

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO TAMAYO, JULIO TAMAYO, FLORENCIO PATALINGHUG, JR., A.K.A. FELIX PATALINGHUG, JR., AND NATIVIDAD TAMAYO (ACQUITTED), ACCU...

G.R. No. 138608. September 24, 2002

Ponente: CORONA, J.

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CORONA, J.:

Accused Rolando Tamayo, Julio Tamayo, Florencio Patalinghug, Jr.,^[1] and Natividad Tamayo were charged with double murder before the Regional Trial Court of the Seventh Judicial Region (Branch 62, Oslob, Cebu) in an information dated November 29, 1994, to wit:

That on October 25, 1994 at 7:30 o'clock in the evening, more or less, at sitio Tubod, Cerdeña, Municipality of Malabuyoc, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating and mutually helping with one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously assault, attack and shoot Leodegario Fuentes and Renante Fuentes, with the use of unknown caliber handgun, thereby inflicting upon them multiple gunshot wounds which caused their instantaneous death.

CONTRARY TO LAW.^[2]

After a plea of not guilty was entered, the accused filed motions for admission to bail before the Regional Trial Court of Cebu City, Branch 20, where this case was originally raffled. However, these motions were denied by said court in an order dated March 25, 1996.

With the creation and operation of RTC-Oslob, Cebu on February 15, 1996, this case was ordered unloaded from RTC-Cebu City, Branch 20, and transferred to RTC-Oslob, Cebu, Branch 62, in an amended order dated September 23, 1996. Further presentation of prosecution evidence was thereafter conducted in the latter court.

The prosecution presented several witnesses.

Lilia Fuentes recalled that at about 7:30 o'clock in the evening of October 25, 1994, she was having dinner with her husband, Leodegario, and their six children in their house at Cerdeña, Malabuyoc, Cebu, when they heard the dogs barking. Leodegario was about to check why the dogs were barking when three persons whom she identified as Rolando Tamayo, Julio Tamayo and Florencio Patalinghug, Jr., suddenly barged into their house through an unlocked kitchen door. Rolando came first, followed by Julio who was holding a flashlight and Florencio who entered last. Julio focused the flashlight on Leodegario's face and seconds later, Rolando shot Leodegario on the chest. After shooting Leodegario, Rolando fired his gun again, this time hitting Renante, 18-year old son of Leodegario and Lilia. Overcome with fear, Lilia embraced her other children who were crying. She saw Rolando aiming his gun at them. She heard three clicks from the gun but fortunately the gun did not fire. Thereafter, Rolando, Julio and Florencio left, dragging Renante out of the house. Lilia then gathered the rest of her children

and, while going down the stairs of their house, Lilia saw Natividad Tamayo, the wife of Julio, hurriedly walking away from their house. Lilia and her children went to the house of their neighbor, Helen Ambos, to seek refuge. After an hour, they proceeded to the house of Amalia Fuentes, Lilia's niece, and stayed there until the morning of the following day. That day, the dead body of Renante was found some 200 meters away from their house. On October 27, 1994, Lilia reported the incident to the police.[3]

SPO2 Faustino Filipinas of Malabuyoc Police Station testified that at around 2 o'clock in the morning of October 26, 1994, Alex Cardines, a barangay tanod of Cerdeña, Malabuyoc, Cebu, reported a shooting incident, allegedly perpetrated by Rolando Tamayo, Julio and Natividad Tamayo, and Florencio Patalinghug, Jr. On October 27, 1994, Lilia lodged a complaint against the four accused for the death of her husband Leodegario and son Renante. That same morning, Rolando and Julio were arrested while Natividad and Florencio were arrested the following day.[4]

Dr. Danilo Cabigon, Municipal Health Officer of Malabuyoc, Cebu, testified that he conducted a post-mortem examination on the cadavers of the victims on October 26, 1994. Dr. Cabigon's autopsy showed that Leodegario sustained one gunshot wound above the right chest. He declared that Leodegario died "due to hemorrhage, thoracic cavity due to gunshot wound, penetrating the big blood vessel and right lung." On the other hand, his post-mortem examination of Renante's body revealed that the victim sustained a single gunshot wound on his left chest which resulted in massive hemorrhage causing death.[5]

The defense presented its own version through its witnesses.

