

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN TEJERO, LUCIO PORTON, CESAR TEJERO AND ARNEL TEJERO, ACCUSED-APPELLANTS.

G.R. No. 135050. April 19, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision[1] dated July 3, 1998, in Criminal Case No. C-2163, of the Regional Trial Court of Catarman, Northern Samar, Branch 20, finding appellants Efren, Cesar and Arnel, all surnamed Tejero, and Lucio Porton guilty of murder and sentencing each to suffer the penalty of reclusion perpetua, to jointly and severally pay the heirs of Alfredo Balase the sum of P50,000, and to pay the costs.

Appellants were charged with murder under the following Information:

That on or about the 18th day of June, 1995, at about 1:00 o'clock in the morning, inside the auditorium of Barangay San Pedro, Municipality of Biri, Province of Northern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused armed with a bladed weapon and a stick locally called "Tadlok", with deliberate intent to kill thru treachery and evident premeditation, conspiring with, confederating together and mutually helping one another did then and there, wilfully, unlawfully and feloniously attack, assault and stab and/or pierce ALFREDO BALASE with the use of said weapons which the accused had provided themselves for the purpose, thereby inflicting upon said Alfredo Balase multiple stabbed wounds which caused the death of said victim.

CONTRARY TO LAW.[2]

When arraigned, Efren Tejero, Lucio Porton, Cesar Tejero and Arnel Tejero with the assistance of counsel de oficio, entered pleas of not guilty to the charge.[3]

At the trial, the prosecution presented four witnesses, namely: Dr. Ma. Sylvia M. Agudo, Romeo Balase, Henry Quiling and Visitacion Balase.

DR. MA. SYLVIA M. AGUDO, the municipal health officer of Biri, Northern Samar, testified that she conducted the autopsy on the body of the victim, Alfredo Balase. She prepared an autopsy report that contained these findings:

- Stab wound, 1cm involving muscles at supraclavicular area, left
- Stab wound, 1cm involving muscles at supraclavicular area, right
- Stab wound, 1cm midsternal line at level of 4th intercostal space
- Stab wound, 1cm midclavicular line, level of 6th intercostal space, right
- Stab wound, 3cm anterior axillary line at level of 7th intercostal space, right

- Lacerated wound, 9cm upper extremity involving muscles of middle third, lateral forearm, right

-----HEMOTHORAX

CAUSE OF DEATH:

Hemorrhage, severe secondary to wounds at midclavicular line, level of 6th intercostal space, right, anterior axillary line at level of 7th intercostal space, right.[4]

ROMEO BALASE, the brother of the victim Alfredo Balase, testified that on June 17, 1995 at around 9:00 P.M., he entered the auditorium of Brgy. San Pedro, Biri, Northern Samar where a dance was being held in celebration of the barangay fiesta. He and his two other companions occupied a table about two meters apart from that occupied by Alfredo. He recounted that Alfredo was drinking “Red Horse beer” together with Henry Quiling, Boboy Albario, Manolo Tejero and Danilo Tejero. Past midnight, or about 1:00 A.M. of June 18, 1995, witness Romeo Balase saw his brother Alfredo, who had consumed about four bottles of beer, resting his head propped up by his hand on the table he (Alfredo) and his companions were occupying.[5] Suddenly, appellant Efren Tejero, coming from the gate, approached Alfredo and stabbed the latter with a small bolo locally known as “dipang”, hitting Alfredo on the right armpit. Efren immediately delivered a second blow but Alfredo parried it with his arm and ran towards the main gate of the auditorium. When Alfredo reached the gate, Lucio Porton hit him with a club. Alfredo parried the swing of the club. Then, according to Romeo, Cesar Tejero came to the scene of the fight and held the head of Alfredo with his two hands. While Alfredo tried to free himself from the grasp of Cesar, Lucio Porton held Alfredo’s right arm. Then appellant Arnel Tejero approached Alfredo and also stabbed him twice with a small pointed bolo on the chest. Not contented, Arnel stabbed him again on the left and right sides of his shoulders. Witness Romeo Balase said he saw all these details because the scene of the incident was illuminated with several fluorescent lights.[6]

