

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROQUE
“UKING” ELLADO AND RODOLFO BAKUNAWA,
ACCUSED.**

G.R. No. 124686. March 05, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

The present petition assails the decision[1] dated March 25, 1996 of the Regional Trial Court, Valenzuela, Branch 171, in Criminal Case No. 4819-V-95, convicting appellant of the crime of murder, sentencing him to suffer the penalty of reclusion perpetua, pay the heirs of the victim, Rogelio Morillo, P24,500.00 in actual damages, P50,000.00 as death indemnity, and to pay the costs.

The facts of the case, as found by the trial court, are as follows:

Appellant Roque Ellado and co-accused Rodolfo Bakunawa are brothers-in-law. Rodolfo is married to Roque's sister, Lina Ellado. Lina and Rodolfo lived at the rear of Rogelio Morillo's house. Sometime in the middle of November 1994, Rogelio and Lina had a heated exchange when she threw garbage near the cage of Rogelio's chicken. Lina hit Rogelio's house with a lead pipe and since then the Ellados and Bakunawas were no longer in speaking terms with the Morillos.

On December 19, 1994 at 6:00 P.M., Roque and Rodolfo entered the gate of Rogelio's house. Shortly, Rodolfo left to go his separate way. Roque was left behind and talked to Rogelio. While Roque and Rogelio were talking, Rodolfo suddenly appeared from behind them and stabbed Rogelio. Rogelio managed to go inside his house. Roque went near the window, aimed a knife at Rogelio and asked if the latter would still fight. Rodolfo went around Rogelio's house. Later, Rogelio collapsed and died.[2]

Accused-appellant was charged under the following information:

That on or about December 19, 1994 in Valenzuela, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, without any justifiable cause, with evident premeditation, treachery, abuse of superior strength and with deliberate intent to kill, did then and there wilfully, unlawfully and feloniously attack and stab with a bolo one ROGELIO MORILLO hitting the latter on the right chest, thereby inflicting upon the said victim serious physical injuries which caused his death.

Contrary to law.[3]

On arraignment, appellant entered a plea of not guilty.[4] Rodolfo Bakunawa remained at large.

At the trial, the prosecution presented two witnesses: (1) Joan Morillo, the victim's daughter who testified that on the night of the incident, Rodolfo stabbed her father who managed to flee inside his house, lock the door and windows save for one where appellant continued to taunt and threaten him until he lost consciousness; and (2) Dr. Ravel Ronald R. Baluyot, NBI medico-legal officer, who conducted the autopsy on the victim's cadaver.

The defense presented appellant Roque Ellado, who testified that he had gone to the house of the victim to apologize to the latter for his sister's quarrel with him, when Rodolfo suddenly appeared and stabbed the victim. He said he went to the victim's house alone and did not arrive with Rodolfo nor conspire with the latter.

Vivina Ellado, sister of appellant, testified that Roque went to Nueva Ecija in the second week of March 1995 to get married. She further testified that Roque and the victim had no quarrel. The victim and his relatives were in fact invited to Roque's wedding.

On March 25, 1996, the trial court rendered judgment finding appellant guilty of murder, thus:

WHEREFORE, accused Roque "Uking" Ellado is hereby sentenced to suffer the penalty of Reclusion Perpetua with the accessory penalties prescribed by law.

To pay the heirs of the victim the sum of P12,000.00 for funeral services, P12,500.00 for the burial lot and perpetual care and the amount of P50,000.00 for death indemnity and costs of suit.

SO ORDERED.[5]

On appeal before us, appellant asserts that the trial court:

...ERRED IN CONVICTING THE ACCUSED-APPELLANT, ROQUE ELLADO BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER WITHOUT HIS GUILT HAVING BEEN PROVED BEYOND REASONABLE DOUBT.[6]

In sum, appellant Roque Ellado alleges that it was only Rodolfo Bakunawa and his wife Lina Ellado who had a serious misunderstanding with the victim and had the motive to kill the latter. He suggests that it was just coincidence that Rodolfo carried out his plan at the time accused-appellant was conversing with the victim. He had not conspired with Rodolfo.

The main issue for our resolution is whether appellant's guilt has been proved beyond reasonable doubt, considering the alleged absence of conspiracy between him and co-accused Rodolfo Bakunawa.

The Office of the Solicitor General, for its part, offers the incriminating testimony of Joan Morillo to show that appellant had a motive to conspire with Rodolfo in committing the crime.

