

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONALDO PONCE, LUISITO LIBRILLO (AT LARGE), ACCUSED,

G.R. No. 126254. September 29, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] of the Regional Trial Court of Iloilo City, Branch 23, dated April 29, 1996, in Criminal Case No. 31423, finding appellant Ronaldo Ponce guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua, as well as to indemnify the heirs of the victim, Jaime Javellana, the sum of P71,250.00 as actual damages, P50,000.00 as indemnity ex delicto, and P30,000.00 as moral damages.

Appellant Ponce and his co-accused Luisito Librilla,[2] who is still at large, were initially charged with murder in an information dated February 8, 1988. The indictment reads:

That on or about the 12[th] day of December 1987, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, armed with bladed instruments, conspiring and confederating between themselves, working together and helping (one) another, with deliberate intent to kill and without any justifiable motive, with treachery and taking advantage of superior strength, did then and there wilfully (sic), unlawfully and criminally stab, hit and wound Jaime Javellana with bladed instruments with which the said accused were provided at the time, thereby causing upon the latter stabbed (sic) wounds on vital parts of his body, which resulted in his death (a) few moments thereafter.

CONTRARY TO LAW.[3]

When arraigned appellant, with assistance of counsel, pleaded not guilty to the offense charged. The case was then tried on the merits.

The facts of this case, as gleaned from the records, are as follows:

Jaime Javellana and Ronaldo Ponce were neighbors at Magdalo St., La Paz, Iloilo City. Javellana was employed as a quartermaster aboard the M/S Don Julio, an inter-island steamer owned by the Negros Navigation Company, Inc.,[4] while Ponce worked as a member of a group providing guards for a gold mine in San Francisco, Agusan del Sur.[5]

At around 10:30 p.m. of December 12, 1987, Jaime and his wife, Neonica,[6] left their house to buy beer and cigarettes at a nearby store. They were about to return home when they were suddenly blocked and accosted by Ponce and Librilla, who were drinking rum at the said store. Ponce glared at the victim and asked for his name. The latter readily acquiesced. Sensing trouble, Jaime then told his wife to go ahead.[7] She did as requested, but kept on looking back at her husband. Suddenly, she saw appellant pull out a knife and thrust it towards her husband.[8] Appellant missed, however, and the victim attempted to flee. The two accused gave chase, both now armed with bladed weapons. Before Jaime could reach his house, Neonica saw Ponce thrusting his knife at her

husband again. This time, Ponce succeeded in stabbing Jaime in the back.[9] Neonica saw her husband fall in front of their fence.[10] Before she could do anything, Librillo knelt beside the victim and stabbed him three times, hitting him in the neck, head, and left side of his body.[11] She screamed for help and the accused fled. Jaime was rushed to the Iloilo Mission Hospital, where he died on arrival.

With her husband's death, Neonica, who was left with four (4) small children to support,[12] was forced to seek employment as a domestic helper in Qatar.[13]

The fatal stabbing of Jaime, was likewise witnessed by Nelly Delgado, an aunt of the victim, with whom he was residing. Nelly testified that she was standing in front of her house, when she saw Ponce and Librillo, who were both carrying knives, chasing the victim.[14] She knew both appellant and Librillo because they were her neighbors.[15] Recognition was no problem as the place where the stabbing took place was well lighted by a street lamp and the light in the balcony of her house.[16] She saw Ponce try to stab Jaime three times but hit him at the back only on the third try.[17] Jaime then fell, almost at her feet. Librillo then knelt beside Jaime and stabbed him several times,[18] while Ponce stood beside Librillo. Nelly shouted at the two accused. They likewise tried to stab her, but upon recognizing her, they ran away instead.[19]

On December 13, 1987, Dr. Jose A. Rafio, Medico-Legal Officer of the Philippine National Police (PNP), RECOM 6, Camp Delgado, Iloilo City, conducted an autopsy on the remains of the victim. His findings, which he reduced to writing,[20] showed that Jaime suffered four (4) stab wounds, and died from the resulting hemorrhage.

