

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LASTIDE A. SUBE, ROLANDO M. MENZON, DINO G. AYALA (AT LARGE), BENEDICTO A. ACALA (AT LARGE) AND FELIZARDO ONTOG, ACCUSED.

G.R. No. 146034. April 09, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Regional Trial Court of Antipolo City, Branch 73, which convicted accused-appellants Lastide A. Sube, Rolando M. Menzon and Felizardo Ontog of the crime of murder and sentenced them to the penalty of reclusion perpetua.[1]

Accused-appellants pleaded not guilty at their arraignment, while their co-accused, Dino G. Ayala and Benedicto A. Acala, remain at large.

On the night of February 14, 1993, Julio Solis and his younger brother, Nicanor, were resting inside their house in Pasong Palanas, Antipolo, Rizal.[2] Their room was illuminated by a double lamp rechargeable light.[3] At about 9:00 p.m., Julio heard shouts and laughter coming from somewhere west of the house.[4] He heard voices shouting, “Bobot, papatayin ko kayo.” Julio was also known by the name of Bobot. He looked outside and saw accused Lastide Sube, Rolando Menzon, Felizardo Ontog, Benedicto Acala and Dino Ayala entering their yard.[5] The five accused were carrying flashlights and wielding bladed weapons.[6] Julio tried to rouse Nicanor, but the latter was ill and did not get up.[7] Julio thus ran out of the house and hid behind some trees approximately five (5) meters away from the house.[8] He saw the five accused enter their house. Then he saw the silhouette of one of the accused hitting his brother Nicanor with their father’s airgun, which happened to be inside the house. Thereafter, the five accused came out of the house carrying Nicanor, whose hands were bound with a nylon cord.[9] That was the last time Nicanor was seen alive.

Immediately after the accused left with Nicanor, Julio reported the incident to his father, Melquiades Solis, and to the police.[10] Accompanied by police officers, Julio and Melquiades went to the house of Sube. However, Sube’s wife refused to let him out, saying that he was drunk.[11] Julio, Melquiades and the police returned to the scene of the crime at around 2:00 a.m. of February 15, 1993, but found nobody there.[12]

A few days later, Sube was turned over by a certain Col. Victor Obillo to the Antipolo Police headquarters. He told the police about the incident and pointed to the place where Nicanor was buried.[13] Menzon was subsequently arrested on February 18, 1993. He and Sube led the police to the place where Nicanor was buried.[14]

On March 8, 1993, an information[15] for Murder was filed against Sube and Menzon. On July 20, 1993, the information was amended to include the other accused. The Amended Information reads as follows:

That on or about the 14[th] day of February, 1993, in the Municipality of Antipolo, Province of Rizal,

Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, armed with a bladed weapon, with intent to kill, by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one Nicanor Solis on his body, thereby inflicting upon the latter mortal wounds which directly caused his death.

CONTRARY TO LAW.[16]

In their defense, each of the accused-appellants told a different story. Sube alleged that on the night of February 14, 1993, he was in his house where Ontog's daughter, Cristina, celebrated her birthday.[17] At around 10:00 p.m., while the other accused-appellants were singing,[18] Sube's wife noticed someone peeking into the house and told Sube, "Dad, may tao." [19] Ayala and Acala ran outside, and a few minutes later, one of them shouted that they had caught someone.[20] Menzon followed Ayala and Acala and returned shortly to fetch Sube.[21] When Menzon and Sube joined Ayala and Acala, they came upon Nicanor Solis' dead body lying by the side of the road.[22] Ontog was already there.[23] Sube asked Ayala and Acala why they killed Solis, and the two men simply told him to shut up. Ayala and Acala, brandishing bladed weapons, then ordered Sube to accompany them and help them bury the corpse. They threatened to kill him and his family if he refused.[24] Thus, Sube was compelled to accompany Ayala, Acala, Menzon and Ontog to a lot owned by his employer, a certain Col. Victor Obillo.[25] It was Ontog, Ayala and Sube who carried the corpse, and they were joined by Menzon in digging up the gravesite.[26] All this time Acala watched with his knife pointed at them.[27]

