

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HERMOGENES FLORA AND EDWIN FLORA, ACCUSED-APPELLANTS.

G.R. No. 125909. June 23, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Accused-appellants seek the reversal of the decision[1] dated November 7, 1995, of the Regional Trial Court, Branch 26, Santa Cruz, Laguna, in Criminal Case Nos. SC-4810, 4811 and 4812, finding them guilty beyond reasonable doubt of the crimes of double murder and attempted murder, and sentencing them to reclusion perpetua, payment of P50,000.00 for indemnity, P14,000.00 for burial expenses and P619,800.00 for loss of earning capacity in Crim. Case SC-4810 for the death of Emerita Roma; reclusion perpetua, payment of P50,000.00 as indemnity, P14,000.00 for burial expenses and P470,232.00 for loss of earning capacity for the death of Ireneo Gallarte in Crim. Case SC-4811; and imprisonment from 2 years, 4 months and 1 day of prision correccional as minimum to 10 years of prision mayor and payment of P15,000.00 to Flor Espinas for injuries sustained in Crim. Case SC-4812.

On February 26, 1993, Prosecution Attorney Joselito D.R. Obejas filed three separate informations charging appellants as follows:

Criminal Case No. 4810

"That on or about January 10, 1993, at around 1:30 o'clock in the morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused Hermogenes Flora @ Bodoy, conspiring and confederating with accused Edwin Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with the said firearm one EMERITA ROMA y DELOS REYES, thereby inflicting upon the latter gunshot wounds on her chest which caused her immediate death, to the damage and prejudice of her surviving heirs.

That in the commission of the crime, the aggravating circumstances of treachery and evident premeditation are present."[2]

Criminal Case No. 4811

"That on or about January 10, 1993, at around 1:30 o'clock in the morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused HERMOGENES FLORA @ Bodoy, conspiring and confederating with accused Erwin [Edwin] Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one IRENEO GALLARTE y VALERA, thereby inflicting upon the latter gunshot wounds on his chest which caused his immediate death, to the damage and prejudice of his surviving heirs.

That in the commission of the crime, the aggravating circumstances of treachery and evident premeditation are present."[3]

Criminal Case No. 4812

"That on or about January 10, 1993, at around 1:30 o'clock in the morning thereof, in Sitio Silab, Barangay Longos, municipality of Kalayaan, province of Laguna, and within the jurisdiction of this Honorable Court, accused Hermogenes Flora @ Bodoy, conspiring and confederating with accused Erwin [Edwin] Flora @ Boboy, and mutually helping one another, while conveniently armed then with a caliber .38 handgun, with intent to kill, by means of treachery and with evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with the said firearm one FLOR ESPINAS y ROMA, hitting the latter on her shoulder, and inflicting upon her injuries which, ordinarily, would have caused her death, thus, accused performed all the acts of execution which could have produced the crime of Murder as a consequence but which, nevertheless did not produce it by reason of a cause independent of their will, that is, by the timely and able medical attendance given the said Flor Espinas y Roma, which prevented her death, to her damage and prejudice."[4]

During arraignment, both appellants pleaded not guilty. Trial thereafter ensued. Resolving jointly Criminal Cases Nos. SC-4810, SC-4811 and SC-4812, the trial court convicted both appellants for the murder of Emerita Roma and Ireneo Gallarte, and the attempted murder of Flor Espinas. The dispositive portion of the decision reads:

"WHEREFORE, in the light of the foregoing, this Court finds as follows:

In CRIMINAL CASE NO. SC-4810, for the death of Emerita Roma, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Murder qualified by treachery and sentences each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law, and to indemnify the heirs of the victim the sums of (a) P50,000.00 as death indemnity; (b) P14,000.00 as expenses for wake and burial; and (c) P619,800 for lost (sic) of earning capacity, without any subsidiary imprisonment in case of insolvency and to pay the costs.

