

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORENZO ASIS Y GONZALES & ROMEO MENDOZA Y SANTOS, ACCUSED-APPELLANTS.

G.R. No. 118936. February 09, 1998

Ponente: PUNO, J.

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PUNO, J.:

On June 19, 1991, LORENZO ASIS y GONZALES alias Allan, ROMEO MENDOZA y SANTOS alias Romy, ATANACIO CARINO y CRUZ alias Taning, and EMELITA MENDOZA alias Emy were charged with MURDER before Branch 12 of the Regional Trial Court of Malolos, Bulacan. The four accused pleaded not guilty to the following information[1]:

"That on or about the 4th day of June 1991, in the Municipality of San Rafael, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, armed with fan knives and with intent to kill one Ernesto Maningas y Sarengo, conspiring, confederating together and mutually helping one another, with evident premeditation, treachery and abuse of superior strength did then and there willfully, unlawfully and feloniously attack, assault and stab with the same fan knives, the said Ernesto Maningas y Sarengo, hitting the latter on the different parts of his body, thereby inflicting on the latter serious physical injuries which directly caused his death.

CONTRARY TO LAW."

Emelita Mendoza was later excluded from the charge when no probable cause was found to exist against her.[2] Trial proceeded against the three remaining accused.

The prosecution established that at about 8:00 p.m. on June 4, 1991, Ernesto Maningas went to ply his usual trade as a tricycle driver. The next morning, his dead body with twenty three (23) stab wounds was found in Bgy. Pinakpinakan, San Rafael, Bulacan, near an irrigation dike. A kitchen knife, with a detached handle was found 1 1/2 meters away from his body. A blood-stained bamboo, about two meters long with a five-inch nail attached to its end was also found 2 1/2 meters away from his body. Carlito Villanca, the barangay captain of Pinakpinakan, reported the incident to the San Rafael Police Headquarters. The victim's body was brought to the Municipal Hall where the Municipal Health Officer found the cause of death as hemorrhage due to multiple stab wounds.[3]

On the morning of June 7, 1991, Pat. Asher Villegas, Cpl. Romeo Galvez and Pfc. Eddie Urbano of the San Rafael Police Headquarters and some members of the Citizen Armed Forces Geographical Unit (CAFGU) picked up accused Lorenzo Asis from his residence. He fitted the description of one of two men who arrived at the farmhouse of Rolando dela Cruz in Bgy. Caingin, San Rafael, Bulacan, wearing blood-stained clothes.[4] Witness Dela Cruz declared that at 9:30 in the morning of June 5, 1991, Rolando Mendoza, a resident of Bgy. Caingin with an unidentified companion came at his house and asked for food.[5] He noticed that Mendoza had a wound on his left arm while his companion had a swollen right hand and bite marks on the left shoulder. When he inquired what happened to them, Mendoza said they figured in a fight in Barangay Pinakpinakan the night before.

The two left after eating and while walking by the road were spotted by CAFGU soldiers. The soldiers went after the two but failed to apprehend them.

On the night of June 7, 1991, Dela Cruz went to the police station and identified Asis as Mendoza's companion.[6]

On June 8, 1991, accused Asis executed a written statement before Pat. Villegas where he declared that he and Mendoza were hired by Atanacio Carino to kill Maningas for the sum of P3,000.00. He identified the broken knife found at the scene of the crime as the weapon used by Mendoza in killing the victim.[7] Carino was arrested but Mendoza was able to flee after learning that policemen were looking for him. He was eventually captured on July 5, 1991 in Dingalan, Aurora, Province.[8]

Prosecution witness, Gilbert de Guzman, a tricycle driver, declared that he last saw the victim alive on June 4, 1991 at the tricycle station near his house in Barangay Sampaloc, some twelve (12) kilometers away from Barangay Pinakpinakan. On that day, at about 8:30 p.m., he saw the victim drive his tricycle towards Bgy. Pinakpinakan with accused Asis and Mendoza on board. He was with Kristina, his sister-in-law, waiting for a ride home. When they saw the victim, Kristina motioned for him to stop. The victim slowed down and promised to pick up Kristina later. The victim failed to return.[9]

Consortia Maningas, the victim's widow, testified on the motive for the killing. She declared that her mother is the plaintiff in a case before the Department of Agrarian Reform Adjudication Board (DARAB) for the recovery of a piece of land in the possession of Barangay Captain Carlito Villanca.[10] She averred that before her husband was killed he had a heated argument with Villanca. At the time of the victim's death, accused Carino was the one cultivating the disputed land.

