

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AURELIO BIRAYON, GREGORIO BIRAYON WINSTON BIRAYON, AND RIZALDY BIRAYON, ACCUSED, AURELIO BIRAYON, WINSTON BIRAYON, AND RIZALDY...

G.R. No. 133787. November 29, 2000

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] dated February 5, 1997, of the Regional Trial Court, Branch 11, San Jose, Antique finding accused-appellants Aurelio Birayon, Winston Birayon, and Rizaldy[2] Birayon guilty of the killing of Justino Ballarta, in Belison, Antique, on May 1, 1993. Aurelio Birayon and Winston Birayon were each sentenced to three penalties of reclusion perpetua, while Rizaldy Birayon was sentenced to three indeterminate penalties of four (4) years of prison correccional in its maximum period, as minimum, to fourteen (14) years of reclusion temporal in its minimum period as maximum. In addition, accused-appellants were ordered to pay the heirs of the victim P50,000.00 as civil indemnity and costs.

Accused-appellant Aurelio Birayon is the father of the other accused. The information charged-

That on the 1st day of May, 1993, in the Municipality of Belison, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a knife and a bolo, conspiring, confederating together and mutually helping one another, with intent to kill, treachery, evident premeditation, and use of superior strength, did then and there, willfully, unlawfully, and feloniously, attack, assault, stab with a knife and hack with said bolo one Justino Ballarta, thereby inflicting upon the latter multiple fatal wounds on the vital parts of his body which caused his instantaneous death.

Contrary to the provisions of Article 248 of the Revised Penal Code. [3]

On representation of his counsel that Gregorio Birayon was "mentally defective," the trial court referred Gregorio Birayon to the Provincial Health Officer for referral to a psychiatrist to determine whether he was mentally fit to stand trial. Eventually he was brought to the Western Visayas Medical Center at Pototan, Iloilo. When the report on Gregorio Birayon's mental condition was not forthcoming, the prosecution moved for his discharge so that the trial for the remaining accused could proceed. This was granted by the trial court in its order, dated February 14, 1994, as amended.

On June 30, 1993, accused-appellants pleaded not guilty after the information was read to them in their native dialect,[4] whereupon trial proceeded.

The prosecution presented two eyewitnesses, Dione "Dionie" Ballarta and Christopher Villalobos. They testified that in the evening of May 1, 1993, they were fishing in the middle of the Sibalom river in Barangay Sinaja in the Municipality of Belison, Antique; that at around 11:00 p.m., they saw five men at the riverbank 20 meters away;

that by the light of the moon, they recognized the men to be Aurelio, Rizaldy, Gregorio, and Winston Birayon; that the men had with them Dione and Christopher's uncle, Justino Ballarta; that they saw Justino Ballarta being held by the arms by Rizaldy and Winston Birayon; that while he was thus restrained, Ballarta was stabbed twice on the chest by Gregorio Birayon; and that he was then pushed by Rizaldy and Winston towards Aurelio Birayon who hacked him (Justino Ballarta) on the head, shoulder, and arm. According to the witnesses, Justino Ballarta was dragged towards the river where he was left by Aurelio and his three sons.

Dione Ballarta and Christopher Villalobos testified that, because of fear, they did their best to make themselves inconspicuous by lowering themselves into the river and that, after the Birayons had left, they still waited for a short while before leaving the river with their nets and the fish they had caught. The following morning, Dione Ballarta told Bienvenido Ballarta that his brother Justino had been killed. On May 4, 1993, Dione Ballarta and Christopher Villalobos gave statements to the police.[5]

Dr. Richard Labiao, rural health physician of Belison, Antique, conducted the autopsy on Justino Ballarta on May 2, 1993. His findings (Exh. A) revealed that the victim sustained the following:

- 1.) Incised wound, head, left temporal area, 12.5 cm. long, muscle deep
- 2.) Hacking wound, head, left temporal area, 12 cm. long, skull deep
- 3.) Hacking wound, head, left temporal area, 12 cm. long skull deep
- 4.) Hacking wound, neck, left posterior triangle, 12 cm. long, cutting muscles & major blood vessels
- 5.) Incised wound, left, shoulder, 4x2 cm., muscle deep
- 6.) Stab wound left chest, at the level of 5th intercostal space, anterior axillary line directed upwards, non-penetrating.
- 7.) Stab wound, right chest, at the level of 5th intercostal space, anterior axillary line directed upwards, non-penetrating.
- 8.) Incised wound, left forearm, 4x2 cm., muscle deep.[6]

According to Dr. Labiao, wound nos. 2, 3, and 4 are fatal, causing instantaneous death, while the others are not.[7] In Justino Ballarta's death certificate (Exh. B),[8] Dr. Labiao specified the cause of death as "hypovolemic shock secondary to multiple stab and hacking wounds of head and neck."

