

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO BAUTISTA Y MERCADO, JOSE BAUTISTA Y MERCADO, ISAIAS YAMBAO ALIAS "BIBILUGIN", JOHN DOE, PETER DOE AND RICHARD DOE, ACCUS...

G.R. No. 68731. February 27, 1987

Ponente: FELICIANO, J.

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FELICIANO, J.:

In the evening of 4 September 1983, people congregated in and milled around the Poblacion of Macabebe, Pampanga, enjoying and participating in the festivities in progress in connection with the approaching town fiesta of Macabebe on 10 September 1983. A tumultuous affray broke out in the immediate vicinity of the Enver Restaurant which was situated in the Poblacion of Macabebe. In the course of this tumultuous affray, Prospero Enriquez, Jr. received a number of stab wounds from which he died the next day. In the same tumultuous commotion, Pablo Liangco also sustained knife wounds which, happily, did not prove fatal.

On 21 September 1983, an Information was filed with the Regional Trial Court in Macabebe, Pampanga, charging the accused with murder, in the following terms:.

"That on or about the 4th day of September 1983, in the Municipality of Macabebe, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the abovenamed accused ROMEO BAUTISTA y MERCADO, JOSE BAUTISTA y MERCADO, ISAIAS YAMBAO alias "BIBILUGIN" (at large), JOHN DOE, PETER DOE and RICHARD DOE whose true names and identities are not yet known, conspiring and confederating together and mutually helping one another, and armed with a knife, with deliberate intent to kill, did then and there willfully, unlawfully and feloniously attack and wound therewith PROSPERO ENRIQUEZ, JR. in the different parts of the body, inflicting upon him incised wound 1 cm. 6-7 intercostal space, left parasternal area; penetrating wound right ventricle of the heart; lacerated liver 3 cm. in length and 1 cm. deep middle lobe and other injuries, with treachery and known premeditation, which directly caused the death of the said Prospero Enriquez, Jr.

All contrary to law, and with the qualifying circumstance of Alevosia, and the generic aggravating circumstances of known premeditation, abuse of superior strength and night time purposely sought to facilitate the commission of the offense.

All contrary to law."^[1]

Isaias Yambao and the three unidentified accused were and continue to be at large and have not to date been brought to trial.

After arraignment and trial, the trial court rendered a decision on 3 September 1984 finding the two brothers, Romeo Bautista and Jose Bautista, guilty of the crime of murder and sentenced both of them to suffer the penalty of reclusion perpetua. The dispositive portion of this decision reads as follows:

"The Court further sentences them jointly and severally to indemnify the heirs of Prospero Enriquez, Jr. the sum of FIFTY THOUSAND PESOS (P50,000.00), Philippine Currency for the death of said Prospero Enriquez, Jr.; FORTY THREE THOUSAND TWO HUNDRED TEN PESOS AND 20/100 (P43,210.20), Philippine Currency for actual damages incurred for burial and other expenses of the deceased in accordance with customs and tradition; and FIVE HUNDRED THOUSAND PESOS (P500,000.00), Philippine Currency for moral damages. The Court further ordered the accused jointly and severally to pay the costs.

SO ORDERED."[2]

In their brief, appellants assigned seven errors which can be consolidated and simplified as follows:

- The lower court erred in believing the testimony of prosecution witnesses, specially Rene Bernarte, Venerando Yambao and Corporal Rowen Yabut, and hence in finding that the appellants took part in the incident where Prospero Enriquez, Jr. sustained stab wounds which led to his death.
- The lower court erred in finding the presence of the qualifying circumstance of treachery or alevosia.
- The lower court erred in finding the presence of the element of conspiracy and that appellants were co-conspirators.

We consider these assigned errors seriatim.

The first error relates to the credibility of the principal prosecution witnesses and to the weight that may properly be ascribed to their respective testimonies. Two were presented as eyewitnesses: Rene Bernarte and Venerando Yambao.

