

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAYMUNDO VISAYA ALIAS "JUNJUN", JERICHO
OCAMPO AND DAVID BAUTISTA, ACCUSED.**

G.R. No. 136967. February 26, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 34, Calamba, Laguna, finding accused Jericho Ocampo guilty beyond reasonable doubt of the crime of murder and sentencing him to suffer the penalty of reclusion perpetua.

In an Information[2] dated September 5, 1996, accused JERICHO OCAMPO, RAYMUNDO VISAYA alias "JUN JUN" and DAVID BAUTISTA were charged with Murder as follows:

"That on or about April 20, 1996, at Del Pilar Street, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another while conveniently armed with a bladed weapon (fan knife) with intent to kill, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said bladed weapon one Joseph Reyes on the different parts of his body thereby inflicting upon him mortal stab wounds which directly caused his death, to the damage and prejudice of his surviving heirs.

That in the commission of the crime the qualifying circumstances of evident premeditation and treachery were (in) attendant.

CONTRARY TO LAW."

Accused Jericho Ocampo was arrested on April 16, 1997[3] while co-accused Raymundo Visaya and David Bautista remained at large.[4] During his arraignment, accused Ocampo pleaded not guilty to the crime charged.[5] Trial thereafter ensued.

The prosecution's evidence consisted mainly of the testimonies of Dr. Esmeraldo Plastina[6], Municipal Health Officer of Calamba, Laguna, Celia Reyes,[7] widow of victim Joseph Reyes, and Magdalena Anasin,[8] waitress in the ABBIE's canteen owned by the Reyes spouses. Their testimonies established the following facts:

At about 9:00 in the evening of April 20, 1996, Celia Reyes, owner/cashier of the ABBIE's Restaurant, located at Del Pilar Street, Calamba, Laguna was inside her canteen together with her husband, victim Joseph Reyes, and their helper, John Behican and waitress Magdalena Anasin. Later, four (4) men entered their restaurant and one of them, accused Jericho Ocampo, who had been a frequent customer of the restaurant for the past two (2) weeks, ordered four (4) bottles of softdrinks and four (4) siopaos from Magdalena Anasin.[9] As the four (4) men partook of their snacks, Celia Reyes overheard them discussing their plan to harm somebody (meron silang titirahin). After the group had finished their food and while not yet making any move to pay their bill, Celia prepared for their dinner at a table which was about six (6) feet away from the table occupied by Ocampo's group. While Celia

and her husband, Joseph Reyes, were eating, Ocampo's group started talking about vomiting. When heard by victim Joseph, the latter told the group to change the topic of their conversation as he and his wife were then eating. However, the group just ignored Joseph and continued talking with each other.[10] After Celia had finished her supper, she went back to the counter while waitress Magdalena Anasin, who was near the "siopawan" waited for Ocampo's group to pay. At this juncture, two (2) of Ocampo's group left the restaurant while Ocampo and another companion, later identified as accused Raymundo Visaya, remained inside the canteen. Ocampo and Visaya then approached the counter but instead of paying their bill, Visaya drew a knife and without any warning, attacked and repeatedly stabbed Joseph, who was then eating and seated facing a corner of the restaurant. Celia heard Ocampo shout "patayin mo na, patayin mo na", hence she immediately rushed to her husband's side and begged his assailants to stop. As victim Joseph fell down, Celia embraced him and then saw Ocampo holding a bottle of Coke and was about to hit her husband when someone shouted "sibat na".[11] After the assailants left, several people entered the canteen and brought Joseph to the hospital where the latter died.[12]

Dr. Esmeraldo Plastina conducted an autopsy on the cadaver of the victim and issued a Medico-Legal Necropsy Report[13], which reveals his findings thus:

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INTERNAL FINDINGS:

Stab wound measuring 3cm. right shoulder.

Stab wound measuring 2.5cm. left hypochondrias region.

Stab wound measuring 3cm. left abdominal region.

Stab wound measuring 1cm. inter-scapular region.

Stab wound measuring 2.5cm. left infra-scapular region.

