PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MOROY “SONNY” GALLO, ACCUSED-APPELLANT.

G.R. No. 128361. November 16, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Accused-appellant Moroy Gallo also known as "Sonny" was convicted by the trial court[1] of murder and sentenced to reclusion perpetua. He was also ordered to pay P100,000.00 for moral damages without subsidiary imprisonment in case of insolvency. Accused-appellant now assails the decision of the court a quo alleging that it erred in giving full faith and reliance on the absurd, incredible and unnatural testimony of the prosecution witnesses.[2]

On 18 August 1986 at around 10:00 o'clock in the evening Amelita Elarmo accompanied by her husband Ignacio was on her way home from the house of her sister in Barangay Talaban, Himamaylan, Negros Occidental, when five (5) persons armed with assorted weapons suddenly blocked their way and surrounded Ignacio. The couple were just about fifteen (15) paces away from their house. Amelita easily recognized their assailants to be the Dequito brothers- Boy, Kano and Elliot - together with Crisanto Gallo and his son Moroy "Sonny" Gallo because they were all neighbors. Forthwith Boy stabbed Ignacio in the chest with a tres cantos or a three-edged knife which sent the latter falling to the ground. Taking their cue from Boy, the others - Kano, Elliot, Crisanto Gallo and his son Moroy Gallo - took turns in hitting the victim with their weapons. Ignacio Elarmo could not do anything except to parry the incoming blows but in vain. According to Amelita, Moroy struck Ignacio with a barateya[3] while Crisanto hacked him on the head with a bolo. Elliot, for his part, threw a stone at the prostrate victim. Amelita however could not tell the exact involvement of Kano because at that time the five (5) malefactors were ganging up on her husband. She desperately shouted for help but nobody came to their rescue. Upon seeing that Ignacio was already unconscious and bleeding to death, the culprits scurried away.

The melee was witnessed by Narciso Esperal from the coffee shop of his in-laws about five (5) arms-length away. He was alone as the coffee shop was at that time already closed. Narciso testified that he saw Boy stab Ignacio twice on the stomach while Crisanto struck him trice on the head with a piece of wood. Moroy threw a stone at Ignacio hitting him on the neck. Kano then beat the victim at the back with a piece of wood while Elliot although armed with a bolo only served as the lookout.

Amelita, with the help of her niece Marilou Esperal, brought Ignacio to the Himamaylan Hospital for treatment. However, after three (3) days Amelita decided to transfer Ignacio to another hospital in Bacolod as the Himamaylan Hospital was not well equipped to perform an operation to remove the tres cantos still embedded in victim's chest. However, on 24 August 1986 Ignacio died before he could be operated on.

On 25 August 1986, Dr. Jansen Vergara, then resident physician of Corazon Locsin Montelibano Regional Hospital, autopsied the cadaver of the victim. He issued a Certificate of Death (Exh. "A") where he reflected his findings at the back thereof to wit:[4] "External Findings: Old stab wound shape (R) parasternal line along level

of 3rd intercostal space. At the head: Old lacerated wound (R) occipito-pareital area, 4cm. Long. Internal Findings: massive hemorrhage at the mediastinum secondary to laceration anterior wall of superior venacava, 1 cm. long, 1 inch above the right atrium with retained pointed 3 sharp-edged metallic foreign body about 6 inches long at the mediastinum moderate hemothorax (R) lung secondary to laceration at the medial and lower portion of upper lobe of (R) lung, anterior aspect."

On 1 September 1986 a criminal complaint for murder was filed against Moroy Gallo, Crisanto Gallo, and the Dequito brothers-Boy, Kano and Elliot. The warrant for their arrest issued on 17 September 1986 by the Municipal Trial Court of Himamaylan, Negros Occidental, having remained unserved, the case was archived in the meantime and pursuant thereto an alias warrant of arrest was issued pending their apprehension. Five (5) years later, i.e., on 13 November 1991, Moroy "Sonny" Gallo was arrested by the police and turned over to the warden of Bacolod City jail. Proceedings were then set in motion for the prosecution and trial of Moroy Gallo.

