

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SALVADOR FERNANDEZ, ERNESTO FERNANDEZ,
DEFENDANTS-APPELLANTS.**

G.R. No. 69619. September 15, 1987

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the decision of the Regional Trial Court of Albay, Branch VIII, in Criminal Case No. 2772 convicting appellants of the crime of murder, the dispositive portion of which reads as follows:

"PREMISES CONSIDERED, finding the accused Salvador Fernandez and Ernesto Fernandez, guilty beyond reasonable doubt of the crime of Murder, defined under Article 248 of the Revised Penal Code, the Court hereby sentences Salvador Fernandez and Ernesto Fernandez to suffer the penalty of reclusion perpetua; to indemnify the heirs of the deceased the amount of P12,000.00; to pay P15,000.00 or as moral and exemplary damages, without subsidiary imprisonment in case of insolvency, and to pay their proportionate share of the costs."

Appellants were indicted by the Provincial Fiscal of Albay for the crime of murder defined and penalized under Article 248 of the Revised Penal Code, in an in-formation dated November 23, 1959 (Records, p. 30) stat-ing that the crime was committed as follows:

"That on or about the 20th day of October, 1959, in the municipality of Libon, province of Albay, Philip-pines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another for a common purpose, with evident pre-meditation, treachery and with delibe-rate intent to kill, and being then armed with deadly weapons, to wit: two (2) bolos and two (2) firearms, did then and there willfully, unlawfully and fe-loniously shoot, attack and hack with the said firearms and bolos one POR-FIRIO CANANEA thereby inflicting upon him fatal wounds which directly caused the spontaneous death of the said PORFIRIO CANANEA.

That in the commission of the crime, the following aggravating cir-cumstances were present:

1. Superior strength
2. use of vehicle (jeep)
3. cruelty by deliberately and inhumanly augmenting the suffering of the vic-tims.

CONTRARY TO LAW."

All the accused were granted bail of P30,000.00, in an order of the trial court, the Regional Trial Court of Albay, Branch I, dated April 28, 1960 (Orig. Records, pp. 119-120). Upon arraignment on August 16, 1960 all the accused pleaded "not guilty" to the offense charged (Orig. Records, p. 147).

On January 27, 1962, Mrs. Maria Cananea, the widow sent a letter to the Secretary of Justice, seeking early

disposition of the case and complaining of its continuous postponement (Orig. Records, p. 262) and on February 5, 1962, a telegram to the Office of the Pre-sident, requesting investigation of the delay in the disposition of the case and complaining among others, of the loss of interest by the trial court (Orig. Records, p. 312). Said court reacted by ordering the widow to show cause why she should not be held in contempt (Orig. Records, p. 315). It appears that the case had already been set for trial when the widow sent her letter to the Secretary of Justice. The trial Court exonerated the widow, considering her fairly satisfactory explanation (Orig. Records, p. 320).

Since the hearing on September 11, 1963 the case was tried jointly with Criminal Cases Nos. 2594 and 2657 and later on, also with Criminal Case No. 2632 in view of the manifestation by the defense counsel that the prosecution witnesses and evidences in Criminal Cases Nos. 2594 and 2657 be also considered as defense witnesses and evidence in Criminal Case No. 2772 although the victim in Criminal Case No. 2772 had nothing to do nor was implicated in any manner in the other cases. Thus the delay in the trial of the case, according to the observation of the Judge of Branch VIII of the Court who penned the appealed decision (Rollo, p. 1138). During the trial of the case one of the accused, Herman Fernandez, died (Orig. Records, p. 603).

On November 8, 1976 Alexander Cananea, son of the victim in Criminal Case No. 2772, wrote the President asking for the early disposition of the case (Orig. Records, p. 934). The letter was forwarded by the Court to the Executive Judge of the Regional Trial Court of Albay in a 2nd Indorsement dated December 14, 1976 (Orig. Records, p. 32).

