PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE ALIB, ROGER ALIB, FREDDIE ALIB, JIMMY ALIB AND ALEJANDRINO DITCHON, ACCUSED-APPELLANTS.

G.R. No. 130944. January 18, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

VICENTE ALIB, ROGER ALIB, FREDDIE ALIB, JIMMY ALIB and ALEJANDRITO DITCHON were charged with Murder qualified by treachery and committed pursuant to a conspiracy for the killing of Wilson Calapan on 20 August 1996 in Sitio Antawan, Mt. Kanlandog, Murcia, Negros Occidental. Vicente Alib, Roger Alib, Freddie Alib and Jimmy Alib were apprehended and tried, while Alejandrito Ditchon has remained at large.

At about 8:30 in the evening of 20 August 1996 the spouses Juanito Calapan and Marilyn Calapan together with their sons Jerson and Wilson were having dinner in their house when they heard accused Vicente Alib, Marilyn's cousin, shouting and challenging them to a fight. Marilyn opened the door and found Vicente at the stairs. He was drunk. She also saw the other accused Roger, Freddie and Jimmy and Alejandrito in the yard. Marilyn told Vicente, "Toto Libat, go home because you are drunk; something might happen and I will be responsible." She then closed the door. Vicente however forced the door open and Marilyn was hit on the head. Whereupon, her son Wilson intervened and asked permission from her if he could escort his uncle home.[1]

Juanito testified that he followed his son Wilson to the stairs to meet his uncle Vicente.[2] Wilson said to Vicente, "Tio, let us go home; I will conduct you home."[3] Suddenly, Vicente's brothers Freddie and Roger grabbed Wilson by the arms and without warning Vicente hacked him on the head with a bolo, while his nephew Jimmy struck Wilson at the back with a piece of wood. Freddie then stepped back, drew his firearm and shot Wilson three (3) times but missed him as he fell to the ground.[4] With his son now at the mercy of his assailants Juanito rushed to his rescue. But it was all in vain. Roger blocked his path and hacked him in the hand. All the accused then fled.[5]

Marilyn who was only about three (3) arms length away saw the brutal assault on her son.[6] She ran towards the Special Forces Detachment of the Philippine Army and sought help from the Detachment Commander, Capt. Andres Banaw. The latter however refused to render immediate assistance because the area was considered "critical"[7] and something might happen to them but he assured Marilyn nevertheless that he and his men would go to the scene of the crime the next day.[8] The same night, Wilson died in their residence. He succumbed to neurogenic shock secondary to a hack wound in the skull, according to the post-mortem examination by Dr. Augustus Tan, Municipal Health Officer of Murcia, Negros Occidental.[9]

Accused Vicente Alib admitted the killing but asserted that it was in self-defense. He recounted that at about 8:00 o'clock in the evening of 20 August 1996 he was about to tow his carabao at the side of the river when upon reaching the house of the Calapans, Juanito shouted at him, "Libat, let's fight."[10] He did not respond as Juanito was drunk. Accused then proceeded on his way home when Juanito and Wilson, who were armed with a cane

cutter and a bolo, respectively, together with one Roberto Rodriguez waylaid him. Wilson then hacked him thrice with a bolo although he escaped the successive blows. According to Vicente, this prompted him to pull his bolo from the scabbard with the use of his left hand and hacked Wilson on the face that sent him falling to the ground.[11] Juanito tried to help Wilson, but as he was about to attack, Vicente hacked him on the left side of his arm. Wounded, Juanito ran towards his house. Vicente also went home.[12] The following day he surrendered at the military detachment of Barangay Kanlandog, Murcia, Negros Occidental.

To corroborate his defense Vicente Alib presented witness Luz Flor, a neighbor of the Calapans. She testified that on 20 August 1996 while she and her family were preparing to sleep they heard Juanito and Wilson challenging Vicente to a fight.[13] Together with a sister, she went out of the house and saw Wilson and Juanito, who appeared to be drunk, chasing Vicente, and the hacking incident followed. From a distance of twelve (12) meters, Luz allegedly saw Wilson hacked Vicente but missed.[14] Nervous as she was, she returned to his house and peeped through the window and allegedly saw Juanito running towards his house while Wilson was already lying on the ground. Vicente then fled.