On the witness stand Moroy testified that on the early evening of 18 August 1986 he was at his house together with his father Crisanto and Boy drinking tuba. Shortly after, Ignacio passed by and was invited by Crisanto to join them. He courteously declined and continued his way towards home. A little later Ignacio returned together with his brother-in-law. Ignacio shouted, "Boy, get out from there." As soon as Boy stepped out of the house Ignacio approached him and a free-for-all ensued. According to Moroy, he was "surprised that there was a rumble and that the brothers (Kano and Elliot) were already there."[5] While the protagonist grappled, Moroy and his father simply stood in front of their house. A little later, they heard Boy shouting at Amelita who was in her house "to take her husband because he is (sic) already finished."[6] After uttering those ominous words, Boy went home. Kano and Elliot followed suit. Moroy and Crisanto, afraid that they might get involved, went "upstairs."[7]

On cross-examination, Moroy revealed that he and the Dequito brothers were first cousins and they worked as lumber sawers in Banalbagan. According to him, when he and his father arrived home at around 6:00 o'clock in the evening they invited Boy for a drink and that at around 9:00 o'clock that evening Ignacio passed by. Fifteen (15) minutes later Ignacio accompanied by a brother-in-law again passed by heading towards the direction of his house. But before Ignacio could reach his house he was waylaid by Boy.[8] At that point, Kano and Elliot joined their brother Boy in mauling the victim. Moroy denied having anything to do with the killing of Ignacio as he (Moroy) was merely standing in his yard all the while that the brawl was going on.[9]

In an attempt to extricate himself from the stifling evidence of the prosecution, accused-appellant interposes the following defenses in this appeal:

First. He denies any involvement in the killing of the victim. He emphatically claims that at the time of the incident he was a mere passive spectator.

Second. He questions the inconsistent testimonies of the prosecution witnesses, particularly with respect to the weapons used by the attackers and the parts of victim's body supposedly hit by the numerous blows.

Lastly. He points out the disparity between the bodily injuries sustained by the victim as reflected in the autopsy report, and the supposed number of blows allegedly inflicted by the five (5) assailants. He rationalizes thus-[10]

> If the foregoing declaration of the prosecution witnesses are any yardstick to sustain the prosecution evidence, we can more than speculate on the number and types of injuries that the victim would have sustained after having been "swarmed" by five (5) men armed as they were with various pointed and heavy objects. One can just imagine the resulting bodily injuries when a person is hacked on the head with a bolo, thrown on the neck or body with a stone, struck on the head and body with a "barateya" (piece of wood).
>
> However, the report of the medico-legal officer revealed a different story and exposed the absurdity and incredulity of the witnesses' testimonies on how the victim could have sustained the wounds during the attack.

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> The external findings of the medico-legal officer showed that the victim sustained only two wounds - a stab wound at the chest and a 4-cm laceration at the head. In short, the physical evidence consisting of bodily injuries, as testified to by the medico-legal officer, directly contradicts the testimonies of the prosecution witnesses.

There is no merit in the appeal. Moroy's defense of denial is worthless in the face of positive identification by the prosecution witnesses. If his claim that he was not in any way involved in the crime were true, he should have tried to substantiate the same. At the very least, he should have presented the numerous witnesses who as he alleged saw the incident.[11] Instead, he relied solely on his own uncorroborated testimony.

Moroy cannot also question the credibility of Amelita Elarmo because of her relationship with the deceased. It is settled that mere relationship to the victim does not automatically tarnish the testimony of the witness. When there is no showing of improper motive on the part of the witness for testifying against the accused, her relationship to the victim does not render her testimony less worthy of full faith and credit. On the contrary, her natural interest in securing the conviction of the accused despite the lapse of six years would prevent her from implicating persons other than the culprits.[12]

Accused-appellant makes much of the alleged inconsistent testimonies of the prosecution witnesses. Although we are not unmindful that the testimonies of the prosecution witnesses differ in some respects, e.g., the weapons used by the five (5) culprits and the supposed parts of the victim's body hit by the blows, we cannot however consider this a sufficient basis to negate Moroy's culpability. As correctly pointed out by the trial court, "these conflicting statements of the witnesses do not affect their credibility since the inconsistency refers to minor details."[13] The testimonies of the various witnesses should not be expected to be identical and coinciding with each other. It is enough that the principal points covered by such testimonies are established although they may not dovetail in all details.[14] It would be a tall order, indeed, to require the witnesses to recall every minute detail of an incident especially so when the events transpired in rapid succession and in the flurry and excitement of the moment. This observation becomes even more relevant when the testimonies were given several years, six (6) years to be precise, after the killing.