Accused Asis and Mendoza denied killing the victim and offered an alibi. They alleged that on June 4, 1991, after buying something from the Baliwag Public Market, they headed home at about 7:30 p.m. They reached Mendoza's house at about 8:30 p.m.

Tricycle driver Mario Bernardino buttressed their alibi. He testified that on June 4, 1991, the two accused rode on his tricycle. He deposited them in front of Mendoza's house at about 8:30 in the evening. He also declared that before the two accused got inside his tricycle, he noticed three men board the tricycle of the victim.[11]

The two accused also alleged that the victim's widow implicated them when they refused to involve Barangay Captain Carlito Villanca in the crime. According to accused Asis, he was offered P30,000.00 by the victim's widow to testify against Villanca.[12]

For his part, accused Carino filed a demurrer to evidence. He alleged that the only evidence against him is the extrajudicial admission of the accused Asis which was executed without the assistance of counsel, and hence, inadmissible.

On November 7, 1994, the trial court convicted accused Asis and Mendoza of murder and acquitted accused Carino in a decision[13] containing the following dispositive portion:

"WHEREFORE, finding both accused Lorenzo Asis y Gonzales and Romeo Mendoza y Santos guilty beyond reasonable doubt as principals by direct participation of (sic) the crime of murder as charged in the information, there being no generic aggravating or mitigating circumstances considered, each of said accused is hereby sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of victim-deceased Ernesto Maningas y Sarengo in the amount of P50,000.00, P16,000.00 incurred for funeral expenses (Exh. "J") as actual damages, another P50,000.00 as moral damages and the further amount of P20,000.00 for and as attorney's fees due to the private prosecution in this case, the latter two (2) amounts

subject to the corresponding filing fees as a first lien, and to pay the costs of proceedings.

"In the service of their sentence each of the aforementioned accused who have undergone preventive imprisonment as detention prisoners shall be credited with the full time during which they have undergone such preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

"For lack of sufficient evidence against him, thus creating in the mind reasonable doubt as to his guilt alleged in the information, accused Atanacio Carino y Cruz is hereby acquitted and this case dismissed insofar as he is concerned. Emelita Mendoza who is also named as an accused in the information but has not actually been prosecuted in this case, is considered excluded from the charge.

"Let copies of this decision be furnished the prosecution, both public and private, the private complainant, all the accused and their respective counsel, and the Provincial Jail Warden of Bulacan.

"SO ORDERED."

On November 28, 1994, accused Asis and Mendoza, through counsel, filed their Notice of Appeal.[14] In their Brief, appellants assigned the following errors committed by the trial court:

"I

"THE HONORABLE COURT ERRED IN CONVICTING THE ACCUSED/APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

"II

"THE HONORABLE COURT ERRED IN IMPOSING THE PENALTY OF RECLUSION PERPETUA DESPITE THE FAILURE OF THE PROSECUTION TO SHOW THE EXISTENCE OF ANY CIRCUMSTANCE THAT MAY QUALIFY THE KILLING TO MURDER.

"III

"THE HONORABLE COURT ERRED IN NOT CONSIDERING VOLUNTARY SURRENDER OF ACCUSED/APPELLANT ROMEO MENDOZA AS MITIGATING CIRCUMSTANCES."[15]

On March 21, 1997, appellant Mendoza withdrew his appeal.[16] Hence, herein appeal concerns Asis only.

We sustain appellant Asis' conviction.

