

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MATT G. CAMPOMANES AND EDWIN D. ROSITA, ACCUSED-APPELLANTS.

G.R. No. 132568. February 06, 2002

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the Decision[1] dated October 17, 1997 of the Regional Trial Court of Manila, Branch 39, in Criminal Case No. 95-140625, finding accused Matt Campomanes y Gesoyot and Edwin Rosita y Danyafok guilty beyond reasonable doubt of the crime of Murder and sentencing them to suffer the penalty of reclusion perpetua.

On January 4, 1995, the two accused were charged with the crime of murder in an information which reads, thus:

“That on or about December 30, 1994, in the City of Manila, Philippines, the said accused conspiring and confederating together and mutually helping each other, did then and there wilfully, unlawfully and feloniously with intent to kill and by means of treachery and evident premeditation, attack, assault and use personal violence upon one Loreto Alkonga y Benid by then and there holding his arms and stabbing his body several times with a fan knife, thereby inflicting upon the latter mortal wounds which were the direct and immediate cause of his death thereafter.

Contrary to law.”[2]

Accused pleaded not guilty to the charge during the arraignment.[3] Trial ensued. The prosecution presented the following witnesses: (1) Renante C. Aureada, an eyewitness to the killing; (2) SPO2 Roberto Gutierrez, the police officer who took the sworn statement of Aureada; (3) SPO2 Jose Bagkus, who investigated the case and took the sworn supplemental statement of Aureada; and (4) Dr. Manuel Lagonera, who conducted the post-mortem examination on the body of Loreto Alkonga.

The facts, according to prosecution witness Renante C. Aureada, are as follows:

On December 30, 1994, at around 10:30 p.m., Aureada, a security guard at the Rizal Park, was guarding the area around the monument of Dr. Jose Rizal when he saw Matt Campomanes, a park photographer, running after Loreto Alkonga, also a park photographer.[4] Campomanes caught Alkonga and grabbed the latter’s collar, causing both of them to lose their balance and fall on the ground, about three (3) meters away from Aureada.[5] Aureada blew his whistle, but the two, instead of stopping, began grappling for Alkonga’s camera and hitting each other using the same.[6] Aureada then saw Edwin Rosita, another park photographer, arrive. Rosita appeared very angry, and brought out a “balisong” or fan knife, pointing the same in the direction of Alkonga.[7] Aureada tried to fire a warning shot but his rifle misfired. Seeing what Aureada was trying to do, Rosita instead went after the latter who started running away.[8] Aureada took his mobile radio and called the park security patrol. Then Aureada saw Rosita begin stabbing Alkonga who was sitting on the ground with his arms raised and held by Campomanes.[9] After Rosita stabbed the victim several times, he, together with Campomanes, ran towards Manila Hotel. Shortly thereafter, they were apprehended by the park security patrol.

Meanwhile, Aureada brought Alkonga to the Philippine General Hospital. Thereafter, he went to the headquarters of his security agency near the Rizal Park where he identified the two accused, Rosita and Campomanes, as the perpetrators of the crime.[10] Alkonga died in the hospital at 2:00 a.m. the following day due to multiple stab wounds.[11]

Prosecution witness SPO2 Roberto Gutierrez testified that at about 1:00 a.m. on December 31, 1994, and while he was on duty at the Ermita Police Station, he took the sworn statement of Renante Aureada regarding the stabbing of one Loreto Alkonga. While making a sworn statement, Aureada identified Rosita as the one who stabbed Alkonga, and Matt Campomanes as the one who held the arms of Alkonga while the latter was being stabbed.[12]

SPO2 Jose Bagkus was the night shift investigator on duty at the Homicide Division of the Western Police District on December 31, 1994. His testimony corroborated that of SPO2 Gutierrez on material points, particularly the identification by Aureada of Rosita as the one who stabbed Alkonga, and of Campomanes as the one who held the arms of the victim while the latter was being stabbed.[13] Aureada gave a sworn supplemental statement of the same tenor in the presence of SPO2 Bagkus.

