

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO SANTIAGO, SOLIS DE LEON AND JAIME ILLESCAS, ACCUSED,

G.R. No. 129371. October 04, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Accused Romeo Santiago, Solis De Leon and Jaime Illescas were charged with murder in an Information[1] which reads:

"That on or about the 18th day of December, 1993, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, armed with a gun and with intent to kill one Antonio Dionisio, did then and there wilfully, unlawfully and feloniously with evident premeditation and treachery, attack, assault and shoot with the said gun the said Antonio Dionisio, hitting the latter on his head, thereby inflicting serious physical injuries which directly caused his death.

Contrary to law."

Only Illescas was arrested while his co-accused remained at large. Upon arraignment, Illescas pleaded "not guilty" to the charge.

The trial court found that on December 18, 1993 at around 8:45 to 9:00 o'clock in the evening, Antonio Dionisio, together with his daughters Mary Ann, Girlie, Maria Paz and Mariel, were on board a blue mini cruiser on their way to attend a party. At the corner of Pitong Gatang Street, Poblacion, Bustos, Bulacan, their car hit an Enduro motorcycle ridden by the three accused. One of the accused uttered expletives at them. Mary Ann clearly remembered Illescas' face and later identified him as the driver of the motorcycle.

After the minor collision, Dionisio dropped off Mary Ann, Maria Paz and Girlie at the party while he and Mariel proceeded to the service station to buy gas for the mini cruiser. Sometime later, Mary Ann learned from a tricycle driver that her father had been shot.

Four-year old Mariel Dionisio who was with her father in the mini cruiser identified Illescas as among the three persons who killed her father, although she said he was not the triggerman.

Miguel Lopez, a tricycle driver, corroborated Mariel's testimony. He testified that he saw the three accused at the corner of Bunga Mayor and Tibagan Streets prior to the incident. Then he heard a gunshot a few minutes after seeing them. He again saw the three accused near the foot of the bridge with two of them aboard the motorcycle while the other one was pushing it, apparently trying to jumpstart the motorcycle. Lopez was facing sideways to the three accused and light coming from a nearby spare parts store was illuminating the area where he saw them. He remembered Illescas as the driver of the motorcycle. Lopez knew the victim, Antonio Dionisio, as he was related to his father.

Edgardo Dungao, a jeepney driver, also saw the three accused prior to the shooting when they passed by the house

of Marcelo Ramos. While driving his jeepney at the Gen. Alejo Santos bridge, he heard a shot. Thereafter, he saw a person on a motorcycle with two other persons running after it. After the two persons caught up with the motorcycle, they all fled. One of the accused was wearing a black jacket. Upon reaching the end of the bridge, he saw the bloodied victim whom he recognized to be Tony Dionisio, a barangay councilman of Bustos, Bulacan.

SPO4 Jaime Santos established the names of the accused as Romeo Santiago, Solis de Leon and Jaime Illescas.

The defense relied solely on the testimony of Illescas who denied participation in the crime. He claimed he was merely a backrider on the motorcycle together with his brother-in-law, Solis de Leon, and Romeo Santiago. While they were on their way to a birthday party at Bustos, Bulacan aboard a black motorcycle, an owner-type jeepney suddenly overtook them causing them to fall down. The driver of said vehicle alighted and told them, "Napakayabang n'yong magpatakbo ng motor, parang sa inyo and daan." Thereafter, the driver of the jeepney forced Romeo Santiago to board his jeepney at gunpoint. While trying to set the motorcycle upright, he heard a gunshot. He did not see who fired the shot. Immediately, he left the premises and went home on a tricycle.

The trial court gave credence to the version of the prosecution and rendered a decision as follows:

"WHEREFORE, judgment is hereby rendered finding accused Jaime Illescas guilty beyond reasonable doubt of the crime of murder pursuant to Art. 248 of the Revised Penal Code because of the attending qualifying circumstances of treachery and evident pre-meditation and hereby sentenced him and imposed the penalty of RECLUSION PERPETUA and to indemnify the heirs of the offended party in the amount of Fifty Thousand Pesos (P50,000.00) as actual and moral damages and to set an example and sense of prevention to others not to commit the same offense."

Hence, this appeal, with accused-appellant interposing the following errors:

- THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS AMPLY AND SUFFICIENTLY PROVED THAT TREACHERY ATTENDED THE SHOOTING AND KILLING OF VICTIM ANTONIO DIONISIO.
- THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS AMPLY AND SUFFICIENTLY PROVED THAT EVIDENT PREMEDITATION ATTENDED THE SHOOTING AND KILLING OF VICTIM ANTONIO DIONISIO.
- THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS AMPLY AND SUFFICIENTLY PROVED THE PRESENCE OF CONSPIRACY BETWEEN YOUR ACCUSED-APPELLANT AND THE TWO OTHER CO-ACCUSED IN THE SHOOTING AND KILLING OF VICTIM ANTONIO DIONISIO.
- THE TRIAL COURT ERRED IN CONVICTING YOUR ACCUSED-APPELLANT OF THE CRIME OF MURDER.

