

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTOLIN HAYAHAY, ORLANDO LICANDA, EDITO COMEDIA Y CONAKE, ALIAS “PALANG,” SERAFIN MORELES Y PALOMPON, ZALDY BILLENTE Y OAB, ...

G.R. No. 120550. September 26, 1997

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellants ANTOLIN HAYAHAY, ORLANDO LICANDA, EDITO COMEDIA y CONAKE, alias "Palang," SERAFIN MORELES y PALOMPON, ZALDY BILLENTE Y OAB, MILIANO OLASIMAN y VILLAROSA, DIONISIO OLASIMAN y VILLAROSA and ANTONIO OLASIMAN y VILLAROSA were charged with and convicted of murder in an Information[1] that reads:

That on or about the 2nd day of November 1990, at Bgy. Sto. Niño, Municipality of San Vicente, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another with evident premeditation and treachery and by means of superior force did then and there wilfully, unlawfully and feloniously attack, assault, stab, box and hit with a piece of wood and iron bar, one GORGONIO LAPU-LAPU, hitting him in various vital parts of his body and inflicting upon the said Gorgonio Lapu-Lapu, multiple incised and stab wounds that resulted to hemorrhagic shock, which were the direct and immediate cause of his instantaneous death.

"CONTRARY TO LAW and committed with aggravating circumstances of taking advantage of superior strength by the accused."

All pled not guilty upon arraignment. Trial ensued.

The prosecution relied heavily on the testimony of RAMIL LAPU-LAPU, brother of the victim and sole eyewitness to the crime at bar. He testified that on November 2, 1990, at about 7:00 p.m., he and the victim, Gorgonio, were on their way to the seashore to buy fish when they were suddenly accosted by appellants. Appellant EDITO COMEDIA stabbed Gorgonio on the chest, while appellants ANTOLIN HAYAHAY and ORLANDO LICANDA stabbed him at the back. Using an iron bar, appellant DIONISIO OLASIMAN clubbed Gorgonio on the head. Appellant SERAFIN MORELES, on the other hand, hit Gorgonio with a piece of wood. Appellants MILIANO OLASIMAN and ZALDY BILLENTE repeatedly boxed and kicked his brother.[2]

Ramil clearly saw the part played by the eight (8) accused in the killing of Gorgonio. He was only about five (5) meters away from the crime scene. The scene was brightly illuminated by a full moon and the kerosene lamps from nearby houses.[3] He also knew all the assailants. They all lived in the same barrio.

After witnessing the incident, Ramil ran back to their house which was about fifty (50) meters away from the crime scene. Appellant Moreles pursued Ramil and tried to club him but missed. Ramil got home and told his sister about the incident. After five (5) minutes, Ramil decided to return to the crime scene. He met the badly

injured Gorgonio on the way. He embraced Gorgonio and they fell on the ground. Gorgonio then heaved his last breath.[4]

Ramil further testified that appellants had a motive for killing Gorgonio. He recalled that two or three days prior to the stabbing incident, appellant Hayahay derided the victim's wife, Merlyn Lapu-Lapu, a school teacher. While Merlyn was teaching, appellant Hayahay broke into her classroom and brazenly accused her of wearing his clothes. Ramil and Gorgonio heard the charge and a sulfurous exchange of words took place between the victim and appellant Hayahay.[5]

The autopsy conducted by DR. JOSELITO VICENTE, medical health officer of San Vicente, Palawan, revealed that Gorgonio suffered eleven (11) stab wounds on different parts of the body. The four (4) wounds on the chest and abdomen hit vital organs of his body and were sufficient to cause his immediate death. Dr. Vicente opined that the wounds could have been caused by a sharp instrument such as a knife or a bolo.[6]

Appellants relied on the defenses of denial and alibi. Only appellant Hayahay admitted his presence within the vicinity of the crime scene.

Appellant ANTOLIN HAYAHAY claimed that he was in Sto. Niño, San Vicente, Palawan, on the date and time the crime at bar was committed. He was in the house of their neighbor, Marcy Rosales, a place often used as a gambling site. There were about forty (40) people gambling in the house. After a while, Ramil and Gorgonio came looking for him. They were drunk and Ramil menacingly pointed an arrow at him. Rosales intervened and asked him to go to the second floor of the house. While at the second floor, he heard a commotion downstairs. People scampered, the kerosene lamp was knocked down on the floor and darkness enveloped the house. He learned that Gorgonio was stabbed and killed in the melee.