The decision was finally promulgated on May 29, 1984 (Orig. Records, p. 1186). On the same date the bonds filed by the accused were cancelled (Orig. Records, p. 1185) and the accused taken into custody as detention prisoners (Orig. Records p. 1187) considering that the judgment is one of conviction.

On April 12, 1981 accused filed a motion for re-consideration (Orig. Records, p. 1188) which was denied by the lower court in its Order dated June 13, 1984 (Orig. Records, p. 1202).

This Court resolved to accept the appeal, in its Resolution dated December 2, 1985 (Rollo, p. 134). Upon the request of the appellant, (Rollo, p. 157) the Court, in its Resolution dated November 3, 1986 resolved to appoint Atty. Jacinto Jimenez of the Ateneo de Manila College of Law as their counsel de oficio (Rollo, p. 158).

The Brief for Defendants-Appellants was filed on January 12, 1987 (Rollo, p. 162); the Brief for the Plaintiff-Appellee, on April 30, 1987 (Rollo, p. 171). The Reply Brief for Defendants-Appellants was filed on May 21, 1987 (Rollo, p. 289).

The facts of the case, as presented by Plaintiff-Appellee (Rollo, pp. 173-176) are as follows:

"On October 20, 1959 at about seven o'clock in the morning, Salvador Fernandez hired a passenger jeepney driven by Victor Romero from the poblacion of Polangui to San Jose, Libon, Albay. Upon boarding the vehicle, Salvador instructed Victor to pass by the station of the Manila Rail-road Company in Polangui where they picked up Salvador's companions, namely, Herman Hernandez and Ernesto Fernandez at the Bañares Carenderia near the station. Thereafter they proceeded to San Jose with Herman and Ernesto instructing Victor to overtake an Alatco car if they pass by one. On the way, Herman and Salvador ordered Victor to stop in front of two (2) men with bolos. Herman and Salvador requested the two men to lend them their bolos. Initially, they refused but later they acceded when Herman and Salvador told them that they were following a thief. Victor noticed that Herman and Ernesto were each carrying a short gun' They continued on their way to San Jose and upon seeing the Alatco car, Victor overtook it pursuant to the express instruction of Salvador. (pp. 71-86, tsn, December 7, 1960, p.m.)

Upon reaching San Jose, Herman, Salvador and Ernesto alighted from the jeepney. Victor parked the vehicle at a parking area and proceeded to a store about sixteen (16) meters away from the jeepney. While eating,

Victor noticed that an Alatco car arrived. He heard an explosion and when he turned, he saw Ernesto Fernandez holding a gun and shot a man he did not recognize. The man attempted to run. But Herman and Salvador overtook the victim and repeatedly hacked him causing him to fall to the ground. Thereafter, Ernesto, Herman and Salvador, rushed back to the parked vehicle and instructed Victor to drive back to Polangui. While on their way, Salvador directed Victor to pass by the poblacion of Libon, Albay where they picked up a woman and her two children. Salvador instructed Victor to proceed to Guinobatan, Albay. Before reaching the poblacion, Salvador ordered Victor to stop. Thereafter, he and his companions alighted and told Victor not to be afraid, Victor then proceeded back to Polangui, Albay (pp. 87-110, TSN, December 7, 1960, p.m.)

At about 12:00 o'clock noon of the same day, two P.C. soldiers came to Victor's house and brought him to the Ligao Detachment in Albay where he was investigated. He learned that the man who was shot and hacked was Porfirio Cananea who died as a result thereof. He gave a written statement to the P.C. authorities (pp. 112-113 and 124, TSN, December 8, 1960, a.m.).

Defendants-appellants assign the following errors (Rollo, p. 162):

I.

THE LOWER COURT ERRED IN NOT RULING THAT THE PROSECUTION FAILED TO PROVE THE GUILT OF DEFENDANTS-APPELLANTS BEYOND REASONABLE DOUBT.

II.

THE LOWER COURT ERRED IN RULING THAT DEFENDANTS-APPELLANTS ACTED IN CONSPIRACY.

III.

