

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUTER ORCULA, SR., LUTER ORCULA, JR. ALIAS "JUN", ROLANDO ORCULA ALIAS "LANDO", AND NESTOR ORCULA ALIAS "BOY", ACCUSED, LUTER ...

G.R. No. 132350. July 05, 2000

Ponente: PUNO, J.

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PUNO, J.:

In an Information[1] filed on May 3, 1994 before Branch 31 of the Regional Trial Court, 11[th] Judicial Region, Tagum, Davao, accused-appellant Luter Orcula, Sr. (Luter, Sr.), together with Luter Orcula, Jr. alias "Jun", Rolando Orcula alias "Lando" and Nestor Orcula alias "Boy", were charged with the crime of murder, committed as follows:

"That on or about March 20, 1994, in the Municipality of Kapalong, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused Luter Orcula, Sr., conspiring, confederating and mutually helping with Luter Orcula, Jr., Rolando Orcula and Nestor Orcula, who are at large, with treachery and evident premeditation, with intent to kill and armed with deadly weapons, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Oscar Caldoza, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW."

Accused-appellant Luter Orcula, Sr. pleaded not guilty and trial on the merits ensued.

The facts are as follows:

The Caldozas were neighbors of the Orculas at Sitio Kantiyo, Sua-on, Kapalong, Davao. There is bad blood between them that originated from a boundary dispute of the land they respectively occupy. Once, the wife of appellant Luter, Sr. warned the wife of the victim, Oscar Caldoza (Oscar), of a plan by Nestor Orcula to kill Oscar.

On March 20, 1994, at about 7:00 p.m., prosecution witness Teodoro Polinar, Jr. (Polinar, Jr.) heard a commotion outside their house. He peeped through their window and saw Luter, Sr., Luter, Jr. (Junior), Rolando (Lando) and Nestor (Boy), all surnamed Orcula (the Orculas), surrounding his grandfather, Oscar Caldoza. Nestor was armed with a bolo while his companions held pieces of wood. When someone shouted "dam-agan nato ni,"[2] Oscar started to run towards his house but the Orculas chased him. At this point, Polinar, Jr. got afraid and put out the lamp. He immediately relayed to his uncle, Dionisio Dapar, that his grandfather was being pursued by the Orculas. Dapar replied that they should remain inside the house because they might also be attacked.

At about 7:30 p.m., the Orculas knocked at Polinar's house and asked for Polinar, Jr.'s father and uncle. Dapar, who was hiding, signalled to Polinar, Jr. not to reveal that he was there. Polinar, Jr. then told the Orculas that his father was in Sua-on while his uncle was drinking tuba at the Lilian Store. When the father of Polinar, Jr. arrived

at 8:00 p.m., they searched for Oscar but they could not find him.

Also at about 7:30 p.m., Teodoro Alimasac (Alimasac) was on his way home from Sua-on when he met the Orculas on the road. He noticed that Luter, Jr. was carrying a spade. After making small talk with Rolando, Alimasac went home.

The following day, at 9:00 a.m., the lifeless body of Oscar was found buried in a banana plantation one hundred meters away from his house. A spade was left near the grave. Alimasac identified the spade as the same one that he saw Luter, Jr. was carrying the night before.

Based on the post-mortem examination conducted by Roman Galicme, a sanitary inspector[3] at the Kapalong Davao Health Center, Oscar sustained multiple stab wounds and a hack wound, as follows: a 6-inch stab wound on the chest; 1 ½-inch stab wound at the back of the left arm; 9-inch stab wound at the back; and a hack wound also at the back which was 4 ½ inches wide and 1 ½ inches deep.[4] Galicme opined that the wounds were caused by a bolo.

Accused-appellant Luter Orcula, Sr. proffered the defense of alibi. He alleged that at 5:00 a.m. of March 19, 1994, he left for Pamakawon, Asuncion, Davao to visit his children, Sonia, Elisa and Oscar, and to bring them some food stuff. He arrived in the afternoon and saw his nephew, Jovino Flores, who was there on a vacation. His daughter, Sonia, informed him that the graduation of Oscar and Elisa would be held on March 25, 1994. Two days after, or on March 21, 1994, Luter, Sr. went back to Sua-on to get money. Upon reaching home, his wife told him that Oscar was killed and that Luter, Sr. and his three sons were being tagged as the suspects. However, Luter, Sr. went back to Pamakawon and attended the graduation of his children. It was only on April 5, 1994 that he surrendered to the authorities. His three sons who are his co-accused remain at large.