He said he could not identify Gorgonio's assailants for he was then at the second floor of the house when fighting erupted.[7] He declared, however, that appellants Licanda and Billentes were then inside the gambling house. He did not notice the presence of the other appellants.[8]

Appellant Hayahay claimed that Gorgonio was jealous of him. Gorgonio's wife, Merlyn, was his friend for they used to live in the house of his aunt when Merlyn was still single. Nonetheless, he admitted they never saw each other again when Merlyn got married.

The next morning, at about 5:00 a.m., appellant Hayahay was arrested by the police at his workplace. The police brought him to the municipal building where they allegedly forced him to admit his complicity in the killing of Gorgonio.[9]

Appellant EDITO COMEDIA testified that on November 2, 1990, at 6:00 p.m., he was in Barangay Alimangohan, about seven (7) kilometers from Barangay Sto. Niño where the killing occurred. He worked as conductor for a jeepney driven by Boy Salonga. They plied the route of barangay Alimangohan to barangay Sto. Niño from 6:00 p.m. of November 2, 1990 until the next morning of November 3. At around 2:00 p.m. of November 3, he was invited by the police for investigation. He acceded and went to the municipal hall together with the barangay tanod. He found his co-accused at the municipal hall when he arrived. He and his co-accused were then identified by Ramil Lapu-Lapu as the victim's assailants. It was only then that he came to know about Gorgonio's death. When he refused to admit his complicity in the killing, he was mauled by the policemen. He did not undergo a medical examination for he was not allowed to leave his cell. Appellant Comedia acknowledged that there was no bad blood between him and prosecution witness Ramil Lapu-Lapu.[10]

Appellant MILIANO OLASIMAN testified that on the date and time the crime was committed, he was in his house in barangay Sto. Niño, about 50 meters away from the house of Marcy Rosales. He knew his co-accused for

they were all townmates. He learned about the incident on November 3 when he was arrested by the police and brought to the municipal hall of San Vicente for investigation. Although he and his co-accused were forced to admit their complicity in the crime, he was not hurt by the police during his 5-day detention. He denied that he and his co-accused gave money to the victim's widow to settle the case. Nonetheless, he admitted that they requested barangay captain Victorio Onsipido to help them talk to the relatives of the victim so they could amicably settle the case which has been pending for almost three (3) years.[11]

Appellant ORLANDO LICANDA claimed that on the date and time the crime was committed, he was in the house of his neighbor, by the name of Puyok Zumarraga, in Sto. Niño, San Vicente, Palawan. Zumarraga's house is about 300 meters away from the Rosales' residence. They exchanged stories from 5:00 p.m. until 8:00 p.m. Barangay captain Victorio Onsipido passed by Zumarraga's house and secured two pumpboats to transport the body of Gorgonio and the latter's relatives to the San Vicente municipal hall. Appellant Licanda accompanied Onsipido in one of the pumpboats.[12] When they reached the municipal hall, Licanda stayed in the pumpboat until dawn of the following day. However, Zaldy Billentes fetched him and brought him to the municipal hall where he and his co-accused were investigated by the police. He denied knowledge of or complicity in the stabbing incident and insisted that he just accompanied the barangay captain in going there. The police did not believe his story and incarcerated him. He was detained for fifteen (15) days and then transferred to the provincial jail.[13]

Licanda denied he paid P11,000.00 to the widow of the victim in partial settlement of their civil liability. He said that a certain Atty. delos Reyes asked him to sign a document (Exhibit "G") but he did not know its contents. Exhibit "G," signed by the barangay captain, accused Orlando Licanda and Atty. delos Reyes, reads:

"Puerto Princesa City

30 November 1991

TO WHOM IT MAY CONCERN:

This is to certify that I have received the amount of Eleven Thousand Pesos (P11,000.00) as partial payment of the civil aspect of Criminal Case No. 9068 for Murder against Antolin Hayahay, et al., leaving a balance of Nineteen Thousand Pesos (P19,000.00), payable immediately after the case is finally dismissed.

As a guarantee, I agreed that the 16 HP I.C. engine of Barangay Captain of Sto. Niño be pledged to me.

(Sgd.) Merlin O. Lapulapu.

