

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WINCHESTER ABUT, RITCHIE WASLO AND GREGMAR BALIGA, ACCUSED.
WINCHESTER ABUT AND GREGMAR BALIGA, APPELLANTS.**

G.R. No. 137601. April 24, 2003

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court for automatic review is the decision[1] of the Regional Trial Court, Cagayan de Oro City, Branch 25, in Criminal Case No. 97-1504, finding appellants Winchester Abut and Gregmar Baliga guilty beyond reasonable doubt of Murder. The trial court sentenced appellant Winchester Abut to death, and appellant Gregmar Baliga only to an indeterminate penalty because of the privilege mitigating circumstance of minority, the trial court appreciated in his favor.

The Charge

On October 27, 1997, an Information was filed charging Winchester Abut, Gregmar Baliga and Ritchie Waslo with murder which reads:

On September 20, 1997, at about 2:00 o'clock early dawn, at the National Park, Bubutan, Tubigan, Initao, Misamis Oriental, which is within the jurisdiction of the Honorable Court, the above-named accused, with intent to kill and taking advantage of superior strength, conspiring, confederating with and mutually helping each other, did, then and there, willfully, unlawfully, and feloniously attack, assault, box, hit, and wound one Edgar Galarpe with the use of their fists, broken bottles, and other deadly weapons, thus, inflicting multiple stab wounds upon the person of the latter which caused his death not long thereafter.

CONTRARY TO and in violation of Article 248 of the Revised Penal Code.[2]

Winchester and Gregmar were arrested. Ritchie remained at-large. Upon arraignment on January 5, 1998, assisted by their counsel, Winchester and Gregmar pleaded not guilty. Trial thereafter ensued with the prosecution presenting Maricar Perez, Rosie Pabila, Al Cailing and Dr. Tammy Uy as witnesses. Winchester and Gregmar testified in their behalf.

The Case for the Prosecution

In the evening of September 19, 1997, Winchester, Ritchie and Gregmar were in the store of Rudy Galarpe at Bubutan, Tubigan, Initao, Misamis Oriental.[3] The three ordered a case of red horse beer and had a drinking spree. They sang with the accompaniment of a video karaoke. Also in the store were Rudy's employee, Maricar Perez, a widow, who was vending chicken barbecue; and the victim, Edgar Galarpe, Maricar's boyfriend; Rosie Pabela and her boyfriend, Al Cailing.[4] Winchester and Al were contemporaries in the Initao National Comprehensive High School. Rosie had been the girlfriend of Winchester before she became the girlfriend of Al. Maricar had been employed for one month in the store of Ritchie's mother before she was employed by Rudy.

At around 2:00 a.m. the following day, Maricar and Edgar and Rosie and Al agreed to take a stroll at the National

Forest Park, which was about one half kilometer away from the store. Upon reaching the park, the two couples sat on the concrete benches facing each other, with a concrete table in between them.[5] Al and Rosie sat on one of the cemented benches facing the national highway[6] while Edgar and Maricar sat on the other bench.[7] Behind Al and Rosie was a pole on which a fluorescent lamp was installed.[8] About fifty meters away from the table was another fluorescent lamp installed near the office of the park administrator. The couples placed the two bottles of red horse beer which they brought along with them on the table. After a few minutes, Winchester, Gregmar and Ritchie arrived.