The testimony of Rene Bernarte may be summed up in the following terms.[3] Bernarte was with Prospero Enriquez, Jr., Rolando Enriquez, and two others inside the Enver Restaurant, a restaurant owned by the Enriquez family. A group of persons including the accused Romeo and Jose Bautista and Isaias Yambao came into the restaurant and sat down and drank beer. After some time, this latter group started to provoke trouble inside the restaurant. Isaias Yambao went out of the restaurant, stood near the door and challenged the group of Prospero Enriquez, Jr. to come out and fight. Alarmed at this development, Bernarte went out through a side door leading to the Enver Mart, an adjacent grocery store, and proceeded to the Macabebe Municipal Hall, about 25 meters away from the restaurant, to call for help. There, Bernarte approached Patrolman Yabut and Corporal Dizon and, with these two policemen, jogged back to the vicinity of the restaurant where trouble had already ensued. Bernarte saw Romeo Bautista stab Pablo Liangco, and immediately thereafter, grab Prospero Enriquez, Jr. Prospero was then in the process of backing off from Jose Bautista and Isaias Yambao, who were also armed with knives and blocking Prospero's way to the municipal hall. Romeo Bautista grabbed the victim from behind and by the neck with his left hand. Both fell on the ground, Prospero on top of Romeo. In the course of the ensuing struggle, Romeo stabbed Prospero several times with a knife in his right hand. Meantime, the other two accused, Jose Bautista and Isaias Yambao, ran off towards the Macabebe Municipal hall. Romeo himself ran towards the direction of San Gabriel (a barrio of Macabebe) but was apprehended by Patrolman Carillo to whom Bernarte had pointed out Romeo as among the culprits. Bernarte saw Prospero lifted from the ground by people who went to his succour, helped on board a car and rushed to the hospital for treatment.

The second eyewitness, Venerando Yambao, testified substantially as follows.[4] Venerando was with his friends Bernarte, Prospero Enriquez, Jr. and others having merienda at approximately 7:00 p.m. at the Enver Restaurant. After Bernarte had left the restaurant, Venerando went out of the restaurant too, to pass water. As of that time, nothing unusual had happened inside the restaurant. Venerando did not see Isaias Yambao nor Jose Bautista inside the restaurant. However, when Venerando was about to go back to the restaurant, he saw Prospero

Enriquez, Jr. running in the direction of the municipal building. Jose Bautista and Isaias Yambao stopped Prospero and blocked his way, stabbing at him and Prospero moved back. Romeo Bautista caught Prospero from behind and held him by the neck with the left hand. A struggle ensued and both fell to the ground with Romeo underneath Prospero and Romeo stabbing Prospero in the process. Prospero lay on the ground bleeding until he was lifted by people and placed inside a car. Venerando went up to Patrolman Yabut and pointed out Romeo Bautista as the culprit as Romeo went off towards Barrio San Gabriel.

Corporal Rowen Yabut testified that Prospero Enriquez, Jr., while standing and holding his bleeding stomach, pointed to Romeo Bautista ("That one wearing shorts")[5] as the attacker who had stabbed him. Patrolman Carillo who had arrested Romeo Bautista as he headed towards Barrio San Gabriel testified that, upon such arrest, he took from Romeo a bladed weapon with blood on the blade, brought him to the municipal jail and locked him up.[6]

The defense assails the testimony of the prosecution witnesses and underscores what the defense contends are inconsistencies therein.

