# PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REGINO (EHEN) MARCELINO, NORBERTO (NOBER) MARCELINO, MELQUIADES (MERDING) MARCELINO, JUDITO MARCELINO, CONRADO (ADOC) ANDOY, G...

*G.R. No. 126269. October 01, 1999*

Ponente: DAVIDE, JR., C.J.

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**DAVIDE, JR., C.J.:**

Once again, the Court is called upon to choose between the conflicting testimonies of witnesses for the State and for the defense. At stake is justice itself, screaming from the grave of an innocent man mercilessly and brutally murdered while performing an official duty. The case does not call for Solomonic wisdom, but due process requires that the parties be heard on every possible point of controversy, especially the accused, who have reached the end of the road and have this one last opportunity to profess their innocence. The State's evidence established the following factual scenario.

In the afternoon of 17 April 1987, Francisco de la Peña received in his home at Buenavista, Himamaylan, Negros Occidental, Roberto Pineda and Roberto Bajos who were dispatched by Negros Occidental Governor Lacson to investigate the reported burning of some houses at Barangays Nabilog and Mandahan in Himamaylan. After spending the night there, Pineda and Bajos, accompanied by Francisco, went to Pindahan, Tayasan, Negros Oriental, where the nearest police unit was located. The two proceeded to the detachment while Francisco remained at their last stop, the house of a certain Tarsing Loreso at Sangkil, Pindahan.[1]

At Pindahan, Pineda and Bajos were spotted by Jonathan Bolongaita at the flea market (tabu-an) being questioned by Barangay Chairman REGINO Marcelino and some of his Civilian Home Defense Force (CHDF) cohorts, namely, JUDITO, MELQUIADES and NORBERTO, all surnamed Marcelino; SILVESTRE and GERON Debaguio; and CONRADO Andoy.[2] Pineda showed some papers to REGINO but the latter rejected them on the pretext that he could not read. REGINO then sent for a certain Sgt. Camay who advised the two not to proceed to Nabilog because it was getting dark and a taxicab was apparently waiting for them. As they turned, Jonathan saw REGINO make a finger line across his neck, then his group, some of whom were carrying long firearms, followed Pineda and Bajos all the way to the junction leading to Sitio Tampa. Jonathan, who was trailing them from a distance, turned to the other road. He was already home when he heard gunshots explode nearby.[3]

In the meantime, farmworkers Nenebeth Balasabas Salimbagat, and brothers Arcadio and Joel Balasabas, who saw REGINO's gang pass by the rice fields near the Tampa creek, also heard the gun reports. When they looked in the direction of the shots, they saw Pineda "lying on his side somewhere at the creek" and Bajos limping to the upper side of the creek. Upon REGINO's orders the men chased Bajos, caught up with him and shot him in the chest.[4] The bodies of the victims were dragged toward the creek. They cut off Bajos' left ear, gouged his left eye, then stripped off their clothes and took their belongings. Upon closer inspection, Jonathan, the Balasabases, and other neighbors saw that Bajos' head was broken and his body covered with stones.[5] They did not touch the

bodies, but when Arcadio passed by the same spot the following morning, only traces of blood and a bloodstained red cap[6] were left. CONRADO, who turned state witness upon motion of the prosecution, later explained that he was among those who concealed and later burned the bodies of the victims upon REGINO's command. He added that REGINO also ordered MELQUIADES to pulverize the bones, gather the ashes and bone powder, place them in a sack, and "ipa-anud sa suba," (let them be carried by the current).[7]

Another witness, Johnythird Calijan, an errand boy at the Army detachment, saw Pineda and Bajos at the flea market in the morning of 18 April 1987. At 4 p.m. of the same day, he learned from JUDITO that they had slain the two strangers. He later saw the soldiers dividing what he believed to be the personal effects of Pineda and Bajos.[8]

A week after, REGINO and defense witness Junior de los Niños convened Pindahan residents to inform them that Pineda and Bajos were members of the New People's Army (NPA) and threatened to kill anyone who would tell the authorities anything about the incident of 18 April 1987.[9] They also paid Jonathan and CONRADO a visit and gave them the same warning.[10]

For the death of Roberto Pineda,[11] an information for murder dated 14 May 1990 was filed against REGINO, NORBERTO, MELQUIADES, JUDITO, CONRADO, GERON and SILVESTRE, viz.:

> That on or about the 18th day of April, 1987, at Napindahan, Tayasan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and helping one another, with evident premeditation and treachery and taking advantage of superior strength and with intent to kill, did then and there, wilfully, unlawfully and feloniously shoot one Roberto Pineda, with the use of carbines, armalite rifles and long firearms, with which accused were then armed and provided, thereby inflicting gunshot wounds on the body of Roberto Pineda, which caused his untimely death.
>
> Contrary to Article 248 of the Revised Penal Code.[12]