He testified that the third stab wound located at the left front armpit was the fatal wound as it cut the left lung, aorta, and pulmonary artery.[21]

Ponce, herein appellant, raised the defense of denial during his trial. He tried to put the blame solely on his co-accused, who was at large. According to appellant, he was having a drinking session with some friends, among them his co-accused Librillo, at the store of a certain Denden Lanciola,[22] when Jaime Javellana and his wife arrived. Librillo asked Jaime where he came from, but the latter angrily retorted "What are you, a CIS?"[23] Librillo lost his cool and exclaimed, "You are arrogant!"[24] Jaime then boxed Librillo, so the latter pulled out a knife and tried to stab Jaime, who, ran off towards his home, with Librillo in pursuit. Librillo caught up with Jaime in front of the latter's house and stabbed him there.[25] Appellant claimed that he was so shocked by the incident that he could do nothing, but watch the tragedy unfold before his eyes. He never bothered to report what he saw to the police. Shortly afterwards, he returned to his job in Mindanao.

Rolly Peñasales, one of his drinking buddies that night, corroborated appellant's story. According to Peñasales it was Librillo alone who chased and stabbed the victim.[26] He claimed that he clearly saw the incident, since the place was well illuminated.[27]

Appellant likewise presented Ana Mae Guillergan, the proprietor of "Bingbing Store", who testified that only Librillo followed the Javellana couple, after the altercation between Librillo and Jaime.[28] Guillergan averred that appellant and Peñasales remained behind in her store. On cross-examination, however, she admitted that she did not see what happened after Librillo ran after the Javellanas. She did not see who actually stabbed the victim.[29] She had closed her store out of fear.

The trial court found appellant's version of the incident unworthy of belief, and his defense both insipid and untenable. Opting to believe the prosecution's version, the trial court convicted appellant, thus:

"WHEREFORE, premises considered and in the light of the foregoing, judgment is hereby rendered finding the accused Ronald Ponce guilty beyond reasonable doubt of the crime of Murder, and there being no mitigating nor aggravating circumstance attendant in the commission thereof, hereby sentences the aforementioned

accused to suffer a penalty of imprisonment of RECLUSION PERPETUA.

The said accused is further condemned to indemnify the heirs of Jaime Javellana the sum of P71,250.00 by way of actual damages, the amount of P50,000.00 as death compensation, and P30,000.00 moral damages.

The accused who is presently detained is entitled to be credited in full with the entire period of his detention.

Let there be issued an alias order of arrest for the other accused Luisito Librillo who remained at large up to the present time.

SO ORDERED.”[30]

Hence, this appeal, imputing the following errors to the trial court, and insisting:

I

THAT THE ACCUSED DID NOT DELIVER A FATAL INJURY TO THE VICTIM.

II

THAT CONSPIRACY HAS NOT BEEN PROVEN

III

THAT NO QUALIFYING CIRCUMSTANCE HAS BEEN ESTABLISHED.[31]

In sum, the issues are: (1) Whether appellant is liable only to the extent of the non-fatal injury he inflicted upon the victim; (2) Whether there is sufficient proof of conspiracy between appellant and his co-accused; and (3) Whether any qualifying circumstance was sufficiently proved to sustain the appellant’s conviction for murder.

Firstly, appellant asks us to consider Dr. Rafio’s testimony that the stab wound inflicted by him was not the fatal wound.[32] Appellant argues that since the wound he inflicted was non-fatal and since the prosecution failed to prove the existence of a conspiracy between him and Librillo, he can only be held accountable to the extent of the physical injury he inflicted upon the victim. Absent a showing of conspiracy, Librillo alone should be held liable for the victim’s death.

Secondly, appellant denies having conspired with his co-accused. Thus, crucial to the resolution of his appeal is the determination of whether or not appellant and Librillo conspired, explicitly or implicitly, to kill Jaime Javellana.

