PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO ALTABANO Y ELLORIN, BENJAMIN CARO Y YU, CYNTHIA ALTABANO Y CARO, CORAZON CARO-LASCANO AND RUBEN LASCANO ALIAS BENTOT, ...

G.R. No. 121344. October 29, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a an appeal from the Decision[1] of the Regional Trial Court of Caloocan City, Branch 121[2] , in Criminal Case No. 121344, finding Eduardo Altabano y Ellorin and Benjamin Caro y Yu, guilty of Murder and sentencing them thus:

> "WHEREFORE, in view of the foregoing premises, this Court finds accused EDUARDO ALTABANO Y ELLORIN and BENJAMIN CARO Y YU GUILTY beyond reasonable doubt for the crime of MURDER and hereby sentences them to suffer the penalty of RECLUSION PERPETUA, to pay the sum of FORTY EIGHT THOUSAND PESOS (P48,000.00) as actual and compensatory damages, to indemnify the heirs of the victim the sum of FIFTY THOUSAND PESOS (P50,000.00) and another sum of FIFTY THOUSAND PESOS (P50,000.00) as moral damages.
>
> The case against accused RUBEN LASCANO is now presently being tried considering that he escaped and was arrested only after the case against his four (4) co-accused has already been submitted for decision.
> The Court, however, finds accused CORAZON CARO-LASCANO and CYNTHIA CARO-ALTABANO NOT GUILTY for the crime of MURDER under Art. 248 of the RPC and the information against them is hereby DISMISSED. With cost de oficio.
>
> SO ORDERED."[3]

Filed on September 5, 1994, the Amended Information charging the accused with the crime of Murder, alleges:

> "That on or about the 31st day of August 1994, in Kalookan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot one ARNOLD FERNANDEZ Y MCOLL, with the use of a gun, hitting the latter on the left breast, thereby inflicting upon the latter serious physical injuries, which injuries ultimately caused death.
>
> CONTRARY TO LAW."[4]

With all the accused except Ruben Lascano alias Bentot, who was then at large, pleading Not Guilty upon arraignment on November 21, 1994,[5] trial ensued.

Testified on by prosecution witnesses SPO1 Antonio Peñaranda, PO3 Feliciano Almojuela, Ofelia Ibacuado, Jonathan Siloran, SPO1 Alexander Flores, Estelita Mallari, PO3 Eduardo Roderno and Dr. Antonio R. Vertido,

and as summarized in the Appellee's Brief, the version of the People runs as follows:

> "At around 9:00 o'clock in the evening of 31 August 1994, Estelita de Guzman Mallari arrived at the store of Angela Macapagal located along L. Lupa St., Maypajo, Kalookan City, in order to buy some mosquito coil repellant (i.e., 'katol'). She noticed a neighbor, Ofelia Ibacuado making a call at the store's telephone and another neighbor, Arnold Fernandez, sitting on the store's cement stairs and drinking a bottle of beer.
>
> Estelita Mallari then saw Ruben Lascano, accompanied by Eduardo Altabano and Benjamin Caro, curse Arnold Fernandez and then kick the latter. These three (3) individuals then proceeded to kick and maul Arnold Fernandez simultaneously, causing the latter to fall on the store's cement floor face up; while Ruben Lascano uttered: "walanghiya ka, oras mo na." At this point, accused Corazon Caro-Altabano and Cynthia Caro-Altabano arrived at the scene, giving verbal encouragement to Ruben Lascano to shoot Arnold Fernandez. Ruben Lascano drew a gun from his waist and shot Arnold Fernandez once in the chest. All the accused then left the scene, leaving the accused sprawled on the ground bleeding. Bystanders came forward to carry Arnold Fernandez to the hospital; but some had noted he was already dead. Aside from Estelita Mallari, this entire incident was likewise seen by Ofelia Ibacuado, who stood transfixed (i.e., 'tulala') at the store's telephone unit.
>
> Responding policeman arrested four (4) of the accused, except Ruben Lascano, later that same evening and they were brought to the police station. They were identified thereat by eyewitnesses Estelita Mallari and Ofelia Ibacuado as the assailants, (together with Ruben Lascano), of Arnold Fernandez. The eyewitnesses recognized the assailants who were particularly long-time neighbors of Estelita Mallari in the same community, since the crime scene right in front of the store was well lighted at the time of the incident."[6]

Prosecution witness SPO3 Eduardo Roderno testified[7] that recovered from the scene of the crime were one magazine of a .45 caliber pistol, seven live ammunitions and one empty shell.

