PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR DREW AND JENNY RAMOS, ACCUSED-APPELLANTS.

G.R. No. 127368. December 03, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] promulgated on April 18, 1996, in Criminal Case No. Q-92-32932, by the Regional Trial Court of Quezon City, Branch 80, finding appellants Salvador Drew and Jenny Ramos guilty of murder and sentencing each to suffer the penalty of reclusion perpetua.

Drew and Ramos, with Willy Mercado a.k.a. "Tabuning," Alex Casao, Roberto Viernes a.k.a. "Obet,' Ryan Cabanag, Luisito Drew, Henry Ramos, Randy Magpusao, Gerry Rivera a.k.a. "Baba," Deomelo Hermi Villanueva, a certain Julius a.k.a. "Buang," and Alejandro Bongalesa were charged with murder under the following Information:

> That on or about the 3[rd] day of November 1991, in Quezon City, Philippines, the above-named accused, conspiring, confederating with and mutually helping one another with intent to kill, qualified by evident premeditation and treachery, taking advantage (of) superior strength, did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ANTONIO CORDIAL, JR., by then and there hitting him with a lead pipe on his head and on the different parts of his body, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the said Antonio Cordial, Jr., in violation of said law.
>
> CONTRARY TO LAW.[2]

Of the 13 charged, only Gerry Rivera, Roberto Viernes, Salvador Drew and Jenny Ramos were apprehended. When Viernes was arrested, he was separately tried. Rivera, Drew and Ramos moved for joint trial apart from their co-accused who remained at large.

The prosecution's evidence established that on November 3, 1991[3], at around 11:00 P.M., the victim, Antonio Cordial, Jr., was walking towards an eatery at Sto. Domingo Street, corner Araneta Avenue, Quezon City. Suddenly, appellants Drew and Ramos, with the 11 other accused waylaid him.[4] Drew was armed with a 2" x 2" piece of wood with which he clubbed the unarmed Cordial.[5] Ramos then struck him on the back of his head with a lead pipe, followed by several blows on the body.[6] The victim fell. As he lay prostrate on the ground, the others joined in beating him with blows and kicks.[7] Appellants and their co-accused then fled. Prosecution witnesses Junjun Sopeña[8] and Conrado Militante witnessed the incident. Militante approached the victim and brought him to the Cordial residence in Kaliraya Street, Tatalon Estate, Quezon City. He was later rushed to the National Orthopedic Hospital. Cordial sustained contusions, abrasions, hematoma, lacerated wounds and abscess formation.[9] He died the next day. An autopsy performed by Dr. Alberto M. Reyes of the National Bureau of Investigation showed that Cordial died of "pneumonia, hypostatic, secondary to traumatic head injuries."[10]

Appellants denied any involvement in the incident. Ramos testified that on November 3, 1991, he came home at

6:00 P.M. after attending his classes and never left the house.[11] He went to sleep at 10:00 P.M. and woke up at 7:00 A.M. the following day to go to school.[12] SPO3 Roque Lopez of the Philippine National Police corroborated his testimony. Lopez claimed that he frequently bought fish in the house of Domingo Rivera, father of accused Gerry Rivera, in Taguko, Tatalon Estate. On November 3, 1991, Lopez said he arrived at the house of Domingo at around 9:00 P.M. and saw appellant Ramos with his brother, already asleep, while accused Gerry Rivera was watching TV. Lopez then drank beer with Domingo. He left Domingo's house at around midnight and saw that Ramos was still asleep.[13]

Appellant Drew testified that at the time of the incident he was already asleep at home in No. 96 ROTC Hunters St., Tatalon Estate, Quezon City.[14] He was not aware of any unusual event that night.

Both appellants claimed that the police did not show them any warrants of arrest when they were apprehended in October 1992.[15] Drew also said he was maltreated and tortured into admitting his complicity in the crime while in police custody.[16]

Finding appellants' defenses neither convincing nor credible, the trial court decreed as follows:

> WHEREFORE, in the light of the foregoing, the Court finds the accused Salvador Drew and Jenny Ramos guilty beyond reasonable doubt of the crime of murder. Accordingly, as the crime charged is punishable only with reclusion perpetua at the time when committed, the Court hereby sentences each of the said two accused to suffer the penalty of reclusion perpetua with the accessory penalties provided by law. Likewise, they are ordered jointly and severally to indemnify the heirs of the victim Antonio Cordial, Jr., the amount of P50,000.00 for his death and the amount of P23,047.00 as actual damages, the sum of P50,000.00 as moral damages and to pay also the costs of suit.
>
> With respect to the accused Gerry Rivera, he is acquitted of the crime charged. Accordingly, his release from detention is hereby ordered unless he is being detained by virtue of another cause.
>
> SO ORDERED.[17]

