

PEOPLE OF THE PHILIPPINES Plaintiff-Appellee, V.S. FERNANDO BUCAYO y MOJICA a.k.a. FERNANDO CUNANAN a.k.a. “BUCAYO,” HECTOR BUCAYO y MOJICA a.k.a.RYAN CUNANAN,Accused-Appellants.

G.R. No. 178770. June 13, 2008

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the Decision of the Court of Appeals (CA) in CA-G.R. CR No. 01089, entitled *People of the Philippines v. Fernando Bucayo y Mojica a.k.a. Fernando Cunanan a.k.a. "Bucayo," Hector Bucayo y Mojica a.k.a. Ryan Cunanan, Cesar Ortiz a.k.a. "Gongong" and Jayson Ortiz a.k.a. "Jayjay."* The CA affirmed with modification the decision of the Regional Trial Court (RTC), Branch 27 in Manila, finding the accused-appellants guilty beyond reasonable doubt of the crime of murder qualified by the use of superior strength. The CA likewise ordered the archiving of the cases against co-accused Cesar and Jayson Ortiz, to be revived upon their arrest.

The facts, as found by the CA, are as follows:

Jonathan Perez and childhood friend Edison Buencillo, Jr. were on their way to visit Jonathan's common-law wife, Princess, who lived in Tondo. As they were walking along A. Rivera St., they passed by the group of Fernando and Hector Bucayo and Cesar and Jayson Ortiz, all of whom Jonathan recognized. The group asked Jonathan and Edison to join them but the two declined the invitation and proceeded to Princess' house where they stayed for 15 minutes. They took the same route home and on their way, the group, joined by a certain Pamboy, Fortune, and some others, surrounded and blocked them. As the group taunted and shouted invectives at Jonathan and Edison, a rumble ensued. Jonathan attempted to flee but was dragged back to the melee by Hector. Jonathan saw Hector and Jayson gang up on Edison, as Fernando struck Jonathan repeatedly with a steel chair. As Jonathan was trying to escape, he got hold of a barbecue stick and stabbed Hector with it. Jonathan said he witnessed the assault on Edison and threw stones at the group to make them stop but his attempts were futile. Neither was his call for help heard. He asked for police assistance, and ran to Edison's house to inform the latter's mother of the melee. Edison expired at the Jose Reyes Memorial Medical Hospital.

On July 23, 2002, Fernando, Hector, Cesar, and Jayson were charged with the murder of Edison. Only Fernando and Hector were arrested as Jayson and Cesar remained at large.

The Information filed against the accused is quoted below:

That on or about April 11, 2002, in the City of Manila, Philippines, the said accused, conspiring and confederating together with one whose true name, real identity and present whereabouts [are] still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and taking advantage of their superior strength, attack, assault and use personal violence upon the person of EDISON BUENCILLO, JR., by then and there mauling and hammering him several times with steel metal chair, thereby inflicting upon said EDISON BUENCILLO, JR. head injuries which are necessarily fatal and mortal, which

were the direct cause of his death immediately thereafter.[1]

After arraignment of Fernando and Hector, who both pleaded not guilty, the RTC heard the testimonies of Jonathan, SPO3 Reynaldo Mira, the investigating officer, Dr. Ravell Ronald Baluyot, the medico-legal who testified that Edison sustained skull fracture and intracranial hemorrhaging caused by a blunt object resulting in his death, and Amparo Rosales-Buencillo who testified on the expenses incurred in connection with the death of Edison.

For its part, the defense presented Hector who claimed that, at around 2 p.m. on the day of the incident, as he was securing his pedicab, he heard shouts of "magnanakaw! (a thief!)." Thinking that Jonathan and Edison were the thieves, he grabbed one by the arm only to be stabbed with a barbecue stick below his armpit by the man who managed to flee. He was brought to the Jose Reyes Memorial Hospital for treatment.

Fernando denied any involvement and said he was sleeping at home and learned later that his brother, Hector, had been stabbed. His wife corroborated his story. One Ricardo Brazil testified that he was asleep in a jeepney when he heard there was a riot among the youngsters. He witnessed one of them escape but he testified that he did not see the accused during the commotion. He did testify that Hector asked for his help and he also saw Fernando milling around the area after the incident. One Romeo Lay y Abadey corroborated Ricardo's story. He informed Fernando and Hector's family of the fight.

After trial, on March 16, 2005, the RTC rendered its decision finding the accused Fernando and Hector guilty beyond reasonable doubt of the crime of murder qualified by superior strength for the death of Edison. The case against Cesar and Jayson were archived to be revived upon their arrest.

Following *People v. Mateo*,^[2] the case was reviewed by the CA.

