

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. AQUIL PILPA Y DIPAZ, ACCUSED-APPELLANT.

G.R. No. 225336. September 05, 2018

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CAGUIOA, J:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Aquil Pilpa y Dipaz (Pilpa) assailing the Decision[2] dated June 8, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05822, which affirmed the Decision[3] dated September 26, 2012 of Regional Trial Court (RTC) of Manila, Branch 18 in Criminal Case No. 03-217857, finding Pilpa guilty beyond reasonable doubt of the crime of Murder.

The Facts

An Information was filed against Pilpa for the murder of Dave Alde (Alde), the accusatory portion of which reads:

"That on or about August 23, 2003, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon the person of one DAVE ALDE Y BURAYAG, by then and there stabbing the latter with a bladed weapon, hitting him on the chest, thereby inflicting upon the said DAVE ALDE Y BURAYAG mortal stab wound which was the direct and immediate cause of his death thereafter.

Contrary to law."[4]

The version of the prosecution, as summarized in its Appellee's Brief,[5] is as follows:

On August 23, 2003, around 8:00 in the evening, prosecution eyewitness Barangay Tanod Leonila Abuel went to Quirino Highway, Pandacan, as she was assigned by her officer in charge to look for a certain Reynan. When she arrived at the highway, she saw a group of five persons which include Dave Alde (Alde for brevity), the victim, Carol (Carol Asis) and Eva (Evangeline Abuel) and two other people the names of which she failed to remember. She approached the said group and asked if they knew the whereabouts of Reynan to which Carol answered in the negative. While still talking to the group, another group of five men, which included one named "JR" and appellant Aquil Pilpa (Pilpa for brevity) arrived. At this point, "JR" stabbed Alde on the chest with a big knife while appellant was positioned at the back of Leonila. After "JR" stabbed Alde, appellant, who was a mere arms-length away from Leonila, poised to thrust Alde as well. At this point, witness Leonila tried to intervene by announcing her position as Barangay Tanod but appellant disregarded said intervention by uttering "wala kaming pakialam kahit Barangay Tanod ka[.]" Witness Leonila sustained injuries as she attempted to parry the thrusts. Appellant's attempts to stab Alde ultimately failed because "Choy[.]" a companion of Alde, was able to parry the thrusts. Leonila then ordered Alde to run away which he was able to do despite his wounds, but appellant and his group gave chase. Thereafter, appellant and his group scampered away.

Subsequently, Alde was brought to the Ospital ng Maynila to be given timely medical attention.

While Alde was brought to the hospital, tanod Leonila, accompanied by the police, one of them, PO3 Benedict Cruz, caught up appellant who was found in a house near the railroad. She identified appellant as one of the group. Appellant was then arrested and brought to the hospital as it is the standard operating procedure to provide medical attention to suspects. When appellant was brought to the hospital, the victim Alde positively identified appellant as one of those who stabbed him.

Dr. Nolan Alandino was the physician on duty at the emergency room when Alde was admitted. Alde underwent emergency surgery due to the stab wounds inflicted on him. Dr. Alandino then referred Alde for further surgery. Alde underwent an operation on both sides of the chest and repair was made on his heart. Such operation ended around 11:40 pm of the same day. Unfortunately, twenty minutes after the operation, while in the recovery room, Alde went into cardiac arrest and succumbed to death.[6]

On the other hand, the version of the defense, as summarized by the RTC, is as follows:

For his defense, accused alleged that on August 23, 2003 between 8:00 to 8:30 in the evening, he was at the billiard hall operated by a certain Aling Cora located in front of their house. Pilpa played with companions whose names he did not know. After few minutes of playing, he left the billiard hall at around 8:30 pm then went straight home to sleep. The accused lived together with "JR" and the latter's two sisters and mother. Just when he was about to sleep, policemen arrived to arrest him and "JR" Niepes. The policemen informed that JR stabbed somebody and because of this, [Pilpa] was brought to Police Station 10. Incidentally, JR was not at home at the time of the (sic) arrest. Herein accused maintained that he was not in the place of incident and denied that he was with alias JR when the stabbing incident happened. [Pilpa] further denied that he had participation in the killing of the victim and stressed that he was not familiar with the identities of the witnesses presented by the prosecution. Further, the accused clarified in court that he had no motive to attack or kill the victim as he did not even personally know Dave Alde.[7]