The defense contends that treachery did not attend the commission of the crime considering that there was a previous altercation between the victim and one of the accused thereby logically putting the former on guard and forewarned at their second meeting. Besides, no evidence was presented by the prosecution to show how the killing was commenced.

This contention is meritorious. There is treachery when the following conditions are present: (a) employment of means, methods or manner of execution to ensure the safety of the malefactor from defensive or retaliatory acts on the part of the victim, and (b) deliberate adoption by the offender of such means, methods or manner of execution.[2]

In ruling that treachery attended the commission of the crime, the trial court held, thus:

"x x x [T]he victim was killed by a single shot on the head while inside his car. There was treachery and premeditation because it was so sudden and unexpected that the victim had no time to prepare for his defense much less to retaliate. Hence, the crime was murder."

The trial court's conclusion has no basis considering that no evidence was presented to show that the accused deliberately employed means, methods or manner of execution to ensure their safety from the defensive or retaliatory acts of the victim.[3] In fact, the trial court merely concluded that the attack was treacherous because it was sudden and unexpected but it failed to cite any evidence to show that the attack was indeed sudden and unexpected.

This Court has held that where all indicia tend to support the conclusion that the attack was sudden and unexpected but there are no precise data on this point, treachery cannot be taken into account. Treachery cannot be established from mere suppositions drawn from the circumstances prior to the moment of the aggression that the accused perpetrated the killing with treachery.[4] When the witnesses did not see how the attack was carried out and cannot testify on how it began, the trial court cannot presume from the circumstances of the case that there was treachery. Circumstances which qualify criminal responsibility cannot rest on mere conjectures, no matter how reasonable or probable, but must be based on facts of unquestionable existence. Mere probabilities cannot substitute for proof required to establish each element necessary to convict. Treachery must be proved by clear and convincing evidence, or as conclusively as the killing itself.[5]

In *People v. Tony Adoc, et. al.*, [6] treachery was ruled out as having attended the commission of the crime considering that the two eyewitnesses had no knowledge as to how the fighting begun, thus:

"Neither could Diomedel Diapo testify as to the cause of the fray. He came out of his house which was across the terminal only after he already heard shouts which proves that the fighting had already started when he arrived at the scene of the crime. This failure of the prosecution to present evidence as to the manner in which the altercation started precludes a finding that the killing was qualified by treachery.

In *People v. Sambulan* (289 SCRA 500 [1998]) this Court also held that:

In the case at bar, the record is bereft of evidence showing the methods or the means employed by appellant in order to ensure his safety from any retaliation that could be put up by the victim. The witness for the prosecution only saw the actual hacking of the victim and not the preceding events that led to it. Treachery cannot be considered where the lone witness did not see the commencement of the assault. The importance of such testimony cannot be overemphasized considering that treachery cannot be presumed nor established from mere suppositions. (Italics supplied)

The same doctrine was applied in *People v. Amamangpang* (291 SCRA 638 [1998]) wherein this Court said:

The trial court, however, erred in finding that the crime was committed with treachery. Treachery, which should be proven as clearly as the crime itself to be considered a qualifying circumstance, was not conclusively established in this case. According to the prosecution eyewitness Noculan, when he was alerted to the assault by the warning shout of appellant's daughter and when he peeped inside the house, he saw the victim already prostrate on the bamboo floor, blood oozing from his neck and about to be struck by the appellant. Since the lone eyewitness failed to witness the initial attack inflicted upon the victim, treachery cannot be considered a qualifying circumstance.

In *People v. Beltran*, this Court reiterated that:

x x x. There is treachery when, in the commission of the crime, the offender employs means, methods and forms which directly and specially insure the execution thereof without risk to himself arising from any defense the offended party might make. The essence of treachery is the swift and unexpected attack without the slightest provocation by the victim. In the case at bar, the victim may have sustained twenty-two (22) stab

wounds but there is no evidence as to the manner in which the attack was made or how the stabbing resulting in her death began and developed. The existence of treachery cannot be established from mere suppositions nor drawn from circumstances that existed prior to and after the killing; it must be proved by clear and convincing evidence or as conclusively as the killing itself. Where treachery is not adequately proved, appellant can only be convicted of homicide.

The defense next assails the finding of the trial court that the qualifying circumstance of evident premeditation attended the killing of the victim. It contends that the 15-minute interval between the initial encounter of the accused and the victim, on the one hand, and the shooting, on the other hand, was not sufficient for meditation and reflection. Also, the defense claims that the evidence is silent as to when the accused resolved to assault and kill the victim. Neither was there evidence that they clung to their previous resolution of assaulting the deceased.

The three requisites needed to prove evident premeditation are the following: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[7]

None of the above requisites exist in this case. The record is bereft of any evidence to show when the accused decided to kill the victim. It was not shown that the accused meditated and reflected upon their decision to kill the victim. Likewise, there is a dearth of evidence that the accused persisted in their plan to kill the victim.

