

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. ARTEMIO ELLORABA, ARTURO MANAOG AND ZOSIMO MIRANDA, ACCUSED.*G.R. No. 123917. December 10, 2003*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-123917/>**CALLEJO, SR., J.:**

On December 11, 1987, at about 7:00 a.m., Antonio Ladan was walking along Barangay Liwayway, MacArthur, Leyte, on his way back home from the house of his cousin Juanito Tisten. Antonio had just spoken with Juanito regarding the sale of his property located in Barangay San Roque. Leticia Galvez, the wife of Barangay Captain Dominador Galvez, was hanging laundry near the house of her brother-in-law, and was chatting with Epifania (Panyang) Advincula. Pelagio Mediona's residence was located near the houses of Dominador and Antonio. As Antonio passed by, he saw Dominador in front of Pelagio's house. Antonio was shocked when, from behind and on Dominador's left, he saw Artemio Elloraba point his shotgun at Dominador and shoot the latter once on the back. Dominador fell to the ground face down. When she heard the gunshot, Leticia looked towards the direction of the gunfire and saw her husband fall. She saw Artemio swing his shotgun from left to right, and vice-versa. Arturo Manaog, who was armed with a small bolo (pisao), turned Dominador's body face up, and stabbed him more than once with the bolo. Zosimo Miranda followed suit and stabbed Dominador once with his bolo. The three then fled from the scene, towards the direction of Baliri river.

At the time of the shooting, Marcelino Ngoho, Dominador's brother-in-law, was travelling along the road of Barangay Liwayway on his motorcycle. As he neared Pelagio's house, he saw Dominador in the yard. He then saw Artemio Elloraba shoot Dominador from behind once with a shotgun. He also saw Arturo Manaog turn the body of the fallen Dominador face up, and stab the latter with his pisao. Marcelino then turned his motorcycle around and sped away towards Barangay Abuyog.

The assailants were all known to the Spouses Dominador and Leticia Galvez. Zosimo Miranda was a neighbor of the Spouses Galvez and was Dominador's nephew. Miranda even used to borrow kettle from the couple. Manaog had been Leticia's student, while Artemio was a drinking buddy of Dominador.

On December 11, 1984, Dr. Lorenzo Tiongson performed an autopsy on the cadaver of Dominador and prepared his Report thereon, which contained his post-mortem findings, to wit:

FINDINGS:

- Lacerated wound at the left side of the forehead extending vertically measuring 2 ½ inches in length.
- Stab wound at the left side of the face, ½ inch lateral to the outer corner of the left eye measuring ½ inch in length.
- Stab wound at the left anterior portion of the thorax, at the same level of the left nipple and ½ inch lateral to the mid-sternal line, measuring 1 inch in length. The wound has a slightly upward direction and the heart beneath was also wounded.

- Stab wound at the right anterior portion of the thorax, $\frac{1}{2}$ inch below the level of wound No. 3 and $\frac{1}{3}$ inch lateral to the mid-sternal line measuring $\frac{3}{4}$ of an inch in length. The wound is non-penetrating.
- Stab wound at the right anterior portion of the thorax, $\frac{1}{3}$ of an inch below the level of wound No. 4 and along the mid-clavicular line (right) measuring $\frac{3}{4}$ inch in length. The wound is penetrating and the lung beneath was also wounded.
- Stab wound at the anterior portion of the thorax, just below the xiphoid process of the sternum measuring $\frac{1}{3}$ inch in length. The wound is penetrating and the diaphragm beneath was also wounded.
- Stab wound at the left side of the anterior portion of the thorax same level with wound no. 6 and $\frac{1}{3}$ inch lateral to it, measuring $\frac{3}{4}$ inch in length. The wound is also penetrating.
- Circular wound at the left lateral portion of the neck, 4 inches below the level of the left ear, measuring $\frac{1}{3}$ in diameter. The wound is surrounded by a blackish coloration (contusion collar).
- Lacerated wound at the right posterior portion of the thorax, 1 inch lateral to the mid-scapular line and $\frac{3}{4}$ inches in length. The edge of the wound has a blackish coloration.
- Lacerated wound at the right posterior portion of the thorax, $\frac{1}{4}$ inch lateral to wound no. 9 measuring 1 inch in length.
- Circular wound at the left posterior portion of the thorax, 2 inches lateral to the left mid-scapular line and 1 inch above the level of the left axilla measuring $\frac{1}{4}$ inch in diameter.