Pilpa was arraigned on September 27, 2004, in which he pleaded "not guilty" to the crime charged.[8] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Decision dated September 26, 2012, the RTC convicted Pilpa of the crime of Murder. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused AQUIL PILPA GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code qualified by treachery and hereby sentenced to suffer the penalty of RECLUSION PERPETUA without eligibility of parole. They are ordered to indemnify jointly and severally the heirs of the victim DAVE ALDE the sum of P75,000.00 as civil indemnity, P75,000.00 as moral damages and P30,000.00 as exemplary damages. Considering that the accused is a detention prisoner, he shall be given full credit for the period of his preventive detention conformably to Article 29 of the Revised Penal Code.

SO ORDERED.[9] (Emphasis in the original)

The RTC found that the positive identification by the prosecution witnesses Leonila Abuel (Leonila), Evangeline Abuel (Evangeline) and Carolina Asis (Carolina) deserved to be given greater evidentiary weight over the general denial by Pilpa that he was not at the place of the incident at the time it took place. The RTC held that Pilpa was liable - although it was only the certain "JR" who was able to inflict stab wounds on the victim - because there was conspiracy among the assailants of Alde.[10] As conspiracy was present, the RTC ruled that all of the assailants were liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime perpetrated in furtherance of such conspiracy.[11]

The RTC also found that treachery attended the killing of Alde, hence Pilpa was liable for Murder instead of

Homicide. The RTC reasoned that "[t]he attack made by Aquil Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself." [12]

Aggrieved, Pilpa appealed to the CA.

Ruling of the CA

In the assailed Decision dated June 8, 2015, the CA affirmed the RTC's conviction of Pilpa, and held that (1) the prosecution was able to sufficiently prove the elements of the crime charged; (2) conspiracy exists among Alde's assailants; and (3) the element of treachery was present in the killing of Alde.

The CA held that conspiracy may be deduced from the conspirators' conduct before, during and after the commission of the crime indicative of a joint purpose, concerted action and community of interests - and that the facts of the present case reveal such concerted action to achieve the purpose of killing Alde. [13] The CA further held that treachery was present despite the fatal assault being a frontal attack, because the said attack was sudden and unexpected and the victim was unarmed. [14]

The CA, however, modified the award of damages to be paid to the heirs of Alde. The CA added the amount of P15,000.00 representing additional actual damages because the heirs were able to show receipts with the said amount representing expenses for the wake and burial of Alde. [15]

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by Pilpa:

(1)

Whether the CA erred in convicting Pilpa despite the prosecution's failure to prove his guilt beyond reasonable doubt; [16]

(2)

Whether the CA erred in convicting Pilpa despite the prosecution's failure to prove that conspiracy exists; [17]

(3)

Whether the CA erred in appreciating the qualifying circumstance of treachery. [18]

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of Pilpa but for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not present in the killing of Alde.

First and Second Issues: The existence of conspiracy and Pilpa's criminal liability

The first two issues, being interrelated, are discussed jointly.

In questioning his conviction, Pilpa harps on the fact that the evidence establishes that he attempted only to stab Alde after "JR" had already stabbed him. He argues essentially that (1) the attempt to stab Alde was not a crime in itself, and (2) in any event, the crime had already been consummated by "JR" alone at the time he made the said attempt. Pilpa further contends that this attempt was not evidence that he was part of the conspiracy, if any, to kill Alde.

The arguments deserve scant consideration.