Menzon's story differs slightly from Sube's. He testified that when Ayala and Acala ran outside to investigate, one of them shouted, "Eto, nahuli na namin." [28] Then Menzon, Sube and Ontog all followed Ayala and Acala.[29] There, Menzon allegedly saw the deceased still alive, being supported by Ayala and Acala as they walked away. When the accused-appellants finally caught up with them again, they came upon Solis' dead body lying by the side of the road.[30] Menzon then asked Ayala and Acala why they killed Solis, and the latter simply told him to keep quiet. [31] Ayala and Acala then pointed their bladed weapons at Sube, Menzon, and Ontog and threatened to kill them and their families if they refused to help them bury the corpse.[32] Acala, Ontog and Ayala then carried the corpse to the gravesite. Ontog, Sube and Menzon dug up the grave,[33] after which Ayala and Acala buried the body.[34] Then Ayala and Acala told Sube, Menzon and Ontog that if they reported this matter to anyone, they and their families would be killed.[35]

Among the accused-appellants' testimonies, it was Ontog's story which differed the most. He claims that he had already left the party at Sube's house at around 9:00 p.m., and was sleeping at home when he awoke to the sound of shouting from outside.[36] When he left his house to see what was happening, he saw that it was Sube's wife who was shouting and that Solis was being chased by Acala and Ayala.[37] Ontog followed them, with Sube and Menzon close behind.[38] Ayala and Acala then caught up with Solis and repeatedly stabbed him to death in different parts of his body.[39] When they noticed that Ontog was there, Acala and Ayala ordered him to help them bury the corpse and brandished their six (6) inch bladed weapons. Hence, Ontog was forced to go with them, but it was Ayala and Acala who buried the body.[40]

After trial, judgment was rendered, the dispositive portion of which reads:

WHEREFORE, premises considered, accused Lastide A. Sube, Rolando M. Menzon and Felizardo Ontog are hereby found guilty for the murder of Nicanor Solis. Sube, Menzon and Ontog are hereby sentenced to the penalty of reclusion perpetua. Said three accused is hereby further ordered to pay jointly and severally the heirs of Nicanor Solis the amount of P30,000.00, P20,000.00 and P50,000.00 as actual and nominal and moral damages and as death indemnity, respectively. This case is ARCHIVED as far as Dino G. Ayala, Benedicto A. Acala are concerned until their arrest or voluntary surrender.

SO ORDERED.[41]

Hence this appeal, where accused-appellants raise the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF MURDER WHEN THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT IN CONVICTING THE ACCUSED-APPELLANTS FOR CONSPIRING TO COMMIT MURDER DESPITE THE ABSENCE OF CLEAR AND CONVINCING PROOF OF THEIR ALLEGED CULPABILITY.

III

THE TRIAL COURT ERRED IN NOT TAKING INTO CONSIDERATION THE ATTENDANT MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[42]

As a general rule, the findings of the trial court on matters of credibility are binding and conclusive on the appellate court, unless some facts or circumstances of weight and substance have been overlooked, misapprehended or misinterpreted.[43] In the case at bar, the trial court gave more credence to the testimony of Julio over the combined testimonies of all the accused-appellants.

Julio's testimony was straightforward and convincing. In the course of his direct examination, he gave a chilling account of the last time he saw his brother, Nicanor, alive.[44] He positively identified the five accused who carried his brother away.[45] Even when he was subjected to rigorous probing during cross-examination, he maintained his story and did not waver.[46]

On the other hand, the testimonies of the accused-appellants are inconsistent, even incredible at times. Accused-appellant Sube admitted on cross-examination that he was one of those who helped carry the body of Nicanor to the makeshift gravesite. He also admitted that he was among those who dug up the hole and buried the victim's corpse.[47] However, on further cross-examination, he changed his story and claimed that it was only Acala and Ayala who carried the body.[48] Menzon, for his part, contradicted Sube by saying that it was only Ontog, Acala and Ayala who carried the victim.[49]