"I AM AGREEABLE TO THE ABOVE TERMS AND CONDITIONS:

(Sgd.) Barangay Captain Santo Niño

WITNESSES:

(Sgd.) Orlando Licanda"[14]

Appellant Licanda admitted he knew Ramil Lapu-Lapu, the victim's brother. He could not give any reason why Ramil testified against him.[15]

Appellant DIONISIO OLASIMAN testified that on the date and time the crime was committed, he was in his house, about 30 meters away from the crime scene. He was then sick of malaria. He could not remember who were with him in the house at that time. He disclaimed knowledge about the killing. On November 6, 1990, accused Billentes and some policemen went to his house and brought him to the San Vicente municipal hall for

investigation. Accused Billentes and prosecution witness Ramil Lapu-Lapu identified him as one of the killers. He was mauled in the police station and was forced to admit the killing of the victim.[16]

He declared that his co-accused were his friends. He also admitted he had no misunderstanding with either Billentes or Ramil and did not know why they implicated him in the crime.[17]

On September 9, 1994, the trial court found all the accused guilty beyond reasonable doubt of the crime of Murder.[18] The dispositive portion of the decision reads:

WHEREFORE, premises considered, the prosecution having successfully proven its case, the Court hereby finds the herein accused ANTOLIN HAYAHAY, ORLANDO LICANDA, EDITO COMEDIA, SERAFIN MORELES, ZALDY BILLENES, MILIANO OLASIMAN, DIONISIO OLASIMAN and ANTONIO OLASIMAN guilty beyond reasonable doubt of the crime of Murder charged against them in the above-captioned case as defined and penalized under Article 248 of the Revised Penal Code and sentences each of them to the penalty of RECLUSION PERPETUA; to each indemnify the heirs of the victim, Gorgonio Lapu-Lapu the sum of FIFTY THOUSAND PESOS (50,000.00), less the amount of 11,000.00 already paid as civil indemnity to the surviving spouse, as stated above; and to pay the costs.

x x x"

Hence this appeal. Appellants contend that:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF PROSECUTION EYEWITNESS RAMIL LAPU-LAPU WHOSE TESTIMONY IS DOUBTFUL AND CONTRADICTORY.

II

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS WHOSE GUILT WERE NOT PROVED BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT ERRED IN FINDING THAT CONSPIRACY EXIST IN THE COMMISSION OF THE CRIME CHARGED AND THAT THE TRIAL COURT ALSO ERRED IN FINDING THAT THE CRIME CHARGED WAS COMMITTED WITH THE ATTENDING QUALIFYING CIRCUMSTANCES OF TREACHERY AND SUPERIOR STRENGTH.

In their first and second assigned errors, appellants claim that the testimony of prosecution eyewitness Ramil Lapu-Lapu is full of contradictions. First, they point out that on direct testimony, Ramil declared that appellants attacked the victim one after the other but, on cross examination, Ramil said he immediately ran away after the first stab blow on the victim for fear that he might also be attacked by appellants. Second, Ramil testified that a heated argument preceded the stabbing of the victim but, on further questioning, he claimed the affray was not prefaced by any argument as appellants just pounced on the hapless victim. Third, Ramil testified he returned to the crime scene but later, Ramil averred he did not leave the house for fear he might also be stabbed. Appellants urge us to reject Ramil's testimony.

We disagree. The inconsistencies alluded to by appellants in the testimony of Ramil are more apparent than real.

First, the records bear that Ramil categorically declared he saw the appellants maul and stab the victim. On the

stand, Ramil gave a detailed eyeball account of the killing and the participation of each of the appellants. He was only at a distance of five (5) meters from the scene of the crime. It cannot be denied that Ramil saw appellant Comedia stab the victim on the chest; he saw appellants Hayahay and Licanda stab the victim's back; he saw appellant Dionisio Olasiman club the victim on the head with an iron bar; he saw appellants Miliano Olasiman and Billentes box and kick the victim; and he saw appellant Moreles hit the victim with a piece of wood.[19] Although Ramil fled when the carnage started, he stressed that he was able to identify each of the appellants and witnessed their exact participation in the killing of the victim before he ran away.[20]

Second, appellants point to the alleged inconsistency in Ramil's initial testimony that there was a heated discussion between the victim and appellants before the melee erupted and his later testimony that the stabbing was not preceded by any argument. Our evaluation of the transcripts of his testimony reveals no such contradiction. It is clear from the records that before the stabbing and mauling of the victim, there was no heated exchange of words.[21] Appellants, without warning, ganged up on the victim upon seeing the victim on the road leading to the seashore. Ramil's testimony that the victim and appellant Hayahay exchanged heated words refers to a prior incident when appellant Hayahay verbally harassed the victim's wife while she was teaching. Appellant Hayahay entered her classroom and accused her of wearing his clothes. The victim heard the insulting accusation and engaged Hayahay in a heated argument.[22]

Appellants also submit that the testimony of Ramil is improbable. Ramil claimed that his brother was stabbed on the chest and back, kicked and clubbed by appellants. On cross examination, however, he asserted that his brother was able to walk back home after the incident. They point out that the victim sustained eleven (11) stab wounds, four of which could cause immediate death. They contend that the medical findings demolish Ramil's testimony that the victim was able to walk back home after he was stabbed.

