

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. GERARDO ROLLAN Y REY, APPELLANT.*G.R. No. 175835. July 13, 2010*

Ponente: ABAD, J.

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This case is about the significance of inconsistencies in the testimonies of two eyewitnesses respecting which of several accused held the victim to immobilize him and which of them inflicted the wounds where conspiracy was shown.

The Facts and the Case

In 1995, the Office of the Public Prosecutor filed an information before the Regional Trial Court (RTC), Branch 255, Las Piñas City in Criminal Case 95-118[1] against accused-appellant Gerardo Rollan and Renato dela Cruz for the murder of Rolando Yrigan.[2] A year after, the prosecution filed an amended information[3] to include four other accused, namely, Dennis Perez, Melo Benabesi, Undo Baylon, and Tomtom Benozza. Trial proceeded only against Rollan, Dela Cruz, and Benabesi since the others remained at large.[4]

The prosecution presented two eyewitnesses, Alfredo Monsanto and his son, Allan. Alfredo testified that he lived at Purok 5, CAA, Las Piñas City. On November 23, 1995, between 9 and 10 p.m., he was walking home from work when he saw from 10 meters away a group of men ganging up (pinagtutulungan) on his neighbor, Rolando Yrigan.[5] The attackers were also his neighbors, namely Renato dela Cruz, Tomtom Benozza, Dennis Perez, Melo Benabesi, and appellant Gerardo Rollan. Although there were no street lights, the area was sufficiently illuminated by lights from nearby houses that used generators.[6]

Alfredo further testified that he saw Dela Cruz pulling at Yrigan's right hand while Benozza did the same with Yrigan's other hand[7] such that the latter's arms were outstretched (nakadipa). Baylon also helped immobilize Yrigan.[8] At the same time, appellant Rollan and the others (Perez, Benabesi, and an unidentified man) took turns in stabbing Yrigan[9] with a long bladed weapon.[10] After Yrigan dropped face flat on the ground,[11] his assailants ran away in different directions.[12]

Allan Monsanto, Alfredo's son, testified that between 9 and 10 p.m. on November 23, 1995, Yrigan came to his house to borrow money. Yrigan left after they talked.[13] Several minutes later, Allan left his house to buy food. As he stepped out, he heard someone moaning and, looking to see who it was, he saw Yrigan, stooped on the ground and with both hands on his bleeding face.[14] Seven men then attacked him with a beinte nueve (folding knife) and a bolo.[15] Appellant Rollan and Benabesi held Yrigan by his hands[16] while Dela Cruz took turns with the others in stabbing him.[17] Afterwards, his assailants threw Yrigan into a pig pen.[18]

The autopsy report[19] showed that Yrigan sustained abrasions as well as lacerated, incised, and stab wounds. The cause of his death was traumatic head injury and stab wounds.

While Dela Cruz denied his involvement,[20] appellant Rollan claimed an alibi. He said that on the date and time

of the incident, he drove a jeepney, plying his usual Sucat-Baclaran route.[21] He brought back the jeepney to the operator's garage at Purok 5, CAA in Las Piñas City, at 11:45 p.m.[22] On November 27, 1995 policemen came to the garage and arrested him.[23]

The defense also presented Teresita Paladin who vouched for the innocence of Benabesi, Dela Cruz, and appellant Rollan. She said that they were asleep in their respective houses[24] when the killing happened right at her door steps. She witnessed from the open door how a certain Bobby hit Yrigan with a piece of wood. Another man, known as Tomtom, stabbed Yrigan several times.[25]

On September 30, 2003 the RTC found appellant Rollan, Benabesi, and Dela Cruz guilty as charged and sentenced them to suffer the penalty of reclusion perpetua and to pay Yrigan's heirs P100,000.00 in indemnity plus P45,000.00 in actual damages. The RTC held that it could not give credence to the denials and alibis they interposed, given that the two eyewitnesses confirmed their part in the commission of the offense. The RTC also held that it could not rely on Paladin's testimony since she belatedly came forward and did not submit herself to a full cross-examination."[26]

On October 13, 2003 Benabesi filed a motion for reconsideration,[27] which the RTC granted by modifying its original decision and acquitting him.[28] The RTC pointed out that, upon further assessment, it found inconsistencies in the testimonies of Allan and Alfredo that made it doubt Benabesi's participation in the killing. Paladin's narration, pointing to two other persons responsible for the crime, was more consistent with Yrigan's injuries. Besides, Allan and Alfredo did not positively identify Benabesi in open court.