HENRY QUILING, corroborating the testimony of Romeo Balase, testified that on June 17, 1995 at around 9:00 P.M., he arrived at the auditorium and occupied a table with the victim, Alfredo Balase, and three others. He narrated that past midnight, at around 1:00 A.M. of June 18, while Alfredo rested his head upon his arm on the table, Efren Tejero approached the former and immediately thrust his bolo on the right side of Alfredo’s body. He delivered another thrust using the same weapon and hit the victim on his right forearm. The witness said he was only two meters away when Efren stabbed the victim twice. Alfredo ran and was chased by Efren towards the gate. Alfredo was then accosted by appellant Lucio Porton who struck him with a “tadlok”, but Alfredo was able to parry the blow. Then Cesar held both hands of Alfredo, while Lucio also held only the right hand of Alfredo. Meanwhile, appellant Arnel Tejero came upon Alfredo and also stabbed him on the chest with a bolo. After stabbing him, Lucio and Cesar released their hold on Alfredo causing the victim to squat on the ground and support his body with his hands. Immediately thereafter, Arnel stabbed him again on the left and right sides of his neck. While this was all happening, Efren served as a look-out.[7]

On cross-examination, witness Henry Quiling stated that he was not alarmed when Efren approached Alfredo because he did not expect that Efren intended to kill Alfredo.[8]

The last prosecution witness, VISITACION BALASE, was the mother of the victim. She testified that she incurred P5,000 for the victim’s coffin and niche, and other miscellaneous expenses.[9]

In their defense, appellants testified together with witness Blas Docena.

Appellant EFREN TEJERO admitted the killing, but asserted that it was in self-defense. He testified that on June 17, 1995 at about 10:00 P.M., he went to the auditorium to attend the dance that was held as part of the fiesta celebration. According to Efren, at about 1:00 A.M. the following day or on June 18, he went outside the gate of the auditorium to answer the call of nature. While he was urinating, Alfredo asked him if he was Efren, the

brother of Ramon. When he answered in the affirmative, Alfredo immediately drew his small bolo from the right side of his waist. Thinking that he might be stabbed by Alfredo, Efren ran towards the main gate to escape. Alfredo overtook him and as he was about to stab Efren, the former stumbled down, releasing his hold of the bolo. Efren picked up the bolo and when Alfredo was about to stand, Efren stabbed him on the right side of his body. They ran to the center of the auditorium, Efren recounted that he took away Alfredo's bolo and, remembering that he has his own bolo, he drew it and stabbed Alfredo several times that he could no longer remember how many. Afterwards, he left Alfredo at the center of the auditorium and went home.[10]

In the early morning of June 18, 1995, he and the three appellants were arrested and held at the Municipal Hall of Biri as suspects in the killing of Alfredo, but were released afterwards since no case was filed against them.[11]

BLAS DOCENA corroborated appellant Efren Tejero's story. He narrated that on June 17, 1995, he went to San Pedro, Biri, Northern Samar to witness the dance being held there. At around 11:00 P.M., he saw Efren chased by Alfredo towards the gate of the auditorium. When Alfredo was already near the table of Efren, he delivered a thrust at Efren, but he did not hit Efren as the former lost his balance and fell causing his bolo to be thrown away. Efren picked up the bolo and with it stabbed Alfredo who was hit at the right side of his body. Afterwards, Alfredo grappled for the possession of the bolo but to no avail. After stabbing Alfredo, Efren ran away leaving Alfredo in the middle of the dance hall.[12]

Appellants Arnel Tejero, Cesar Tejero and Lucio Porton disavowed any complicity in the killing of Alfredo Balase, claiming that they were in their respective houses at the time of the incident. In effect, they interposed denial and alibi as their defense.

Appellant ARNEL TEJERO testified that at about 1:00 A.M. of June 18, 1995, he was at home asleep. At the same hour, however, he was awakened by his wife due to the commotion at the auditorium. After informing him of the stabbing incident, his wife fainted. He attended to his wife until she regained consciousness, then he went back to sleep.[13] He denied ever going to the auditorium.