Accused Natividad Tamayo claimed that at around 7 o'clock in the evening of October 25, 1994, she was eating her supper along with husband, Julio, and daughter, Leonida, in their house at Cerdeña, Malabuyoc, Cebu. After finishing her household chores, she went to sleep at about 8:30 o'clock in the evening. On October 26, 1994, while she and Julio were working at their farm at Sitio Lapad Bato, a barangay tanod approached and told them that they needed to go to the barangay hall to clarify some important matters. It was then that they learned they were being implicated in the death of Leodegario and Renante Fuentes.[6]

Julio Tamayo corroborated his wife Natividad's testimony in all points material to their common defense.[7]

Rey Cardente, a relative of Helen Ambos, declared that in the evening of October 25, 1994, he was at the house of Helen Ambos when a nervous Lilia Fuentes arrived and told Helen that Leodegario and Renante were shot. But when asked who committed the crime, Lilia answered that she did not know. She just continued sobbing.[8]

Accused Rolando Tamayo claimed that, at the time of the alleged incident, he was at home for a novena prayer in honor of the Blessed Virgin Mary. After the event, all the participants went home except for Gregorio Balansag who opted to spend the night at Rolando's house. The next day, Rolando was invited for questioning at the barangay hall. There he saw his father, Julio, and mother, Natividad, and learned that the three of them were implicated in the killing of Leodegario and Renante Fuentes.[9]

Gregorio Balansag affirmed the testimony of Rolando Tamayo that a novena prayer was held at Rolando's place from 6:30 p.m. to 8:00 p.m. on October 25, 1994. He stayed at Rolando's house for the night and all the time that he was there, Rolando did not go out of his house.[10]

Crisanto Cardente, a neighbor of Florencio Patalinghug, Jr. at Cerdeña, Malabuyoc, Cebu, testified that in the afternoon of October 25, 1994, he met Florencio Patalinghug, Jr. who invited him to come to his house for the death anniversary of his younger sister. He had dinner with Florencio's family and went home at around 11 o'clock in the evening. He was sure that Florencio did not leave the house that night.[11]

Accused Florencio Patalinghug, Jr., a resident of Cerdeña, Malabuyoc, Cebu, asserted that, on October 25, 1994, he was at home for the death anniversary of his younger sister. The affair lasted until 11:00 p.m. The next morning, a policeman brought him to the house of Lilia Fuentes where he was asked whether he knew who killed Leodegario and Renante. He answered that he did not know who the perpetrators were. He even helped in cleaning the caskets of the victims. On October 28, 1994, while peddling mangoes in Malabuyoc, Cebu, he was approached by a policeman who told him that he was being invited for investigation by the Chief of Police of Malabuyoc, Cebu. The policeman asked him to pin down the Tamayos as the persons responsible for the killing of Leodegario and Renante, otherwise, he would be included as one of the accused. He admitted knowing his co-accused as he used to work at their farm.[12]

The prosecution presented Carmelita Cardaño as a rebuttal witness. She maintained that no novena prayers were held on October 25, 1994 inasmuch as the image of Our Lady of Fatima had already been transferred to another sitio. She further averred that she was always present everytime there was a prayer meeting as she was usually the prayer leader. In fact, she never saw Rolando Tamayo in any of the novena prayers.[13]

On September 15, 1998, the trial court rendered the assailed decision, the dispositive portion of which reads:

WHEREFORE, the Court finds accused Julio Tamayo, Rolando Tamayo and Florencio Patalinghug, Jr. guilty of the crime of Double Murder beyond reasonable doubt and they are hereby sentenced to suffer the penalty of reclusion perpetua each for two (2) counts and to indemnify the heirs of the victims jointly and severally the sum of P100,000.00 as civil indemnity.