EXTERNAL FINDINGS:

Abdominal cavity with hemorrhage.

CAUSE OF DEATH:

Intra-abdominal hemorrhage due to stab wound."

On the other hand, accused Jericho Ocampo testified that between the hours of 8:00 to 9:00 in the evening, he was at the Calamba plaza waiting for his former classmate in the elementary grades, Raymundo Visaya, for a drinking spree. Visaya arrived with two companions whom he did not know and they decided to forego drinking and instead proceeded to ABBIE's canteen, about seven (7) meters from the plaza. He then ordered for their food and paid for them. While eating, Visayas' companions started talking about vomiting which angered victim Joseph who told them "Putang ina n'yo, huwag kayong magkuwentuhan ng suka diyan, may kumakain dito." He (Ocampo) then told his companions that they should go home, and so he went out of the canteen and bought cigarettes. While he was waiting outside for his companions, he heard a sound of a broken bottle coming from the canteen so he went back and saw co-accused Visaya and the victim "nagpapagulong" (grappling) while Visaya's other two companions were standing at the door. Visaya's father arrived and pacified his son Raymundo and took the knife from him and told him to go home. He was then invited by Raymundo Visaya to continue their drinking and they both went to Baras where Visaya told him that he (Visaya) had stabbed the victim and afterwards, they went their separate ways. Ocampo went to visit his grandmother at Mamatid, a barangay in Cabuyao, Laguna and the following day, he learned from his uncle that he was being implicated in the killing of victim Joseph Reyes. He went home to Banadero, Calamba and was arrested one year after the killing of Joseph Reyes.[14]

On October 19, 1998, the lower court rendered judgment finding accused Jericho Ocampo guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision reads:[15]

"ACCORDINGLY, this Court finds accused Jericho Ocampo, GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized under Article 248 of the Revised Penal Code, as amended, and hereby sentences him to suffer the penalty of Reclusion Perpetua.

Accused is further ordered to indemnify the widow Celia Reyes the sum of THIRTY-TWO THOUSAND (P32,000.00) PESOS as actual damages and FIFTY THOUSAND (P50,000.00) PESOS as compensatory damages.

The record of the case as against accused Raymundo Visaya and David Bautista is hereby ordered ARCHIVED pending their arrest.

With costs against accused Ocampo."

In convicting accused Jericho Ocampo of murder, the trial court appreciated the presence of treachery and conspiracy among the accused. In finding treachery, the court concluded that the two eye witnesses, Celia Reyes, wife of the victim and Magdalena Anasin, waitress in the canteen, had established that victim Joseph Reyes who was then seated facing a corner and eating his dinner was totally caught by surprise by the unexpected attack from behind by Raymundo Visaya which rendered him helpless and defenseless, and there was no showing that the victim was armed to resist the attack; that Ocampo's group commonly adopted the mode of attack was shown by the group's prior action - with two of them on guard and the other two on the pretext of paying their bills, suddenly ganged up on the victim. It however, found no sufficient basis to substantiate the presence of evident premeditation. The trial court also ruled that there was conspiracy among the accused and concluded that Jericho Ocampo was in the company of Raymundo Visaya when the latter inflicted upon the victim five (5) stab wounds while the latter was facing a corner totally unaware and defenseless and Ocampo was also heard to have uttered the words "patayin mo na, patayin mo na" while holding a bottle of coke with which he would have hit the victim if not for the shout "sibat na" emanating outside; that although accused Ocampo may contend that he merely shouted "patayin mo na, patayin mo na" and held a bottle of coke and did not hit the victim, he was considered a co-conspirator. Thus when Visaya stabbed from behind the defenseless victim, Ocampo's hand also held the killer knife. After all, conspiracy implies concert of design and not participation in every detail of execution. The defense of alibi invoked by the accused was not given credence in the face of the positive identification of the eye-witnesses.

Hence, this instant appeal filed by accused Jericho Ocampo alleging that:[16]

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED GUILTY AS CHARGED AS CONSPIRATOR DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE CONSPIRACY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE QUALIFYING CIRCUMSTANCE OF TREACHERY DESPITE THE INSUFFICIENCY OF EVIDENCE TO PROVE THE SAME.

