

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE LLANES Y PABICO, ALLAN RINON Y PABICO, ROLAND GAMBA Y PABICO, HOMERIANO DAYAON Y PABICO, AND OSCAR PABICO Y DE AUSTRIA, A...

G.R. No. 140268. September 18, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

This is an appeal from the decision of the Regional Trial Court finding Jose Llanes y Pabico, Allan Riñon y Pabico, Roland Gamba y Pabico, Homeriano Dayaon y Pabico and Oscar Pabico y De Austria, guilty of Murder, committed as follows:

That on or about October 12, 1992 at around 11:00 o'clock in the evening at Barangay Bagasbas, municipality of Daet, province of Camarines Norte, and within the jurisdiction of this Honorable Court, the above-named accused by conspiring, confederating and helping with one another and by means of treachery and superior strength and with intent to kill unlawfully, feloniously and criminally, did then and there, attack, assault, strike, and hit one Jaime Cootauco y Villa, Jr. with an iron pipe and fist blows inflicting upon Jaime Cootauco y Villa, Jr. mortal and fatal wounds on his head which caused his death to the damage and prejudice of the heirs of Jaime Cootauco y Villa, Jr.

CONTRARY TO LAW.[1]

Upon arraignment, all the accused, assisted by their counsels, pleaded not guilty to the crime charged.

Trial ensued after which, judgment was rendered on January 12, 1999, the dispositive portion of which reads:

WHEREFORE, premises considered, proof beyond reasonable doubt has overcome the constitutional presumption of innocence of the accused and has clearly established their guilt, accused JOSE LLANES y PABICO, ALLAN RINON y PABICO, ROLAND GAMBA y PABICO, OSCAR PABICO y DE AUSTRIA and HUMERIANO DAYAON y PABICO conspired, confederated and mutually helped each other for the consumation (sic) of the crime charged, they are hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to pay the heirs of the deceased FIFTY THOUSAND PESOS (P50,000.00) each for the death indemnity and for mental anguish and wounded feelings suffered by the heirs of the victim, the Court awards THIRTY THOUSAND PESOS (P30,000.00) as moral damages.

SO ORDERED.[2]

The prosecution presented as their witnesses Marlon Tejada and Pio Malubay from the Daet PNP Station; companions of the victim, Nenito Cambronero, Jim Llanto, and Allan Cabezudo; Records Officer, Marilyn Susano of the Camarines Norte Provincial Hospital; and, Atty. Winston S. Racoma.

The facts, as established by the prosecution, are as follows:

On October 12, 1992 at about 10 o'clock in the evening, the group of Nenito Cambronero, Jim Llanto, Allan

Cabezudo, Francia Manumbas and the victim, Jaime Cootauco, Jr. went to the Bagasbas Beach, Daet, Camarines Norte to have some fun and to breathe fresh air. They later decided to go to the De Los Santos Beerhouse to have a drink. Inside the beerhouse, the appellants, Jose Llanes y Pabico, Allan Riñon y Pabico, Roland Gamba y Pabico, Humeriano Dayaon y Pabico and Oscar Pabico y de Austria were already there having a drinking spree. They were noisy, laughing, clapping their hands, walking to and fro and banging the stools. The group of Nenito Cambronero ordered a bottle of gin. Jaime Cootauco did not join in the drinking because he was not feeling well. After several minutes of stay at said beerhouse, Jaime Cootauco asked permission to leave and told his group that he would take a rest in one of the cottages along the beach. Later, all the appellants went out of the beerhouse.[3] Suddenly a shout from outside of the beerhouse was heard saying “May binubugbug!”[4] Nenito Cambronero followed by Allan Cabezudo and Jim Llanto ran outside and saw that there was a commotion in one of the cottages.[5] As they approached the cottage, Nenito Cambronero saw that it was their companion, Jaime Cootauco who was being mauled by the group. He saw Roland Gamba hit the victim in the head, his chin and the back of the head with a lead pipe while the other appellants were holding the hands of the victim and at the same time kicking him.[6] When Nenito Cambronero and companions came closer in order to help the victim, the appellants ran away from the cottage towards the sea. The moon was very bright so Nenito Cambronero, Allan Cabezudo and Jim Llanto saw their faces and from the shirts they were wearing, recognized the appellants to be the same group drinking inside the beerhouse. Jaime Cootauco was bloodied particularly on the face, head and left chin. He was brought to the hospital where he later died. Nenito Cambronero reported the incident to the police.[7] The Autopsy Report[8] revealed that the cause of death was due to the following:

1. Large depressed comminuted fracture Parieto-Occipital Area, Left;
2. Subdural and Epidural hemorrhages;
3. Massive cerebral hemorrhages and contusions, all lobes;
4. Partly macerated brain tissue, Left Hemisphere;

During the investigation conducted by the Daet PNP, Roland Gamba executed an extra-judicial confession whereby he admitted that he was one of the perpetrators of the crime.[9] The extra-judicial confession, signed by appellant Roland Gamba was executed in the presence of Atty. Winston S. Racoma. The pertinent portion of which reads as follows:

xxx

- T - Alam mo ba kung bakit ikaw ay nasailalim ng imbestigasyon or pagsisiyasat na ito?

S - Opo Dahilan po sa aking pag-amin sa isang kreming naganap sa Brgy Bagasbas, Daet, Camarines Norte.

- T - Anong klaseng krimen naman ang sinasabi mo na iyong inamin na naganap sa Brgy Bagasbas, Daet, Camarines Norte?

S - Dahilan po sa p[agkapatay ko kay Jaime Cootauco Jr.

- T - Kailan naman naganap ang pangyayaring ito?

S - Noong pong Lunes na gabi ika 12 ng Oktobre 1992 ganap na ila 11:00 ng gabi ang oras humigit kumulang.

- Maaari mo bang isalaysay kung paano naganap ang pangyayaring ito?

S - Noong pong ila 12 ng Oktobre 1992 ganap na ika 11:00 ng gabi ang oras humigit kumulang habang kami ng aking mga kasamahan ay nagiinuman sa look ng Delos Santos Store ay dumating namn (sic) ang isang grupo ng kalalakihan na kasama na dito itong nagngangalang Jaime Cootauco Jr. at siya ay nagsiupuan din sa delos Santos Store at sila ay nag-inuman din at hindi nagtagal ay lumabas itong si Jaime Cootauco at ako ay sumundo (sic) sa kanyan (sic) sa paglabas ng Delos Santos Store at ako ay napadaan sa isang deep well at kinuha ko ang isang tubo at pagdating ko naman sa isang cottage na malapit sa sea wall kami at nagkatinginan nitong si Jaime Cootauco at bigla ko na lang siyang pinagpapalo ng aking dala dalang tubo at pagkatapos ko

siyang paluin ng aking daladalang tubo ako naman ay mabilis na tumako (sic) at ako ay nagdaan sa sea wall at nagtuloy na ako sa aming bahay sa Purok Ii, Brgy Bagasbas, Daet, Camarines Norte.

- T - Pagkatapos na siya ay iyong biglang pagpapaluin ng isang tubo ano naman ang sumunod na pangyayari?

S - Tumakbo na po akong palayo at ako ay dumaan pa sa Runway na daladala ko pa ang tubong ginamit ko sa kanya hanggang sa ako ay makarating na sa aming bahay at kinabukasan ay narinig ko sa Radyo na namatay na ang tao ng pinagpapalo ko ng tubo na nagngangalang Jaime Cootauco

- T - Matagal mo ba ng kilala itong si Jaime Cootauco Jr.?

S - Ngayon na lang po nalaman na ang taong pinagpapalo ko noong nasabing oras at petsa sa loob ng cottage at namatay ay nagngangalang Jaime Cootauco.

- T - Sino-sino naman ang mga kasamahan ng maganap ang pangyayaring ito?

S - Ako lang po at wala ng iba.

- T - Pansamantala ang ibestigador (sic) ay wala ng sasabihin sa iyo ikaw ba ay may nais na idagdag o bawasin sa mga salaysay mong ito?

S - Wala na po.

- T - Handa mo bang lagdaan ang mga sinabi mo sa salaysay mong ito?

S - Opo.

- T - Ikaw ba ay tinakot o binayaran upang umamin lang sa kasong ito?

S - Hindi po. Sa katunayan nga po ako ay nagsurrender pa sa Police.