Accused Natividad Tamayo is hereby acquitted for insufficiency of evidence.

The Provincial Warden, Cebu Provincial Detention and Rehabilitation Center (CPDRC) Cebu City is hereby directed to discharge from custody the live person of accused Natividad Tamayo immediately upon receipt hereof, unless there is any other cause for which she should continue to be detained.

Cost to be taxed against the three (3) accused also jointly and severally.

SO ORDERED.[14]

Only accused Florencio Patalinghug, Jr. interposed the instant appeal, contending that the trial court erred:

I. IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION'S LONE EYEWITNESS, LILIA FUENTES;

II. IN RULING THAT THE ACCUSED-APPELLANT'S DEFENSE OF ALIBI CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION BY PROSECUTION'S LONE EYEWITNESS;

III. IN RULING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION WAS SUFFICIENT TO CONVICT HE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT OF TWO (2) COUNTS OF MURDER; AND

IV. IN FINDING THE ACCUSED-APPELLANT GUILTY OF TWO (2) COUNTS OF MURDER AND SENTENCING HIM TO SUFFER THE PENALTY OF RECLUSION PERPETUA FOR EACH COUNT.[15]

The first and second assignments of error being interrelated, shall be discussed together.

In assailing the decision of the trial court, accused-appellant attacks the credibility of the lone eyewitness, Lilia Fuentes, wife and mother of victims Leodegario and Renante, respectively, alleging that Lilia's version was replete with improbabilities and inconsistencies. Accused-appellant also tries to discredit Lilia by claiming that she could not have positively identified him because the assault happened in the dark as the exact place where the

crime was committed was lit only by a kerosene lamp.

We do not agree. Lilia Fuentes positively established the presence of accused-appellant in her house on the night of October 25, 1994 and we find no reason to disturb the trial court's evaluation of her testimony. She testified on direct examination as follows:

Atty. Abellana: (to witness)

Q - Who entered first into your house when those three men barged your door?

A - Rolando Tamayo.

Q - Who followed him?

A - Julio Tamayo.

Q - Who was next?

A - Nickname is Felix and the full name is Florencio Patalinghug.

Q - Why do you know them?

A - Because they are from that place, sitio Kaluktugan.

Q - If Rolando Tamayo is in the court room now, will you please point him out?

A - (Witness pointing to a man and when asked, he identified himself as one Rolando Tamayo.)

Q - How about Julio Tamayo, if he is in the courtroom, will you please point him out?

A - (Witness pointing to man and when asked, he identified himself as one Julio Tamayo.)

Q - How about Felix Patalinghug?

A - (Witness pointing to a man and when asked, he identified himself as one Felix Patalinghug.)

Q - What happen (sic) when those three (3) persons entered into your house?

A - Julio Tamayo was the one bringing the flashlight and beam the light to my husband and Rolando Tamayo was the one who shot my husband.

Q - Was your husband hit when your husband was shot by Rolando Tamayo?

A - Yes, he was hit.

Q - Where was your husband hit?

A - On his breasts.

Atty. Abellana: (to witness)

Q - What did the three do especially Rolando Tamayo after shooting your husband?

A - He fired again and then it was my son who was hit.

Q - To what direction this second shot was made to which your son was being hit?

A - Towards my son.

COURT: (to witness)

Q - How old is your son?

A - 18 yrs. old your Honor.

Atty. Abellana: (to witness)

Q - What is the name of your son again?

A - Renante Fuentes.

Q - When Rolando Tamayo shoot his firearm for the second time, was your son hit?

A - Yes, sir.

Q - Where was he being hit?

A - He shouted, "Ma, naigo ko!" (Ma, I was hit.)[16]

Also, on cross-examination, Lilia declared:

Q: On the day of the incident, there was no moon?

A: I was not able to notice if there was moon because of fear but it was a little bright.

ATTY. SON:

Q: When you used the term 'a little bright' or 'hayag', what was the source of that light?