The accused, with the exception of GERON who remains at large, all pleaded not guilty to the charge. REGINO, who was arrested ahead of the others, requested and was granted a separate trial. Although the trial was over by 30 August 1991, no decision was immediately rendered. On 1 October 1991, the prosecution filed a motion to reopen REGINO's trial and another motion to discharge JUDITO and CONRADO as state witnesses. The trial court denied both motions. In the joint trial of the rest of the accused, the testimonial and documentary evidence presented at REGINO's separate trial were adopted and reproduced by agreement of the parties. On 3 April 1992, the prosecution filed another motion to discharge JUDITO and CONRADO. Despite vigorous opposition from the defense, the trial court allowed CONRADO to be utilized as a state witness, but his testimony was to be confined to a determination of the guilt of the other accused.

Expectedly, the accused denied the accusation and set up alibi as a defense. Nobody could, however, corroborate their stories. The only witnesses, apart from the accused themselves, were Barangay Councilman Walter Gonzalez and Barangay Captain Jose "Junior" de los Niños, who testified that they did not notice any stranger in the area or hear any gunshot on 18 April 1987, or even receive a report of a shooting incident.[13]

On 18 July 1996, the court a quo, presided by Judge Rosendo B. Bandal, Jr., who inherited the case from Judge Enrique C. Garrovillo, found the accused guilty as charged. Thus:

> WHEREFORE, the Court finds accused REGINO MARCELINO, NORBERTO MARCELINO, MELQUIADES MARCELINO, JUDITO MARCELINO and SILVESTRE DEBAGUIO, guilty beyond reasonable doubt of the crime of Murder and sentences them to suffer the penalty of RECLUSION PERPETUA and to solidarily indemnify the heirs of deceased victim Roberto Pineda the amount of Fifty Thousand Pesos (P50,000.00); moral damages of Two Hundred Thousand Pesos (P200,000); and to pay the


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costs.

x x x

SO ORDERED.[14]

In so ruling, the trial court gave full faith and credence to the version of the prosecution; corollarily, it rejected the different alibis advanced by the defense on the ground that accused-appellants were positively identified by credible witnesses. Besides, they failed to establish the physical impossibility of their presence at the crime scene during its commission. It further held that conspiracy existed among them, with REGINO as the mastermind. Finally, although the court did not consider evident premeditation for the purpose of setting the penalty, it nevertheless concluded that the killing was attended by treachery, the victims being then unarmed and totally unaware of their lot.

Accused-appellants seasonably elevated their case before this Court for a review, raising as sole issue the error allegedly committed by the trial court in convicting them even as their guilt had not been proved beyond reasonable doubt.

They argue that they could not be held liable for the deaths of Pineda and Bajos because the prosecution failed to establish the corpus delicti of the crime charged. Apparently, there was no physical evidence of the alleged murder, and the original prosecution witnesses were not able to demonstrate how, when and where the bodies of the victims were concealed or disposed of. This contention has no basis either in law or jurisprudence. The corpus is the body or material substance upon which a delicti has been committed. Its two elements – that a certain result has been proved, and that some person is criminally responsible for the act[15] – need not be ascertained beyond reasonable doubt, unlike the very fact of commission of the crime and its author.[16]

Producing the body of the victim, as well as proving its disposal, is not necessary for a murder or homicide conviction. It is enough to show that a person was killed without legal justification. In certain situations, this may even be presumed or established by circumstantial evidence.[17]

From the testimonies of prosecution witnesses, there is no doubt that Roberto Pineda was killed on 18 April 1987. The records reveal that he left Bacolod City on 16 April 1997 to fetch Bajos who accompanied him to Pindahan, Tayasan, Negros Oriental. Pineda was sent by Governor Lacson of Negros Occidental to investigate the reported abused by military and para-military groups in the hinterlands. When he did not return home on the scheduled date, his mother Delia used all resources within her power to look for Roberto. She sought the aid of military authorities and the government officials concerned; yet, all she heard were reports that her son was killed at Pindahan, Tayasan, Negros Oriental.

Prosecution witnesses Jonathan Bolongaita, Arcadio Balasabas, Joel Balasabas, and Nenebeth Salimbagat testified that two men whom they subsequently identified as Pineda and Bajos were shot and killed by the CHDF on 18 April 1987 at Tampa creek.

State witness Conrado Andoy adequately explained that there was no trace of the crime because the corpses were incinerated.

The testimonial evidence leaves no doubt that REGINO engineered the execution of Pineda and Bajos. But did the prosecution sufficiently establish a conspiracy as to hold the other accused-appellants equally liable for the twin deaths? We believe so.