We are unpersuaded. We find nothing inconsistent between the medical findings on the wounds sustained by the victim and the fact that the victim did not die instantaneously but was able to walk a couple of meters before slumping on the ground dead. Dr. Vicente's opinion that four of the victim's wounds could cause immediate death is a mere description of the nature or severity of the wounds inflicted on the victim and does not purport to be a measure on the remaining life of the latter.

Appellants argue that their identification by Ramil was doubtful for the incident happened at nighttime. They further contend that Ramil's testimony should not have been accorded full faith and credit for being uncorroborated. We find no merit in these contentions. Ramil was just five (5) meters away from his brother, the victim, when the affray started. Although there was no electric supply in the barrio, Ramil saw the stabbing incident as the crime scene was illuminated by the full moon and the kerosene lamps from the nearby houses. Moreover, the fact that Ramil was the only eyewitness to the crime and his testimony was not corroborated by any other witness cannot detract from his credibility. Our jurisprudence is consistent that credibility does not go with numbers. The testimony of a single witness, if straightforward and categorical, is sufficient to convict.[23] On the whole, we find Ramil's eyeball account of the crime accurate and free from bias. None of the appellants was able to impute any ill-motive on Ramil. On the contrary, as brother of the victim, Ramil would necessarily be interested in seeing that his brother's true assailants are brought to justice.

Appellants' defenses, on the other hand, leave much to be desired. They are easy of concoction. Their alibis cannot even stand the test of physical impossibility which requires that he who invokes alibi should demonstrate that he was at too far a place as to be at the scene of the crime at the time of its commission. Appellant HAYAHAY claimed he was in the second floor of the house of his neighbor, Marcy Rosales, when the stabbing incident happened outside Marcy's house. Interestingly, however, Marcy Rosales was not presented to corroborate his testimony. As to appellant COMEDIA, he insisted that he was nowhere in the vicinity of the crime for he

acted as a conductor for a jeepney driven by one Boy Salonga and they plied the route of Barangay Alimangohan to Barangay Sto. Niño. Again, this Boy Salonga who was allegedly with appellant Comedia was not presented to confirm the veracity of the latter's claim. Appellant DIONISIO OLASIMAN testified that he was in his house suffering from malaria. However, neither his wife nor his children who lived with him in said house corroborated his alibi. Neither were his medical records adduced during the trial. Appellant Dionisio's house is just 50 meters away from the crime scene and it was not impossible for him to be at the scene of the crime. Appellant MILIANO OLASIMAN's alibi must also fall. Allegedly, he was in his house at the time of the stabbing. His house is a mere 30 meters away from the crime scene. In fact, prosecution eyewitness Ramil Lapu-Lapu was standing in front of appellant Olasiman's house when he saw his brother being ganged up by appellants' group. Moreover, Olasiman admitted that he and his co-accused requested their barangay captain Victorio Onsipido to assist them in talking with the victim's relatives to settle their case. We have ruled that an offer of compromise in a criminal case may be received in evidence as an implied admission of guilt.[24] Finally, for his part, appellant LICANDA claimed that he was in the house of his neighbor, Puyok Zumarraga. However, he was placed in the vicinity of the crime by his co-accused, appellant Hayahay, who testified that he saw Licanda in Rosales' house before the fighting erupted.[25] Thus, we find appellants' alibis to be feeble and insufficient to exculpate them from the crime charged.

Finally, appellants contend that the trial court's finding of conspiracy is not supported by evidence. They insist that conspiracy was not established for after Ramil saw one of the appellants initially stab the victim, Ramil ran away. Appellants also charge that no evidence supports the trial court's finding of the presence of the qualifying circumstances of abuse of superior strength and treachery.