Appellant contends that the trial court failed to establish his guilt beyond reasonable doubt considering that the evidence submitted by the prosecution was merely circumstantial. In a criminal prosecution, a conviction may be sustained on the basis of circumstantial evidence provided that the following requisites are met: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[17] We find that all these requisites have been successfully met by the prosecution. The evidence showed that appellant was one of two persons last seen in the company of the victim before he was killed. On the morning that the victim's body was found, the appellant was observed with his clothes smeared with blood. Witness dela Cruz saw his left shoulder with bite marks and his right hand swollen. When asked about the injuries, he admitted engaging in a fight in Bgy. Pinakpinakan. On the same morning, some CAFGU soldiers spotted the appellant with co-accused Mendoza while walking by the road in Bgy. Caingin. They had blood-stained clothes. The two ran away, when pursued. Their flight evinces guilt. These circumstances taken together lead to no other conclusion but that the appellant is guilty as charged.

Appellant failed to discredit the testimony of prosecution witness dela Cruz who saw him wearing blood-stained clothes and bearing injuries in different parts of his body. Neither did he succeed in discrediting the testimony of Gilbert de Guzman who saw him ride the tricycle of the victim around the time that he was killed. We reject appellant's contention that de Guzman could not have seen him riding the passenger seat of Maningas' tricycle as it was covered by canvass (lona) on both sides.[18] We give credence to the testimony of de Guzman considering that he was only five meters away from the light post when he saw the victim's tricycle approach and slowed down. He was also only one meter away from the victim when he talked with his sister-in-law.[19] De Guzman was thus able to see the appellant and his co-accused, for while the sides of the tricycle were covered by a canvass, its front side was not:

"ATTY. BERMAS:

"Q: Mr. Witness, you mentioned that the tricycle just slacken its speed, is it not?

"GILBERT DE GUZMAN:

"A: Yes, sir.

"Q: It did not have a full stop in front of your house? - I withdraw that question.

"x x x.

"Q: When the tricycle slackened its speed you did not come near to the tricycle?

"A: I approached it.

"x x x.

"Q: And this tricycle has a cover in front, is it not? (sic)

"A: No, sir."[20]

Worthy to note, witnesses dela Cruz and De Guzman had no ill motive to testify against the appellant.

The defense presented by appellant was alibi. It cannot exculpate him for appellant failed to prove that it was impossible for him to be at the scene of the crime. Appellant was not able to refute that he was only a few kilometers away from the scene of the crime when it happened. In fact, tricycle driver Bernardino brought appellant and his co-accused to Bgy. Pinakpinakan at around 7:30 to 8:00 in the evening which was the same time that prosecution witness de Guzman saw the victim head towards the direction of Bgy. Pinakpinakan. "When averring alibi, two requirements must be strictly met in order that the same may be of value to the defense, that is, the accused must prove that he was not present at the scene of the crime at the time of its commission, and that it was physically impossible for him to be there at the time. Without said essential requisites having been established, reliance on alibi, all the more becomes a liability."[21]

We reject the allegation of appellant that he was charged because he refused the P30,000.00 offer of Consorcia Maningas, the victim's widow, to testify against accused Carino and Bgy. Captain Villangca. What is more credible is the testimony of Atty. Johannes Ignacio, the lawyer of Consorcia Maningas that the latter saw appellant Asis in prison because Asis wanted to be a state witness.[22]

We now come to the proper penalty. Appellant contends that the trial court erred in imposing the penalty of reclusion perpetua despite the failure of the prosecution to show the existence of any circumstance that may qualify the killing to murder. We find merit in this argument. The trial court did not state in its Decision the circumstance which would qualify the killing to murder. Instead, it declared that:

"(i)n this case, the circumstances shown at the trial appear sufficient for conviction of accused Asis and Mendoza for the crime charged as the actual perpetrators of the killing of the victim. Aside from the fact that they were the last two persons seen in the company of the victim before he was killed, soon after said killing they were also seen with their clothings smeared with blood and they themselves had some injuries on their person. This could only mean that, notwithstanding their concerted unexpected attack on the victim as clearly indicated by the numerous stab wounds he suffered from their hands, on the back, the chest, the waist, including the mouth and the head, he managed to put up some fight for dear life, even using his teeth and biting Asis on the left shoulder."

