

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO MORENO, FELIX MORENO AND ROBERTO MORENO, ACCUSED-APPELLANTS, MARCOS MORENO, AT LARGE.

G.R. No. 120956. June 11, 1997

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

DOMINGO MORENO, his wife CONSUELO, and children FELIX, ROBERTO, MARCOS and ANGEL were charged with murder, in conspiracy with one another, with treachery, evident premeditation and use of superior strength, for the killing of one Leonardo Balauro on 6 August 1989 in Sitio Seoli, Bgy. San Jose, Mauban, Quezon. While all the accused were arraigned, Marcos Moreno escaped from detention after arraignment hence was tried in absentia.

Domingo Moreno admitted hacking the victim but claimed he did so in self-defense while Felix, Roberto and Marcos invoked alibi. Angel and Consuelo although admitting their presence denied any participation in the commission of the offense.

The evidence discloses that in the evening of 5 August 1989 the spouses Domingo and Consuelo Moreno had a drinking spree with Leonardo Balauro, his wife Erlina Balauro, and Renato, Eva, Melanie and Sonia, all surnamed Almirez, in the house of Salvacion Camposano in Sitio Seoli, Bgy. San Jose, Mauban, Quezon. The revelry continued until the early morning of the following day.

At about one o'clock in the morning of that day, Consuelo accompanied to her house her sister-in-law Erlina Balauro, younger sister of Domingo, to rest. Thereafter Consuelo returned to the house of Camposano where the drinking spree was still ongoing. On her way back, Consuelo met Leonardo who, in his inebriated condition, bumped her. Consuelo, who took it as an act of sexual molestation, shouted to her husband for help. Responding to his wife's call, Domingo appeared and a fight ensued between him and Leonardo. Domingo tried to wrest possession of the bolo Leonardo was holding. In the struggle, Domingo was wounded at the back by Leonardo.

After the incident Erlina and Leonardo went home. In the meantime, Domingo and Consuelo sought the help of their children Roberto, Marcos, Felix and Angel. Not long after, the Morenos proceeded to the house of the Balauros. Domingo and Roberto wielded a bolo each, Felix a knife and Marcos a piece of wood. As they approached the house, Domingo shouted and challenged Leonardo to come out. When Leonardo did not respond, his attackers stoned his house.

Fearing for their lives, Erlina and her children stealthily exited through their kitchen door and dashed towards the coconut grove behind their house. Leonardo attempted to follow but Domingo caught him and, together with Roberto, Felix and Marcos stabbed, hacked and beat him to death.

Dr. Victorino Q. Araña, Medico-Legal Officer of the Mauban District Hospital, certified in his medical report that the deceased Leonardo Balauro sustained one (1) stab wound, four (4) hacking wounds, three (3) incised wounds

and one (1) lacerated wound.[1]

The trial court rejected the alibi of Roberto, Felix and Marcos and accorded full credence to the testimonies of prosecution witnesses Erlina Balauro, Genalyn Balauro and Romeo Pulgo who positively identified Roberto, Felix and Marcos to be among the culprits. It likewise turned down Domingo's claim of self-defense since his act could not be justified. The immediate threat to his life ceased when the fight stopped and Leonardo left for home.

On 30 April 1991 the Regional Trial Court, Br. 64, Mauban, Quezon, rendered a decision the dispositive portion of which reads -

WHEREFORE x x x the court arrives at the indubitable conclusion that the crime is qualified with treachery and evident premeditation and found (sic) FELIX, ROBERTO, MARCOS and DOMINGO, all surnamed MORENO, guilty beyond reasonable doubt of the crime of murder.

x x x DOMINGO MORENO and FELIX MORENO are, therefore, sentenced to suffer the prison term of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS, the maximum period of reclusion temporal; accused ROBERTO MORENO and MARCOS MORENO are to be credited of (sic) the mitigating circumstance of voluntary surrender, and there being no aggravating circumstance attending, sentenced to suffer the penalty of indeterminate prison term of the minimum of TEN (10) YEARS and ONE (1) DAY of prison mayor, to a maximum of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal maximum, all with full benefit of the accessories of the law. Domingo, Felix, Roberto and Marcos, all surnamed Moreno, are ordered to indemnify the heirs of Leonardo Balauro for damage caused in the amount of P30,000.00, share and share alike.