The last to testify for the prosecution was Dr. Antonio S. Vertido who conducted an autopsy of the victim's cadaver. On re-direct examination, he averred[8] that a .38 caliber has almost the same characteristics as a .45 caliber, so that the gunshot wound sustained by the victim might have been caused by a .38 caliber or a .45 caliber pistol.

Appellants placed reliance on denial and alibi as their defense. They alleged that they were inside Cynthia Caro-Altabano's house together with their children, friends and relatives, while accused Ruben Lascano was with Renato Alipio, Cynthia Altabano's brother-in-law, on board a Nelbusco bus bound for Isabela.

The theory of the defense, as narrated by Corazon Caro-Lascano, and corroborated by the defense witnesses, Julius Lascano, Elena Villareal, Benjamin Caro, and Cynthia Altabano Y Caro, is to the following effect:

> "At around 5:00 o'clock in the afternoon of August 31, 1994, the witness was standing in front of the gate of her house when the victim, Arnold Fernadez approached and cursed her. Accordingly, Fernandez told accused Corazon Lascano that she is 'pakantutin'. Thereafter, a heated argument ensued between them but both were pacified by Corazon's sister who advised the said accused to file a case against Fernandez at Sangandaan Police Headquarters. Later, Corazon was accompanied by her husband, Ruben Lascano in lodging a complaint against Fernandez at the said police headquarters. At about 6:00 o'clock in the evening, Ruben Lascano, hurriedly packed some of his personal belongings and rode an owner-type jeep as he was bound for Isabela that night. Afterwards, accused Corazon Lascano together with her two (2) small children went to her sister's (Cynthia Caro-Altabano) house which is just a few meters away from her own house. Also at the house of Cynthia were Benjamin Caro, Elena Villareal, Pilomer Adrales and Cynthia herself. At about 9:00 o'clock in the evening they heard a gunshot and after five (5) minutes, some members of the Fernandez clan started stoning Cynthia's house. She saw Agustin Fernandez on board of a Ford Fierra throw a bottle towards the house and in the process hit a balot vendor who was then in front of the gate. Herein accused then called up for

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> assistance to the mobile patrol which arrived 30 minutes later at the barangay hall. The policeman then invited Corazon, Cynthia Caro-Altabano, Eduardo Altabano and Benjamin Caro to the police headquarters for investigation. Corazon's husband, Ruben Lascano has not reported to work up to the present and neither has she seen him since the latter left on August 31, 1994. She also stated that she has no knowledge of her husband's whereabouts and has not communicated to her in any manner.
>
> x x x She also maintained that all the accused never set foot on the crime scene at the night of the incident since her husband had left earlier while herein witness was then inside her sister's house together with Benjamin Caro and her sister Cynthia and accused Eduardo Altabano were inside the sari-sari store of the former. x x x"[9]

On the basis of the evidence on record, the Trial Court rendered its decision convicting appellants Eduardo Altabano y Ellorin and Benjamin Caro y Yu of the crime of Murder, and acquitting Corazon Caro-Lascano and Cynthia Altabano y Caro for want of the requisite evidence against the two.

Dissatisfied with the aforesaid decision, the appellants, Benjamin Caro y Yu and Eduardo Altabano y Caro interposed the appeal at bar anchored on the assignment of errors, that:

"1. RESPONDENT TRIAL COURT COMMITTED GRAVE ERRORS OF LAW IN CONVICTING THE ACCUSED APPELLANTS EDUARDO ALTABANO AND BENJAMIN CARO OF THE CRIME OF MURDER ALLEGEDLY IN CONSPIRACY WITH RUBEN LASCANO.

2. RESPONDENT TRIAL COURT COMMITTED GRAVE ERRORS OF LAW IN NOT ACQUITTING THE ACCUSED APPELLANTS EDUARDO ALTABANO AND BENJAMIN CARO, IN THE SAME MANNER AS WHAT IT DID WITH THE ACCUSED CYNTHIA ALTABANO AND CORAZON CARO, AT LEAST ON GROUNDS OF REASONABLE DOUBT."[10]

Firmly settled is the doctrine "that for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise physically impossible for him to be at the locus criminis at the time of the alleged crime."[11] In the case under scrutiny, appellants failed to prove and demonstrate the physical impossibility of their being at the scene of the crime at the approximate time of its commission. The house of Cynthia Altabano where they (appellants) claim to have stayed, was only five (5) to six (6) houses away[12] from the scene of the felony. Moreover, "defense of alibi cannot prevail over the positive identification of the accused by the eyewitness who had no untoward motive to falsely testify."[13] Prosecution witnesses Ofelia Ibacuado and Estelita Mallari, who were both one (1) meter[14] away from the crime scene, positively identified the appellants. They recounted[15] how Ruben Altabano, Benjamin Caro and Eduardo Altabano took turns in kicking Arnold Fernandez and how Ruben Altabano shot the victim then laying prostrate on the floor. These witnesses could not have been mistaken in their identification of appellants who were all known to them, being their long time neighbors, and considering that the place was well-illuminated by the light bulbs of the store. They (witnesses) testified in their own right and as independent narrators of what happened.