Winchester told Maricar that he wanted to get acquainted with Edgar, and asked her permission. Maricar agreed. Edgar introduced himself to Winchester, at the same time, extending his hand towards Winchester for a handshake and said: "I am Edgar." Winchester shook hands with Edgar. When Edgar asked for his name, Winchester curtly responded: "King-king ko, Bay." Edgar was dumbfounded when Winchester yanked his hand and immediately boxed him. Edgar fell to the ground. He tried to stand up but Winchester, Gregmar and Ritchie ganged up on him, kicked and mauled him. Ritchie struck the two bottles of red horse beer against the table and hit Edgar with the broken bottles. Winchester astraddled the victim while Ritchie and Gregmar positioned themselves on each side of the victim. The three continued their assault on the victim and stabbed him. Maricar and Rosie saw Edgar being stabbed by Winchester, Gregmar and Ritchie and tried in vain to stop the assault. Edgar pleaded to his attackers to stop assaulting him telling them that he had sustained so many stab wounds already. Frantic, Rosie shouted at Ritchie, Gregmar and Winchester: "What have we done to you? Why did you do that to us?" Although mortally wounded, Edgar stood up and staggered towards the direction of the national highway only to fall down near one of the cemented benches in the park about 10 meters from the table.[9] Winchester wanted to run after Edgar but was prevailed upon by Rosie not to. Gregmar and Ritchie ran after Edgar but returned to the park when Edgar fell down. Afraid that he would be the next victim, Al fled from the park towards the national highway with Ritchie and Gregmar in hot pursuit. Al was able to elude his pursuers. Ritchie and Gregmar rejoined Winchester at the park. Gregmar, Ritchie and Winchester then left the park together. Maricar tried to help Edgar up but he was too heavy for her. She then shouted for help. When Al heard the shouts for help of Maricar, he returned to the park and together with the girls, flagged down a truck. They then boarded Edgar in the truck and had him transported to the Initao District Hospital. However, Edgar was already dead on arrival at the hospital.

Dr. Tammy Uy, the Medico-Legal Officer of the National Bureau of Investigation conducted an autopsy of the victim's body. His post mortem findings are as follows:

Embalmed, fairly well-preserved. Areas of post-mortem greyish-yellowish discolorations are noted.

ABRASIONS, roughly linear: 7X0.3 cms., left side of the chest, infero-medial aspect; 10X0.2 cms., left lower thoracic region between left posterior and mid-axillary lines.

ABRASIONS, confluent, 2X1.5 cms., right elbow; 4X0.7 cms., left forearm, middle third, posterior aspect; 5X6 cms., right knee region; 6X3 cms., left knee region.

STAB WOUNDS, non-penetrating; two (2) in number; elliptical in shapes; measuring 1.7 cms. long and 2.1 cms. long; located at the left scapular region of the back and middle third of right forearm, posterior aspect, respectively; edges, clean-cut; extremities are modified by embalming; both directed forward, downward, medially; involving only the skin and underlying soft tissues and muscles; with approximate depths of 2.2 cms. and 2.5 cms., respectively.

STAB WOUNDS, non-penetrating; twelve (12) in number; triangular in shapes; with average sizes of 0.4X0.4X0.4 cm.; two (2) are located at the chest, six (6) at the back, two (2) at the left upper arm, one (1) at the dorsum of right hand, and one (1) at the middle third of right thigh, posterior aspect; with contused edges;

involving only the skin and underlying soft tissues and muscles; with approximate depths ranging between 0.6 cm. and 3.7 cms.

STAB WOUNDS, penetrating; four (4) in number; triangular in shapes; with average sizes of 0.4X0.4X0.4 cm.; one (1) is located at the left side of the chest, medial aspect, and three (3) at the left lower thoracic region of the back; with contused edges; involving among others, the skin and underlying soft tissues and muscles, the pericardium and right ventricle of the heart, the lower lobe of the left lung, the lower lobe of the left lung and the lower lobe of the left lung, (sic) respectively, with approximate depths of 6.5 cms, 6 cms, 5.5 cms, and 7.5 cms, respectively.

HEMOPERICARDIUM, about 30 cc. embalmed blood.

HEMOTHORAX, left, about 400 cc. embalmed blood; left lung, atelectatic.

Stomach, empty. Heart chambers, empty of blood. Brain and other visceral organs, embalmed and fairly well-preserved.

x x x x x x x x

CAUSE OF DEATH: Hemorrhage, severe, secondary to multiple stab wounds.[10]

The Defenses and Evidence of the Accused

Gregmar and Winchester denied assaulting and stabbing Edgar. They claimed that it was Ritchie alone who stabbed and killed the victim.

Winchester testified that before he left Sitio Bubutan for Manila, he and Rosie had been sweethearts. However, they broke up before Winchester left for Manila. Winchester was employed for seven months in a printing press in Manila. He had to return on September 14, 1997 to Bubutan when his father died. However, Winchester was peeved when his father was buried even before his arrival. In the meantime, Winchester and Rosie reconciled.