In CRIMINAL CASE NO. SC-4811, for the death of Ireneo Gallarte, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Murder, qualified by treachery and with the aggravating circumstance of evident premeditation and sentences each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law, and to indemnify the heirs of the victim the sums of (a) P50,000.00 as death indemnity; (b) P14,000.00 as expenses for wake and burial; and (c) P470,232.00 for lost (sic) of earning capacity, without any subsidiary imprisonment in case of insolvency and to pay the costs.

In CRIMINAL CASE NO. SC-4812, for the injuries sustained by Flor Espinas, the Court finds both accused Hermogenes Flora and Edwin Flora guilty beyond reasonable doubt of the crime of Attempted Murder and sentences each of them to suffer an indeterminate penalty of imprisonment from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to ten (10) years of prision mayor, as maximum, and to pay P15,000.00 to Flor Espinas as indemnity for her injuries and to pay the costs.

SO ORDERED."[5]

The facts of the case, borne out by the records, are as follows:

Days before the incident, appellant Hermogenes Flora alias "Bodoy," had a violent altercation with a certain Oscar Villanueva. Oscar's uncle, Ireneo Gallarte, pacified the two.

On the evening of January 9, 1993, a dance party was held to celebrate the birthday of Jeng-jeng Malubago in Sitio Silab, Barangay Longos, Kalayaan, Laguna. Appellant Hermogenes Flora, allegedly a suitor of Jeng-jeng

Malubago, attended the party with his brother and co-appellant Edwin Flora, alias "Boboy". Also in attendance were Rosalie Roma, then a high school student; her mother, Emerita Roma, and her aunt, Flor Espinas. Ireneo Gallarte, a neighbor of the Romas, was there too.

The dancing went on past midnight but at about 1:30, violence erupted. On signal by Edwin Flora, Hermogenes Flora fired his .38 caliber revolver twice. The first shot grazed the right shoulder of Flor Espinas, then hit Emerita Roma, below her shoulder. The second shot hit Ireneo Gallarte who slumped onto the floor. Rosalie, was shocked and could only utter, "si Bodoy, si Bodoy", referring to Hermogenes Flora. Edwin Flora approached her and, poking a knife at her neck, threatened to kill her before he and his brother, Hermogenes, fled the scene.

The victims of the gunfire were transported to the Rural Health Unit in Longos, Kalayaan, Laguna, where Emerita and Ireneo died.[6]

Early that same morning of January 10, 1993, the police arrested Edwin Flora at his rented house in Barangay Bagumbayan, Paete, Laguna. Hermogenes Flora, after learning of the arrest of his brother, proceeded first to the house of his aunt, Erlinda Pangan, in Pangil, Laguna but later that day, he fled to his hometown in Pipian, San Fernando, Camarines Sur.

The autopsy conducted by the medico-legal officer, Dr. Ricardo R. Yambot, Jr., revealed the following fatal wounds sustained by the deceased:

EMERITA ROMA

"a) Gunshot of entrance at the posterior chest wall near the angle of the axillary region measuring 1 cm. in diameter with clean cut inverted edges involving deep muscles, and subcutaneous tissues and travel through both lobes of the lungs, including the great blood vessels.

About 400 cc of clotted blood was extracted from the cadaver. The bullet caliber 38 was extracted from the lungs.

The cause of her death was attributed to 'Hypovolemic' shock secondary to massive blood loss secondary to gunshot wound of the posterior chest wall."[7]

IRENEO GALLARTE

"Gunshot wound of entrance at the left arm, measuring 1 cm. in diameter with clean cut inverted edges involving the deep muscles, subcutaneous tissues traveling through the anterior chest wall hitting both lobes of the lungs and each great blood vessels obtaining the bullet fragments.

About 500 cc. of clotted blood was obtained from the cadaver."