> "Where there is no evidence to show improper motive on the part of the prosecution witnesses to testify falsely against the appellants or falsely implicate them in the commission of the crime, as in the instant case, the logical conclusion is that no such improper motive existed and that their testimonies are worthy of full faith and credit."[16]

The declaration of Dr. Antonio S. Vertido who examined the victim's cadaver that the fatal shot could have come from a .45 caliber pistol strengthened the submission and further buoyed up the theory of the prosecution – that the victim was shot on the chest with a single bullet from a .45 caliber pistol.

Appellants contend that they should not be held liable for the shooting perpetrated by Ruben Lascano, as they did

not agree to kill the victim. The most that they can be liable is for the crime of physical injuries as their kicking the victim could not have caused his death.

This stance of appellants is not impressed with merit. As aptly ratiocinated and found below, conspiracy attended the commission of the crime. The trial court succinctly concluded:

> "Accused Ruben Lascano and his relatives had a vengeful motive to kill the victim due to the latter's offensive remark towards Lascano's wife, Corazon, several hours before Fernandez was killed. 'The evidence establish the actual agreement which shows the pre-conceived plan, motive, interest or purpose in the commission of the crime; conspiracy is shown by the coordinated acts of the assailants' (People vs. Regalio, 220 SCRA 368). Accused Ruben Lascano, Eduardo Altabano, and Benjamin Caro ganged up on the victim, hitting and kicking him until the latter was lying prostrate and helpless on the ground. Their intent to kill Fernandez upon approaching the latter who was then drinking alone was evident from Ruben Lascano's words: "Walanghiya ka, oras mo na", and the fact that he was armed with gun. The community of criminal purpose among the three (3) accused men was likewise shown by the failure of Benjamin Caro and Eduardo Altabano to prevent their companion from firing the fatal shot at the victim's chest."[17]

Indeed, even if only Ruben Lascano shot the victim, appellants cannot escape liability. Conspiracy having been established, "all the conspirators are liable as co-principals regardless of the manner and extent of their participation since in contemplation of law, the act of one would be the act of all."[18]

In acquitting accused Cynthia Altabano y Caro and Corazon Caro-Lascano, the lower court found:

> "On the other hand, the Court finds insufficient evidence to induce that moral certitude exacted by the fundamental law to prove the guilt of the two (2) women accused for the crime charged. There is no showing that they conspired with the three (3) men to kill the victim considering that they came later than the trio at the crime scene. 'For the utterances of an accused to make him a principal by inducement, the same must be of a nature and uttered in such manner as to become the determining cause of the crime, and that the inducement precisely was intended to serve that purpose' (People vs. Balderama, 226 SCRA 537).
>
> In the case at bar, it is apparent that the three (3) accused men have already resolved and conspired to kill the victim before the two women accused made their utterances, hence, the same can not be considered as the determining cause of the crime. Triggerman Ruben Lascano never hesitated in his action which culminated in the killing of the victim. Even without the utterances of the two women, the crime would still have been committed by Ruben Lascano, Eduardo Altabano and Benjamin Caro who were impelled by the same criminal resolution."[19]

From the foregoing, it is thus decisively clear that the Trial Court erred not in acquitting the two (2) accused women and in convicting the appellants.

But the Court upholds the conclusion arrived at by the Trial Court that treachery is not available to have qualify the offense.

> "Treachery as a qualifying circumstance, can not be properly appreciated in the absence of any evidence tending to show that the commission of the crime was characterized by a sudden attack, without according the victim any opportunity to make any defense against the assault on his person by the accused."[20]

As correctly ruled by the Court a quo, there was no treachery in the commission of the crime since Arnold Fernandez was aware of the hostility of the assailants just before the attack and he had the opportunity to observe the commencement of the assault as he was facing his assailants.[21]

As regards the qualifying circumstance of evident premeditation, it is proper to review the appreciation of the same even if not raised as an error in the appeal, in line with the jurisprudence

> "that an appellate court is cloth with ample authority to review rulings even if they are not assigned as errors on appeal, and this is especially so if the court finds that their consideration is necessary in arriving at a just decision of the case before it."[22]

Evident premeditation cannot be appreciated against appellants. Although the defamatory words uttered by the victim against Corazon Caro-Lascano must have spawned the grudge of appellants towards the victim, the evidence for the prosecution has not established all the elements[23] of evident premeditation, to wit: (1) the time the offender determined to commit the crime; (2) an act indicating that the offender had clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender to reflect upon the consequences of his act.

