PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEPITO ORBITA Y JUSAY, CEFERINO CAPISUNDA Y BALCE, AND ORLANDO SANTIAGO Y FRANCISCO, ACCUSED-APPELLANTS.

G.R. No. 122104. January 19, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case is an appeal from the decision of the Regional Trial Court, Batangas, Branch 13, Lipa City finding accused-appellants Pepito Orbita y Jusay, Ceferino Capisunda y Balce and Orlando Santiago y Francisco, guilty beyond reasonable doubt of murder.[1]

On October 3, 1989, the third assistant Provincial Prosecutor, province of Batangas, filed with the Regional Trial Court, Lipa City an Information charging accused-appellants with murder committed as follows:

> "That on or about the 18th day of August, 1989, at about 7:30 o'clock in the evening, at Barangay Tipaz, Municipality of San Juan, Province of Batangas, Philippines and within the jurisdiction of this honorable court, the above named accused, armed with long firearms, conspiring, and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearms one Diosdado de Guzman y Areglado, suddenly and without warning, thereby inflicting upon the latter multiple gunshot wounds on different parts of his body which directly caused his death.
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> "Contrary to law."[2]

The accused were arraigned separately. Pepito Orbita y Jusay and Ceferino Capisunda y Balce were arraigned on December 4, 1989, and they pleaded not guilty. The accused Orlando Santiago y Francisco was arraigned on January 9, 1990. He pleaded not guilty.[3] Trial ensued.

The facts are as follows:

On August 18, 1989 at about 2:00 in the afternoon, Arbel Magtibay, Gildo Areglado, Diosdado de Guzman and Ading Ray were having a drinking spree in front of the house of Ading Ray at Barangay Tipaz, San Juan Batangas. At that moment, accused-appellants Pepito Orbita, Ceferino Capisunda and Orlando Santiago all CAFGU members passed by. They were invited by the group to drink. When Ading Ray handed Santiago a drink, the latter threw the glass of lambanog, which prompted Diosdado de Guzman to say " kung iinom, uminom, kung ayaw huwag itapon ang alak". Obviously irked by the remark, Orbita, Capisunda and Santiago suddenly pointed their rifles at Diosdado de Guzman. Ading Ray pacified the three accused who thereafter left.[4]

Later that same day, at around 7:30 in the evening, while Diosdado de Guzman, Ambo Comia, Lordino Mendoza and Arbel Magtibay were walking home, they met the two accused-appellants, Pepito Orbita and Orlando Santiago in front of the store of Rosenda Bautista. The two poked their M-14 armalite rifles at Diosdado de Guzman. Lordonio Mendoza pacified the accused-appellants. However, Orbita suddenly opened fire at Diosdado

de Guzman, hitting the latter on the chest. Ambrocio Comia and Lordino Mendoza, companions of Diosdado de Guzman fled from the scene while helping Diosdado, and after reaching a big stone at the side of the road left Diosdado to call for a jeep to bring the seriously wounded Diosdado to a hospital.[5]

Eyewitness Juanito Mendoza testified that he was at his house nearby when he heard the shots. When he went out of his house, he saw Diosdado de Guzman being aided by Ambrocio Comia, and Lordonio Mendoza. Diosdado de Guzman was bloodied. Ambrocio Comia and Lordonio Mendoza then left to look for a jeep. Juanito Mendoza went to the side of the road in front of his house and saw Ceferino Capisunda at the other side of the road, carrying a long firearm. Juanito asked him not to fire his gun because his mother was sick and the shot would alarm her. Ceferino Capisunda did not respond. Juanito Mendoza went on his way home. After a few steps away from Ceferino and before reaching his house, he heard someone calling him "Cap" followed by a burst of gunfire. When he turned around, he saw Ceferino Capisunda firing his long firearm at Diosdado de Guzman and the latter fell to the ground, near the stairs at the side of the road just in front of his house. The latter was instantly killed.[6]

After consideration of the evidence presented by both parties, on February 2, 1995, the trial court rendered judgment finding the accused guilty as charged. The dispositive portion of the decision reads:

> "WHEREFORE, premises considered and taking into account the qualifying circumstance of Treachery and the generic aggravating circumstance of use of superior strength, the court finds the accused Pepito Orbita, Ceferino Capisunda and Orlando Santiago GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER and are hereby sentenced to suffer the penalty of RECLUSION PERPETUA together with all the accessory penalties, to jointly and solidarily indemnify the heirs of the victim in the amount of FIFTY THOUSAND (50,000.00) PESOS and to pay the costs of suit.
>
> SO ORDERED."[7]

Hence, this appeal.

In their brief, accused-appellants imputes the following errors to the trial court:

- In finding that there was conspiracy and thus convicting the three (3) accused of murder;
- In not giving credit to the testimonies of the three accused;
- In not finding that there was sufficient provocation on the part of the victim.[8]

We find the appeal without merit.

"Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement may be deduced from the manner in which the crime was committed;[9] or from the acts of the accused before, during and after the commission of the crime, indubitably pointing to and indicating a joint purpose, a concert of action and a community of interest."[10] "Conspiracy may even be shown through circumstantial evidence, or deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interest."[11]

In the case at bar, although not all the accused fired on Diosdado de Guzman, all of them acted together to achieve one common design, to kill Diosdado de Guzman. The series of events and the actuations of the three accused reveal that there was a common design, understanding, and agreement amongst them to commit the crime charged.

