

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEOPOLDO AQUINO ALIAS POLDONG AND LORETO AQUINO, ACCUSED-APPELLANTS.

G.R. No. 126047. September 16, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

LEOPOLDO AQUINO alias Poldong and LORETO AQUINO, brothers, appeal from the Decision of the Regional Trial Court, Br. 32, Agoo, La Union, finding them guilty of murder and sentencing them to reclusion perpetua, to pay the heirs of Loreto Cecilio P50,000.00 as civil indemnity, P21,596.00 for actual expenses, P100,000.00 as moral damages, and the costs.[1]

On the night of 23 December 1988 Loreto Cecilio attended a Christmas dance in Bgy. Dulao, Aringay, La Union. Prosecution witness Pablo Medriano Jr. narrated in court that on the same evening he and three (3) lady friends were having snacks in a store near the dance hall. Loreto Cecilio was also at the store conversing with Ronald Medriano. Witness Pedro Medriano Jr. knew Loreto Cecilio because the latter was a friend of his brother Julito Medriano. At the back of the store were the accused Leopoldo Aquino and Loreto Aquino who were drinking liquor. While having their snacks, witness Medriano learned that a fight erupted between two (2) groups, one from Bgy. Dulao, and the other, from Bgy. Alaska. But the protagonists were immediately pacified.

Shortly thereafter, the Aquino brothers approached Pablo Medriano and challenged him to a fight. They asked him if he could still remember the time when he stoned them, but Pablo replied in the negative.

For fear of his life Pablo Medriano ran towards the house of Liberato Madriaga, his uncle, to seek shelter and help. Upon reaching the yard of his uncle, Pablo turned back to see if he was still being pursued by the Aquino brothers; instead, he saw them mauling Loreto Cecilio. Leopoldo Aquino was hugging Loreto Cecilio from behind while Loreto Aquino was boxing and hitting their victim. Already dazed and beaten, Loreto Cecilio was hit by Leopoldo with a stone on the neck causing him to fall down.

Upon reaching the house of his uncle Liberato, Pablo was met by his mother who hid him from his attackers until some people carried the lifeless body of Loreto Cecilio to the yard of the house. The victim was rushed to the hospital but was pronounced dead on arrival.

On 4 January 1989 Dr. Arturo Llavore, medico-legal officer of the National Bureau of Investigation in San Fernando, La Union, conducted a post-mortem examination of the exhumed body of Loreto Cecilio. In his report, Dr. Llavore concluded that the death of Loreto Cecilio was caused by a very strong force from a blunt object delivered on the right side of the neck. This conclusion confirmed the testimony of Pablo Medriano that Loreto Cecilio was hit by Leopoldo Aquino on the neck with a stone.

As expected, the defense gave a different account of the events. According to accused-appellants, after 11 o'clock in the evening of 23 December 1988, they were drinking beer at the store of a certain Virgilio Bautista. The group

of Pablo Medriano and that of the victim Loreto Cecilio were behind the store also drinking liquor. After 30 minutes past midnight of 23 December 1988, the two (2) camps started throwing stones at each other and a free-for-all ensued.

The Aquino brothers denied participation in the melee. Instead, they pointed to prosecution witness Pablo Medriano and his companions as the ones who figured in the brawl. In view of the fight, they thought it prudent to go home and stay away from trouble. The following morning they were arrested and questioned for the killing of Loreto Cecilio. They were later released after being detained by the police for a couple of hours. Both vehemently denied any involvement in the death of Loreto Cecilio. They claimed that the victim was a stranger and they had no grudge against him. There was no reason for them to kill or harm him.

To buttress their defense, accused-appellants presented Ambrocio Caoile who testified that he was also at the Christmas dance that night of 23 December 1988. According to him, he stayed and roamed around the area looking for his friends from 10:00 o'clock in the evening of 23 December up to 2 o'clock the following morning. He confirmed that a fight broke out between two (2) groups, one from Bgy. Dulao, and the other from Bgy. Alaska. Caoile admitted seeing the Aquino brothers in front of the store of Virigilio Bautista. However, he denied having seen them figure in any altercation, mauling, or killing. In fact, according to Caoile, he did not observe any unusual incident during the dance except for the fracas between the two (2) groups; and, that he only learned about the death of Loreto Cecilio the next morning.

