

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AGUEDA T. ALBA, ADRIANO GORTAYO, MARIBEL GORTAYO, SATURNINO REMBULAT JR., DAVID KINGKING, ALICIA KINGKING, FRANCISCO ALOVERA, ...

G.R. No. 130627 and Nos. 139477-78. May 31, 2001

Ponente: PARDO, J.

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PARDO, J.:

For their feet run to evil, they hasten to shed blood. It is in vain that a net is spread before the eyes of any bird -- These men lie in wait for their own blood, they set a trap for their own lives. This is the fate of everyone greedy of loot; unlawful gain takes away the life of him who acquires it.

Proverbs 1:16 - 19

A bitter and long drawn out dispute over the ownership and possession of a fishpond, covering an area of forty-one (41) hectares, located at Dongon West, Numancia, Aklan[1] violently culminated in the bloody death of Roberto Acevedo. Accused stand charged with the gruesome murder--a reminder that nothing, much more material things or property, is worth bloodied hands.

The Case

The case is an appeal from the decision of the Regional Trial Court, Aklan, Branch 5, Kalibo[2] finding accused Agueda T. Alba, Saturnino Rembulat, Jr., Francisco Alovera, Ronnie Gonzaga and Adriano Gortayo (hereafter, "Alba, Rembulat, Alovera, Gonzaga and Gortayo") guilty beyond reasonable doubt of murder for the killing of Roberto Acevedo, and attempted murder for the shooting of Julito Magcope, sentencing each of them to reclusion perpetua for murder, and an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum, for attempted murder, to jointly and severally indemnify the heirs of Roberto Acevedo (hereafter, "Acevedo") the sum of P50,000.00 and P100,000.00 for funeral, burial and other necessary expenses and to pay the costs.

The Facts

On July 25, 1990, at around seven o'clock in the morning, Randy Ricaforte (hereafter, "Ricaforte"),[3] was working in a fishpond in Brgy, Dongon, Numancia, Aklan. After placing the potable water into a drum inside the hut, Ricaforte went to the fishpond's water gate. At the gate, accused David Kingking called out to him and asked Ricaforte to join him and others.[4] Ricaforte testified that David Kingking was holding an M-16 armalite at that time. Ricaforte was brought to accused Alba who asked him if he was one of Acevedo's goons. Ricaforte answered in the negative and was then brought to accused Rembulat and Gortayo, both of whom were also carrying firearms. At this point, Rembulat and Gortayo started firing repeatedly at the hut[5] where Acevedo was staying. Acevedo then started running out of the hut towards the fishpond tower.[6] Gortayo continued to fire at Acevedo. When Acevedo reached the tower, Gortayo stopped firing his armalite and instead used his rifle

grenade.[7] After firing at the tower, Gortayo shouted, "Bobby, if we cannot get you now, we will get you tomorrow." [8]

Ricaforte also testified that he saw several of the accused, namely, Alicia Kingking, Danilo Tolis and others whom he could not identify running towards the fishpond carrying pieces of wood.[9]

After the firing, accused brought Ricaforte to the house of a certain Belen Artates where he later heard, after two hours, the news that Acevedo was dead.[10] The police later found the bullet ridden body of Acevedo under the tower, surrounded by sacks of fertilizer.[11]

Julito Magcope, Acevedo's caretaker (hereafter, "Magcope"), also testified that he saw Acevedo running towards the tower while being shot at. When accused Gonzaga and Alovera noticed Magcope, they started shooting at him with their armalites. Fortunately, Magcope managed to jump out of the line of fire, into the irrigation canal. He later on crawled towards the fishpond dike where he hid himself during the firing.[12]

On October 11, 1990, the First Assistant Provincial Prosecutor of Aklan filed with the Regional Trial Court, Kalibo, Aklan, an information against accused David Kingking, Alicia Kingking, Danilo Tolis,[13] Maribel Gortayo, Claudio Aspera and accused Alba, Rembulat, Alovera, Gonzaga, Gortayo and five other "Does"[14] for "murder with and attempted murder", as follows:[15]

"That on or about the 25th day of July, 1990, in the morning, in Barangay Dongon West, Municipality of Numancia, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, with evident premeditation and by means of a band and with intent to kill, did then and there wilfully, unlawfully and feloniously raid, attack, and shoot ROBERTO ACEVEDO and JULITO MAGCOPE with high powered rifles (sic) names: armalite M16 and M14 as well as carbine, inflicting upon ROBERTO ACEVEDO the following injuries, to wit:

"CYANOSIS, intergument and nailbeds.