Dr. Manuel Lagonera, the medico-legal officer of the Western Police District Command, testified that he conducted a post-mortem examination on the body of Loreto Alkonga, and found eight stab wounds caused by a large bladed instrument and other non-surgical wounds caused by a narrower or smaller bladed instrument. The victim suffered internal injuries on the right ventricle of the heart, pancreas, spleen, diaphragm and blood vessels of the left and right kidneys. He died due to shock secondary to multiple stab wounds.[14]

The two accused were presented as witnesses to proffer their own version of what transpired, and to bolster their theory of incomplete self-defense.

Matt Campomanes testified that on December 30, 1994, at about 10:00 p.m., he was in front of the Rizal monument taking pictures of a customer when he heard someone asking for help. He turned around and saw Alkonga holding a knife and running after Rosita.[15] He tried to pacify the two, placing himself between them, but he was instead hit on the head with a camera by Alkonga. He felt dizzy and lost consciousness. When he recovered, he was already being apprehended by the park security guard.[16]

Edwin Rosita testified that at about 10:30 p.m. on December 30, 1994, he was at the Rizal Park talking to four female customers regarding taking their pictures when Alkonga came and asked that he be introduced to the women. Rosita complied, but after the introduction, Alkonga insisted that he be the one to take the women's pictures. Rosita and the women refused. The group then transferred to another spot, but before Rosita could take the pictures, Alkonga followed and kicked him on the abdomen. Alkonga also hit Rosita on the face using a camera.[17] They engaged in a fistfight, and suddenly, Alkonga drew a "balisong" and stabbed Rosita on the left chest and on the waist.[18] Rosita tried to run away from Alkonga. Just then, Matt Campomanes came and tried to intervene, but Alkonga hit him on the head. When Alkonga was about to stab Campomanes, Rosita grabbed Alkonga's hand and they grappled for the knife. Rosita was able to take the knife from Alkonga, and because of his "confusion", Rosita stabbed Alkonga several times.[19]

After trial, the court a quo rendered judgment dated October 17, 1997, the dispositive portion of which reads:

"PREMISES CONSIDERED, judgment is hereby rendered finding the two accused MATT CAMPOMANES Y GESOYOT and EDWIN ROSITA Y DANYAFOK guilty beyond reasonable doubt of the crime of murder as defined and penalized under 248 of the Revised Penal Code, as amended. Accordingly, both the said accused are hereby sentenced to suffer an imprisonment of reclusion perpetua with all the accessory penalties provided by law thereon.

The two accused are likewise ordered to pay the civil indemnity in the amount of Fifty Thousand (P50,000.00) Pesos jointly and severally to the heirs of the victim, Loreto Alkonga.

Cost against the accused.

SO ORDERED.”[20]

Hence this appeal. On November 11, 1999, this Court received a letter from Edwin Rosita whereby the latter manifested his intention to withdraw the appeal of his case.[21] After requiring the Public Attorney’s Office to comment on the letter, this Court issued a Resolution dated February 09, 2000 whereby the appeal of this case with respect to Edwin Rosita was considered withdrawn and dismissed accordingly.[22]

Accused-appellant Matt Campomanes raises the following assignment of errors:

“I.

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS DIRECT CONSPIRACY AMONG ACCUSED-APPELLANTS IN THE COMMISSION OF THE CRIME.

II.

THE TRIAL COURT ERRED IN FINDING THAT EVIDENT PREMEDITATION WAS ATTENDANT IN THE COMMISSION OF THE CRIME TO QUALIFY IT TO MURDER.

III.