The other Alibs disavowed any complicity in the killing of Wilson Calapan claiming that they were in their respective homes at the time of the incident.[15]

On 25 April 1997 the trial court rendered a decision[16] rejecting the theory of self-defense as well as alibi and gave full credence to the testimonies of prosecution witnesses Marilyn and Juanito Calapan who positively identified the accused as the culprits. Accordingly, the accused were convicted of murder qualified by treachery and sentenced to reclusion perpetua, except 15-year old accused Jimmy Alib whose sentence was suspended and was ordered released under the supervision of the Department of Social Welfare and Development pursuant to PD 603, The Child and Youth Welfare Code.

Accused-appellants contend in this appeal that the trial court seriously erred: (a) in disregarding their evidence; (b) in finding the existence of treachery and conspiracy in the commission of the crime charged; and, (c) in not holding that it was physically impossible for them to be at the scene of the crime at the time of its commission.

Accused-appellants' assigned errors revolve on the credibility of the witnesses. But the rule is that findings of trial courts on the credibility of witnesses deserve a high degree of respect. Having observed the deportment of witnesses during the trial the court a quo was in a better position to determine the issue of credibility; thus, its findings will not be disturbed on appeal in the absence of any clear showing that it had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of accused-appellants.[17] We find no reason to depart from this rule. Indeed, after a conscientious review of the records we are convinced that the death of victim Wilson Calapan was a result not of self-defense on the part of accused-appellant Vicente Alib but of unlawful, criminal aggression perpetrated by all accused-appellants; consequently, we affirm their conviction.

In self-defense the burden of proof rests upon the accused. His duty is to establish by sufficient, satisfactory and convincing evidence the following requisites: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel it; and, (c) lack of sufficient provocation on the part of the person defending himself.[18] We discern no criminal aggression on the part of the victim in the instant case. Accused-appellant Vicente Alib miserably failed to show that there was a previous, unlawful and unprovoked attack on his person that would have placed him in danger, thereby forcing him to repel the attack and inflict more or less severe wounds upon his victim employing reasonable means therefor. On the contrary, Juanito and Marilyn Calapan categorically testified that all accused-appellants mercilessly and viciously attacked their son Wilson as he was trying to pacify his pugnacious uncle Vicente who was drunk at that time and to escort him home. The

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clear, unequivocal and untraversed account of events by these prosecution witnesses regarding the manner of attack and the participation of each accused-appellant in the killing of Wilson Calapan rendered totally inutile the defenses which Vicente, Roger, Freddie and Jimmy Alib now invoke.

Vicente Alib would have this Court believe that Wilson Calapan, together with Juanito Calapan and one Roberto Rodriguez, all armed, waylaid him; that a bloody hacking encounter ensued wherein he killed Wilson and wounded Juanito after skillfully dodging their successive hacking blows, much like the familiar stereotyped protagonist in an action movie who could easily overpower his adversaries with grace and savvy. But we are not impressed, much less amused, by his story.

It is incredible that he was unscathed during the alleged ambush, given his claim that he was only one (1) arm's length from the deceased who, at that time, was armed with a 2-1/2-foot long bolo, and with two (2) other armed companions - Juanito Calapan and Roberto Rodriguez. As observed by both the court a quo and the Solicitor General, and to which we agree, if Vicente's story were to be believed he would have been the deceased and not Wilson. But as it turned out, Vicente sustained no injury, not even a scratch from his encounter with Wilson, Juanito and Roberto. This is surprising since the picture accused-appellant paints of the deceased is that of a dangerous young man who would pick a fight with anybody in the barangay. The fact that he emerged unharmed from his encounter with such a "dangerous individual" who had companions who were allegedly armed to the teeth and hell-bent on harming him, belies his claim that he alone killed the victim in self-defense.

