

PEOPLE OF PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARSENIO TOLENTINO Y DORIA, ACCUSED-APPELLANT.

G.R. No. 59097. September 20, 1988

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This case was originally an automatic review of a sentence imposing the death penalty. Subsequent to the commutation of the death penalty to reclusion perpetua pursuant to Art. III, Sec. 19 (1) of the 1987 Constitution, the accused manifested his desire to continue the case as an appealed case.

Arsenio Tolentino y Doria was charged with the crime of Robbery with Homicide in an Information which reads:

"That on or about April 20, 1979, in the City of Manila, Philippines the said accused conspiring and confederating together with others whose true names, identities and present whereabouts are still unknown and helping one another, armed with bladed weapons, did then and there wilfully, unlawfully and feloniously, with intent of gain and by means of intimidation of and violence against person, take, steal and carry away one (1) .38 caliber revolver, Smith and Wesson, with Serial No. 786722, of undetermined value, belonging to one Pat. Agustin Panares y Tolentino, a police officer duly appointed, qualified and acting as Member of the Metropolitan Police Force, Western, Police District when the said Pat. Agustin Panares was responding to a call for assistance from one Dionisia Datig, an owner of a store located at 1589 Bo. Capangpangan St., Sta. Ana, this City, to the damage and prejudice of the said owner in the said undetermined amount; that by reason of and on the occasion of the said robbery and for the purpose of enabling the said accused to take, steal and carry away the said firearm and in pursuance of their conspiracy, the said accused, with intent to kill and taking advantage of their number and superior strength, wilfully, unlawfully and feloniously attacked, assaulted and used personal violence upon the said Pat. Agustin Panares, by then and there stabbing him with bladed weapon on the chest and on the different parts of his body, then grabbing his service pistol and firing the same at him, hitting him on the chest and other parts of his body, thereby inflicting upon him mortal stab and gunshot wounds which were the direct and immediate cause of his death thereafter.

"Contrary to law." (p. 3, Rollo)

Upon arraignment, on October 14, 1979, the accused, assisted by his counsel de oficio, pleaded not guilty to the charge.

The facts of the case as found by the trial court are as follows:

Dionisia Datig, a vegetable vendor, was tending her store located in Barrio Kapangpangan, Sta. Ana, Manila at about 11:00 o'clock a.m., on April 20, 1979 when she heard some noise as if glasses were being broken in her store. Looking towards where the noise came from, she saw two men whom she did not know, kicking her display shelf. She saw a policeman across the street who happened to be the deceased, Pat. Agustin Panares. He was then conversing with Lourdes Santos, another store owner in the same place.

Pfc. Rodrigo Capalad, on the other hand, received a telephone call about the incident from Pat. Romeo Villagrancia

of ISOD, Western Police District, at about 11:40 a.m. Taking cognizance of the case, he proceeded to the crime scene. Already at the scene when Pfc. Capalad arrived were operatives of the ISOD, Western Police District. They found Pat. Agustin Panares lying on his back, already dead, inside a "sari-sari" store and full of blood as he suffered multiple gunshot and stab wounds. His firearm was missing from its holster.

Also found at the scene was a broken knife, a left foot slipper, and a pair of rubber sandals with the name "DANNY" on the right foot and the initial "J" on the left foot.

Lourdes Santos, in whose store the body of Pat. Panares was found, gave a statement as follows: She was conversing with Pat. Panares at about 11:00 a.m., on April 20, 1979, when she noticed a commotion in front of the store owned by Aling Dionisia across the street. She was able to identify the three (3) male persons who broke the "escaparte" because they usually pass at her place to buy. She likewise knew Pat. Panares because he used to take snack in her store after his tour of duty.

Lourdes Santos also mentioned that Aling Dionisia approached Pat. Panares for help and that Pat. Panares asked the latter to call another policeman as the trouble makers were too many for him. When Aling Dionisia had already left, the three trouble makers, one after the other approached Pat. Panares. The one who was ahead held Pat. Panares' hands from behind. As Panares struggled to free himself, the second man stabbed him while the accused, Arsenio Tolentino, grabbed Pat. Panares' gun and shot him with it, three times. The three men then ran away.

Dr. Luis Larion, medico-legal officer of the Western Police District, performed an autopsy on the cadaver of Pat. Agustin Panares after it was identified by his wife. His findings show that the victim suffered 15 external injuries including multiple abrasions. The more serious injuries were caused by more or less 3 kinds of weapons, namely: a sharp pointed instrument causing two stab wounds and two incised wounds; a long pointed instrument causing three punctured wounds; and a firearm causing 4 gunshot wounds, three of which were fatal (Exhs. "C" and "E").

Without the three fatal gunshots wounds, the victim could still have survived as none of the stab wounds were fatal. The abrasion on the chest, neck and chin could have been caused when he fell or were suggestive of a scuffle before he was shot. The fired bullets recovered from the victim's body were submitted to the Ballistics Section of the Western Police District for examination. The findings were to the effect that the bullets were fired from the barrel of Pat. Panares' gun.

Arsenio Tolentino who fled to Nabua, Camarines Sur, was arrested on August 25, 1979. Tolentino verbally admitted his participation in the perpetration of the crime and accompanied the Special Operations Group of the Western Police District of Sta. Ana to Masantol, Pampanga to recover Pat. Panares' gun from a cousin with whom he left it. However, Tolentino's cousin told the team that he gave the gun to another person in Hagonoy, Bulacan. The gun was recovered from said person. The accused was then turned over to the investigators together with the recovered gun.

As to the companions of appellant, Gerundio Tolentino was killed before he could be tried and the whereabouts of Eduardo Llamas are unknown.