WAKAS NG SALAYSAY, October 15, 1992, Daet, Camarines Norte.[10]

For the defense, each of the accused testified in his own behalf. Other defense witnesses Manuel Mapano and Wilfredo Calzada were also presented.

Roland Gamba testified that on October 12, 1992 at about 11 o'clock in the evening, he was at the De Los Santos Store in Bagasbas, Daet, Camarines Norte with the other co-accused having a drinking spree. At around 11:30, he left the place leaving behind his companions. He alleged that he was already drunk so he went straight home to sleep.[11] He did not recall any untoward incident that happened that night. He learned about the incident through the radio the next morning, October 13, 1992 where his name was mentioned as one of the perpetrators of the crime.[12] At 2:30 that afternoon, he went to the police station to surrender together with Jose Llanes and Homer Dayaon.[13]

Roland Gamba averred that he executed the extra-judicial confession after being promised that he would be released from detention. He was also convinced by Gene Dayaon, the father of his co-accused, Homeriano Dayaon to sign the affidavit so that he could be freed and was promised that he would be given "sustento." [14] He further alleged that he did not engage the services of Atty. Racoma. While it is true that Atty. Racoma saw him affix his signature on the confession, he was, however, not advised of its consequences.[15]

Oscar Pabico testified that he was at the De Los Santos Beerhouse that night with the other co-accused. While at the store, he heard somebody shout from outside that somebody was being mauled. He and his companions hurriedly went home when there was already a commotion. While drinking in the beerhouse, the group was discussing about "Pangkristiyanong Pamumuhay" (PAKRISPAM) and did not talk about killing or mauling anybody.[16]

For his part, Jose Llanes testified that he was at the De Los Santos Beerhouse with Homeriano Dayaon, Oscar Pabico and Allan Riñon at about 11 o'clock that evening of October 12, 1992. They drank only about two small bottles of San Miguel Beer and were talking about PAKRISPAM. They stayed in the beerhouse until 11:00 and

went home. He asserted that no untoward incident happened that night.[17]

Homeriano Dayaon likewise testified that he was at the De los Santos Beerhouse with his co-accused that night. They consumed only about two bottles of beer when he heard somebody shout from outside that somebody was being mauled. The shout came from a distance of about twenty meters from where he was. When there was a commotion already, he was at the door ready to leave. Allan Riñon was behind him. Oscar Pabico and Jose Llanes were just paying their orders and also about to leave.[18]

He knew Roland Gamba who passed by the place and partook also of the beer they were drinking. He asserted that Roland Gamba stayed only a few minutes and left earlier than the others. They heard about the commotion but did not want to get involved since they felt dizzy because of the beer they took.[19]

Allan Riñon testified that he was at the De los Santos Beerhouse with the other four co-accused having a drinking spree. His group and the owner, Rogelio De los Santos were the only ones in the beerhouse at 10:00 that evening. He noticed a group come in later but did not know them. His second cousin, Roland Gamba came in and joined their group but stayed only for twenty minutes. The group stayed in the store until 11:00 and they all went home. No untoward incident happened that night when they went home. He, however, noticed another group having a drinking spree in the store but said group was still there when they left.[20]

Aside from the accused-appellants, the defense presented Manuel Mapano who testified that he was with his girlfriend that night at the beerhouse. When they arrived in the beerhouse at about 10:30 that evening, he already saw the two groups having their respective drinking sprees in the first floor so he and his girlfriend opted to stay in the second floor of the beerhouse. After thirty minutes, they heard somebody shout: "May binubugbog." His girlfriend requested him to go down to look into the commotion. Downstairs, he was met by Jose Llanes who introduced him to his other companions. He alleged that the introductions lasted about thirty minutes after which he and his girlfriend went home.[21]

Wilfredo Calzada also testified that on October 12, 1990 at about 11:00 in the evening, he went to the Bagasbas Resort to fetch his daughter who was selling cigarettes. He saw Homeriano Dayaon, Oscar Pabico, Allan Riñon and Jose Llanes buying cigarettes from a store from whom he asked for some sticks of cigarettes. Thereafter, he heard a shout and a commotion. He averred that when he heard the shout, he saw two of the accused still seated inside the store because they were drinking while the two others were standing. There was no movement from any of them when there was also already a commotion outside of the beerhouse. He, however, hurriedly left to fetch his daughter and went home.[22]

In this appeal, the following assignment of errors were made:

I

THAT THE COURT A QUO ERRED IN ITS FINDINGS OF FACTS THAT ARE NOT SUPPORTED BY THE EVIDENCE ADDUCED BY THE PROSECUTION.