A: From the sky. xxx"[17]

x x x x x x x x

Q: Now, you mentioned yesterday that there was light coming from the sky, did that light reached (sic) the inside portion of your house?

A: There was light inside our house, sir, because we have lamps.

x x x x x x x x

Q: Alright, that lamp which you said was inside the house, emitted light inside the house, is that correct?

A: Yes, because there was light in the sala and also there was light in the kitchen

Q: Bright enough, when a person goes inside the house, he can be seen?

A: Yes, sir.

Q: How far were you from the door when the 3 accused allegedly entered and barged into your house?

A: About one meter more or less. [18]

Indubitably, Lilia was able to identify accused-appellant because she was at the scene of the crime. In fact, she was situated at a distance of only about one meter from the accused-appellant and his companions. Likewise, there was ample illumination coming from the lamps located in the kitchen and living room of their house. Further, the flashlight used by Julio Tamayo adequately improved the lighting condition of the place. Illumination produced by a kerosene lamp or flashlight is sufficient to allow identification of persons.[19]

Accused-appellant also attempts to make much capital out of inconsistencies in the testimony of Lilia. He specifically points to the declaration of Lilia that at the time he, Julio and Rolando entered her house, the kitchen

was illuminated by a gas lamp which was on a table between herself and the three assailants.[20] However, when the trial court sought clarification on the exact location of the gas lamp, Lilia stated that the table was in the living room and not in the kitchen.[21] These conflicting statements, accused-appellant insists, makes the witness' credibility doubtful.

The contradictions in the testimony of the eyewitness Lilia pointed out by accused-appellant refer to a very minor detail which is not sufficient to overthrow the probative value accorded by the trial court to her testimony. It has been our standard ruling that minor inconsistencies and contradictions in the testimony do not affect the credibility of witnesses. On the contrary, they may even be considered badges or manifestations of truthfulness and thus enhance a witness' credibility.[22]

The defense argues that the trial court (Regional Trial Court of Oslob, Cebu, Branch 62) had no opportunity to observe and examine the demeanor of the prosecution's eyewitness Lilia because her testimony was given before the Regional Trial Court of Cebu City, Branch 20 during the hearings on the application for bail filed by all the accused. Thus, the conclusions and findings of the trial court should not be given evidentiary weight.

Contrary to accused-appellant's contention, the fact that Judge Jesus dela Peña (who rendered the appealed decision) was not the one who heard the testimony of the eyewitness will not per se warrant a reversal of the decision, more so when the judgment is fully supported by the evidence on record as in the case at bar. This Court has ruled that, while the trial judge who presided at the trial would be in a better position to ascertain the truth or falsity of the testimony of the witnesses, it does not necessarily follow that a judge who was not present during the trial cannot render a valid and just decision. This is in fact the main reason why all trial courts are mandatorily required to be courts of record. Whoever is tasked to render judgment in a case can rely on the transcribed stenographic notes taken during the trial as the basis for his decision.[23] In this case, Judge dela Peña's evaluation of Lilia's testimony is supported by the evidence on record. It is settled that the trial court's factual findings are binding on this Court when they are supported by the evidence on record.[24]

Accused-appellant further claims that Lilia's behavior while the shooting incident was happening and her failure to immediately report the crime were contrary to human nature and experience. It is an accepted fact that people react differently in particular situations and respond to stimuli in varying ways and degrees. Witnesses of startling occurrences do not react similarly, depending on the situation and their state of mind.[25]

Lilia mentioned in her testimony that, after her husband and son were shot, she was terrified and all she could do was embrace her little children. Clearly, what was foremost in her mind then was to shield her children from the same tragedy that struck her husband and son. Truly, no clear-cut standard form of behavior can be drawn. If Lilia did not run for cover after her husband and son were shot, it was because she was terrified and this was perfectly normal.

