

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MICHAEL BOKINGO ALIAS “MICHAEL BOKINGCO” AND REYNANTE COL, ACCUSED-APPELLANTS.

G.R. No. 187536. August 10, 2011

Ponente: PEREZ, J.

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PEREZ, J.:

For review is the Amended Decision[1] dated 14 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 00658, finding appellants Michael Bokingco[2] (Bokingco) and Reynante Col (Col) guilty as conspirators beyond reasonable doubt of the crime of Murder and sentencing them to suffer the penalty of reclusion perpetua.

On 31 July 2000, an Information[3] was filed against appellants charging them of the crime of murder committed as follows:

That on or about the 29[th] day of February, 2000 in the City of Angeles, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, armed with a claw hammer and with intent to kill by means of treachery, evident premeditation, abuse of confidence, and nighttime, did then and there willfully, unlawfully and feloniously attack, assault and maul NOLI PASION, by hitting and beating his head and other parts of his body with said hammer, thereby inflicting upon said NOLI PASION fatal wounds on his head and body which caused his death.[4]

On arraignment, Bokingco entered a guilty plea while Col pleaded not guilty. During the pre-trial, Bokingco confessed to the crime charged.[5]

The victim, Noli Pasion (Pasion) and his wife, Elsa, were residing in a house along Mac Arthur Highway in Balibago, Angeles City. Pasion owned a pawnshop, which formed part of his house. He also maintained two (2) rows of apartment units at the back of his house. The first row had six (6) units, one of which is Apartment No. 5 and was being leased to Dante Vitalicio (Vitalicio), Pasion's brother-in-law, while the other row was still under construction at the time of his death. Appellants, who were staying in Apartment No. 3, were among the 13 construction workers employed by Pasion.[6]

The prosecution's evidence show that at around 1:00 a.m. on 29 February 2000, Vitalicio was spin-drying his clothes inside his apartment when Pasion came from the front door, passed by him and went out of the back door.[7] A few minutes later, he heard a commotion from Apartment No. 3. He headed to said unit to check. He peeped through a screen door and saw Bokingco hitting something on the floor. Upon seeing Vitalicio, Bokingco allegedly pushed open the screen door and attacked him with a hammer in his hand. A struggle ensued and Vitalicio was hit several times. Vitalicio bit Bokingco's neck and managed to push him away. Bokingco tried to chase Vitalicio but was eventually subdued by a co-worker. Vitalicio proceeded to his house and was told by his wife that Pasion was found dead in the kitchen of Apartment No. 3. Vitalicio went back to Apartment No. 3 and saw Pasion's body lying flat on the kitchen floor. Pasion and Vitalicio were brought to the hospital. Pasion expired

a few hours later while Vitalicio was treated for his injuries.[8]

Elsa testified that she was in the master's bedroom on the second floor of the house when she heard banging sounds and her husband's moans. She immediately got off the bed and went down. Before reaching the kitchen, Col blocked her way. Elsa asked him why he was inside their house but Col suddenly ran towards her, sprayed tear gas on her eyes and poked a sharp object under her chin. Elsa was wounded when she bowed her head to avoid the tear gas.[9] Col then instructed her to open the vault of the pawnshop but Elsa informed him that she does not know the combination lock. Elsa tried offering him money but Col dragged her towards the back door by holding her neck and pulling her backward. Before they reached the door, Elsa saw Bokingco open the screen door and heard him tell Col: "tara, patay na siya."[10] Col immediately let her go and ran away with Bokingco. Elsa proceeded to Apartment No. 3. Thereat, she saw her husband lying on the floor, bathed in his own blood.[11]