Accused-appellants' defense was alibi. They claimed that from April until May 2, 1993, all of the male Birayons, with the exception of Gregorio Birayon who was left home to tend to their animals, set up temporary quarters on the seashore of Barangay Durog of the Municipality of San Jose at the mouth of the Sibalom River. It was the season for catching bangus fry and, from the afternoon of May 1, 1993 until 4:00 a.m. in the morning of May 2, 1993, together with other fisherfolk, accused-appellants were hard at work catching fish.[9] They claimed that they were still catching bangus fry on May 6, 1993 when policemen arrived and arrested them. Corroborating accused-appellants' alibi were Adoracion Casalan[10] and Francisco Española.[11] Adoracion Casalan testified that she was with accused-appellants while they were catching bangus fry at Barangay Durog of the Municipality of San Jose, while Española, the buyer of their catch, said he saw accused-appellants catching bangus fry at Barangay Durog from 10:00 p.m. of May 1, 1993 to midnight of May 2, 1993 when he left.

Lydia Pasicaran for her part testified that, on May 2, 1993, at about 8:30 a.m., she was at the Sibalom River washing clothes when she saw something floating, which turned out to be a corpse. She requested the men nearby to call the police. After the police arrived, the body was identified to be that of Justino Ballarta. By that time, there were 30 people milling around, but she did not see Dione Ballarta and Christopher Villalobos among them. She said she went home at around noon. In the afternoon, Christopher Villalobos passed by her house and asked her whether the body found in the river was that of Justino Ballarta ("Papa Tino") and when she answered in the affirmative, Villalobos ran towards the direction of the river.[12]

On February 5, 1991, the trial court promulgated its decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing pronouncements, judgment is hereby rendered finding the accused and conspirators Aurelio Birayon, Winston Birayon and Rizaldy Birayon guilty beyond reasonable doubt of the felony of murder and:

1. The accused-Aurelio Birayon is hereby sentenced to three (3) penalties of reclusion perpetua;
2. The accused Winston Birayon is hereby sentenced to three penalties of reclusion perpetua;
3. The accused Rizaldy Birayon is hereby sentenced to three (3) indeterminate penalties within the range of four (4) years of prision correccional in its maximum period, as minimum term, to fourteen (14) years of reclusion temporal in its minimum period, as maximum term.

The aforementioned accused are likewise ordered to pay to the heirs of Justino Ballarta the sum of P50,000.00 for and as indemnity for his death; and to pay the cost.

In the service of their sentences, the aforementioned accused are to be credited with the time of their detention pursuant to Article 29 of the Revised Penal Code and Republic Act. No. 6157.

SO ORDERED.[13]

The trial court found that accused-appellants had conspired to kill the victim and that they did so with treachery. It considered the privileged mitigating circumstances of minority in favor of Rizaldy Birayon.

Accused-appellants contend that-

I. THE HONORABLE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II. THE HONORABLE LOWER COURT ERRED IN NOT GIVING CREDENCE TO TESTIMONIES OF THE ACCUSED AND THEIR WITNESSES.

III. THE HONORABLE LOWER COURT ERRED IN FINDING THE ACCUSED GUILTY OF THE CRIME CHARGED.

First. Accused-appellants claim that the testimony of prosecution eyewitnesses Dione Ballarta and Christopher Villalobos should not have been given credence because (1) they are nephews of the victim; (2) their story is unnatural and contrary to human experience since they did not do anything to help Justino Ballarta nor did they retrieve his body after the assailants had left it in the river; and (3) they did not report the incident that same night and instead they went home to sleep.

The contention is without merit. The weight of the testimony of witnesses is not impaired or in any way affected by their relationship to the victim when there is no showing of improper motive on their part. Indeed, the natural wont of relatives of the victim is to see the real culprits punished rather than to implicate innocent persons.[14]

Nor should the failure of the two eyewitnesses to help Justino Ballarta be taken against them. Both knew it was foolhardy to do so, considering that they were outnumbered by accused-appellants who were armed.

Their failure to report the incident the same night it occurred[15] has been sufficiently explained by them. According to Dione Ballarta, he was so afraid that his immediate reaction was not to get involved lest the fate of their uncle befall them.[16] For his part, Christopher Villalobos also felt that if they told Justino Ballarta's family right away, his brother, Bienvenido Ballarta, might do something rash and violent.[17]

Accused-appellants also point out that Christopher Villalobos testified that he stayed in his house from the afternoon of May 1, 1993 and only went out on May 2, 1993,[18] so that he could not have witnessed the murder

which allegedly took place on May 1, 1993 at 11:00 p.m. According to accused-appellants, by Lydia Pasicaran's testimony, Christopher Villalobos did not actually see the killing of Justino Ballarta because, according to her, he even asked her the identity of the corpse found in the river.