On the defenses of denial and alibi interposed by the other accused-appellants, courts generally view them with disfavor on account of their aridity and the facility with which an accused could concoct them to suit his defense. Being evidence that is negative in nature and self-serving, they cannot secure worthiness more than that placed upon the testimonies of prosecution witnesses who testify on clear and positive evidence.

Moreover, for alibi to be given weight, accused-appellants must prove not only that they were somewhere else when the crime was committed but that they were so far away that it was physically impossible for them to be present at the scene of the crime or its immediate vicinity at the time of its commission.[19] The evidence on record reveals that it was not physically impossible for them to be at the locus criminis considering that all of them and their victim lived in a small barrio. In fact, the Alibs and the Calapans were neighbors, residing only fifty (50) meters from each other.

Accused-appellants posit that they did not flee after the commission of the crime but stayed in their respective houses doing daily chores, an evidence of their innocence. There is however no law or principle which guarantees that non-flight per se is proof, let alone conclusive proof, of one’s innocence and, as in the case of alibi and denial, such a defense is unavailing when placed astride the undisputed fact that there is positive identification of the offenders.[20]

Accused-appellants likewise argue that the trial court erred in finding conspiracy since their complicity in the crime was not sufficiently established by the prosecution. They maintain that the victim suffered only one (1) hack wound on the right side of his head and no other wound was found on his body, thereby negating their participation in the crime. The argument is bereft of merit. In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim.

The prosecution evidence clearly and convincingly shows a coordinated assault on the victim with each of the accused-appellants performing a specific role in the execution of the crime. Thus, Freddie Alib and Roger Alib held both arms of the victim to render him immobile and preclude any potential resistance from him, thus

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enabling Vicente to consummate his dastardly act; Jimmy Alib positioned himself at the back of the victim and rendered assistance to his co-conspirators by hitting the victim with a piece of wood; after the victim was hacked by Vicente, Freddie drew his gun and shot (although he missed) the victim thrice to ensure that he was dead; and, Roger blocked the path of Juanito Calapan and hacked his hand to prevent him from helping the victim. In carrying out a conspiracy, every act of each conspirator in furtherance of the common purpose is in contemplation of law the act of all. Consonant with this legal principle, each appellant is just as guilty as if he himself dealt the deathblow that sent Wilson Calapan to his grave.

Accused-appellants next contend that assuming Vicente Alib may be held liable for the killing of Wilson Calapan, it cannot be murder for the following reasons: (a) the killing of the victim was not attended by the qualifying circumstance of treachery; and, (b) the attack on the victim was not so sudden and unexpected as he was facing the victim when he hacked the latter.

We are not persuaded. The records speak eloquently of the manner by which the victim was slain. Wilson Calapan could not have expected, as he descended the stairs of his house, that he would be savagely and fatally assaulted by accused-appellants who were his relatives. He was totally defenseless during the attack since his hands were restrained by Freddie and Roger, and Vicente hacked him on the head with a bolo without any warning. As held by the trial court -

> When Wilson went down with Vicente Alib, he did not have the faintest idea that he was vulnerable to an attack considering that the latter was deemed a relative. He went out to escort his uncle home, obviously oblivious of the sinister intent of the latter. Wilson was not in a position to have prepared for an attack. He willingly went down, unarmed, but was grabbed by the two other Alibs by the hands which made the hacking of Vicente easier and without risk to themselves. Roger Alib even managed to hack Juanito on the hand when the latter came to his son's rescue. Abuse of superior strength, absorbed in the qualifying circumstance of treachery, is evident from the disparity between the strength of the hapless victim and his five assailants.

