhay*, in which this Court denied the claim of voluntary surrender of the accused:

The record shows that after Cecilia Jaranilla had pinpointed appellants as the assailants to the police, the latter and the barangay captain went to appellants' house to invite them for investigation. Appellants did not go to the police or to the barangay captain to surrender. As appellant Edgar himself admitted, he had the intention to surrender to the authorities at their house but such intention was never realized because the police arrested him and his brothers at their house. Such intention was therefore never implemented by appellant Edgar's own volition.[46]

WHEREFORE, the decision of the Regional Trial Court is hereby **AFFIRMED**.

SO ORDERED.

Bellosillo, (Chairman), Puno, Quisumbing, and Buena, JJ., concur.

[1]Rollo, p. 5.

[2]TSN, pp. 21-26, July 16, 1990.

[3]TSN, pp. 8-10, Sept. 17, 1990.

[4]Id., pp. 11, 31.

[5]Id., 43.

[6]Id., p. 14.

[7]Id., p. 19.

[8]TSN, p. 4, Oct. 1, 1990.

[9] Ibid.

[10]TSN, p. 8, March 19, 1991.

[11]Id., p. 4.

[12]Records, p. 10.

[13]TSN, pp. 8-12, Oct. 17, 1991.

[14]Id., p. 12.

[15]Ibid.

- [16]TSN, p. 15, Oct. 17, 1991.
- [17]Id., p. 16.
- [18]Id., pp. 16-17.
- [19]Id., p. 18.
- [20]Id., pp. 19-20.
- [21]Id., pp. 22-23.
- [22]TSN, pp. 2-3, Oct. 21, 1991.
- [23]TSN, p. 5, Oct. 21, 1991.
- [24]Rollo, p. 37, Decision, p. 16.
- [25]TSN, pp. 10-11, May 23, 1990.
- [26]Appellee's Brief, p. 9-10; Rollo, pp. 150-151.
- [27]People v. Layaguin, 262 SCRA 207 (1996); People v. Fabrigas, Jr., 261 SCRA 436 (1996); People v. Magana, 259 SCRA 380 (1995).
- [28] TSN, pp. 8-18, Sept. 17, 1990.
- [29]TSN, p. 5, Oct. 1, 1990.
- [30]People v. Flores, 185 SCRA 366, 378 (1990) citing People v. Valdez, 159 SCRA 152 (1988); People v. Sarol, 139 SCRA 125 (1985).
- [31]People v. Nitcha, 240 SCRA 283, 293 (1995).
- [32]People v. Llaguno, 285 SCRA 124, 135 (1998).
- [33]REVISED PENAL CODE, Art. 8.
- [34]TSN, p. 31, Sept. 17, 1990.
- [35]TSN, p. 31, Sept. 17, 1990.
- [36]Id., pp. 31-32.
- [37]People v. Salison, Jr., 253 SCRA 758 (1996).
- [38]People v. Sancholes, 271 SCRA 527 (1997).
- [39]People v. Narca, 275 SCRA 696 (1997).
- [40]People v. Patawaran, 274 SCRA 130, 139 (1997).
- [41]People v. Tampon, 258 SCRA 115 (1996).
- [42]People v. Baluyot, 170 SCRA 569 (1989).
- [43]Decision, p. 14, Rollo, p. 127.
- [44]People v. Rapanut, 263 SCRA 515 (1996).

[45]TSN, June 18, 1991, pp. 9-10.

[46]G.R. No. 119544, Aug. 3, 1998, p. 20.

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