Christopher Villalobos' testimony shows, however, that he was confused by the questioning of the defense counsel as the private prosecutor kept on interrupting with his objections so that he simply answered "yes" to the question of whether he stayed in his house late in the afternoon of May 1, 1993 and went out only on the following morning on May 2, 1993.[19] During re-direct examination, however, Christopher Villalobos clarified that he did go out at 7:00 p.m. of May 1, 1993 to go to the river to fish.[20]

On the other hand, Lydia Pasicaran's testimony actually establishes Christopher Villalobos' presence at the scene of the crime for what he actually asked her was whether the corpse was that of the victim ("Papa Tino").[21] It is unlikely he would have named the victim if he did not know that Justino Ballarta had been killed.

Second. Accused-appellants contend that Gregorio Birayon could not have been one of the assailants because he is insane.[22]

It is unnecessary to discuss this contention inasmuch as Gregorio Birayon is not an appellant in this case. In any event, it has not been shown that Gregorio Birayon was in fact mentally ill because no medical report of his condition was presented to the trial court. In fact, as the order of February 14, 1994 of the trial court shows, Gregorio Birayon was dropped from the information not so much because it was found that he was not fit to stand trial but just so the trial of the other accused-appellants would not be delayed. Accused-appellant Aurelio Birayon himself testified that he only noticed there was something amiss in his son's mental condition when they were detained in connection with this crime.[23] This was corroborated by Gregorio's brother, accused-appellant Winston Birayon.[24]

Third. Accused-appellants reiterate their alibi and contend that two disinterested witnesses, Adoracion Casalan and Francisco Española, support their claim. This contention has no merit. In the first place, accused-appellants were positively identified by prosecution witnesses as the perpetrators of the crime.[25] Dione Ballarta and Christopher Villalobos pointed to them as the killers and positively identified them when they were presented in court.[26] In view of their identification, it was unnecessary for the prosecution to show accused-appellants' motive for the crime.[27]

In the second place, by the defense witnesses' own account, accused-appellants were in Barangay Durog, San Jose at the time of the commission of the crime. While it is true that this place is separated from Barangay Sinaja, where the crime took place, by a river, actually only a "small portion" of this river, according to defense witness Francisco Española, separates the two barangays.[28] On the other hand, as Aurelio Birayon testified, Barangay Sinaja can be reached by foot by taking a roundabout route which would take "more than an hour." [29] It was thus possible for accused-appellants to reach Barangay Sinaja from Barangay Durog, where they claimed they were catching bangus fry, at the time of the commission of the crime. At any rate, the trial court's assessment of the evidence of the defense should be given weight since it had the opportunity to observe the witnesses' testimonies.[30]

Fourth. There was conspiracy in this case as shown by the fact that accused-appellants acted in concert.[31] However, while this circumstance makes the act of one the act of all, it does not make each of the accused-appellants liable for as many crimes of murder as there are conspirators. For the fact is that there was only one crime of murder. It was, therefore, error for the trial court to sentence each of accused-appellants to three penalties.

Fifth. We agree that the killing of Justino Ballarta was committed with treachery as alleged in the information. Consequently, the crime is murder. As Dione Ballarta and Christopher Villalobos testified, both Winston and Rizaldy Birayon held the victim's arms as Gregorio Birayon stabbed him twice. Then Aurelio Birayon dealt the victim the coup de grace by hacking him several times. Thus, accused-appellants employed means in killing him which ensured the execution of the crime without risk to themselves arising from the defense which the victim might take.[32] Abuse of superior strength, which is also present, is absorbed in treachery so there is no need to appreciate it separately as an independent aggravating circumstance.[33]

The trial court correctly held that evident premeditation, although alleged in the information, cannot be appreciated as the prosecution failed to prove (1) the time when the accused-appellants determined to commit the crime, (2) an act manifestly indicating that they had clung to their determination, and (3) the lapse of an interval of time between the determination to commit the crime and the execution thereof sufficient to allow them to reflect upon the consequence of their act.[34] However, the trial court erred when it held that the crime was committed with "aid of armed men" considering that the armed accused-appellants, as co-conspirators, acted under the same plan and for the same purpose as the unarmed accused-appellants.[35]

The trial court correctly appreciated the privileged mitigating circumstance of minority in favor of Rizaldy Birayon. While the only evidence of minority is his testimony that he was 17 years of age at the time of the commission of the crime,[36] the prosecution failed to rebut such testimony. Applying Arts. 68(2) and 61(3) in relation to Art. 248 of the Revised Penal Code, this circumstance would lower his penalty by one degree from reclusion temporal maximum to death[37] to prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law, in the absence of any aggravating or mitigating circumstance, the maximum of Rizaldy Birayon's penalty shall fall within the range of reclusion temporal minimum, while the minimum of his penalty shall fall within the range of prision correccional maximum to prision mayor medium.

