

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANTONIO DESOY AND CARLITO CUATON @ YOYOK, ACCUSED-APPELLANTS.

G.R. No. 127754. August 16, 1999

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Conviction, it is said, must rest on nothing less than a moral certainty of guilt.[1] This is no more true than in a case such as the one at bar, where the imposable penalty is the supreme penalty of death.

In an Information dated June 15, 1994, Elmer Desoy and herein appellants Antonio Desoy and Carlito Cuaton @ Yoyok were accused of the crime of Murder, committed as follows:

That, in the evening, on or about the 30th day of April, 1994, in the municipality of Labason, Zamboanga del Norte, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with a bolo, and with intent to kill by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and hack one SAGRADO SALVADOR BALUCAN, thereby inflicting upon him hack wound on the vital part of his body which caused his death shortly thereafter; that as a result of the commission of the said crime the heirs of the herein victim suffered the following damages, viz:

a) Indemnity for victim's death. . .P50,000.00

b) Loss of earning capacity. . . . 30,000.00

P80,000.00

CONTRARY TO LAW (Viol. of Art. 248, Revised Penal Code), with the aggravating circumstances of nocturnity, treachery and abuse of superior strength.[2]

Upon arraignment on September 16, 1994, all the accused, duly assisted by counsel, Atty. Rodrigo Ladera of the Public Attorney's Office (PAO), entered a plea of "NOT GUILTY." [3]

Trial on the merits commenced on December 9, 1994. On February 2, 1996, accused Elmer Desoy withdrew his previous plea of NOT GUILTY to the offense of MURDER; and, with the consent of the offended party and the prosecutor entered a plea of GUILTY to the lesser offense of HOMICIDE. Accordingly, the court a quo sentenced him to suffer the indeterminate penalty of imprisonment ranging from 12 years to 20 years, and to pay the heirs of the victim P50,000.00 as indemnity.[4] On March 15, 1996, the prosecution rested its case with the testimonies of Hernando Balasabas, Dr. Rosalyn Adan Go and SPO3 Ferdinand Curambao, and the admission of Exhibits (A, A-1, A-2, & A-3) which were identified in the course of said testimonies.

The defense, in turn, started presenting its evidence on May 10, 1996, and rested its case on October 11, 1996 with the testimonies of accused Antonio Desoy and Carlito Cuaton only. No documentary evidence was presented.[5]

Thereafter, on November 8, 1996, the court a quo, thru Judge Wilfredo G. Ochotorena, rendered a decision, the dispositive portion of which reads as follows:

WHEREFORE, the Court finds accused Antonio Desoy and Carlito Cuaton guilty beyond reasonable doubt of the crime of MURDER, penalized under the provisions of Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act No. 7659, qualified by taking advantage of superior strength, and there being other modifying circumstances of nighttime and armed men which attended the commission of the crime, and so, hereby imposes upon accused Antonio Desoy and Carlito Cuaton each the extreme penalty of DEATH and, to indemnify jointly and severally the heirs of the victim P50,000.00.[6]

The prosecution's version of the facts was related by prosecution witness Hernando Balasabas who testified as follows: that he is 34 years old, married, a laborer, and a resident of Gil Sanchez, Labason, Zamboanga del Norte; that he had known Sagrado Salvador Balucan (hereinafter referred to as "Salvador Balucan") since childhood; that at about 11 o'clock in the evening of April 30, 1994, he and Salvador Balucan were strolling along the town plaza of Labason; that they sat on the slide from where they noticed three persons, namely, Carlito Cuaton, Antonio Desoy and Elmer Desoy drinking kulafu and tuba on the swing nearby; that he (Balasabas) was able to recognize the three above-named persons because of their proximity to himself and Salvador Balucan and because the plaza was then well-lighted; that the three men invited them to drink, but that he and Salvador Balucan refused because they did not drink kulafu and tuba; that shortly thereafter, he and Salvador Balucan started to walk home; that at this point, they were chased by the three men; that he (Balasabas) was chased by Elmer Desoy and Carlito Cuaton who were armed with an empty bottle and a piece of wood, respectively; that his friend Salvador Balucan was chased by Antonio Desoy who was armed with a bolo; that at some point they all converged; that Elmer Desoy got the bolo from Antonio Desoy and hacked Salvador Balucan once on the head causing him to fall down; that thereafter, the three assailants ran away; that he himself ran away to inform the victim's relatives of what had happened; and, that later on he learned that Salvador Balucan had died.[7]