On November 20, 1981, the trial court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused, Arsenio Tolentino y Doria, guilty beyond reasonable doubt of the crime of robbery with homicide, aggravated by treachery, and hereby sentences him to DEATH; to indemnify the heirs of the deceased, Pat. Agustin Panares, in the sum of P1 2,000.00 for the death of the latter; and to pay the costs.

"Atty. Emilia Saturnino, counsel de oficio for the accused, is hereby awarded P500.00 as attorney's fees." (p.

14, Rollo).

The accused-appellant now assigns the following errors:

I. THE LOWER COURT ERRED IN FINDING THAT APPELLANT COMMITTED THE CRIME OF ROBBERY WITH HOMICIDE.

II. THE LOWER COURT ERRED IN FINDING THAT THE CRIME COMMITTED WAS ATTENDED BY THE AGGRAVATING CIRCUMSTANCE OF TREACHERY, (pp. 4-5, Defendant-Appellant's Brief)

In his first assignment of error, the accused-appellant contends that there was no crime of robbery with homicide committed. According to the accused-appellant, it was not established that it was Tolentino's intention to steal the gun, but that the taking of the gun was a mere afterthought. He further contends that robbery must precede the taking of human life. It should not be a mere afterthought but should be the original design.

The contentions of the accused-appellant are untenable. The testimony of Lourdes Santos clearly shows that there was an intent to rob the victim of his gun. The gun was first taken from the victim before he was killed. The gun was then taken away and hidden. Nevertheless, whether or not the taking was before or after the death of the victim is of no moment in this case. It is immaterial that homicide preceded the robbery where robbery was the real motive of the culprits (*People v. Gapasin*, 145 SCRA 178). In the case at bar, the accused intended both to take the gun and to kill the victim.

The fact that the accused brought the gun when he and his co-authors of the crime fled, is an indication that there was, on their part, an intent to gain which is a necessary element of robbery. Had there been no such intention, they could have left the gun after killing the victim. On the contrary, they brought it with them and had another person keep it. The case of *People v. Albert Newman & Dionisio Tolentino*, G.R. No. L-45354, July 26, 1988), states that "a presumption of guilt arises if the effects belonging to a person robbed and killed are found in the possession of another."

Secondly, the accused-appellant claims that there is no treachery that attended the commission of the crime as only Lourdes Santos testified on the manner of the commission of the crime but she did not see the circumstances surrounding the shooting of the deceased by the appellant. The allegation is likewise unmeritorious. Treachery cannot only be gleaned from the fact that the fatal shot was fired while the victim was lying down. It is sufficient that the mode of attack was consciously adopted by the culprits. Thus, Lourdes Santos, in her testimony related:

x x x

x x x

x x x

"x x x [O]ne after the other, the three trouble makers approached Pat. Panares. The one who was ahead held Pat. Panares' hands from behind. As Panares struggled to free himself, the second man stabbed him while the accused, Arsenio Tolentino, grabbed Pat. Panares' gun and shot him with it, three times. The three men then ran away." (p. 7, Rollo)

From this, it is evident that there is treachery. There is treachery in a sudden and unexpected attack which renders the victim unable to defend himself by reason of the suddenness and severity of the attack (*People v. Fernandez*, 154 SCRA 30). In the case at bar, the victim was unable to defend himself considering that his hands were held back while the two other authors of the crime stabbed him one after the other and the accused fired the fatal shot. Such a circumstance reveals that the appellants helped each other during the commission of the crime. Such a

method of attack or manner of killing clearly indicates the indispensable cooperation and spontaneous coordination between the appellants (*People v. Newman & Tolentino*, supra) to kill a helpless victim.

To say that nobody saw the accused actually fire the fatal shot and, therefore, the accused should be acquitted is ridiculous. The inception of the crime was seen by a number of witnesses. Logic and experience would dictate that an inference of guilt follows under the circumstances where it was seen that the accused and his co-authors stabbed the victim and shortly thereafter, gunshots were heard. The fact that the gun used was in the possession of a cousin to whom the accused passed the gun is likewise relevant.

The accused-appellant further claims that treachery cannot be appreciated against the appellant because in the absence of conspiracy, treachery can be appreciated only against the person who adopted the treacherous mode of attack. Conspiracy need not be proved by direct evidence, it may be inferred from the acts of the assailants (*People v. Abueg*, 145 SCRA 622). The simple fact that the three assailants approached the victim together and they all participated in the assault which caused 15 stab, gunshot and other wounds during the commission of the crime, thus, giving to each other moral and physical aid and assistance, from these acts taken together, there is clearly manifest a concerted action in the pursuit of a common design to kill and, subsequently, to steal (*People v. Newman & Tolentino*, supra). The act of one is necessarily the act of all.

Moreover, the allegation of the accused that he was merely forced by Eduardo Llamas and Gerundio Tolentino to shoot the victim is clearly without basis. If it were true that he was merely forced, he could have jumped at the opportunity to escape when he came in possession of the gun since he would then be in a superior position than the two, considering that compared to the knives of the latter, he had a more powerful weapon. He could have used it against Eduardo and Gerundio to frighten them. On the contrary, he proceeded with the shooting.

The appellant's self-serving statement is further negated by his claim in Exhibit "I" that he was on a drinking spree with the two, that they went to the store to buy "pulutan" and that the victim was merely made fun of (*nakatuwaan*) by them.

WHEREFORE, IN VIEW OF THE FOREGOING CIRCUMSTANCES, the decision of the lower court is hereby AFFIRMED with the MODIFICATION that the death penalty, pursuant to the 1987 Constitution, is commuted to RECLUSION PERPETUA and the indemnity to be paid by the accused-appellant to the heirs of the deceased is increased to THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, C.J. (Chairman), Felicia.no, Bidin, and Cortes, JJ., concur.

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