An unexpected and sudden attack under circumstances which render the victim unable and unprepared to defend himself by reason of the suddenness and severity of the assault constitutes treachery or alevosia. Parenthetically, the fact that the attack on deceased Wilson Calapan was frontal does not preclude the presence of treachery in this case as the same made the attack no less unexpected and sudden. In fine, the trial court correctly considered the killing of Wilson Calapan as Murder qualified by treachery, and, in the absence of any attendant mitigating or aggravating circumstances, imposed on Vicente Alib, Roger Alib and Freddie Alib the penalty of reclusion perpetua. We likewise agree that the other accused-appellant, Jimmy Alib, was entitled to the benefit of a suspended sentence under Art. 192, PD 603, The Child and Youth Welfare Code, he being a minor at the time of the commission of the crime in 1996 and at the time of the sentencing in 1997.[21]

WHEREFORE, the conviction of accused-appellants Vicente Alib, Roger Alib, Freddie Alib and Jimmy Alib by the court a quo for MURDER qualified by treachery is AFFIRMED. Accordingly, they are all sentenced to reclusion perpetua together with its accessory penalties under the law.

As regards accused-appellant Jimmy Alib, the decision of the trial court suspending his sentence and ordering his release under the supervision of the Department of Social Welfare and Development is likewise AFFIRMED. It appearing, however, that as of the date of this Decision he has already reached the age of majority, the Department of Social Welfare and Development is DIRECTED to submit a report and recommendation to the court a quo regarding his conduct and behavior for purposes of applying Arts. 196 and 197 of PD 603, The Child and Youth Welfare Code.[22]

In addition to the foregoing, accused-appellants are ORDERED to pay jointly and severally the heirs of the

victim, Wilson Calapan, in the amounts of P50,000.00 as indemnity for his death and P23,000.00 for funeral and burial expenses. The sum of P24,798.00 representing the loss of earning capacity of the deceased, as decreed by the trial court, is DELETED for lack or insufficiency of evidence.

With regard to accused ALEJANDRITO DITCHON, let this case be ARCHIVED and an Alias Warrant of Arrest issue against him and face trial under the law.

SO ORDERED.

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

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[1] TSN, 21 January 1997, pp. 4-7.

[2] Id., 13 January 1997, p. 20.

[3] Id., p. 23.

[4] Id., p. 13.

[5] Id., pp. 14 and 16.

[6] Id., 21 January 1997, pp. 8-9.

[7] Capt. Banaw did not explain what he meant by "critical," but the presence of the Philippine Army Special Forces and CAFGUs in that municipality suggests that it had something to do with communist rebels infesting the area.

[8] TSN, 24 February 1997, p. 4.

[9] Id., 13 January 1997, p. 7; Exh. "B-2."

[10] Id., 25 February 1997, p. 24.

[11] Id., p. 31.

[12] Id., pp. 32-33.

[13] Id., 26 February 1997, p. 5.

[14] Id., p. 11.

[15] Id., 17 March 1997, pp. 8, 9, 19 and 22.

[16] Decision penned by Judge Anastacio I. Lobaton, RTC-Br. 44, Bacolod City.

[17] People v. Tañedo, G.R. No. 110405, 2 January 1997, 266 SCRA 34.

[18] Art. 11, par. 1, The Revised Penal Code 6.

[19] People v. Baniel, G.R. No. 108492, 15 July 1997, 275 SCRA 654.

[20] People v. Dinglasan, G.R. No.101312, 28 January 1997, 267 SCRA 26, 44.

[21] Accused-appellant Jimmy Alib was only fifteen (15) years old at the time of the commission of the crime in 1996 and sixteen (16) years old at the time of his sentencing in 1997.

[22] Art. 196. Dismissal of the case. - If it is shown to the satisfaction of the court that the youthful offender

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whose sentence has been suspended has behaved properly and has shown his capability to be a useful member of the community, even before reaching the age of majority, upon recommendation of the Department of Social Welfare, it shall dismiss the case and order his final discharge.

Art. 197. Return of the Youthful Offender to Court. – Whenever the youthful offender has been found incorrigible or has willfully failed to comply with the conditions of his rehabilitation programs, or should his continued stay in the training institution be inadvisable, he shall be returned to the committing court for the pronouncement of judgment.

When the youthful offender has reached the age of twenty-one while in commitment, the court shall determine whether to dismiss the case in accordance with the next preceding article or to pronounce the judgment of conviction.

In any case covered by this article, the youthful offender shall be credited in the service of his sentence with the full time spent in actual commitment and detention effected under the provisions of this Chapter.

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