The prosecution, likewise, presented Dr. Rosalyn Adan Go, who testified that the cause of death of Salvador Balucan was the wound on his head which could have been inflicted by a bolo or any sharp-bladed instrument;[8] and SPO3 Ferdinand Curambao, a member of the Philippine National Police of Labason, who testified as follows: that in the evening of April 30, 1994, he was on duty at Post No. 4 located at the public market of Labason; that he was informed through ICOM radio that there was a stabbing incident near the Labason Central School; that he proceeded to the crime scene with PO3 Sergio Villaester; that when they arrived at the scene of the crime, they saw the body of Salvador Balucan (referred to in his testimony as "Fernando" Balucan) on the road; that he instructed PO3 Villaester to bring Salvador Balucan to the hospital; that thereafter, he inquired from the people at the crime scene whether they had seen the perpetrators; that he was informed that they were seen running towards the municipal building; that he proceeded thereto and found Elmer Desoy, Antonio Desoy and Carlito Cuaton; that he asked them who hacked Salvador Balucan; and, that both Antonio Desoy and Carlito Cuaton told him that it was Elmer Desoy who hacked the victim.[9]

On cross-examination, SPO3 Curambao further testified that he was able to recover the bolo used in hacking Salvador Balucan from the ricefield; and that it was Elmer Desoy who told him that he (Elmer Desoy) had thrown the bolo in the ricefield.[10]

The accused, on the other hand, interposed the defense of alibi. Testifying in his behalf, Antonio Desoy declared that he is 18 years old, single, a detainee at the Sicayab Provincial Jail, Dipolog City; that sometime in April 1994, he came to Labason, Zamboanga del Norte to visit his elder brother Elmer Desoy who was detained in the Labason Municipal Jail; that on April 30, 1994, at about 8 o'clock in the evening, he was at the Labason Gymnasium with Carlito Cuaton to watch a basketball game; that at around the same time, they saw Elmer Desoy

at the town plaza; that thereafter, he went to the Labason Fire Station to sleep; that at about 11 o'clock, he was awakened by a certain Policeman Okong who told him that he was one of the suspects in the killing of Salvador Balucan; that upon investigation, he denied any participation in the killing.[11]

On cross-examination, Antonio Desoy testified, thus:

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Q: Do you know a person of (sic) Hernando Balasabas?

A: I do not know him.

Q: You said during the direct-examination that it was Elmer Desoy who killed the victim Salvador Balucan, why do you say that?

A: Because the companion of the victim pointed Elmer Desoy as the person who killed the victim.

Q: Who is that compnaion (sic)?

A: I do not know his name.

Q: Is it not a fact that during the incident when the victim was killed you were together with Elmer Desoy and Carlito Cuaton?

A: No, sir.

Q: And that you now told the Court it was Elmer Desoy who killed the victim thatis (sic) why he is in Muntinlupa?

A: Because that is the real truth he was the one who killed Balucan.

Q: How do you know, were you present?

A: Because Elmer confided that he was the one who killed the victim.

Q: The truth is you were present when the victim was killed?

A: No, sir.

Q: In fact, you handed the weapon that was used in killing the victim?

A: No, sir.[12]

For his part, accused Carlito Cuaton testified that he is 32 years old, married, a fisherman, and a resident of

Labason, Zamboanga del Norte; that in the evening of April 30, 1994, he and Antonio Desoy went to the Labason Gymnasium to watch a basketball game; that they went inside said gymnasium at around 11 o'clock in the evening; that the game ended at around 1 o'clock in the morning; that thereafter, he and Antonio Desoy went to the police station; that upon getting there, he was placed inside the detention cell by a certain Policeman Edgar Duco; that he slept therein until 6 o'clock the next morning; that he had no participation in the killing of Salvador Balucan; that he learned from a certain "Nando" that Elmer Desoy was the one who stabbed and killed said Salvador Balucan.[13]

On cross-examination, Carlito Cuaton further testified, thus:

xxx.

Q: So, from what time was that when you went to the basketball game?

A: 11:00 in the evening, sir.