Appellant claims that conspiracy was not established by the testimony of the prosecution witnesses and assails their credibility; that the witnesses Celia Reyes and Magdalena Anasin both stated that it was accused Raymundo Visaya who stabbed Joseph Reyes, however, in their evident desire to implicate accused-appellant, prosecution witnesses had to reinvent their stories and contradicted what they told the police when they were initially investigated immediately after the incident. Appellant suggests that since Raymundo Visaya who was the actual perpetrator still remained at large, the prosecution had to find a scapegoat to answer for the death of Joseph Reyes. Appellant also claims that to establish conspiracy, evidence of actual cooperation rather than mere

cognizance or approval of an illegal act is required; that appellant's participation was limited only to the act of rushing to the crime scene after the victim was stabbed and he had not performed any harmful act which facilitated the victim's death.

We resolve to affirm the judgment of conviction.

Appellant Jericho Ocampo was convicted of murder on the theory of conspiracy. It is well settled that conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[17] The presence of the element of conspiracy among the accused can be proven by their conduct before, during or after the commission of the crime[18] showing that they acted in unison with each other, evincing a common purpose or design.[19] There must be a showing that appellant cooperated in the commission of the offense, either morally, through advice, encouragement or agreement or materially through external acts indicating a manifest intent of supplying aid in the perpetration of the crime in an efficacious way.[20] In such case, the act of one becomes the act of all, and each of the accused will thereby be deemed equally guilty of the crime committed.[21] The proof of conspiracy is perhaps most frequently made by evidence of a chain of circumstances.[22]

The prosecution was able to establish that appellant Ocampo together with his companions ate dinner at ABBIE's canteen and after consuming their food and drinks, two members of the group stood up and went to the door while the other two members, Raymundo Visaya and appellant Ocampo approached the counter on the pretense that they were to pay their bills. Visaya drew a knife and attacked the victim who was then eating and seated facing a corner of the restaurant totally unaware of the impending assault on his person. Appellant Ocampo then said, "patayin mo na, patayin mo na" while holding a bottle of coke was about to hit the victim but this was aborted when someone shouted "sibat na". While it was only Visaya who stabbed the victim, appellant Ocampo made no attempt to stop him but instead showed approval of the criminal act by uttering the words, "patayin mo na, patayin mo na". Thus, Visaya and the appellant, by their acts at the time of the aggression, manifested a common intent or desire to kill the victim, so that the act of Visaya became also the act of appellant Ocampo. Moreover, their coordinated escape from the crime scene when somebody shouted "sibat na" confirmed the existence of conspiracy.

Appellant tries to discredit the testimony of prosecution witness Celia Reyes by alleging that although another prosecution witness Magdalena Anasin was present at the crime scene, the latter did not corroborate the testimony of Celia that appellant uttered anything nor saw appellant holding a bottle about to hit the victim.

The argument deserves scant consideration. The Court cannot and does not expect absolute uniformity in every detail, because witnesses react differently to what they see and hear depending upon their situation and state of mind.[23] It is a common experience that the perception of individuals may vary depending on their location and the extent of their peripheral vision. The Court has long acknowledged the verity that different human minds react distinctly and diversely when confronted with a sudden and shocking event, and that a witness may sometimes ignore certain details which at the time might have appeared to him to be insignificant but which to another person, under the same circumstances, would seem noteworthy.[24] In this case, Magdalena testified that when she saw Visaya draw a knife and stab the victim and saw appellant also rush to the victim, she was so afraid and shocked[25] by the incident, thus, she stated that "nawalan ako ng tingin."[26] which explained why she could not have completely narrated every detail of what was said. In contrast, Celia clearly heard the utterances because she was near the appellant.

Appellant also contends that the introduction of additional facts different from what were stated during the investigation immediately after the incident without a valid explanation makes the testimony of witness Celia

Reyes incredible and undeserving of consideration.

