

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO MUMAR @ LIToy, JOSUE BAYRON @ BOBONG, AND DAGSON BAGAYAN @ TANGKAD, ACCUSED-APPELLANTS.**

*G.R. No. 123155. June 08, 2000*

Ponente: BUENA, J.

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**BUENA, J.:**

Accused-appellants Carlito Mumar @ Litoy, Josue Bayron @ Bobong, and Bagayaw Dagson @ Tangkad appeal the decision of the Regional Trial Court at Tagbilaran City, Branch 2 in Criminal Case No. 8032 entitled "People of the Philippines versus Carlito Mumar, et al." convicting them of murder and sentencing them to reclusion perpetua.

On October 29, 1992, an information was filed against Carlito Mumar, Josue Bayron, and Bagayaw Dagson charging them of the crime of murder committed as follows:

"That on or about the 31st day of August, 1992, in the municipality of Trinidad, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping each other, with abuse of superior strength, they being than (sic) armed with a shotgun, a short firearm and a bolo, did then and there, willfully, unlawfully and feloniously and with intent to kill, assault and shoot with the shotgun one Arsenio Villaver, thereby inflicting multiple shotgun wounds on vital parts of the latter's body which caused his instantaneous death; to the damage and prejudice of the heirs of the deceased.

"Acts committed contrary to the provisions of Article 248 of the Revised Penal Code." [1]

Upon arraignment, appellants pleaded not guilty to the crime charged. The Regional Trial Court thereafter proceeded with the trial.

The following is the testimony of Vincent Villaver, one of the witnesses for the prosecution:

On August 31, 1992 at about 9:00 o'clock in the evening Arsenio Villaver and his 12-year old son Vincent were walking home along the road inside the Bohol Cattle Corporation ranch at San Vicente, Trinidad, Bohol when they were waylaid by three men identified as Litoy (Carlito Mumar), Bobong (Josue Bayron), and Tangkad (Bagayaw Dagson).

Arsenio Villaver and Vincent Villaver were laborers of the Bohol Cattle Corporation ranch while Carlito Mumar (Litoy) was the overseer (caretaker) of the ranch. Josue Bayron (Bobong) and Bagayaw Dagson (Tangkad) were ranch cowboys hired by Mumar.

A shout of "Don't move because we are the police" was heard by Vincent Villaver and his father. With their backs turned towards the three men Vincent and his father raised their hands but all of a sudden they heard a gunshot and Vincent saw that his father was hit at the back. Vincent dropped to the ground and thus was not hit.

The three men went over to where the Villavers were. Vincent noticed that Litoy was armed with a shotgun, Bobong with a revolver and Tangkad was holding a bolo.

Vincent saw Bobong chase his father who ran to the nearby bushes before slumping to the ground. Bobong then ordered the older Villaver to stand up but, when the latter replied that he cannot, the former remarked that Arsenio was just playacting.

Litoy held Vincent and told him that if he will not tell the police that he and his father were caught stealing copra from the ranch, he will be the next one to be killed. While Litoy was threatening the boy, Tangkad was pointing a bolo at the latter.

That same evening Vincent was brought by the three men to the house of Abner Bayron, brother of Josue Bayron (Bobong) and brother-in-law of Carlito Mumar (Litoy). Accused Litoy ordered Abner to take Vincent to the police. Abner then brought Vincent to the municipal building of Trinidad where the policeman on duty told them to go to the station commander at his house.

After his interrogation Vincent and some policemen went back to the ranch. Some time later Litoy, Bobong and Tangkad arrived. They no longer had the weapons which Vincent earlier saw. The three accused told the policemen that the person they fired at, the one that they hit, was left there. When Vincent asked where his father was, the policemen replied that his father is no longer in the bushes. Afterwards, they went back to the municipal hall and it was there where Vincent spent the night.