In respect, firstly, of the testimony of Rene Bernarte, the defense notes that while Bernarte who had run to the municipal building to summon help and who together with police officers proceeded back towards the Enver Restaurant, had professed to have seen the stabbing of Prospero Enriquez, Jr. from beginning to end, one of the policemen who had responded to the call for help, Patrolman Rodolfo Carillo, testified that when he and other Macabebe policemen reached the vicinity of Enver Restaurant, the trouble had already subsided.[7] The defense also notes, secondly, that Bernarte had testified that he was only about four meters away from Romeo and Prospero as the former held the latter by the neck.[8] The defense, however, points out that the other eyewitness, Venerando Yambao, who himself had asserted that he was about six meters away when Romeo was knifing Prospero, nevertheless denied seeing Bernarte at that same moment.[9] Indeed, Venerando Yambao stated that he had not seen Bernarte at any place nor at any time outside the Enver Restaurant nor while the stabbing affray was taking place.[10] Thirdly, Bernarte also testified that Romeo had stabbed another man, Pablo Liangco, before grabbing Prospero by the neck and knifing him. Pablo Liangco, on the other hand, who had sustained knife wounds, filed a criminal case for frustrated murder against five persons -- but not against Romeo Bautista: a singular omission if indeed Romeo had stabbed Pablo. Finally, the defense notes Bernarte's claim that the three accused had sought to provoke trouble inside the Enver Restaurant and that Isaias Yambao had challenged Rolando Enriquez, a brother of Prospero, to a fight. The other eyewitness Venerando Yambao, upon the other hand, stated that nothing unusual had happened inside the restaurant from the time he (Venerando) arrived up to the time he stepped out to pass water and that Jose Bautista and Isaias Yambao were not inside the restaurant before he stepped out.

The defense, finally, seeks to impeach the testimony of Corporal Yabut by pointing to the testimony of Venerando Yambao that he (Venerando) did not see Prospero stand up after having fallen to the ground nor did he see Prospero talking to Corporal Yabut.[11]

We do not believe that the inconsistencies noted by the defense are necessarily material nor fatal to the prosecution's case against Romeo Bautista. These inconsistencies basically relate to the timing or the precise sequence of particular events. The fact that one claimed eyewitness did not see the other claimed eyewitness at a particular given moment in time, does not, of course, prove that the latter (Bernarte) was not present at all to witness the affray. It may be supposed that Bernarte was probably mistaken in testifying that Romeo Bautista had stabbed Pablo Liangco before grabbing Prospero Enriquez by the neck. We do not believe, however, that such error necessarily means that Bernarte was also mistaken when he identified Romeo as attacking and stabbing Prospero. That error and the inconsistencies in the testimonies of prosecution witnesses must be viewed in the context of the confused turmoil and commotion — many people rushing hither and thither — within which the

stabbing of Prospero and Pablo took place. The testimonies of Bernarte and Venerando Yambao coincide on this specific point: Romeo grabbed Prospero from behind and stabbed him. We note also that the testimonies of the two eyewitnesses on this essential point were not only mutually corroborative but were also supported and strengthened by the statements of the two policemen Yabut and Carillo. The defense was, in particular, unable to rebut or explain away the testimony of Patrolman Carillo about the bloody knife recovered from Romeo upon his arrest.

Turning to the case against Jose Bautista, we note firstly that only one (Venerando Yambao) of the two eyewitnesses testified that Jose (along with Isaias Yambao) was stabbing Prospero as the latter was backing off. The other eyewitness, Rene Bernarte, testified only that Jose and Isaias Yambao were "armed with knives when they stopped and accosted Prospero".^[12] Venerando Yambao's testimony on that specific point, in other words, stands uncorroborated. The prosecution presented no knife or bladed weapon found anywhere and in any way connected with Jose Bautista. The prosecution did not attempt to relate any of the knife wounds sustained by Prospero to a frontal attack on him, as distinguished from an attack commenced from behind him. The nature and location of the wounds of Prospero were not shown to be incompatible with a hypothesis that they had all been inflicted by Romeo as he held Prospero by the neck and commenced stabbing the latter even as both fell backwards to the ground.

In his defense, Jose Bautista stated that when a waitress inside the restaurant had shouted "Trouble! There is trouble!",^[13] he went outside the restaurant and upon seeing people chasing and fighting one another, ran across the road and left for home on board a tricycle for fear that he would get involved and get hurt in the mêlée.^[14] Corroboration of this statement of Jose is furnished by Pablo Liangco who testified that as soon as the waitress had shouted in alarm, Jose ran out of the restaurant, and about fifty meters away, boarded a "motorized Honda for ferrying passengers".^[15] Jose proceeded to Barrio San Roque where he resided, went to the ricefield where he had a tilapia pond and there spent the rest of the night as he had often done before while watching over the tilapia he was cultivating.

