

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUBEN ESTEPANO, RODNEY ESTEPANO AND RENE ESTEPANO, ACCUSED-APPELLANTS.*G.R. No. 126283. May 28, 1999*

Ponente: BELLOSILLO, J.

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ENRIQUE BALINAS was stabbed and hacked to death for which Dominador, Rodrigo, Ruben, Rodney, Dante and Rene, all surnamed Estepano, were charged with murder. Rodrigo died during the trial and before judgment could be rendered. Dante was never apprehended hence, as against him, the case was archived. After trial, Dominador was acquitted on reasonable doubt. Only Ruben, Rodney and Rene were found guilty. Accordingly, the three (3) were sentenced to reclusion perpetua and ordered to indemnify the heirs of Enrique Balinas in the amount of P100,000.00 for moral damages and P9,500.00 for actual damages, without subsidiary imprisonment in case of insolvency.[1]

The case for the prosecution is woven mainly on the testimony of Florencio Tayco. He narrated that on 16 April 1991, at around ten o'clock in the evening, he was on his way home in Barangay IV, Himamaylan, Negros Occidental, with Lopito Gaudia and Enrique Balinas. Enroute, they met Dominador Estepano at the BM Trucking compound. At this juncture, according to Florencio, Lopito started to talk to Dominador while he and Enrique stood nearby. Suddenly, Rodrigo appeared and without any provocation stabbed Enrique in the stomach with a "guinunting." [2] Ruben who was armed with a cane cutter and Rodney, Dante and Rene, each armed with a bolo, followed suit in hacking Enrique. While this was happening, Dominador told his companions, "You better kill him!" [3]

Lopito Gaudia confirmed that on 16 April 1991, at around ten o'clock in the evening, while he was walking home with Enrique Balinas and Florencio Tayco, they saw Dominador Estepano at the BM Trucking compound near the house of Junior Vasquez. While he was talking to Dominador he saw two (2) persons, both naked from the waist up, pass by. He recognized one of them to be Rodrigo Estepano. Soon after, he heard a couple of "splashing sounds and a ring," which made him turn around. As he did, he saw Rodrigo withdrawing his bolo from the neck of Enrique. He also saw another person, who was armed with a cane cutter, standing near the fallen Enrique. He asked Dominador why Rodrigo hacked Enrique and Dominador replied that that was "the result of intense hatred." He then hurriedly left for home. On the way he met some military men and told them about the incident. The military men assured him that they would report the matter to the police authorities. [4]

Dominador Estepano gave his own version of the incident. According to him, on 16 April 1991, at around ten o'clock in the evening, he was at home with his wife and son Roberto. They were about to eat supper when he heard Enrique Balinas call out for his son Rodrigo to come down. He peeped through the window and saw Rodrigo hacking Enrique. When Enrique fell to the ground Rodrigo hastily fled. There was no other person in the vicinity. He then went down his house where the victim was and saw the latter's firearm. He picked it up and

when Chief of Police Balquin arrived, he turned over the firearm to him.[5]

Robert Hautea[6] and Luz Cuepas,[7] both residents of Barangay IV, corroborated the testimony of Dominador.

Accused Ruben, Rene and Rodney invoked alibi. Ruben claimed that on 16 April 1991, at around ten o'clock in the evening, he was at the provincial hospital in Bacolod City attending to his wife who earlier underwent a caesarian operation.[8] Rene and Rodney, sons of Rodrigo, claimed that they were at home sleeping when the killing occurred. Rene, who was only thirteen (13) years of age then, testified that he came to know about the incident that same night when his mother awakened him to inform him about it.[9] Rodney, on the other hand, was awakened by shouts that his father killed Enrique Balinas.[10]

The crux of this appeal of Ruben, Rodney and Rene is that the trial court erred: (a) in giving credence to the testimony of prosecution witness Florencio Tayco; (b) in finding the existence of conspiracy in the commission of the crime charged; and, (c) in finding them guilty of murder.[11]

On the first assigned error, accused-appellants argue that the trial court accorded too much credence to the testimony of Florencio Tayco notwithstanding that some substantial points of his testimony were not corroborated by Lopito Gaudia who was also present at the crime scene. Florencio maintained that aside from Rodrigo, the other Estepanos, Dante, Rodney, Ruben and Rene, also attacked Enrique. Lopito, on the other hand, asserted that he saw Rodrigo with only one companion at the time of the incident.[12]

The assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, who of the witnesses to disbelieve or whose testimonies to accept. Verily, findings of the trial court on such matters are binding and conclusive on the appellate court unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted,[13] which is not true in the present case.