Vincent returned to the ranch the following morning. This time his companions were his mother and some policemen. They found his father in the bushes already dead. Vincent Villaver learned that his father died of a gunshot wound at the back and that a case for theft was filed against him and his father together with Julieta Polistico before the 5th MCTC Trinidad-San Miguel-Bien Unido, Bohol.

On August 3, 1994, while the case was pending trial, Vincent and his mother, Margarita Villaver were taken by Abner Bayron to Tagbilaran City to the house of Atty. Ramon Cimafranca II, counsel for herein accused, where they were made to sign two affidavits of desistance. They were promised that they would be given money for the settlement of the case. They were told not to attend the hearing of the case nor to inform their lawyer about the execution of the affidavits of desistance.

Vincent Villaver alleged that he was compelled to sign the affidavit of desistance because, according to them, "they will pay us." He referred to Carlito Mumar and Atty. Cimafranca as the persons who will pay him and his mother. He wanted to inform his lawyer about the execution of the affidavit of desistance but was forbidden to do so. After the affidavit was executed he was not paid because, according to Atty. Cimafranca, the company has no more money to pay.

Dr. Dalmacio Javellana, a medico-legal expert, testified that the distance between the victim and the assailant at the time of the incident was more or less seven meters; that the firearm used is a shotgun; and, that the victim was shot at the back.

Margarita Villaver, the wife of the victim, was the third witness for the prosecution. She testified that she incurred expenses in the amount of Thirty-two Thousand Three Hundred Thirty-five Pesos (P32,335.00) for the burial and other expenses for the late Arsenio Villaver and Twenty Thousand Pesos (P20,000.00) for the services of their lawyer. She sought Eighty Thousand Pesos (P80,000.00) for moral damages. She stated that her late husband was the breadwinner of the family. She admitted having executed an affidavit of desistance because she was told that she would be paid but until the time of the hearing no amount of money was given to her.

Abner Bayron took the witness stand as the only witness for the defense. His testimony goes as follows:

In the evening of August 31, 1992 he was awakened by accused Carlito Mumar, Josue Bayron and Bagayaw Dagson. They had with them a boy named Vincent Villaver whom they said was caught stealing copra inside the ranch.

Carlito Mumar directed Abner Bayron to bring Vincent to the municipal hall of Trinidad. Along the way Vincent sought Abner's help and told him that he was merely persuaded by Julieta Polistico. Upon reaching the municipal building they were told to proceed to the residence of the station commander, Pascual Cabando.

Vincent told Commander Cabando that he was merely induced by Julieta Polistico. Thereafter Vincent and the police went to the ranch. Abner averred that Vincent Villaver never mentioned to him or to the police the incident about his father.

Abner Bayron further alleged that when the house of the Villavers was destroyed by a typhoon, he asked Mrs. Margarita Villaver, her son Vincent, and daughter Tata, to stay in his house. The Villavers stayed with him for more than five (5) months. It was during their (the Villavers) stay that Margarita broached the topic that she was tired of waiting for the result of the case and that she wanted to withdraw the murder case she filed and to have the case in the Trinidad court withdrawn. He admitted that when Margarita told him that she was already tired of the case he made the suggestion to drop the case against his relative Carlito Mumar and the others. But he declared that it was upon the request of Mrs. Villaver that Abner accompany her and her son Vincent to the house of Atty. Ramon Cimafranca II in Tagbilaran City.

Upon consultation with Atty. Cimafranca, Mrs. Villaver and her son Vincent executed their affidavits of desistance and the same were subscribed and sworn to before City Prosecutor Alberto Santos Rara in Tagbilaran City.

On July 5, 1995, a decision was rendered by the trial court convicting the accused and imposing the following penalty:

"WHEREFORE, in Criminal Case No. 8032, the Court finds the accused Carlito Mumar @ Litoy, Josue Bayron @ Bobong, and Dagson Bagayaw @ Tangkad, guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as embraced in the aforequoted Information. There being no mitigating nor aggravating circumstances adduced and proven during the trial, and applying the doctrine laid down by the Supreme Court in the case of *People vs. Muñoz*, 170 SCRA 107, the Court hereby sentences each of the accused to suffer the penalty of RECLUSION PERPETUA, with the accessory penalties of the law, to pay the heirs of Arsenio Villaver funeral expenses in the sum of P10,000; attorney's fees in the amount of P5,000, death indemnity in the sum of P50,000, without subsidiary imprisonment in case of insolvency, and to pay the costs.