"Wound, gunshot, ENTRANCE, shape and size cannot be determined, modified by laceration and suture, medial border, sorrounded by abrasion collar, 0.2 cm., medial canthus or right orbital ridge, 1.5 cms. from anterior midline, 146.0 cms. from right heel, directed upwards, slightly backwards and laterally, penetrating, causing punched in fracture, fronto-nasal injection with beveling at the inner deploe of frontal bone with multiple linear extensions downward to tight ithmoid bone. Left side to left portion of frontal bone, towards the right, to right temporal bone, then downwards and laterally to right zygomatic bone with bone fragments missing at right frontal bone and the right eyeball pushed inside, lacerating right frontal lobe of the brain where small lead fragments lodged and recovered, make an EXIT, avulsion rectangular in shape right eyebrow, center of which is 4.0 cms. from anterior midline, 148.0 cms. from right heel, with multiple laceration around, on the lateral side, 11.5 cms., extending from lateral canthus of the eye-lid to right temporal region, upwards, 6.0 cms. extending from forehead to medial end of the right eyebrow, downwards 2.5 cms. along right side of bridge of the nose, 4.0 cms at the middle portion on the upper side and 1.0 cm. on the infero-lateral side.

"Subdural hemorrhage, massive, extensive.

"Subarachnoidal hemorrhage, massive extensive.

"Brains, lacerating frontal lobe, right side with portion, missing, Gyri flattened.

"Heart, covered with moderate amount of fatty tissues. Ventricular, chambers, empty, coronary arteries, patent.

"Lungs, voluminous, criptous, congested. Cut section show focal areas of hemorrhage. Exude sanguinous froth on pressure, moderate amount.

"Other visceral organs, slightly congested.

"Stomach, empty.

"as per Necropsy Report No. 90-No.0-92, issued by Dr. Ricardo S. Jaboneta, M.D., Medico-Legal Officer of the National Bureau of Investigation, Western Visayas Regional Office, Iloilo City, which injuries caused the instantaneous death of said ROBERT ACEVEDO while in the case of JULITO MAGCOPE, the herein accused have already commenced directly by overt acts the commission of the crime of murder but did not perform all the acts of execution which would have produced the felony by reason of causes other than their own spontaneous desistance, that is, by the timely escape of said JULITO MAGCOPE.

"As a result of the criminal acts of the accused, the family of the victim ROBERTO ACEVEDO and JULITO MAGCOPE suffered actual damages in the total amount of One Hundred Thousand Pesos (P100,000.00).

"CONTRARY TO LAW."

On January 22, 1991, accused Alba, Gonzaga and Rembulat submitted themselves to the jurisdiction of the court. Upon arraignment, they pleaded "not guilty" to the crimes charged.[16]

On April 18, 1991, accused Gortayo was likewise arraigned. He pleaded not guilty to the charges.[17]

On November 21, 1991, accused Alovera pleaded "not guilty" upon arraignment.[18]

After due trial, on June 18, 1997, the trial court rendered a decision, the dispositive portion of which reads:[19]

"WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

xxx

"2. In Criminal Case No. 3209, finding the accused AGUEDA T. ALBA, SATURNINO REMBUBULAT, JR., ADRIANO GORATYO (GOROTAYO), RONNIE B. GONZAGA and FRANCISCO C. ALOVERA guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code for the killing of Engr. Roberto alias "Bobby" Acevedo, each of them is hereby sentenced to suffer the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of Engr. Roberto Acevedo the sum of P50,000.00 and another P100,000.00 for funeral, burial, and other necessary expenses on account of the victim's death.

"The Court also finds the afore-named accused guilty beyond reasonable doubt of the crime of attempted murder for the shooting of Julito Magcope and each of them to suffer an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum to six (6) years and one (1) day of prision mayor as maximum and to pay the costs.

"Accused DAVID KINGKING, ALICIA KINGKING and DANILO TOLIS are hereby ACQUITTED of the offense charged for failure of the prosecution to establish their guilt beyond reasonable doubt.

"The cases against the remaining accused who have remained at-large are hereby sent to the archives to be revived upon their arrest.

"SO ORDERED."

On June 24, 1997, accused Agueda T. Alba, Saturnino Rembulat, Jr., Francisco Alovera, Ronnie Gonzaga and Adriano Gortayo filed their notice of appeal.[20]

On July 8, 1998, the Court resolved to accept their appeal.[21]

Accused-appellants simply submits that their guilt was not established beyond reasonable doubt.[22]

The Court's Ruling

We do not agree. The concept of "proof beyond reasonable doubt" does not entail absolute certainty of the fact that the accused committed the crime, and neither does it exclude the possibility of error.[23] Only moral certainty is required.[24]

In the cases at bar, the quantum of proof beyond reasonable doubt was met. In *People v. Villablanca*,[25] we held that the testimony of a single witness is sufficient to support a conviction where it is both positive and credible. How much more in this situation where two prosecution witnesses[26] gave unflinching and reliable testimonies against accused appellants? Witnesses are weighed and not numbered. With this in mind, we sustain the convictions and discuss accused-appellants' individual culpabilities in seriatim.