On September 19, 1997, late in the evening, Winchester, Gregmar and Ritchie were in the store of Rudy Galarpe at Bubutan, Tubigan, Initao, Misamis Oriental. They sang with the accompaniment of a video karaoke. With them were Maricar Perez, the girlfriend of Ritchie and Rosie Pabilan who were listening to the singing and the karaoke. At about 2:00 a.m. the following day, Rosie and Maricar left the store telling Ritchie that they were going to the park in the forest and for him and Winchester to follow them. The two women left the store first, followed by Ritchie and Winchester and Gregmar. When they reached the park, Winchester, Ritchie and Gregmar saw that the two women were with Edgar Galarpe and Al Cailing seated on the benches made of cement. Winchester then asked Maricar if he, Winchester, could get acquainted with Edgar, and Maricar agreed. Winchester then extended his hand towards Edgar and introduced himself, thus: "Kiking ako, parts" (I am Kiking, parts). However, Edgar abruptly pulled the hand of Winchester and boxed Winchester on the neck. Winchester and Edgar then fought each other. Ritchie and Al likewise fought with each other. Maricar intervened and pacified Ritchie and Al. Edgar and Winchester continued boxing each other. Winchester fell down when Edgar hit him. When he saw his friend Winchester down on the ground, Ritchie struck the bottles of red horse beer against the table and hit Edgar with the broken bottles. Edgar fled from the park towards the national highway. Ritchie, armed with a knife, ran after Edgar. Al also fled from the park. On the other hand, Winchester and Gregmar remained in the park with Maricar and Rosie. Ritchie later rejoined Winchester and Gregmar in the park. They then left the park together. On September 22, 1997, Winchester was arrested by policemen for the death of Edgar.

Winchester adduced evidence that on September 23, 1997, he was examined and treated by Dr. Jaima Roa, the Municipal Health Officer, for the following injuries:

- Old contusion right middle arm lateral portion about 1½ inch in a semi circular.[11]

Gregmar testified that he was born on January 15, 1980. To buttress his testimony, he adduced in evidence his Certificate of Live Birth[12] and his Elementary School Permanent Record[13] showing that he was born on January 15, 1980. He also testified that on his way to the park with Winchester and Ritchie, he tarried because he had to defecate. After he had defecated, he heard a woman shouting for help from the direction of the park. He rushed to the park and saw Edgar mauling Winchester. Winchester fell to the ground. Edgar then knelt on the back of Winchester and mauled him anew. Ritchie stabbed Edgar several times and fled from the park.

The Verdict of the Trial Court

On October 9, 1998, the trial court rendered its Judgment[14] with the following dispositive portion:

IN THE LIGHT OF THE FOREGOING CONSIDERATIONS, this Court hereby finds both accused, WINCHESTER ABUT and GREGMAR BALIGA, GUILTY BEYOND REASONABLE DOUBT of the crime of MURDER, in conspiracy with each other as principals by direct participation.

Considering that the crime was committed by both accused Winchester Abut and Gregmar Baliga when the penalty for Murder was amended by R.A. 7659, effective January 1, 1994, the said penalties found in said law is applicable and hereby sentences the accused, WINCHESTER ABUT to DEATH BY LETHAL INJECTION.

Accused Gregmar Baliga, who is still below 18 years when the crime was committed, is sentenced to an indeterminate penalty of Ten (10) years of Prison Mayor as minimum to Seventeen (17) years and four (4) months of Reclusion Temporal as the maximum term.

The two accused, WINCHESTER ABUT and GREGMAR BALIGA are ordered to pay Seventy Five Thousand Pesos (P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri", "sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 75,000.00) to the herein offended party as indemnity and another Seventy Five Thousand Pesos (P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri", "sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 75,000.00) as moral damages, and to pay the costs.

SO ORDERED.[15]

Winchester and Gregmar, now appellants, assail the decision of the trial court contending that:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE GUILT OF ACCUSED-APPELLANTS FOR THE CRIME CHARGED WERE PROVEN BEYOND REASONABLE DOUBT.

II

GRANTING THAT HEREIN ACCUSED-APPELLANTS ARE GUILTY IN KILLING THE VICTIM, THE

COURT A QUO GRAVELY ERRED IN CONVICTING THEM OF THE CRIME CHARGED INSTEAD OF THE LESSER OFFENSE OF HOMICIDE.