On the other hand, accused-appellant Ontog testified that on the night of February 14, 1993, he and Sube had a brief drinking spree. He went home at around 7:30 p.m.[50] He failed to mention that Menzon, Acala and Ayala were present at the drinking session, despite the testimony of Sube and Menzon to this effect.[51] Later, on cross-examination, he changed his story and admitted that he was with Menzon, Acala and Ayala.[52] He denied any participation in the carrying of the body and the digging of the grave,[53] contrary to the testimonies of Sube and Menzon.[54]

All three accused-appellants denied participation in the killing of Nicanor but alleged that they were coerced and threatened by Dino Ayala and Benedicto Acala, their co-accused who were at large, to bury him. We are not convinced by the three accused-appellants' futile attempt to shift the blame to their two co-accused who are, conveniently, still at large.

While the evidence against accused-appellants is largely circumstantial, Rule 133, Section 5 of the Rules of Court states:

Circumstantial evidence, when sufficient. — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt.

The following circumstances were established by the evidence on record: (1) on the night of the killing, shouts of “Bobot, papatayin ko kayo,” were hurled at the victim and his brother Julio;[55] (2) shortly after the said shouts were heard, the accused barged into the victim’s house wielding bladed weapons and attacked the victim while he was lying down;[56] (3) the victim was last seen alive being carried away by the five accused;[57] (4) the dead body of the victim was discovered the following day buried in a gravesite pointed by two of the accused-appellants.[58]

The facts from which the aforementioned circumstances arose have been proved through positive testimony. In order that these circumstances may support a conviction, they must form an unbroken chain of events leading to one fair conclusion, i.e., the culpability of the accused-appellants for the killing of the victim.[59] We are convinced that the aforementioned circumstances, taken together, leave no doubt that the accused-appellants killed Nicanor Solis.

As regards conspiracy, direct proof is not essential as conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.[60] In the case at bar, it was shown that the accused entered the victim’s house together, armed with bladed weapons. In unison, they left the house carrying the victim.[61] The medico-legal report on the victim indicates that the victim suffered six stab wounds, three incised wounds and hematoma. Three of the stab wounds were penetrating stab wounds.[62] On cross-examination, PNP Major Florante Baltazar, the medico-legal officer who conducted the autopsy on the victim, testified that, according to his measurements, more than one instrument was used in inflicting the stab and incised wounds.[63] In the absence of direct proof thereof, as in the present case, the existence of conspiracy may be deduced from the mode, method, and manner by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a joint purpose and design, concerted action and community of interest.[64] The existence of conspiracy among all the accused-appellants was sufficiently established by the evidence presented. Thus, all the three accused-appellants are held liable for the killing of Nicanor Solis.

However, we disagree with the trial court’s finding that the killing of the victim was attended by the qualifying circumstance of evident premeditation.

For evident premeditation to be appreciated, there must be proof, as clear as the evidence of the crime itself, of the following elements thereof, to wit: (1) the time the accused decided to commit the crime; (2) an overt act manifestly indicating that he clung to his determination; and (3) sufficient lapse of time between the decision and the execution to allow the accused to reflect upon the consequence of his act.[65]

The essence of evident premeditation is that the execution of the crime is preceded by cool thought and reflection upon a resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[66] In this case, the records are bereft of any evidence of evident premeditation. There is no proof of the time when accused-appellants decided to commit the crime. Neither is there any showing of how accused-appellants planned the killings, nor of how much time elapsed before they executed their plan. Absent all these, evident premeditation cannot be appreciated. Hence, the crime committed is only homicide.

Neither Sube nor Menzon is entitled to the benefit of voluntary surrender. For this circumstance to mitigate criminal liability, the following elements must concur: (1) the offender has not been actually arrested; (2) the offender surrendered himself to a person in authority; and (3) the surrender was voluntary.[67] Sube never

surrendered. He merely reported the incident to his employer, Col. Victor Obillo, who then turned him over to the police for the sole purpose of reporting said incident.[68] Menzon, on the other hand, was arrested by the police.[69] Clearly, these preclude the appreciation of the mitigating circumstance of voluntary surrender in favor of the two accused-appellants.