Conspiracy to commit the crime of murder may be gleaned from the established facts. REGINO, the acknowledged CHDF leader in Tayasan, effectively ordered his men to kill Bajos and Pineda by means of a

signal, i.e., drawing a line across his neck with a finger. The gesture was so conspicuous that even Jonathan Bolongaita saw it. REGINO and his compatriots followed the deceased when the latter took the road to Barangay Nabilog. Upon reaching Tampa creek, the prosecution witnesses heard gunshots and saw long firearms aimed at the unarmed Pineda and Bajos. Pineda was already lying on the ground when the armed group chased the wounded and limping Bajos before shooting him, too. Their bodies were set on the ground side-by-side, their clothes removed, their personal belongings stolen. Thereafter REGINO ordered that the bodies be burned, obviously to conceal their evil deed. These circumstances, taken together, sufficiently established a unity of purpose, community of interest and intent, which were carried out in concert. Their concordant combination and cumulative effect satisfy the legal requisites for conspiracy,[18] which occurs when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[19] For conspiracy to exist, there need not 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.[20] Direct proof of previous agreement to commit the crime is not necessary. Conspiracy may even be shown through circumstantial evidence, or deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action, and community of interest.[21]

Conspiracy having been established in this case, each accused-appellant is equally guilty for the death of Roberto Pineda. Once conspiracy is proven, the act of one is the act of all.[22]

As regards REGINO's contention that the trial court relied on CONRADO's testimony in convicting him, a close scrutiny of the judgment reveals that REGINO's guilt was founded on the testimonies of the witnesses presented during his separate trial. Indeed, the evidence thus introduced against him established with moral certainty his criminal culpability.

Moving on to the defense of alibi offered by accused-appellants, we find the same to be unconvincing. For it to prosper, they must show that it was physically impossible for them to have been at the scene of the crime.[23] In this, they miserably failed.

REGINO maintained he was at Dumaguete City from 16-19 April 1987 to attend a certain Chester Cunanan's party on 18 April 1987. This statement is, however, unsubstantiated. Considering the distance between Dumaguete City and Pindahan, which could be negotiated within three to four hours by bus, it was not impossible for REGINO to have been physically present at Pindahan on 18 April 1987, the date of the incident.

The alibis of the other accused were easy to fabricate, largely uncorroborated, and too flimsy to deserve exhaustive discussion. Moreover, alibis cannot prevail over the positive identification of the malefactors. We find no reason to doubt the credible testimony of Jonathan Bolongaita, as corroborated by Arcadio Balasabas and confirmed by state witness CONRADO. Finally, the positive testimonies of the prosecution witnesses have greater probative value than the negative testimonies of Bgy. Captain de los Niños and councilman Gonzales.

The alleged inconsistencies between the prosecution witnesses' sworn statements and their testimonies in open court are immaterial, sufficiently explained by them and do not affect their credibility as witnesses. A sworn statement or affidavit, taken ex-parte by a person other than the witness, is almost always incomplete and often inaccurate, sometimes from partial suggestion, at other times for want of proper suggestion or inquiry. Omission and misunderstanding by the writer are frequent, particularly when the dictation is done in haste and impatience. Their infirmity as evidence is a matter of judicial experience. As such, affidavits taken ex-parte are generally considered inferior to testimonies made in open court.[24]

Joel Balasabas' failure to include REGINO in his sworn statement as one of the accused was merely an oversight.

Nenebeth Salimbagat clarified that she had inadvertently stated the incorrect date of the commission of the crime due to the length of time that had elapsed before her sworn statement was taken, but she corrected the mistake during her direct testimony. It is true that Joel did not see some of the accused and the testimonies of the prosecution witnesses as to whose firearms were aimed at Pineda and Bajos varied. These minor details are hardly material, considering that witnesses testifying on the same event do not have to be in perfect agreement if they corroborate each other on material points. Differences in perception can be attributed to their location vis-à-vis the crime scene.

As to qualifying circumstance of treachery, we believe this was duly proven in this case. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms of attack which tend directly and specially to insure the execution of the crime without risk to himself arising from the defense which the offended party might make.[25] For treachery to exist, two essential elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate, and (b) the said means of execution was deliberately or consciously adopted.[26] What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate.[27]

Bajos and Pineda were deliberately led toward Nabilog by REGINO when he claimed there was a taxi there waiting for them. He ordered JUDITO to lead the two, and as they turned, gave the order to kill. When they reached Tampa creek, Pineda and Bajos, concerned, unforwarned and with nary a chance to defend themselves, were suddenly shot by accused-appellants. Pineda immediately fell down. He had absolutely no opportunity to offer any defense.

While accused-appellants took advantage of their superior strength, this circumstance is deemed absorbed in treachery and cannot be considered separately as a generic aggravating circumstance.[28]

We agree with the trial court that the qualifying circumstance of evident premeditation was not established. The following requisites must be established before evident premeditation may be considered in imposing the proper penalty: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[29] Evident premeditation must be clearly proven, established beyond reasonable doubt and must be based on external acts that are evident, not merely suspected, and which indicate deliberate planning.[30] The attendant factual circumstances in this case are insufficient to prove evident premeditation.

