

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOVITO BARONA, FELIPE FERRARIZ, ELPIDIO SARA, JR., @ “MATIAS SARA” AND ROBERTO BARONA, @ “PEWE BARONA,” ACCUSED-APPELLANTS.

G.R. No. 119595. January 25, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For conspiring to kill Celedonio Baron who allegedly stole a chicken, the four accused-appellants were charged,[1] tried, convicted of murder and sentenced to suffer reclusion perpetua and ordered to jointly indemnify the mother of the victim.[2] When the case was elevated to this Court, accused-appellants Jovito Barona, Felipe Ferrariz and Roberto Barona sought the withdrawal of their appeal.[3] The latter, however, died while detained at the New Bilibid Prison.[4] After confirming the voluntariness of the withdrawal of appeal by Jovito Barona and Felipe Ferrariz, that court considered the case "closed and terminated" as to them.[5] Hence the only remaining case for disposition is the appeal of Elpidio Sara, Jr. alias Matias Sara.

The facts given credence by the trial court are as follows:

At about 8:30 o'clock in the evening on June 26, 1988, Eduardo Dimapilisan was requested by his sister to fetch her husband Celedonio Baron at the store of a certain Pinang in Barangay Pajo, Pototan, Iloilo, which is about one kilometer away. When he arrive at the store, Dimapilisan was told by Pinang that Celedonio was in the house of appellant Jovito Barona which was just ten (10) meters away. While waiting at the store, Dimapilisan saw Celedonio come out of the house of Jovito. He was able to clearly identify his brother-in-law because of the electric light from the store and the lamp in Jovito's house. Shortly, he saw the four appellants follow Celedonio. While the letter was walking, Roberto held, choked and strangled him. Felipe held Celedonio's arms behind his back and ordered Matias Sara to stab the victim. Despite his plea for mercy, "malooy ka Tias, indi ko pagpatya",[6] Sara stabbed the defenseless Celedonio on his left arm. Thereafter , Jovito shot Celedonio with a homemade firearm which caused him to fall. After shooting him, Jovito hit the victim with the butt of his gun. Dimapilisan was shocked at what he had witnessed, and rushed home to his sister's house to tell her about the incident.

Meanwhile, Salvador Poli who was in his house, heard a cry for help and recognized the voice to be that of Celedonio, whom he knew since their younger days. His nephew came up to his house for help and told him that somebody had been stabbed. Together with the barangay captain, they went to the place of the incident and there they found Celedonio lying in a pool of blood. They rushed him to the hospital where he was pronounced dead due to loss of blood.

At the trial, the court rejected accused-appellants' defenses of denial and alibi, and found all four of them guilty beyond reasonable doubt of the crime of murder.

In this appeal, the primary issue for consideration is the credibility of witnesses. In this connection, the rule is well-settled that the findings of facts of the court a quo and its assessment of the credibility of witnesses is best left to the trial court judge because of his unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the appellate tribunals.[7] Besides, no cogent reasons were shown that the court a quo had overlooked or disregarded material facts and circumstances which when considered would have affected the result of this case[8] or justify a departure from its assessments and findings.[9]

Based on the positive and direct testimonies of the eyewitness to the crime, accused-appellant Matias Sara, Jr. stabbed the victim with a knife while the latter was being held by Roberto and Felipe. After the victim was stabbed, accused-appellant Jovito shot the victim on the arm with a gun. The medico-legal report states that the victim had in fact sustained a gunshot wound on the "upper third arm right thru and thru." The testimony of Dimapilisan is consistent with the findings in the medico-legal report which shows that the victim sustained wounds in the following parts of his body:

- Lacerated wound 2 inches length 1 inch width 2 inches depth, at head, parietal region;
- Contusion 2 inches length below the first wound;
- Gunshot wound upper third right arm right thru and thru.[10]

The stabbing and the shooting rendered the victim weak and defenseless. The collective action of the four appellants readily shows that there was a concurrence in their evil design in perpetrating the crime. Their superiority in number and the fact that they were armed with a bladed weapon and a gun shows that treachery was attendant in the commission of the crime. Evidently, there is notorious inequality of forces between the victim and the four accused-appellants. The excessive force was out of proportion to the means available to the person attacked.[11] However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed treachery.[12] Treachery consists in employing means, methods or forms in crimes against persons which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might take.[13] It requires the concurrence of two conditions, both of which are present in the case at bar:

- 1.) employment of means of execution that gives the person attacked no opportunity to defend himself, much less, to retaliate; and
- 2.) deliberate or conscious adoption of the means of execution.[14]

Based on the overt act proven in this case, it was established that the appellants followed the victim out of the house of Jovito Barona. They suddenly ganged up on him and helped one another in inflicting fatal wounds and injuries. While holding the victim's hands behind his back, Felipe Ferrariz ordered Matias Sara to stab him. That stab rendered him all the more defenseless. Weakened by the stab wound, the victim became an easy target for the gunshot that ensued, and which caused him to fall to the ground.