The crime of homicide is punishable by reclusion temporal. There being no appreciable modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the minimum term of the penalty shall be taken from the penalty next lower in degree, prision mayor, which has a range of from six (6) years and one day to twelve (12) years. Hence, accused-appellants are sentenced to suffer an indeterminate penalty of imprisonment from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

It should be noted that accused-appellant Felizardo Ontog, through a letter addressed to this Court dated October 10, 2002, indicated his desire to withdraw his appeal.[70] This request was treated as a motion to the same effect and granted. Hence, Ontog's appeal was dismissed in a Resolution dated November 11, 2002.[71] However, in light of the fact that we have seen fit to modify the trial court's judgment in a manner that is favorable to the accused-appellants, then such modification should apply to Ontog as well.[72]

The trial court's award of damages likewise needs to be modified. The heirs of Nicanor Solis are entitled to civil or death indemnity in the amount of Fifty Thousand Pesos (P50,000.00) as a matter of law.[73] The heirs of Nicanor Solis should also be awarded moral damages in the amount of Fifty Thousand Pesos (P50,000.00) for the mental anguish, wounded feelings and moral shock they suffered as a result of Nicanor's death.[74] However, the award of actual damages must be deleted for failure of the prosecution to present receipts to substantiate the same.[75] Instead, the heirs of the victim should be awarded temperate damages in the amount of P25,000.00, considering that they incurred hospital and funeral expenses as a result of the victim's death.[76]

WHEREFORE, based on the foregoing, the decision of the Regional Trial Court of Antipolo City, Branch 73, finding accused-appellants guilty beyond reasonable doubt of Murder, is MODIFIED. As modified, accused-appellants Lastide A. Sube, Rolando M. Menzon and Felizardo Ontog are found guilty beyond reasonable doubt of the crime of Homicide for the death of Nicanor Solis and are sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

Accused-appellants are jointly and severally ORDERED to pay the heirs of the victim the following:

- a) civil indemnity in the amount of P50,000.00;
- b) moral damages in the amount of P50,000.00; and
- c) temperate damages in the amount of P25,000.00.

The award of actual damages is DELETED for lack of legal basis.

Costs de oficio.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Vitug, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 31.

- [2] TSN, October 12, 1993, p. 3.
- [3] TSN, September 6, 1994, p. 4.
- [4] TSN, October 12, 1993, p. 5; TSN, September 6, 1994, p. 8.
- [5] TSN, October 12, 1993, pp. 3-4.
- [6] Ibid., pp. 4-5.
- [7] TSN, September 6, 1994, p. 5.
- [8] Ibid., pp. 4-5, 7-8.
- [9] Id., p. 9.
- [10] TSN, October 12, 1993, p. 6; TSN, September 6, 1994, p. 10.
- [11] TSN, September 6, 1994, p. 11.
- [12] Ibid., p. 12.
- [13] TSN, June 15, 1995, pp. 9-10.
- [14] TSN, June 15, 1995, pp. 10-11; TSN, July 17, 1996, pp. 10-11; Prosecution's Exhibits 'A', 'A-1', 'A-2', Record, p. 239.
- [15] Record, p. 1.
- [16] Record, p. 37.
- [17] TSN, June 15, 1995, p. 4.
- [18] Ibid., p. 5.
- [19] Id., pp. 4-5, 19.
- [20] Id., p. 5; TSN, September 4, 1995, p. 9.
- [21] TSN, June 15, 1995, p. 6; TSN, September 14, 1995, p. 8.
- [22] TSN, June 15, 1995, p. 6.
- [23] TSN, November 9, 1995, p. 3.
- [24] TSN, June 15, 1995, pp. 7-8.
- [25] TSN, September 14, 1995, pp. 22-23.
- [26] Ibid., pp. 24-25.
- [27] Id., p. 25.
- [28] TSN, February 15, 1996, p. 7.
- [29] TSN, May 30, 1996, p. 15.
- [30] TSN, July 17, 1996, p. 3.
- [31] TSN, February 15, 1996, p. 14.