II

THAT THE COURT A QUO ERRED IN GIVING CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES NENITO CAMBRONERO, JIM LLANTO AND ALLAN CABEZUDO WHICH ARE INCONSISTENT, DOUBTFUL, UNCERTAIN, CONTUMACIOUS, AMBIGUOUS AND UNRELIABLE TO BE THE BASIS OF CONVICTION.

III

THAT THE COURT A QUO CLEARLY ERRED IN FINDING THAT THE APPELLANTS HEREIN HAD

CONSPIRED WITH ROLAND GAMBA IN THE KILLING OF THE VICTIM WHEN THERE IS COMPLETELY NO EVIDENCE OF CONSPIRACY ADDUCED BY THE PROSECUTION.

IV

THAT THE COURT A QUO ERRED IN CONVICTING THE APPELLANTS OF THE CRIME OF MURDER INSTEAD OF ACQUITTING THEM ON THE BASIS OF REASONABLE DOUBT.[23]

The appeal is without merit.

When it comes to the issue of the credibility of the witnesses, this Court will generally not disturb the factual findings of the trial court for it is in the better position to examine the real evidence, observe the demeanor of the witnesses and can, therefore, discern if the witnesses are telling the truth or not. Thus, absent any showing of a fact or any circumstance which the trial court failed to appreciate and which, if considered may alter the result, the factual findings as found by the trial court remain binding upon us.

In the case at bar, the victim's companion Nenito Cambronero gave a direct and straight narration of the events which evinces only the truthfulness of his testimony. A witness who testifies in a categorical, straightforward, spontaneous and frank manner and remains consistent is a credible witness.[24] Nenito Cambronero was certain that he saw the appellants maul the victim which led to the latter's death. He testified, to wit:

X X X

Q

Last October 12, 1992, at about 10:00 o'clock p.m., do you still recall where were you then?

A

Yes, Sir.

Q

Now, do you have companions on that particular date and time?

A

Yes, Sir.

Q

Who were you companions on that particular date and time?

A

Jimmy Yanto, Allan Cabezudo, Jaime Cootauco, Jr., Francia Manumbas and me, Sir.

Q

Where were you then on that particular date and time together with these persons you mentioned?

A

We went to Bagasbas, Sir.

FISCAL VILLAFUERTE:

Q

Could you probably tell us for what purpose you went to Bagasbas on that particular date and time?

A

To breath fresh air.

Q

And this Bagasbas that you mentioned, in what municipality is this located?

A

Daet, Camarines Norte.

Q

Were you able to reach Bagasbas on that particular time and date?

A

Yes, Sir.

Q

While you were at Bagasbas, Daet, Camarines Norte, what did you do?

A

We were invited by Allan Cabezudo to drink a bottle of gin in Delos Santos beer house.

Q

Did you accede to his invitation?

A

Yes, Sir.

Q

When you reached the Delos Santos beer house what did you do?

A

We sat before a table and Allan ordered a bottle of gin and nagaraya peanuts.

Q

When you arrived in that particular beer house, were there persons inside the beer house?

A

Yes, Sir.

Q

How many tables were occupied when you arrived?

A

Three (3) tables.

Q

While you were taking or partaking the drinks at that time, did you notice anything unusual?

A

There was.

Q

What?

A

While we were drinking, they were walking at our side and banging on the stools.

Q

And to whom are you referring when you said they?

A

To five (5) of them. (Witness referring to the accused.)

Q

Do you mean to say that these persons you pointed to were already inside the beer house when you arrived?

A

They were already there.

Q

What were they doing inside the beer house when you arrived, these persons whom you pointed to?

A

They were drinking.

Q

And while they were drinking, what did you notice on them?

A

They were noisy, they were laughing and they were tapping their hands.

x x x[25]

FISCAL VILLAFUERTE:

Q

For how long did you stay in the beer house on that particular evening?

A

More or less one (1) hour.