THE TRIAL COURT ERRED IN NOT UPHOLDING THE THEORY OF INCOMPLETE SELF-DEFENSE RAISED BY BOTH APPELLANTS DESPITE PHYSICAL EVIDENCE SUPPORTING THE SAME.”[23]

Once again, the credibility of witnesses is decisive of the guilt or innocence of the accused. Well-entrenched is the rule that this Court will not interfere with the trial court’s assessment of the credibility of the witnesses absent any showing of arbitrariness or oversight of material facts or circumstances.[24] This is based on the fact that the trial court had the unique opportunity to observe the demeanor and conduct of the witnesses under grueling examination.[25] After a review of the evidence, we find no compelling reason to disturb the assessment of evidence made by the trial court. The identification of the accused by eyewitness Aureada was clear and positive, without any showing of ill motive on the latter’s part. Following our unbending jurisprudence, such positive identification prevails over denial and self-serving evidence, and is sufficient for conviction.[26]

Now, upon the first assignment of error, the accused-appellant contends that conspiracy was not satisfactorily established by the prosecution, and that no competent proof was adduced showing that accused-appellant wanted to kill Alkonga. He further alleges that he “could not have moved nor stopped it (the stabbing of the victim by accused Rosita) even if he wanted to since the incident happened in a split seconds (sic) so to speak.”[27] Accused-appellant claims he did not have the courage to prevent or stop the armed attacker Rosita. He now proposes that since there was no concerted action between him and co-accused Rosita, there should be no finding of conspiracy and each of them should be held liable for his own act.

The contention is devoid of merit.

Conspiracy is present where the participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the crime.[28] Proof of a previous agreement to commit the crime need not be shown.[29] Neither is it necessary that all the participants deliver the fatal blow, as the act of one is the act of all.[30]

In the case before us, the fact that accused-appellant was not the one who stabbed the victim does not negate his

participation in the conspiracy. Eyewitness Aureada saw accused-appellant holding the arms of the victim while the latter was being stabbed by accused Rosita. Such positive act of the accused-appellant forms part of the concerted action to achieve the common intention and design to kill the victim. We have ruled in several cases that the act of holding the victim to render him immobile, or defenseless, thus enabling the other companions to consummate the dastardly act, constitutes an active participation in a conspiracy.[31]

Anent the second assignment of error, the accused-appellant contends that it is plain error on the part of the lower court to appreciate the qualifying circumstance of evident premeditation on the basis of the presence of conspiracy. The Solicitor General joins in this contention but alleges instead the presence of treachery to qualify the crime.

Evident premeditation may be appreciated as a qualifying circumstance after the following requisites are sufficiently established: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[32] It is true that “where conspiracy is directly established, with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted.”[33] However, where no such evidence exists, and where conspiracy is merely inferred from the acts of the accused in the perpetration of the crime, as in the case at bar, the above requisites of evident premeditation need to be established.[34] A careful perusal of the records of this case shows that evident premeditation was not sufficiently proven, and thus, may not be appreciated.

We agree, however, with the Solicitor General that treachery is present. There are two conditions for the existence of the qualifying circumstance of treachery, viz: (1) the employment of the means of execution that gives the person attacked no opportunity to defend himself or retaliate; and (2) the deliberate and conscious adoption of the means of execution.[35]

In the case at bar, eyewitness Aureada testified that when the victim was stabbed by Rosita, said victim was in a sitting position with arms raised and held by Campomanes.

“ATTY. NOGALES:

x x x x x x x x

Q

Did you see him (Rosita) actually stab Loreto Alkonga?

A

Yes, sir.

Q

How far were you?

A

5 meters away, sir.

COURT: (to the witness)

Q

Was that the first time he stabbed Loreto Alkonga after Edwin Rosita failed to get to you?

A

Yes, sir.

Q

That was the first time?

A

Yes, sir.

ATTY. NOGALES:

Q

And will you please tell the court the relative position between (sic) Edwin Rosita and Loreto Alkonga when the first stabbed Loreto Alkonga?

A

Loreto Alkonga was then sitting at the back of the monument with arms raised which were being held by Matt Campomanes and in that situation he was being stabbed by Edwin Rosita.

Q

Now, if you are Edwin Rosita, how will you please demonstrate to the court how he was stabbing Alkonga?