With the allegation of treachery in the information having been proven, the same is treated as a circumstance that qualified the killing to murder, pursuant to Article 248(1) of the Revised Penal Code.[15] Likewise established with certainty is that the appellants' concerted actions were indicative of their conspiracy. No direct proof is necessary to show that conspiracy exists among the assailants. Community of criminal design may be inferred from the conduct of the accused before, during and after the commission of the crime.[16] The overt acts and the concurrence of the time when they were committed disclose the presence of conspiracy in this case.

The bare denials and alibi interposed by accused-appellants when juxtaposed with the positive declarations of the

prosecution witnesses is not worthy of credence. Recognized as inherently weak defenses,[17] which is the usual refuge of scoundrels, alibi and denial must be buttressed by other convincing evidence of non-culpability to merit credibility.[18] It all the more fails where the assailants were positively identified by credible witness,[19] against whom no ulterior motive can be attributed, as in this case. Records, show that the place where accused-appellants claimed they were at the time of the incident ranges from a distance of thirty (30) meters to about a kilometer away from the place of the crime. Other than these unsubstantiated, self-serving and negative statements[20] of their alleged respective locations, no other evidence was presented to show that it was impossible for them to physically traverse the two places within a short span of time as to preclude their presence in the locus criminis. Such self-serving statements deserve no weight in law and cannot be given greater evidentiary value over the testimony of witnesses who testified on positive points.[21] A distance of about five kilometers between the scene of the crime and the whereabouts of the accused has been considered as not so far as to negate physical presence at the scene of the crime.[22] With more reason then, the fact that a mere neighbor whose house is about fifty (50) meters from the locus criminis which obviously can be negotiated by mere walking negates the posture of alibi. As consistently held by the court, for alibi to prosper, there must be potent proof that the accused could not have been physically present at the place of the crime or its vicinity at the time of its commission.[23] As mentioned earlier, no such, convincing proof was presented to substantiate their proffered defenses.

With respect to the penalty, at the time of the commission of the crime in 1988, murder was penalized with reclusion temporal maximum to death.[24] There being neither mitigating nor aggravating circumstances concurring in the perpetration of the crime, the proper penalty in accordance with Article 63 of the Revised Penal Code is reclusion perpetua, the medium period.

Actual damages were correctly awarded to the victim's mother, considering that she spent for the funeral and burial expenses. However, the award of P50,000.00 designated as "compensatory damages" by the trial court should be properly denominated as civil indemnity. This amount of indemnity is in accordance with recent jurisprudence and it requires no proof other than the fact of death as a result of the crime and proof of the appellants' responsibility therefor.[25] However, with the exception of the award of actual damages, all the other damages and monetary awards should be granted to the heirs of the victim and not solely to his mother. Under the law, succession pertains in the first place, to the descending direct line.[26] If the decease is survived by legitimate children, it excludes his parents and ascendants.[27]

WHEREFORE, the decision of the trial court is **AFFIRMED** subject to the **MODIFICATION** that the monetary awards shall be paid not solely to the victim's mother but to all his heirs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] The Information reads: "That on or about January 26, 1988, in the Municipality of Pototan, Province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Jovito Barona, armed with a homemade firearm, 20 gauge, and Matias Sara, armed with a knife locally known as 'punyong,' taking advantage of the nighttime, with deliberate intent and decided purpose to kill, conspiring, confederating and mutually working together, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, stab, assault and shoot one Celedonio Baron with said weapons with which they were then provided, inflicting upon the latter lacerated and gunshot wounds on the vital parts of his body which caused his death thereafter.

CONTRARY TO LAW." Regional Trial Court (RTC) Records, p. 1.

[2] The dispositive portion of the decision dated June 17, 1994 of the RTC (Branch 39-Iloilo City) penned by Judge Jose Abdallan reads: "WHEREFORE, premises considered, the accused Jovito Barona, Felipe Ferraris, Elpidio 'Matias' Sara, Jr. and Roberto 'Pewe' Barona are hereby found guilty beyond reasonable doubt of the crime of Murder, and there being no aggravating or mitigating circumstance, said accused are hereby sentenced each to suffer the penalty of reclusion perpetua.