His cause of death was attributed to 'Hypovolemic' shock secondary to massive blood loss secondary to gunshot wound of the left arm."[8]

Flor Espinas submitted herself to a medical examination by Dr. Dennis Coronado. Her medical certificate [9] disclosed that she sustained a gunshot wound, point of entry, 2 x 1 cm. right supra scapular area mid scapular line (+) contusion collar; and another gunshot wound with point of exit 1 x 1 cm. right deltoid area.

Three criminal charges were filed against the Flora brothers, Hermogenes and Edwin, before Branch 26 of the Regional Trial Court of Sta. Cruz, Laguna. During the trial, the prosecution presented two eyewitnesses, namely, (1) Rosalie Roma, daughter of one of the victims, Emerita Roma, and (2) Flor Espinas, the injured victim. Rosalie narrated the treacherous and injurious attack by Hermogenes Flora against the victims. Flor detailed how she was shot by him.

Felipe Roma, the husband of Emerita, testified that his wife was forty-nine (49) years old at the time of her death and was a paper mache maker, earning an average of one thousand (P1,000.00) pesos a week. He claimed that his family incurred fourteen thousand (P14,000.00) pesos as expenses for her wake and burial.

Ireneo Gallarte's widow, Matiniana, testified that her husband was fifty-two (52) years old, a carpenter and a substitute farmer earning one hundred (P100.00) to two hundred (P200.00) pesos a day. Her family spent fourteen thousand (P14,000.00) pesos for his wake and burial.

The defense presented appellants Hermogenes and Edwin Flora, and Imelda Madera, the common-law wife of Edwin. Appellants interposed alibi as their defense, summarized as follows:

Version of Edwin Flora:

"Edwin Flora, 28 years old, testified that accused Hermogenes Flora is his brother. On January 10, 1993, around 1:30 in the morning, he was at Barangay Bagumbayan, Paete, Laguna in the house of Johnny Balticanto, sleeping with his wife. Policemen came at said house looking for his brother Hermogenes. Replying to them that his brother was not living there, policemen took him instead to the Municipal building of Paete and thereafter transferred and detained him to (sic) the Municipal building of Kalayaan.

He recalled that on January 9, 1993, after coming from the cockpit at about 3:00 p.m. he and his accused brother passed by the house of Julito Malubago. His brother Hermogenes was courting the daughter of Julito Malubago. At about 6:00 p.m. he went home but his brother stayed behind since there would be a dance party that night."^[10]

Version of Hermogenes Flora:

"Hermogenes Flora, 21 years old, testified that he did not kill Ireneo Gallarte and Emerita Roma and shot Flor Espina on January 10, 1993 at about 1:30 in the morning of Silab, Longos Kalayaan Laguna.

On said date, he was very much asleep (sic) in the house of his sister Shirley at Sitio Bagumbayan, Longos, Kalayaan. From the time he slept at about 8:00 in the evening to the time he woke up at 6:00 in the morning, he had not gone out of her sister's house. He knew the victims even before the incident and he had no severe relation with them.

x x x

He also testified that in the morning of January 10, 1993, Imelda Madera came to their house and told him that his brother Edwin was picked-up by the policemen the night before. Taken aback, his sister told him to stay in the house while she would go to the municipal hall to see their brother Edwin. Thereafter, his aunt and sister agreed that he should go to Bicol to inform their parents of what happened to Edwin."^[11]

Madera corroborated the testimony of her husband.^[12]

As earlier stated, the trial court convicted accused-appellants of the crime of double murder and attempted murder. Appellants now raise this sole assigned error:

"THE TRIAL COURT ERRED IN CONVICTING THE TWO ACCUSED-APPELLANTS DESPITE THE FAILURE OF THE PROSECUTION TO MORALLY ASCERTAIN THEIR IDENTITIES AND GUILT FOR THE CRIMES CHARGED."