Hence, this appeal of Salvador Drew and Jenny Ramos premised on the following errors allegedly committed by the trial court:

> I
>
> THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES DESPITE THEIR MANIFEST INCONSISTENCIES.
>
> II
>
> THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE KILLING WAS ATTENDED WITH ABUSE OF SUPERIOR STRENGTH AND CONSPIRACY.[18]

In sum, the issues submitted for our resolution involve: (a) the credibility of the prosecution witnesses; and (b) the existence of circumstances that qualified the crime and the appellants' participation in it as co-conspirators.

On the first assigned error, appellants contend that the testimonies of prosecution witnesses Sopeña and Militante are riddled with inconsistencies, inaccuracies and improbabilities damaging to their credibility. According to appellants, Sopeña first testified that appellant Drew was on the victim's right side when he struck the latter with a wooden stick, yet when asked where Drew hit the victim, Sopeña claimed that the blow landed on the victim's left shoulder. Given the relative positions of Drew and the victim as described by Sopeña, appellants submit that it would have been impossible for Drew to hit victim's left shoulder. Second, Sopeña gave inconsistent answers when asked what he was doing at the gasoline station at the time of the incident. Third, Sopeña claimed that he

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did not know that Militante also witnessed the incident, notwithstanding the fact that they share the same address. Fourth, Sopeña is a biased witness since he and the victim lived in the same place.

With respect to Militante's testimony, appellants contend that his credibility is also suspect given the contradictions in his sworn statement and his testimony in court. In his sworn declaration, Militante claimed that the incident happened at 2:00 A.M., November 4, 1991, but on the witness stand, he declared that the victim was mauled at 11:00 P.M., November 3, 1991. Moreover, Militante declared in his testimony of January 20, 1993, that no other person witnessed the incident. But when called back to the witness stand on July 20, 1994, he averred that Sopeña and several of their neighbors also saw the incident.

Appellants submit that it was error for the trial court to convict them on the basis of the wavering, inconsistent, and inaccurate testimonies of Sopeña and Militante. They fault the prosecution for failing to present other witnesses.

For the State, the Office of the Solicitor General stresses that the inconsistencies pointed out by appellants refer to trivial and collateral matters, which do not show any conscious and deliberate effort on the part of the prosecution witnesses to distort the truth. There is no factual showing that the witnesses were biased or driven by some ill motive to testify falsely against the appellants. Moreover, the alleged inconsistencies do not affect the substance of their positive testimonies that they saw appellants Drew and Ramos, with 11 other persons, waylay the victim; and that Drew clubbed the latter with a wooden stick while Ramos struck him with a lead pipe. The OSG contends that minor inconsistencies aside, the separate accounts of Militante and Sopeña support and corroborate each other.

As a rule, appellate courts will not disturb the findings of the trial court regarding the credibility of witnesses, since it is the trial judge who had the opportunity to observe the deportment of the witnesses and their manner of testifying.[19] However, this rule does not apply in the present case, for the judge who penned the decision was not the same judge who heard the prosecution witnesses testify.[20] Hence, the records were subjected to a minute scrutiny to determine if the trial court unduly relied on the testimonies of the two prosecution witnesses, or if it overlooked some fact or circumstance of weight and influence which, if considered, might affect the result of the case.

The inconsistencies pointed out by appellants in Sopeña's testimony, to our mind, are more apparent than real. Inconsistencies and discrepancies referring to minor and collateral matters and not touching upon the basic elements of the crime, do not impair the credibility of a witness.[21] Note that the pertinent portions of Sopeña's testimony on who, what, when and where of the crime are consistent. Sopeña positively pointed to appellants as among those who ganged up on the victim and gave specific details on how they inflicted fatal injuries upon him. Note likewise that the substance of Sopeña's testimony remained constant even under grueling cross-examination. Note further that appellants failed to show any improper motive why Sopeña would testify falsely against them. Neither could they point to any factual matter on record to support their allegation that Sopeña was biased against them. Absent any indication that a witness for the prosecution was moved by improper motive, the presumption is that said witness was not so moved, and that his testimony is entitled to full faith and credit.[22]