A

(witness demonstrating by stooping while he was stabbing Loreto Alkonga with his right hand and going at the other side and stabbing Loreto Alkonga)."[36]

It is clearly deducible from the foregoing that the manner by which the victim was killed was deliberately and consciously adopted by the accused to ensure the execution of the dastardly act without affording the victim any opportunity to defend himself or to retaliate. In a sitting position with arms restrained by one of the accused, the victim becomes a helpless and defenseless object of the attack. It is immaterial that the victim initially grappled with Campomanes and was even able to hit the latter with the camera. Crucial is the moment when Rosita came with a bladed weapon, and with the victim in a sitting position with his arms raised and held by Campomanes,

said victim was repeatedly stabbed by Rosita. Such manner of killing had been declared by this Court in a plethora of cases to be attended by treachery.[37]

Upon the last assignment of error, the accused-appellant offers his theory of incomplete self-defense to at least lower the penalty imposable for the crime. Self-defense has the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent and repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[38] The presence of the first element, unlawful aggression, is a condition sine qua non to the presence of self-defense, complete or incomplete.[39] It is incumbent upon the accused to prove unlawful aggression by clear and convincing evidence, otherwise, his theory of incomplete self-defense will not hold water.

In view of the finding of the court a quo of lack of credibility of, and material inconsistencies in, the testimonies of the two accused which we earlier sustained, the allegation of unlawful aggression, and ultimately, of incomplete self-defense by the accused-appellant loses ground. Moreover, the contention of unlawful aggression on the part of the victim-- that the victim kicked Rosita on the right front hip, hit him on the face, and stabbed him "below his (Rosita's) left nipple and on the waist"[40] --was not sufficiently proven by the evidence on record. During his testimony, Rosita showed a "1 ½ inch scar below his left nipple and on the waist,"[41] but the medical certificate he presented shows that he sustained mere lacerations on the thumb, abrasions and contusions.[42] No evidence was adduced to prove when and how the scars below the left nipple and on the waist were actually sustained. Worthy to note is the contention of the Solicitor General that assuming there was unlawful aggression on the part of the victim, the same ceased the moment Campomanes held his arms.[43] "When the unlawful aggression which has begun no longer exists, the one making the defense has no more right to kill or even wound the former aggressor." [44] Lastly, the number of wounds on the body of the victim negates the claim of self-defense, complete or incomplete.[45] In this case, the victim suffered quite a large number of stab wounds, and Rosita himself admitted during the cross-examination that he stabbed the victim about nineteen (19) times.[46]

Finally, not a single evidence was presented to prove civil indemnity in this case. Thus, we are constrained to sustain the ruling of the trial court limiting the award to an amount of fifty thousand pesos (P50,000.00) for the death of Loreto Alkonga.

WHEREFORE, the questioned Decision convicting the accused-appellant Matt G. Campomanes and the accused Edwin D. Rosita of the crime of Murder and sentencing them to suffer the penalty of reclusion perpetua and to jointly and severally pay Fifty Thousand Pesos (P50,000.00) to the heirs of the victim, Loreta Alkonga, is hereby AFFIRMED.

SO ORDERED.

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

[1] Penned by Judge Benjamin A.G. Vega.

[2] Records, p. 1.

[3] Id., p. 14.

[4] TSN dated October 16, 1995, pp. 9-10.

[5] TSN dated October 30, 1995, p. 14.