At the outset, it may be noted that the trial court found both appellants have been positively identified. However, they challenge the court's finding that they failed to prove their alibi because they did not establish that it was physically impossible for them to be present at the crime scene. According to the trial court, by Hermogenes' own admission, the house of his sister Shirley, where appellants were allegedly sleeping, was only one (1) kilometer away from Sitio Silab, where the offenses allegedly took place. The sole issue here, in our view, concerns only the

plausibility of the appellants' alibi and the credibility of the witnesses who identified them as the perpetrators of the crimes charged.

For the defense of alibi to prosper, it is imperative that the accused establish two elements: (1) he was not at the locus delicti at the time the offense was committed, and (2) it was physically impossible for him to be at the scene at the time of its commission.[13] The defense of alibi and the usual corroboration thereof are disfavored in law since both could be very easily contrived.[14] In the present case, appellants' alibi is patently self-serving. Although Edwin's testimony was corroborated by his common-law wife, it is ineffectual against the positive testimonies of eyewitnesses and surviving victims who contradicted his alibi. Moreover, an alibi becomes less plausible as a defense when it is invoked and sought to be crafted mainly by the accused himself and his immediate relative or relatives.[15] Appellants' defense of alibi should have been corroborated by a disinterested but credible witness.[16] Said uncorroborated alibi crumbles in the face of positive identification made by eyewitnesses.[17]

In their bid for acquittal, appellants contend that they were not categorically and clearly identified by the witnesses of the prosecution. They claim that the testimonies of the said witnesses were not entitled to credence. They assail the credibility of two eyewitnesses, namely Rosalie Roma and Flor Espinas, because of the alleged inconsistencies in their testimonies. For instance, according to appellants, Rosalie Roma testified she was in the dance hall when the gunshots were heard, and that she was dancing in the middle of the dance hall when Hermogenes shot Emerita Roma, Ireneo Gallarte and Flor Espinas,

"Q Where were you when Hermogenes Roma shot these Ireneo Gallarte, Emerita Roma and Flor Espinas?

A I was dancing, sir. (Emphasis ours.)

Q And how far were you from Hermogenes Flora when he shot these persons while you were dancing?

A Two armslength from me only, sir."[18]

However, to a similar question, later in her testimony, she replied,

"Q And where were these Emerita Roma, Your mother, Ireneo Gallarte and Flor Espinas when Hermogenes Flora shot at them?

A They were beside each other.

Q And how far were you from these 3 persons?

A Because they were standing beside the fence and I was only seated near them, sir."[19] (Emphasis ours.)

On this issue, we do not find any inconsistency that impairs her credibility or renders her entire testimony worthless. Nothing here erodes the effectiveness of the prosecution evidence. What counts is the witnesses' admitted proximity to the appellants. Was she close enough to see clearly what the assailant was doing? If so, is there room for doubt concerning the accuracy of her identification of appellant as one of the malefactors?

Appellants argue that since the attention of witness Flor Espinas was focused on the dance floor, it was improbable for her to have seen the assailant commit the crimes. On cross-examination, said witness testified that while it was true she was watching the people on the dance floor, nonetheless, she also looked around (gumagala) and occasionally looked behind her and she saw both appellants who were known to her.[20] Contrary to appellants' contention that Flor did not have a sufficient view to identify the assailants, the trial court concluded that Flor was in a position to say who were in the party and to observe what was going on. On this point, we concur with the trial court.

Well-settled is the rule that findings of the trial court on the credibility of witnesses deserve respect, for it had the opportunity to observe first-hand the deportment of witnesses during trial.[21] Furthermore, minor inconsistencies do not affect the credibility of witnesses, as they may even tend to strengthen rather than weaken their credibility.[22] Inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity, or the weight of their testimony.[23] Such minor flaws may even enhance the worth of a testimony, for they guard against memorized falsities.