We do not agree. It bears emphasis that a sworn statement or an affidavit does not purport to be a complete compendium of the details of the event narrated by the affiant[27] because such affidavits are often executed when an affiant's mental faculties are not in such a state as to afford him a fair opportunity to narrate in full what actually transpired and are sometimes prepared with partial suggestions and inquiries of the administering officer, without the aid of whom the witness may be unable to recall the connected circumstances necessary for his accurate recollection of the subject.[28] Prosecution witness Celia Reyes clarified that the alleged omission was due to the fact that she did not know that it has to be written in detail[29] as she was not specifically asked by the investigator.[30] There is no rule of evidence to the effect that omission of certain particulars in an affidavit or sworn statement would estop an affiant in making an elaboration thereof during the trial.[31]

Appellant further claims that the attack on the victim was not attended by treachery. He contends that prior to the stabbing incident, an altercation ensued between the victim and his group when the victim ordered the latter to stop talking about vomiting as the victim and his wife were then eating dinner, thus the victim must have already expected that he might be met with resistance and should have prepared himself for any eventuality.

We are not persuaded.

The trial court found and we agree that the killing of the victim was attended by treachery which would qualify the killing of Joseph Reyes to murder. Treachery exists when the offender employs means, methods, or forms in the execution of the offense which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[32] The attack should be deliberate and unexpected[33] and the means employed by the malefactor must not give the victim an opportunity to defend himself or to retaliate.[34]

In this case, the evidence shows that accused Raymundo Visaya and appellant Ocampo went to the counter and under the pretense of paying their bills, accused Visaya instead drew a knife from his right side without uttering a word attack and stab the victim who was then seated in a corner facing a wall while eating his dinner. The unsuspecting victim was completely unprepared for the unexpected attack as he was facing a wall and totally deprived of a chance to ward off or escape from the criminal assault. Appellant's claim that an altercation preceded the attack is not supported by the evidence on record as it was established that when the victim told appellant's group to refrain from talking about vomit, the group just continued with their conversation while the victim and his wife continued their dinner, after which, the victim's wife Celia Reyes, went to the counter and waited for the accused to pay the bill.

The defense of appellant Ocampo consisted of alibi and denial which are inherently weak and constitute an "unstable sanctuary for felons"[35] due to the facility with which they can be concocted.[36] For the defense of alibi and denial to prosper, it is not enough to show that the accused was somewhere else when the crime was committed, but that the accused must further demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of the commission thereof.[37] In this case, appellant Ocampo admitted that he was with co-accused Raymundo Visaya inside the ABBIE's canteen but claimed that he went outside the canteen and just waited for his companions to come out; that while outside, he heard the sound of a broken bottle and when he went back to the canteen, he saw Visaya and the victim grappling with each other. Clearly, therefore, it was not impossible for appellant to have been at the crime scene as he was present in the immediate vicinity. Moreover, greater weight is given to the positive narration of prosecution witnesses than to the negative testimonies of the defense. Between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails. We find no cogent reason to disagree with the

trial court's rejection of appellant's alibi in this wise:

"Accused alibi that he was already outside the canteen when the stabbing occurred cannot be given credence in the face of the eyewitnesses' testimony.

Positive identification where categorical and consistent and without any showing of ill motive on the part of eyewitness testifying on the matter prevails over denial and alibi which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law" (See *People vs. Enriquez*, G.R. 124833, July 20, 1998)

A closer look at the testimony of Ocampo would also reveal several instances of inconsistency; (i) he said that the group decided to forego drinking and decided to eat instead at ABBIE's. However, after the stabbing, instead of heeding the advice of Visaya's father to go home, he decided to continue drinking with Visaya in Baras, an indication that they had already drunk prior to eating at ABBIE's canteen; and (ii) it is difficult to believe that he could not have known what happened to the victim when they left the canteen considering the number of wounds inflicted on the victim and the fact that he even witnessed Visaya's father take the knife away from his son.

