

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AMBROSIO CONDE, JR., ELEAZAR CONDE, VICENTE CONDE, SR., AND EUSEBIO CONDE ALIAS “BOY”, ACCUSED-APPELLANT.

G.R. No. 134483. January 16, 2002

Ponente: BUENA, J.

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BUENA, J.:

Accused-appellants Ambrocio[*] Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde appeal the decision of the Regional Trial Court, Fifth Judicial Region at Masbate, Masbate, Branch 48 in Criminal Case No. 7975 entitled “People of the Philippines versus Ambrocio Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde alias ‘Boy,’” convicting them of murder and sentencing them to reclusion perpetua.

On December 20, 1995, an information was filed against Ambrocio Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde charging them of murder committed as follows:

“That on or about September 17, 1995 at about 7:00 o’clock in the evening thereof, at Sitio Bugtong-Lubi-Poblacion, Dist. No. 2, Municipality of Claveria, Province of Masbate, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping each other with intent to kill and without any justifiable motive, evident premeditation, treachery and abuse of superior strength, taking advantage of nighttime, did then and there wilfully, unlawfully and feloniously attack, assault and hack with a long bolo thus employing personal violence upon the person of one Alberto Romero, thereby inflicting upon the latter mortal wounds on the different parts of the body, which caused his death, to the damage and prejudice of the heirs of Alberto Romero in such amount as may be awarded to them under the provision of the New Civil Code.

“CONTRARY TO LAW.”[1]

Upon arraignment, accused Ambrocio Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde, assisted by counsel, pleaded not guilty to the crime charged.[2] The four accused are related to each other. Vicente Conde, Sr., is the father of Eleazar and Eusebio. He is also the uncle of Ambrocio, Jr.

After the accused were arraigned the Regional Trial Court proceeded with the trial.

Witnesses for the prosecution included Dr. Gil Genorga, Flory Bino, and Jelita Romero. The two lady witnesses testified that:

On September 17, 1995 at about 7 o’clock in the evening, Alberto Romero arrived in the house of his mother-in-law, Guillerma Cuervo, located at Sitio Bugtong-Lubi, Poblacion Claveria, Masbate. While he was seated on a bench in the wall-less kitchen talking with Jelita, his wife, and Flory Bino, his sister-in-law, Ambrocio Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde, appeared out of nowhere. Jelita Romero and Flory Bino recognized the four men by the light of the kerosene lamp.[3]

Ambrocio Conde held the head of Alberto Romero while Eleazar Conde stabbed the latter with a bolo. Meanwhile

Vicente Conde, Sr. and Eusebio Conde stood by. Because Alberto was able to roll to the ground, he managed not to get hit. Then he stood up and ran downhill. The four Condes gave chase.[4]

The two women, Jelita Romero and Flory Bino, shouted for help but nobody came to their assistance. Jelita Romero, her four (4) children, her mother, Guillerma Cuervo, Flory Bino went to spend the night at the house of Omie Abocado, a neighbor.[5]

The following day they looked for Alberto Romero. In the ranch of Mayor Eddie Andueza of Claveria, Masbate, they found his lifeless body dumped in the water. There were hack wounds on his body.[6]

Both Jelita Romero and Flory Bino were unaware if the other men were carrying arms.[7]

Dr. Gil L. Genorga, the Medico-Legal Officer who conducted the autopsy on the cadaver of the victim, stated that the cause of death was massive hemorrhage secondary to multiple stab and hacking wounds.[8] The fatal wounds were wounds nos. 20, 21, 22 and 23.[9]

Wound No. 20 is a stab wound 4 x 3 centimeters in diameter penetrating the abdominal cavity with the large intestine coming out located at the iliac region (left). Wound No. 21 is a stab wound 3 x 1.5 centimeters in diameter penetrating the abdominal cavity located at the lumbar region (left). Wound No. 22 is a stab wound 1.5 x 1 centimeter in diameter penetrating the abdominal cavity located at the iliac region (left). Wound No. 23 is a stab wound 3.5 x 1 centimeter in diameter penetrating the abdominal cavity located one inch above the umbilical cord slightly to the left iliac region.[10] Wounds were also found at the right shoulder, at the root of the neck and in other parts of the victim's body.[11]

He likewise testified that the injuries were caused by a sharp-edged and pointed instrument. He admitted that it was possible that only one instrument was used to inflict the injuries, that the injuries were caused or inflicted by more than one person, that the assailants had superiority in number and arms.[12]

The defense presented eight (8) witnesses, namely SPO2 Benito Alcantara, SPO1 Efren Adrao, Eddie Edem, Robelita Conde and the four accused – Vicente Conde, Sr., Eusebio Conde, Eleazar Conde, Ambrocio Conde. All four accused interposed the defenses of denial and alibi.