Finally, Moroy cites the disparity between the post-mortem report and the testimonies of the prosecution witnesses on how Ignacio was ruthlessly killed. Apparently, he is proceeding from an erroneous premise. The testimonies of the prosecution witnesses are admittedly wanting in accuracy. But this cannot overturn the fact that Moroy was positively identified as one of the armed malefactors who encircled and attacked the victim. His presence at the locus criminis, not as a mere passive spectator but as an active participant in the cabal, was adequately established by the prosecution. In fact Amelita was consistent in her testimony that the five (5) named assailants surrounded and ganged up on her husband. In the darkness of the night, the witnesses could not have possibly observed every single detail of the incident. This is especially so since they were made to recount an event long past. Such is the limitation of human memory.

We are inclined to believe, in the light of the post-mortem report, that only one or two, but not all, of the malefactors actually inflicted the injuries on the victim. Nonetheless, this would not exonerate the others who did not or were not able to lay their hands on the deceased where there is showing that their armed presence lent moral encouragement and sense of security indicating community of purpose with their comrades who actually dealt the fatal blow. All their overt acts, taken collectively, show that they conspired to kill Ignacio.

To establish conspiracy it is not essential that there be previous agreement to commit the crime; it is sufficient that there be a common purpose and design, concerted action and concurrence of the interest and the minds of the parties meet understandingly so as to bring about a deliberate agreement to commit the offense charged, notwithstanding the absence of a formal agreement. Where the assailants, including Moroy, surrounded and in a

concerted fashion assaulted[15] the fallen unarmed victim, no better proof could show that they intentionally and voluntarily acted together for the realization of a common criminal intent to kill Ignacio. Granting arguendo that Moroy did not strike the victim, his conduct nonetheless indicated cooperation with the other malefactors, as when his armed presence unquestionably gave encouragement and moral support to the latter. His liability is clearly that of a co-conspirator.[16] In a similar vein, even if not all the malefactors laid hand on the victim, the others would still be liable for conspiracy if there is a showing that the latter performed overt acts which indicate unity or purpose in accomplishing the criminal design. There being a conspiracy, evidence as to who inflicted the fatal wound becomes irrelevant; all shall be regarded as co-principals since the act of one is the act of all.

As recounted by Amelita Elarmo in her testimony-[17]

A:

He used a piece of wood or "barateya."

Q:

What did this Moroy Gallo do with his barateya?

A:

He struck my husband with that piece of wood.

Q:

Was your husband hit?

A:

Yes, sir.

Q:

Have you seen or did you see where was your husband hit when he was struck by the barateya?

A:

He was hit in the head.

Q:

How many times did Moroy or Sonny Gallo strike your husband with that piece of wood?

A:

Only once because they were surrounding my husband.

Q:

How about Crisanto Gallo, what did this Crisanto Gallo do?

A:

He used a bolo.

Q:

What did he do with his bolo?

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A:

He used his bolo in hacking the head of my husband.

Q:

How many times did this Crisanto Gallo hack your husband?

A:

Only once and he was hit in the head.

Q:

How about Elliot Dequito?

A:

He used a stone and threw it to my husband.

Q:

Was your husband hit by the stone thrown by Elliot?

A:

He was hit on his body.

Q:

How bout Kano Dequito, what is Kano Dequito do?

A:

I cannot exactly tell because at that time they ganged up on us.

Q:

How about Boy Dequito have you seen him; what did he do?

A:

He stabbed my husband with a 3-edged weapon at the breast.