PO3 Quirino Dayrit (PO3 Dayrit) was stationed at Police Station No. 4 in Barangay Salakot, Balibago, Angeles City. At 1:20 a.m. of 29 February 2000, he received a phone call regarding the incident. He, together with a certain P/Insp. Maniago, proceeded to Apartment No. 3 and conducted an investigation. He noticed a pool of blood on the cemented floor of the kitchen. He also saw a claw hammer with a green lead pipe handle approximately 13 inches long near the kitchen sink. A lead pipe measuring 40 inches and a chisel were also found in the nearby construction site. The police went to Angeles University Medical Center afterwards. PO3 Dayrit saw Pasion lying in one of the beds while Vitalicio was still loitering around the emergency room. He approached Vitalicio and Elsa who both informed him of the incident.[12] He prepared a police report on the same day narrating the result of his investigation.[13]

Evelyn Gan, the stenographic reporter of Prosecutor Lucina Dayaon, jotted down notes during the preliminary investigation. She attests that Bokingco admitted that he conspired with Col to kill Pasion and that they planned the killing several days before because they got "fed up" with Pasion.[14]

The necropsy report prepared by Dr. Joven G. Esguerra (Dr. Esguerra), contained the following findings:

- Marked pallor of lips and nailbeds
- Body in rigor mortis
- Contusion with hematoma, right medial infraorbital region extending to the right of the root of the nose.
- Contusion with hematoma, left post-auricular region.
- Contusion with hematoma, right angle of mandible.
- Contusion with hematoma, right mandibular region.
- Contusion with hematoma, left occipital region.
- Contusion with hematoma, right fronto-parietal region.
- Contusion with hematoma, right supraorbital region.
- Abrasions, linear, confluent, proximal third, right leg anterior 2 ½ x 6 ½ cm.
- Contusion with hematoma, left shoulder, level of head of left humerus.
- Stab wound, anterior chest along the anterior median line, 7 cm above the nipple line, 0.8cm length, 0.5 cm wide and 1 cm deep, hitting and puncturing the manubrium sterni, not entering the thoracic cavity. Both extremities round.
- 2 stab wounds, non-penetrating, anterior chest, 13 cm to the left of the anterior median line, 3 cm below

injury (12) 14 cm the right of the anterior median line 4 ½ on below injury (12). Wound 0.8 cm in length, both extremities round.

- Lacerated wound, semi-lunar shape, 3 cm length, left shoulder.
- Lacerated wound, right eyebrow area, C-shaped 2 ½ cm length.
- Lacerated wound, lateral angle, right eye, 0.8 cm length.
- Lacerated wound, right supraorbital region, medial aspect, 2 cm length.
- Lacerated wound, semi-lunar, 5 cm length, occipital region 5 cm length involving all layers of the scalp with brain tissue seen on the gaping wound.
- Lacerated wound, 4 cm length, C-shaped 2 ½ cm to the right of injury (18) 1 ½ cm below, wound involving the whole scalp.
- Lacerated wound, left post-auricular region, C-shaped 4 cm length, 3 cm length.
- Lacerated wound left post-auricular region, region of the squamous part of the left temporal bone, C-shaped (2) 3.5 cm and 4 cm lengths.
- Lacerated wound, right mandibular region 4 cm length, 1 cm wide.
- Lacerated wound, stellate, 5.5 x 5 x 5 cm, right fronto-parietal region with brain tissue out of the gaping wound.
- Lacerated wound, right submandibular region 0.3 x 3.5 cm.
- Lacerated wound, right cheek 0.8 cm length.
- Depressed, complete fracture, occipital bone right with stellate linear extensions, with gaping, with brain tissue maceration.
- Skull fracture, right fronto-parietal region, depressed, complete, C-shaped with linear extensions, with gaping of bone with brain tissue maceration and expulsion.
- Hemorrhage, massive, subdural and epidural.
- Brain tissue damage.[15]

Dr. Esguerra concluded that the injuries sustained by Pasion on his skull proved fatal.[16]