Q: So, at 11:00 in the evening of April 30, 1994 you were not inside the municipal jail of Labason?

A: I was inside the jail, sir.

Q: And you went back to the municipal jail at that time, what time?

A: 1:00 dawn, sir.

Q: And when you arrive (sic) in the municipal jail what happened?

A: I was placed inside, sir.

Q: How about Antonio Desoy?

A: He was outside because because (sic) he was not a detainee, sir.

xxx.

Q: When did you learn that Balucan was killed right at the childrens play ground of Labason?

A: The next day, sir.

Q: Who informed you?

A: Edgar Duco, sir.

Q: And what did Edgar Duco tell you about the death of Balucan?

A: According to Edgar Duco that last night there was incident happened (sic) and according to the companion of the victim the killer was Elmer Desoy, sir.

Q: That Nanding was Hernando Balasabas?

A: I do not know Hernando Balasabas, sir.

xxx.

Q: Why, what time was Blaucan (sic) killed according to the police?

A: About 11:00, sir.

Q: So, at that time you were not inside the jail?

A:

I was at the gym with Antonio Desoy, sir.[14]

In finding the accused guilty beyond reasonable doubt of MURDER, the court a quo, while ruling out the presence of treachery and evident premeditation, nevertheless appreciated the qualifying circumstance of taking advantage of superior strength as having attended the killing of Sagrado Salvador Balucan.

It found, thus:

Certainly, this Court finds that the qualifying circumstances (sic) of taking advantage of superior strength as alleged in the information, attended the killing of Sagrado Salvador Balucan. Where it is shown that the attack had not been made with alevosia, the number of the accused's group and the circumstances of their acts vis-à-vis a defenseless person may constitute abuse of superior strength (people vs. Contre, 186 SCRA 76 (1990); people vs. Hatague, 207 SCRA 779 (1992). In the presence (sic) case accused group took advantage of the presence of Antonio Desoy and Carlito Cuaton, which presence facilitated the stabbing of Sagrado Salvador Balucan. Accused group numbered three (3) male persons, one armed with a bolo, others armed with empty bottle and a piece of wood; the victim Balucan who was cross-eyed and unarmed one of the three (Elmer Desoy) stabbed him (Balucan) with a bolo. The slaying of Sagrado Salvador Balucan must still be characterized as murder.[15]

The court a quo likewise appreciated the aggravating circumstances of nighttime and with the aid of armed men against the accused.[16]

Finally, the court a quo found that although there was no proof as to a previous agreement by and between the assailants to commit the crime charged, conspiracy was evident from the manner of its perpetration.

Said court ruled in part:

Certainly, there was conspiracy between brothers Antonio Desoy and Elmer Desoy also with Carlito Cuaton, and it was not necessary to prove a previous agreement to commit the crime since from their avert acts (sic), it was clear that they acted in concert (sic) in the pursuit of their unlawful design or common goal which was to

kill the victim.[17]

The trial court did not give credence to the testimonies of accused Antonio Desoy and Carlito Cuaton. It held that denial and alibi cannot prevail over the positive identification made by prosecution witness Hernando Balasabas. Furthermore, for alibi to prosper, it is not enough for the accused to prove that he was somewhere else at the time of the incident. He must also demonstrate that it was physically impossible for him to be at the scene of the crime. Said court noted that in the case at bar, the distance between the place of the killing and place pointed to in the alibi is barely forty fathoms.[18]

Ratiocinating thus, the court a quo found the accused guilty of MURDER and because of the presence of the aggravating circumstances of aid of armed men and nighttime imposed upon them the supreme penalty of DEATH and ordered them, jointly and severally, to indemnify the heirs of the victim the amount of Fifty Thousand Pesos (P50,000.00).[19]

The case is now before this Court on automatic review.

It is axiomatic that factual findings and conclusions of trial courts are entitled to great weight and are not to be disturbed on appeal.[20] However, this rule speaks of exceptions. Thus, where there is a showing that the trial court failed to appreciate facts and circumstances that would have altered its conclusion, it is incumbent upon this Court to correct such mistake.

In the instant case, the evidence of the prosecution point to Elmer Desoy as the one who fatally hacked Salvador Balucan on the head. On the other hand, the complicity of accused-appellants Antonio Desoy and Carlito Cuaton to the crime is premised on the alleged presence of conspiracy in the commission of the crime.