The trial court construed the withdrawal of Jose Bautista as "flight" and as evincing a "feeling of guilt". This is not supported by the evidence of record. Jose testified that on the day following the tumultuous commotion, he learned from his son that the Mayor of Macabebe was looking for him and wanted to talk to him at the house of the Barangay Captain of San Roque. Jose repaired to the house of the Barangay Captain and there waited for the Mayor for about three hours. When the Mayor arrived and queried Jose about the events of the previous night, Jose replied that he was not aware of what had ensued the night before. Upon request of the Mayor, Jose voluntarily went with the Mayor to the municipal building. Jose testified that there in the municipal building, he first learned what had happened to Prospero Enriquez, Jr. and Pablo Liangco. The circumstances of Jose staying that night in Barangay San Roque where he resided, his waiting for the Mayor for hours and proceeding with him to the municipal building, do not necessarily nor reasonably yield an inference of flight and "a feeling of guilt". The same circumstances, on the contrary, may suggest innocence and a belief that that innocence would be perceived by others.

We are not unmindful of prior rulings of the Court that the testimony of one witness is sufficient for conviction where such witness positively identified the accused as the wrongdoer.^[16] In the instant case of Jose Bautista, however, the totality of the circumstances here relating to him, especially the milieu of tumult, disorder and confusion, (which is perhaps most dramatically brought home by recalling that three supposed co-accused remain, even today, unidentified: "John Doe, Peter Doe and Richard Doe") is such that a very substantial doubt persists in our mind whether Jose had in fact stabbed Prospero at all. That milieu we regard as imposing upon the prosecution a more exacting degree of proof than would be necessary in the absence of confusion and turmoil.

The trial court itself made no explicit finding that Jose had stabbed Prospero and apparently held Jose guilty along with his brother Romeo solely on the basis that conspiracy being shown, the acts of Romeo were the acts of Jose. We are hence compelled to conclude that the prosecution did not succeed in proving Jose's guilt beyond reasonable doubt, nor even by preponderance of evidence.

We turn to the next assigned error concerning the lower court's finding that treachery was present and qualified the killing of Prospero Enriquez, Jr. to murder. The trial court held that:

"The manner of the attack on the victim by accused Romeo Bautista by holding the victim by the neck as the accused Romeo Bautista approached the victim from behind, to the mind of the [trial] court, prevented the victim from defending himself and ensured the consummation of the crime, without risk or danger to the accused, thereby constituting treachery or alevosia that would qualify the killing of Prospero Enriquez, Jr. to murder." [17]

Once more we note that that killing must be viewed within the context of the actual events surrounding it and that those events constituted a turbulent affray, a disorderly commotion, disorganized and confused fighting, with people dashing back and forth.[18] Where the immediate context of a killing is one of a melee or riot (here a mini-riot) or confused fighting, the element of treachery can scarcely be found present. In such a context, the relative position of Romeo vis-a-vis Prospero — the attack by the former upon the latter from behind — may be presumed to have come about by mere accident rather than by deliberate design. There was certainly no evidence that such was deliberately and purposely sought by Romeo and his brother. The opportunity for such an attack from behind appears to have materialized suddenly and the attack by Romeo itself the product of an impulse of the moment. Such circumstances negate treachery, evident premeditation, abuse of superior strength and nocturnity.[19] Finally, the Solicitor General has agreed with the defense that there was nothing to show that the method or manner of Romeo's attack upon Prospero was deliberately or consciously chosen by the accused and that therefore treachery cannot properly be found in this case. The Solicitor General concluded, correctly, that the killing of Prospero Enriquez, Jr. constituted homicide, not murder.[20]

The last assigned error relates to the finding of conspiracy. In finding conspiracy, the trial court relied wholly on a process of inference from the apparently concerted acts of the accused:

"The victim was intercepted by accused Jose Bautista and Isaias Yambao alias "Bibilugin" and when the victim retreated backward, accused Romeo Bautista, from behind the victim, held the victim by the neck with his left hand, and as they fell on the ground, with accused Romeo Bautista beneath the victim, accused Romeo Bautista stabbed the victim several times with a knife, the accused using his right hand.