CONSUELO MORENO and ANGEL MORENO are ACQUITTED of the crime charged for insufficiency of evidence. The officer of the law in custody of both Consuelo Moreno and Angel Moreno is hereby ordered to release both accused immediately after receipt of this Order, unless held for other offense.[2]

The Court of Appeals affirmed the conviction of the accused-appellants for murder but found that abuse of superior strength, not treachery nor evident premeditation, qualified the killing. It likewise modified the penalty imposed upon Domingo Moreno and Felix Moreno and raised it from reclusion temporal maximum to reclusion perpetua as no aggravating nor mitigating circumstance attended the commission of the crime. By reason of the imposable penalty and pursuant to Sec. 3, par. (c), of Rule 122 of the Rules of Court, the Court of Appeals certified the case to us for review.[3]

We affirm the conviction of the accused-appellants.

After a careful assessment of the evidence adduced by the parties, we are convinced that appellants are guilty beyond reasonable doubt of the crime charged. The prosecution has ably established its cause while the evidence for the defense in the main flourishes with inconsistencies and improbabilities.

Accused-appellant Felix Moreno made conflicting testimonies concerning the presence of his brothers Angel Moreno and Marcos Moreno in his house on the night of 5 August 1989. On cross-examination he testified -

Atty. Ambas: Your father was with your brother Roberto when they came to your house that evening?

Felix Moreno: Yes, sir.

Q: But your mother was with them, too, that evening?

A: Yes, sir.

Q: And your brother Marcos and Angel were also with them when they came to your house that evening?

A: When I saw my father bleeding, I became dizzy, sir.

Q: But you did not lose consciousness?

A: I just felt dizzy, sir.

Q: But the question to you is: Did you see your brother Angel and Marcos that evening in your house?

A: Yes, sir.

Q: So, when Roberto called on you that evening of August 5, 1989, he was with your father Domingo, mother Consuelo and brothers Angel and Marcos?

A: They just came to our house, sir.

Q: So, all those persons I mentioned, approached and came to your house?

A: Yes, sir.[4]

But on redirect examination, Felix Moreno changed his story and said that the only persons who went to his house that time were his father Domingo, his mother Consuelo, and his brother Roberto. When confronted with the earlier statement he made he faintly explained that he was not in his normal condition having succumbed to a bout of dizziness, thus -

Atty. Anastacio: So, you might be mistaken in saying that it was at 8:30 o'clock in the evening?

Felix Moreno: Yes, sir.

Q: The same is true that when you stated you saw Marcos Moreno and Angel Moreno at that evening of August 6, 1989, you might be mistaken?

Atty. Ambas: That will be already impeaching one's witness.

Atty. Anastacio: He testified that he was not in his normal condition.

Court: Objection sustained.

Atty. Anastacio: Who were the very persons you actually saw on the night of August 5, 1989 when you have (sic) already occasion to see Roberto Moreno and your father Domingo Moreno?

A: My father, my mother and Roberto Moreno and no more, sir.[5]

Accused Angel Moreno was likewise indecisive if not unpersuasive. He was inconsistent in his testimony relative to the exact residence of his brother Roberto, although Angel together with his mother Consuelo was acquitted by the trial court for insufficiency of evidence -

Atty. Ambas: So, your father Domingo has three houses in all?

Angel Moreno: Yes, sir.

Q: Now, who are living in that house at the foot of the mountain?

A: I and my brothers Marcos Moreno and Roberto Moreno, sir.

Q: Now your father and mother live in that house near the sea?

A: Yes, sir.

Q: How about your sister Encarnacion, where does she live?

A: In the house of my parents, sir.

Q: Your brother Sario, where does he live?

A: We are together, sir.

Q: How many of you live in that house at the foot of the mountain?

A: Three, sir.

Q: Who are those persons?

A: Sario Moreno, Marcos Moreno and myself, sir.

Q: And where does Roberto Moreno live?

A: He has his own house, sir.[6]

Accused Roberto Moreno testified that his house at the foot of the hill was far from his parents' house; that in the early morning of 6 August 1989 his mother accompanied his wounded father to his house; and, that his mother requested him to bring Domingo to the hospital.[7] This version appears implausible considering the attendant circumstances. Roberto's house and that of his parents were, by his own testimony, quite distant from each other. This obtaining, it is difficult to understand the need for the spouses Domingo and Consuelo to personally go and fetch Roberto from his house considering that his father was already wounded and had to be immediately extended medical treatment. Domingo and Consuelo resided near their son Felix and it was more logical for them to approach him for help. Assuming that Felix at that time was very weak due to "wine poisoning" and unable to render any assistance, they could still have asked the wife of Felix to seek assistance from their other relatives. For Domingo and Consuelo to go personally to the house of Roberto at the foot of the hill, and then return to their house by the sea to board their motorized banca to take them to the hospital would be stretching the matter to incredible limits. At the very least, they should have remained in their own house, or that of Felix, and sent someone else to call for Roberto.