The clear and convincing testimony of Florencio Tayco positively points to accused-appellants as the killers of Enrique Balinas. Florencio testified that he was only two arms length away from the victim[14] as well as from the assailants.[15] Thus, it was unlikely that he could not have recognized the latter considering that he was a resident of the place and thus familiar more or less with the faces of its townsfolk. He was positive in identifying Rodrigo as the person who first stabbed Enrique in the stomach with a bolo,[16] followed by Ruben, Dante, Rodney and Rene, each hacking the victim one after the other while the victim was already lying down.[17] He was also positive in identifying the respective weapons used by the malefactors.[18] As there was no indication that Florencio was moved by any improper motive, the presumption is that he was not so moved and his testimony must be given full faith and credence.[19]

Florencio's account, in a way, was bolstered by the testimony of Dr. Quintin Napoles, the physician who made a post mortem examination on the body of the victim. His findings revealed:

"Multiple hack wounds left face and neck with fracture of cervical vertebrae; stab wound left anterior chest and right posterior lumbar region, non-penetrating. Dead on arrival." [20]

On the basis of his medical findings, Dr. Napoles opined that there could have been more than one kind of weapon used in killing the victim - one sharp pointed and another sharp bladed.[21]

It is undisputed that both Florencio Tayco and Lopito Gaudia were present at the crime scene when the incident happened. However, as clearly shown by their testimonies, it was only Florencio who saw the entire incident.

What Lopito witnessed was only that which transpired when he turned around upon hearing some noise. Naturally, their impressions on the incident would vary. In other words, the alleged conflicting testimonies between the two eyewitnesses as claimed by accused-appellants are more imagined than real.[22]

With respect to the defense of alibi, we agree with the trial court that it must fail. Well entrenched is the rule that alibi and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. They warrant the least credibility or none at all and cannot prevail over the positive identification of the accused by the prosecution witness.[23]

Appellant Ruben Estepano would impress us that in the evening of 16 April 1991 he was at the provincial hospital attending to his wife who had a caesarean operation, and never left the hospital until the following day. However, he did not introduce evidence that his wife was actually admitted in the hospital and that she was discharged therefrom only on 17 April 1991 to prove that he was not at the scene of the crime when the incident happened.[24] The other appellants, Rodney and Rene, on their part, testified that they were asleep when the incident happened. These testimonies are not sufficient to outweigh their positive identification by one of the prosecution witnesses.

For alibi to prosper, it is not enough for accused-appellants to prove that they were somewhere else when the crime was committed. They must likewise demonstrate that they were so far away that they could not have been present at the place of the commission of the offense or its immediate vicinity at the time of its commission.[25] They were not able to prove that it was physically impossible for them to be at the locus criminis considering the proximity of the places where they alleged to be and the place where the victim was murdered. For alibi to be believed, credible and tangible proof of physical impossibility for the accused to be at the scene of the crime is indispensable.[26]

On the second issue, accused-appellants contend that there was no solid ground to establish conspiracy among them because their identities as authors of the crime were not proved by clear and convincing evidence, and that their participation in the crime was not sufficiently established in the light of conflicting testimonies of the prosecution witnesses.[27]

We do not agree. The factual findings of the trial court, through the credible testimony of prosecution witness Florencio Tayco, clearly established their identities as the assailants as well as the participation of each of them, not to mention the weapons used for the attack. Conspiracy may be deduced from the mode and manner in which the offense was committed,[28] and the concerted acts of the accused to obtain a common criminal objective signify conspiracy.[29] In the case at bar, the overt acts of accused-appellants in taking turns in hacking Enrique Balinas clearly and adequately established conspiracy. It can be inferred therefrom that they acted in unison in the pursuit of their common criminal design which was to kill the victim Enrique Balinas.[30]

