

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS HECTO, PEDRO HECTO AND LORETO HECTO, ACCUSED, PEDRO HECTO AND LORETO HECTO, DEFENDANTS-APPELLANTS.

G.R. No. 52787, February 28, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

From the decision of the then Court of First Instance of Leyte, rendered after trial in Criminal Case No. 1093, finding accused Pedro Hecto and Loreto Hecto guilty beyond reasonable doubt of the crime of murder with direct assault upon a person in authority and sentencing "each of them to the death penalty to be executed at a date to be set and in the manner provided for by law and to jointly and severally indemnify the heirs of Barrio Captain Catalino Pedrosa (represented by Mrs. Caridad B. Pedrosa of San Isidro, Dulag, Leyte) in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency and to pay 2/6 of the costs," (p. 22, Rollo) the aforementioned accused have appealed to this Court.

Following are the facts.

Sometime in January or February 1972, brothers Jesus Hecto and Pedro Hecto slaughtered a carabao in barrio San Isidro, municipality of Dulag, Province of Leyte. They did not pay the corresponding "tumbada" or slaughter fee and upon learning of this nonpayment, Barangay Captain Catalino Pedrosa asked him (Jesus) to pay the same. Jesus replied that he could not yet pay the required slaughter fee because those who bought meat from him had not also paid him yet. Thereafter, Pedrosa met Municipal Treasurer Benedicto de la Paz who informed him that according to the Hecto brothers they had already paid the slaughter fee to him (Pedrosa). Pedrosa denied having received the fee mentioned.

On February 27, 1972, Catalino Pedrosa and his wife went to visit their farm and on their way home, about 3:00 in the afternoon, they met Jesus and Pedro Hecto. Pedrosa confronted the two about the false information they gave the municipal official concerning the alleged payment of the slaughter fee to him. A heated discussion ensued and the Rectos tried to attack Pedrosa. Mrs. Caridad Pedrosa pulled her husband away and the trouble was averted.

About 6:00 in the afternoon of March 24, 1972, Catalino Pedrosa left his house in barangay San Isidro to accompany a two-year old nephew to the house of the child's parents. On his way back, about 6:30 he was shot by Jesus Hecto and Pedro Hecto and thereafter stabbed by Marcial Hecto and Roberto Silvano.

Caridad Pedrosa at the time was in her house preparing supper. Upon hearing the sound of a gunfire, she immediately ran to the door. However, she was prevented from going down the house by Loreto Hecto and Faustino Silvano, son and nephew, respectively, of Jesus Hecto. They pointed their guns at her. Notwithstanding, Caridad, could see Jesus Hecto pointing a gun at her husband, Catalino Pedrosa, who was already lying on the ground face up. This was followed by Pedro Hecto who also fired his own gun at Pedrosa. Thereafter, Jesus Hecto, Pedro Hecto, Marcial Hecto and Roberto Silvano carried the victim to a nearby ditch where Roberto and

Marcial took turns in stabbing him with their bolos. The four assailants then walked away. Loreto Hecto and Faustino Silvano who were at the door of the house of the Pedrosas guarding Caridad joined the four.

The police was informed of the incident. Acting Chief of Police Nerio dela Cruz, with several policemen, arrived at the scene of the incident at about 8:00 that evening. They found the dead Pedrosa with three gunshots and three stab wounds on his body.

During the trial of the case, the accused Jesus Hecto died shortly after he had testified. Accordingly, the case against him was dismissed by the court. Trial proceeded against Pedro and Loreto Hecto while their confederates: Roberto Silvano, Marcial Hecto and Faustino Silvano remained at large.

The defense of appellants Loreto Hecto and Pedro Hecto was denial. Loreto testified that at the date and time of the incident he was in his house two kilometers away from barangay San Isidro drinking tuba with his hired farm laborers, Pablo Lirios and Felicito Bico. In the morning of that day, March 24, 1972, his farm laborers plowed his cornfield until about 4:00 in the afternoon. He then offered them tuba which they drank together in his house. About 6:00, his sister Lolita arrived telling them that their father Jesus fought with Catalino Pedrosa. He then left for barrio San Isidro to see his parents and, as a precautionary measure, he brought his mother Maria Ganaron to his house.

Appellant Pedro Hecto declared that on March 23 and 24, 1972 he stayed in his house because the palay which was harvested on March 21 was being threshed by Beato Andrade and Victor Isyo. The threshing was finished about 11:00 in the evening of March 24. About 9:00 some members of the police force of Dulag went to his house looking for his brother Jesus Hecto. They left upon finding that he was not there. About an hour later, Jesus arrived and said that he had killed somebody and that he was going to town to surrender. After a few days, he (Pedro Hecto) left for Tacloban City where he worked as carpenter until he was arrested on June 17, 1972.