As this Court has repeatedly held, the premeditation to kill must be plain, notorious and sufficiently proven by evidence of outward acts showing the intent to kill.[8] In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[9]

We cannot agree with the prosecution's theory that the 15-minute interval is sufficient time for the accused to coolly reflect on their plan to kill the victim. It has been held in one case that even the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act.[10]

The trial court erred in appreciating the existence of conspiracy among the three (3) accused.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It may be deduced from the manner in which the offense is committed, as when the accused acted in concert to achieve the same objective.[11] In order to hold an accused liable as co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or in furtherance of conspiracy. The overt act may consist of active participation in the actual commission of the crime itself or it may consist of moral assistance to his co-conspirators by exerting moral ascendancy over the other co-conspirators by moving them to execute or implement the conspiracy.[12] Mere presence at the scene of the incident, knowledge of the plan or acquiescence thereto are not sufficient grounds to hold a person liable as a conspirator. As such, conspiracy must be established as any element of the crime and evidence of the conspiracy must be beyond reasonable doubt.[13] Neither joint nor simultaneous action is per se sufficient indicium of conspiracy, unless proved to have been motivated by a common design.[14]

As shown by the evidence presented by the prosecution, Illescas was driving the motorcycle in the company of his co-accused immediately prior to and after the shooting incident. Illescas' participation in the crime was limited to driving the motorcycle. As testified to by Mariel, the four-year old daughter of the victim, Illescas was not the triggerman, although he was the one driving the motorcycle.

The prosecution failed to adduce sufficient evidence to completely establish the existence of conspiracy among

the three accused. The acts of Illescas vis-à-vis those of his co-accused failed to establish beyond reasonable doubt the presence of conspiracy. It bears stressing that conspiracy must be proved as convincingly and indubitably as the crime itself.[15] Nonetheless, the failure of the prosecution to prove the existence of conspiracy does not eliminate any criminal liability on the part of Illescas. Although he could not be convicted as a co-principal by reason of the conspiracy he could still be held liable as an accomplice, thus:

We have previously held that the liability of one whose participation in a crime was limited to driving for the killers x x x is only that of an accomplice. The rationale for these rulings is that where the quantum of proof required to establish conspiracy is lacking, the doubt created as to whether accused acted as principal or accomplice will always be resolved in favor of the milder form of criminal liability, that of a mere accomplice.

x x x [T]he lack of complete evidence of conspiracy, which creates the doubt whether he has acted as a principal or as an accomplice, impels this Court to resolve the question as to his liability in his favor by holding that he is guilty of the minor form of responsibility.[16]

Based on the foregoing disquisition, it is clear that the court below erred in convicting accused-appellant of murder. Absent the qualifying circumstances of treachery and evident premeditation, accused-appellant could only be held liable for homicide. In addition, lacking sufficient evidence of conspiracy and there being doubt as to whether accused-appellant acted as a principal or just a mere accomplice, the doubt should be resolved in his favor and is thus held liable only as an accomplice.

Under Article 249 of the Revised Penal Code the penalty for homicide is reclusion temporal. Since accused-appellant is only an accomplice, the imposable penalty is one degree lower than that imposable for the principal, i.e., prision mayor. There being neither aggravating nor mitigating circumstances, the said penalty shall be imposed in its medium period.[17] Applying the Indeterminate Sentence Law, accused-appellant Illescas is accordingly sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum.

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Bulacan, Branch 79, is **AFFIRMED** with the **MODIFICATION** that accused-appellant Jaime Illescas is held guilty of homicide and is accordingly sentenced to a prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and to indemnify the heirs of Dionisio Antonio the amount of P50,000.00.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Dated February 15, 1994, Rollo, p. 12.

[2] *People v. Flora*, G.R. No. 125909, June 23, 2000; *People v. Rios*, G.R. No. 132632, June 19, 2000.

[3] *People v. Belbes*, G.R. No. 124670, June 21, 2000; *People v. Ladit*, G.R. No. 127571, May 11, 2000.

[4] *People v. Silva*, G.R. No. 131591, December 29, 1999.

[5] *People v. Lopez*, G.R. No. 131151, August 25, 1999.

[6] G.R. No. 132079, April 12, 2000.

[7] *People v. Sison*, 312 SCRA 792, 804 (1999).

[8] *People v. Tan*, G.R. No. 129882, September 14, 1999; *People v. Mahinay*, 304 SCRA 767, 779 (1999); *People v. Chua*, 297 SCRA 229, 242 (1998).

[9] *People v. Tan*, *supra*.

[10] *People v. Rabanillo*, G.R. No. 130010, May 26, 1999.

[11] *People v. Bautista, et al.*, G.R. No. 131840, April 27, 2000.

[12] *People v. Ragundiaz, et al.*, G.R. No. 124977, June 22, 2000.

[13] *Salvatierra, et al. v. CA and the People of the Philippines*, G.R. No. 115998, June 16, 2000.

[14] *People v. Ragundiaz*, *supra*.

[15] *People v. Patalinghug*, G.R. Nos. 125814-15, November 16, 1999.

[16] *People v. Ragundiaz*, *supra*.

[17] Revised Penal Code, Article 64 (1).

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