Appellants testified on their own behalf. Bokingco recalled that he was sleeping in Apartment No. 3 at around 1:20 a.m. on 29 February 2000 when he was awakened by Pasion who appeared to be intoxicated. The latter wanted to know why he did not see Bokingco at the construction site on 28 February 2000. When Bokingco replied that he just stayed at the apartment the whole day, Pasion suddenly hit him in the head. This prompted Bokingco to take a hammer and hit Pasion. They both struggled and Bokingco repeatedly hit Pasion. Bokingco escaped to Manila right after the incident. He was subsequently arrested in Mindanao on 11 June 2000.[17] During the cross-examination, Bokingco admitted that he harbored ill feelings towards Pasion.[18]

Col confirmed that he was one of the construction workers employed by Pasion. He however resigned on 26 February 2000 because of the deductions from his salary. He went home to Cainta, Rizal, where he was apprehended and brought to Camp Olivas. Upon reaching the camp, he saw Bokingco who pointed to him as the person who killed Pasion. He insisted that he doesn't know Bokingco very well.[19]

On 16 December 2004, the trial court rendered judgment[20] finding appellants guilty beyond reasonable doubt of

murder, viz:

WHEREFORE, the Court finds accused MICHAEL BOKINGO alias MICHAEL BOKINGCO and REYNANTE COL guilty beyond reasonable doubt of the crime of MURDER, defined and penalized in Art. 248 of the Revised Penal Code, and there being the two aggravating circumstances of nighttime and abuse of confidence to be considered against both accused and the mitigating circumstance of voluntary plea of guilty in favor of accused Bokingo only, hereby sentences each of them to suffer the penalty of DEATH. Each accused is ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00) to pay the heirs of the victim Seventeen thousand six hundred pesos (P17,600.00) as actual damages, Fifteen thousand pesos (P15,000.00) as attorney's fees, Twenty five thousand pesos (P25,000.00) as exemplary damages, and to pay the costs. [21]

In its Decision dated 24 July 2008, the Court of Appeals affirmed the findings of the trial court but reduced the penalty to reclusion perpetua in view of Republic Act No. 7659, thus:

WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION. Accused-appellant REYNANTE COL is found GUILTY as conspirator beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery and evident premeditation and with the attendant aggravating circumstances of nighttime and abuse of confidence, with no mitigating circumstances. The proper imposable penalty would have been death. However, pursuant to Republic Act No. 9346, appellant is sentenced to suffer the penalty of Reclusion Perpetua. Accused-appellant is further ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00); Fifty thousand pesos (P50,000.00) as moral damages; Twenty five thousand pesos (P25,000.00) as exemplary damages; Twenty five thousand pesos (P25,000.00) as temperate damages; Fifteen thousand pesos (P15,000.00) as attorney's fees; and to pay the costs. [22]

Appellants filed a Motion for Reconsideration[23] and called the appellate court's attention on the omission to rule on Bokingco's fate when it rendered the challenged decision. Appellants also noted the absence of other evidence, aside from Bokingco's admission, to prove that conspiracy existed in the instant case. Appellants maintained that the admission made by Bokingco cannot be used as evidence against his alleged co-conspirator. Appellants also took exception to the findings of the lower courts that the aggravating circumstances of treachery, evident premeditation, nighttime and abuse of confidence attended the commission of the crime.[24]

The Court of Appeals merely modified its Decision by including the criminal liability of Bokingco in its dispositive portion of its Amended Decision, which reads:

WHEREFORE, the assailed Decision is AFFIRMED with MODIFICATION. Accused-appellants MICHAEL BOKINGCO and REYNANTE COL are found GUILTY as conspirators beyond reasonable doubt of MURDER as defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659, qualified by treachery and evident premeditation and with the attendant aggravating circumstances of nighttime and abuse of confidence, with no mitigating circumstances. The proper imposable penalty would have been death. However, pursuant to Republic Act No. 9346, the accused-appellant are sentenced to suffer the penalty of Reclusion Perpetua without the possibility of parole (in accordance with Section 3 of the said law). Each of the accused-appellants is further ordered to indemnify the heirs of victim Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00); Fifty thousand pesos (P50,000.00) as moral damages; Twenty five thousand pesos (P25,000.00) as exemplary damages; Twenty five thousand pesos (P25,000.00) as temperate damages; Fifteen thousand pesos (P15,000.00) as attorney's fees; and to pay the costs.[25]