Underscoring the weakness of the evidence for the accused-appellants are the glaring inconsistencies between the testimony of Roberto and that of Felix. Roberto attested that he and his parents passed by the house of Felix to request the latter to help push their banca from its berth near Domingo's house to the sea -

Atty. Anastacio: And the house where you passed by that evening was the house where Felix Moreno is (sic) living?

Roberto Moreno: Yes, sir.

Q: And that is a separate house from the house of your parents?

A: Yes, sir.

Q: Why did you pass by the house where your brother Felix Moreno was then living?

A: I asked help from Felix to push the banca to the sea, sir.

Q: Was he present?

A: Yes, sir.

Q: Now, you said that you wanted him to help you in pushing that banca to the sea. Did Felix Moreno help you?

A: No, sir.

Q: Why?

A: Because he was lying down as he was sick, sir.

Q: You said that that banca was (sic) motorized. Where is (sic) the engine at that time?

A: In the house of my parents, sir.

Q: In the house where Felix was then living?

A: No, sir.

Q: Where?

A: In the house of my parents, sir.

Q: At that time where was that engine? Was it already attached to the banca or not?

A: No, sir.

Q: Where is (sic) it situated?

A: In the 'tahik,' sir.

Q: Who got that engine to be put in the banca?

A: I, sir.

Q: Where did you get the engine?

A: In the house, sir.

Q: In whose house?

A: In the house of my parents, sir.[8]

Felix on the other hand testified that his brother Roberto dropped by his house to get the engine from the banca -

Atty. Anastacio: When Roberto Moreno told you about that matter, where was your father?

Felix Moreno: In front of the house, sir.

Q: Did you come to know why they were there aside from telling you that matter?

A: Because they will (sic) get the engine, sir.

Q: What is (sic) that for?

A: For the boat, sir.[9]

Consuelo's testimony also conflicts with that of Roberto -

Atty. Anastacio: After going in (sic) the house of Roberto Moreno, where else did you go before proceeding to the hospital at Atimonan?

Consuelo Moreno: We passed by the house of Felix, sir.

Q: Is this Felix, Felix Moreno who is one of the accused in this case?

A: Yes, sir.

Q: Why did you pass by the house of Felix Moreno?

A: In order to get the engine of the boat, sir.[10]

We also note why Roberto, Domingo and Consuelo in proceeding to the hospital after passing by the house of Felix, left Felix behind who, if indeed he was ailing, also needed medical attention. This would have dispensed with the need for Roberto to return to the house of Felix the following morning in order to bring Felix to the hospital. All told, the failure of the witnesses for the defense to get their acts together and present a consistent and credible narrative can only indicate a contrived story deserving no regard.

The lower court properly rejected Domingo's claim of self-defense. Leonardo suffered lacerated, incised and hacking wounds. These were found to be caused by different blunt and pointed objects. Leonardo was also shown to have been beaten with a piece of wood. The nature of the injuries sustained by Leonardo ineluctably shows that he was attacked by several assailants armed with weapons of various kinds and not by Domingo Moreno alone. The claim of self-defense by Domingo was also invalidated by the character of the wounds found on Leonardo's body. The alibi set up by Felix, Roberto and Marcos could not stand as against the testimony of Erlina Balauro, Genalyn Balauro and Romeo Pulgo positively identifying the appellants as among the perpetrators of the crime.

In support of its finding that abuse of superior strength and not treachery or evident premeditation qualified the killing, the Court of Appeals explained, which we quote with approval, that -

While we sustain the conclusion of the trial court that there was no self-defense, we cannot uphold its finding that evident premeditation existed. Before evident premeditation can be appreciated, the elements thereof, namely, the time when the accused decided to commit the crime; the overt act showing that the accused clung to his determination to commit the crime; and the lapse of time between the decision and the execution of the crime sufficient for meditation and reflection, must be established (*People v. Clamor*, 198 SCRA 642, 655; *People v. Jatoy*, 222 SCRA 801, 806). None of these elements was established. In our opinion, it was error to consider that evident premeditation existed, merely on the basis of the conspiracy among the appellants herein.