In convicting the Aquino brothers of murder, the trial court ratiocinated thus -

The identity of the two accused has been established beyond reasonable doubt by the testimony of Pablo Medriano, Jr. He knew the two accused since he was still young as they all came from Dulao, Aringay, La Union x x x x Pablo Medriano could have seen clearly the mauling of Loreto Cecilio as the place of the mauling was well lighted. There was light from the store and the dance hall. The place of the mauling was just 10 to 12 meters from the store and the dance hall.

On the other hand, the defense of the accused consisted merely of denials. They admitted they were at the scene of the incident. They also admitted that Pablo Medriano Jr. and Loreto Cecilio were also present near the store. But they tried to project a saintly poise of indifference to the fight between the two groups and smugly claims that they went home. Their witness Ambrocio Caoile also testified in the same manner by saying that there was no mauling incident involving Loreto Cecilio as he did not witness any mauling during all the time he was near the store x x x x The testimony of Pablo Medriano Jr. is a positive narration of the facts surrounding the killing of Loreto Cecilio. The testimonies of the accused and their lone witness are mere denials hence negative. The testimony of Pablo Medriano Jr. being a positive narration of facts must be given greater weight than the negative testimonies of the defense witness of the two accused.

Accused-appellants impute the following alleged errors to the lower court: (1) in considering the existence of conspiracy and the attendance of the qualifying circumstance of abuse of superior strength; (2) in disregarding the mitigating circumstance of voluntary surrender in favor of the accused; (3) in admitting in evidence the exhumation report/postmortem findings to show the injuries sustained by the deceased Loreto Cecilio; (4) in relying on the uncorroborated testimony of a single witness in convicting the two (2) accused and in not acquitting them on reasonable doubt; and, (5) in acting more like a prosecutor and/or failed to observe the neutrality of an impartial tribunal.

We affirm the Decision of the court below.

First. Accused-appellants submit that they could not have conspired to harm and kill Loreto Cecilio as the latter was a stranger to them and they had nothing against him. Their meeting was merely accidental.

This argument is misplaced. Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[2] What is fundamental for conspiracy is the unity of purpose and unity in the execution.[3] Direct proof of the accused's previous agreement to commit a crime is not indispensable. This fact may be deduced from the mode and manner in which the offense was perpetrated.[4] 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 had the same purpose and were united in its execution.[5] A conspiracy may be inferred without need of showing that the parties actually came together and agreed in express terms to enter into and pursue a common design.[6] As found by the trial court -

x x x [the accused-appellants'] behavior and participation as narrated by Pablo Medriano, Jr. clearly shows that there [was a] conspiracy by and between them in the commission of the crime. They aided each other in perpetrating the crime. They [had] the same common purpose, and they pursued it x x x x[7]

Accused-appellants likewise claim that the trial court erred in considering the qualifying circumstance of abuse of superior strength. They insist that "the alleged mauling was a spur of the moment impulse, hence, it may not be said that the accused had cooperated and intended to use or secure advantage from such superior strength, or had specifically contrived or deliberately intended and prepared to take advantage of superior strength in a projected assault against the victim." [8]

This contention is without merit. To appreciate the attendant circumstance of abuse of superior strength, what should be considered is whether the aggressors took advantage of their combined strength in order to consummate the offense.[9] The circumstance of superiority depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of by him in the commission of the crime.[10] It is not necessary that a premeditated plan to use superior force against the victim be proved. It is enough that the facts show that this leverage in strength was employed of by the accused in the commission of the crime.

In the instant case, the records show that accused-appellants took advantage of their combined strength against the unarmed and helpless Loreto Cecilio. Leopoldo Aquino embraced and held on to the victim while his brother Loreto Aquino hit and boxed the victim. Thus, even if the killing was a result of a chance encounter, the manner by which the crime was committed clearly indicates that accused-appellants made good use of their dominant strength.

Second. Accused-appellants contend that the lower court should have appreciated the mitigating circumstance of voluntary surrender as they freely submitted themselves to the police on 19 September 1992 without any warrant of arrest having been served on them.