The court is convinced that the concerted attack by the accused on the victim proved the existence of conspiracy among the accused in the killing of the victim Prospero Enriquez, Jr." [21]

There was, in other words, no evidence at all of any prior agreement among the accused to kill Prospero Enriquez, Jr. nor indeed to commit any other crime.

It is important to recall, still again, that the context of the killing here was not that of a one-to-one, or more precisely, a three-to-one fight. The context was, as earlier stressed, that of tumultuous and confused fighting. In this context, the assumed juxtaposition of Jose Bautista and Isaias Yambao in front of Prospero Enriquez, Jr., with Romeo Bautista behind Prospero, could very well have been brought about fortuitously or accidentally in the course of the disorganized fighting. No necessary inference of conspiracy arises from such a juxtaposition in such a context.[22] Any inference of a common design or of concerted action is further weakened by the testimony adduced by the prosecution itself to the effect that both Jose and Isaias ran away towards the municipal building even as Romeo held Prospero by the neck and tumbled to the ground. Had a common design truly existed, the

natural reaction would have been for Jose and Isaias to assist Romeo and to gang up on Prospero. We hold the trial court to be in error here.

WHEREFORE, the decision of the trial court is modified with the following results:

- Jose Bautista is ACQUITTED on the ground of reasonable doubt. Since his participation in the crime has not been shown even by a preponderance of evidence, no indemnity or civil liability is properly imposed on him.
- Romeo Bautista is found GUILTY of the lesser crime of homicide and, there being no aggravating or mitigating circumstance present, his sentence is reduced to reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, he is hereby sentenced to an indeterminate penalty of eight (8) years and one (1) day of prision mayor as a minimum to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal as a maximum.
- The indemnity for the death of Prospero Enriquez, Jr. is reduced to Thirty Thousand Pesos (P30,000.00), Philippine currency, and the award for moral damages shall be Fifty Thousand Pesos (P50,000.00), Philippine currency.
- The award of Forty Three Thousand Two Hundred Ten Pesos and 20/100 (P43,210.20), Philippine currency, for actual damages incurred by way of burial and other expenses by the family of the deceased, stands.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Gancayco, and Sarmiento, JJ., concur.

[1] Decision, p. 1, Criminal Case No. 83-0044(M).

[2] Decision, p. 32.

[3] TSN, pp. 397-448, 9 November 1983; TSN, pp. 87-143, 16 November 1983; TSN, pp. 453-471, 7 December 1983.

[4] TSN, pp. 519-572, 8 December 1983; TSN, pp. 145-182, 8 February 1984.

[5] TSN, pp. 378 and 380, 13 October 1983.

[6] TSN, pp. 336 and 342, 12 October 1983.

[7] TSN, p. 335, 12 October 1983.

[8] TSN, p. 117, 16 November 1983.

[9] TSN, p. 565, 8 December 1983.

[10] TSN, pp. 559-560, 8 December 1983; TSN, pp. 159-160, 8 February 1984.

[11] TSN, pp. 150-151, 8 February 1984.

[12] TSN, p. 416, 9 November 1983.

[13] TSN, pp. 11-19, 20 June 1984.

[14] TSN, pp. 675-676, 678, 21 June 1984.

[15] TSN, pp. 243-244, 28 May 1984.

[16] *People v. Tintero*, 111 SCRA 714 (1982); *People v. Oquino*, 122 SCRA 797 (1983).

[17] Decision, p. 31, Criminal Case No. 83-0044 (M); Rollo, p. 41.

[18] One of the defense witnesses estimated the number of people involved in the commotion to be about a hundred (TSN, 21 March 1984, pp. 15-16; 200-201; Appellants' Brief, p. 11).

[19] *People v. Cadag*, 2 SCRA 388 (1961); *People v. Macalisa*, 22 SCRA 699 (1968); *People v. Rhoda*, 122 SCRA 909 (1983); and *People v. Macariola*, 120 SCRA 92 (1983).

[20] Appellee's Brief, pp. 21-22.

[21] Decision, p. 29, Id; underlining supplied.

[22] *People v. Dorico*, 54 SCRA 172 (1973).

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