The sole and crucial issue, therefore, in this case is whether or not the presence of conspiracy has been adequately proven by the prosecution.

We rule in the negative.

There is conspiracy where, at the time the malefactors were committing the crime, their actions impliedly showed a unity of purpose among them, a concerted effort to bring about the death of the victim.[21]

In the instant case, the trial court reached the conclusion that there was a conspiracy between herein accused-appellants and Elmer Desoy on the premise that their overt acts clearly showed that they acted in concert in the pursuit of their unlawful design or common goal which was to kill the victim.[22]

However, a perusal of the records will show this observation of the court a quo to be inaccurate.

Witness for the prosecution Hernando Balasabas who was at the scene of the crime, and who saw the actual killing of his friend Salvador Balucan, positively identified the latter's assailant as one Elmer Desoy.

On direct examination, Balasabas gave this illuminating testimony:

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Q: Who was that person bringing bolo?

A: Antonio.

Q: Only one of them bringing bolo?

A: Yes, sir.

Q: When you said Antonio, you mean Antonio Desoy?

A: Yes, sir.

Q: While Antonio Desoy was bringing bolo, where was he bringing a bolo?

A: He chased my companion.

Q: How, about you, were you not chased by Antonio?

A: It was Elmer and Carlito who struck with a bottle and piece of wood.

x x x

Q: What happen (sic) when Antonio Desoy went after Sagrado Balucan bringing a bolo?

A: Carlito and Elmer joined in running after us and because the victim and I met each other, Elmer got the bolo from Antonio and used the bolo in hacking the victim.

x x x

Q: Who actually hacked the victim Nonoy Balucan?

A: Elmer.

Q:

How many times did Elmer Desoy hack the victim?

A: Only once at the head.

Q: When Elmer Desoy hacked the victim where were the other two persons?

A: He (sic) was nearby.[23] (Underscoring supplied.)

On clarificatory questioning by the court a quo, Balasabas answered thus:

Q: You said Elmer forcibly took the bolo from Antonio and used it?

A: Yes, sir.

Q: Do you mean to tell us that Elmer got the bolo from his hand (from the hand of Antonio Desoy?)

A: Yes, sir.

Q: He delivered the bolo?

A: No, sir.

Q: When Elmer was already in possession of the bolo, (W)hat did (he do)?

A: He hacked the other one.

Q: Who was the person hacked by Elmer?

A: Nonoy Balucan.

x x x

Q: In other words only Elmer Desoy chased Balucan and while the other two persons standby am I right?

A: They were following him.

Q: Do you mean to tell us that Carlito and Antonio while chasing the victim, the two also followed chasing Balucan?

A: Yes, sir.

Q: But at that time they were not bringing a bolo or a blunt instrument?

A: None, sir.[24] (Underscoring supplied.)

On cross examination, Balasabas reiterated that he saw Elmer Desoy holding the bolo with his right hand, and that said Elmer Desoy used the bolo to hack Salvador Balucan.[25]

From the above testimony of eyewitness Hernando Balasabas, it is crystal clear that the assailant of Sagrado Salvador Balucan was Elmer Desoy who was initially included as one of the accused in the Information dated June 15, 1994.[26] Notably, the same Elmer Desoy subsequently pleaded GUILTY to the lesser crime of HOMICIDE and accordingly sentenced by the court a quo to suffer the indeterminate penalty of imprisonment ranging from 12 years to 20 years, and to pay the heirs of the victim Fifty Thousand Pesos (P50,000.00).

What is likewise clear is that in hacking Salvador Balucan to death, Elmer Desoy acted on his own without the aid nor cooperation of anyone else; and far from acting in concert with Elmer to bring about the death of the victim, accused-appellants acted separately and independently of each other. It is evident from the above testimony that the participation of accused-appellant Antonio Desoy was limited to chasing Salvador Balucan while

accused-appellant Carlito Cuaton, together with Elmer Desoy, pursued Hernando Balasabas. However, while Antonio Desoy did chase Balucan with a bolo, there is no showing that he actually inflicted any injury contributing to the death of the latter at any point during the chase. Neither did he give, much less offer, material aid to Elmer Desoy by handing the bolo to the latter to be used in killing the victim. As a matter of fact, it was Elmer Desoy who forcibly took possession of the bolo from Antonio's hand to hack the victim.