Appellant Rollan appealed to the Court of Appeals (CA) in CA-G.R. CR 00399 but the latter court affirmed the decision of the RTC in its entirety.[29] The CA also denied the motion for reconsideration that he subsequently filed.[30]

The Issue

The only issue presented in this case is whether or not the CA erred in affirming the RTC's finding that appellant Rollan and the others with him murdered Yrigan.

The Court's Ruling

Appellant Rollan capitalizes on the fact that the testimonies of the prosecution's eyewitnesses, Alfredo and Allan, were somewhat contradictory. Alfredo said that Dela Cruz and Benabesi, aided by Baylon, immobilized Yrigan by holding and pulling away his hands from either side so appellant Rollan and the other accused could freely attack him with a long bladed weapon. Allan said, on the other hand, that appellant Rollan and Benabesi were the ones who held Yrigan's hands while the others attacked him with a bolo and a knife.

But, as the CA pointed out, both testimonies show that the assailants acted in conspiracy with each other as evidenced by their concerted action in surrounding Yrigan and attacking him simultaneously, with some holding and pulling at his hands so he could not use them to defend himself and return the attack, and the others stabbing and slashing at him with weapons.

Alfredo and Allan appear to be credible witnesses. The several accused in this case, like the victim, were their neighbors. Thus, it was most unlikely for the two witnesses to have made mistakes in identifying who Yrigan's assailants were.

Since the accused here did not adduce evidence that Alfredo and Allan were ill-motivated in testifying against their own neighbors, their testimonies can be believed.[31] It helps that the autopsy report conforms to their

narration of what the assailants did to Yrigan. So, if either of them was imprecise in recalling who did what in that brief stunning moment of the attack, such mistake would be understandable. What is important is that they were in full agreement as to the mode of attack adopted and the identities of those who took part in it. Ascertaining which assailants gripped the victim's hands to immobilize him or struck blows that killed him would not affect their liabilities. The liabilities of conspirators are the same whatever their individual parts in the offense were.

Appellant Rollan points out that, had Alfredo and Allan really been there, witnessing what was happening at 10-meter range, the likelihood is that the killers would have either attacked or at least intimidated them. But how can this be when the assailants apparently had their anger focused on Yrigan and the witnesses did not show any intention of interfering. Surely, Rollan does not expect the accused to spontaneously murder all neighbors who happened to be around just to cover up for the killing of Yrigan.

Appellant Rollan assails the testimonies of Alfredo and Allan as unlikely to be true considering how they were unable to note each other's presence during the incident. But the two were not similarly placed. Alfredo was walking home from work when he froze on the road to witness the commotion. Allan, on the other hand, came out of his house to buy food when he responded to Yrigan's moaning and saw how the latter was being attacked. The two witnesses did not have to be conscious of each other's presence to be credible in their testimonies.

Finally, appellant Rollan points out that, while Alfredo said that the attackers immediately fled in different directions after they committed the crime, Allan said that they first threw Yrigan into a pig pen before doing that. But, actually, Allan himself did not mention the matter of throwing Yrigan into the pig pen until later in the course of cross-examination. Allan probably did not regard it as part of the aggression proper and so he omitted mention of it at first. In Alfredo's case, he was not asked about it on cross-examination. Consequently, it cannot be said that one of the two lied about the pig pen part of what happened.