Appellants filed a notice of appeal. In its Resolution dated 26 October 2009, this Court required the parties to submit their Supplemental Briefs within 30 days from notice thereof if they so desire. [26] Appellants manifested that they are no longer filing a Supplemental Brief and are adopting their arguments in the Appellant's Brief

submitted before the Court of Appeals. [27] The appellee likewise manifested that it is dispensing with the filing of a Supplemental Brief. [28] The instant case was thus submitted for deliberation.

In seeking the reversal of the Court of Appeals' Amended Decision, two issues were raised: 1) whether the qualifying circumstances were properly appreciated to convict appellant Bokingco of murder and 2) whether appellant Col is guilty beyond reasonable doubt as a co-conspirator.

There is no question that Bokingco attacked and killed Pasion. Bokingco made two (2) separate and dissimilar admissions: first, in his extrajudicial confession taken during the preliminary investigation where he admitted that he and Col planned the killing of Pasion; and second, when he testified in open court that he was only provoked in hitting Pasion back when the latter hit him in the head. On the basis of his extrajudicial confession, Bokingco was charged for murder qualified by evident premeditation and treachery.

Appellants maintain that they could not be convicted of murder. They question the presence of treachery in the commission of the crime considering that no one from the prosecution witnesses testified on how Pasion was attacked by Bokingco. They also submit that evident premeditation was not proven in the case. They belittle Bokingco's extrajudicial admission that he and Col planned the killing. The attendance of the aggravating circumstances of nighttime and abuse of confidence was likewise assailed by appellants. They aver that nighttime was not purposely sought but it was merely co-incidental that the crime took place at that time. Neither has trust and confidence been reposed on appellants by the victim to aggravate the crime by abuse of confidence. Appellants claim that they were living in an apartment owned by Pasion, not because the latter trusted them but because they worked in the construction of the victim's apartment.

On the other hand, the OSG emphasizes that the prosecution has established that Pasion was defenseless when fatally attacked by Bokingco and there was no opportunity for him to defend himself from the unexpected assaults of Bokingco. The OSG agrees as well with the trial court's findings that evident premeditation, nighttime, and abuse of confidence attended the commission of the crime.

We agree with appellants that treachery cannot be appreciated to qualify the crime to murder in the absence of any proof of the manner in which the aggression was commenced. For treachery to be appreciated, the prosecution must prove that at the time of the attack, the victim was not in a position to defend himself, and that the offender consciously adopted the particular means, method or form of attack employed by him.[29] Nobody witnessed the commencement and the manner of the attack. While the witness Vitalicio managed to see Bokingco hitting something on the floor, he failed to see the victim at that time.[30]

Bokingco admitted in open court that he killed Pasion.[31] But the admitted manner of killing is inconsistent with evident premeditation. To warrant a finding of evident premeditation, the prosecution must establish the confluence of the following requisites: (a) the time when the offender was determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[32] It is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out. [33] In the instant case, no proof was shown as to how and when the plan to kill was devised. Bokingco admitted in court that he only retaliated when Pasion allegedly hit him in the head.[34] Despite the fact that Bokingco admitted that he was treated poorly by Pasion, the prosecution failed to establish that Bokingco planned the attack.