Appellants claim that the trial court erred (1) in relying on inadmissible evidence in making a finding of facts relevant to the judgment of conviction; (2) in rendering a judgment of conviction even if their respective guilts were not proven beyond reasonable doubt; and (3) in finding that the crime of murder was committed with assault upon a person in authority.

With respect to the first assigned error, We agree with appellants that the sworn statement of Constancio Bollena who did not testify at the hearing should not have been admitted and considered by the trial court. In said affidavit, Bollena said that he was talking with Pedrosa when Jesus Hecto, Pedro Hecto, Loreto Hecto, Marcial Hecto, Roberto Silvano and Faustino Silvano arrived; that after Loreto Hecto and Faustino Silvano proceeded to Pedrosa's house, Jesus Hecto immediately drew and fired his gun twice at Pedrosa; that Jesus then turned his attention to Bollena who ran away and succeeded in evading the shot fired at him by Jesus. As aptly stated by the Solicitor General in his brief, the affidavit of Bollena should not be considered in passing judgment upon the guilt or innocence of herein appellants. "Such statement is hearsay evidence for the reason that Bollena never testified in court. Appellants did not have the opportunity to cross-examine him and test his credibility." (p. 167, Rollo)

However, the conviction of appellants Pedro Hecto and Loreto Hecto by the trial court was not entirely based on the affidavit of Bollena. There were the testimonies of Caridad Pedrosa and Mario Cadayong. Hereunder are the said testimonies of Caridad Pedrosa, wife of the victim -

"Q

You said that you were inside your house. Immediately after you heard the first gunshot, what did you do?

ATTY. SANTOS:

Answered already, Your Honor.

COURT:

Let her answer because her testimony on this point is not very clear.

FISCAL CABLITAS:

A I ran towards the door of the house.

Q And you said you were threatened by Loreto and Faustino with guns. Where were you threatened by them?

A I was threatened by the door of our house because I was not able to go down. When I opened the door they threatened me with guns.

X XX X X X X X X

Q Did you know what was that gun report - the fourth gunshot report about?

A Yes, sir.

Q

What was it about?

A The gunshot was fired by Pedro Hecto. I could see him still holding the gun.

Q To whom was it aimed when you saw that gun which he fired?

A Towards my husband.

x xx x x x x x x

Q When this fourth gunfire was made, were Loreto and Faustino still pointing their guns at you?

A Yes, they were still pointing their guns at me.

Q

How did you manage to see what was happening to your husband?

A Because I looked at the two (2) persons pointing their guns to me and at the same time I looked also at the place where my husband has fallen.

x xx x x x x x x

Q After your husband was fired upon by Pedro Hecto what happened after that?

A They lifted my husband to the culvert.

Q Who lifted your husband?

A The four (4) of them.

Q Who?

A Jesus Hecto, Pedro Hecto, Marcial Hecto and Roberto Silvano.

x xx x x x x x x

FISCAL CABLITAS:

Q Your husband, as you said, was the barrio captain of your place at the time when he was gunned down by the accused and by the other persons charged in the information, who are simply residents of the place who are

supposed to be under him. Will you please tell the Court the reason why your husband was killed?

x xx x x x x x

A It was in the month of January or February when Jesus Hecto slaughtered their carabao.

Q What year?

A 1972.

Q

And then?

A My husband asked for the permit of slaughtering the carabao.

Q What is this "tumbada" in your local parlance?

A Whenever somebody slaughter a carabao, a certain amount is asked from them.

Q For what is this amount - where does this go?

A For the municipal treasurer.

Q Municipal treasurer or barrio treasurer?

A Municipal treasurer.

Q And then, was Jesus Hecto able to pay the 'tumbada' to the barrio captain, your husband?

A Jesus Hecto did not give the amount to my husband because according to Jesus Hecto, the persons who partook of the carabao did not pay him yet.

X XX X X X X X X

FISCAL CABLITAS:

I am asking for the motive, Your Honor.

COURT:

Witness is being asked on what she knows about the motive.

FISCAL CABLITAS:

A Benedicto de la Paz asked my husband about the amount as payment for the slaughter of the carabao as according to his information, the amount was already given to him.

Q As a result of this, do you know what happened on February 27, 1972, as a result of this 'tumbada' in question?

A We were from our farm when we passed by Pedro and Jesus Hecto at the waiting shed.

Q And then?

A

My husband confronted Jesus Hecto by saying 'You have told there that you have already given the amount as payment for the slaughter of the carabao; but why did you tell them when you have not given me this amount yet?'

Q What happened after this?

A There was an exchange of words between my husband and Jesus Hecto.

Q And then?

A I held my husband because they were about to harm my husband.

Q Who were about to harm your husband?

A Pedro Hecto and Jesus Hecto.

Q What did you do?

A I held my husband and we went home.

Q And what did Jesus Hecto and Pedro Hecto do when you held your husband and you went home?