Under normal conditions, where the act of conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted. In the case before us, however, no such evidence exists; the conspiracy is merely inferred from the acts of the accused in the perpetration of the crime. There is no proof how and when the plan to kill Leonardo was hatched, and what time elapsed before it was carried out. We are, therefore, unable to determine on the evidence if the appellants enjoyed sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences. In other words, there is no showing of the opportunity for reflection and persistence in the criminal intent that characterizes the aggravating circumstance of evident premeditation (*People v. Custodio*, 97 Phil. 698, 704).

The lower court held that treachery was established and thereby qualified the offense. We disagree. The accused-appellants did not camouflage their hostile intentions. They announced their presence at the scene of the crime with shouts (TSN, June 28, 1990, p. 85). That mode of attack negated the existence of treachery, since the element of surprise, which marks the presence of treachery was absent (*People v. Cunanan*, 75 SCRA 15, 23).

We venture to state, however, that the proper qualifying circumstance in the case is abuse of superior strength, which anyway is also alleged in the information (pp. 26-27, Orig. Record). The Morenos cooperated and took advantage of their combined strength to overpower the unarmed victim. The number of aggressors clearly points to the attending circumstance of superior strength. The evidence shows that the accused-appellants were physically stronger and abused such superiority. There was simply no way that the deceased could survive the overwhelming onslaught.[11]

While the lower court found that in the case of Domingo Moreno and Felix Moreno no aggravating or mitigating circumstance attended the commission of the crime, it however failed to impose the proper penalty as provided in Art. 248 of the Revised Penal Code. The appropriate penalty is reclusion perpetua, the medium period of the penalty for murder, as correctly fixed by the Appellate Court -

We agree with the trial court that the crime committed by the accused-appellants is murder qualified by abuse of superior strength. We disagree, however, as to the penalty meted out to accused Domingo Moreno and Felix Moreno. The felony of murder is penalized by reclusion temporal in its maximum period to death (Art. 248, Rev. Penal Code, as amended). There being neither aggravating nor mitigating circumstance attendant to the commission of the felony, the penalty imposable upon the accused-appellants Domingo Moreno and Felix Moreno is reclusion perpetua, which is the medium period of the penalty for the crime of murder. As correctly pointed out by the Solicitor General, the Indeterminate Sentence Law will not apply since the resulting penalty, after considering the attending circumstances, is reclusion perpetua (*People v. Cempron*, 187 SCRA 248, 256).

We also noted that the court a quo awarded an indemnity of P30,000.00. The already settled jurisprudence on the matter is that the indemnity should be increased to P50,000.00 (*People v. Dasig*, 221 SCRA 550, 559; *People v. Maceda*, 190 SCRA 548).[12]

However, in appreciating voluntary surrender as a mitigating circumstance for accused Roberto Moreno and Marcos Moreno, the court a quo was correct in imposing the indeterminate penalty of ten (10) years and one (1) day of prison mayor maximum as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum.

WHEREFORE, the Decision of the Regional Trial Court of Mauban, Quezon, as modified by the Court of Appeals, holding accused-appellants DOMINGO MORENO, FELIX MORENO, MARCOS MORENO and ROBERTO MORENO guilty of murder is AFFIRMED. Accordingly, Domingo Moreno and Felix Moreno are sentenced to suffer the penalty of reclusion perpetua together with the accessory penalties provided by law.

The mitigating circumstance of voluntary surrender is appreciated in favor of MARCOS MORENO and ROBERTO MORENO. Correspondingly, they are ordered to suffer the penalty of ten (10) years and one (1) day of prison mayor maximum as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal maximum as maximum. The award of indemnity to the heirs of the deceased Leonardo Balauro is I N C R E A S E D from P30,000.00 to P50,000.00. Costs against accused-appellants.
SO ORDERED.

Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.
Padilla, (Chairman), J., on leave.

[1] Exh. "B," Records, p. 3.

[2] Decision, pp. 14-15; Records, pp. 150-151.

[3] Decision penned by Justice Fermin A. Martin, concurred in by Justices Pedro A. Ramirez and Conchita Carpio-Morales.

[4] TSN, 11 September 1990, p. 18.

[5] Id., pp. 27-28.

[6] TSN, 25 September 1990, p. 10.

[7] Id., p. 19.

[8] Id., pp. 23-24.

[9] See Note 7, p. 10.

[10] TSN, 9 October 1990, p. 9.

[11] Rollo, pp. 95-96.

[12] Id., p. 99.

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