Luter, Sr.'s daughter, Sonia, and his nephew, Jovino Flores, corroborated his testimony.

On April 16, 1997, judgment was rendered by the trial court finding accused-appellant Luter Orcula, Sr. guilty beyond reasonable doubt of the crime of murder and he was sentenced to suffer the penalty of reclusion perpetua and to pay the wife of the victim the amount of P50,000.00 as indemnity, P50,000.00 as moral damages, and P3,000.00 for burial expenses.[5]

Hence this appeal under the following assignment of errors:

- That the trial court erred in convicting the accused on purely circumstantial evidence which taken as a whole is insufficient to prove the guilt of the accused beyond reasonable doubt;
- That the trial court erred in wholly disregarding the defense of alibi by accused on a mere technicality that the testimonies presented were all by relatives of accused;
- That the trial court erred in not considering that a doubt as to the guilt of the accused was created by the insufficiency of prosecution evidence and the weight of accused's evidence, which doubt should have been resolved for the acquittal of accused.

Except for the finding as to the nature of the crime committed and the penalty imposed, we affirm the findings of the trial court.

Section 4, Rule 133 of the Revised Rules of Court provides that circumstantial evidence is sufficient for conviction if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Wharton suggests four basic guidelines in the appreciation of circumstantial evidence, to wit: (1) it should be acted upon with caution; (2) all the essential facts must be consistent with the hypothesis of guilt; (3) the facts must exclude every other theory but that of guilt; and (4) the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense.[6] The peculiarity of circumstantial evidence is that the guilt of the accused cannot be deduced from scrutinizing just one particular piece of evidence. It is more like a puzzle which, when put together, reveals a convincing picture pointing towards the conclusion that the accused is the author of the crime.[7]

There is no dispute that there was no eyewitness to the actual killing of the victim, Oscar Caldoza. However, several circumstances lead to the conclusion that Luter, Sr. was one of the perpetrators of the crime.

First, it is not disputed that bad blood exists between the Caldozas and the Orculas because of a boundary dispute over the land that they respectively own.

Second, two months before the incident, the wife of Luter, Sr. had warned the wife of Oscar that the former's son, Nestor Orcula, has a plan to kill Oscar.[8] This is not necessarily hearsay if only to prove that there was such a statement or warning made. And true enough, the warning was not just an empty threat, because Oscar was indeed killed.

Third, Polinar, Jr. gave a detailed account of what actually transpired on that fateful night. Thus, on direct examination he testified, to wit:

"Q

Could you tell us of any incident that happened then ?

A

Yes, sir, there was.

Q

What was that?

A

They were chasing my grandfather.

Q

How did you see that?

A

I was peeping on the window.

Q

And what did you see?

A

They were chasing my grandfather and they brought with them the bolo and pieces of wood.

Q

Who were they, you said 'they', who were they?

A

Luter, Sr., Luter, Jr., Boy, and Lando.

Q

How far were you when you saw them chasing your lolo, how far were they?

A

About twenty (20) meters.

Q

You said awhile ago that they were carrying bolos and woods. Who [was] carrying [a] bolo among the four?

A

Boy.

Q Boy, are you referring to Nestor Orcula?

A Yes, sir.

Q Who else was carrying [a] bolo, if any?

A No more.

Q And who were carrying the piece[s] of wood?

A Luter, Junior, Lando.

Q That was 7:00 o'clock in the evening, how were you able to see them?

A Because of the illumination from the moon.

Q What direction were they going?

A The direction was towards their house.

Q And what more did you see?

A No more, sir, only the time when they came back.

Q What time was that when they came back to your house?

A At around 7:30 o'clock.

Q Who came back to your house?

A The four (4) of them. The three (3) of them were at the back while Luter Orcula, Sr. was the one who came near.

Q And what did Luter Orcula, Sr. do?

A He was looking for my father and my uncle.

Q What is the name of your father?

A Teodoro Polinar.

Q Your uncle?

A Dionisio Dapar.

Q And when he ask[ed] that, what was your answer?

A I answered that my uncle [is] drinking tuba at Lilia and my father is at Sua-on.

Q After that, what happened next?

A They left.

x x x x x

Q You said that your grandfather Oscar Caldoza was chased by several persons, was Luter Orcula, Sr. and other persons chased your grandfather (sic)?

A Yes, your Honor.

Q Is he one of those who chased your grandfather?