Q:

Who struck your husband first of those mentioned by you, Moroy using a piece of wood, Crisnato Gallo using a bolo or Boy Dequito stabbing your husband hitting him on the chest. Who did the first act?

A:

The first one who did the first act was Boy Dequito.

Q:

While these five (5) persons were ganging up your husband, what did you do, if any?

A:

I was shouting and we fell to the ground.

Q:

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Did anybody come to help you after you shouted?

A:

Nobody helped me.

Q:

After you shouted for help and nobody come to help you, what did these five (5) persons do?

A:

They all ran away and they did not appear until morning.

Parenthetically, the failure of the law enforcers to serve the warrant of arrest for five (5) years was for no other reason than that Moroy disappeared after the incident. Flight is a circumstance tending to establish guilt thus giving truth to the maxim, "the wicked fleeth, even when no man pursueth, whereas the righteous is a brave as a lion."

The trial court was correct in appreciating the qualifying circumstance of abuse of superior strength as alleged in the Information.[18] Where the armed assailants, including accused-appellant, seized upon their greater number and superior power to overwhelm the unarmed victim Ignacio Elarmo, the aggression must be considered as having been attended with abuse of superior strength.

Considering that the murder was committed prior to the effectivity of R.A. 7659 on 1 January 1994, the applicable provision is Art. 248 of the Revised Penal Code which penalizes murder with reclusion temporal in its maximum period to death. The imposable penalty which has three periods, namely, minimum (reclusion temporal), medium (reclusion perpetua) and maximum (death), makes Art. 64 of the Revised Penal Code applicable. In this case the prosecution was able to establish the qualifying aggravating circumstance of abuse of superior strength. In the absence of any other generic aggravating and mitigating circumstance, the imposable penalty is reclusion perpetua, the medium period of the penalty pursuant to Art. 64 of the Penal Code.

Comformably with recent jurisprudence, the amount of the P50,000.00 for civil indemnity and P50,000.00 for moral damages shall be awarded to the heirs of the decedent.[19] Pursuant thereto, the moral damages awarded by the trial court is reduced to P50,000.00. Actual damages shall be awarded only when there is competent proof that the same have been suffered and evidence of the actual amount thereof.[20] And this prosecution failed to do. Consequently, no actual damages shall be awarded.

WHEREFORE, the assailed Decision convicting accused-appellant Moroy "Sonny" Gallo of the crime of murder and sentencing him to reclusion perpetua is AFFIRMED. He is further ordered to pay the heirs of the deceased Ignacio Elarmo P50,000.00 for civil indemnity and another P50,000.00 for moral damages. Cost against accused-appellant.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Decision penned by Judge Jose Y. Aguirre, Jr., RTC-Br. 55, Himamaylan, Negros Occidental; rollo, pp. 15-24.

[2] Id., p. 52.

[3] A piece of wood usually about 2" x 2" x 4' (or it can be any size).

[4] Exh. "A," Original Records, p. 9.

[5] TSN, 26 May 1993, p. 9.

[6] Id., p. 10.

[7] Id., p. 11.

[8] TSN, 18 August 1993, p. 10.

[9] Id., p. 11.

[10] Rollo, pp. 61-62.

[11] TSN, 26 May 1993, p. 12.

[12] People v. Dominguez, G.R. No. 100199, 18 January 1993, 217 SCRA 170.

[13] Rollo, p. 22.

[14] People v. Alolod, G.R. Nos. 117506-07, 7 January 1997, 266 SCRA 157.

[15] TSN, 15 July 1992, p.10.

[16] People v. Hubilla, Jr., G.R. No. 114904, 29 January 1996, 252 SCRA 471.

[17] TSN, 15 July 1992, pp. 8-10.

[18] Rollo, p.15.

[19] People v. Verde, G.R. No. 119077, 10 February 1999.

[20] Del Rosario v. Court of Appeals, G.R. No. 118325, 29 January 1997, 267 SCRA 159; Lufthansa German Airlines v. Court of Appeals, G.R. No. 108997, 12 April 1995, 243 SCRA 600.

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