Accused-appellant Carlito Cuaton, on the other hand, initially pursued Hernando Balasabas. When Balasabas met up with Balucan, Carlito Cuaton then followed Elmer Desoy in chasing the latter. At that point, Cuaton was not even armed; more significantly, as with his co-accused Antonio Desoy, he never, at any point inflicted any harm upon Salvador Balucan.

The trial court itself found that the stabbing of Salvador Balucan was probably the result more of a sudden impulse of the moment generated by not honoring the invitation to drink kulafu and tuba than the outcome of conscious design or choice on the part of the accused. If that were true, then the two accused could not have known that Elmer Desoy had intended to kill the victim, much less that he would actually kill him. The act of stabbing/hacking Salvador Balucan was the result of a "sudden impulse of the moment" on the part of Elmer Desoy that neither Antonio Desoy nor Carlito Cuaton could have anticipated precisely because it was so sudden. They simply had no time to see that Elmer intended to cause the victim the wound that he did.

Under such circumstances, that the accused-appellants did NOT have any participation in the criminal design of Elmer Desoy cannot be gainsaid. Their actions alone are not conclusive of a conspiracy between them and Elmer Desoy to kill Salvador Balucan. On the contrary, their acts are more consistent with the theory that they probably meant to frighten the victims, not to kill any of them. Clearly, there was no unity of purpose among them, nor a concerted effort to bring about the death of the victim.

Conspiracy, like the crime itself, must be proven beyond reasonable doubt.[27] Existence of conspiracy must be clearly and convincingly proven. The accused must be shown to have had guilty participation in the criminal design entertained by the slayer, and this presupposes knowledge on his part of such criminal design. Mere presence at the scene of the crime at the time of its commission is not, by itself, sufficient to establish conspiracy.[28]

In the absence of previous conspiracy, unity of criminal purpose and intention immediately before the commission of the crime, or community of criminal design, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each of the participants is liable only for the act committed by him.[29]

All circumstances considered in the case at bar, this Court is convinced that the guilt of the accused-appellants as conspirators in the crime of murder has not been established beyond any peradventure of doubt. Certainly, their actions are not beyond reproach. However, this Court is not morally convinced that such actions warrant the imposition of the supreme penalty of death upon them.

Well-settled is the rule that in case of doubt as to the guilt of the accused, the case must be resolved in their favor.

WHEREFORE, the Decision appealed from is hereby REVERSED and SET ASIDE. Accused-appellants Antonio Desoy and Carlito Cuaton are hereby ACQUITTED on the ground of reasonable doubt. The Director of Prisons is hereby directed to forthwith cause the release of accused-appellants unless they are being lawfully held for another cause and to inform the Court accordingly within ten (10) days from notice.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

[1] *People v. Quindipan*, 323 Phil. 497 (1996).

[2] Records, p. 15

[3] *Id.*, at 21.

[4] *Id.*, at 50-51.

[5] Rollo, p. 19.

[6] *Id.*, at 33-34.

[7] TSN, December 9, 1994, pp. 2-6.

[8] TSN, February 3, 1995, p. 4.

[9] TSN, December 8, 1995, pp. 2-4.

[10] *Id.*, at 11.

[11] TSN, May 10, 1996, pp. 2-5.

[12] *Id.*, at 8.

[13] TSN, September 13, 1996, pp. 2-4.

[14] *Id.*, at 5 and 6.

[15] Rollo, pp. 30-31.

[16] *Id.*, at 31.

[17] *Id.*, at 32.

[18] *Id.*, at 33.

[19] *Id.*, at 33-34.

[20] *People v. Daquipil*, 240 SCRA 314 (1995).

[21] *Sison vs. People*, 250 SCRA 58 (1995).

[22] Rollo, p. 32.

[23] TSN, December 9, 1994, pp. 4-5.

[24] *Id.*, at 8-9.

[25] TSN, July 9, 1995, p. 4.

[26] *Supra*.

[27] *People vs. Dulatre, Jr.*, 248 SCRA 107 (1995).

[28] *People v. Taaca*, 178 SCRA 56 (1989).

[29] *U.S. vs. Magcomot*, 13 Phil. 386 (1909); *U.S. vs. Abiog*, 37 Phil. 137 (1917)

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