

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GEORGE BAYOD Y DALURAN, ACCUSED-APPELLANT.

G.R. No. 122664. February 05, 2001

Ponente: PARDO, J.

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PARDO, J.:

The case before the Court is an appeal from a decision of the Regional Trial Court, Branch 01, Manila convicting accused George Bayod y Daluran of murder and frustrated homicide, for the killing of Eduardo del Rosario y Diaz and the near fatal killing of Arnold Tamo y Martinez.

The fallo of the decision reads:

"WHEREFORE, this court finds the accused George Bayod y Daluran GUILTY beyond reasonable doubt of the crimes of murder and frustrated homicide and, as a consequence thereof, sentences him, as follows:

"(1) In Criminal Case No. 92-112209, to suffer the penalty of reclusion perpetua together with all the accessory penalties provided by law.

"Further, he shall indemnify Amelia del Rosarion in the total amount of P67,535.00 as actual and compensatory damages and P15,000.00 as and for attorney's fees; and the legal heirs of the deceased in the amount of P50,000.00 as damages for death and P100,000.00 as moral damages, without subsidiary imprisonment in case of insolvency; and

"(2) In Criminal Case No. 92-112210, to suffer the indeterminate prison term of six (6) years of prision correccional maximum as minimum to ten (10) years of prision mayor medium as maximum.

"Cost against the accused in both cases.

"SO ORDERED."[1]

By two separate Information filed on November 4, 1992, with the Regional Trial Court, Manila, Assistant City Prosecutor Arturo A. Cabides of Manila charged accused with murder and frustrated murder, as follows:

Criminal Case No. 92-112209

"INFORMATION

"The undersigned accuses GEORGE BAYOD Y DALURAN of the crime of MURDER, committed as follows:

"That on or about November 1, 1992, in the city of Manila, Philippines, the said accused, conspiring and confederating with others, whose names, identities and present whereabouts are still unknown and helping each other, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault and use personal violence upon the person of one EDUARDO DEL ROSARIO Y DIAZ, by then and there hacking and mauling the latter several times on the different parts of his body with

a bolo, thereby inflicting upon him mortal stab wounds which were the direct cause of his death.

"CONTRARY TO LAW.

"ARTURO A. CABIDES

Assistant City Prosecutor"[2]

Criminal Case No. 92-112210

"INFORMATION

"The undersigned accuses GEORGE BAYOD Y DALURAN of the crime Frustrated Murder, committed as follows:

"That on or about November 1, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with others, whose names, identities and present whereabouts are still unknown and helping each other, with intent to kill and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault and use personal violence upon one ARNOLD TAMO Y MARTINEZ, by then and there hacking and mauling the latter with a bolo on the different parts of his body, thereby inflicting upon him physical injuries which are necessary mortal (sic), thus performing all the acts of execution which would have produced the crime of murder as a consequence but which nevertheless, did not produce it by reason or cause independent of the will of the said accused, that is, the timely and able medical assistance rendered to the said ARNOLD TAMO Y MARTINEZ, which prevented his death.

"CONTRARY TO LAW.

"ARTURO A. CABIDES

"Asst. City Prosecutor"[3]

Upon arraignment on November 27, 1992, accused entered a plea of not guilty in both cases.[4] He filed a petition for bail; however, after due hearing, on April 7, 1993, the trial court denied the petition.[5] Joint trial of the cases ensued.

On November 1, 1992, around 2:30 in the afternoon, Eduardo del Rosario, Arnold Tamo, Oliver Alano, Luis Diaz and a certain Timoteo were in front of Eduardo's house located at No. 1122 Antipolo St., Sampaloc, Manila. Earlier that morning, they sold fish at the España market. Eduardo's companions accompanied him home, and assisted him because he was a paralytic.[6]

The doorbell at the gate of the house was not functioning, so the group registered their presence by knocking at the gate and shouting "Hoy, Tao," which words were echoed by someone from accused's group which was having a drinking session in a neighboring house. After a short exchange of words between the two groups, accused and his two (2) companions went out of their house and challenged Eduardo's companions to a fistfight. When accused's group was about to be overpowered, they went back to accused's house and each of them got a weapon. Accused hacked Arnold Tamo with a bolo on the head and stabbed him at the left side of his body. Then accused went after Luis Diaz and Timoteo who ran away from the scene.[7]

Thereafter, accused attacked Eduardo with a bolo hitting the latter on the left chin. Accused's companions, who had armed themselves with wooden clubs, struck Eduardo on the head and face.[8]

Accused then threatened Oliver Alano with a bolo. However, Oliver pleaded that he be spared, and accused relented. Subsequently, one of accused's companions struck Eduardo with a wooden club and then turned to Oliver and hit his arms.[9]

Both Eduardo and Arnold Tamo were brought to the UST Hospital and at around 6:45 in the evening, Eduardo expired.[10]

During the trial, the prosecution presented Amelia del Rosario, the common-law wife of Eduardo. She testified that she saw the entire incident from the second floor balcony of their house facing Antipolo Street, which was three meters up from the ground floor. She saw George Bayod hack her husband Eduardo with a bolo. She knew George Bayod because they were neighbors.