- [6] Id., p. 8; TSN dated October 16, 1995, p. 11.
- [7] Id., p. 12.
- [8] Id., pp. 12-13.
- [9] Id., pp. 14-15.
- [10] Id., pp. 22-24.
- [11] Records, p. 108.
- [12] TSN dated February 12, 1996, p. 5.
- [13] Id., pp. 9-12.
- [14] TSN dated February 19, 1996, pp. 11-14; Records, p. 108.
- [15] TSN dated May 16, 1996, pp. 4-5.
- [16] Id., pp. 5-7.
- [17] TSN dated August 19, 1996, pp. 6-8.
- [18] Id., p. 8.
- [19] Brief for the Accused-Appellants, p. 5; Rollo, p. 59; TSN dated August 19, 1996, p. 11.
- [20] RTC Decision, Rollo, p. 29.
- [21] Rollo, p. 117.
- [22] Id., p. 123.
- [23] Brief for the Accused-Appellants, p. 1; Rollo, p. 55.
- [24] People vs. Daroy, 336 SCRA 24, 36, 37 (2000); People vs. Mahinay, 304 SCRA 767, 777 (1999); People vs. Perez, 313 SCRA 556, 557 (1999); People vs. Lotoc, 307 SCRA 471, 479-480 (1999).
- [25] People vs. Cabansay, G. R. No. 138646, March 6, 2001, p. 9; People vs. Rendaje, 344 SCRA 738, 750 (2000).
- [26] People vs. Sabado, 345 SCRA 269, 281 (2000); People vs. Dinglasan, 267 SCRA 26, 44 (1997); People vs. Carizo, 233 SCRA 687 (1994).
- [27] Brief for the Accused-Appellant, p. 6; Rollo, p. 60.
- [28] People vs. Dinglasan, *supra*, p. 45; citing People vs. Francisco, 249 SCRA 526, 536 (1995).
- [29] People vs. Daroy, *supra*, p. 39.
- [30] People vs. Catampongan, 318 SCRA 674, 685 (1999), citations omitted.
- [31] People vs. Quillosa, 325 SCRA 747, 757 (2000); People vs. Perez, *supra*, p. 561; People vs. Dinglasan, *supra*, p. 45; People vs. Catampongan, *supra*, pp. 685-686; and People vs. Lotoc, *supra*, p. 484.
- [32] People vs. Marcelino, 316 SCRA 104, 117 (1999).
- [33] People vs. Custodio, 97 Phil 698, 704 (1955).

[34] Ibid.

[35] *People vs. Cabansay*, supra, p. 10, citing *People vs. Realin*, 301 SCRA 495, 513 (1999), et al.

[36] TSN dated October 16, 1995, pp. 14-15.

[37] *People vs. Pirame*, 327 SCRA 552, 567 (2000); *People vs. Repollo*, 331 SCRA 375, 385 (2000); *People vs. Condemena*, 23 SCRA 910 (1968); *People vs. Lotoc*, supra, pp. 484, 485; *People vs. Quillosa*, supra, p. 757; *People vs. Dinglasan*, supra, p. 46; and *People vs. Daroy*, supra, p. 39.

[38] Article 11 of the Revised Penal Code. *People vs. Cabansay*, supra, p. 7, citing *People vs. Arizala*, 317 SCRA 244, 251 (1999), further citations omitted.

[39] *People vs. Sazon*, 189 SCRA 700, 704 (1990), citing *People vs. Batas*, et al., 176 SCRA 46 (1989).

[40] Brief for the Accused-Appellants, p. 11; Rollo, p. 65.

[41] TSN dated August 19, 1996, p. 8.

[42] The Medico-Legal Certificate of Edwin Rosita, dated February 20, 1995, presented as Exhibit “4”, shows that Rosita had been attended to in the hospital for the following: “Multiple lacerations, (R) middle digit and (L) thumb. Multiple abrasions, (L) chest and periumbilical. Contusion-hematoma, (R) zygomatic. (+) Alcoholic Breath.” [Records, p. 171] Accused-appellant Matt Campomanes also presented a Medico-Legal Certificate dated July 3, 1996, marked as Exhibit “3”, which yields the following finding: “Contusion-hematoma, (R) temporo parietal.” [Records, pp. 170-171]

[43] Brief for the Appellee, p. 14; Rollo, p. 105.

[44] Ibid., citing *People vs. Santos*, 255 SCRA 309; *People vs. Babor*, 262 SCRA 359, 365 (1996).

[45] Ibid., citing inter alia, *People vs. Castro*, 276 SCRA 572, 579 (1997).

[46] TSN dated November 11, 1996, p. 10.

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