The accused-appellants were in each other’s company when the first encounter between their group and that of Diosdado de Guzman occurred. When they met on the road Pepito Orbita and Orlando Santiago were together.

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Although it was only Pepito Orbita who fired the first shot, Orlando Santiago also pointed his gun at the deceased Diosdado de Guzman and his companions, thereby participating in the unlawful aggression. Ceferino Capisunda on the other hand positioned himself at the other side of the road and when Diosdado de Guzman was attempting to escape, shot the latter several times, until the helpless Diosdado fell to the ground dead. All these taken together reveal a well planned and orchestrated design to kill, not merely injure the deceased Diosdado de Guzman.

The accused-appellants testified that at the time of the incident they were all going to attend a baptismal rite of the daughter of their friend Celso Sorpia. On their way to the baptism, they saw Diosdado de Guzman having a drinking spree with a group of persons they did not know. De Guzman called them and offered drinks. Capisunda and Orbita obliged, Santiago did not drink.

Upon reaching the place of the baptismal rites, the three accused-appellants took snacks. Hours later, de Guzman arrived with two companions and de Guzman cursed them (accused-appellants) saying that the CAFGUs were "walang kuwentang tao at palamunin ng gobyerno". They just kept their cool and after a while Capisunda left Santiago and Orbita behind. At around 7:00 p.m. Orbita and Santiago left the place of the baptism for the PC detachment; on their way, they met de Guzman who uttered "Walang kuwentang tao ang mga CAFGU, dapat ay pinagpapapatay na." They again ignored his remarks, but de Guzman hit Orbita on the head and he became dizzy. He heard gunfire, but he did not know whether anybody was hit. He woke up and regained consciousness at the hospital.[12]

We are not convinced of the testimony of the accused. The testimony of Pepito Orbita is unbelievable and implausible. According to him, he fired his gun only once. How can he explain that there were five gunshot wounds found in the body of the victim, with different points of entry and trajectory.[13]

"Positive identification, where categorical and consistent and without any showing of ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial which, if not substantiated by clear and convincing proof, are negative and self-serving evidence undeserving of weight in law."[14]

In the case at bar, three eyewitnesses positively testified that accused-appellants shot and killed Diosdado de Guzman.

As to the claim that there was sufficient provocation on the part of the victim, we find the claim puerile and does not deserve any discussion. The remarks of the deceased were not sufficient to provoke and goad the accused to kill.

All told, we are convinced beyond a shadow of doubt that the accused-appellants acted in concert and killed Diosdado de Guzman treacherously. We agree with the trial court that the killing was qualified by treachery.[15] The victim was unarmed. Accused Orbita shot the victim suddenly and unexpectedly with an M-14 Garand rifle. Accused Capisunda followed in shooting the victim as he was fleeing from the shots, also with an M-14 Garand rifle. Accused Santiago aimed his gun at the victim. Though he did not fire, he is equally guilty due to the conspiracy. When conspiracy is established, it matters not who among the accused actually shot and killed the victim.[16]

WHEREFORE, the Court hereby AFFIRMS the appealed decision with MODIFICATION. The accused are in addition sentenced jointly and severally to pay the heirs of the victim the amount of P50,000.00, as moral damages.

Costs against appellants.

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SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] In Criminal Case No. V-2189, Decision, Regional Trial Court, Judge Jane Aurora C. Lantion, presiding. Original Record, pp. 203-209.

[2] Information, Original Record, p. 1.

[3] Ibid., Order, Criminal Case No. V-2189, dated December 4, 1990, Ibid., p. 34.

[4] TSN, Jan. 21, 1993, pp. 11-12; Feb. 26, 1990, pp. 3-8.

[5] TSN, Jan. 21, 1993, pp. 5-9.

[6] TSN, April 11, 1990, pp. 8-14.

[7] Original Record, Decision, Regional Trial Court, pp. 203-209, at page 209.

[8] Rollo, Appellants Brief, pp. 56-69, at page 58.

[9] People vs. Cawaling, 293 SCRA 267, 306 (1998); see also People vs. Andres, 296 SCRA 318, 339 (1998), citing People vs Palomar, 278 SCRA 114 (1997), People vs. Cabiles Sr., 258 SCRA 271(1996)

[10] People vs. Isabelo Perez, G. R. No. 130501, September 2, 1999, citing People vs. Magallano, 266 SCRA 305 (1997), People vs. Albao, 287 SCRA 129 (1998)

[11] People vs. Marcelino, G. R. No. 126269, October 1, 1999, citing People vs. Galapin, G. R. No. 124215, July 31, 1998; People vs. Tabag, 268 SCRA 115, 127 (1997); People vs. Laurente, 255 SCRA 543, 564 (1996); Pecho vs. People, 262 SCRA 518, 530 (1996)

[12] TSN, July 9, 1990, pp. 2-10.

[13] Original Record, Exhibit "F", Post Mortem examination, p. 21.1

[14] People vs. Villablanca, supra, citing People vs. Dinglasan, 267 SCRA 26 (1997)

[15] Original Record, Decision, Criminal Case No. V-2189, p. 209.

[16] People vs. Araneta, 300 SCRA 80, p. 97 (1998), citing People vs. Sequino, 264 SCRA 79 (1996).

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