Granting, arguendo, that Ocampo learned about the killing of Joseph Reyes only when he continued drinking with Visaya in Baras, his subsequent actions nevertheless belies his cry for innocence. Instead of reporting the matter to the authorities, he visited his grandmother and then went home knowing that he was already implicated in the case. Any other man convinced of his innocence would have gone to the nearest police to clear his name. Instead, he went home in all innocence as if nothing really happened and continued to remain deaf and mute to the killing until his arrest."

All told, the core issue raised by the appellant in his brief centers on the credibility of witnesses. The doctrinal rule is that findings of facts made by the trial court, which had the opportunity to directly observe the witnesses, and to determine the probative value of other testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same, an opportunity not equally open to an appellate court.[38] After a thorough review of the records of this case, we are convinced that the trial court did not err in finding accused appellant guilty as charged.

The penalty for murder under Article 248 of the Revised Penal Code is reclusion perpetua to death. There being no aggravating or mitigating circumstances, the trial court correctly imposed the penalty of reclusion perpetua.

WHEREFORE, the appeal is DISMISSED and the assailed decision is hereby AFFIRMED.

SO ORDERED.

Melo (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Penned by Judge Antonio M. Eugenio, Jr., Criminal Case No. 4910-96-C; Rollo, pp. 17-26; Records, pp. 301-310.

[2] Rollo, p.10; Records, p.12.

[3] Records, p. 20.

[4] Records, p. 16; TSN, September 15, 1997, p. 2.

[5] May, 5, 1997, Record, p. 25.

[6] TSN, August 25, 1997, pp. 3-10.

- [7] TSN, September 15, 1997, 2-17.
- [8] TSN, January 16, 1998, pp. 3-7.
- [9] TSN, September 15, 1997, pp. 3-5; TSN, January 16, 1998, p. 4.
- [10] Ibid., pp. 7-8; TSN, January 16, 1998, pp. 4-5.
- [11] TSN, September 15, 1997, pp. 8-13; TSN, January 16, 1998, pp. 5-7.
- [12] TSN, September 15, 1997, pp. 15-16; TSN, January 16, 1998, p.7.
- [13] Records, p. 58, Prosecution Exhibit "B".
- [14] TSN, June 29, 1998, pp. 3-13.
- [15] Rollo, pp. 25-26.
- [16] Rollo, p. 45.
- [17] *People vs. Nava*, 306 SCRA 15 citing Article 8, second par., Revised Penal Code.
- [18] *People vs. Lotoc*, 307 SCRA 471 citing *People vs. Magallano*, 266 SCRA 305.
- [19] *People vs. Macahia*, 307 SCRA 404 citing *People vs. Andres*, 296 SCRA 318; *People vs. Cawaling*, 293 SCRA 267.
- [20] *People vs. Custodio*, 47 SCRA 289.
- [21] *People vs. Quinao, et al.*, 269 SCRA 495.
- [22] *People vs. Miranday*, 242 SCRA 620.
- [23] *People vs. Badon*, 308 SCRA 175.
- [24] *People vs. Bihison*, 308 SCRA 510 citing *People vs. Daen, Jr.*, 244 SCRA 382, 391.
- [25] TSN, January 16, 1998, p. 6.
- [26] Ibid.
- [27] *People vs. Lising*, 285 SCRA 595 citing *People vs. Gabas*, 233 SCRA 77.
- [28] *People vs. Siguin* citing *People vs. Marollano* 274 SCRA 84.
- [29] TSN, September 15, 1997, p. 22.
- [30] Ibid, p. 26.
- [31] *People vs. Lising*, supra, citing *People vs. Gabas*, supra.
- [32] Article 14(16), Revised Penal Code.
- [33] *People vs. Macalino*, 177 SCRA 185.
- [34] *People vs. Belga*, 258 SCRA 583.
- [35] *People vs. Andal*, 279 SCRA 474.
- [36] *People vs. Dacoba*, 289 SCRA 265.

[37] People vs. Dominguez, 217 SCRA 170.

[38] People vs. Andales, 322 SCRA 56 citing People vs. Escandor, 265 SCRA 444.

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