It was during the preliminary investigation that Bokingco mentioned his and Col's plan to kill Pasion.[35] Bokingco's confession was admittedly taken without the assistance of counsel in violation of Section 12, Article III of the 1987 Constitution, which provides:

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

x x x x

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

In *People v. Sunga*,^[36] we held that "the right to counsel applies in certain pretrial proceedings that can be deemed 'critical stages' in the criminal process. The preliminary investigation can be no different from the in-custody interrogations by the police, for a suspect who takes part in a preliminary investigation will be subjected to no less than the State's processes, oftentimes intimidating and relentless, of pursuing those who might be liable for criminal prosecution."^[37] In said case, Sunga made an uncounselled admission before the police. He later acknowledged the same admission before the judge in a preliminary investigation. Sunga was thrust into the preliminary investigation and while he did have a counsel, for the latter's lack of vigilance and commitment to Sunga's rights, he was virtually denied his right to counsel. Thus, the uncounselled admission was held inadmissible.^[38] In the instant case, the extrajudicial confession is inadmissible against Bokingco because he was not assisted at all by counsel during the time his confession was taken before a judge.

The finding that nighttime attended the commission of the crime is anchored on the presumption that there was evident premeditation. Having ruled however that evident premeditation has not been proved, the aggravating circumstance of nighttime cannot be properly appreciated. There was no evidence to show that Bokingco purposely sought nighttime to facilitate the commission of the offense.

Abuse of confidence could not also be appreciated as an aggravating circumstance in this case. Taking into account that fact that Bokingco works for Pasion, it may be conceded that he enjoyed the trust and confidence of Pasion. However, there was no showing that he took advantage of said trust to facilitate the commission of the crime.

A downgrade of conviction from murder to homicide is proper for Bokingco for failure of the prosecution to prove the presence of the qualifying circumstances.

Under Article 249 of the Revised Penal Code, the applicable penalty for homicide is reclusion temporal. There being no mitigating or aggravating circumstance alleged and proven in the instant case, the penalty should be applied in its medium period pursuant to Article 64(1) of the Revised Penal Code, which ranges from a minimum of 14 years, 8 months and 1 day to a maximum of 17 years and 4 months. Applying the Indeterminate Sentence Law, the imposable penalty shall be within the range of prision mayor in any of its periods as minimum to reclusion temporal in its medium period as the maximum. The range of prision mayor is from 6 years and 1 day to 12 years, while reclusion temporal in its medium period, ranges from 14 years, 8 months and 1 day to 17 years and 4 months. Therefore, the indeterminate penalty of six years and one day of prision mayor as minimum to 14 years, eight months and one day of reclusion temporal, as maximum is appropriate under the circumstances.^[39] The award of exemplary damages should be deleted as no aggravating circumstance was proven.

Col, on the other hand, was charged as a co-conspirator. He contends that to hold him guilty as co-conspirator, it must be established that he performed an overt act in furtherance of the conspiracy. Applying Section 30, Rule 130 of the Rules of Court, Col asserts that Bokingco's uncounselled testimony that appellants planned to kill Pasion bears no relevance considering the fact that there was no other evidence which will prove the conspiracy. Col also claims that Elsa's statements during trial, such as the presence of Col inside her house and his forcing her

to open the vault of the pawnshop, as well as the alleged statement she heard from Bokingco "Tara, patay na siya," are not adequate to support the finding of conspiracy.

The Office of the Solicitor General (OSG) justifies Col's conviction of murder by conspiracy by mentioning that starting from the declaration of Bokingco, the victim's wife, Elsa, also positively declared that Col blocked and attacked her with a knife when she tried to check on her husband. She was left alone by Col when he was told by Bokingco that the victim was already dead. For the OSG, appellants' acts are indicative of conspiracy. The OSG contends that the prosecution witnesses had no ill-motive to lie and falsely accuse appellants of the crime of murder.

The lower courts concluded that there was conspiracy between appellants.

We disagree.

This Court is well aware of the policy to accord proper deference to the factual findings of the trial court, owing to their unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grueling examination.[40] However, this rule admits of exceptions, namely: 1) when the trial court's findings of facts and conclusions are not supported by the evidence on record, or 2) when certain facts of substance and value likely to change the outcome of the case have been overlooked by the lower court, or 3) when the assailed decision is based on a misapprehension of facts. [41] The second exception obtains in this case.