Vicente Conde, Sr. claimed that on September 17, 1995 he, accompanied by his wife, arrived at the municipal police station in Poblacion, Claveria, Masbate at 6 o'clock in the evening and left at 8 o'clock in the evening. As he had been informed of his son, Vicente Conde, Jr.'s arrest for drunkenness he went to the police station to request the release of his son. However it was denied and he was told that his son would be released the following day.[13]

He testified that Alberto Romero was his nephew because Alberto's mother, Juanita Conde, is his second cousin, that he did not have any grudge against his nephew, that he did not have any misunderstanding with Flory Bino or Jelita Romero, that Sitio Bugtong Lubi is less than 2 kilometers away from the police station.[14]

SPO2 Benito Alcantara and SPO1 Efren C. Adrao corroborated the claim of Vicente Conde, Sr.

SPO2 Alcantara testified that on September 17, 1995 he was in the police station of Claveria, Masbate from 8:30 in the morning until 6:30 in the evening. He stated that in the afternoon of that day Vicente Conde, Sr. together with his wife were in the police station to follow up the case of their son, Vicente, Jr. When he left the municipal building at 6:30 p.m., Vicente Conde, Sr. was still there.[15]

SPO1 Efren C. Adrao averred that he reported to the police station of Claveria, Masbate at 6:30 in the evening. He saw Vicente Conde, Sr., accompanied by his wife and a certain Pampilo Alburo, in the police station at around 7 o'clock in the evening of September 17, 1995. Vicente Conde, Sr. left ahead of him, as he left the police station at

about 8 o'clock in the evening.[16]

Eusebio Conde, in interposing his alibi, told the court that at 7 o'clock in the evening of September 17, 1995 he was in his residence at Sitio Barandal, Claveria, Masbate, graining corn. His wife Robelita and stepchildren were also home at that time.[17]

As he never left his residence that day he did not see Jelita Romero or Flory Bino.[18]

He and Alberto Romero were second-degree cousins. He did not remember having any altercation with his cousin Alberto. He was aware that the house of the mother-in-law of Alberto is two (2) kilometers away from his house.[19]

He saw his cousin Ambrocio and his brother Eleazar but not his father Vicente on the day of the incident. Their (Eusebio, Ambrocio, and Eleazar) houses are adjacent to each other for they live in the same sitio. Vicente's house is located in Pasig, Claveria, with a distance of more than two (2) kilometers from the houses of the three other accused.[20]

Eleazar Conde testified that on September 17, 1995 at about 7 o'clock in the evening he was in his house resting.[21]

Earlier in the evening (6 o'clock) he saw his cousin Ambrocio in the latter's house which was three arms length away from his. But at 7 o'clock in the evening he no longer saw Ambrocio. He likewise saw his older brother Eusebio between 6:00 – 6:30 in the evening as the latter's house is only three arms length away from his.[22]

Eleazar did not see Jelita Romero, Flory Bino or his father Vicente that day. He did not have any misunderstanding with Alberto who was his relative and close friend.[23]

Ambrocio Conde testified that on September 17, 1995, at around 7 o'clock in the evening he was in his house alone cooking. He saw both Eusebio and Eleazar in their respective houses which are both three (3) arms length away from his house.[24]

He did not see his uncle Vicente that evening. Neither did he see Jelita Romero or Flory Bino that day. In fact, he met Jelita Romero only when he was apprehended. He also said that he did not have any misunderstanding with Alberto and that he seldom saw the latter.[25]

Eusebio Conde, Eleazar Conde and Ambrocio Conde came to know of the death of Alberto Romero only on September 25, 1995, eight days after the killing, when they were apprehended.[26]

Eddie Edem, a goldsmith, told the police that he was in the house of Eusebio Conde on September 17, 1995 from 11 o'clock in the morning until the following day, September 18, 1995. He spent the night in Eusebio's home, as he was unable to go home. He went there to repair some pieces of jewelry belonging to Ambrocio, Eleazar, Eusebio and his wife.[27]