A

He said 'Ikaw, Capitan, ka nga estrikto, magkikita kita ha iba nga adlaw.' Meaning, 'You, Bo. Captain, you are very strict. We will see each other some day.' (pp. 310, 311, 314, 315, 323, 324, 325 and 326, tsn., Hearing on January 28, 1975) and of Mario Cadayong:

"Q You said Catalino Pedrosa was killed, do you know how he was killed?

A Yes, sir.

Q How?

A He was shot.

Q By whom?

A He was shot by Jesus Hecto and Pedro Hecto.

Q Now you are talking about shots, you mean to say that there were guns during the incident?

A Yes, sir.

Q How many guns have you seen?

A Pedro and Jesus Hecto were having one gun each.

x xx x x x x x x

Q And when while you were running towards the coconut tree to take cover, you heard a second shot?

A I did not run because the coconut tree was very near. While I was going to that tree to hide I saw Jesus Hecto holding the gun and firing the second fire.

x xx x x x x x x

COURT:

Just answer the question whether Catalino died after quivering.

WITNESS:

A Not yet because he was still shot.

ATTY. TAN:

Q

He was shot by whom?

A Pedro Hecto.

(pp. 432, 433, 435 & 445, tsn., June 3, 1976 hearing)

x xx x x x x x x

COURT:

Will you describe to us in proper sequence what you saw from the time Jesus Hecto pointed his gun to Catalino Pedrosa who was already fallen on the ground shaking?

A Catalino was shot again by Pedro. Catalino Pedrosa was carried by Pedro Hecto, Jesus Hecto and Roberto Silvano to the ditch. After that, Catalino was stabbed by Roberto and after that he was again stabbed by Marcial. We were stepping back-wards as we saw Man Caring pointed to with a gun by someone.

Q

Who is Man Caring?

A Caridad Pedrosa.

Q Who was pointing a gun at Caridad Pedrosa?

A Loreto and Faustino.

X X X X X X X X

Q How about Roberto? You said he stabbed Catalino. What weapon did he use in stabbing at your uncle?

A He used a pisaw, a small bolo. Maybe it was pisaw. (Witness indicating a length of one-third of a meter.)

X X X X X X X X

Q Did you see Pedro Hecto actually fire upon Catalino Pedrosa?

A Yes, sir.

Q

Was Catalino hit?

A Maybe, he was hit because Catalino was just in front of Pedro and whose position was lying face upwards.

Q When Jesus Hecto fired upon Catalino Pedrosa, referring to the second shot you saw, was Pedro around?

A. Yes, sir. He was around.

(pp. 243, 244, 245, 247, tsn., September 9, 1975 hearing)

x xx x x x x x x

Q When for the first time did you see Pedro Hecto in the scene of the incident?

A I saw them when they were going to the waiting shed. I saw Jesus Hecto, Pedro Hecto, Marcial Hecto, Roberto Silvano going to the waiting shed." (p. 450, tsn., June 3, 1976 hearing)

Thus, it is clear that Mrs. Caridad Pedrosa and Mario Cadayong saw the killing of the victim, Catalino Pedrosa. Considering the concerted action of Jesus Hecto, appellants Pedro and Loreto Hecto, Marcial Hecto, Roberto and Faustino Silvano, conspiracy among them has been successfully established by the prosecution. While their companions were slaying the deceased, appellant Loreto Hecto and Faustino Silvano were by the stairs of the house of Catalino to prevent any assistance which could come therefrom. After they had accomplished their criminal or unlawful purpose, they left together. Time and again We have ruled that concert of action at the time of consummating a crime and the form and manner in which assistance is rendered to the person or persons inflicting the fatal wounds on their victim determine complicity where it would not be otherwise evident. In a conspiracy, all are liable for the acts of one.

The fact that appellants went into hiding after the incident is evidence of guilt. Pedro Hecto was arrested two months later in Tacloban City, while Loreto Hecto presented himself before the authorities in March 1974 or after two years. Their three companions have not yet been arrested up to now.

Against the testimony of the People's witnesses, appellants Loreto and Pedro Hecto claim that they were elsewhere when the killing took place. Well established is the rule that where the accused have been positively identified by witnesses as perpetrators of the offense, the defense of alibi is futile and unavailing.

We now come to the contention of the defense that the trial court erred in convicting them of the complex crime of murder with assault upon a person in authority. They pointed out that when the barangay captain was killed he was not in actual performance of his official duties. Be that as it may, the fact is, the attack on the deceased was occasioned by the official duties done by him. As the barangay captain, it was his duty to enforce the laws and ordinances within the barangay. If in the enforcement thereof he incurs the enmity of his people who thereafter treacherously slew him, the crime committed is murder with assault upon a person in authority.

WHEREFORE, the appealed judgment is hereby AFFIRMED with the modification that for lack of necessary votes the sentence is reduced to reclusion perpetua and the indemnity increased to P30,000.00. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De La Fuente, Cuevas, and Alampay, JJ., concur.

Aquino, J., no part.

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