Q

You and your companions, how many of you drunk gin on that night?

A

Four (4), Sir

Q

Who were they?

A

Allan Cabezudo, Francia Manumbas, Jimmy Yanto and myself.

Q

What about Jaime Cootauco Jr., did he parttake (sic) also in the drinking of that gin?

A

No, Sir, he did not parttake (sic) the drinks. He just sat beside us.

Q

Will you tell us why he did not parttake (sic) drinking of gin?

A

He was just listening the conversation.

xxx

Q

Now Mr. Witness, you said that while you were taking the gin that evening Jaime Cootauco Jr. was just sitting there and just listening because he was not parttaking (sic) the drink. While Jaime Cootauco was there, what was he doing there aside from listening?

A

After several minutes, he asked permission to leave because according to him he will rest to (sic) one of the cottages.

Q

Did you permit him to do so?

A

Yes, Sir.

Q

What happened next when Jaime Cootauco Jr. left your group and allegedly went to a cottage nearby to rest?

A

After several minutes the five (5) men beside us also went out.

Q

These five men that you referred to, how are they related to the five accused in this case?

COURT:

Q

Who went out?

WITNESS:

A

They, Sir. (Witness pointing to the accused.)

FISCAL VILLAFUERTE:

Q

After they left the place, what did you do?

A

We saw them that they went to one of the cottages and we suspected that they are going to do something.

Q

Why did you have that suspicion?

A

We were thinking that they might have followed one of our companions.

Q

What happened next after these five men left the beer house?

A

We followed the five men, Sir.

Q

And what happened after that?

A

We saw them mauling Jaime Cootauco.

Q

So what did you do?

A

When we were about to succor Jaime Cootauco, they hurriedly ran away.

Q

Now, this mauling that you saw of Jaime Cootauco, where was this done?

A

Inside the cottage.

Q

And how were you able to identify these accused as the one who mauled Jaime Cootauco?

A

We came to know them by their faces because we saw them face to face for quite sometime.

Q

How were you able to know that they are the same persons whom you saw mauling Jaime Cootauco?

A

They are the ones whom we saw in the cottage.

ATTY. AYO:

May we request, Your Honor, that the phrase “inabot namin sa cottage” be recorded as the first answer of the witness.

FISCAL VILLAFUERTE:

Q

When you said “inabot” what do you mean of that?

A

We saw them.

Q

When they were running, were you able to see them?

A

Yes, Sir.

Q

And you were able to see their persons clearly?

A

Yes, Sir.

Q

Considering that it was nighttime and you were on the beach, how were you able to see them?

A

The moon was very bright.

Q

And you could not be possibly mistaken as to their identity?

A

No, Sir.

Q

To be the same persons as the one whom you saw inside the beer house?

A

Yes, Sir.

Q

Upon seeing Jaime Cootauco mauled by these persons and these accused whom you mentioned ran away, what did you do?

A

We lifted him, (Jaime Cootauco) and brought him to the hospital.

Q

And after bringing him to the hospital, what did you do next?

A

We went to the police station.

x x x[26]

On cross-examination, Nenito Cambronero gave a more detailed account of what he witnessed in the cottage.

x x x

ATTY. AYO:

Q

You said that you saw the group of five (5) mauling Mr. Jaime Cootauco, is it true?

A

Yes, Sir.

Q

All of them were hitting Mr. Jaime Cootauco?

A

Some were holding and some were hitting Mr. Jaime Cootauco.

Q

You said that the accused Roland Gamba was hitting Jaime Cootauco with a lead pipe, what were the others doing?

x x x

WITNESS:

A

The others were holding Jaime Cootauco, Your Honor.

COURT:

Q

Who are these others who were holding Jaime Cootauco?

A

Homerino (sic) Dayaon, Allan Renion (sic), Jose Llanes and Oscar Pabico.

x x x

ATTY. AYO:

Q

Mr. Witness, if you will be asked to re-enact the incident, what was the position of Jaime Cootauco and what were the relative positions of the accused if using your body as of Mr. Jaime Cootauco?

A

Mr. Jaime Cootauco was standing and he was held by the hands and then he fell.

x x x

COURT:

Q

When for the first time have you seen these accused?

A

On October 12, Your Honor.

Q

Where and what time?