Indeed, in order to convict Col as a principal by direct participation in the case before us, it is necessary that conspiracy between him and Bokingco be proved. Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. It may be inferred from the conduct of the accused before, during, and after the commission of the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action, and community of interest.[42] Unity of purpose and unity in the execution of the unlawful objective are essential to establish the existence of conspiracy.[43]

As a rule, conspiracy must be established with the same quantum of proof as the crime itself and must be shown as clearly as the commission of the crime.[44]

The finding of conspiracy was premised on Elsa's testimony that appellants fled together after killing her husband and the extrajudicial confession of Bokingco.

Nobody witnessed the commencement of the attack. Col was not seen at the apartment where Pasion was being attacked by Bokingco. In fact, he was at Elsa's house and allegedly ordering her to open the pawnshop vault, thus:

Q:

Do you remember any unusual incident that happened on that time and date when you were in your master's bedroom?

A:

I heard a bumping sound (kalabog) at the back portion of our building where we reside.

x x x x

Q:

What did you do when you heard those sounds in the wee hours of the morning on that day when you were in your master's bedroom?

A:

I wondered why and I immediately went down to the kitchen since the door of the kitchen was directly leading to the back door or back portion of the building where the apartments were situated.

Q:

Why, on what floor is this master's bedroom located?

A:

Second floor.

Q:

Were you actually able to go down and see what was happening?

A:

Yes, sir, but I was only able to reach the stairs leading to the kitchen. I was not able to go out of the kitchen because I was blocked.

Q:

You were blocked by whom?

A:

By Reynante Col.

Q:

Are you referring to the same Reynante Col, the accused in this case?

A:

Yes, sir.

x x x x

Q:

You said you were blocked by Reynante Col. How did he block you?

A:

As soon as I reached the stairs, I was blocked by Reynante Col and he was situated near the back door of the pawnshop. There is a pawnshop in the front portion of our residence.

Q:

When you saw him near the door of your pawnshop, did you confront him?

A:

Yes, sir.

Q:

How did you confront him?

A:

I asked him, Reynante, what are you doing here?

Q:

What was the reaction of Reynante Col?

A:

He ran towards me and sprayed something into my eyes and he put a sharp object under my chin. (Witness demonstrating by putting her hand under her chin)

Q:

How far was he before he attacked you?

A:

Probably, from the witness stand up to the chair of Fiscal Hilario. Maybe two steps away from him. (Around 3 meters)

Q:

Were you able to identify what this spray is and what part of your body was hit?

A:

My eyes were sprayed with tear gas.

Q:

What did you feel when your eyes was (sic) sprayed with tear gas?

A:

It was "mahapdi" (painful).

Q:

When you felt pain in your eyes, how were you able to see something or a sharp weapon under your chin?

A:

Before he sprayed the tear gas to my eyes, I was able to see him poke the sharp object under my chin and I bowed my head a little to avoid the tear gas. I was wounded under my chin and I felt the sharpness of the object.[45]

x x x x

Q:

What else happened while he was doing that to you?

A:

He sprayed tear gas in my eyes and told me to be silent.

Q:

What else, if any, did he tell you?

A:

To open the combination of the vault.

Q:

Did you comply to his order that you open the combination of the vault?

A:

No, sir. I do not know the combination.

Q:

What vault are you referring to?

A:

Vault of the pawnshop.

Q:

Where is that pawnshop located with reference to your residence?

A:

At the first floor is the pawnshop and at the back is our kitchen.

Q:

When you refused to open the vault of the pawnshop, what did Reynante Col do about it?

A:

He did not say anything.

Q:

How about you, was there anything else you did?

A:

I offered him money so he will not kill me.

Q:

When you offered him money so he will not kill you, did he agree?

A:

No, sir.

Q:

What else happened next when he did not agree to your offer of money?