"SO ORDERED." [2] (Citation omitted)

Hence, this appeal where accused-appellants assign the following errors allegedly committed by the trial court:

1. THE TRIAL COURT SERIOUSLY ERRED AND WHIMSICALLY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT.
2. THE TRIAL COURT SERIOUSLY AND MANIFESTLY ERRED IN HOLDING THAT THE ACCUSED CONSPIRED TOGETHER AND PLANNED THE KILLING OF ARSENIO VILLAYER.
3. THE TRIAL COURT SERIOUSLY ERRED IN HOLDING THAT THE PROSECUTION'S EVIDENCE SUFFICIENTLY ESTABLISHED THE AGGRAVATING CIRCUMSTANCE OF ABUSE OF SUPERIOR

## STRENGTH.

The appeal is unmeritorious.

Appellants contend that the testimony of the prosecution's lone witness Vincent Villaver is uncorroborated, inconsistent, and incredible. They cite the testimony given by Vincent during the trial that he and his father were immediately fired upon by appellants[3] in contradiction to the testimony he made during the preliminary examination conducted on September 16, 1992 in the 5th Municipal Circuit Trial Court, Trinidad, Bohol wherein he said "I don't know who shot my father, because it was dark." [4]

We find that the testimonies of Vincent Villaver given on two different occasions - the first made sixteen (16) days after the tragic incident and the second two (2) years thereafter - regarding the shooting of his father to be consistent. Let it not be forgotten that the boy was present at the time his father was shot.

In fact, Vincent Villaver was standing next to his father Arsenio when they were waylaid on their way home by the accused-appellants. The latter were positioned behind Vincent and his father who, upon hearing appellants say "don't move because we are the police," stopped and raised their hands. Immediately afterwards they were fired upon. In the testimonies given before both the Regional Trial Court and the Municipal Circuit Trial Court Vincent Villaver said the same thing.

In assailing the credibility of the witness, appellants point out that in the trial court hearing and in the preliminary examination Vincent could not say who shot his father.

With their (Vincent and his father Arsenio) backs turned towards the three (3) appellants, it was quite unlikely that Vincent saw who fired at them. While he may not have seen who among the three pulled the trigger there was no doubt in his mind that it was Litoy (Mumar).

The answer became readily apparent to him when he was approached by Litoy who, among the three accused, was the only one carrying a shotgun.

Most telling is what Vincent revealed when he testified:

"ATTY. ALBERTO BAUTISTA:

"Q. What was Litoy Mumar doing at that time when Tangkad was pointing a bolo at you?

"A. He said, If you will not tell the policeman that you stole you will be the next to be killed." [5] (Emphasis supplied)

Vincent also learned the identities of the other appellants (Bayron and Bagayaw) and the kind of weapons they were holding as he actually saw Bayron chase his father who, because of his wound, slumped to the bushes. [6] Bagayaw meanwhile pointed a bolo at the boy. [7]

The presence of the three accused at the scene of the crime can not be denied. They were the ones who brought the witness to the house of Abner Bayron. Even Abner Bayron corroborates this.

It may be trite to repeat the foregoing tenets but we deem it best to reiterate them: A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness. [8] The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. [9] Unless the trial judge plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case, his assessment of the credibility of witnesses must be respected. [10]

Absent any showing that the trial court erred in gauging whether the witness was telling the truth or not, we abide

by its finding as to the credibility of the lone eyewitness Vincent Villaver.

Accused-appellants assert that since the prosecution failed to present the firearm used in shooting Arsenio Villaver, there was no proof that it was Carlito Mumar who shot Arsenio Villaver. Furthermore, no paraffin test was conducted to show that Mumar fired at the deceased.