The trial court was correct in finding accused-appellants Ruben Estepano and Rodney Estepano guilty of murder as the killing was attended by treachery. The evidence shows that they suddenly and unexpectedly attacked the victim while the latter was waiting for Lopito Gaudia who was talking to Dominador Estepano. There was treachery because the following requisites concurred: (a) the culprits employed means, methods or forms of execution which tended directly and specially to insure their safety from any defensive or retaliatory act on the part of the offended party, which meant that no opportunity was given the latter to do so; and, (b) that such means, method or manner of execution was deliberately or consciously chosen.[31] The penalty of reclusion perpetua was correctly imposed on them in the absence of any mitigating or aggravating circumstances.[32]

With respect to accused-appellant Rene Estepano, the records show that he was only thirteen (13) years of age at the time of the commission of the offense. Under Art. 12, par. (3), of The Revised Penal Code, a person over nine

(9) years of age and under fifteen (15) is exempt from criminal liability unless it is shown that he acted with discernment. The minor referred to here is presumed to have acted without discernment. Thus, it is incumbent upon the prosecution to prove that such minor acted otherwise.[33]

A scrutiny of the records shows that the prosecution failed to prove that accused-appellant Rene Estepano acted with discernment. The testimony of prosecution witness Florencio Tayco only attempted to establish, as it did, Rene's presence at the crime scene and his supposed participation in the killing of Enrique Balinas. Thus -

Q: Aside from Ruben Estepano alias "Texas" and Dante Estepano who helped in attacking Enrique Balinas, were there other persons involved or helped aside from these two?

A:

Yes, sir.

Q: How many more (who) helped?

A: Rodney Estepano and Rene Estepano.

x x x x

Q: What is (sic) the weapon used by "Texas" (Ruben)?

A: Cane cutter (espading).

x x x x

Q: How about Rene?

A: Bolo.[34]

Clearly, the prosecution did not endeavor to establish Rene's mental capacity to fully appreciate the consequences of his unlawful act. Moreover, its cross-examination of Rene did not in any way attempt to show his discernment. He was merely asked about what he knew of the incident that transpired on 16 April 1991 and whether he participated therein.[35] Accordingly, even if he was indeed a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age.[36] The cross-examination of Rene could have provided the prosecution a good occasion to extract from him positive indicators of his capacity to discern. But, in this regard, the government miserably squandered the opportunity to incriminate him.

The damages awarded by the trial court to the heirs of the victim must be modified. The P100,000.00 granted by the trial court for moral damages must be REDUCED to P50,000.00 considering that the purpose for such award is not to enrich the heirs but to compensate them for the injuries to their feelings. Conformably with prevailing jurisprudence, an additional award of P50,000.00 as indemnity for the death of Enrique Balinas must also be given.[37]

Finally, the heirs are likewise entitled to damages for the loss of earning capacity of the deceased, and the absence of documentary evidence to support a claim therefor does not prevent recovery of such damages.[38] The testimony of Marietta Balinas, the victim's wife, on the earning capacity of her husband is enough to establish the basis for the award. The formula for determining the life expectancy of Enrique Balinas applying the American Expectancy Table of Mortality is as follows: $\frac{2}{3}$ multiplied by (80 minus the age of the deceased).[39] Since Enrique was 34 years of age at the time of his death,[40] then his life expectancy was 30.66 years.

At the time of his death, Enrique was earning P2,000.00 a month as househelper of a certain Dr. Sancho[41] so that his annual income was P24,000.00. From this amount, 50% should be deducted as reasonable and necessary living expenses to arrive at his net earnings. Prescinding from the foregoing, we deduce that his net earning capacity was P367,920.00 computed as follows:

$$\begin{aligned} &\text{net earning life gross reasonable} \\ &\text{capacity (x) = expectancy x annual less \& necessary} \\ &\text{income living expenses} \\ &x = \frac{2}{3} (80 - 34) \times [24,000.00 - 12,000.00] \\ &= 30.66 \times 12,000.00 \\ &= P367,920.00 \end{aligned}$$

WHEREFORE, the decision appealed from is MODIFIED. Accused-appellants RUBEN ESTEPANO and RODNEY ESTEPANO are found GUILTY beyond reasonable doubt of Murder and are accordingly sentenced each to reclusion perpetua. They are ordered to jointly and severally indemnify the heirs of their victim Enrique Balinas y Gran the amount of P50,000.00 as indemnity for death, P50,000.00 as moral damages, P9,500.00 as actual damages and P367,920.00 for loss of earning capacity.