III

GRANTING FURTHER THAT HEREIN ACCUSED-APPELLANTS ARE GUILTY OF THE CRIME CHARGED, THE COURT A QUO GRAVELY ERRED IN IMPOSING THE SUPREME PENALTY OF DEATH UPON ACCUSED-APPELLANT WINCHESTER ABUT.[16]

On the first assignment of errors, the appellants assert that Ritchie alone assaulted and killed the victim. The prosecution failed to prove that the appellants conspired with Ritchie to assault and kill the victim. They did not intend to assault and kill the victim. They and Ritchie proceeded to the park from the store of Rudy Galarpe merely to get acquainted with the victim and Al and not to assault or kill him. The appellants could not have conspired with Ritchie to assault and kill the victim because (a) appellant Winchester was shaking hands with the victim when Ritchie broke two bottles of red horse beer prompting the victim to violently pull the hand of the appellant; (b) Rosie was able to pull away appellant Winchester from Edgar; (c) it was Ritchie alone who pursued the victim as the latter staggered from the park towards the national highway; (d) appellant Gregmar was still defecating while the victim was being mauled, assaulted and stabbed by Ritchie; (e) even as Maricar, Rosie and Al were carrying the victim to the truck, Rosie and Maricar were talking with the appellants and Ritchie, hence, the women were aware that the assault and killing of the victim were the result of an uncontrolled outburst of emotions. Maricar, Rosie and Al could not have identified and pin-pointed who among the appellants and Ritchie assaulted and stabbed Edgar considering that the moon was dimly lit and that the fluorescent lamp installed near the office of the park administrator was about fifty meters away from the situs criminis.

The Court is not persuaded by the contentions of the appellants.

By challenging their identification by the witnesses of the prosecution, as the assailants of the victim, the appellants thereby attacked the credibility of said witnesses and the probative weight of their testimonies. But the legal aphorism is that when the issue of credibility of witnesses is involved, the findings of facts of the trial court, its calibration of the testimonies of witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded by the appellate court high respect if not conclusive effect precisely because of the unique advantage of the trial court in observing and monitoring at close range the demeanor, deportment and conduct of the witnesses as they testify unless the trial court has overlooked, misconstrued or misinterpreted cogent facts of substance which if considered might affect the result of the case.[17]

In this case, there is no showing that the trial court overlooked, misunderstood, misapplied or misconstrued any facts of substance that would have materially affected the outcome of the case. The trial court found the collective testimonies of the witnesses of the prosecution straightforward, positive and credible, in contrast to the testimonies of the appellants. The trial court correctly concluded that the appellants conspired with Ritchie in assaulting and stabbing the victim to death and that all of them are criminally liable for the death of the victim. The appellants cannot thus argue that Maricar, Rosie and Al could not have seen the appellants stab and kill the victim.

A conspiracy exist when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To establish conspiracy, direct evidence is not required. It is not even essential that there be proof of the agreement to commit the felony. Proof of concerted action of the accused before, during and after the crime which demonstrates their unity of design and objective is sufficient. This Court had consistently ruled that conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly independent were in fact

connected, showing a closeness of former association and concurrence of sentiment. To hold one as a co-principal by reason of conspiracy it must be shown that he performed an overt act in pursuance of or furtherance of the conspiracy, although the acts performed might have been distinct and separate. This overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting a moral ascendance over the other co-conspirators by moving them to execute or implement the criminal plan. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all.[18] It matters not who among the accused inflicted the fatal blow to the victim.[19]

In this case, the evidence on record indubitably shows that after introducing himself to the victim, appellant Winchester pulled the hand of the victim and boxed him. Ritchie broke two bottles of beer and hit the victim with the broken bottles. The appellants and Ritchie ganged up and assaulted the victim. Not content, they stabbed the victim repeatedly. Maricar narrated how the appellants and Ritchie by their collective acts killed the victim, thus:

Q

And after Edgar Galarpe said his name to Winchester Abut, what did Winchester Abut say?

A

Winchester Abut did not answer when Edgar Galarpe said “How about you, Partner? What is your name?”

Q

And what happened after that?

A

Then Richie (sic) Waslo got the two Red Horse bottle which were still cold.

Q

And what happened to these bottles?

A

The two Red Horse bottles were broken.

Q

Then, what happened?

A

They immediately attacked Edgar.

Q

Who are these who attacked Edgar Galarpe?

A

Winchester Abut, Richie Waslo and Gregmar Balega.

