

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DONATO PETIL AND BONIFACIO LUMANGLAS (AT LARGE), ACCUSED.
DONATO PETIL, ACCUSED-APPELLANT.**

G.R. No. 70223, March 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Donato Petil and Bonifacio Lumanglas were charged in the Regional Trial Court, 4th Judicial Region, BRANCH XXXIV, Calamba, Laguna, with murder, in an information which reads:

"That on or about February 4, 1979 at Brgy. Bitin, Bay, Laguna and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping with one Bonifacio Lumanglas of Bo. Abuyon, San Narciso, Quezon, the latter still at large, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault and stab one Fortunato del Valle with deadly weapons, thereby inflicting upon the latter serious stab wounds on the different parts of his body which caused his immediate death."

The accused Bonifacio Lumanglas eluded arrest and is at large. Hence, trial proceeded only as against the accused Donato Petil who is now appealing from the decision finding him guilty and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased Fortunato del Valle the amount of EIGHT THOUSAND ONE HUNDRED NINE PESOS AND 90/100 (P8,109.90) representing actual damages as well as compensation for the death of the deceased in the amount of THIRTY THOUSAND PESOS (P30,000.00).

The evidence for the prosecution which the trial court accepted as representing the facts of the case is summarized in the People's brief as follows:

"It appears that at about 7:00 o'clock in the evening of February 4, 1979, Cesar Natividad and deceased Fortunato del Valle, who are both jeepney drivers of the Tanauan- San Pablo route, were proceeding on a Toyota vehicle to Barrio Bitin, Bay, Laguna, with Fortunato driving. They were coming from San Felix, Sto. Tomas, Batangas and arrived at Sipit, Bitin, at about 9:00 o'clock in the evening as Fortunato brought his 'compadre' home. Thereafter, they pro-ceeded to the Philippine Infrastructure, Inc. (PII) at Bitin Bay, Laguna, where Fortunato alighted from the vehicle to buy cigarettes at a nearby store (pp. 4-13, 30, tsn., Oct. 9, 1979). Cesar Natividad also alighted from the Toyota and followed Fortunato about 2 meters behind (pp. 49-50, tsn., Nov. 7, 1979). On the way to the store, Fortunato was met by appellant Donato Petil and his brother-in-law Bonifacio Lumanglas. Donato placed his arms around the neck of Fortunato, and as both of them were facing the store, Bonifacio, coming from the front of them, stabbed Fortunato several times, as Donato also stabbed Fortunato at the back, prompting prosecution witness Cesar Natividad to shout: 'Bakit ninyo siya sinaksak?' (pp. 13-20, pp. 42-43, tsn., Ibid; pp. 60-61, 65, tsn., Nov. 23, 1979).

"Fortunato del Valle fell in a kneeling position, and Cesar Natividad together with Catalino Umelin lifted him and brought him to Sto. Tomas and then to Lipa City as Fortunato was hovering between life and death. Accused Donato Petil and Bonifacio Lumanglas by then had already gone (pp. 21-25, tsn., Ibid; pp. 63-64, tsn.,

Nov. 23, 1979). Fortunato finally died (p. 25, tsn., Ibid). On February 5, 1979, Cesar Natividad gave the statement to the police that he saw the stabbing incident (pp. 28-30, tsn., Nov. 7, 1979)."

The appellant raised the following assignments of errors:

I.

THE TRIAL COURT ERRED IN DISCOUNTING OR GLOSSING OVER THE SERIOUS FLAWS AND WEAKNESSES OF THE EVIDENCE FOR THE PROSECUTION.

II.

THE TRIAL COURT ERRED IN REJECTING THE DEFENSE OF PETIL AS ONE OF ALIBI.

III.

THE TRIAL COURT ERRED IN HOLDING THAT PETIL'S LEAVING THE PII PLANT IS INCONSISTENT WITH HIS INNOCENCE.

IV.

THE TRIAL COURT ERRED IN REJECTING THE TESTIMONY OF DEFENSE WITNESS MARANAN.

IV.

THE TRIAL COURT ERRED IN FINDING THAT THERE WAS CONSPIRACY BETWEEN ACCUSED BONIFACIO LUMANGLAS (AT LARGE) AND PETIL.

VI.

THE TRIAL COURT ERRED IN CONVICTING PETIL INSTEAD OF ACQUITTING HIM.

The records of the case show that the findings of facts of the trial court are supported by convincingly credible evidence. The appellant has failed to show reversible error.