Appellant LUCIO PORTON testified that he was at home on the evening of June 17, 1995. He went to the auditorium to take a peek at the celebration. At about 10:00 P.M. he was asked by his wife to go home.[14] According to Lucio, the following day, he was brought to the Chief of Police of Biri and was detained in jail for a day and a half. On February 7, 1996, while he was in Cabuyao, Laguna where he was working as a construction worker with Efren Tejero, he was arrested by some NBI agents who, according to him, shot him on the left side of his back after one Renato Balase pointed to him and identified him as Lucio Porton.[15]

Appellant CESAR TEJERO testified that he did not attend the dance since he was busy attending to his visitors at his home.[16] According to him, witnesses Henry Quiling and Romeo Balase testified against him because the two got mad at him when he refused to testify as a witness for Renato Balase, the brother of Romeo Balase, who was accused of killing a Salvador Galo.

On July 3, 1998, the trial court rendered a decision rejecting the defense's theory of self-defense as well as alibi and gave full credence to the testimonies of prosecution witnesses who positively identified appellants as the culprits. The dispositive portion of said decision reads:

WHEREFORE, premises considered, the Court finds the accused EFREN TEJERO, LUCIO PORTON, ARNEL TEJERO and CESAR TEJERO guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and hereby sentences them to suffer the penalty of reclusion perpetua and to indemnify the heirs jointly and severally the amount of P50,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.

SO ORDERED.[17]

Hence, this appeal.

The Court issued a resolution on November 24, 1999[18] dismissing appellant Arnel Tejero's appeal pursuant to Section 8, Rule 124 of the Rules of Court,[19] after it was proven during the pendency of this appeal that he escaped from the provincial jail at Dancalan, Bobon, Northern Samar on July 12, 1998. We reiterated the dismissal in another resolution dated September 6, 2000.[20] Thus, as for Arnel Tejero, his conviction for the killing of Alfredo Balase is deemed affirmed and had become final and executory. As for the remaining three appellants, their appeal stands, which we will now resolve.

Accused-appellants contend that:

I.

THE TRIAL COURT ERRED IN CONVICTING ALL THE ACCUSED OF THE CRIME OF MURDER ON THE BASIS OF THE THEORY OF CONSPIRACY WHICH IS BUT A SPECULATION AND NOT A FACT.

II.

THE TRIAL COURT ERRED IN NOT GIVING CREDENCE TO THE SELF-DEFENSE OR INCOMPLETE SELF-DEFENSE OF EFREN TEJERO AND IN NOT ACQUITTING THE OTHER APPELLANTS LUCIO PORTON, CESAR TEJERO AND ARNEL TEJERO, ON REASONABLE DOUBT.

III.

THE TRIAL COURT ERRED IN HOLDING THAT TREACHERY ATTENDED THE COMMISSION OF THE CRIME.[21]

In sum, the issues for our resolution are: (1) whether the trial court correctly held appellants equally liable for the death of the victim on the basis of conspiracy, and (2) whether treachery was sufficiently proven to sustain appellants' conviction for murder.

Appellants contend that the trial court's finding of conspiracy rests merely on speculation and not on fact. They claim that there was no evidence to prove that appellant Efren Tejero met with the other appellants and that together they planned the killing of Alfredo. Appellants argue that their mere presence at the gate of the auditorium did not prove conspiracy, since their presence and that of others at the dance was not unusual or unexpected.[22]

After examining carefully the testimonies of witnesses for the prosecution as well as the defense, the trial court's finding of the existence of a conspiracy to kill the victim is well-taken. It must be noted that Article 8, paragraph 2 of the Revised Penal Code provides that "conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." It is a well-settled rule that conspiracy need not be established by direct evidence of a prior agreement. It is sufficient that the accused acted in concert at the time of the commission of the offense, that they had the same purpose or common design, and that they were united in its execution.[23]

In this case, the accused's synchronous presence at the crime scene was not a mere coincidence[24] but was part of a design to kill Alfredo Balase. As the trial court observed, appellant Efren Tejero had to call the other appellants to help him kill Alfredo to preempt the latter's threat to liquidate their whole family. All the appellants waited for the opportune time for them to carry out their plan. It is noteworthy also that appellants are related to each other: Efren Tejero is the uncle of brothers Arnel and Cesar Tejero, while Lucio Porton is the brother-in-law

of Efren.[25]