On April 30, 2007, the CA affirmed with modification the decision of the RTC. The fallo of the CA Decision reads:

WHEREFORE, premises considered, finding no error committed by the trial court in arriving at the assailed decision, the same is hereby AFFIRMED with MODIFICATION directing accused-appellants to pay the heirs of EDISON the sum of P50,000.00 as moral damages, and P25,000.00 as exemplary damages, in light with current jurisprudence.^[3]

On accused-appellants' assertion that the testimony of Jonathan was not credible because he could not have witnessed everything that was happening because he was himself under attack, the CA observed that, although Jonathan was himself under attack and was terrified, it was not impossible that he had opportunity to see the attack on Edison. The CA also opined that there was no reason why Jonathan should lie about what he saw. Taken into account the fact that the trial court had been convinced of the testimony of Jonathan and having observed the demeanor of the witness, the CA was not inclined to disturb the RTC's findings on the credibility of Jonathan. Against the positive and categorical testimony of an eyewitness, the CA said, the denial by the accused of their involvement on the crime must fail.

As to the argument that conspiracy among the accused had not been proven, the CA further observed that direct proof of conspiracy is not essential to establish the conspiracy. It said that the existence of the assent of minds of the co-conspirators may be inferred from proof of facts and circumstances which, taken together, indicate that they are parts of the complete plan to commit the crime. The CA cited the following chain of events which tend to establish that there was a community of design among the accused to perpetrate the crime: (1) Fernando and his group blocked the path of Jonathan and Edison as the two were on their way home; (2) they all participated in the attack on Jonathan and Edison; (3) when Jonathan had a chance to flee, Hector dragged him back; and (4) Hector

and Jayson exchanged blows with Jonathan and Edison as Fernando kept hitting Edison with a steel chair causing the death of Edison.

After having filed their Notice of Appeal, accused-appellants manifested that they were re-pleading and adopting their Brief for Accused- Appellants as their Supplemental Brief. The lone issue presented before this Court is:

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.

The appeal has no merit.

Essentially, accused-appellants' claim, that the testimony of Jonathan ought not to be believed simply because Jonathan could not have witnessed the mauling of Edison since he himself was under attack, has no basis. Both the trial and appellate courts found Jonathan's testimony credible and their findings should be given full faith and credit. Time and again, we said that the findings by the RTC should be respected as the trial court judge was in the best position to determine the witness' credibility. It is well-settled in our jurisdiction that the determination of credibility of witnesses is properly within the domain of the trial court as it is in the best position to observe their demeanor.[4] This conclusion becomes all the more pressing when the appellate court affirms the findings of the trial court.

It also bears remembering that people react differently in different situations and there is no standard human response when one is confronted with a strange and frightful experience. [5] Even if a witness is himself attacked, he is still in a position to later on describe what has transpired. In some situations, when under siege, one's power of observation becomes even more acute and heightened. Recall that at that time Edison was being mauled to death with a steel chair, Jonathan was not himself under siege and even testified that at that time, he was even hurling stones at Edison's maulers.

Lastly, the CA found that Jonathan had no reason to fabricate what he witnessed. As against Jonathan's straightforward and convincing testimony, the alibi of Fernando that he was asleep in his house and the denial of Hector that they confronted and assaulted Jonathan and Edison miserably fail. Alibi is the weakest of all defenses and as against positive identification by prosecution witnesses, alibi is worthless. Just as alibi is an inherently weak defense, so is denial since these are self-serving negative evidence that cannot be accorded much evidentiary weight than the positive declaration of a credible witness.

The testimonies of Ricardo Brazil and Romeo Lay, that they heard the commotion and witnessed one chasing another youngster, heard Hector asking for their help, and saw Fernando milling around after the incident, are of no consequence. These accounts do not in anyway establish that Fernando and Hector had not participated in the death of Edison. Brazil and Lay did not identify who attacked whom; and what and who exactly they saw. At most, what the two testified to was that there was a rumble, a chase, and Hector had been stabbed.

Altogether, the incidents prior to the melee, the simultaneous active participation of the accused and use of their superior strength and number, and the flight of the Ortiz brothers undoubtedly establish a conspiracy to assault and harm Jonathan and Edison, leading to Edison's death. There is conspiracy when the separate acts committed, taken collectively, emanate from a concerted and associated action, albeit each circumstance, if considered separately, may not show confabulation.[6] In this case, to reiterate, the CA observed that (1) Fernando and his group blocked Jonathan and Edison as the two were on their way home; (2) they all participated in the attack on Jonathan and Edison; (3) when Jonathan had a chance to flee, Hector dragged him back; and (4) Hector and Jayson exchanged blows with Jonathan and Edison as Fernando viciously hit Edison with a steel chair causing the demise of Edison. All these constitute circumstances that lead to the conclusion that all the accused conspired to

harm their prey. These, taken with the eyewitness testimonies and the physical evidence supported by the medico-legal's findings, establish without doubt the guilt of the accused-appellants.

WHEREFORE, the instant appeal of accused-appellants Fernando and Hector Bucayo is DISMISSED. The April 30, 2007 Decision of the CA is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, and Brion, JJ., concur.
Carpio-Morales., J. concur.

* On leave.

[1] CA rollo, p. 12.

[2] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[3] Rollo, p. 13. Penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Jose C. Mendoza and Ramon M. Bato, Jr.

[4] Llanto v. Alzona, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295.

[5] People v. Quirol, G.R. No. 149259, October 20, 2005, 473 SCRA 509, 516.

[6] Nierva v. People, G.R. No. 153133, September 26, 2006, 503 SCRA 114, 127.

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