It is well-established that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[19] Conspiracy is the unity of purpose and intention in the commission of a crime. There is conspiracy if at the time of the commission of the offense, the acts of two or more accused show that they were animated by the same criminal purpose and were united in their execution, or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action.[20]

It is true that the elements of conspiracy must be proved by the same kind of proof — proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself.[21] However, this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged.[22] Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.[23]

In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the prosecution correctly argued:

To prove conspiracy, it is not needed that a meeting between the perpetrators be proven. Such conspiracy may be inferred from the conduct before and immediately after the act of the people involved. The conduct of appellant and "JR" in approaching the group of Alde, stabbing him and running after him, indubitably shows that they had agreed to kill him. After the incident, appellant was also found to be in "JR"s home. It is contrary to human experience and logic to be present at the home of a friend who had just stabbed another without being aware of such occurrence as appellant alleges.

x x x x

It cannot be disputed that the acts of appellant and "JR" were done with a common goal of achieving the death of Alde. Their act of stabbing him cannot be interpreted to mean anything else other than they wanted to inflict him serious harm. Such acts of stabbing done to achieve a common goal indicate concerted action and concurrence of sentiments which is adequate in proving that a conspiracy exists.

x x x x

The fact that appellant was unable to actually stab Alde, not by his own volition but due to the parry of Alde's companion "Choy", does not preclude the existence of conspiracy. Conspiracy can rightly be inferred and proven by the acts of stabbing committed by both appellant and "JR" jointly and concertedly. The existence of conspiracy renders appellant as a co-principal even if he failed to actually stab Alde.

Appellant's lame attempt to refute the existence of conspiracy relying on the cases of *People vs. Jorge* and *People vs. Iligan, et. al.* is misplaced because in those cases, the persons involved did not take part in the actual stabbing. In this case, appellant himself took part in the stabbing. Furthermore, appellant's assertion that such crime was already consummated by "JR" and therefore appellant can no longer be liable for conspiracy is untenable and without basis. The fact that "JR" was able to stab Alde first does not mean that appellant who stabbed him next can be exculpated from conspiracy. Otherwise, every conspiracy charge may be thwarted by the mere fact that one of the conspirators beat the others to the act.[24] (Underscoring and additional emphasis supplied; italics in the original)

To further establish his innocence, Pilpa relies on alibi and denial, and the imputation of ill-motive on the prosecution witnesses. Pilpa reiterates that he was not at the scene of the crime at the time of the incident, and the eyewitnesses' testimonies, particularly those of Carolina and Evangeline, should not be accorded evidentiary weight as they were long-time friends of Alde.

Again, Pilpa's arguments fail to convince.

The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[25] Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.[26] These, Pilpa was unable to prove.

Long-time friendship, without more, is not sufficient to constitute ill-motive so as to taint an eyewitness' testimony. And even assuming, without conceding, that the Court could not accord Carolina's and Evangeline's testimonies any evidentiary weight, the result would nevertheless be the same. It bears to stress that Pilpa was positively identified, not just by Carolina and Evangeline, but also by the barangay tanod Leonila and by the victim himself when the latter was in the hospital.[27]

In this connection, the Court quotes with approval the following ratiocination of the CA:

Appellant failed to show that the prosecution witnesses were prompted by any ill-motive to falsely testify or accuse him of a crime as grave as murder. In fact, appellant admitted that it was only during the trial of the present case that he saw the witness Leonila Abuel. Settled is the rule that where no evidence exists to show any convincing reason or improper motive for a witness to falsely testify against an accused, the testimony deserves faith and credit.

In the face of the positive identification by the prosecution witnesses, appellant's denial and alibi vanish into thin air. Alibi and denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.[28]

Without doubt, therefore, Pilpa should be liable for the killing of Alde.

Third Issue: Existence of the Qualifying Circumstance of Treachery

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance was present, thereby making Pilpa liable for Murder instead of Homicide. The CA held:

On the account of the eyewitnesses Leonila Abuel, Evangeline Abuel and Carolina Asis, appellant and his companions suddenly appeared in front of the victim without any warning or provocation. JR stabbed the victim on his chest. Thereafter, appellant aimed to stab the victim but somebody was able to parry his thrust. The sudden and unexpected attack deprived the unsuspecting victim of any real chance to defend himself, ensuring the attack without risk to his assailants and without sufficient provocation on the victim's part. Likewise, the means employed on the victim assured his assailants of no risk at all arising from the defense that the victim might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.