CAUSE OF DEATH: Profuse hemorrhage due to shot-gun wounds, cut and multiple stab wounds.[1]

On December 11, 1987, Leticia Galvez gave a sworn statement to the police investigators. It turned out that Elloraba had a pending warrant in connection with another criminal case. On December 24, 1987, a composite team of police operatives from MacArthur and Abuyog, Leyte, led by P/Lt. Paulino Matol and Sgt. Jose Genobatin, secured a copy of the said warrant and proceeded to the house of a certain Beyong Fernandez in Barangay Danao where Elloraba was staying. After about thirty minutes of negotiations, Elloraba decided to surrender to P/Lt. Paulino Matol. He also surrendered the shotgun he used in shooting Dominador.

Elloraba, Manaog and Miranda were charged with murder in the Regional Trial Court of Abuyog, Leyte, Branch 10, in an Information the accusatory portion of which reads:

That on or about the 11[th] day of December 1987, in the Municipality of MacArthur, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other, and with the use of superior strength, did then and there willfully and lawfully and feloniously and with treachery and evident premeditation, attack, assault and use personal violence upon one DOMINADOR GALVEZ, by then and there shooting the latter on the different parts of the body with the use of a home-made shot gun, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW.[2]

Upon their arraignment, all the accused, assisted by counsel, pleaded not guilty to the charge.

The Case for the Accused

Zosimo denied inflicting any injuries on the victim. He testified that aside from being the Barangay Captain of Barangay Liwayway, Dominador was an Informer of the Philippine Constabulary against the New People's Army. He alleged that Dominador had a grudge against him. There was a donation of 35 pieces of galvanized sheets for the repair of the barangay chapel, but Dominador used only 20 pieces for the chapel and used the rest for the

roofing of his house. Zosimo reported the matter to Doroteo Galvez, the father of Dominador, and Leonilo Pelagio, Jr.

Dominador was summoned to a barangay meeting regarding the matter, but failed to attend. At one time, Dominador was drunk and blocked Zosimo's way. Dominador told him, "Boboy, I am angry at you. Why did you do something to me?" Zosimo replied, "I do not know why you are accosting me."

On December 11, 1987, at 6:00 a.m., he went to the house of his aunt, Zosimo's mother, Susana Candelaria, about ½ kilometer away from his house in Barangay Liwayway. At 8:00 a.m., the spouses brought him to their farm to harvest rice. The spouses left him there and went back home. At about 10:00 a.m., Fernando Arado arrived and informed him that his brother, Leonardo Miranda, was being hunted down by Dominador and that Leonardo's life was in peril. Zosimo returned home after asking permission from the Spouses Candelaria. When he arrived home, he was informed by Dingding that Philippine Constabulary soldiers were on the lookout for him. Zosimo then rushed to the house of Barangay Captain Diosdado Mentis where he stayed and tarried for a while. A policeman later arrived and placed him under arrest for the killing of Dominador.

Susana Candelaria corroborated the testimony of Zosimo.

Arturo Manaog also denied any involvement in the killing of Dominador. He testified that on December 8, 1987, Dominador poked an armalite at him. He told his older brother, Cristito Manaog, and their parents about the incident. On December 11, 1987, at 7:00 a.m., Arturo was in the house of his brother Cristito, about 200 meters away from the house of Pelagio Mediona. He was ill with flu at the time and stayed in bed. A policeman later arrived and brought him to the police station for the killing of Dominador. Maria Manaog, Cristito's wife, corroborated the testimony of Arturo Manaog.

Castor Mones testified that he and Artemio Elloraba went to work for Benyong Fernandez in the latter's coconut farm in Sitio Limon, Barangay Danao, MacArthur, Leyte. Benyong was already old and his children were all women. During the period of December 5 to December 11, 1987, he and Artemio were in the farm of Benyong, harvesting coconuts. On December 9, 1987, he was able to gather 5,000 coconuts. By December 10, 1987, he had finished splitting the coconuts. At 5:00 a.m. of December 11, 1987, Artemio smoked the coconuts, while Castor gathered the coconut husks for the fire. At 10:00 a.m., Leonila Elloraba, Artemio's wife, brought their breakfast. According to the witness, it would take more than one hour for one to negotiate the distance between Sitio Limon to Barangay Liwayway, on foot.

Leonila corroborated the testimony of Castor in part. She testified that when she delivered breakfast for Artemio and Castor on December 11, 1987, she told them that Dominador had been killed. When Artemio asked who the culprit was, she replied that the word was that he was killed by NPAs.