The accused are further ordered to pay jointly and severally Pacita Baron, the mother of the deceased the amount of P4,500.00 as actual damages and to the legal heirs of the deceased the amount of P50,000.00 as compensatory damages for his wrongful death and P30,000.00 as moral damages and the costs of the suit.

The accused, who are all detained, are credited with the number of days they spent under detention, if they are qualified, otherwise, they shall be credited only with 4/5 of their preventive imprisonment.

SO ORDERED." Rollo, p. 33.

[3] Letter of appellants Jovito and Roberto Barona and Ferrariz dated October 16, 1995 withdrawing their appeal (Rollo, p. 49); Letter dated June 9, 1997 of appellants Jovito Barona and Ferrariz withdrawing their appeal (Rollo, p. 136)

[4] Certification issued by the Bureau of Corrections dated August 22, 1996 that appellant Roberto Barona died on August 14, 1996, Rollo, p. 117.

[5] SC Resolution dated June 30, 1997; Rollo, p. 135.

[6] "Have mercy, Tias. Don't kill me."

[7] People v. Silvano, (Per curiam-En Banc), G.R. No.127356, June 29, 1999; People v. Tan, 264 SCRA 425 (1996)

[8] People v. Acabo, 328 Phil. 378 (1996); People v. Padilla, 312 Phil. 721 (1995); People v. Codilla, 224 SCRA 104 (1993); People v. Dio, 44 SCAD 559.

[9] People vs. Kyamko, 222 SCRA 183 (1993)

[10] Rollo, pp. 27-28.

[11] People v. Mako, 196 SCRA 378 (1991); People v. Cabiling, 74 SCRA 285 (1976) cited in People v. De Leon, 128436, Dec. 10, 1999.

[12] People v. Diaz, G.R. No.130210, December 8, 1999 citing People v. Sancholes, 271 SCRA 527 (1997)

[13] Article 14, par. 16, Revised Penal Code (RPC), as amended. See also People v. Ringor, Jr., G.R. No.123918, December 9, 1999.

[14] People v. Serzo, Jr., 274 SCRA 553 (1997); People v. Azugue, 268 SCRA 122 (1997) cited in People v. Lopez, G.R. No. 131151, August 25, 1999.

[15] People v. Valdez, G.R. No.127663, March 11, 1999; People v. Santos. 270 SCRA 650 (1997); People v. Javier, 269 SCRA 181 (1997)

[16] People v. Cantere, G.R. No.127575, March 3, 1999.

[17] People v. Ladrillo, G.R. No.124342, December 8, 1999; People v. Caguioa, Sr., 328 Phil.747 (1996)

[18] *People v. Burce*, 269 SCRA 293 (1997) cited in *People v. Cayago*, G.R. No.131151, August 18, 1999.

[19] *People v. Quijada*, 328 Phil. 503 (1996); *People v. Helga*, 328 Phil. 93 (1996); *People v. Alunan*, 328 Phil. 293 (1996); *People v. Hernandez*; 328 Phil. 1123 (1996)

[20] *People v. Mahinay*, G.R. No. 125311, March 17, 1999.

[21] *People v. Godoy*; 250 SCRA 676 (1995); *People v. Tabiliran, Jr.*, 249 SCRA 447 (1995)

[22] *People v. Gardoce*, 346 Phil. 914 (1997); *People v. Ballabare*, 264 SCRA 350 (1996); *People v. Manabat*, 100 Phil. 603 (1956)

[23] *People v. Vasquez*, 346 Phil. 104 (1997) citing *People v. Fabrigas*, 261 SCRA 436 (1996); *People v. Alshaika*, 261 SCRA 637 (1996); *People v. Daquipil*, 240 SCRA 314 (1995), *People v. Morin*, 241 SCRA 709 (1995)

[24] Article 248 of the Revised Penal Code, as amended.

[25] *People v. Lopez*, G.R. No. 131151, August 25, 1999 citing *People v. Espanola*, 271 SCRA 689 (1997); *People v. Cayago*, G.R. No. 128827, August 18, 1999 citing *People v. Ortega, Jr.*, 276 SCRA 166 (1997)

[26] Civil Code, Article 978.

[27] See Civil Code, Article 985.

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