We do not agree. For the mitigating circumstance of voluntary surrender to be properly appreciated, the following requisites must concur: (a) the offender was not actually arrested; (b) he surrendered to a person in authority or to an agent of a person in authority; and, (c) his surrender was voluntary.[11] In the instant case, the surrender of accused-appellants was far from voluntary. The first warrant of arrest issued on 5 January 1989 was returned unserved because they could not be found.[12] Thereafter, several alias warrants of arrest were issued stating therein the possible whereabouts of accused-appellants in La Union, Ilocos Sur, and Pangasinan. The warrant officer in Sta. Cruz, Ilocos Sur, again returned the warrant of arrest unserved because of failure to locate them. As to the warrant of arrest sent to Pangasinan, no return appeared on record. Despite these outstanding warrants of arrest, the Aquino brothers successfully managed to elude the long arm of the law until their surrender to the police through the municipal mayor of Aringay, La Union, on 19 September 1992 or more than three (3) years since the first warrant of arrest was issued.

Besides, the mitigating circumstance of voluntary surrender should be appreciated only where there is nothing on record to show that the warrant of arrest had actually been served on the accused, or that it had been returned unserved for failure of the server to locate the accused, and there is direct evidence to show that the accused voluntarily presented himself to the police when he was taken into custody.[13] In *People v. de la Cruz*[14] we held that the search for the accused, which lasted four (4) years, belies the spontaneity of the surrender.

Third. Accused-appellants aver that the trial court should not have admitted the exhumation report because the exhumed body was not properly identified to be that of the victim Loreto Cecilio. This averment is clearly without basis. As correctly argued by the Solicitor General -

Dr. Arturo Llavore testified that Carlito Cecilio, brother of the deceased Loreto Cecilio, actually made the request for the exhumation of the latter's cadaver. In fact, Carlito identified the cadaver as that of his deceased brother, as shown in a photograph taken immediately after the exhumation.

Fourth. Accused-appellants insist that the crime charged against them was not proven beyond reasonable doubt; and, that the reliance by the trial court on a single and uncorroborated witness was not sufficient to warrant a conviction.

This Court is not persuaded. A doctrine of long standing in this jurisdiction is that the testimony of a lone eyewitness, if credible and positive, is sufficient to convict an accused.[15] The testimony of a single witness, free from any signs of impropriety or falsehood, is sufficient for conviction, even if uncorroborated.[16]

This Court accords the highest respect to the findings of the trial court on the issue of credibility of witnesses.[17] In fact, jurisprudence is replete with cases declaring that the assessment by the lower court of the credibility of an eyewitness deserves the highest respect of the Supreme Court considering that it had the direct opportunity to observe his deportment and manner of testifying and availed of the various aids to determine whether he was telling the truth or simply concocting lies.[18] As observed by the court a quo -

The Honorable Court noted that Pablo Medriano, Jr. is an engineering student or graduate and appears to be intelligent. The Honorable Court intently observed the deportment and behavior of Pablo Medriano, Jr. and concludes that he is telling the truth. Pablo Medriano, Jr. testified in a spontaneous and straightforward manner. So that in the light of the declarant's demeanor, conduct and attitude, his version of the incident is more believable and credible.[19]

Absent any consequential argument or proof to the contrary, we see no reason to disturb the findings of the court below.

Corollarily, accused-appellants parry the imputation of guilt on their part by advancing different theories and arguments with respect to the commission of the crime. They even pointed to the eyewitness Pablo Medriano Jr., and his brother Julito Medriano as the ones responsible for the death of Loreto Cecilio. Unfortunately, this feeble attempt at exoneration not only appears to be incredible but is likewise unsupported by facts and evidence on record.

Clearly, what stands on record is the fact that the eyewitness, Pablo Medriano Jr., positively identified accused-appellants as the perpetrators of the crime. Accused-appellants failed to prove any motive on the part of Pablo Medriano Jr. to falsely accuse them of the crime charged. Thus, his testimony must stand.

On the other hand, the defense of accused-appellants consists merely of denials as against the positive identification by the prosecution eyewitness. We have ruled often enough that positive identification by an independent witness who has not been shown to have any reason to falsely testify must prevail over the simple denials and unacceptable alibi of the accused.[20] The murder of Loreto Cecilio by Leopoldo Aquino and Loreto

Aquino was indeed established beyond reasonable doubt.