A

At delos Santos Store, at about 10:00 o'clock in the evening, more or less.

Q

At the place of the incident, have you seen these accused?

A

Yes, Your Honor.

Q

You have seen the respective participation as regards the offense charged, is that correct?

A

Yes, Your Honor.

Q

And you could not identify and pinpoint as to who and as to what extent the participation of each anyone, if you could still remember?

A

Yes, Your Honor.

COURT:

Proceed.

x x x

ATTY. AYO:

Q

Who was holding the left hand of Mr. Cootauco?

A

Allan Renion (sic) and Oscar Pabico, Sir.

Q

They were holding the left hand of Mr. Cootauco?

A

Yes, Sir.

Q

Who among them was holding the right hand of Mr. Jaime Cootauco?

A

Jose Llanes, Sir.

Q

What was their position relative to your position when you saw them? Were they facing you while holding the hands of Mr. Jaime Cootauco?

A

They were facing me.

Q

And so Mr. Cootauco was facing you too?

A

Yes, Sir.

Q

And Mr. Roland Gamba was also facing you?

A

He was sidewise.

x x x

ATTY. AYO:

We would like to ask the witness how tall and big was Mr. Jaime Cootauco?

WITNESS:

A Taller than me and bigger than me.

ATTY. AYO:

Q

Mr. Witness, using the Court Interpreter as Mr. Jaime Cootauco, could you show to us how Mr. Jaime Cootauco was being mauled?

x x x

A

And I was in front of the cottage.

Q

And what was your distance from the group?

A

More or less five (5) meters.

Q

So Mr. Roland Gamba was not facing you but facing Mr. Jaime Cootauco, whom he was hitting?

A

His side towards me.

Q

How was Mr. Roland Gamba hitting Mr. Cootauco?

A

He was hitting Jaime Cootauco from his side, hitting Jaime Cootauco bellow (sic) his chin. And when he (Jaime Cootauco) fell on the ground, Roland Gamba was hitting him at the back of his head.

Q

So Mr. Witness, you saw Mr. Roland Gamba to the right of the victim Mr. Jaime Cootauco?

A

Yes, Sir.

Q

And Mr. Roland Gamba first hit Mr. Jaime Cootauco on the chin?

A

Yes, Sir.

Q

And when Mr. Jaime Cootauco fell because of that blow, Mr. Cootauco fell on his face?

A

Yes, Sir, he fell downward.

Q

And when he was already down on the ground, it was the time when Mr. Roland Gamba hit Mr. Jaime Cootauco at the back of his head?

A

Yes, Sir.

Q

And all the while you were taking a view of that mauling incident from a distance of 4 or 5 meters apart?

A

Yes, Sir.

Q

And you were with your other companions Allan Cabezudo, Francis Manumbas and Jimmy Yanto?

A

Yes, Sir.

Q

So we can presume Mr. Witness that they saw what you saw?

A

Yes, Sir.

Q

And Mr. Cootauco was hit by Mr. Gamba only two (2) times, is that right?

A

Many times. I could not count.

Q

Because even when you were already there viewing the mauling incident, the group still continued mauling Mr. Cootauco?

A

Yes, Sir.

Q

So you first saw Mr. Roland Gamba hitting Mr. Cootauco on the chin and on the head?

A

Yes, Sir.

Q

It was the first act of the accused that you saw?

A

Yes, Sir.

Q

So from Delos Santos Store, when you went out, you saw that Mr. Roland Gamba was hitting the victim on the chin and on the head?

A

Yes, Sir.

Q

And after that what did you still see aside from Mr. Gamba hitting two (2) times Mr. Cootauco?

A

When he fell down, he was continuously hit by Mr. Gamba.

COURT:

Q

By the same person, by Mr. Roland Gamba?

WITNESS:

A

Yes, Sir.

COURT:

Proceed.

ATTY. AYO:

Q

So it was not only two (2) times that Mr. Gamba hit Mr. Jaime Cootauco?

COURT:

Already answered. The witness said Gamba hit Cootauco many times.

ATTY. AYO:

Q

What were the other four (4) accused doing while Mr. Gamba was hitting Jaime Cootauco, after Cootauco fell?

WITNESS:

A Some were kicking. They were surrounding the victim and somebody were (sic) kicking.