Appellant Rollan claims alibi as his defense and threw in Paladin's testimony to corroborate his. But their stories do not match. Rollan said that he was out driving a passenger jeepney at the time of the incident. Paladin claimed that Rollan was asleep at his home. Paladin had to admit eventually during cross-examination that she could not have known that Rollan was at home because she did not leave her house all day.[32] She merely assumed he was asleep because it was already late.[33]

As regards the civil indemnity to which the heirs of the victim are entitled, while this Court would affirm the award of P45,000.00 in actual damages, it must modify the awards to make them conform to the latest precedents, i.e., reduce the death indemnity to P75,000.00[34] and make additional awards of P50,000.00 in moral damages and P25,000.00 in exemplary damages (considering the attendance of at least one aggravating circumstance).[35] The Court will also grant the victim's heirs indemnity for loss of earning based on the testimony of Yrigan's wife that her husband earned P250.00 daily as a carpenter at the time of his death,[36] applying the following formula:

Net Earning Capacity = $\frac{2}{3} \times (80 \text{ less the age of the victim at the time of death}) \times (\text{Gross Annual Income less the Reasonable and Necessary Living Expenses})$ [37]

Since Yrigan's estimated annual gross income was P84,000.00, deducting from it his presumed expenses of 50%, the balance of P42,000.00 would presumably be what his family was receiving from him. His life expectancy is assumed to be $\frac{2}{3}$ of the age 80, less 36, his age at the time of death.[38] Upon computation[39] his net lost earning would be P1,232,000.00.

WHEREFORE, the Court AFFIRMS the decision of the Court of Appeals in CA-G.R. CR 00399, which found the accused-appellant Gerardo Rollan guilty as charged, subject to modifications in the award of damages to the heirs of Rolando Yrigan. Such award should now be as follows:

- Actual damages of P45,000.00;
- Civil indemnity for death of P75,000.00;
- Moral damages of P50,000.00;
- Exemplary damages of P25,000.00; and
- Indemnity for loss of earning in the sum of P1,232,000.00.

SO ORDERED.

Carpio, Villarama, Jr.,[*] Perez,**] and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

[1] Case transferred to Branch 275.

[2] CA rollo, p. 11, Information reads: That on or about the 23[rd] day of November 1995, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and a knife (beinte nuebe), conspiring and confederating together with Dennis Perez, Melo Benabesi, alias Bobby, alias Undo, alias Tongtong and one John Doe whose true identities and present whereabouts are still unknown and all of them mutually helping and aiding one another with intent to kill and with treachery and evident premeditation and by taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Rolando Yrigan, thereby inflicting upon him serious and mortal stab wounds which directly caused his death. Contrary to law.

[3] Records, p. 53.

[4] Id. at 19 & 215.

[5] TSN, September 23, 1996, p. 4.

[6] Id. at 5; (see also TSN, September 30, 1996, p. 3).

[7] Id.

[8] Id. at 5.

[9] Id. at 5-6.

[10] Id. at 7.

[11] Id. at 8.

[12] Id.

[13] TSN, December 2, 1996, p. 4.

[14] Id. at 12.

[15] Id. at 4.

[16] Id. at 6.

[17] Id.

[18] Id. at 12.

[19] Records, p. 189.

[20] TSN, November 3, 1999, pp. 4, 6.

[21] TSN, April 2, 2003, p. 3.

[22] Id. at 4.

[23] Id. at 7.

[24] TSN, July 24, 2002, p. 8.

[25] Id. at 5, 7.

[26] Records, p. 328.

[27] Id. at 330-342.

[28] Id. at 348-351.

[29] Rollo, pp. 2-14, penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. Del Castillo.

[30] CA rollo, pp. 121-122.

[31] *People v. Garchitorena*, G.R. No. 175605, August 28, 2009, 597 SCRA 420, 444.

[32] TSN, February 13, 2003, p. 15.

[33] Id. at 12.

[34] *People v. Bracia*, G.R. No. 174477, October 2, 2009, 602 SCRA 351, 375, citing *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 68; *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[35] *People v. Bracia*, supra note 34, at 375-376, citing *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 701; *People v. Arbalate*, supra note 34.

[36] TSN, December 16, 1996, p. 3.

[37] *People v. Bracia*, supra note 34, at 376; *People v. Nullan*, 365 Phil. 227, 257 (1999).

[38] TSN, December 16, 1996, p. 2.

[39] Yrigan's net earning capacity = $[2/3 (80-36)] \times [84,000-42,000] = \text{P}1,232,000$.

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