In some cases, the Court held that the lapse of more than three (3) hours, as in the present case, sufficed for the offender to reflect on the consequences of his intended crime. But in this case, the prosecution failed to prove the first element of evident premeditation. As has been consistently ruled, evident premeditation should not be appreciated where "there is neither evidence of planning or preparation to kill nor the time when the plot was conceived."[24] Here, the Trial Court merely inferred the existence of evident premeditation from the acts of the assailants, concluding as follows:

> "The fact that the three assailants approached the victim at the time he was drinking alone several hours after the latter had an argument with Ruben Lascano's wife, Corazon, showing that indeed there was a pre-determined plan on the part of the assailants to attack the victim. The presence of a firearm in Ruben Lascano's possession and the assailant's superior number clearly bespeaks of a deliberate plan on their part to ensure the execution of the crime."[25]

Evidently, the prosecution has not proven the necessary "direct and positive evidence"[26] to qualify the killing to murder.

All things duly considered, the Court is of the conclusion, and so finds, that appellants can only be guilty of homicide, absent any circumstance to qualify the felonious killing complained of to murder. Considering the absence of any mitigating or aggravating circumstance to modify the penalty of reclusion temporal prescribed by Article 249 of the Revised Penal Code, the same penalty should be imposed in its medium period. With the application of the Indeterminate Sentence Law, appellants have to suffer the penalty[27] of eight (8) years of prision mayor, minimum, to fourteen (14) years, eight (8) months and one day of reclusion temporal, as maximum.

WHEREFORE, as above indicated, the appealed Decision is accordingly MODIFIED. Appellants EDUARDO ALTABANO Y ELLORIN and BENJAMIN CARO Y YU are adjudged guilty of Homicide and are hereby sentenced to suffer the indeterminate penalty of eight (8) years of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one day of reclusion temporal, as maximum. The judgment appealed from is affirmed in all other respects. No pronouncements as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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[1] Dated May 29, 1995; Rollo, pp. 16-35.

[2] Presided by Judge Adoracion G. Angeles.

[3] Rollo, p. 35.

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[4] Rollo, p. 3.

[5] Original Records, p. 32.

[6] Appellee's Brief, pp. 4-6.

[7] Decision, Rollo, p. 24.

[8] Decision; Rollo, p. 25.

[9] Rollo, pp. 28-29

[10] Appellants' Brief, Rollo, pp. 79-80.

[11] People vs. Umali 242 SCRA 17, p .23, citing People vs. Hortillano 177 SCRA 729, 739 and People vs. Baylon 57 SCRA 114.

[12] Decision, Rollo, p. 33.

[13] People vs. Morales, 241 SCRA 267, p. 275, citing People vs. Javier, 229 SCRA 638.

[14] Rollo, pp. 31-32.

[15] See Decision, Rollo, pp. 20 and 23.

[16] People vs. Pija 245, SCRA 80, p. 85, citing People vs. Rostata, Jr., 218 SCRA 657.

[17] Rollo, p. 34.

[18] People vs. Salvatierra, 257 SCRA 489, p. 506, citing People vs. Apawan, et. al., 235 SCRA 355.

[19] Rollo, pp. 34-35.

[20] People vs. Pagsanjan, 221 SCRA 735, p. 745.

[21] Rollo, p. 35.

[22] Servicewide Specialist, Inc. vs. Court of Appeals, et. al., 257 SCRA 643.

[23] People vs. Magsombol, 252 SCRA 187, p. 200, citing People vs. De la Cruz, 242 SCRA 129.

[24] People vs. Nazareno, et. al., 260 SCRA 256 p. 282 ,[1996], citing People vs. Salvador, 224 SCRA 819[1993]; People vs. Wenceslao, 212 SCRA 560, p. 569[1992], citing People vs. Caraig, G.R. No. 91162, October 3, 1991.

[25] Rollo, p. 35.

[26] People vs. Aquino, 158 SCRA 212.

[27] People vs. Ocsimar, 253 SCRA 689, p. 698[1996].

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