Joan, the only eyewitness, testified that on the night of the incident, Rodolfo and appellant arrived in the yard of their house. She was beside one of the windows, with a view of her father who was outside feeding chickens. Rodolfo then left, leaving appellant behind. Appellant was apologizing to her father for his sister's behavior. Suddenly, Rodolfo emerged from behind her father and stabbed him. The victim managed to run into their house, and instructed Joan to close the doors and windows of the house. Only one window was left open, through which Joan shouted for help. It was through that open window that appellant appeared, drew a knife from his waist and pointed it at the victim. He also told Rodolfo to go around to the back of the house. Appellant even asked the victim if he would still fight back and if he was still alive. When the victim fell to the floor, appellant left.[7] The trial court found Joan's testimony "convincing and trustworthy." [8]

Conclusions of the trial court on the credibility of witnesses are generally not disturbed by appellate courts, the former being in a better position to decide the issue, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.[9] In this case, we see no reason why we should not rely on the trial court's finding that Joan's testimony is convincing and trustworthy.

Appellant admitted that he was at the scene of the crime at the time of its commission. But he would like to impress the court that it was mere coincidence that Rodolfo decided to kill the victim at the very same time he

was talking to the latter. Joan testified, however, that he taunted the victim through a window. It was he who ordered Rodolfo to go around the house. And appellant left only after the victim became unconscious.

His denial of complicity in the crime cannot prevail over the positive testimony of Joan and her straight-forward testimony. Denial, which is negative and self-serving, cannot be given greater evidentiary weight over the testimony of a credible witness who testifies on affirmative matters.[10]

Appellant did not point to any ill motive why Joan should testify against him. Absent such improper motive, the presumption is that the witness was not so moved and her testimony is entitled to full faith and credit.[11] The tacit agreement between and coordinated actions of Rodolfo and Roque to commit the crime through a common intent to injure the victim is sufficiently and convincingly established by Joan's testimony.

Furthermore, appellant's protestations of innocence fall flat in view of his failure to give aid to the victim and to call for help, and his leaving the victim in his injured condition.[12] His act of merely leaving the crime scene after the victim fell unconscious betrays his claim that he was in a state of shock, and reveals an intent to insure the victim's elimination. Lingered at the victim's window while pointing a knife at him, making threatening remarks, and instructing Rodolfo to cover the rear of the house are gestures evincing, at the very least, moral support and actual aid to his co-conspirator. Even if appellant's belligerent acts toward the victim surfaced only after the fatal stabbing, the conduct of the appellant before, during and after the commission of the crime may be considered to show an extant conspiracy.[13]

Roque and Rodolfo acted in concert in the assault on the victim. They had the same purpose and were united in its execution. Conspiracy exists at the time of the commission of the offense.[14] Their actuations could only point to the existence of a pre-conceived plan to maim and kill Rogelio. Where the acts of the accused collectively and individually demonstrate the existence of a common design towards the accomplishment of the same unlawful purpose, conspiracy is evident, and all the perpetrators will be liable as principals.[15]

Lastly, the acts of appellant indicate that he and Rodolfo had planned the attack in a manner that would catch the victim unaware. Their move initially was in the guise of a conciliatory overture. It served to cover their nefarious plot. Even if it was Rodolfo who inflicted the fatal wound, liability also exists on the part of appellant notwithstanding non-participation in every detail in the execution of the crime.[16] The deceptive manner by which the two accused fatally assaulted the victim shows that they had intended to catch him off guard, to insure the success of the attack. An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the attack constitutes *alevosia*. [17]

As treachery attended the killing of the victim, the offense committed by appellant and his co-accused Bakunawa is murder. However, the aggravating circumstances of evident premeditation and abuse of superior strength alleged in the information to be attendant cannot be appreciated, as the elements of the former were not proven, and the latter is deemed absorbed by treachery.[18]

WHEREFORE, the decision of the Regional Trial Court of Valenzuela, Branch 171, in Criminal Case No. 4819-V-95 dated March 25, 1996, convicting accused-appellant of the crime of Murder and sentencing him to reclusion perpetua is AFFIRMED.

SO ORDERED.

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

[1] Rollo, pp. 18-26.

- [2] Id. at 54-55.
- [3] Id. at 7.
- [4] Records, p. 20.
- [5] Rollo, p. 26.
- [6] Id. at 37.
- [7] TSN, June 28, 1995, pp. 6-21.
- [8] Rollo, p. 25.
- [9] *People vs. Palma*, 308 SCRA 466, 476 (1999).
- [10] *People vs. Acala*, 307 SCRA 330, 347 (1999).
- [11] *People vs. Silvano*, 309 SCRA 362, 394 (1999).
- [12] TSN, October 25, 1995, p. 13; TSN, November 8, 1995, pp. 10-11.
- [13] *People vs. Gungon*, 287 SCRA 618, 633 (1998).
- [14] *People vs. Hilario*, 284 SCRA 344, 354 (1998).
- [15] *People vs. Bitoon, Sr.*, 309 SCRA 209, 220 (1999).
- [16] *People vs. Medina*, 292 SCRA 436, 449 (1998).
- [17] *People vs. Rada*, 308 SCRA 191, 204 (1999).
- [18] *People vs. Sanchez*, 308 SCRA 264, 286 (1999).

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