We disagree.

The failure to submit in evidence the gun used in the killing was not a fatal omission because the People's evidence had established that the deceased died as a result of a gunshot.[11] One of the witnesses for the prosecution, Dr. Dalmacio Javellana, testified that the victim died of gunshot wounds which was caused by a shotgun[12] -- a gun somewhat similar to the one held by Lito.[13]

Well-settled is the rule that paraffin tests are inconclusive.

"Scientific experts concur in the view that the paraffin test has . . . proved extremely unreliable in use. The only thing that it can definitely establish is the presence or absence of nitrates or nitrites on the hand. It cannot be established from this test alone that the source of the nitrates or nitrites was the discharge of firearms. The person may have handled one or more of a number of substances which give the same positive reaction for the nitrates or nitrites, such as explosives, fireworks, fertilizers, pharmaceuticals, and leguminous plants such as peas, beans, and alfalfa. A person who uses tobacco may also have nitrate or nitrite deposits on his hands since these substances are present in the products of combustion of tobacco." The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found its substances other than gunpowder."[14]

Accused-appellants aver that it was highly unnatural for a son who had just witnessed the shooting of his father not to have mentioned the incident to the police.

As held by the Supreme Court in the case of *People vs. Aranjuez*,

"As a matter of common observation and knowledge, the reaction or behavior of persons when confronted with a shocking incident varies."[15]

To an observer, it might have been quite unnatural for a son not to have mentioned to the police that his father was killed on the same evening that he was brought to the municipal hall on charges of theft. Be it remembered though, that different people act differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[16]

To have one's father killed or shot beside one clearly falls within the category of a shocking or frightful experience and no one can rightly say what a child's reaction would or should have been.

We take into consideration the circumstances which took place after the shooting incident: One of the accused, Lito Mumar, threatened the witness Vincent Villaver that he would be the next one to be killed if he did not admit that he stole from the ranch. His father Arsenio Villaver was shot and left lying on the ground when he was brought to the house of Abner Bayron, the brother-in-law of Lito and the brother of Bobong (two of the accused). He was brought to the municipal hall to talk with the police with only Abner Bayron accompanying him. He was only 12 years old at the time his father was killed.

We believe that all these factors created in the mind of the witness a feeling of helplessness: that he is utterly devoid of support and that the police may not believe him.

Appellants further contended that since Margarita Villaver and her two children - Vincent and Tata - lived for five months in the house of Abner Bayron she could not have truly believed that accused-appellants killed her

husband.

Margarita Villaver and her family moved to the house of Abner Bayron during a typhoon and stayed there for five months. She admitted that her husband was the sole breadwinner of the family. While we are averse to making conjectures, it might have been possible that she did not have anybody to turn to and she was forced to accept the help proffered by Abner Bayron.

We will never know what prompted Margarita Villaver to stay in the house of Abner Bayron. When Margarita Villaver was called to the witness stand to testify, she was not asked what prompted her to stay at the house of Abner and the reason why she stayed for a long period of time.

We do not place much stock in the affidavits of desistance executed by Margarita Villaver and Vincent Villaver. Affidavits of recantation can easily be secured from poor and ignorant witnesses, usually for monetary consideration and the Court has invariably regarded such affidavits as exceedingly unreliable.[17]

From the testimonies given by Vincent Villaver and Margarita Villaver we can only arrive at the conclusion that the reason why they willingly agreed to sign affidavits of desistance was because they had hoped to receive, as they were promised, some monetary consideration.

Anent the second assigned error, it was averred that the accused-appellants did not come to an agreement to kill or inflict any kind of injury on the person of Arsenio Villaver.

The three accused got together to investigate the pilferage of the copra and to catch the thief on the night in question. These acts were legitimate and done in line with their duty to protect the properties of the ranch.

The above argument is not meritorious.