COURT:

Q

Who are these some who were kicking Jaime Cootauco?

A

Homerino Dayaon, Oscar Pabico, Jose Llanes and Allan Renion.

COURT:

Proceed.

ATTY. AYO:

Q

So Mr. Witness, while Mr. Roland Gamba was hitting (sic) Mr. Cootauco on the ground, the four (4) other accused were also kicking the victim Cootauco?

A

Yes, Sir.

Q

How was Mr. Roland Gamba hitting Mr. Cootauco on the ground?

A

He was hitting him with the piece of pipe coming from above his head.

Q

How many times more did Mr. Roland Gamba hitting Mr. Cootauco while he was on the ground?

A

Many times because he continuously hit Mr. Cootauco.

x x x

ATTY. AYO:

Q

Could you say that all others were kicking Jaime Cootauco while Roland Gamba was hitting him?

A

Yes, Sir.

Q

So how many minutes, if you could estimate, did the group maul Mr. Cootauco while you were taking a view of that scene?

A

The incident happened so fast. Maybe less than two (2) minutes.

Q

And that scene Mr. Witness were you not irritated at all? With that scene, were you irritated?

A

Yes, Sir.

Q

And because of that incident you could have get (sic) yourselves into trouble with the group?

A

No, Sir, because when we were approaching Jaime Cootauco to help him, the group ran away.

x x x[27]

Nenito Cambronero's testimony was corroborated by the other prosecution witnesses Jimmy Llanto and Allan Cabezudo. Indeed, the trial court did not err in giving credence to their testimonies for they did not waver in relating what they have personally observed that night of the incident. They were positive in their identification of the appellants as the assailants of the victim. Considering that visibility was favorable at that time for the moon was very bright, they were certain that they saw the five appellants running away from the cottage after mauling the victim.

With the foregoing testimonies, the trial court did not err in ruling that conspiracy was present in the instant case.

Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. There is no need to prove a previous agreement to commit the crime if by their overt acts, it is clear that all the accused acted in concert in the pursuit of their unlawful design.[28] It may even be inferred from the conduct of the accused before, during and after the commission of the crime. Nenito Cambronero testified that he noticed the five appellants leave the beerhouse after the victim, Jaime Cootauco asked permission to go out. Suspecting that the group was going to do some harm to their companion, Nenito Cambronero followed them outside and indeed saw the appellants mauling the victim. He saw Roland Gamba hit the victim with a lead pipe while Homeriano Dayaon, Allan Riñon, Jose Llanes and Oscar Pabico were holding the victim.[29] The appellants' actions of "helping or assisting" each other and simultaneously hitting the victim with a lead pipe and kicking the victim are clear and indubitable proof of concerted effort to bring about the death of the victim.[30]

Thus, the appellants' submission that the testimony of Nenito Cambronero should be discarded considering that he could not actually give the detailed participation of every single accused but only in general as he had seen it is untenable. In conspiracy, the act of one is the act of all. It is not even necessary to determine who among the appellants inflicted the fatal wound. But while the prosecution has established that Roland Gamba was responsible for hitting the victim with a lead pipe, this finding does not diminish the criminal liability of the other appellants. Where conspiracy is adequately shown, the precise modality or extent of participation of each individual becomes secondary.[31]

In their attempt to exonerate themselves, appellants Jose Llanto, Oscar Pabico, Homeriano Dayaon and Allan Riñon denied participation in the mauling incident. Each one gave the alibi that they were still inside the beerhouse when the shout from outside was heard that somebody was being mauled.

They averred that they went straight home when they heard that there was a commotion outside of the beerhouse. The four appellants were actually one in saying that although they knew Roland Gamba, they did not participate in the mauling incident which Roland Gamba admitted to have been involved in as stated in the extra-judicial confession. They assert that Roland Gamba entered the beerhouse when they were already there, partook of their drinks, stayed only for about twenty minutes and then left. They, meanwhile, remained in the beerhouse and continued with their drinking until they went home at about 11 o'clock that evening.