A Yes, Your Honor."^[9]

On cross, this witness reiterated that he saw Luter, Sr., Boy, Lando and Junior chasing his grandfather, and that they later went to the house of Polinar, Jr. and inquired about his father and uncle.^[10]

Fourth, prosecution witness Alimasac testified that he was on his way home that night when he saw the four accused standing on the road, around thirty (30) meters away from where the body of Oscar was found buried, and that he noticed that Junior was carrying a spade.^[11] The following morning, the same spade was found near the gravesite. Alimasac positively identified the spade as the one belonging to the Orculas because of the handle, aside from the fact that he used to see it at the house of the latter.^[12]

Fifth, Polinar, Jr. testified that he saw Nestor carrying a bolo as their group was surrounding Oscar. The sanitary inspector who conducted a post-mortem examination on Oscar testified that the stab and hack wounds sustained by the latter were caused by a bolo.^[13]

Sixth, the last time that Polinar, Jr. saw Oscar alive was when the latter was running towards Oscar's house being chased by the Orculas. The following day, the body of Oscar was found buried 100 meters away from his house.

Seventh, the three other accused - Junior, Lando and Nestor - are the children of Luter, Sr. who remain to be at large. Surprisingly, no one from the immediate family seems to know their whereabouts and no sufficient explanation has been offered as to their flight. Defense witness Sonia Cujitia, a daughter of Luter, Sr., admitted that her brothers disappeared right after the incident and that she does not know where they are.^[14] It has often been said that flight is a strong indication of guilt.^[15] Luter, Sr. was seen together with his three sons during all the times material to this case: when Polinar, Jr. saw the Orculas gang up on Oscar a few meters away from the former's house; when the same group went to the house of Polinar, Jr. and asked the latter about his father and uncle; and when Alimasac met the group on the road several meters away from where the body of Oscar was found. There is no iota of doubt that Luter, Sr. conspired with his three sons in the killing of Oscar.

The foregoing circumstances when viewed in their entirety are as convincing as direct evidence and, as such, negate the innocence of accused-appellant.^[16]

Accused-appellant faults the trial court in giving credence to the testimony of prosecution witness Teodoro Alimasac. He claims that Alimasac failed to identify any distinguishing mark on the spade found near the gravesite which would indicate that it was the same one he saw Luter, Jr. holding on the night of March 20, 1994. Quite to the contrary, Alimasac was able to clearly see the spade that Luter, Jr. was holding because he was only ten (10) meters away from where Luter, Jr. was standing and Alimasac even approached and talked to Luter, Jr.'s brother, Lando. He was also able to recognize the spade by its handle aside from the fact that he has seen the Orculas use it at their house which is only 100 meters away from Alimasac's house.^[17] There is therefore no reason to doubt that the spade indeed belonged to the Orculas.

At any rate, even in the absence of this piece of evidence, the conviction of accused-appellant can still stand on the basis of all the other circumstances hereinbefore mentioned which when put together constitute an unbroken chain, consistent with each other and the theory that accused-appellant authored the crime charged.^[18]

Accused-appellant further asserts that the trial court's finding of guilt is inconsistent with the evidence on record in that whereas the hack and stab wounds sustained by the victim were found to have been caused by a bolo, on the other hand prosecution witness Polinar, Jr. testified that it was only Nestor who was armed with a bolo and that herein accused-appellant was merely carrying a piece of wood. The defense insists that accused-appellant

cannot be convicted as charged since it has not been sufficiently established that he was the one who inflicted the fatal wounds. We are not persuaded.

Unquestionably, and accused-appellant does not allege otherwise, conspiracy attended the killing of the victim. Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence.[19] It is sufficient that the form and manner in which the attack was accomplished clearly indicate unity of action and purpose.[20] In the case at bar, the presence of Luter, Sr. at the scene of the crime indubitably shows his complicity with his three sons in perpetuating the killing of Oscar. Polinar, Jr. positively identified Luter, Sr. as part of the group which surrounded Oscar and then gave chase to the victim towards the latter's house. A few minutes thereafter, the Orculas went to the house of Polinar, Jr. and the latter categorically testified that it was Luter, Sr. who approached him and inquired about his father and uncle. Alimasac was likewise unwavering in his testimony that he saw Luter, Sr. together with the other accused near the place where the victim's body was found. It has never been denied that bad blood existed between the Orculas and the victim because of a boundary dispute involving their properties and, hence, there was a motive for the accused in killing the victim.[21] Well-settled is the rule that motive can be essential to conviction where the evidence on the commission of the crime is circumstantial.[22] Conspiracy having been established, all the conspirators are liable as co-principals regardless of the manner and extent of their participation since in the contemplation of the law, the act of one is the act of all.[23]

We find no reason to doubt the credibility of the prosecution witnesses which is generally for the trial court to determine. The reason is that it is the trial judge who has seen and heard the witnesses themselves and observed their demeanor and manner of testifying. The factual findings of the trial court therefore command great weight and respect,[24] in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach these findings.[25] None is availing in this case.