THE LOWER COURT ERRED IN RULING THAT THE COMMISSION OF THE CRIME WAS QUALIFIED BY EVIDENT PREMEDITATION.

IV.

THE LOWER COURT ERRED IN RULING THAT THE COMMISSION OF THE CRIME WAS AGGRAVATED BY CRUELTY.

V.

THE LOWER COURT ERRED IN SENTENCING DEFENDANTS-APPELLANTS TO PAY DAMAGES.

The guilt of the accused was proven beyond reasonable doubt. They were positively identified by prosecution witnesses Victor Romero and Epifanio Peñalosa as the perpetrators of the crime. Both testified that Ernesto Fernandez shot Porfirio Cananea while his brothers Salvador and Herman hacked the victim (TSN, pp. 86-87; 369-370; pp. 145-149, 180). There is no reason to believe that they may have been mistaken in their identification of accused-appellants. Victor Romero was the driver of the jeepney hired by Salvador at Polangui in the morning of October 20, 1959 to take him and his co-accused brothers Ernesto and Herman to Bo. San Jose, Libon, Albay (TSN, p. 72). They were his only passengers from Polangui to San Jose. Undisputedly he was in the scene of the crime. Epifanio Peñalosa, on the other hand, is related to the wives of Ernesto and Herman. Perpetua Non, the wife of Ernesto is his niece, being a daughter of his sister. Cecilia Olival, wife of Herman, is another niece because the mother of Cecilia is a first cousin of his (TSN, pp. 152-153). He has no motive to testify against the Fernandez brothers. He is not related to Porfirio Cananea who is only a brother of his son-in-law, Felipe Cananea

(TSN, p. 175). He was a co-passenger of the victim in the Alatco bus from Polangui. He alighted at San Jose, together with the other passengers, to wait for another bus that would take them to Pantao (TSN, pp. 142-144). Thus his presence at the scene of the crime. Positive identification of the accused by the witnesses proved his commission of the crime (*People v. Perez*, 102 SCRA 352 [1918]).

The testimonies of Victor Romero and Epifanio Peñalosa are corroborated by the testimony of Dr. Alfredo Se, Municipal Health Officer of Libon, who performed the autopsy on the victim's body. Based on the autopsy re-port (Exhibit "F") he made (Orig. Records, p. 6), Dr. Se testified having found three (3) gunshot wounds and seven-teen (17) wounds on the body of the late Porfirio Cananea and that the multiple incised wounds were caused by the hacking of a bolo (TSN, pp. 221, 344, 386).

They are also corroborated by the testimony of Juan Cerdeña, Chief of Police of Libon, Albay, testifying for the prosecution. Based on his report on his actual investigation of the case at the scene of the crime (Exh. "E", Orig. Records, p. 8), Cerdeña testified among others, having found two (2) bolos at the scene of the crime (TSN, pp. 199-200).

Ernesto and Salvador testified in court after the death of Herman (Rollo, p. 253). Both imputed the crime to their dead brother, Herman (TSN, pp. 817-831; pp. 1035, 1102-1104) as the one who shot the victim to death and hacked him. Their testimonies are not however credible. Their positive identification by eyewitnesses belie their defense (*People v. Diamonon*, 94 SCRA 227 [1979]).

In effect, the testimonies of Salvador and Ernesto as to the death of Porfirio Cananea by gunshot and hacking with bolos corroborated the testimonies of prosecution witnesses.

Conspiracy, in the statutory language, exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (*People v. Ogapay*, 66 SCRA 210 [1975]). It need not be proved by direct evidence but its existence may be inferred from the acts of appellants tending to show a continuity of criminal purpose or design (*People v. Santalani*, 93 SCRA 315 [1979]); it may be deduced from evidence of facts and circumstances (*People v. Yu*, 80 SCRA 382 [1977]); it is proven by the fact that appellants arrived at the scene of the crime together, all armed and helped one another in assaulting the victim (*People v. Panuelos*, 136 SCRA 501 [1985]).