There is conspiracy when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[33] The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy.[34] Direct proof, however, is not essential to show conspiracy.[35] It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design.[36] Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.[37] Thus, to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance of or furtherance of the conspiracy, although the acts performed might have been distinct and separate.[38] This overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting a moral ascendancy over the other co-conspirators by moving them to execute or implement the criminal plan.[39] Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all.[40]

Close scrutiny of the records in this case persuades us that, contrary to the appellant's assertion, conspiracy has been amply shown by the prosecution's evidence. The manner by which the killing was carried out, as described by the prosecution witnesses, clearly demonstrates that the assailants were propelled by one common purpose: to punish Javellana for the perceived effrontery and arrogance he displayed to them. With the bladed weapons they had in hand, and having drunk rum, appellant and his co-accused mutually helped each other accost, block, chase, stab, and kill the victim.

The evidence clearly shows that appellant and Librillo were together drinking liquor at the neighborhood store, when Librillo and the victim had a verbal exchange. Armed with bladed weapons, appellant and Librillo then chased the unarmed victim from the store to his house. Upon catching up with the latter, appellant inflicted a stab wound on his back. The victim collapsed and while he lay prostrate, Librillo stabbed him repeatedly. While Librillo was stabbing the helpless victim, appellant stood by with his knife at the ready. Both of them then tried to stab the victim's aunt who shouted at them, but on recognizing her as a neighbor, desisted from the act and instead fled together. Under the circumstances, it is evident that Ponce and Librillo acted in unison and cooperated with each other toward the accomplishment of a common felonious objective. Clearly, Ponce and Librillo were of one mind, not only in attacking Javellana, but also in the manner in which the attack was to be made. Their actions implicitly showed unity of purpose between them - a concerted effort to bring about the death of the victim.

When by their acts, two or more persons proceed toward the accomplishment of the same felonious object, with each doing his act, so that their acts though seemingly independent were in fact connected, showing a closeness of formal association and concurrence of sentiment, conspiracy may be inferred.[41] As shown by the prosecution's evidence, there was a method, a common design, and a common purpose in their attack, however instantaneous. Appellant's actions-standing on guard with his knife, while his co-accused stabbed the deceased several times, and then fleeing together with his co-accused-are consistent with the circumstance of conspiracy.

In our view, conspiracy having been established, appellant and his co-accused are equally liable for the offense. As conspirators, they are equally responsible for the victim's death, regardless of which of them actually dealt the fatal blow.[42]

But was the killing of Jaime Javellana homicide or murder?

Appellant argues that the fatal stabbing should only be homicide, and not murder, given the failure of the prosecution to prove any qualifying circumstance,[43] which attended the commission of the crime. He asks us to note that the decision of the trial court is bereft of any mention of any qualifying circumstance, which would justify his being found guilty of murder.

Note that the information in the present case alleges "treachery and taking advantage of superior strength" as the circumstances, which qualified the killing as murder. Treachery, while alleged, was not proven by the prosecution. It is an entirely different matter, however, with respect to the circumstance of "abuse of superior strength." This qualifying circumstance is present where there is proof of gross physical disparity between the protagonists or when the force used by the assailant is out of proportion to the means available to the victim.[44] The narration of the incident by the prosecution witnesses clearly shows that the attack on the hapless victim, was purposely made with the use of excessive force, out of proportion to the defenses available to the deceased. Note that the latter was unarmed, while his two attackers carried knives. Superiority in numbers is not always superiority in strength, taking into consideration the age, size, and strength of the parties. But in this case, two assailants armed with deadly weapons were obviously superior to a lone, unarmed and unprepared opponent. Here superiority in strength speaks loud and clear.[45] And that superiority was demonstrably abused in the chase and

fatal attack. Murder is committed where the killing is attended by abuse of superior strength, the victim being unarmed, while all the attackers were armed with bladed weapons.[46]

WHEREFORE, the decision of the Regional Trial Court of Iloilo City, Branch 23, dated April 29, 1996, in Criminal Case No. 31423, finding appellant Ronaldo Ponce guilty of murder and imposing upon him the penalty of reclusion perpetua, and ordering him to pay the victim's heirs the amount of P50,000.00 as indemnity, P71,250.00 as actual damages and P30,000.00 as moral damages is hereby AFFIRMED. Costs against appellant.