The Solicitor General interpreted this ruling to mean that the trial court considered abuse of superior strength as a qualifying circumstance. We disagree with this interpretation. "Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime." [23] It must be shown by clear and convincing evidence that this qualifying circumstance was consciously sought by the assailants. [24] In the case at bar, the fact that there were two assailants and one of them was armed with a knife does not by itself show that abuse of superior strength was present. Mere superiority in number does not indicate the presence of this circumstance. [25] Nor was it shown that the victim was weaker in constitution and that he could not have possibly defended himself from his stronger assailant. On the contrary, it appears that the victim was able to put up a fight and even inflicted several wounds on appellant Asis and his co-accused Mendoza.

We next consider whether the prosecution proved the presence of treachery. Where treachery is alleged, the manner of attack must be proven. [26] It cannot be presumed or concluded merely on the basis of the resulting crime. Thus, we ruled:

"(t)he essence of treachery is the swift and unexpected attack without the slightest provocation by the victim. In the case at bar, the victim may have sustained twenty two (22) stab wounds but there is no evidence as to the manner in which the attack was made or how the stabbing resulting in her death began and developed. The existence of treachery cannot be established by mere suppositions nor drawn from the circumstances that existed prior and after the killing; it must be proved by clear and convincing evidence or as conclusively as the killing itself. Where treachery is not adequately proved, appellant can only be convicted of homicide." [27]

As there was no qualifying circumstance, the trial court should have convicted appellant Asis of homicide and not murder.

IN VIEW WHEREOF, the decision of the Regional Trial Court in Criminal Case No. 1115-M-91 convicting appellant Asis of MURDER is MODIFIED. We find appellant Asis to be guilty of HOMICIDE only and impose upon him an indeterminate sentence of 10 years of prision mayor as minimum to 17 years and 4 months of reclusion temporal as maximum. No costs.

SO ORDERED.

Regalado, (Chairman), Melo, Mendoza, and Martinez, JJ., concur.

[1] Original Record, p. 1.

[2] Decision, p. 3; Rollo, p. 35.

[3] Exhibit "G".

[4] TSN, Rolando dela Cruz, September 27, 1991, pp. 4-15.

- [5] TSN, Asher Villegas, September 13, 1991, pp. 1-18.
- [6] Exhibit "E"; Extrajudicial Statement, Rolando dela Cruz, Original Record, p. 6.
- [7] Exhibit "B", "B-1", "B-2".
- [8] Decision, p. 3; Rollo p. 35.
- [9] TSN, Gilbert de Guzman, October 4, 1991, p. 16.
- [10] Extrajudicial Statement, Consorcia Maningas, June 10, 1991, Original Record, p. 3.
- [11] TSN, Mario Bernardino, February 1, 1993, pp. 2-8.
- [12] TSN, Lorenzo Asis, August 13, 1993, pp. 2-30.
- [13] Decision, p. 7; Rollo, p. 39.
- [14] Rollo, p. 40.
- [15] Rollo, p. 104.
- [16] Rollo, p. 147.
- [17] Section 4, Rule 133, Revised Rules of Court; *People v. Malimit*, 264 SCRA 167 (1996); *People v. Prado*, 254 SCRA 533 (1996); *People v. Danao*, 253 SCRA 147 (1996).
- [18] TSN, Gilbert de Guzman, October 4, 1991, p. 18.
- [19] Exhibit "F"; Extrajudicial Statement, Gilbert de Guzman, Original Record, p. 7.
- [20] TSN, Gilbert de Guzman, October 4, 1991, pp. 16-18.
- [21] *People v. Sumaoy*, 263 SCRA 460 (1996); *People v. Danao*, 253 SCRA 146, 153 (1996).
- [22] TSN, Atty. Johannes M. Ignacio, March 21, 1994, pp. 9-15.
- [23] *People vs. Daquipil*, 240 SCRA 314, 332-333 (1995).
- [24] *People v. Casingal*, 243 SCRA 37 (1995).
- [25] *People v. Escoto*, 244 SCRA 87 (1995).
- [26] *People v. Silvestre*, 244 SCRA 479 (1995).
- [27] *People v. Beltran*, 260 SCRA 141, 153 (1996).

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