She hurriedly went down and sought help from a passing police mobile patrol car. Policemen rushed Eduardo and Arnold unconscious to the UST Hospital, for treatment.[11]

Aside from Amelia, Arnold Tamo, one of the victims who survived the attack, testified that accused George Bayod attacked them. He positively identified accused Bayod as the one who hacked him on the head and then stabbed him at the left abdomen.[12]

Oliver Alano was another witness for the prosecution. He testified that one of the companions of accused Bayod struck Eduardo del Rosario with a piece of wood when the latter was down.[13]

The medical reports of Dr. Sergio Alteza, Medico Legal Officer, UST Hospital showed that Eduardo del Rosario sustained the following injuries:

"INJURIES: Unconscious, stretcher-borne

"1. Depressed fracture - 3 cm, left frontal area, head

"2. Periorbital contusion with hematoma, left

"3. Massive contusion with hematoma, 10 x 15 cm. face, left

"4. Stab wound, 3 cm x 1 cm, left submandibular area

"5. Multiple contuso-abrasions, Rt. Forearm, Rt. Elbow and Rt. Knee

"6. Massive intracranial hemorrhage.[14]

And Arnold Tamo the following:

"Injuries:

"1. Stab wound, 12 cm x 3 cm., mid-parietal area, head

"2. Stab wound, 7 cm. x 1 cm., abdomen"[15]

According to accused Bayod, on November 1, 1992, he was at his house at No. 1124 Antipolo St., Sampaloc, Manila.

About lunchtime, he was cooking and entertaining his visitors, who were applying as security guards. After lunch, he heard a loud voice coming from outside his house. Someone was uttering "putang ina ninyo." He went to their gate outside and saw around seven (7) to eight (8) persons in front of the house of Eduardo del Rosario, talking to each other. He went inside his house and again heard someone say "putang ina ninyo, patay kayong lahat." At this juncture, accused Bayod and two of his visitors went out of the gate of his house. He saw a commotion happening outside.[16]

He saw his two visitors, his cousin and brother-in-law, in front of the house of Eduardo del Rosario with four other men engaged in a fight and that the group of del Rosario were all armed with lead pipes and knives. They hit

accused on the forehead with a lead pipe after which he went inside his house and got his bolo. When he went out, he was met by three men holding steel pipes and fan knives. He recognized one of them as Arnold Tamo. They were waiting for him to strike. Someone struck him on his left shoulder with a steel pipe. He then retreated and felt weak but the men continued to pursue him and when they were about to attack, he swung his bolo and hit Arnold Tamo on the left side of the body.[17]

The commotion and the fight lasted more than five minutes. The group of del Rosario retreated and accused chased Arnold Tamo and his companions. When he returned to the scene of the commotion, he noticed a man sprawled face down on the road and recognized him to be del Rosario. However, he did not approach him for there were people coming and so he ran towards his house.[18]

Senissa Castissima, wife of the accused, and Felicidad Garcia testified that there was no conspiracy among the accused and his friends. They did not see the commotion that led to the death of Eduardo del Rosario and the serious injury sustained by Arnold Tamo.

On August 18, 1995, the trial court rendered a decision convicting accused and sentencing him as set forth in the opening paragraph of this decision.

Hence, this appeal.[19]

The accused-appellant raises the following issues:

- Whether the trial court erred in not absolving him of the crime charged considering the testimony of prosecution witness Oliver Alano;
- Whether the trial court erred in holding that there was conspiracy among the accused and the other unidentified malefactors;
- Whether the trial court erred in considering the attendance of the aggravating circumstance of treachery;
- Whether the trial court erred in concluding that the accused hacked the deceased on the chin contrary to the findings of the medico legal expert; and
- Whether the trial court erred in depending on the testimony of Amelia del Rosario, who was not an eyewitness.[20]

We shall scrutinize the testimonies of both the prosecution and defense witnesses. The first assigned error deals with the testimony of prosecution witness Oliver Alano.[21] We quote the testimony to better understand its import.

"Q.

Before that, how about the two companions of George Bayod, where were they when Bayod was trying to run after Luis, Arnold and Timoteo?

"A. Among the companions of George Bayod, there was one left behind.