After trial, the court rendered judgment convicting all the accused for murder, the decretal portion of the decision reads:

WHEREFORE, the prosecution having proven the guilt of these three (3) accused beyond reasonable doubt, the Court finds the accused ARTEMIO ELLORABA, ARTURO MANAOG and ZOSIMO MIRANDA, GUILTY beyond reasonable doubt of the crime of MURDER as charged and each is sentenced to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of DOMINADOR GALVEZ the sum of FIFTY THOUSAND (P50,000.00) PESOS and to pay the costs.[3]

Only Zosimo Miranda appealed from the decision of the trial court, contending that:

ASSIGNMENT OF ERRORS

(D.1)

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT COMPLETELY ACCEPTED AS GOSPEL TRUTH THE VERSION OF THE PROSECUTION ABOUT THE TRAGIC SHOOTING AND STABBING INCIDENT NOTWITHSTANDING THE IRRECONCILABLE CONFLICTING TESTIMONIES OF THE ALLEGED THREE PROSECUTION EYEWITNESSES, WITH PROSECUTION EYEWITNESS, MARCELINO NGOHO, BROTHER-IN-LAW OF DOMINADOR GALVEZ, EXCULPATING HEREIN ACCUSED-APPELLANT, AND CASTING DOUBT ON THE PRESENCE OF ANTONIO LADAN AND LETICIA GALVEZ AT THE SCENE OF THE CRIME.

(D.2)

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT CONVICTED HEREIN ACCUSED-APPELLANT NOTWITHSTANDING THE FACT THAT THE PROSECUTION'S EVIDENCE FAILED TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT AND OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF APPELLANT HEREIN.

(D.3)

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT APPRECIATED THE QUALIFYING CIRCUMSTANCES OF CONSPIRACY AND ABUSE OF SUPERIOR STRENGTH WHEN THE SAME WERE NEVER PROVEN BY THE PROSECUTION INsofar AS HEREIN ACCUSED- APPELLANT IS CONCERNED.

(D.4)

THE COURT A QUO GRIEVOUSLY ERRED WHEN IT ADJUDGED, ORDERED AND DIRECTED HEREIN ACCUSED-APPELLANT CIVILLY LIABLE TO THE PRIVATE OFFENDED PARTY NOTWITHSTANDING HIS NON-PARTICIPATION IN THE OFFENSE CHARGED.[4]

We do not agree with the appellant.

There is no discordance between the testimony of Ngoho on one hand, and those of Ladan and Leticia on the other. In point of fact, the testimonies of Ngoho, Ladan and Leticia Galvez complement each other. What differentiates the testimony of Ngoho and those of Ladan and Leticia is that Ladan and Leticia Galvez saw the entire episode of Dominador's killing; whereas Ngoho witnessed the killing of Dominador by Elloraba and Manaog, and left the situs criminis without seeing the stabbing of Dominador by the appellant. According to his testimony, Ngoho left the scene after seeing Elloraba shoot Dominador and while Manaog was stabbing the victim. Ngoho returned to the scene of the crime only after the culprits had already fled.

We are in full accord with the disquisitions of the Office of the Solicitor General:

Appellant Zosimo Miranda contends that court a quo erred in its appreciation of the evidence presented before it. He points to a certain alleged inconsistencies between the testimony of prosecution witness Marcelino Ngoho, on the one hand, and Leticia Galvez and Antonio Ladan on the other. The inconsistencies, appellant avers, are enough to create reasonable doubt as to his guilt of the crime charged. (Appellant's Brief, p. 6)

In particular, appellant points to the testimony of Marcelino Ngoho that he only saw Artemio Elloraba and Arturo Manaog attack the victim. This testimony, appellant claims, is at odds with that of the testimonies of Antonio Ladan and Leticia Galvez pointing to him as the third attacker. He concludes that the said conflicting testimonies cast doubt as to his presence and participation in the crime (id., pp. 9-13).

A perusal of the testimonies adverted to show no conflict or inconsistency. Marcelino Ngoho testified that he fled the scene right after he saw the shooting by Artemio Elloraba and the hacking by Arturo Manaog.

Q.

When you saw Artemio Elloraba at that time, what happened next?

A.

He was carrying a firearm.

Q.

What did he do with that weapon?

A.

He fired and when he fired it, Dominador Galvez fell. He fired it from behind.

...

Q.

After Artemio Elloraba fired his firearm, what next did you observe?

A.

After he fired, he moved backwards and Arturo Manaog approached the fallen Dominador Galvez and turned the victim face up and stabbed.

(TSN, Feb. 16, 1989, pp. 6 and 9)

...

Q.

After Arturo Manaog had delivered stabbing blow on Dominador Galvez, after he was turned face upwards, what next transpired?

A.

Artemio Elloraba was swinging his gun side to side and when he turned it towards me, I made a "u- turn" of my motorcycle and left proceeding to my house.

Q.

After that, what else transpired?

A.

When I noticed that the criminals were not there anymore, I returned and loaded the victim on my motorcycle, going to Abuyog.

(TSN, Feb. 16, 1989, p. 11)

Ngoho could not have witnessed appellant's attack on the victim because he was no longer at the scene, having fled when he felt his life threatened when Elloraba pointed the gun at him. He returned only after the assailants left.