Appellants seek to capitalize on the discrepancy between Militante's sworn statement and his testimony in court regarding the time and date of the offense. However, the records disclose that the police officer who took his sworn statement neither read nor explained to him its contents before asking him to sign it.[23] Militante, thus, had no opportunity to correct his affidavit as to the date of the incident until he was confronted with it in open court. Discrepancies between the statements of the affiant in his affidavit and those made by him on the witness stand do not necessarily discredit him since ex parte affidavits tend to be incomplete and inaccurate, hence,

affidavits are generally subordinated in importance to declarations made in open court.[24] Nor can we support appellants' contention that Militante contradicted himself when he first claimed that only Sopeña and he saw the incident, only to later backtrack and declare that several other persons witnessed the fatal mauling. A close scrutiny of his testimony of January 20, 1993, shows that he did not say that Sopeña and he were the only eyewitnesses. The pertinent portion of the transcript of stenographic notes taken on this point reveals this exchange:

> Q:
>
> Aside from the barangay tanod, Mr. Witness, was there any person who passed by the said place when the alleged incident took place?
>
> A:
>
> None, sir.[25]

His answer refers to the absence of other passers-by. His testimony of July 20, 1994, refers to several other persons, including some of his neighbors, who saw the incident but refused to be involved in the case.[26]

Appellants fault the prosecution for its failure to present these other eyewitnesses. But it is the prerogative of the prosecution to decide, in the presentation of its case, the number of witnesses it may choose to present.[27] Moreover, it is not the number of witnesses against the accused but the quality and weight of their testimonies that are crucial. The truthful testimony of one eyewitness might suffice to convince the court of the guilt of the accused beyond reasonable doubt.[28] Since Militante's story dovetails with and is corroborated by Sopeña's account and absent any showing that Militante had an axe to grind against appellants, his testimony deserves full faith and credence.

In contrast to the testimonies of eyewitnesses positively identifying appellants as among the offenders and detailing their participation in the offense, all that appellants could offer as a defense is bare denial and alibi. The meaning of the word "alibi" is "elsewhere"[29] and for it to prosper, the accused must establish by clear and convincing evidence that: (1) he was in another place at the time the offense was perpetrated; and (2) it would be physically impossible for him to have been at the scene of the crime.[30] Appellants failed to discharge this burden. Hunters Street where Drew lived and Taguko area where Ramos allegedly was sleeping on the night of the incident are both in Tatalon Estate which also includes the area of Sto. Domingo and Araneta Avenue. From the houses where appellants claimed they were at the place of the incident in Araneta Avenue, Quezon City, will take no more than ten minutes of jeepney or car ride. Neither Ramos nor Drew showed by clear and convincing evidence that it was physically impossible for them to go from their sleeping quarters to the locus criminis at the time of the mauling of the victim. Thus, appellants' defense of denial and alibi cannot prevail over their positive identification by eyewitnesses who saw them at the scene of the crime.

In their second assignment of error, appellants contend that the trial court erred in appreciating abuse of superior strength as a qualifying circumstance in the commission of the crime absent a showing that appellants deliberately intended to take advantage of it. They argue that superiority in terms of number on the part of the assailants does not prove abuse of superior strength, particularly where the victim did not die on the spot, but only succumbed a day after the incident.

The Solicitor General, for the State, replies that the prosecution duly established the aggravating circumstance of taking advantage of superior strength so as to qualify the killing to murder. He points out that appellants, aided by 11 others, ganged up on the victim and employed their superiority in number and strength to prevent his escape and inflict fatal injuries upon him.

For the qualifying circumstance of taking advantage of superior strength to be appreciated, we have repeatedly held that the prosecution must show that the accused were physically stronger than the victim, and that they abused such superiority by taking advantage of their combined strength to consummate the offense.[31] In the present case, we find that appellants and their 11 confederates took advantage of their collective strength to inflict fatal injuries upon the victim by rendering him defenseless and preventing his escape from the attackers. The unarmed victim could not match the combined strength of the 13 maulers. Appellants Drew and Ramos, who were armed with a wooden club and a lead pipe, respectively, reduced the unarmed victim into helplessness. The weapons used by appellants negated any defense the victim could put up. Alone and unarmed, the victim was no match to appellants and their co-accused. Thus, we agree that the circumstance of taking advantage of superior strength qualified the killing to murder, and no error could be attributed to the trial court on this score.