- [32] TSN, February 15, 1996, pp. 15-16; TSN, July 17, 1996, pp. 3-4.
- [33] TSN, February 15, 1996, pp. 16-17.
- [34] TSN, July 17, 1996, pp. 8-9.
- [35] Ibid., p. 9.
- [36] TSN, August 27, 1996, pp. 6-7; TSN, October 1, 1996, p. 13.
- [37] TSN, August 27, 1996, pp. 7-8, TSN, December 10, 1996, p. 6.
- [38] TSN, December 1, 1996, pp. 5-7.
- [39] TSN, August 27, 1996, pp. 7-8.
- [40] Ibid., pp. 10-11.
- [41] Rollo, p. 31; penned by Judge Mauricio M. Rivera.
- [42] Rollo, p. 50.
- [43] People v. Lucena, G.R. No. 137281, April 3, 2001, citing People v. Jaberto, G.R. No. 128147, May 12, 1999.
- [44] TSN, October 12, 1993, pp. 3-8.
- [45] Ibid., pp. 4-5.
- [46] TSN, September 6, 1994, pp. 2-9.
- [47] TSN, September 14, 1995, pp. 24-25.
- [48] TSN, November 9, 1995, p. 4.
- [49] TSN, July 17, 1996, p. 5.
- [50] TSN, August 27, 1996, pp. 5-6.
- [51] TSN, July 15, 1995, pp. 17-19; TSN, February 15, 1996, pp. 6-7.
- [52] TSN, October 1, 1996, pp. 8-12.
- [53] TSN, December 10, 1996, pp. 11-12.
- [54] TSN, September 14, 1995, p. 25; TSN, November 9, 1995, pp. 4-7; TSN, February 15, 1996, pp. 16-17.
- [55] TSN, October 12, 1993, p. 3.
- [56] Ibid., p. 5.
- [57] Ibid., pp. 6-7.
- [58] TSN, June 15, 1995, pp. 10-11; TSN, July 17, 1996, p. 10.
- [59] People v. Gonzales, G.R. No. 138402, August 18, 2000, citing People v. Magana, G.R. No. 105673, July 26, 1996.
- [60] People v. Cantonjos, G.R. No. 136748, November 21, 2001, citing People v. Mansueto, G.R. No. 135196, July 31, 2000.

[61] TSN, October 12, 1993, pp. 4-6; TSN, September 6, 1994, pp. 4-5, 8-9.

[62] Record, p. 253.

[63] TSN, April 12, 1994, p. 19.

[64] People v. Listerio, G.R. No. 122099, July 5, 2000, citing People v. Datun, G.R. No. 118080, May 7, 1997.

[65] People v. Lucena, G.R. No. 137281, April 3, 2001, citing People v. Magno, G.R. No. 134535, January 19, 2000.

[66] People v. Lucena, G.R. No. 137281, April 3, 2001, citing People v. Adrales, G.R. No. 132152, January 19, 2000.

[67] People v. Gutierrez, G.R. No. 142905, March 18, 2002, citing People v. Sumalpong, G.R. No. 124705, January 20, 1998.

[68] TSN, June 15, 1995, pp. 8-10.

[69] TSN, February 15, 1996, p. 17.

[70] Rollo, p. 146.

[71] Rollo, p. 147.

[72] Rules of Court, Rule 122, Sec. 11, (a).

[73] People v. Manlansing, G.R. Nos. 131736-131737, March 11, 2002, citing People v. Torres, Jr., G.R. No. 138046, December 8, 2000.

[74] TSN, May 10, 1994, p. 7.

[75] People v. Yatco, G.R. No. 138388, March 19, 2002.

[76] People v. Manlansing, G.R. Nos. 131736-37, March 11, 2002.

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