Accused-appellant also hinges his defense on alibi. For such a defense to prosper, it is not enough for the accused to prove that he was somewhere else when the crime occurred. He must also demonstrate that it was physically impossible for him to have been at the scene of the crime.[26]

Accused-appellant claims that when the shooting occurred, he was at home commemorating the death anniversary of his younger sister. However, his house was only one kilometer away from where victim Leodegario Fuentes and his family lived. Thus, it was not physically impossible for him to have been at the scene of the crime.

Moreover, positive identification by an eyewitness prevails over the defense of alibi.[27] Hence, accused-appellant's attempt to exculpate himself through alibi must fail.

The third assignment of error pertains to the issue of conspiracy among Julio Tamayo, Rolando Tamayo and

accused-appellant. In ruling that there was conspiracy among the three accused, the trial court relied mainly on the testimony of the eyewitness, Lilia Fuentes, who testified that she saw the three accused enter her house and shoot her husband and son.

We disagree with the trial court on this respect. Article 8 of the Revised Penal Code provides that “a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.” There is need for “concurrence of wills” or “unity of action and purpose” or for “common and joint purpose and design.” Admittedly, direct proof of a previous agreement need not be established for conspiracy may be deduced from the acts of the accused pointing to a joint purpose, concerted action and community of interest.[28] Nevertheless, except in the case of the mastermind of a crime, it must also be shown that the accused performed an overt act in furtherance of the conspiracy.[29] Mere knowledge, acquiescence or approval of the act, without the cooperation or agreement to cooperate, is not enough to make one a party to a conspiracy. As this Court has repeatedly stated, criminal conspiracy must be established, not by conjectures but by positive and conclusive evidence. In fact, the same quantum of proof necessary to establish the crime is required to support a finding of conspiracy, that is, proof beyond reasonable doubt.[30]

Lilia Fuentes’ testimony regarding accused-appellant’s participation in the shooting of her husband and son consisted of the following: (1) he was one of the three men who entered her house on the night of October 25, 1994 and (2) he, together with the two other accused, dragged the body of Renante out of the house after Renante was shot by Rolando Tamayo. Lilia’s testimony contained nothing that could indicate that accused-appellant directly participated in the overt act of shooting the victims. The fact that accused-appellant was with the other accused when the crime was committed is insufficient proof of conspiracy. Mere presence at the scene of the crime does not amount to conspiracy. The prosecution must establish conspiracy beyond reasonable doubt.[31] The testimony of Lilia failed to do so.

However, though accused-appellant’s presence was not enough to prove conspiracy, he was definitely not an innocent spectator either. He was at the scene of the crime to aid or abet the commission thereof. This made him not a conspirator but an accomplice.

An accomplice is one who knows the criminal design of the principal and cooperates knowingly or intentionally therewith by an act which, even if not rendered, the crime would be committed just the same.[32] To hold a person liable as an accomplice, two elements must be present: (1) the community of criminal design, that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose and (2) the performance of previous or simultaneous acts that are not indispensable to the commission of the crime.

It is significant to note that the plan to kill the Fuenteses could have been accomplished even without accused-appellant’s participation. It should be noted further that he was unarmed that night. The prosecution evidence has certainly not established that accused-appellant was part of the conspiracy to kill the victims. The lack of such complete evidence of conspiracy impels this Court to impute to him a milder form of responsibility, i.e., guilt of a mere accomplice. The resolution of the fourth assignment of error is relevant in view of its effect on accused-appellant’s penalty.

Accused-appellant asserts that the qualifying circumstances of treachery and evident premeditation were not properly established in this case, thus the crime committed was not murder.

Under our penal law, treachery is present when the attack is sudden and unexpected, and renders the victim unable to defend himself. Even if the attack is frontal, treachery may still exist when it is done in a sudden and unexpected manner, and the victim is not given any chance to retaliate and defend himself, thus ensuring the safety of the malefactors.[33] In the present case, it is obvious that the victims were caught off-guard by the

unexpected attack of the assailants. The victims were having dinner when Julio, Rolando and Florencio surreptitiously entered their house and, without warning, shot the victims who were at that time unarmed and completely unaware of any impending danger to their lives. There was no way the victims could have defended themselves from the assailants' treacherous attack.