Appellants assert that Flor Espinas and Rosalie Roma were biased because they are relatives of the victim Emerita Roma. However, unless there is a showing of improper motive on the part of the witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of credit. On the contrary, their natural interest in securing the conviction of the guilty would deter them from implicating other persons other than the culprits, for otherwise, the latter would thereby gain immunity.[24]

Here, appellants did not present any proof of improper motive on the part of the eyewitnesses in pointing to the Flora brothers as the perpetrators of the crime. There is no history of animosity between them. Emerita Roma and Flor Espinas were merely innocent bystanders when hit by gunfire. Where eyewitnesses had no grudge against the accused, their testimony is credible.[25] In the absence of ulterior motive, mere relationship of witnesses to the victim does not discredit their testimony.[26]

Coming now to the criminal responsibility of appellants. In the present case, when Hermogenes Flora first fired his gun at Ireneo, but missed, and hit Emerita Roma and Flor Espinas instead, he became liable for Emerita's death and Flor's injuries. Hermogenes cannot escape culpability on the basis of aberratio ictus principle. Criminal liability is incurred by any person committing a felony, although the wrongful act be different from that which he intended.[27]

We find that the death of Emerita and of Ireneo were attended by treachery. In order for treachery to exist, two conditions must concur namely: (1) the employment of means, methods or manner of execution which would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) such means, method or manner of execution was deliberately or consciously chosen by the offender.[28] When Hermogenes Flora suddenly shot Emerita and Ireneo, both were helpless to defend themselves. Their deaths were murders, not simply homicides since the acts were qualified by treachery. Thus, we are compelled to conclude that appellant Hermogenes Flora is guilty beyond reasonable doubt of double murder for the deaths of Emerita Roma and Ireneo Gallarte, and guilty of attempted murder of Flor Espinas.

Is the other appellant, Edwin Flora, equally guilty as his brother, Hermogenes? For the murder of Ireneo Gallarte, was there conspiracy between appellants? For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence. It is sufficient that at the time of the commission of the offense, the accused and co-accused had the same purpose and were united in execution.[29] Even if an accused did not fire a single shot but his conduct indicated cooperation with his co-accused, as when his armed presence unquestionably gave encouragement and a sense of security to the latter, his liability is that of a co-conspirator.[30] To hold an accused guilty as a co-conspirator by reason of conspiracy, it must be shown that he had performed an overt act in pursuance or furtherance of the conspiracy.[31] Edwin's participation as the co-conspirator of Hermogenes was correctly appreciated by the trial court, viz.:

"Edwin Flora demonstrated not mere passive presence at the scene of the crime. He stayed beside his brother Hermogenes, right behind the victims while the dance party drifted late into the night till the early hours of the morning the following day. All the while, he and his brother gazed ominously at Ireneo Gallarte, like hawks waiting for their prey. And then Edwin's flick of that lighted cigarette to the ground signaled Hermogenes to

commence shooting at the hapless victims. If ever Edwin appeared acquiescent during the carnage, it was because no similar weapon was available for him. And he fled from the crime scene together with his brother but not after violently neutralizing any obstacle on their way. While getting away, Edwin grabbed Rosalie Roma and poked a knife at her neck when the latter hysterically shouted "si Bodoy, Si Bodoy," in allusion to Hermogenes Flora, whom she saw as the gunwielder. All told, Edwin, by his conduct, demonstrated unity of purpose and design with his brother Hermogenes in committing the crimes charged. He is thus liable as co-conspirator."^[32]

However, we cannot find Edwin Flora similarly responsible for the death of Emerita Roma and the injury of Flor Espinas. The evidence only shows conspiracy to kill Ireneo Gallarte and no one else. For acts done outside the contemplation of the conspirators only the actual perpetrators are liable. In *People v. De la Cerna*, 21 SCRA 569, 570 (1967), we held:

"x x x And the rule has always been that co-conspirators are liable only for acts done pursuant to the conspiracy. For other acts done outside the contemplation of the co-conspirators or which are not the necessary and logical consequence of the intended crime, only the actual perpetrators are liable. Here, only Serapio killed (sic) Casiano Cabizares. The latter was not even going to the aid of his father Rafael but was fleeing away when shot."