Appellants next contend that the trial court erred in finding that there was a conspiracy to kill the victim or inflict physical injuries upon him. Petitioners theorize that Militante's testimony of January 20, 1993, if properly scrutinized, shows that a chance encounter between appellant Drew and the victim triggered the incident, thus:

> Q:
>
> When Mr. Antonio Cardial,[32] Jr. arrived, what happened?
>
> A:
>
> When Antonio Cardial, Jr. was seen by Salvador Drew, he ran.
>
> Q:
>
> After that what happened, if any?
>
> A:
>
> Antonio Cardial, Jr. was surrounded by many persons.
>
> Q:
>
> More or less, how many?
>
> A:
>
> They were 13 including Salvador Drew.
>
> Q:
>
> When Salvador Drew ran after seeing the victim, after that what did he do?
>
> A:
>
> He ran back.
>
> Q:
>
> When you said that the victim surrounded by persons (sic) including Salvador Drew, what happened?
>
> A:
>
> And Salvador Drew got a piece of wood and clubbed at the side body (sic) of Antonio Cardial, Jr.[33]

Appellants stress that the foregoing categorically shows that Drew bore no arms when he accidentally met the victim. Instead, he ran away and later looked for a wooden club with which he armed himself. He caught the

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attention of the bystanders in their community, a slum area, where neighbors would always come to the aid of their peers in time of trouble and they moved in to surround the victim to help and protect their friend and neighbor Drew. Appellants submit that there was no conspiracy to speak of under these circumstances.

In finding that conspiracy characterized the killing of Cordial, Jr., the lower court held:

> ... Conspiracy as a qualifying circumstance is likewise present as it can be inferred by (sic) the respective acts of the two accused (Salvador Drew and Jenny Ramos) in hitting respectively the victim Cordial, Jr. with a "dos por dos" piece of wood and a lead pipe which clearly established a common design on their part to commit the offense charged. While it may be true that the head injuries of the victim Cordial, Jr. was caused only by the accused Jenny Ramos who as the evidence shows hit the victim in (sic) his head with a lead pipe, the act of said accused can also be considered as an act of the other accused Salvador Drew because of their conspiracy to commit the crime charged.[34]

In conspiracy, the commission of a crime is through the joint act or intent of two or more persons.[35] To establish conspiracy, however, it is not essential that there be proof of a previous agreement to commit the crime. It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose or a community of interest.[36]

In the present case, we find that conspiracy can be deduced from the circumstances surrounding the crime. Appellants and their co-accused performed concerted acts in pursuit of a joint purpose: they waylaid and surrounded the lone and unarmed victim, ganged up on him, and through blows delivered with a wooden club and a lead pipe, inflicted fatal injuries on him. Appellant Drew's contention that his neighbors and friends only surrounded the victim to protect and aid Drew is patently preposterous. True Drew ran off upon seeing the victim, but he immediately returned armed with a wooden club. But why he should arm himself against the victim who was showing no signs of harming him is not explained. The records do not show any sign of provocation or aggression on the part of the victim against Drew. Nor does the evidence show why Drew needed the aid and assistance of his friends and neighbors since the victim was not making any trouble for Drew. Instead, the records reveal that the victim, Cordial, Jr., was immediately surrounded by appellants and their companions. Without provocation, appellants fell upon the hapless victim with a wooden club and a lead pipe. Their companions then joined in to deliver kicks and blows. In People v. Datun, 272 SCRA 380 (1997), we found that there was conspiracy when the accused and their companions surrounded the victim and, without warning, inflicted fatal wounds upon him. In the present case, after the victim fell prostrate, appellants and their confederates fled the scene together. The acts of appellants before, during and after the incident indubitably point to a joint purpose, intent, and design to effect a common unlawful objective. Action in concert to achieve a common design is the hallmark of conspiracy. Hence, the act of one is the act of all the conspirators and the precise extent of participation of each of them becomes secondary.[37]

At the time of the crime on November 3, 1991, the penalty for murder under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. Under Article 64 of the Revised Penal Code, when there is no aggravating or mitigating circumstance, the penalty shall be imposed in its medium period, which is reclusion perpetua.

As to the award of damages, we affirm the award of P50,000 as death indemnity. However, the award of P23,047 as actual damages must be increased because as shown by receipts, the expenses for the medical and burial expenses of the victim total P23,565.[38] The award of P50,000 as moral damages, recoverable under Article 2219 (1) in relation to Article 2206 of the Civil Code, is in order and should be affirmed.