Additionally, the evidence on record shows that (1) appellant Efren Tejero suddenly stabbed the victim while the latter was resting his head on his arms at the table; (2) when the victim ran to the gate to escape, the other appellants were waiting for him. Appellant Cesar Tejero held the victim's head while appellant Lucio Porton held the victim's arm to render him immobile and preclude any potential resistance from him, thus enabling appellant Arnel Tejero to consummate their dastardly act; and (3) while this was all happening, Efren acted as a look-out to insure the success of their criminal act. All four appellants appear to have acted in concert during the fatal attack against the victim. Each performed specific acts with such close coordination as to indicate beyond doubt a common criminal design or purpose. As conspirators, they are liable as co-principals regardless of the manner and extent of their participation since, in point of law, the act of one would be the act of all.[26]

As already stated, Efren claims that he acted in self-defense. Thus, he has the burden of proving: (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 his part.[27] Efren testified that when Alfredo was about to stab him after a brief chase, Alfredo stumbled, releasing his hold of the bolo. Efren picked up the bolo, it was then that he stabbed Alfredo. Assuming *arguendo* that this version were true, unlawful aggression, assuming it was initially present, had already ceased the moment Efren had possession of the weapon and he no longer had any right to attack his alleged offender. With the absence of the primordial element of unlawful aggression, the other requisite of self-defense would have no leg to stand on.[28] Moreover, it is worth noting that appellant himself admitted that when he faced Alfredo at the center of the auditorium, he remembered that he had his own bolo, drew it and stabbed Alfredo several times. He could not even remember how many times he did. Clearly, even if we follow Efren's version, there was no reasonable necessity of the means employed by him to prevent or repel the alleged attack. The gravity of the wounds inflicted on the victim is indicative of a determined effort to kill and not just to defend.[29]

Also, the testimony of defense witness Docena, in an attempt to corroborate Efren's theory of self-defense, fails to impress us. As pointed out by the trial court, he is a biased witness since during his stay in Brgy. San Pedro, he was a helper of Pedro Tejero, a close relative of Efren. Also, according to the trial court, he was fidgety in his seat while testifying and would smile every time he answered the questions propounded to him.

Needless to say, findings of the trial court on the credibility of witnesses deserve great weight, given the clear advantage of a trial judge in the appreciation of testimonial evidence.[30] For indeed the trial court is in a better position to decide the question of credibility, having heard the witnesses and observed their deportment and manner of testifying during the trial.[31]

We now come to the defense of alibi and denial raised by the two remaining appellants, namely Cesar Tejero and Lucio Porton. It is settled that for alibi to prosper as a defense, the accused must show that they were so far away that they could not have been physically present at the place of the crime at the time of its commission and their presence elsewhere renders it impossible for them to be the guilty parties.[32] In this case, the trial court estimated the distance of Cesar's house from the auditorium to be a mere 20 meters, and that of Lucio to be a mere 50 meters.[33] Given the relative proximity of the locus criminis established by the trial court, the appellants' defense of alibi must necessarily fail.

Moreover, alibi and denial cannot prevail over the positive testimony of the appellants by the prosecution witnesses, Balase and Quiling,[34] concerning appellants' actual participation and identification. Although it may be conceded that their testimonies differ in some respects (e.g. to which gate of the auditorium did Alfredo go and the supposed parts of Alfredo's body hit by the blows), yet these differences do not refer to the crux of the matter,

which is their presence at the scene and their participation in the commission of the crime. Besides, witnesses are not expected to remember every single detail of an incident with perfect or total recall.[35]

Finally, appellants contend that assuming Efren may be held liable for the killing of Alfredo Balase, 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 since they were facing each other when the stabbing took place.