His testimony thus covered only a stage or portion of the event. Appellant's participation in the crime was established through the testimonies of Antonio Ladan and Leticia Galvez who were present throughout the attack on the victim. Both their eyewitnesses' testimonies were consistent that appellant delivered a single hacking blow to the head of the victim after the latter was shot by Elloraba and stabbed and hacked by Manaog (TSN, Feb. 9, 1989, pp. 6-9, 15 Sept. 27, 1989, pp. 6-7). This is consistent with the physical evidence (Exh. "A"; Cf. *People v. Tuson*, 261 SCRA 711 [1996]).

Appellant failed to adduce evidence to show why Ladan and Galvez would implicate him in the commission of the crime. As earlier pointed out, appellant is a nephew of the victim. He also related to Antonio Ladan who is a cousin of his father (TSN, Sept. 8, 1989, p. 9). It is thus inconceivable for the victim's widow and appellant's own uncle to point to him as one of the attackers if it were not the truth. When there is no evidence to show any dubious reason or improper motive why a prosecution witness should testify falsely against the accused or falsely implicate him in a heinous crime, the said testimony is worthy of full faith and credit (*People v. Cristobal*, 252 SCRA 507 [1997]).

Appellant attempts to cast doubt on the presence of Ladan at the scene. He claims that no one noticed nor testified as to his presence while the crime was being committed. But even assuming, *arguendo*, that Ladan was not present and did not witness the crime, his testimony is merely corroborative since there was another eyewitness in the person of the victim's widow.

In an attempt to further discredit the testimony of Ladan, appellant wonders why the former failed to note the presence of Ngoho at the scene. He points out the same "omission" in the testimony of Leticia Galvez. The testimonies of Ladan and Galvez dwelt only on the attack on the victim. Both Ladan and Galvez cannot be expected to recall or name all the persons who were at or near the scene who had nothing to do with the killing.[5]

Contrary to the perception of the appellant, conspiracy is not a qualifying circumstance. Conspiracy may be a felony by itself when the law defines it as a crime with an imposable penalty therefor or is merely a mode of increasing criminal liability. Examples of conspiracy to commit a crime per se include conspiracy to sell illicit drugs under Section 21 of Republic Act No. 6485, conspiracy to bribe voters under Section 261 (b) of the Omnibus Election Code and conspiracy to commit any violation under Article 115 of the Revised Penal Code.

In this case, the conspiracy was alleged in the Information as a mode of increasing criminal liability. There is conspiracy when two or more persons agree to commit a crime and desire to commit it.[6] Direct evidence is not required to prove conspiracy. It may be proved by circumstantial evidence. It is not even required that they have an agreement for an appreciable period to commence it.[7]

What is important is that all participants performed specific acts with such cooperation and coordination bringing about the death of the victim.[8] When conspiracy is present, the act of one is the act of all.[9] In this case, Elloraba, Manaog and the appellant acted in concert to achieve a common purpose, i.e., to kill the victim. Elloraba shot the victim at close range. Manaog followed suit and stabbed the victim with a pisao. The appellant later stabbed the victim with his own bolo. The three fled from the scene together, carrying their weapons with them.

Indubitably, the three acted in concert; hence, all are guilty for the killing of Dominador.

The crime is qualified by treachery. The victim was unarmed. Elloraba shot the victim from behind. Manaog turned the body of the victim, face upward, and stabbed him. The appellant followed suit, stabbing the victim while the latter was lying on the ground, defenseless.[10] Abuse of superior strength is absorbed by treachery.

The trial court failed to award moral and exemplary damages. The decision of the trial court has to be modified. The heirs of the victim, Dominador Galvez, are entitled to P50,000.00 as moral damages and P25,000.00 as exemplary damages.

IN LIGHT OF ALL THE FOREGOING, the appealed Decision is AFFIRMED WITH MODIFICATION. The appellant is ordered to pay to the heirs of the victim, Dominador Galvez, the amount of P50,000.00 as moral damages, and P25,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

Puno, (Chairman), Quisumbing, Austria-Martinez, and Tinga, JJ., concur.

[1] Exhibit "A," Records, p. 14.

[2] Records, p. 1.

[3] Rollo, p. 137.

[4] Rollo, pp. 84-85.

[5] Rollo, pp. 160-163.

[6] Article 8, Revised Penal Code.

[7] People vs. Quijon, 325 SCRA 453 (2000); People vs. Alo, 348 SCRA 702 (2000).

[8] People vs. Arizobal, 348 SCRA 143 (2000).

[9] People vs. Crisostomo, 222 SCRA 93 (1993).

[10] People vs. Aglipa, 337 SCRA 181 (2000).

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