Thus, as correctly pointed out by the court a quo:

"The attack made by Aquil Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself. Even if the victim was with his companions, the attackers were equipped with bladed weapons and this ensures that the victim shall be without chance to keep himself safe from the violent and treacherous acts of the accused[.]"[29]

On the other hand, Pilpa claims that the existence of treachery must be proved by clear and convincing evidence before the same could be appreciated. He insists that "[i]n the absence of any convincing proof that the accused

consciously and deliberately adopted the means by which they committed the crime in order to ensure its execution, the Honorable Court must resolve the doubt in favor of the accused." [30]

On this issue, the Court rules in favor of Pilpa.

It was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the attack was "sudden," "unexpected," and "without any warning or provocation." [31] It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. [32]

As the Court held in *People v. Santos*, [33] "[t]reachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that 'the attack was sudden'[:]; there must be a clear showing from the narration of facts why the attack or assault is said to be 'sudden.'" [34]

Stated differently, mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby knowingly intended to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. [35] Specifically, it must clearly appear that the method of assault adopted by the aggressor was deliberately chosen with a view to accomplishing the act without risk to the aggressor. [36]

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends in a public highway (Quirino Highway), [37] and even in the presence of a barangay tanod, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. As the Court similarly held in *People v. Tumaob*: [38]

x x x. The qualifying circumstance of treachery can not logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. [39] (Emphasis and underscoring supplied)

In addition, the attack itself was frontal. In *People v. Tugbo, Jr.*, [40] the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of Pilpa and not appreciate the said circumstance.

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is reclusion temporal. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is prision mayor with a range of six (6) years and one (1) day to twelve (12) years.

Thus, Pilpa shall 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. [41]

Finally, in view of the Court's ruling in *People v. Jugueta*,^[42] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of P50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby PARTIALLY GRANTED. The Court DECLARES accused-appellant Aquil Pilpa y Dipaz GUILTY of HOMICIDE, for which he is 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. He is further ordered to pay the heirs of Dave Alde the amount of Fifty Thousand Pesos (P50,000.00) as civil indemnity, Fifty Thousand Pesos (P50,000.00) as moral damages, and Fifty Thousand Pesos (P50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, A. Reyes, Jr., and J. Reyes, Jr.,[*] JJ., concur.

[*] Designated additional member per Special Order No. 2587 dated August 28, 2018.

[1] See Notice of Appeal dated July 8, 2015, rollo, pp. 15-16.

[2] Rollo, pp. 2-14. Penned by Associate Justice Sesonando E. Villon with Associate Justices Rodil V. Zalameda and Pedro B. Corales, concurring.

[3] CA rollo, pp. 48-59. Penned by Presiding Judge Carolina Icasiano-Sison.

[4] Rollo, p. 3.

[5] CA rollo, pp. 74-91.

[6] Id. at 79-80.

[7] Id. at 52.

[8] Rollo, p. 3.

[9] CA rollo, p. 59.

[10] Id. at 55.

[11] Id. at 55-56.

[12] Id. at 58.

[13] Rollo, p. 7.

[14] Id. at 11.

[15] Id. at 13.

[16] Id. at 6.

[17] Id.

[18] Id. at 7.

[19] *Silon v. Court of Appeals*, 281 Phil. 536, 541 (1991).

[20] *People v. Aquino*, 390 Phil. 1176, 1184-1185 (2000).

[21] *People v. Taborada*, 284-A Phil. 736, 742 (1992).

[22] *Id.*

[23] *Id.* at 743.

[24] CA rollo, pp. 87-89.

[25] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[26] *People v. Desalisa*, 451 Phil. 869, 876 (2003).

[27] Rollo, p. 4.

[28] *Id.* at 12.

[29] *Id.* at 11-12.

[30] CA rollo, pp. 43-44.

[31] Rollo, p. 11; *id.* at 50, 58.

[32] *People v. Sabanal*, 254 Phil. 433, 436 (1989).

[33] 175 Phil. 113 (1978).

[34] *Id.* at 122.

[35] *People v. Delgado*, 77 Phil. 11, 15-16 (1946).

[36] *People v. Bacho*, 253 Phil. 451, 458 (1989).

[37] CA rollo, pp. 49-50.

[38] 83 Phil. 738 (1949).

[39] *Id.* at 742.

[40] 273 Phil. 346, 352 (1991).

[41] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[42] 783 Phil. 806 (2016).

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