This contention is devoid of merit. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor. In this case, treachery was already present when Efren, armed with a bolo, approached Alfredo and suddenly stabbed him. Alfredo did not have the faintest idea that he was vulnerable to an attack, considering that he was resting his head on his arms at the table oblivious of the sinister intent of Efren. Due to the suddenness of the attack, witness Quiling who was just beside Alfredo was not able to help him. He had no inkling whatsoever that Efren would stab Alfredo since the former did not carry his weapon openly. Only when Efren got near the victim did he immediately draw his weapon.[36] While Efren may not have succeeded in his initial thrusts, as in fact, Alfredo was able to parry his first blow, this nonetheless is quite insignificant because the existence or non-existence of treachery is not dependent on the success of the assault.[37] The fact that Alfredo was facing Efren at the same moment as the latter's attack did not erase its treacherous nature. Even if the assault were frontal, there was treachery if it was so sudden and unexpected that the victim had no time to prepare for his defense.[38]

In fine, the trial court correctly considered the killing of Alfredo Balase as murder qualified by treachery. There being no aggravating nor mitigating circumstance attending the killing, the applicable penalty would thus be reclusion perpetua.[39] The award of P50,000 as death indemnity to the victim's heirs is likewise affirmed.

WHEREFORE, the instant appeal is DENIED. The decision of the Regional Trial Court convicting appellants Efren Tejero, Cesar Tejero and Lucio Porton of the crime of murder and sentencing them to reclusion perpetua, and to jointly and severally pay the heirs of Alfredo Balase P50,000 as civil indemnity as well as the costs is AFFIRMED.

With regard to appellant Arnel Tejero who is at large, his conviction by the trial court for the killing of Alfredo Balase is deemed affirmed and had by now become final and executory. The court a quo is directed to order the immediate arrest and commitment of appellant Arnel Tejero to the New Bilibid Prison for service of his sentence.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Corona, J., no part in the deliberations.

[1] Rollo, pp. 16-26.

[2] Records, p. 17.

[3] Decision, p. 1; Rollo, p. 16.

[4] Id. at 5.

[5] TSN, August 5, 1996, pp. 8-10.

[6] Id. at 4-6.

[7] TSN, September 16, 1996, pp. 2-5.

[8] Id. at 9.

[9] TSN, October 31, 1996, p. 5.

[10] TSN, January 15, 1997, pp. 4-8.

[11] Id. at 11-12.

[12] TSN, May 19, 1997, pp. 2-6.

[13] TSN, February 27, 1997, p. 2.

[14] TSN, July 11, 1997, pp. 2-3.

[15] Id. at 5-9.

[16] TSN, August 15, 1997, p. 3.

[17] Rollo, p. 26.

[18] Id. at 46-47.

[19] Rule 124, Sec. 8 of the Revised Rules of Court.

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The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal.

[20] Rollo, p. 136.

[21] Id. at 57.

[22] Id. at 58-59, 61.

[23] People vs. Tami, G.R. Nos. 101801-03, 244 SCRA 1, 22 (1995).

[24] People vs. Landicho, G.R. No. 116600, 258 SCRA 1, 31 (1996).

[25] TSN, January 15, 1997, p. 13.

[26] People vs. Abordo, G.R. No. 107245, 321 SCRA 23, 39 (1999).

[27] Article II, par. 1, The Revised Penal Code.

[28] People vs. Baniel, G.R. No. 108492, 275 SCRA 472, 481 (1997).

[29] Id. at 482.

[30] People vs. Benito, G.R. No. 128072, 303 SCRA 468, 476 (1999).

[31] People vs. Durado, Sr., G.R. No. 121669, 321 SCRA 498, 512 (1999).

[32] People vs. Enoja, G.R. No. 102596, 321 SCRA 7, 20 (1999).

[33] Rollo, p. 23.

[34] People vs. Cabangcala, G.R. No. 135065, August 8, 2001, p. 14.

[35] *People vs. Benito*, G.R. No. 128072, 303 SCRA 468, 478 (1999).

[36] TSN, September 16, 1996, p. 10.

[37] *People vs. Zamil*, G.R. No. 105284, 275 SCRA 182, 190 (1997).

[38] *People vs. De Manuel*, G.R. No. 117950, 263 SCRA 49, 59 (1996).

[39] Article 63 (2), Revised Penal Code.

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