A:

He dragged me going towards the back door.[46]

Based on these acts alone, it cannot be logically inferred that Col conspired with Bokingco in killing Pasion. At

the most, Col's actuations can be equated to attempted robbery, which was actually the initial information filed against appellants before it was amended, on motion of the prosecution, for murder.[47]

Elsa testified that she heard Bokingco call out to Col that Pasion had been killed and that they had to leave the place. This does not prove that they acted in concert towards the consummation of the crime. It only proves, at best, that there were two crimes committed simultaneously and they were united in their efforts to escape from the crimes they separately committed.

Their acts did not reveal a unity of purpose that is to kill Pasion. Bokingco had already killed Pasion even before he sought Col. Their moves were not coordinated because while Bokingco was killing Pasion because of his pent-up anger, Col was attempting to rob the pawnshop.

In as much as Bokingco's extrajudicial confession is inadmissible against him, it is likewise inadmissible against Col, specifically where he implicated the latter as a cohort. Under Section 28, Rule 130 of the Rules of Court, the rights of a party cannot be prejudiced by an act, declaration or omission of another. *Res inter alios acta alteri nocere non debet*. Consequently, an extrajudicial confession is binding only on the confessor, is not admissible against his or her co-accused, and is considered as hearsay against them.[48] An exception to the *res inter alios acta* rule is an admission made by a conspirator. Section 30, Rule 130 of the Rules of Court provides that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator provided that the conspiracy is shown by evidence other than by such act or declaration.[49] In order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that first, the conspiracy be first proved by evidence other than the admission itself; second, the admission relates to the common object; and third, it has been made while the declarant was engaged in carrying out the conspiracy.[50] As we have previously discussed, we did not find any sufficient evidence to establish the existence of conspiracy. Therefore, the extrajudicial confession has no probative value and is inadmissible in evidence against Col.

Bokingco's judicial admission exculpated Col because Bokingco admitted that he only attacked Pasion after the latter hit him in the head.

All told, an acquittal for Col is in order because no sufficient evidence was adduced to implicate him.

WHEREFORE, the appeal is GRANTED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00658 is REVERSED and SET ASIDE. Appellant Reynante Col is ACQUITTED on ground of reasonable doubt. The Bureau of Corrections is ordered to cause the immediate release of accused-appellant, unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice.

Appellant Michael Bokingco is found GUILTY beyond reasonable doubt of the crime of Homicide. He is hereby sentenced to suffer the penalty of six years (6) and one (1) day of prision mayor as minimum to 14 years, eight (8) months and one (1) day of reclusion temporal, as maximum Appellant is further ordered to indemnify the heirs of Noli Pasion in the amount of Seventy five thousand pesos (P75,000.00); Fifty thousand pesos (P50,000.00) as moral damages; Twenty five thousand pesos (P25,000.00) as temperate damages; Fifteen thousand pesos (P15,000.00) as attorney's fees; and to pay the costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Bersamin,[*] and Sereno, JJ., concur.

[*] Per Special Order No. 1053.