The award of moral damages of P200,000 should, however, be reduced to P50,000, and only in favor of Delia Pineda, mother of Roberto Pineda, because she alone testified on her sufferings as a result of Roberto’s death.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered DISMISSING the appeal and AFFIRMING in toto the judgment of the Regional Trial Court of Negros Oriental, Branch 30, of 18 July 1996 in Criminal Case No. 9358, except as to the award of moral damages, which is hereby reduced from P200,000 to P50,000 payable to Delia Pineda, mother of the victim.

Costs against the accused-appellants.

**SO ORDERED.**

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] TSN, 27 February 1991, 4-6, 8-10, 17-18.


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[2] The names of the accused are capitalized. CONRADO Andoy was utilized as state witness while GERON Debaguio remains at large. Hence, only REGINO, JUDITO, MELQUIADES, NORBERTO and SILVESTRE appealed from the 18 July 1996 decision of the trial court.

[3] TSN, 7 May 1991, p.m., 6-14.

[4] Joel and Arcadio claimed that REGINO aimed his gun at Bajos, contrary to Nenebeth and Jonathan's testimony that it was JUDITO who aimed his gun at Bajos as REGINO trained his at Pineda.

[5] TSN, 27 February 1991, 24-29, 33-35; 7 May 1991, a.m., 15-17, p.m., 15-18; 9 May 1991, a.m., 12-16.

[6] Exhibit "C."

[7] TSN, 11 August 1993, 25-32.

[8] TSN, 9 May 1991, p.m., 30-34.

[9] TSN, 27 February 1991, 36-37, 9 May 1991, a.m., 22-24, p.m., 18-20.

[10] TSN, 7 May 1991, p.m., 20; 10 February 1992, 17, 34; 11 August 1993, 29-32.

[11] The death of Roberto Bajos is not involved in this action. Although prosecution witness Modesto L. Cajita, Supervising NBI Agent and OIC, in his letter dated 26 February 1990 to the Provincial Prosecutor of Negros Oriental, recommended the filing of double murder charges against the accused, the two deaths were made the subject of separate indictments.

[12] Rollo, 9-10.

[13] TSN, 1 July 1991, 26; 3 July 1991, 16.

[14] Rollo, 65.

[15] People v. Cabodoc, 263 SCRA 202[1996]; People v. Cabodoc, 263 SCRA 202[1996]; People v. Barlis, 231 SCRA 426, 442[1994]; People v. Roluna, 231 SCRA 445, 452[1994], citing People v. Sasote, 91 Phil. 111.

[16] People v. Cabodoc, supra.

[17] People v. Roluna, supra.

[18] People v. Dela Cruz, 229 SCRA 754, 763[1994]

[19] Article 8, Revised Penal Code.

[20] Peole v. Sequiño, 264 SCRA 79, 102[1996]; People v. Hubilla, Jr., 252 SCRA 471, 480-481[1996].

[21] People v. Galapin, G.R. No. 124215, 31 July 1998, 12; People v. Tabag, 268 SCRA 115, 127[1997]; People v. Laurente, 255 SCRA 543, 564[1996]; People v. Hubilla, Jr., id.; Pecho v. People, 262 SCRA 518, 530[1996].

[22] People v. Enriquez, 281 SCRA 103[1997].

[23] See People v. Alshaika, 261 SCRA 637, 646[1996]; People v. De la Cruz, 207 SCRA 632, 645[1992]; People v. Maqueda, 242 SCRA 565, 592[1995].

[24] People v. Conde, 252 SCRA 681, 690[1996]; People v. Enciso, 223 SCRA 675, 685-686[1993].

[25] People v. Cabodoc, 263 SCRA 187, 203[1996]; People v. Villegas, 262 SCRA 314, 323[1996]; See People v. Estrellanes, 239 SCRA 235, 249[1994].

[26] People v. Peña, G.R. No. 116022, 1 July 1998, 8; People v. Landicho, 258 SCRA 1, 27[1996]; People v. Compendio, Jr., 258 SCRA 254, 264[1996]; People v. Garcia, 209 SCRA 164[1992].

[27] People v. Villonez, et. al., G.R. No. 122976-77, 16 November 1998, 14; People v. Tobias, 267 SCRA 229, 255[1997].

[28] People v. de Leon, 248 SCRA 609[1995]; People v. Albarico, 238 SCRA 203[1994]; People v. Landicho, supra.

[29] People v. Felix, G.R. No. 126914, 1 October 1998, 12; People v. Cruz, 262 SCRA 237, 243-244[1996]; People v. Compendio, Jr., supra.

[30] People v. Peña, supra.


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