Francisco Alovera and Ronnie Gonzaga were categorically identified by prosecution witness Magcope. The latter testified that the accused-appellants both shot and fired at the tower where Acevedo took refuge. These are specific and overt acts that leave no doubt as to their guilt in the crime of murder.

We agree with the trial court that Adriano Gortayo's culpability is indisputable. We adopt the trial court's reasoning, thus:[27]

"Considering the testimony of Ricaforte that Gortayo was the only person who fired from Gate No. 1 (TSN, January 25, 1991, p. 23) no other conclusion can be drawn except that it was Gortayo who shot and hit the victim (underscoring ours). Moreover, proof as to who among the armed men that fired at the tower actually killed the victim is not necessary should the presence of conspiracy be established. Where conspiracy is proven, the act of one is the act of all (*People vs. M/Sgt. Reynaldo Landicho, et. al.*, G. R. No. 116600, July 3, 1996)."

Agueda T. Alba and Saturnino Rembulat, Jr. are likewise guilty of the crime charged. True, they did not actually fire upon Acevedo. Still, their participation in the conspiracy to murder him is apparent. First, they were conspicuously present during the commission of the crime, in such a way that they could not be considered as innocent bystanders. Second, they arrived and left the scene of the crime with the other accused-appellants. Third, they did nothing to prevent or stop the successive shooting of the tower, where they knew Acevedo was hiding. Fourth, Alba had a motive to kill Acevedo on account of the dispute over the fishpond which has become more bitter through the years. We agree with the trial court:[28]

"Accused Alba would have easily dissuaded her son-in-law, Gortayo from firing his gun if the former has also no intention of inflicting harm on Engr. Acevedo. On the contrary, the Court cannot simply disregard the fact that on account of the raging fishpond controversy between accused Alba and the victim, the former was determined to eliminate Engr. Acevedo in order to retake actually possession of the disputed fishpond. Presumably, she was able to attain her purpose."

In *People v. Taliman*,[29] we held that coupled with enough circumstantial evidence, motive may be sufficient to support a conviction. Motive was clearly established in this case.

Furthermore, we note that Alba and Gortayo were not immediately apprehended even after a warrant was issued for their arrest. They tried to flee. Flight indicates guilt. Accused-appellants' act of not confronting their accuser goes against the principle that the first impulse of an innocent man when accused with wrongdoing is to express his innocence at the first opportune time.[30]

Alibi and denial, which are the defenses interposed by accused-appellants, are the weakest of all defenses[31] and must fail given the straightforward, candid and positive testimonies of the prosecution witnesses.[32] Besides, the rule is that the trial court's assessment of the credibility of witnesses is entitled to great respect. The court had the opportunity to observe the witnesses' demeanor and deportment on the witness stand.[33] In fact, the trial court noted the deportment of the prosecution witnesses and hailed their manner of testifying as

"straightforward...devoid of any embellishment or exaggerations." [34] Anent the trial court's decision, "The reliability and veracity of their (prosecution witnesses') testimonies cannot be suspect." [35]

Attempted Murder

Given that there was a conspiracy, we likewise find all accused-appellants guilty of the crime of attempted murder. Magcope testified that he witnessed Acevedo being fired at. At this point, accused-appellants Gonzaga and Alovera started shooting at him with their armalites. The only reason why he was not injured was because he was able to jump out of the irrigation canal and was able to crawl towards the fishpond dike where he hid himself during the firing. [36] In a conspiracy, the act of one is the act of all.

Article 6 of the Revised Penal Code provides:

"Art. 6. Consummated, frustrated and attempted felonies.- x x x There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance."

Clearly, there was an attempt to murder Magcope, a plan that would have been carried out if it weren't for Magcope's timely dodging of the shots fired at him.

Penalties Imposed

At the time of the commission of the offense of murder, [37] the penalty imposable under Article 248 of the Revised Penal Code was reclusion temporal in its maximum period to death. [38] There being no aggravating or mitigating circumstance that attended the murder, the proper imposable penalty is reclusion perpetua. [39]

Article 51 of the Revised Penal Code provides that "A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit the felony."

Damages Awarded

The records are bereft of any receipt or voucher to justify the trial court's award of actual damages for funeral and burial expenses. Hence, we delete the same. Every pecuniary loss must be established by credible evidence. [40]

An award of moral damages in the amount of fifty thousand pesos (P50,000.00) to the heirs of Acevedo is proper. [41] Moral damages are also awarded taking into consideration the pain and anguish of the victim's family. [42]

Civil indemnity awarded for wrongful death in the amount of fifty thousand pesos (P50,000.00) is in line with current jurisprudence. This can be awarded without need of proof other than the death of the victim. [43]

The Fallo

WHEREFORE, the decision of the Regional Trial Court, Branch 5, Kalibo, Aklan, is **AFFIRMED** with **MODIFICATION**.