The defense evidence consists primarily of denial and alibi. Well-entrenched is the doctrine that for alibi to prosper, the defendant must prove not only (1) that he was somewhere else when the crime was committed, but (2) it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[26]

Accused-appellant claims that on March 20, 1994, he was at Pamakawon, Asuncion, Davao to visit his children. Accused-appellant admits that it takes only six (6) hours to travel from Sua-on to Pamakawon. Thus, it was not physically impossible for him to have been at the scene of the crime at the time of its commission.

The apparently indifferent behavior of accused-appellant after the incident is likewise very revealing. According to accused-appellant, when he went home to Sua-on on March 21, 1994 his wife informed him that he and his three sons were the principal suspects in the killing of Oscar. He simply ignored the suspicion and instead went back to Pamakawon purportedly to bring the money that his children needed for graduation. When he returned to Sua-on on March 25, 1994, he was told that he has been charged with murder and that a warrant for his arrest has been issued. Accused-appellant did not do anything and allegedly he just stayed at the house[27] from March 25 up to April 5, 1994 when he surrendered to the authorities. When asked why he surrendered only on that date, accused-appellant merely answered "I don't know." [28] If accused-appellant sincerely believed that he is not guilty, it is puzzling how he could take such a lackadaisical attitude considering the gravity of the offense being charged against him. Worse, he did not bother to explain his indifference even after he learned that a warrant of arrest had been issued against him.

The information alleged that the killing was qualified by evident premeditation and treachery. It will be noted, however, that the trial court failed to make a finding as to the existence of these qualifying circumstances.

The qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence thereof should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit.[29] Treachery is considered present when there is the employment of means of execution that gives the person attacked no opportunity to defend himself or retaliate and the method of execution was deliberately or consciously adopted.[30]

In the case at bar, no evidence was presented to show how the killing was committed. There was no eyewitness to the actual stabbing incident who could provide the details as to how the initial attack was commenced and how it progressed until the victim died.[31] Where no particulars are known as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed, it can in no way be established from mere suppositions that the accused perpetrated the killing with treachery.[32] Moreover, it cannot be said that the attack on the victim was sudden and unexpected. Initially, there was an altercation wherein Oscar was surrounded by the Orculas. Then, when someone from the group shouted that they should gang up on Oscar, the victim still managed to run away. Hence, he was not rendered totally defenseless. That mode of attack negated the existence of treachery since the element of surprise, which marks the presence of treachery, was absent.[33] And where the words "we will gang up on him" were uttered before starting the aggression, there can be no treachery because that statement was a warning to the offended party of the hostile attitude of the accused[34] and must have placed the deceased on his guard.[35]

Similarly, the prosecution failed to establish that evident premeditation attended the commission of the crime. There was no showing of (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender had clung to his determination; and (3) a sufficient lapse of time between the determination to commit the crime and the execution thereof, to allow the offender to reflect on the consequence of his act.[36] None of these elements can even be fairly inferred from the evidence adduced by the prosecution. The warning given by the wife of Luter, Sr. to the wife of Oscar about the alleged plan to kill Oscar cannot be considered as proof of the time when the accused determined to commit the crime. As to such fact, the testimony is hearsay and inadmissible. Even if there was such a threat, this alone is not sufficient to prove evident premeditation absent the second element,[37] there being no showing that the accused had deliberately planned to commit the crime after making such threat. Polinar, Jr. testified that when he peeped through the window, he saw the Orculas already surrounding Oscar. There is no testimony as to what happened immediately prior thereto, or as to how the Orculas planned to kill Oscar.

Accordingly, accused-appellant can be held liable only for the crime of homicide under Article 249 of the Revised Penal Code which is punishable by reclusion temporal.