On September 17, 1995 he saw both Ambrocio and Eleazar at their respective houses, as their houses were very near the house of Eusebio. He went to bed at about 7 o'clock in the evening and did not rise until the following day at 6 o'clock in the morning. As he was already asleep he did not know of the whereabouts of the accused. He added that before going to sleep he saw the four accused also going to sleep.[28]

Robelita Conde, the wife of Eusebio Conde, claimed that on September 17, 1995 she saw all the accused except Vicente Conde, Sr. whose house was far from theirs. At 7 o'clock in the evening she saw Ambrocio in his house graining corn and she also saw Eleazar inside his house. Her husband, Eusebio, was graining corn inside their house from 7 o'clock until 11 o'clock in the evening.[29]

Mely Conde, the wife of Eleazar, testified that even though she did not see Ambrocio she knew that he was home at 7 o'clock in the evening because she noticed the fire in his house. She saw Eusebio at his house graining corn at that time. At the same time her husband Eleazar was at home cooking. They had supper at 8 o'clock. After washing the dishes he grained corn.[30]

She went to sleep at 10:30 in the evening but her husband fell asleep ahead of her. She saw Eusebio at 10 o'clock eating his supper.[31]

From the testimonies given in court, it was revealed that Alberto Romero is a relative of the four accused since his mother is a first-degree cousin of Vicente Conde, Sr., and the motive for his killing was unknown.

On April 22, 1998, the trial court promulgated its decision finding the four accused guilty of the crime charged. The dispositive portion thereof reads as follows:

“WHEREFORE, since the killing of the victim has been qualified to murder by taking advantage of superior strength, and with the attendant aggravating circumstance of nighttime and none of the mitigating circumstances; accused, Ambrocio Conde, Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde are hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the victim, Alberto Romero, the sum of Fifty Thousand (P50,000.00) pesos and to pay the costs.

“Since all the accused are detention prisoners they are given full benefits of the period of their preventive imprisonment to be deducted from the principal penalty.

“SO ORDERED.”[32]

On appeal, accused-appellants assign the following errors:

“I

“THE TRIAL COURT GRAVELY ERRED IN BRUSHING ASIDE THE FULLY CORROBORATED AND WELL-EXPLAINED DEFENSE OF ALIBI AND DENIAL PUT UP BY THE ACCUSED-APPELLANTS.

“II

“THE TRIAL COURT GRAVELY ERRED IN CONVICTING ALL THE ACCUSED-APPELLANTS OF MURDER BASED ON CIRCUMSTANTIAL EVIDENCE WHICH IS INSUFFICIENT TO PRODUCE A CONVICTION BEYOND REASONABLE DOUBT.”

The appeal is unmeritorious.

The issues, being interrelated, will be discussed jointly.

Accused-appellants contend that their conviction was based on circumstantial evidence, particularly on the testimonies of the two prosecution witnesses, namely, Flory Bino and Jelita Romero.

They pointed out that Flory Bino, when questioned as to her whereabouts on the night in question, vacillated between being in the house of her mother and being in the house of the mother-in-law of the victim.

They likewise charged that Jelita Romero, being the widow of the victim Alberto Romero, was very much interested in pinning them down as her husband's killers and concluded that since Jelita Romero and Flory Bino are sisters, the latter was not a disinterested witness.[33]

Relationship by itself does not give rise to the presumption of bias or ulterior motive, nor does it ipso facto impair the credibility or tarnish the testimony of the witness.[34]

We have reviewed the transcripts of the hearings, particularly those of Jelita Romero and Flory Bino, and, except for the former's not being truthful about her relationship with Flory Bino or the latter's omission of her relationship with Jelita Romero we do not find their testimonies on what transpired on the night of the incident to be contrived.

The alleged discrepancies are more apparent than real. They do not diminish what the witnesses observed on the fateful night of September 17, 1995.

But to put the mind of the accused-appellants to rest regarding Flory Bino's alleged inconsistency: Flory Bino, in the affidavit she had executed on September 21, 1995, stated that her younger sister is Jelita Romero and her mother's name is Guillerma and that they (Jelita, Guillerma, and she) were in their house.[35] There is no inconsistency as the mother-in-law of Alberto is Guillerma who, it turns out, is her mother.

Contrary to accused-appellants' allegation Flory Bino's testimony was not somersaulting or doubtful when asked about the events of September 17, 1995. She testified in a frank and spontaneous manner leaving no doubt in our minds that she witnessed the attack on Alberto Romero and the subsequent chase made by the accused when their prey took flight.