Q

How did they suddenly attack Edgar Galarpe? How about Winchester Abut?

A

Winchester Abut boxed Edgar Galarpe.

Q

Where was he hit?

A

I was not able to notice where Edgar Galarpe was hit because there was already a rumble. He was ganged up by the three.

Q

How about Al Cailing? Where was he during the rumble?

A

Al Cailing was near us.

Q

What about Waslo? What specifically did he do when you said he ganged up on Edgar Galarpe? On the part of Waslo, what specifically did he do by way of attacking Edgar Galarpe?

A

Richie Waslo kept on boxing Edgar Galarpe.

Q

Do you recall where was Edgar Galarpe hit by Richie Waslo?

A

I cannot recall.

Q

What happened to Edgar Galarpe when he was boxed by Richie Waslo?

A

When Edgar Galarpe was continuously boxed, he fell down.

Q

How about Gregmar Balega? What specifically did he do by way of attacking Edgar Galarpe?

A

Still the same. Gregmar Balega kept on boxing Edgar Galarpe. The three of them took turns in attacking Edgar Galarpe.

Q

How about the bottle in which the group brought?

A

The bottle that was broken was left in the table.

Q

You mentioned after awhile that Edgar Galarpe fell down. What did accused do when Edgar Galarpe fell down?

A

That was the time when Winchester Abut rode on top of Edgar Galarpe, while Gregmar Balega was on one side, while Richie Waslo was on the other side.

Q

Now, what was Winchester Abut doing to Edgar Galarpe when he was riding on top of Edgar Galarpe?

A

They kept on stabbing, but I did not see what was the instrument used by them in stabbing Edgar Galarpe because the moonlight was not quite bright.

Q

How was Edgar Galarpe positioned while lying on the ground?

A

At first Edgar Galarpe was lying on his back, but after awhile, he was able to lie on his face to the ground because he struggled so that he can stand up.

Q

Was he able to stand up?

A

After awhile, when Richie Waslo left, he was able to stand up because when I pulled up, Winchester Abut, Edgar Galarpe shouted enough because I have many stab wounds already.

Q

How about Rosie Pabela? What was she doing all the while?

A

Rosie Pabela pulled out Winchester Abut and kept on shouting, “What have we done to you?,” and “why did you do this to us?”[20]

Al Cailing corroborated the testimony of Maricar when he testified on direct and cross examinations, thus:

Q

And who was this one who introduced himself?

A

Winchester Abut introduced himself.

Q

How did he do that?

A

When they arrived they met Maricar Perez and Maricar said, “you are here King, introduce yourself” and so he said, King-King ko, Bay, meaning, “I am King- King, Bay.”

Q

When he said King-King ko Bay, to whom did he say those words?

A

Winchester Abut addressed those words to Edgar Galarpe.

Q

And what was the answer of Edgar Galarpe?

A

Edgar Galarpe answered, “I am Edgar, Bay.”

Q

After that, what happened next?

A

When King-King released the hand of Edgar Galarpe, he immediately boxed Edgar Galarpe and so Edgar Galarpe stood up, but he was ganged up.

Q

Who ganged up Edgar Galarpe?

A

Winchester Abut, Gregmar Baliga and Ritchie Walso ganged up Edgar Galarpe.

Q

When they ganged up Edgar Galarpe, what happened to Edgar Galarpe?

COURT:

Slowly. Before that, ask how?

Q

How did they gang up Edgar Galarpe?

A

The three accused helped one another in stabbing Edgar Galarpe.

COURT:

What did they use?

A

I cannot exactly determine what were the instruments used by them in stabbing Edgar Galarpe because there were insufficient illumination of light.

Q

While they were ganging up Edgar Galarpe, what happened to Edgar Galarpe?

A

(What happened to) Edgar Galarpe fell down.

Q

And when Edgar Galarpe fell down, what did Wichester (sic) Abut do?

A

Winchester (sic) Abut was brought by Rosie Pabila towards the seashore. [21]

x x x x x x x x

Q

So, immediately thereafter, Winchester Abut introduced himself to you?

A

Yes, Mam.

Q

And he suddenly boxed Edgar Galarpe?

A

Immediately after releasing the hands of Edgar Galarpe because they were shaking hands.

Q

Without any reason, he immediately boxed Edgar Galarpe?