To conclude, appellant Edwin Flora is guilty beyond reasonable doubt only of the murder of Ireneo Gallarte. He has no liability for the death of Emerita Roma nor for the injuries of Flor Espinas caused by his co-accused Hermogenes Flora.

WHEREFORE, the decision of the trial court is hereby MODIFIED as follows:

(1) Appellants Hermogenes Flora and Edwin Flora are found GUILTY beyond reasonable doubt of the MURDER of Ireneo Gallarte and sentenced to each suffer the penalty of reclusion perpetua and to pay jointly and severally the heirs of Ireneo Gallarte in the sum of P50,000.00 as death indemnity; P14,000.00 compensatory damages for the wake and burial; and P470,232.00 representing loss of income without any subsidiary imprisonment in case of insolvency.

(2) Hermogenes Flora is found GUILTY beyond reasonable doubt of the MURDER of Emerita Roma and the ATTEMPTED MURDER of Flor Espinas. For the MURDER of EMERITA ROMA, Hermogenes Flora is sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of Emerita Roma in the sum of P50,000.00 as death indemnity, P14,000.00 as expenses for wake and burial, and P619,800.00 for loss of earning capacity, without any subsidiary imprisonment in case of insolvency. For the ATTEMPTED MURDER of Flor Espinas, Hermogenes Flora is sentenced to suffer the penalty of imprisonment from two (2) years, four (4) months and one (1) day of prision correccional as minimum to ten (10) years of prision mayor, as maximum, and to pay P15,000.00 to Flor Espinas as indemnity for her injuries.

(3) Appellant Edwin Flora is ACQUITTED of the murder of Emerita Roma and the attempted murder of Flor Espinas.

Costs against appellants.

SO ORDERED.

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

[1] Rollo, pp. 32 - 51.

[2] Id. at 5.

- [3] Id. at 6.
- [4] Id. at 7.
- [5] Id. at 49-51.
- [6] TSN, February 1, 1995, pp. 14-15; Records, pp. 2-3.
- [7] Records, SC-4810, p. 3.
- [8] Records, SC-4811, p. 3.
- [9] Records, SC-4812, p. 5.
- [10] Rollo, p. 70.
- [11] Id. at 71.
- [12] TSN, January 18, 1995, pp. 2-13.
- [13] *People vs. Batulan*, 253 SCRA 52, 53 (1996)
- [14] *People vs. De Castro*, 252 SCRA 341, 352 (1996)
- [15] *People vs. Danao*, 253 SCRA 146, 147 (1996)
- [16] *People vs. Fabrigas Jr.*, 261 SCRA 436, 437 (1996)
- [17] *People vs. Ferrer*, 255 SCRA 19, 35 (1996)
- [18] TSN, June 9, 1993, p. 4.
- [19] Id. at 6. A fair reading could reconcile Rosalie's answers to mean having a seat for herself while the dance was ongoing.
- [20] TSN, July 19, 1993, pp. 15-16.
- [21] *People vs. Ramos*, 240 SCRA 191, 192 (1995)
- [22] *People vs. Lorenzo*, 240 SCRA 624, 626 (1995)
- [23] *People vs. Nicolas*, 241 SCRA 67, 68 (1995)
- [24] *People vs. Alcantara*, 33 SCRA 812, 821 (1970)
- [25] *People vs. Asil*, 141 SCRA 286, 288 (1986)
- [26] *People vs. Radomes*, 141 SCRA 548, 549 (1986)
- [27] Revised Penal Code, Art. 4.
- [28] *People vs. Estillo*, 141 SCRA 456, 460 (1986)
- [29] *People vs. Hubilla, Jr.*, 252 SCRA 471, 472 (1996)
- [30] Ibid.
- [31] *People vs. Luayon*, 260 SCRA 739, 740 (1996)
- [32] Rollo, p. 43.

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