Fifth. A conscientious perusal of the records yields no proof that the trial judge acted partially and improperly. That he asked questions in the course of the trial does not make him a biased judge. In fact, the questions he propounded were merely clarificatory aimed at elucidating the issues of the case. We ruled in *People v. Manalo*[21]-

It is not only the right but oft-times the duty of a trial judge to examine witnesses when it appears necessary for the elucidation of the record. Under the system of legal procedure in vogue in this jurisdiction, where the trial court is judge of both the law and the facts, it is oft-times expedient or necessary in the due and faithful administration of justice for the presiding judge to re-examine a witness in order that his judgment when rendered may rest upon a full and clear understanding of the facts.

WHEREFORE, the Decision of the Regional Trial Court, Agoo, La Union, finding accused-appellants LEOPOLDO AQUINO and LORETO AQUINO GUILTY of MURDER and sentencing each of them to suffer the penalty of reclusion perpetua and to pay the heirs of Loreto Cecilio P50,000.00 as death indemnity and P21,596.00 for actual damages, is AFFIRMED with the MODIFICATION that the award of moral damages is REDUCED from P100,000.00 to P50,000.00 in line with prevailing jurisprudence.[22] Costs against accused-appellants.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Decision dated 4 January 1994 by Presiding Judge Leo M. Rapatalo.

[2] Art. 8, The Revised Penal Code.

[3] *People v. Dorico*, No. L-31568, 29 November 1973, 54 SCRA 172.

[4] *People v. Cara*, G.R. Nos. 117483-84, 12 December 1997, 283 SCRA 96; *People v. Hayahay*, G.R. No. 120550, 26 September 1997, 279 SCRA 567; *People v. Asto*, G.R. No. 108611, 20 August 1997, 277 SCRA 697; *People v. Sion*, G.R. No. 109617, 11 August 1997, 277 SCRA 127; *People v. Apongan*, G.R. No. 112369, 4 April 1997, 270 SCRA 713; *People v. Gayon*, G.R. No. 116228, 13 March 1997, 269 SCRA 587; *People v. Magallano*, G.R. No. 114872, 16 January 1997, 266 SCRA 305.

[5] *People v. Hubila, Jr.*, G.R. No. 114904, 29 January 1996, 252 SCRA 471.

[6] *People v. Salison*, G.R. No. 115690, 20 February 1996, 253 SCRA 758.

[7] Decision, p. 23; Rollo, p. 32.

[8] Rollo, p. 65.

[9] *People v. Balano*, G.R. No. 116721, 272 SCRA 782.

[10] *People v. Bongadillo*, G.R. No. 96687, 20 July 1994, 234 SCRA 233.

[11] *People v. Rapanut*, G.R. No. 106817, 24 October 1996, 263 SCRA 515.

[12] See Return Warrant of Arrest, Records, p. 8a.

[13] *People v. Braña*, No. L-29210, 31 October 1969, 30 SCRA 307.

[14] No. L-30059, 19 December 1970, 36 SCRA 452.

[15] *People v. Abalos*, G.R. No. 88189, 9 July 1996, 258 SCRA 523.

[16] See *People v. Pabalan*, G.R. Nos. 117819-21, 30 September 1996, 262 SCRA 574; *People v. Tuvilla*, G.R. No. 88822, 15 July 1996, 259 SCRA 1; *People v. Garde*, G.R. No. 103968, 11 July 1996, 258 SCRA 613.

[17] *People v. Talaboc*, G.R. No. 103290, 23 April 1996, 256 SCRA 441.

[18] *People v. Laurente*, G.R. No. 116734, 29 March 1996, 255 SCRA 543.

[19] See Note 7, pp. 18-19; Rollo, pp. 27-28.

[20] *People v. Bracamonte*, G.R. No. 95939, 17 June 1996, 257 SCRA 380.

[21] G.R. No. 55177, 27 February 1987, 148 SCRA 98.

[22] *People v. Verde*, G.R. No. 119077, 10 February 1999; *People v. Gutierrez*, G.R. No. 116281, 8 February 1999.

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