"Q. Why, was only one left? How about the other one?

"A. I did not notice him anymore ma'am.

"Q. And then, what happened?

"A.

The one who was left behind picked up a piece of wood and struck Mr. Eduardo del Rosario on the head.

"Q. How many times?

"A.

Once when Mr. Del Rosario was still standing and twice when he was already on the ground.[22]

Clearly, witness Oliver Alano did not absolve the accused of the crime. Witness Oliver Alano simply stated that "it was the one who was left behind that struck the deceased with a piece of wood." He declared that accused-appellant George Bayod hacked the deceased with a piece of wood. Hence, Oliver Alano did not absolve accused-appellant of the crime charged.

In the second assigned error, accused-appellant argues that there was no conspiracy among accused-appellant and his other unidentified companions. The argument deserves no merit. Conspiracy can be deduced from the acts of the assailant prior, during and after the attack. "To establish conspiracy it is not essential that there be previous agreement to commit the crime; it is sufficient that there be a common purpose and design, concerted action and concurrence of interests and the minds of the parties meet understandingly so as to bring about a deliberate agreement to commit the offense charged, notwithstanding the absence of a formal agreement." [23]

"The agreement may be deduced from the manner in which the offense was committed; 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. It is not essential that there be proof of the previous agreement to commit the crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose." [24]

In this case, the series of events indubitably show that there was unity of purpose and concurrence of will, and that they all acted in concert towards the same end. (1) Accused-appellant and his companions were together as a group in the neighboring house; (2) when Eduardo and his group called out from the gate of his house, someone from the group of accused-appellant retorted to every call made by the other group; (3) after an exchange of unpleasant words between the two group, accused-appellant and two of his companions went out of the house and engaged the group of del Rosario in a fist fight; (4) when they were about to be overtaken by the group of del Rosario, they all retreated to the house of accused-appellant and armed themselves with bolos, lead pipes, knives and wooden clubs; and (5) they went on the attack again against the group of del Rosario, with accused George Bayod thrusting the first blow on del Rosario and on Arnold Tamo.

Such events undeniably point to one conclusion, that is, to subdue the opposing faction. This is evidence to prove the existence of conspiracy.

In the third assigned error, accused-appellant claims that treachery was not present in the killing of Eduardo del Rosario.

Treachery is present when the offender commits any crime against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from any defense which the offended party might make.[25]

The deceased del Rosario was a paralytic and was not armed at the time of the attack. He was not in a position to defend himself. The attack on del Rosario was without risk of any defense or retaliation from the deceased, hence, treacherous. However, the attack on Arnold Tamo could not be considered treacherous since the victim could easily avoid the attack by fleeing from accused-appellants and his companions.

In the fourth assigned error, accused assails the discrepancies in the testimony of prosecution witnesses and that of Dr. Sergio Alteza, Jr., the medico legal expert. According to the accused, the trial court concluded that accused

hacked the deceased on the chin whereas the testimony of Dr. Alteza stated that the wound on the chin was a stab wound not a hack wound. We see no discrepancy in the medico legal report and the testimony of prosecution witness as to the kind of injury sustained by the deceased del Rosario on the chin. The prosecution witnesses were using the term hacked in layman's terminology, whereas Dr. Alteza used the term stab wound as a doctor who knew the difference between a hack wound, stab wound and an incised wound.

Further, we agree with the Solicitor General that the issue is legally inconsequential since among accused's group he was the only one holding a bladed weapon. All the others were armed with wooden clubs.

As to the fifth error, we find no support for the argument that witness Amelia del Rosario, being the wife of the victim would be "overwhelmed by the tragedy and could naturally lead her to point an accusing finger to an obvious and known target--her neighbor, accused George Bayod." [26]

"On the contrary, relationship itself could strengthen credibility in a particular case, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. The earnest desire to seek justice for a dead kin is not served should the witness abandon his conscience and prudence to blame one who is innocent of the crime." [27]

Eyewitness Amelia del Rosario was a few meters away from the scene and her view was unobstructed. On the other hand, Arnold Tamo was in the middle of the commotion, hence, distracted by everything that was going on around him. Amelia del Rosario was in a position to clearly see what was happening. She was outside of the commotion area and necessarily focused attention on her husband.

In summation, we believe that accused-appellant George Bayod y Daluran and his group had one thing in mind when they went out to face the group of Eduardo del Rosario. They were irked by the exchange of words between their group and that of the deceased.

Initially, the group of accused-appellant went out to meet the group of del Rosario and engaged them in fisticuffs. It should have ended there when accused-appellant George Bayod went back to his house. However, accused-appellant went out again and armed with a two feet bolo went on a rampage and begun the attack on the group of the deceased Eduardo del Rosario, who were all unarmed and so were easily overpowered.