Accused-appellants would make us believe that Jelita Romero, the widow of the victim, wanted to pin them down as her husband's killers without any reason. It is unlikely that Jelita Romero would point an accusing finger at innocent people, who are also her husband's relations, for no reason at all. She designated them as her husband's killers because she knew it to be true. Justice would not be served if the guilty parties are allowed to go scot-free.

"When there is no showing that the principal witnesses for the prosecution were actuated by an improper motive, the presumption is that they were not so actuated and their testimonies are thus entitled to full faith and credit." [36]

It is not amiss at this stage to reiterate the doctrine that the factual findings of the trial court should be respected because the trial judge is in a better position to pass judgment on the veracity of witnesses having had the opportunity to personally hear them, observe their deportment and manner of testifying, and detect if they were telling the truth.[37]

Accused-appellants Ambrocio Conde, Jr., Eleazar Conde, Vicente Conde, Sr., and Eusebio Conde all interpose the defense of alibi: Vicente Conde, Sr. was allegedly in the police station of Claveria, Masbate while the three other Condes, i.e., Ambrocio, Jr., Eleazar, and Eusebio, were in their respective houses on the night of September 17, 1995.

Vicente Conde's presence in the police station was corroborated by SPO1 Efren Adrao and SPO2 Benito Alcantara while that of the other Condes was corroborated by Eddie Edem, and Robelita Conde and Mely Conde, the wives of Eusebio Conde and Eleazar Conde, respectively.

Eddie Edem testified that he went to bed at 7:00 p.m. and did not awaken until the following morning. At no time during the night did he wake up.

The accused could have slipped out of their houses without Eddie Edem being any wiser. This possibility is not at all remote considering that the witness was asleep and might not have heard the accused leaving their respective houses which, we might point out, are three meters away from the house where he slept, i.e., the house of Eusebio Conde.

While we do not doubt that Vicente Conde, Sr. had been to the police station of Claveria on the night in question we find that it would not have been an impossibility for him to have proceeded to Sitio Bugtong-Lubi thereafter as

the police station in Claveria was a mere two kilometers away from Sitio Bugtong-Lubi. It would not have taken Vicente Conde, Sr. ages to reach the house of Alberto Romero's mother-in-law.

Neither was there an impossibility for the other three accused to reach the said house as they live only two kilometers away. It would have been an easy matter for them to slip out of their houses without fear of being discovered by their witness Eddie Edem.

For the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else where the crime was committed, he must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission.[38]

All the accused-appellants failed to prove that there was an impossibility for them to be at the scene of the crime and that they were not there at the time it happened.

Under our rules on evidence, an accused can still be convicted even if no eyewitness is available provided that enough circumstantial evidence has been established by the prosecution to prove beyond reasonable doubt that the accused committed the crime.[39]

Section 4 of Rule 133 of the New Rules on Evidence provides:

“Sec. 4. Circumstantial evidence, when sufficient. – Circumstantial evidence is sufficient for conviction if:

“(a) There is more than one circumstance;

“(b) The facts from which the inferences are derived are proven; and

“(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.”

Simply put, to warrant conviction, circumstantial evidence must constitute an unbroken chain of events that can lead reasonably to the conclusion pointing to the accused, to the exclusion of all others, as the author of the crime.[40]

Jelita Romero and Flory Bino were conversing with the victim Alberto Romero when the four accused appeared. The two witnesses recognized the accused by the light of the kerosene lamp which was hanging on the ceiling. They saw Ambrosio hold the head of the victim, Eleazar attempted to hack the latter while the two other accused watched. They were one in saying that when the victim ran away all four Condes pursued him. This was the last time that Alberto Romero was seen alive. His corpse was found the next day.

These circumstances, linked together, indubitably show that the four accused conspired and had a hand in the killing of Alberto Romero.

As an aside, we find it improbable that Ambrosio Conde, Jr., Eleazar Conde and Eusebio Conde learned of the death of their cousin Alberto Romero eight days after his death and only when they were apprehended. News travel fast in small communities, more so, horrifying ones, and for them not to have gotten wind of said news is far-fetched.

While agreeing to the factual findings of the trial court, we do not, however, agree with its appreciation of the aggravating circumstance of nighttime.

There is no question that the penalty for murder is from reclusion perpetua to death.[41] The former is imposed when no aggravating circumstance attended the killing. On the other hand, the latter is imposed when there is one or more aggravating circumstance and no mitigating circumstance is present.

