

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO NAVA Y DELA CRUZ @ MARCING, GERALD QUILIZA Y
ORCILLA @ JAY AND ANGELITO QUILIZA, ACCUSED-APPELLANTS.**

G.R. No. 123148. April 20, 1999

Ponente: ROMERO, J.

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ROMERO, J.:

Accused-appellant Marcelino Nava, along with Gerald and Angelito both surnamed Quiliza, were charged with the crime of murder in Criminal Case No. D-11260 before the Regional Trial Court[1] of Dagupan City, Branch 44, in an amended information dated November 27, 1992, which reads as follows:

"That on or about the 9th day of November, 1992, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARCELINO NAVA y dela Cruz @ Marcing, GERALD QUILIZA y Orcilla @ Jay and ANGELITO QUILIZA, the 1st being then armed with a bolo and the two (2) armed with pieces of wood, taking advantage of superior strength and with intent to kill one EMILIO ICO, confederating together, acting jointly and helping one another, did then and there, wilfully, unlawfully and criminally, attack, assault and use personal violence upon the latter by smashing and hitting him on vital parts of his body with the said weapons, thereby causing his death shortly thereafter due to 'Cardio Respiratory Arrest, Massive Intracranial Hemorrhage, Traumatic' as per Autopsy Report issued by Dr. Tomas G. Cornel, Asst. City Health Officer, this City, to the damage and prejudice of the legal heirs of said deceased, EMILIO ICO, in the aforesaid amount of FIFTY THOUSAND PESOS (P50,000.00), Philippine currency, and other consequential damages.

Contrary to Article 248 of the Revised Penal Code."

When arraigned, appellant and Gerald Quiliza entered a plea of not guilty. The other accused, Angelito Quiliza, however, remained at large.

The evidence for the prosecution reveal the following facts.

Rodrigo Ico, a resident of Pantan East, Dagupan City, and a nephew of the deceased Emilio Ico, testified that at about 8:00 p.m. of November 9, 1992, while having dinner at his house, he rushed outside to investigate an ongoing scuffle and thereupon saw appellant Nava on top of the deceased who lay prostrate on the ground, while being repeatedly clubbed by the Quiliza brothers with a piece of wood. Recognizing all the accused as they reside in the same barangay, Rodrigo pleaded with Angelito to stop the beating, which appeal the latter heeded as he released the weapon used and walked away from the scene of the crime. When he called Nava's attention, the latter stood up and tried to stab him with a bolo. Rodrigo ran away and sought the help of Barangay officer Rudy Torio and, together, they returned to the locus criminis. All of the accused having disappeared, they brought the deceased to the Pangasinan Medical Center where he eventually expired.

Josefina Francisco, likewise in her capacity as eyewitness, narrated that on the night of the incident, she was watching television at a nearby house when she chanced upon the deceased who told her that someone was

throwing stones at his house. Intrigued by his story, Josefina trailed him until the deceased reached his house. Suddenly, Angelito Quiliza thrashed the deceased with a piece of wood until the latter fell down. Nava, on the other hand, clambered on top of him and hacked him with a bolo. Gerald Quiliza was seen standing beside the other two brandishing a longer piece of wood.

Assistant City Health Officer Tomas G. Cornel testified on the results of the autopsy conducted upon the person of the deceased and explained that the latter sustained several wounds which were probably caused by dull or blunt instruments, such as a piece of wood, lead pipe or even a bolo which has no blade at all. With his findings, Dr. Cornel concluded that the death of the deceased was caused by massive intra-cranial hemorrhage due to trauma.

The defense, on the other hand, presented appellants Marcelino Nava and Gerald Quiliza.

Nava, a watch and electronic repairman, testified that on the night in question, he was on his way to Intramuros, Dagupan City, to visit his brother.[2] However, he was arrested by elements of the Dagupan City Police Station for his alleged participation in the death of Emilio Ico. In an incoherent narration of events, he contended that he even met the deceased who was going to Intramuros, drunk and wielding a bolo, shouting invectives at their neighbors who came his way.

Gerald Quiliza, in his attempt to exculpate himself from any criminal liability, averred that while working at his uncle Carlos Cacayurin's compound, he saw his co-accused and brother-in-law, Marcelino Nava, conversing with the deceased Emilio Ico in front of the latter's house. The conversation, however, resulted in a heated altercation whereby the deceased allegedly went inside his house and came charging back at Nava unsheathing a 14-inch long bolo. Nava ran towards the Quiliza residence and fetched Angelo. It was at this moment that Gerald reported the matter to his mother, Soledad, who ordered him to stay inside the house while she proceeded to the place of the incident.

A few hours thereafter, the Quiliza family heard over the radio that Gerald is the subject of a manhunt for killing Emilio Ico. Hence, Gerald, accompanied by his mother Soledad and uncle Carlos, presented himself before barangay captain Philip Maramba to deny any such involvement. Consequently, they proceeded to the police station where Gerald was investigated and eventually incarcerated.

In a decision dated May 22, 1995, the trial court convicted the appellants, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused Marcelino Nava y dela Cruz @ Marcing and Gerald Quiliza y Orcilla @ Jay guilty beyond reasonable doubt of the crime of Murder, and are sentenced as follows:

1. Accused Marcelino Nava y dela Cruz @ Marcing is sentenced to suffer the penalty of Reclusion Perpetua;
2. Accused Gerald Quiliza is sentenced to suffer the penalty of from Ten Years of Prision Correccional in its maximum period to Prision Mayor in its medium period, as minimum, to fourteen years, ten months and twenty days of Prision Mayor in its maximum period to Reclusion Temporal in its medium period, as maximum, in view of the presence of the privileged mitigating circumstance of minority under Article 68(2) of the Revised Penal Code and the mitigating circumstance of voluntary surrender which is offset by the aggravating circumstance of nighttime.