Denial and alibi are weak defenses and become even weaker in the face of the positive identification of the appellants by the prosecution witnesses that they are the perpetrators of the crime. For alibi to prosper, it must be proven that it was physically impossible for the appellants to have been at the place where the crime was committed before, during, or after he was at such other place. The appellants take refuge in the testimonies of the defense witnesses Manuel Mapano and Wilfredo Calzado that they were allegedly inside the beerhouse when the commotion outside arose. Not much evidentiary weight could be given to the testimonies of these witnesses for it did not actually prove that it was physically impossible for the appellants to have been involved in the mauling incident in the cottage which was only a few meters away from the beerhouse. On the other hand, the records is replete with evidence that the appellants ganged up on Jaime Cootauco in one of the cottages and were seen running away from the cottage after the incident.

For Roland Gamba, he asserts that the extra-judicial confession executed by him on October 13, 1992 must not be admitted for such was allegedly executed under duress and for want of competent and independent counsel of his own choice. He further asserts that while a lawyer was present, he was however not made aware of the consequences of such confession.

These contentions deserve scant consideration. There is no dispute that the extra-judicial confession was made by Roland Gamba after he was duly informed of his rights and after he was asked if he wanted to avail the services of

a lawyer to which he answered in the affirmative.[32] The presence of Atty. Winston S. Racoma effectively insured that no force, threat or intimidation was employed to compel him to sign his confession. The alleged pressure made on him by the father of his co-accused, Homeriano Dayaon to execute the confession with the promise of his freedom and money has not been substantiated by evidence other than his self-serving testimony. Evidently, the extra-judicial confession, concededly signed by the accused and made in the presence of a lawyer was done with regularity and legality. Its alleged irregularity is without basis. Considering its admissibility, a confession constitutes evidence of high order since it is supported by the strong presumption that no person of normal mind would knowingly confess to being the doer of a crime unless prompted by truth and conscience.[33] Although an extra-judicial confession is admissible only against the confessant,[34] there is sufficient evidence to prove the complicity of Roland Gamba and the other appellants to the crime.

Finally, the trial court correctly appreciated the qualifying circumstance of abuse of superior strength in the instant case. The victim was helpless and outnumbered by the assailants. He was merely resting in the cottage until he was attacked by the appellants. The eyewitness account that the victim was held by the four appellants while Roland Gamba was hitting him with a lead pipe and simultaneously being kicked by the others clearly show that the appellants not only enjoyed overwhelming numerical superiority but they also took advantage of their combined strength in order to consummate the crime. The existence and proof of only one duly alleged qualifying circumstance, like abuse of superior strength, is enough to elevate a killing to murder.

WHEREFORE, the appeal is hereby DENIED and the Decision of the Regional Trial Court AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, and Pardo, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo, p. 27.

[2] Id., at 43-44.

[3] TSN, March 12, 1993.

[4] TSN, September 7, 1993, p. 7.

[5] Id., at 9.

[6] TSN, April 22, 1993.

[7] TSN, March 12, 1993, p. 59.

[8] Exhibit "G."

[9] TSN, March 11, 1993, p. 21.

[10] Exhibit "C," Folder of Exhibits, pp. 3-4.

[11] TSN, August 3, 1994, pp. 2-3.

[12] Id., at 15.

[13] Id., at 23.

[14] Id., at 47-50.

- [15] Id., at 61.
- [16] TSN, March 31, 1995.
- [17] TSN, July 12, 1995, pp. 15-19.
- [18] TSN, July 11, 1995.
- [19] TSN, October 12, 1992, p. 14.
- [20] TSN, July 11, 1996.
- [21] TSN, October 7, 1996.
- [22] TSN, November 5, 1997, pp. 2-10.
- [23] Appellant's Brief, Rollo, pp. 101-102.
- [24] People v. Ilao, 296 SCRA 658 (1998).
- [25] TSN, March 12, 1993, pp. 49-52.
- [26] Id., at 55-59.
- [27] TSN, April 22, 1993, pp. 17- 46.
- [28] People v. Camaddo, 217 SCRA 162 (1993).
- [29] TSN, June 18, 1993, p. 19.
- [30] Rollo, p. 42.
- [31] People v. de Roxas, 241 SCRA 369 (1995).
- [32] TSN, September 7, 1993, pp. 5-7.
- [33] People v. Calvo, 269 SCRA 676 (1997).
- [34] People v. Suarez, 267 SCRA 119 (1997).

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