A

Yes, Mam.

Q

How about Ritchie Waslo, what was he doing then?

A

Then, the three accused helped one another in mauling Edgar Galarpe.

Q

Is it not a fact, Mr. Cailing, that this Winchester Abut fell down before there (there) was a commotion among this group and the group of Winchester Abut.

A

Winchester Abut did not fall down.

Q

But, you are ascertain (sic), Mr. Cailing, that when there was a commotion, you left the place instead of helping Edgar Galarpe?

A

Edgar Galarpe and attempted to run away and Edgar Galarpe was chased by the two accused, Winchester (sic) Abut and Gregmar Baliga and I was chased by Ritchie Waslo.

Q

So, it is not true that the three accused ganged up Edgar Galarpe? There was first a chasing of Edgar Galarpe by the two accused, Winchester Abut and Gregmar Baliga and against you by Ritchie Waslo?

A

At first, Edgar Galarpe was ganged up by the three accused and when Edgar Galarpe and myself attempted to run away, I was chased by Ritchie Waslo while Edgar Galarpe was chased by Winchester Abut and Gregmar Baliga, but Edgar Galarpe did not run because he was already wounded.

Q

But, you did not see who stabbed Edgar Galarpe?

A

I saw that Edgar Galarpe was stabbed by the three accused.

Q

Despite the fact, the three accused ganged up Edgar Galarpe, you did not do anything?

A

I attempted to help Edgar Galarpe, but I was also afraid and so, I ran away.

Q

You are telling now the court that only the girls or the females who helped Edgar Galarpe when there was a commotion?

A

It did not take long and I came back because Maricar Perez was shouting for me to come back.[22]

Rosie Pabila likewise testified that the appellants and Ritchie stabbed the victim several times.[23]

As shown in the autopsy report of Dr. Tammy Uy, the victim sustained eighteen stab wounds on the chest, arms, thighs and at the back, as well as abrasions.[24] The finding of the trial court that the appellants stabbed the victim is buttressed by the testimony of the doctor that the assailants used two kinds of weapons, a single or double-bladed instrument or object and a sharp-pointed instrument with three sides (tres cantos):

Q

The next entry are stab wounds. Where are these located?

A

These two stab wounds are located at the left scapular region of the back or left shoulder blade region, and the other is located at the posterior aspect of the forearm.

Q

What could have caused these two stab wounds?

A

Considering that these stab wounds are elliptical (sic) in shape they could have been caused by any sharp-bladed object or instrument.

Q

Such as a knife?

A

Yes.

Q

How deep are these stab wounds?

A

Well, the size are 1.7 cm long and 2.1 cm long and they have an approximate depth of 2.2 cm and 2.5 cm, respectively.

Q

Do you consider those stab wounds as fatal?

A

No.

Q

Could you estimate how deep is that with your finger?

A

2.5 cm is rough which is equivalent of one inc. 2.2 cm is almost one inch.

Q

Could you tell if the size or sharp-pointed instrument used was single or double-bladed?

A

I could not tell that. It could be single or double-bladed.

Q

The next entry is twelve stab wounds. Could you point?

A

These twelve non-penetrating stab wounds are described in my report. As to shape, they are triangular in shape.

Q

What could have caused these stab wounds?

A

These could have been caused by a sharp-pointed instrument with three sides.

Q

Such as a file?

A

A file (limbas or tres cantos).

Q

These stab wounds are fatal?

A

Considering that all of them are non-penetrating, if they are taken individually they are non-fatal. As to location, two are located at the chest; six at the back; two at the left upper arm; one at the back of the right hand; and one in the middle third of the right thigh posterior aspect, back of the right thigh.

Q

Would you say that the wound found on the dorsal portion of the hand could be called as a defensive wound?

A

Yes, it is possible.

Q

How about the other wounds at the forearm which you mentioned in Entry No. 3?

A

The one at the posterior aspect of the left forearm is highly indicative of a defensive wound.

Q

The last entry is also stab wounds, four in number and penetrating. Where are these located?

A

These are located on the following: One is found on the left side of the chest medial aspect or near the center of the body; the other three are located at the left lower thoracic region of the back, more or less below the left shoulder blade region (witness demonstrating).

Q

What kind of weapon was used in the infliction of these four stab wounds?