Accused Marcelino Nava and Gerald Quiliza are ordered to pay an indemnity of P50,000.00 to the heirs of the deceased. They are also ordered to pay the amount of P13,797.00, representing the expenses incurred in connection with the death of Emilio Ico.

With costs against accused Marcelino Nava and Gerald Quiliza.

SO ORDERED."[3]

On January 16, 1997, Gerald Quiliza manifested his intention to withdraw his appeal, which this Court, upon a showing of the voluntariness of such withdrawal, granted in a resolution dated December 3, 1997.

Nava assails the lower court's finding that the victim was hacked to death as it is not supported by the autopsy conducted by and, as testified to, by Dr. Cornel, which report disclosed that the death was caused by lacerated wounds inflicted with the use of blunt instruments.

The Court sustains the guilty verdict meted out upon the appellant for the crime of murder.

Appellant's position that the prosecution evidence failed to establish the existence of conspiracy is unavailing. In his brief, appellant declared that the mere fact that he was seen on top of the deceased, striking the latter with his fists, while the Quiliza brothers repeatedly assaulted the victim with a piece of wood, is inadequate to support a finding of conspiracy. If appellant is to be believed, how is the combination of all these facts in relation to the death of the deceased to be construed?

It must be noted that Article 8, paragraph 2 of the Revised Penal Code provides that "conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it." In several cases[4] decided by this Court, it has been consistently held that "to establish conspiracy, two or more persons must be shown to come to an agreement concerning the commission of a felony. It is not, however, necessary that direct proof be adduced to establish such agreement. It can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime." Thus, it is unnecessary for the prosecution to show the existence of a previous agreement on the part of the accused to take advantage of their numerical superiority to kill the victim.[5]

In the instant case, the existence of conspiracy is beyond dispute. The series of acts, fistblows by appellant and the clubbing by the Quiliza brothers, resulting in the death of the deceased suggest unity of purpose. Thus, "each of their contributing acts without any semblance of desistance reflected their resolution to commit the said crime." [6]

In the main, appellant contends that the trial court erred in finding that he hacked the victim with a bolo as the prosecution evidence reveal that the wounds suffered by the deceased were caused by a blunt instrument and not by a bolo. This supposition, however, is amply rebutted by Dr. Tomas G. Cornel in his direct examination when he averred, viz.:

"Q

You have mentioned dull or blunt instrument. What are these instrument (sic) which could have caused these wounds under your external findings?

A These are dull or blunt instruments and maybe caused by a piece of wood, lead pipe or bolo, that is (sic) no blade at all.

Q You are referring to a dull bolo?

A Yes sir."[7]

"The nature of the wounds suffered by the victim therefor does not preclude the possibility that a bolo could have

caused the same." [8] Moreover, such a distinction is negated, not only by the circumstances obtaining in the case which point to appellant's culpability, but particularly the positive testimonies of Rodrigo Ico and Josephine Francisco, identifying him as one of those responsible for the death of the deceased.

While it may be conceded that the testimonies of the two prosecution witnesses differ in some respects, as pointed out by the appellant, the same, however, do not affect the veracity of said declarations. It must be noted that Josefina and Rodrigo did not witness the incident at exactly the same time. As correctly observed by the Solicitor General in his brief:

Josefina saw how the incident began. She testified that she saw the victim walking towards his house when he was hit by Angelito Quiliza by a piece of wood. The victim fell and appellant and Gerald joined Angelito in mauling him. Josefina did not stay and watch the entire incident as she was pregnant at that time. Rodrigo, on the other hand, arrived at the time when the victim was already on the ground being beaten up by appellant and the Quiliza brothers. Rodrigo witnessed the incident after it had started up to the time when the victim was brought to the hospital." [9]

Conformably to the foregoing pronouncement, it would indeed be unreasonable to demand from the prosecution witnesses an identical narration of the events which transpired before affirmance of appellant's conviction can be ordered. The law does not require such an exacting standard "where there is consistency in relating the principal occurrence and positive identification of the assailant." [10] Besides, as held in numerous decisions, when there is no evidence to indicate that the principal witness for the prosecution was moved by improper motive, the presumption is that such witness was not so moved and that his testimony is entitled to full faith and credit. [11]

WHEREFORE, in view of the foregoing, the instant appeal is DISMISSED and the appealed decision dated May 22, 1995 is hereby AFFIRMED in toto.

Costs against the appellants.

SO ORDERED.

Vitug, Panganiban, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Judge Crispin C. Laron.

[2] The records, however, failed to disclose his brother's name.

[3] Rollo, p. 39.

[4] *People v. Cortes*, 286 SCRA 295 (1998); *People v. Gungon*, 287 SCRA 618 (1998); *People v. Hayahoy*, SCRA 567 (1997); *People v. Asto*, 277 SCRA 697 (1997).

[5] *People v. Robedillo*, 286 SCRA 379 (1998).

[6] *People v. Bergante*, 286 SCRA 629 (1998).

[7] TSN, January 21, 1993, pp. 19-20.

[8] Rollo, p. 106.

[9] Appellee's Brief, pp. 18-19.

[10] *People v. Perez*, 265 SCRA 506 (1996).

[11] *People v. Balad*, 274 SCRA 695 (1997); *People v. Pija*, 245 SCRA 80 (1995); *People v. Matildo*, 230 SCRA

635 (1994).

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