Accused-appellant was the first to initiate the attack with his two feet bolo. The deceased del Rosario was a paralytic, who could hardly move. The seriously wounded Arnold Tamo was unarmed and completely overpowered by the group of accused-appellant. With this scenario, the conclusion is inevitable that accused-appellant George Bayod and his unidentified companions ganged-up on the group of del Rosario and with an advantage in number and strength killed del Rosario and seriously wounded Arnold Tamo, who could have died if not for the timely medical attention given him.

The trial court erred in convicting accused Bayod of frustrated homicide. It is clear from the nature of the wounds inflicted on Arnold M. Tamo that the wounds were fatal wounds. The weapon used was a two feet bolo. From these, it could be readily concluded that the intent of accused-appellant was to kill Arnold Tamo, not merely to injure him.

Intent to kill may be deduced from the nature of the wound inflicted and the kind of weapon used. In the case at bar, accused-appellant was armed with a two feet bolo and the injuries sustained by Arnold Tamo in the head and the belly were fatal wounds that would have caused his death had he not been given immediate medical attention. This belies any claim that accused-appellant did not intend to kill Arnold Tamo.

"A felony is frustrated when the offender performs all the acts of execution which would produce the felony as a

consequence which nevertheless, do not produce it by reason or causes independent of the will of the perpetrator." [28] In this case, timely medical attention saved the life of Arnold Tamo.

The penalty for frustrated murder is one degree lesser than that prescribed for the consummated felony, [29] which in this case is prision mayor maximum to reclusion temporal medium. [30]

Applying the Indeterminate Sentence Law and in the absence of any modifying circumstance, the penalty for frustrated murder may be eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight months of reclusion temporal, as maximum.

IN VIEW WHEREOF, the decision of the trial court is hereby AFFIRMED, with modification that the accused-appellant George Bayod y Daluran is found guilty of murder and sentenced to reclusion perpetua, in Criminal Case No. 92-112209, and of frustrated murder and sentenced to an indeterminate penalty of eight (8) years of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, in Criminal Case No. 92-112210. In all other respects, the appealed decision is affirmed.

Costs against accused-appellant.

SO ORDERED.

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

[1] Decision, Criminal Cases Nos. 92-112209-10, promulgated August 18, 1995, Judge Rebecca G. Salvador, presiding, Original Record, pp. 299-309 at pp. 308-309.

[2] Original Record, p. 2.

[3] Original Record, p.13.

[4] Ibid., Certificate of Arraignment, p. 36.

[5] Ibid., Resolution, pp. 82-84.

[6] TSN, December 2, 1992, p. 3; TSN, January 19, 1993, pp. 3, 5 and 7.

[7] TSN, December 9, 1992, pp. 5-12; TSN January 19, 1993, pp. 9-16.

[8] TSN, December 2, 1992, pp. 8-9 and 11; Exh. "G".

[9] Ibid., pp. 8-9 and 11-12; TSN, December 9, 1992, pp. 13-14.

[10] TSN, December 2, 1992, p. 28.

[11] Ibid., pp. 6-11.

[12] TSN, January 19, 1993, pp. 15-16.

[13] TSN, December 9, 1992, p. 12.

[14] Original Record, Exhibit "1", Medical Report, p. 287.

[15] Original Record, Medical report, p. 105.

[16] TSN, July 5, 1993, pp. 5-7.

[17] Ibid., pp. 8-12.

[18] TSN, February 9, 1995, pp. 17-18.

[19] Rollo, p. 37.

[20] Appellants Brief, Rollo, pp. 72-74.

[21] Also spelled Alanao in the TSN.

[22] TSN, December 9, 1992, p. 12.

[23] *People vs. Gallo*, 318 SCRA 157, 165 [1999].

[24] *People vs. Fuertes*, G. R. Nos. 95891-92, February 28, 2000.

[25] *People vs. Reyes*, G. R. No. 133647, April 12, 2000; and *People vs. Samad Agando*, G. R. No. 130670, May 31, 2000.

[26] Appellants Brief, Rollo, p. 99.

[27] *People vs. Rendoque Sr.*, G. R. No. 106282, January 20, 2000; *People vs. Dacibar*, G. R. No. 11286, February 17, 2000.

[28] Article 6, Revised Penal Code.

[29] Article 50, Revised Penal Code.

[30] *People vs. Cupcupin*, G. R. Nos. 118573-74, May 31, 2000; see also *People vs. Aglipa*, G. R. No. 130941, August 3, 2000; *People vs. Gungon*, 351 Phil. 116, 139 [1998].

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