A

Well, these could have been caused by a sharp-pointed object or instrument with three sides or three corner or tres kantos.

Q

All the four stab wounds?

A

Yes.

Q

Could you determine which of the penetrating stab wound was caused first?

A

I cannot determine that, sir. I can only say that all these stab wounds sustained by the victim were inflicted on the fact while he was still alive.

Q

Could you hazard an educated guess of what position was the victim at the time he was stabbed with these penetrating wounds?

A

Well, with respect to the left side of the chest, most probably they were, more or less, facing each other while the three at the back is that most probably the assailant was, more or less, at the back of the victim.

Q

Would you say that the victim was lying at that time when the wounds were inflicted on him?

A

That is possible.

Q

Which of these stab wounds was fatal?

A

Each of them could be fatal because the one at the chest involved the heart, while the three at the back involved the lungs.

Q

Are you trying to say that the one found on the left chest caused injury of the heart?

A

Yes.[25]

Although Ritchie alone pursued the victim as he staggered from the situs criminis, however, by then the victim had already been assaulted and repeatedly stabbed by the appellants and Ritchie. The appellants cannot thus argue that Ritchie alone is criminally liable for the death of the victim. As against the collective positive testimonies of the witnesses of the prosecution coupled with the physical evidence on record pointing to the appellants and Ritchie as the perpetrators of the crime, the bare denial of the appellants which are merely negative self-serving evidence cannot prevail.[26] Besides, there is no evidence on record that the three witnesses of the prosecution had any ill motives to testify against the appellants and ascribe to them the commission of a heinous crime for which the appellants could be meted reclusion perpetua or even the death penalty. It would run counter to the natural order of events and of human nature and contrary to the presumption of good faith for the prosecution witnesses to falsely testify against the appellants if, indeed, they are innocent.[27]

In sum, the appellants are criminally liable for the death of the victim.

The Crime Committed by the Appellants

On the second and third assignment of errors, the appellants aver that they are guilty only of homicide as defined in Article 249 of the Revised Penal Code, and not of murder. Even if it is assumed that the appellants are guilty of murder, the proper penalty for the crime is reclusion perpetua and not the death penalty. Although the crime is qualified by abuse of superior strength, however, treachery was not alleged in the information; and hence, treachery should not be considered as an aggravating circumstance in the commission of the crime.

The trial court correctly convicted the appellants of murder with the qualifying circumstance of abuse of superior strength. However, the trial court erred in appreciating treachery against the appellants. There is treachery when the offender commits any of the crimes against persons employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. In order that treachery may be appreciated as a qualifying circumstance, it

must be shown that: a.) the malefactor employed means, method or manner of execution affording the person attacked no opportunity to defend himself or to retaliate; and b.) the means, method or manner of execution was deliberately or consciously adopted by the offender. The second is the subjective element of treachery.[28] Treachery must be proved by clear and convincing evidence as conclusively as the killing itself. In the absence of any convincing proof that the accused consciously and deliberately adopted the means by which they committed the crime in order to ensure its execution, the Court must resolve the doubt in favor of the accused.[29] In this case, the prosecution failed to prove that the mode or manner of execution was deliberately or consciously adopted by the appellants when they stabbed the victim. Appellant Winchester first boxed the victim. The appellants and Ritchie then mauled and kicked the victim. There is no evidence that at the outset, they had decided to stab and kill the victim. It was only at the late stage of the assault that the appellants and Ritchie stabbed the victim. The Court believes that after ganging up on and mauling the victim, the appellants, at the spur-of-the moment, decided to stab the victim. Thus, the subjective element of treachery was not present.[30] However, the appellants and Ritchie abused their superior strength. They boxed and kicked the victim without let up. They mauled and kicked the victim even as he was already sprawled on the ground. The victim was outnumbered. As against the combined strength of the appellants and Ritchie, the victim was helpless. There was indubitably inequality of strength between the victim and the appellants and Ritchie.[31]

The Proper Penalties

Under Article 248 of the Revised Penal Code, the penalty for murder is reclusion perpetua to death. There being no modifying circumstances in the commission of the crime other than the qualifying circumstance of abuse of superior strength, appellant Winchester Abut should be sentenced to reclusion perpetua conformably with Article 63 of the Revised Penal Code.