Appellants' contentions are untenable. We affirm the trial court in ruling that appellants conspired to kill the victim. It is a well-settled rule that conspiracy need not be shown by direct proof of an agreement by the parties to commit the crime. The conduct of the malefactors before, during or after the commission of the crime is sufficient to prove their conspiracy. Once proved, the act of one becomes the act of all. All shall be answerable as co-principals regardless of the extent or degree of their participation.[26]

In the case at bar, the prosecution proved that when appellants saw the victim near the seashore, all of them approached the victim. Five of the appellants had weapons (knives, an iron bar and a piece of wood) which were used to kill the victim. They were prepared for the job. All the appellants took turns in stabbing, boxing and kicking the hapless victim. Conspiracy is thus evident from appellants' collective and individual acts which demonstrated the existence of their common design to kill the victim.[27]

The trial court also correctly appreciated the qualifying circumstances of treachery and taking advantage of superior strength. The eight appellants, five of whom were armed, alternately mauled, clubbed and stabbed the defenseless victim. As per the testimony of the medico-legal expert, the victim suffered eleven (11) stab wounds, four of which were fatal and could cause the victim's immediate death. The number of assailants and nature of weapons used against the unarmed victim show a notorious inequality of force between the parties, which unquestionably gave appellants undue advantage and superiority of strength over their victim. Clearly, the killing of the victim was attended by the qualifying circumstance of abuse of superior strength.[28] Treachery was also properly appreciated by the trial court as appellants' attack on the victim was sudden and unprovoked, without giving the latter warning of any kind and thus rendering him unable to defend himself from their unexpected attack.[29] Treachery was present as the offenders employed means, methods or forms in killing the victim which tend directly and specially to insure its execution, without risk to themselves arising from the defense which the offended party might make.[30]

IN VIEW WHEREOF, the trial court's decision convicting appellants of the crime of Murder is **AFFIRMED** in

toto. Costs against appellants.
SO ORDERED.

Regalado, and Torres, Jr., JJ., concur.
Mendoza, J., on official leave.

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- [1] Dated November 20, 1990; Original Records, pp. 1-2.
- [2] TSN, October 9, 1991, pp. 6-9, 24-27, 42.
- [3] Ibid, pp. 19-20, 37.
- [4] Ibid, pp. 28, 56-62.
- [5] TSN, October 9, 1991, pp. 43-45, 74-75.
- [6] TSN, March 17, 1992, pp. 7-27.
- [7] TSN, August 13, 1993, pp. 5-18, 31-33.
- [8] Ibid, pp. 20-30.
- [9] Ibid, pp. 42-44.
- [10] Ibid, pp. 27-30.
- [11] TSN, November 26, 1993, pp. 4-18.
- [12] Ibid, pp. 12-15, 28-29.
- [13] Ibid, pp. 16-27.
- [14] Original Records, at p. 169.
- [15] Ibid, pp. 52-53.
- [16] TSN, March 17, 1994, pp. 4-9.
- [17] Ibid, pp. 11-14.
- [18] Decision penned by Judge Eustaquio Z. Gacott, Jr., Presiding Judge, RTC of Palawan and Puerto Princesa City, Branch XLVII, 4th Judicial Region; Rollo, pp. 39-55.
- [19] TSN, October 9, 1991, pp. 6-9, 24-27.
- [20] Ibid, pp. 19 & 58.
- [21] Ibid, pp. 42 & 46.
- [22] Ibid, pp. 43-45, 73-75.
- [23] *People v. dela Cruz*, G.R. No. 118458, July 1997; *People v. Ferrer*, 255 SCRA 19 [1996].
- [24] Section 24, Rule 130, Rules of Court.
- [25] TSN, August 13, 1993, p. 30.
- [26] *People v. Sotes*, 260 SCRA 353 [1996]; *People v. Gregorio*, 255 SCRA 380 [1996]; *People v. Laurente*, 255

SCRA 543 [1996]; *People v. Alcantara*, 254 SCRA 384 [1996].

[27] *People v. Jain*, 254 SCRA 686 [1996]; *People v. Juan*, 254 SCRA 478 [1996]; *People v. Gregorio*, 255 SCRA 380 [1996].

[28] *People v. Salison, Jr.*, 253 SCRA 772 [1996].

[29] *People v. Cariativo*, 256 SCRA 1 [1996]; *People v. Gregorio*, 255 SCRA 380 [1996]; *People v. Lapura*, 255 SCRA 85 [1996].

[30] Article 14 (16), Revised Penal Code; *People v. San Gabriel*, 253 SCRA 84 [1996].

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