From a legal standpoint, there is conspiracy if at the time of the commission of the offense the appellants had the same purpose and were united in its execution.[18]

The following circumstances show that the three accused had a unity of purpose and intention to commit a crime. (1) While Vincent and his father Arsenio were walking towards their house, appellants shouted "don't move because we are the police". (2) While Vincent and his father were standing with their back towards appellants and with their hands raised they were fired upon by appellants; (3) Appellant Mumar approached Vincent and held him; (4) Appellant Bayron chased Arsenio who tried to run but slumped in the bushes. When he told Arsenio to stand up and the latter replied that he could not, Bayron uttered "you are only playacting." (5) Appellant Dagson pointed a bolo at Vincent while the latter was being threatened by Mumar. (6) After his father had been shot, all of the appellants brought Vincent to the house of Abner Bayron. (7) Not one of the accused brought the victim to the hospital despite the latter's being shot. In fact, they candidly told the policemen who went to the ranch on the night of the incident that the person they fired at, the one that they hit, was left there.[19]

From the above we can only arrive at the conclusion that the accused acted in unison in the accomplishment of their unholy purpose. Such ineluctably establishes conspiracy.

Finally, a direct proof to show that the accused had come to an agreement to commit a felony is not necessary. It is sufficient that all the accused manifested by their acts a common intent to do harm to the victim.

"Direct proof is not essential to show conspiracy as its existence may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that the accused had acted in unison with each other, evincing a common purpose and design." [20]

As their third assignment of error, appellants alleged that the conclusion of the trial court that abuse of superior

strength was present in the commission of the alleged crime is without any factual or evidentiary basis.

We find this allegation erroneous.

During the trial it was proven that appellants enjoyed not only numerical superiority over the victim and his son, but also of arms consisting of a shotgun, a revolver and a bolo, while Arsenio and Vincent Villaver were unarmed. The trial court was therefore correct in appreciating abuse of superior strength as the qualifying circumstance that raised the killing of Arsenio Villaver to murder.[21]

Assuming arguendo that the Villavers did steal the copra, the concerted action of the three accused-appellants in shooting him was not justified. The elder Villaver was not alleged to be armed and a young boy of 12 years is no match against three fully-grown armed men. There was no need for the three to shoot Arsenio Villaver.

Moreover, the victim's back was turned towards his assailants. He did not pose a threat to the latter because when he heard the accused say that he is not to move he obeyed them. He even raised his arms to show his compliance with the directive. Dr. Javellana testified that the victim was shot at the back. This goes to prove that he was not facing his assailants and, as we have just stated, constituted no danger to the accused.

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby **AFFIRMED**.

**SO ORDERED.**

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Orig. Record, p. 24.

[2] Rollo, p. 30.

[3] T.S.N. dated September 13, 1994, p. 30.

[4] Exhibit "1-B".

[5] T.S.N. dated September 13, 1994, p. 34.

[6] T.S.N. dated September 13, 1994, pp. 31-32.

[7] Ibid., p. 34.

[8] People vs. Noay, 296 SCRA 292 (1998); People vs. Ila, 296 SCRA 658 (1998)

[9] People vs. De la Cruz, 298 SCRA 36 (1998)

[10] People vs. Viovicente, 286 SCRA 1 (1998)

[11] People vs. Atanacio, 128 SCRA 22 (1984)

[12] T.S.N. dated September 8, 1994, pp. 9-10.

[13] T.S.N. dated September 13, 1994, p. 31.

[14] People vs. De Guzman, 250 SCRA 118, 128-129 (1995)

**[15] 285 SCRA 466 (1998)**

[16] People vs. Luzorata, 286 SCRA 487 (1998)

[17] People vs. Bernardo, 220 SCRA 31 (1993)

[18] People vs. Bergante, 286 SCRA 629.

[19] T.S.N. dated September 13, 1994, p. 33.

[20] People vs. Sumampong, 290 SCRA 471 (1998)

[21] See Article 248 (1), Revised Penal Code.

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