In addition to the P50,000.00 civil indemnity, the amount of P50,000.00 as moral damages should be awarded to the heirs of the Justino Ballarta, in line with the current rulings of this Court.[38]

WHEREFORE, the decision of the Regional Trial Court, Branch 11, San Jose, Antique is affirmed with the MODIFICATION that accused-appellants Aurelio and Winston Birayon are each sentenced to one penalty of reclusion perpetua, while accused-appellant Rizaldy Birayon is sentenced to one indeterminate prison sentence of eight (8) years of prision mayor minimum, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal minimum, as maximum. In addition to the P50,000.00 civil indemnity and the costs awarded by the trial court, accused-appellants are also ordered to pay P50,000.00, as moral damages, to the heirs of the victim Justino Ballarta.

SO ORDERED.

Bellosillo, J., (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Per Judge Nery G. Duremdes.

[2] Also referred to as "Rizalde" or "Salde" Birayon in the records.

[3] Records, p. 33.

[4] Id., p. 39.

[5] TSN (Dione Ballarta), pp. 2-33, Oct. 11, 1995; TSN (Christopher Villalobos), pp. 2-33, Oct. 23, 1995.

- [6] Records, p. 4.
- [7] TSN, pp. 8-9, Oct. 9, 1995.
- [8] Records, p. 117.
- [9] TSN (Aurelio Birayon), pp. 4-17, Feb. 22, 1996; pp. 2-18, Feb. 29, 1996; TSN (Winston Birayon), pp. 2-31, May 8, 1996; TSN (Rizaldy Birayon), pp. 2-33, Sept. 6, 1996.
- [10] TSN, pp. 2-16, Nov. 15, 1995.
- [11] TSN, pp. 2-22, Nov. 16, 1995.
- [12] TSN, pp. 2-7, Oct. 23, 1996.
- [13] Decision, pp. 22-23; Rollo, pp. 178-179.
- [14] E.g., *People v. Candare*, G.R. No. 129528, June 8, 2000.
- [15] Dione Ballarta did inform the victim's brother the following morning, per TSN, p. 13, Oct. 11, 1995.
- [16] TSN, pp. 27-28, Oct. 11, 1995.
- [17] TSN, p. 32, Oct. 23, 1995.
- [18] *Id.*, pp. 25.
- [19] *Id.*, pp. 22-25.
- [20] *Id.*, p. 26.
- [21] TSN, p. 7, Oct. 23, 1995.
- [22] Reply Brief, pp. 8-10; Rollo, pp. 171-174.
- [23] TSN, p. 5, Feb. 22, 1996.
- [24] TSN, p. 6, May 8, 1996.
- [25] E.g., *People v. Vital*, G.R. No. 130785, Sept. 29, 2000.
- [26] TSN (Dione Ballarta), pp. 4-12, Oct. 11, 1995; TSN (Christopher Villalobos), pp. 4-11, Oct. 23, 1995.
- [27] E.g., *People v. Bahenting*, 303 SCRA 558 (1999); *People v. Quiamco*, 268 SCRA 516 (1997).
- [28] TSN, p. 11, Nov. 16, 1995.
- [29] TSN, p. 6, Feb. 29, 1996.
- [30] E.g., *People v. Ladit*, G. R. No. 127571, May 11, 2000; *People v. Verde*, 302 SCRA 690 (1999).
- [31] E.g., *People v. Durado*, G.R. No. 121619, Dec. 23, 1999.
- [32] E.g., *People v. Cleopas*, G.R. No. 121998, Mar. 9, 2000.
- [33] E.g., *People v. Candare*, G.R. No. 129528, June 8, 2000; *People v. Gutierrez, Jr.*, 302 SCRA 643 (1999)
- [34] E.g., *People v. Ladit*, G.R. No. 127571, May 11, 2000.
- [35] *People v. Padlan*, 290 SCRA 388 (1998); *People v. Candado*, 84 SCRA 508 (1978).

[36] TSN, p. 4, Sept. 6, 1996.

[37] Prior to its amendment by R.A. No. 7659 effective December 31, 1993, Art. 248 provides that the penalty for murder shall be reclusion temporal maximum to death.

[38] E.g., *People v. Francisco*, G.R. No. 121682, April 12, 2000; *People v. Robles*, 305 SCRA 273 (1999).

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