Accused-appellants Agueda T. Alba, Saturnino Rembulat, Jr., Francisco Alovera, Ronnie Gonzaga and Adriano Gortayo are found guilty beyond reasonable doubt of the crime of **MURDER** defined and penalized under Article 248 of the Revised Penal Code and are sentenced to reclusion perpetua. Accused-appellants are jointly and severally ordered to pay the heirs of Roberto Acevedo, moral damages in the amount of fifty thousand pesos (P50,000.00) and civil indemnity in the amount of fifty thousand pesos (P50,000.00). The award for funeral expenses to the heirs of Roberto Acevedo is **DELETED**.

Accused-appellants are likewise found guilty beyond reasonable doubt of ATTEMPTED MURDER defined and penalized under Article 248, in relation to Article 51 of the Revised Penal Code, and in the absence of any modifying circumstances, are sentenced to an indeterminate penalty of four (4) years and two (2) months of prision correctional, as minimum, to ten (10) years of prision mayor, as maximum, and to pay the costs.

The case is archived as to accused who remain at large, until their arrest and submission to the jurisdiction of the trial court.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Ynares-Santiago, JJ., concur.
Kapunan, J., on leave.

[1] RTC Decision, Rollo, pp. 43-71, at pp. 59-60.

[2] In Criminal Case No. 3209 for Murder with Attempted Murder, dated June 18, 1997, Judge Niovady M. Marin, presiding judge.

[3] Then sixteen years old and an employee of the victim, Roberto Acevedo.

[4] Claudio Aspira and Pepito Andrade.

[5] TSN, January 23, 1992, p. 11.

[6] The hut was about three meters away from the tower.

[7] TSN, January 25, 1991, pp. 1-41.

[8] TSN, January 23, 1992, p. 12.

[9] Ibid., p. 14.

[10] TSN, January 25, 1991, pp. 1-41.

[11] TSN, January 28, 1991, p. 11.

[12] TSN, January 28, 1990, pp. 33-35.

[13] In an order by the trial court dated November 18, 1991, the trial court ordered that the name of accused Danilo Solis should be corrected to Danilo Tolis in the records of the case and in the corresponding warrants of arrest of the said accused (RTC Records, p. 386).

[14] John Doe, Peter Doe, Richard Doe, Fred Doe and Raffy Doe (Information, Rollo, p. 8).

[15] Filed by First Assistant Provincial Prosecutor Edgar R. Peralta before the Regional Trial Court, Branch 2, Kalibo, Aklan (Information, Rollo, pp. 8-10).

[16] RTC Records, p. 108.

[17] RTC Decision, Rollo, pp. 43-71, at p. 46.

[18] Ibid.

[19] Ibid., at pp. 70-71.

[20] Notice of Appeal, Rollo, p. 72.

[21] Rollo, p. 87.

[22] Brief for Accused-Appellants, Rollo, pp. 134-149, at p. 144.

[23] *People v. Bautista*, 308 SCRA 620 [1999].

[24] *People v. Santiago*, 319 SCRA 644 [1999].

[25] 316 SCRA 13 [1999].

[26] Randy Ricaforte and Julito Magcope.

[27] RTC Decision, Rollo, pp. 43-71, at p. 65.

[28] RTC Decision, Rollo, pp. 43-71, at p. 67.

[29] G. R. No. 109143, October 11, 2000.

[30] *People v. Malapayon*, G. R. Nos. 111734-35, June 16, 2000.

[31] *People v. Gonzales*, G. R. No. 138402, August 18, 2000; *People v. Bracamonte*, 327 Phil 160 [1996].

[32] *People v. Sarabia*, 334 Phil 432 [1997].

[33] *People v. Juntilla*, 314 SCRA 568 [1999]; *People v. Lomerio*, 326 SCRA 530 [2000]; *People v. Antonio*, G. R. No. 128149, July 24, 2000.

[34] RTC Decision, Rollo, pp. 43-71, at p. 66.

[35] *Ibid.*

[36] TSN, January 28, 1990, pp. 33-35.

[37] July 25, 1990.

[38] This was amended by R. A. No. 7659, effective on December 31, 1993.

[39] *People v. Gonzales*, G. R. No. 122769, August 3, 2000.

[40] *People v. Espina*, 326 SCRA 753 [2000]; *People v. Enguito*, 326 SCRA 508 [2000]; *People v. Mindanao*, G. R. No. 123095, July 6, 2000.

[41] *People v. Ereño*, 326 SCRA 157 [2000].

[42] *Ibid.*

[43] *People v. Baluran*, 325 SCRA 476 [2000]; *People v. Quijon*, 325 SCRA 453 [2000]; *People v. Mindanao*, G. R. No. 123095, July 6, 2000.

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