The penalty imposed by the trial court on appellant Gregmar Baliga which is from ten years of prision mayor as minimum to 17 years and 4 months of reclusion temporal, as maximum is correct. The appellant was seventeen and eight months old when the crime was committed and under Article 68 of the Revised Penal Code, the penalty for the crime should be reduced by one degree.

Civil Liabilities of the Appellants

The trial court awarded to the heirs of the victim Edgar Galarpe P Normal 0 false false false EN-PH X-NONE X-NONE 75,000 as civil indemnity and P Normal 0 false false false EN-PH X-NONE X-NONE 75,000 as moral damages. The decision of the trial court must be modified. Conformably with the current jurisprudence, the appellants are obliged to pay in solidum the heirs of the victim, Edgar Galarpe, the amount of P Normal 0 false false false EN-PH X-NONE X-NONE /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-parent:""; mso-padding-alt:0cm 5.4pt 0cm 5.4pt; mso-para-margin-top:0cm; mso-para-margin-right:0cm; mso-para-margin-bottom:10.0pt; mso-para-margin-left:0cm; line-height:115%; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi; mso-fareast-language:EN-US;} 50,000 as civil indemnity.[32] However, they are not liable for moral damages because the prosecution failed to present the heirs of the victim to prove said damages.[33]

IN LIGHT OF ALL THE FOREGOING, the decision of the Regional Trial Court of Cagayan de Oro City, Branch 25, in Criminal Case No. 97-1504 is AFFIRMED with MODIFICATIONS. Appellants Winchester Abut and Gregmar Baliga are found guilty beyond reasonable doubt of murder under Article 248 of the Revised Penal Code qualified by abuse of superior strength. There being no other modifying circumstances in the commission of

the crime, appellant Winchester Abut is sentenced to suffer the penalty of reclusion perpetua. Appellant Gregmar Baliga is sentenced to suffer an indeterminate penalty of from ten (10) years of prision mayor in its medium period, as minimum, to seventeen (17) years and four (4) months of reclusion temporal in its medium period, as maximum. Said appellants are hereby ordered to pay in solidum the heirs of the victim, Edgar Galarpe, the amount of P50,000 as civil indemnity. The award for moral damages is deleted.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J., , Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, and Azcuna, JJ., concur.

Quisumbing, J., on official leave.

[1] Penned by Judge Noli T. Catli.

[2] Records, p. 2.

[3] TSN, April 1, 1988; Records, p. 177.

[4] TSN, January 12, 1998, pp. 3-4.

[5] Exhibit "B."

[6] Exhibits "B-1" and "B-3."

[7] Exhibits "B-2" and "B-4."

[8] Exhibit "B-5."

[9] Exhibit "C-1."

[10] Records, p. 13.

[11] Exhibit "I."

[12] Exhibit "2."

[13] Exhibit "2-A."

[14] Rollo, p. 22.

[15] Id., at 29-30.

[16] Rollo, pp. 62-63.

[17] People vs. Aquino, 329 SCRA 247 (2000); People vs. Ratunil, 334 SCRA 721 (2000).

[18] People vs. Ponce, 341 SCRA 352 (2000).

[19] People vs. Canoy, 328 SCRA 385 (2000); People vs. Go-od, 331 SCRA 612 (2000); People vs. Pama, 216 SCRA 385 (1992); People vs. Liquiran, 228 SCRA 62 (1993); People vs. Sequiño, 264 SCRA 9 (1996).

[20] TSN, Perez, January 12, 1998, pp. 7-10.

[21] TSN, Cailing, January 20, 1998, pp. 7-8.

[22] TSN, Cailing, February 2, 1998, pp. 4-5, *supra*.

[23] TSN, January 14, 1998, pp. 11-12.

[24] Exhibit "A."

[25] TSN, Uy, January 9, 1998, pp. 7-10, *supra*. (Emphasis supplied)

[26] *People vs. Orio*, 330 SCRA 576 (2000).

[27] *People vs. Macaliag*, 337 SCRA 502 (2000).

[28] *People vs. Arellano*, 334 SCRA 775 (2000).

[29] *People vs. Orio*, *supra*.

[30] *People vs. Arellano*, *supra*.

[31] *People vs. San Andres*, 326 SCRA 223 (2000).

[32] *People vs. Quimson*, 366 SCRA 581 (2001).

[33] *Id.*

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