However, the prosecution was not able to prove evident premeditation. For this circumstance to be appreciated, there must be proof, as clear as that of the killing, of the following elements: (1) the time when the offender determined to commit the crime; (2) an act indicating that he clung to his determination; and (3) sufficient lapse of time between determination and execution to allow himself time to reflect upon the consequences of his act.^[34] None of these elements was proven in this case. Evident premeditation could not therefore aggravate the offense committed.

All told, the crime committed is murder and the penalty prescribed for it is reclusion perpetua to death. Under Article 63 of the Revised Penal Code, where two indivisible penalties are prescribed for an offense and there is neither mitigating nor aggravating circumstances in the commission of the crime, the lesser penalty shall be applied. Inasmuch as no mitigating or aggravating circumstance attended the commission of the offense, the lesser penalty of reclusion perpetua shall be imposed on the principal accused. On the accused-appellant as an accomplice, the proper penalty is one degree lower than that of a principal. He is also entitled to the benefits of the Indeterminate Sentence Law.

WHEREFORE, the appeal is hereby **PARTIALLY GRANTED**. Accused-appellant Florencio Patalinghug, Jr. is convicted as an accomplice, not as a principal, in the crime of murder. He is therefore sentenced to an indeterminate prison term of 8 years and 1 day of prision mayor as minimum, to 14 years 8 months and 1 day of reclusion temporal as maximum, for each of the two counts of murder. He shall also, jointly and severally with the other accused, pay as civil indemnity the amount of P50,000 for each count.

SO ORDERED.

Puno, (Chairman), Panganiban, Sandoval-Gutierrez, and Morales, JJ., concur.

[1] Also referred to as Felix Patalinghug, Jr. in the record.

[2] Rollo, p. 6.

[3] TSN, April 6, 1995, pp. 4-13; May 11, 1995, pp. 7-10.

[4] TSN, March 31, 1995, pp. 2-13.

[5] TSN, June 30, 1995, pp. 4-5.

[6] TSN, July 8, 1997, pp. 25-32.

[7] TSN, August 19, 1997, pp. 4-14.

[8] TSN, September 23, 1997, pp. 4-10.

[9] TSN, October 13, 1997, pp. 3-12.

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

[11] TSN, February 9, 1998, pp. 3-8.

[12] TSN, March 10, 1998, pp. 13-19.

- [13] TSN, April 20, 1998, pp. 2-5.
- [14] Rollo, p. 33.
- [15] Rollo, p. 64.
- [16] TSN, April 6, 1995, pp. 6-7.
- [17] TSN, April 6, 1995, pp. 6-7.
- [18] TSN, May 12, 1995, pp.3-4.
- [19] *People vs. Loste*, 210 SCRA 614 [1992] .
- [20] TSN, May 12, 1995, p.4.
- [21] TSN, June 8, 1995, p.8.
- [22] *People vs. Gaspar*, 318 SCRA 649 [1999] .
- [23] *People vs. Peralta*, 237 SCRA 220 [1994] .
- [24] *People vs. Salimbago*, 314 SCRA 282 [1999] .
- [25] *People vs. Halili*, 245 SCRA 340 [1995] .
- [26] *People vs. Estepano*, 307 SCRA 701 [1999] .
- [27] *People vs. Rabang, Jr.*, 315 SCRA 451 [1999] .
- [28] *People vs. Andres*, 296 SCRA 318 [1998] .
- [29] *People vs. De Roxas*, 241 SCRA 369 [1995] .
- [30] *People vs. Del Rosario*, 305 SCRA 740 [1999] .
- [31] *People vs. Albao*, 287 SCRA 129 [1998] .
- [32] *People vs. Corbes*, 270 SCRA 465 [1997] .
- [33] *People vs. Benito*, 303 SCRA 468 [1999] .
- [34] *People vs. Sumalpong*, 284 SCRA 464 [1998] .

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