“If there are neither aggravating nor mitigating circumstances, then the crime although falling under Republic

Act No. 7659, will not be punished by death but by the lesser penalty of reclusion perpetua.”[42]

The consideration of nighttime as an aggravating circumstance was erroneous.

Although the crime was committed at 7 o’clock in the evening, no evidence was presented showing that nighttime was especially sought by the offenders to consummate the crime or to facilitate its commission. The trial court’s appreciation therefore of this aggravating circumstance is misplaced.

Nighttime only becomes an aggravating circumstance when: (1) it was specially sought by the offender; or (2) it was taken advantage of by him; or (3) it facilitated the commission of the crime by insuring the offender’s immunity from capture.[43]

While the trial court correctly imposed the penalty of reclusion perpetua, the appreciation of the aggravating circumstance of “nighttime” must be stricken out from the dispositive portion of its decision.

WHEREFORE, IN VIEW OF THE FOREGOING, the decision appealed from convicting the accused-appellants of murder and imposing upon them the penalty of reclusion perpetua is AFFIRMED.

SO ORDERED.

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

[*] Interchangeably with “s” or “c” in the records.

[1] Orig. Records, p. 1.

[2] Ibid., p. 23.

[3] T.S.N. dated August 29, 1996, pp. 2, 3, 6, and 16; T.S.N. dated September 27, 1996, pp. 2 and 5.

[4] T.S.N. dated August 29, 1996, pp. 4, 6, and 7; T.S.N. dated September 27, 1996, pp. 6 and 8.

[5] T.S.N. dated August 29, 1996, pp. 4-5; T.S.N. dated September 27, 1996, pp. 7-8.

[6] T.S.N. dated August 29, 1996, pp. 5-6; T.S.N. dated September 27, 1996, p. 9.

[7] T.S.N. dated August 29, 1996, p. 7; T.S.N. dated September 27, 1996, p. 9.

[8] Exhibit “A-B”, Orig. Record, p. 282-B; Exhibit “B”, Orig. Record, p. 282-C.

[9] Exhibit “A-B”, Orig. Record, p. 282-B.

[10] Ibid.

[11] Exhibit “A”, Orig. Record, pp. 282-A – 282-B.

[12] T.S.N. dated June 27, 1996, pp. 4, 5, and 9.

[13] T.S.N. dated December 4, 1996, pp. 2, 3, 6, 9, and 12.

[14] Ibid., pp. 4, 5, 6, and 10.

[15] T.S.N. dated March 18, 1997, pp. 3-4.

[16] T.S.N. dated April 30, 1997, pp. 3-4.

[17] T.S.N. dated January 8, 1997, pp. 2, 4, and 5.

- [18] Ibid., pp. 4 and 6.
- [19] Ibid., pp. 3 and 16.
- [20] Ibid., pp. 6, 7, and 9.
- [21] T.S.N. dated January 22, 1997, p. 2.
- [22] Ibid., pp. 4-5.
- [23] Ibid., pp. 5, 6, 7, and 10.
- [24] Ibid., pp. 10, 12, and 13.
- [25] Ibid., pp. 13, 14, 15, 17, and 18.
- [26] T.S.N. dated January 8, 1997, p. 10, T.S.N. dated January 22, 1997, pp. 9 and 15.
- [27] T.S.N. dated April 30, 1997, pp. 8, 14, and 15.
- [28] Ibid., pp. 9, 10, 12, 13, 17, and 18.
- [29] T.S.N. dated January 5, 1998, pp. 2, 3, 4, 5, and 9.
- [30] Ibid., pp. 11-13.
- [31] Ibid., pp. 14, 17, and 18.
- [32] Orig. Records, p. 289; Rollo, p. 20.
- [33] Appellants' Brief, p. 9; Rollo, p. 57.
- [34] People vs. Quilang, 312 SCRA 314 [1999].
- [35] Exhibit "C", Orig. Records, p. 5.
- [36] People vs. Quilang, 312 SCRA 314 [1999].
- [37] People vs. Patalinghug, 318 SCRA 116 [1999].
- [38] People vs. Naguita, 313 SCRA 292 [1999].
- [39] People vs. Lagao, Jr., 271 SCRA 51 [1997].
- [40] People vs. Villaran, 269 SCRA 630 [1997].
- [41] see Article 248, Revised Penal Code.
- [42] People vs. Yam-id, 308 SCRA 651 [1999].
- [43] People vs. Bermas, 309 SCRA 741[1999].

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