WHEREFORE, the appealed decision of the Regional Trial Court of Quezon City, Branch 80, dated April 18,

1996, in Criminal Case No. Q-92-32932, finding appellants Salvador Drew and Jenny Ramos guilty beyond reasonable doubt of murder and sentencing each of them to suffer the penalty of reclusion perpetua is AFFIRMED, with the modification regarding the award of damages as follows: appellants are jointly and severally ordered to pay the heirs of the victim the amount of P50,000 as civil indemnity, P23,565 as actual damages, and P50,000 as moral damages.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

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[1] Rollo, pp. 32-38.

[2] Records, p. 1.

[3] Erroneously cited as December 3, 1991 on p. 2 of the Decision, Rollo, p. 33.

[4] TSN, January 20, 1993, pp. 5-6.

[5] Id. at 6; TSN, December 9, 1992, p. 5

[6] Id. at 7; Id. at 6-7.

[7] Id. at 8 ; Id. at 7; TSN, March 30, 1993, pp. 2-3.

[8] Also referred to as Supena in Brief for the Plaintiff-Appellee, Rollo, p. 106.

[9] TSN, February 10, 1993, pp. 4-5.

[10] Records, p. 152.

[11] TSN, June 28, 1994, pp. 4-5.

[12] Id. at 5-6.

[13] TSN, April 26, 1995, pp. 3-4.

[14] TSN, January 24, 1994, p. 4.

[15] TSN, March 1, 1994, p. 3; TSN, June 28, 1994, p. 7.

[16] Id. at 3-4.

[17] Rollo, p. 38.

[18] Id. at 74.

[19]People v. Francisco, G.R. Nos. 118573-74, 332 SCRA 305, 331 (2000) citing People v. Silvestre, G.R. No. 127573, 307 SCRA 68, 82 (1999).

[20] People v. Cawaling, G.R. No. 117970, 293 SCRA 267, 294 (1998).

[21] People v. Muyco, G.R. No. 132252, 331 SCRA 192, 199 (2000) citing People v. Atad, G.R. No. 114105, 266 SCRA 262, 272 (1997).

[22] People v. Jarandilla, G.R. Nos. 115985-86, 339 SCRA 381, 391 (2000) citing People v. Nava, G.R. No.

123148, 306 SCRA 15, 22 (1999).

[23] TSN, January 20, 1993, p. 18.

[24] People v. Yanson-Dumancas, G.R. Nos. 133527-38, 320 SCRA 584, 606 (1999) citing People v. Padao, G.R. No. 104400, 267 SCRA 64, 76 (1997).

[25] TSN, January 20, 1993, p. 14.

[26] TSN, July 20, 1994, pp. 12-13.

[27] People v. Gomez, G.R. No. 132171, 332 SCRA 661, 669 (2000) citing People v. Requiz, G.R. No. 130922, 318 SCRA 635, 647 (1999).

[28] People v. Abubu, G.R. No. 129072, 322 SCRA 407, 413 (2000).

[29] People v. Gamer, G.R. No. 115984, 326 SCRA 663, 673 (2000).

[30] People v. Listerio, G.R. No. 122099, 335 SCRA 40, 61-62 (2000) citing People v. Belaro, G.R. No. 99869, 307 SCRA 591, 606 (1999).

[31] People v. Cual, G.R. No. 131925, 327 SCRA 623, 641 (2000) citing People v. Balano, G.R. No. 116721, 272 SCRA 782, 791 (1997), People v. Maloloy-on, G.R. No. 85246, 189 SCRA 250, 258 (1990), People v. Diokno and Diokno, G.R. No. 45100, 63 Phil. 601 (1936), and People v. Bustos, G.R. No. 27200, 51 Phil. 385 (1928).

[32] Error in spelling. This should read "Cordial."

[33] TSN, January 20, 1993, p. 6.

[34] Rollo, p. 36.

[35] People v. Arlalejo, G.R. No. 127841, 333 SCRA 604, 611 (2000).

[36] People v. Fuertes, G.R. No. 95891-92, 326 SCRA 382, 407-408 (2000) citing People v. Apelado, G.R. No. 114937, 316 SCRA 422, 431 (1999).

[37] People v. Mendoza, G.R. No. 128890, 332 SCRA 485, 496 (2000) citing People v. De Los Reyes, G.R. No. 44112, 215 SCRA 63, 71 (1992).

[38] Records, pp. 155A-158.

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