It is undisputed that the accused-appellants hired a jeep in Polangui, Albay, driven by Victor Romero, to take them to San Jose, Libon. They arrived at San Jose armed with guns and bolos. When Ernesto fired at Pro-firio Cananea and the victim attempted to run Herman and Salvador both armed with bolos ran after him, hacking him repeatedly until he fell to the ground face downward. Even while they were still attacking with their bolos on the victim, Ernesto shot the latter again on the forehead. They left the scene of the crime together, still aboard their hired jeep. Obviously, appellants cooperated and labored to the same end - the death of the victim, leaving no doubt of the existence of conspiracy in this case.

In *People v. Garcia* (94 SCRA 14 [1979]) the Court said that when a group of men more or less give chase to a single unarmed individual running for his life and they overtake him and inflict wounds on his body by means of shooting, stabbing, hitting with pieces of wood, there is conspiracy to kill; and it does not detract from their status as conspirators that there is no evidence of previous agreement, it being sufficient that their wills have concurred and they labored to achieve the same end.

To properly appreciate evident premeditation, it is necessary to establish proof, as clear as the evidence of the crime itself about (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient lapse of time between the

determination and the execution to allow him to reflect (*People v. Johnson*, 103 SCRA 530 [1981]; *People v. Guiapar*, 129 SCRA 539 [1984]). To qualify the killing there should have been proof that the appellants had met the night before, discussed among themselves, and agreed to kill their victim the following morning (*People v. Verges*, 105 SCRA 744 [1981]). In the instant case there is no proof that accused-appellants met for the purpose of discussing and agreeing among themselves to kill the victim. The element of sufficient lapse of time between the determination and execution of the criminal act to afford the culprits full opportunity for calm reflection on the consequences of the crime committed, had not been established.

Only one circumstance, however, is necessary to qualify an offense as murder (*People v. Dueño*, 90 SCRA 23 [1979]). While evident premeditation may not have been established, treachery which qualifies the killing to murder has been amply proven. The attack made on Peo-firio Cananea was sudden and unexpected. He had just alighted from the bus unaware that he would be attacked. When he was first shot by Ernesto he was not given any opportunity to defend himself. 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. Carzano*, 95 SCRA 146 [1983]; *People v. Beltran*, 137 SCRA 508 [1984]; *People v. Escoltero*, 139 SCRA 218 [1985]).

Abuse of superior strength is not a separate and distinct aggravating circumstance as it is deemed absorbed in the qualifying circumstance of treachery (*People v. Tajon*, 128 SCRA 656 [1984]; *People v. Rosario*, 134 SCRA 496 [1985]).

The aggravating circumstance of cruelty cannot be considered. For cruelty to exist, it must be shown that the accused enjoyed and delighted in making the victim suffer slowly and gradually causing him unnecessary physical or moral pain in the consummation of the act (*People v. Gatcho*, 103 SCRA 207 [1981]). While the victim was shot three (3) times and hacked several times until he died, the infliction of the wounds was continuous rather than slow and gradual. Inflicting various successive wounds upon a person to cause his death without appreciable time intervening between the infliction of one wound and that of another, as in the present case, does not constitute cruelty (*People v. Ang*, 139 SCRA 115 [1985]).

Every person criminally liable is civilly liable (*People v. Zaganay*, 127 SCRA 128 [1984]). Following the precedent set in *People v. de la Fuente* (126 SCRA 518 [1983]) reiterated in *People v. Centeno* (130 SCRA 198 [1984]) the civil indemnity for murder is increased from P12,000.00 to P30,000.00

PREMISES CONSIDERED, the decision appealed from, finding Salvador Fernandez and Ernesto Fernandez guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, and sentencing them to suffer the penalty of reclusion perpetua, is hereby AFFIRMED in all respects, except the P12,000.00 indemnity for the death of the victim which is hereby increased to P30,000.00.

SO ORDERED.

Teehankee, C.J., Narvasa, and Cruz, JJ., concur.

Gancayco, J., on leave.

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