- [1] Penned by Associate Justice Romeo F. Barza with Associate Justices Mariano C. Del Castillo (now Supreme Court Associate Justice) and Arcangelita M. Romilla-Lontok, concurring. Rollo, pp. 2-25.
- [2] In this Decision, we refer to appellant Michael Bokingo by his alias "Michael Bokingco."
- [3] Another Information was filed before the first level court of Angeles City for Attempted Homicide. Records, Vol. I, p. 92.
- [4] Id. at 1.
- [5] Id. at 103.
- [6] CA rollo, p. 137.
- [7] TSN, 23 October 2001, p. 7.
- [8] TSN, 26 July 2001, pp. 4-13.
- [9] TSN, 22 January 2002, pp. 3-5.
- [10] Id.
- [11] TSN, 28 February 2002, pp. 3-5.
- [12] TSN, 15 February 2001, pp. 5-18.
- [13] Records, Vol. I, pp. 17-18.
- [14] TSN, 3 December 2002, p. 13.
- [15] Records, Vol. II, p. 413.
- [16] TSN, 30 January 2001, p. 15.
- [17] TSN, 16 July 2003, pp. 3-7.
- [18] TSN, 2 September 2003, p. 2.
- [19] TSN, 4 November 2003, pp. 3-7.
- [20] Presided by Judge Ma. Angelica T. Paras-Quiambao. CA rollo, pp. 7-30.
- [21] Id. at 29-30.
- [22] Id. at 154.
- [23] Id. at 161-166.
- [24] Id. at 164-165.
- [25] Id. at 195-196.
- [26] Rollo, p. 45.
- [27] Id. at 46.
- [28] Id. at 53.
- [29] People v. Tabuelog, G.R. No. 178059, 22 January 2008, 542 SCRA 301, 320 citing People v. Concepcion, G.R. No. 169060, 6 February 2007, 514 SCRA 660, 670-671.

[30] TSN, 26 July 2001, pp. 4-13.

[31] Records, p. 103.

[32] *People v. Delpino*, G.R. No. 171453, 18 June 2009, 589 SCRA 515, 529 citing *People v. Tigle*, 460 Phil. 368, 382-383 (2004) citing further *People v. Baldogo*, 444 Phil. 35, 59-60 (2003).

[33] *People v. Grabino*, G.R. No. 189981, 9 March 2011; *People v. Agudez*, G.R. No. 138386-87, 20 May 2004, 428 SCRA 692, 709 citing *People v. Jarlos*, G.R. No. 140897, 19 February 2003, 397 SCRA 735, 743-744.

[34] TSN, 16 July 2003, p. 5.

[35] TSN, 2 September 2003, p. 10-11.

[36] 447 Phil. 776 (2003).

[37] *Id.* at 807.

[38] *Id.* at 790-791.

[39] *Revita v. People*, G.R. No. 177564, 31 October 2008, 570 SCRA 356, 372.

[40] *People v. Olimba*, G.R. No. 185008, 22 September 2010.

[41] *People v. Bi-ay*, G.R. No. 192187, 13 December 2010 citing *People v. Bautista*, G.R. No. 188601, 29 June 2010, 622 SCRA 524, 537-538.

[42] *People v. Relos, Sr.*, G.R. No. 189326, 24 November 2010 citing *People v. Delos Santos*, 399 Phil. 405, 417 (2000); *People v. Cabrera*, G.R. No. 105992, 1 February 1995, 241 SCRA 28, 34; *People v. Agpawan*, 393 Phil. 434, 438 (2000).

[43] *People v. Jorge*, G.R. No. 99379, 22 April 1994, 231 SCRA 693, 698 citing *Orodio v. Court of Appeals*, G.R. No. L-57519, 13 September 1988, 165 SCRA 316, 323.

[44] *Cajigas v. People*, G.R. No. 156541, 23 February 2009, 580 SCRA 54, citing *Sim v. People*, G.R. No. 159280, 18 May 2004, 428 SCRA 459, 465-466.

[45] TSN, 22 January 2002, pp. 3-5.

[46] TSN, 28 February 2002, p. 3.

[47] Records, Vol. I, p. 92.

[48] *People v. Vda. de Ramos*, 451 Phil. 214, 224-225 (2003).

[49] *People v. Morial*, 415 Phil. 310, 335-336 (2001).

[50] *Tamargo v. Awingan*, G.R. No. 177727, 19 January 2010, 610 SCRA 316, 332 citing *People v. Tena*, G.R. No. 100909, 21 October 1992, 215 SCRA 43, 48-49 citing further *Montoya v. Baun*, 44 O.G. 4382 as cited in *Francisco*, *The Revised Rules of Court in the Philippines*, Vol. VII, Part I, 1990 ed., p. 349.

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