SO ORDERED.

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

[1] Records, pp. 190-202.

[2] Also spelled as "Lebrillo" in the records.

[3] Records, p. 1.

[4] TSN, May 4, 1993, p.18; TSN, February 16, 1993, p. 5; Exhibit "E", Folder of Exhibits, p. 5.

[5] TSN, June 11, 1993, p. 23.

[6] Sometimes referred to as "Monica" in the records.

[7] TSN, May 4, 1993, p. 15.

[8] Ibid.

[9] Supra Note 7, at 16.

[10] Id. at 17.

[11] Ibid.

[12] Supra Note 7, at 20.

[13] Id. at 21.

[14] TSN, February 16, 1993, p. 4.

[15] Id. at 5.

[16] Ibid.

[17] Supra Note 14, at 7. See also TSN, March 12, 1993, p. 10.

[18] Ibid.

[19] Supra Note 14, at 8.

[20] Exhibit "B", Index of Exhibits, p. 2.

[21] TSN, January 28, 1993, p. 15.

[22] More accurately "Bingbing Lanchola." See TSN, August 24, 1993.

[23] "CIS" is used in common parlance to refer to members of the PNP Criminal Investigation Service.

[24] TSN, June 11, 1993, p. 26.

[25] Id. at 27.

[26] TSN, July 30, 1993, pp. 36-37.

[27] Id. at 37-38.

[28] TSN, August 24, 1993, pp. 52.-53.

[29] Id. at 60.

[30] Supra Note 1, at 202.

[31] Rollo, p. 38.

[32] TSN, January 28, 1993, p. 14.

[33] *People v. Sumalpong*, 284 SCRA 464, 487-488 (1998) citing *People v. Lopez*, 249 SCRA 610 (1995), *People v. Abarri*, 242 SCRA 39 (1995); *People v. Baniel*, 275 SCRA 472, 485 (1997); *People v. Luayon*, 260 SCRA 739, 752 (1996) citing *People v. Timple*, 237 SCRA 52 (1994).

[34] *People v. Villagonzalo*, 238 SCRA 215, 230-231 (1994).

[35] *People v. Gabatin*, 203 SCRA 225, 231 (1991).

[36] *People v. Hubilla, Jr.*, 252 SCRA 471, 480 (1996).

[37] *People v. Timple*, 237 SCRA 52, 68 (1994) citing *People v. Orehuela*, 232 SCRA 82 (1994), *People v. Valeriano*, 226 SCRA 694 (1993).

[38] *People v. Manambit*, 271 SCRA 344, 387 (1997) citing *US v. Dasal*, 3 Phil. 6 (1903).

[39] *Pecho v. People*, 262 SCRA 518, 531 (1996) citing *People v. De Roxas*, 241 SCRA 369 (1995); *People v. Tami*, 244 SCRA 1, 22 (1995) citing *People v. De Roxas*, 241 SCRA 369 (1995), *People v. Peralta*, 25 SCRA 759 (1968).

[40] *People v. Narca*, 275 SCRA 696, 714 (1997) citing *People v. Torrefiel*, 256 SCRA 369 (1996), *People v. Solon*, 244 SCRA 554 (1995), *People v. Miranday*, 242 SCRA 620 (1995).

[41] *People v. Fabro*, 277 SCRA 19, 43 (1997) citing *People v. Azugue*, 268 SCRA 711 (1997), *People v. Layno*, 264 SCRA 558 (1996), *People v. Isleta*, 264 SCRA 374 (1996).

[42] *People v. Amondina*, 220 SCRA 6, 11 (1993).

[43] REV. PEN. CODE., Art. 248. Murder. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
- In consideration of a price, reward, or promise.
- By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

- On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.

- With evident premeditation.

- With cruelty, by deliberately and inhumanely augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[44] *People v. Bernal*, 254 SCRA 659, 671 (1996).

[45] *People v. Layaguin*, 262 SCRA 207, 218 (1996).

[46] *People v. Ramos*, 260 SCRA 402, 410 (1996).

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