Accused-appellant RENE ESTEPANO is ACQUITTED in the absence of proof that he acted with discernment; consequently, his immediate RELEASE from confinement is ORDERED unless he is detained for some other lawful cause. The Director of Prisons is DIRECTED to implement this Decision and to report to this Court immediately the action taken hereon within five (5) days from receipt hereof.

SO ORDERED.

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

[1] Decision penned by Judge Jose Y. Aguirre Jr., RTC-Br. 55, Himamaylan, Negros Occidental, 31 January 1996, Rollo, pp. 35-36.

[2] "Guinunting" means fighting bolo.

- [3] Rollo, pp. 22-23.
- [4] TSN, 12 March 1992, pp. 23-24.
- [5] Rollo, p. 26.
- [6] TSN, 3 August 1993, pp. 2-19.
- [7] TSN, 26 January 1994, pp. 2-27.
- [8] TSN, 6 April 1994, pp. 5-7.
- [9] Id., p. 17.
- [10] TSN, 23 June 1994, pp. 5-6.
- [11] Brief for the Appellants, p. 1.
- [12] TSN, 9 January 1992, pp. 7-8.
- [13] *People v. Oliano*, G.R. No. 119013, 6 March 1998, 287 SCRA 158; *People v. San Juan*, G.R. No. 105556, 4 April 1997, 270 SCRA 693.
- [14] TSN, 9 January 1992, p. 25.
- [15] Id., p. 19.
- [16] Id., p. 6.
- [17] Id., pp. 26-27.
- [18] Id. p. 10.
- [19] *People v. Chavez*, G.R. No. 116294, 21 August 1997, 278 SCRA 230.
- [20] TSN, 22 July 1992, pp. 5-8.
- [21] Id., p. 9.
- [22] Appellee's Brief, pp. 7-8.
- [23] *People v. Dacoba*, G.R. Nos. 121995-96, 20 April 1998, 289 SCRA 265.
- [24] Rollo, pp. 32-33.
- [25] *People v. Carullo*, G.R. No. 82351, 24 April 1998, 289 SCRA 481.
- [26] *People v. Nang*, G.R. No. 107799, 15 April 1998, 289 SCRA 16.
- [27] Brief for the Appellants, p. 12.
- [28] *People v. Silong*, G.R. No. 110830, 23 May 1994, 232 SCRA 487, citing *People v. Dela Cruz*, G.R. No. 68319, 31 March 1992, 207 SCRA 632.
- [29] *People v. Silong*, G.R. No. 110830, 23 May 1994, 232 SCRA 487, citing *People v. Villanueva*, G.R. Nos. 97144-45, 10 July 1992, 211 SCRA 403.
- [30] Rollo, p. 30.
- [31] *People vs. Regular*, No. L-38674, 30 September 1981, 108 SCRA 35.

[32] Arts. 248 and 64, par. (1), The Revised Penal Code.

[33] Reyes, L., The Revised Penal Code, 1993 Revised Ed., Bk. I, p.216.

[34] TSN, 9 January 1992, pp. 8 & 10.

[35] TSN, 6 April 1994, pp. 15-22.

[36] People vs. Cordova, G.R. Nos. 83373-74, 5 July 1993, 224 SCRA 319.

[37] People vs. Verde, G.R. No. 119077, 10 February 1999.

[38] Ibid.

[39] See also Villa-Rey Transit, Inc. v. Court of Appeals, No. L-25499, 18 February 1970, 31 SCRA 511; Negros Navigation Co., Inc., v. Court of Appeals, G.R. No. 110398, 7 November 1997, 281 SCRA 534; Metro Manila Transit Corporation v. Court of Appeals, G.R. No. 116617, 16 November 1998; Sanitary Steam Laundry, Inc. v. Court of Appeals, G.R. No. 119092, 10 December 1998; People v. Verde, G.R. No. 119077, 10 February 1999.

[40] TSN, 4 March 1993, p. 5.

[41] Id., p. 4.

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