It appears, however, that accused-appellant Luter Orcula, Sr. voluntarily surrendered on April 5, 1994 and thereafter was committed to the custody of the Chief of Police of Kapalong, Davao by Judge Napy A. Agayan of the Municipal Trial Court of Kapalong.[38] There being one ordinary mitigating circumstance with no aggravating circumstance, the maximum penalty to be imposed should be reclusion temporal in its minimum period, pursuant to Article 64, par. 2 of the Revised Penal Code. Applying the Indeterminate Sentence Law, the minimum imposable penalty is any period within the range of the penalty next lower to that prescribed by the Code for the offense which is prision mayor. We likewise cannot sustain the award of actual damages in the amount of P3,000.00 considering that there were no receipts presented to support them.[39]

WHEREFORE, the decision under review is hereby MODIFIED. Accused-appellant LUTER ORCULA, SR. is found guilty of HOMICIDE and is hereby sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum, to twelve (12) years and one (1) day of reclusion temporal as maximum. Accused-appellant is further ordered to indemnify the wife of the victim in the amount of P50,000.00 and to pay

P50,000.00 as moral damages.

SO ORDERED.

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

[*]At Large.

* At Large.

[*] At Large.

[1] Original Records, p. 1.

[2] Meaning "we will gang up on him," RTC Decision, Criminal Case No. 9291, p.5; Original Records, p. 225.

[3] In the absence of the municipal health officer or the three doctors assigned at the Kapalong Davao Health Center, the sanitary inspector conducts the post-mortem examination; TSN, March 16, 1995, p. 13.

[4] Exhibit E; Original Records, p.13.

[5] Penned by Presiding Judge Erasto D. Salcedo, Original Records, pp. 221-233.

[6] Wharton's Criminal Evidence, Vol. II, p. 1643.

[7] People vs. Locsin Fabon @ "Loklok," G.R. No. 133226, March 16, 2000.

[8] TSN, September 21, 1994, p. 16.

[9] TSN, September 21, 1994, pp. 38-41.

[10] Ibid., p. 48.

[11] Ibid., pp. 23-24.

[12] Ibid., p. 28.

[13] TSN, June 22, 1995, p. 10.

[14] TSN, May 7, 1996, pp. 12-13.

[15] People vs. Guarin, G.R. No. 125964, October 22, 1999; People vs. Sanchez, G.R. No. 118423, June 16, 1999.

[16] People vs. Fabon, *supra*.

[17] TSN, September 21, 1994, pp. 24-28.

[18] People vs. Flores, G.R. No. 129284, March 17, 2000.

[19] People vs. Buluran, et al., G.R. No. 113940, February 15, 2000; People vs. Patalinghug, G.R. Nos. 125814-15, November 16, 1999; People vs. Aquino, G.R. No. 126047, September 16, 1999.

[20] People vs. Fuertes, et al., G.R. Nos. 95891-92, February 28, 2000; People vs. Berganio, 110 Phil. 322 (1960).

[21] TSN, September 21, 1994, pp. 24-28.

[22] People vs. Nemeria, 242 SCRA 448 (1995); People vs. Villaran, 269 SCRA 630 (1997) where it was held that "a key element in the web of circumstantial evidence is motive."

- [23] *People vs. Salvatierra*, 257 SCRA 489 (1996); *People vs. Apawan*, 235 SCRA 355 (1994).
- [24] *People vs. Flores*, *supra*.
- [25] *People vs. Hernandez*, G.R. No. 130809, March 15, 2000.
- [26] *People vs. Baniel*, 275 SCRA 472 (1997).
- [27] TSN, September 23, 1996, pp. 19-20.
- [28] *Ibid.*, p. 18.
- [29] *People vs. Lubreo*, 200 SCRA 11 (1991); *People vs. Ardisa*, 55 SCRA 245 (1974).
- [30] *People vs. Magayac*, G.R. No. 126043, April 19, 2000 citing *People vs. Bernas*, G.R. Nos. 76416 and 94372, July 5, 1999.
- [31] *People vs. Narit*, 197 SCRA 334 (1991).
- [32] *U.S. vs. Perdon*, 4 Phil 141 (1904); *U.S. vs. Panagilion*, 34 Phil 786 (1916).
- [33] *People vs. Cunanan*, 75 SCRA 15 (1977).
- [34] *People vs. Luna*, 76 Phil 101 (1946).
- [35] *People vs. Gonzales*, 76 Phil 473 (1946); *People vs. Rillorta*, 180 SCRA 102 (1989).
- [36] *People vs. Rimorin*, G.R. No. 124309, May 16, 2000; *People vs. Pascual*, G.R. No. 127761, April 28, 2000.
- [37] *People vs. Fuentesuela*, 73 Phil 553 (1942).
- [38] Order dated April 5, 1994; Original Records, p. 19.
- [39] *People vs. Enguito*, G.R. No. 128812, February 28, 2000; *People vs. Juan, et al.*, G.R. Nos. 100718-19, January 20, 2000.

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