Appellant's defense is one of alibi. He passes the blame to his co-accused Lumanglas who is at large. He also narrates a story of torture. According to Petil, as foreman-carpenter, on February 4, 1979, he was at Barrio Bitin, Bay, Laguna, supervising the work at the Philippine Infrastructure, Inc. (PII). He started to work at 7:00 A.M., and stayed up to 6:00 A.M., the following day, working overtime, because the Ministry of Energy needed the place as a landing pad for helicopters. At about 8:20 in the evening of February 4, 1979, while he was supervising work inside the batching plant of the PII, the deceased Fortunato del Valle came and inquired from him about the form lumber he was asking. The appellant allegedly told him to see Engineer Luinario as the form lumber is not his and he cannot decide on the request. Fortunato then cursed Donato, and holding the latter's shirt collar, pushed him, causing him to fall to the ground face down. Fortunato then challenged him to a fight which he did not accept. After the two were separated, Antonio Maranan arrived telling the appellant that his brother-in-law, Bonifacio Lumanglas, stabbed Fortunato del Valle. Maranan also advised him to leave and go home for fear that the relatives of Fortunato might retaliate against him. Petil rode on a truck together with Antonio Maranan and proceeded to Sto. Tomas, Batangas, where he alighted. He spent the night at Barangay San Felix, Sto. Tomas, and then proceeded to Tanauan, where he took a truck to Lipa City and then boarded another vehicle to Batangas City arriving at Kumintang Ilaya, Batangas at about 4:30 A.M., of February 5, 1979. While waiting for a ride for Sampaga, Batangas City, a jeep, wherein Sgt. Angel del Valle, Cesar Natividad, Alfredo Pugela and Dondon

Arellano were on board, arrived. Sgt. del Valle hog-tied him to a post of the jeep and brought him to the Constabulary Headquarters at Batangas City. On the way Sgt. del Valle poked a gun at his temple and pressed the trigger but it failed to fire, so Sgt. del Valle hit him with the same gun in the chest and he lost consciousness. He regained consciousness between San Jose and Batangas City on the way to Lipa City. They stopped at the Villa Hospital at Lipa City where Sgt. del Valle inquired from his father whether Fortunato was already dead. The father, mother, wife and sister of Fortunato ganged up on him, dealing blows and hitting his head against the jeepney post. Sgt. del Valle again hit him with his gun and he lost consciousness a second time. He regained consciousness only when they were already at Maraoy, Lipa City. He was brought to the poblacion of Sto. Tomas, Batangas, where he was mauled by CAT students at the prodding of Sgt. del Valle. Later, he was taken to the house of Balbino del Valle at San Felix, Sto. Tomas, Batangas City, where he was threatened with death, intimidated and later paraded around the barrio by relatives of the deceased announcing him as a criminal before he was turned over to the Bay Police authorities.

It is already a settled rule that alibi is a weak defense for it is easy of fabrication. (People v. Ragas, 44 SCRA 152; People v. Mori, 55 SCRA 382; People v. Dereje, 56 SCRA 554; People v. Zapatero, 58 SCRA 450; and People v. Coronado, G.R. No. 68932, Oct. 28, 1986). For the defense of alibi to prosper, it is not enough to prove that the accused was somewhere when the crime was committed but that he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime. (People v. Benaraba, 129 SCRA 266; People v. Esmael, 37 SCRA 601; People v. Diaz, 55 SCRA 178; People v. Turalba, 55 SCRA 697; People v. Baylon, 57 SCRA 114; People v. Cortez, 57 SCRA 308; and People v. Coronado, *supra*).

In the case at bar, taking into consideration the distance of 250 meters (trial court's finding) from the batching plant, where the appellant claims he was supervising his men when the stabbing incident happened, to the scene of the crime, the possibility of his physically being at the latter site is beyond question.

Furthermore, alibi cannot prevail over the positive identification of prosecution witnesses. (People v. Manalo, 135 SCRA 84; People v. Nepomuceno, 136 SCRA 556; People v. Jones, 137 SCRA 166; People v. Arbois, 138 SCRA 24; People v. Canamo, 138 SCRA 141; People v. Sinaw-ay, 138 SCRA 221; People v. Gani, 139 SCRA 301; and People v. Coronado, *supra*). The appellant was distinctly and positively identified by eyewitnesses. Cesar Natividad saw appellant stabbing the victim and was so surprised by the suddenness of the attack that he exclaimed, "Bakit ninyo siya sinaksak?"

The alleged beatings and maulings he claims to have received from a peace officer, students, and other persons have nothing to do with the credibility of the witnesses who testified against him.

Appellant also faults the trial court's conclusion of conspiracy between him and Bonifacio Lumanglas despite an alleged absolute lack of proof.

A conspiracy exists when two or more persons come to an agreement to commit a crime and decide to commit it. (Revised Penal Code, Art. 8; People v. Rojas, G.R. Nos. L-46960-62, Jan. 8, 1987; People v. Ogapay, 66 SCRA 209; People v. Alonzo, 73 SCRA 484; People v. Alviz, 122 SCRA 815; and People v. Veloso, G.R. Nos. 38551-53, Feb. 27, 1987). While it is desirable that the conspiracy be proved by direct evidence, like an express understanding among the plotters affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence only. (People v. Rojas, *supra*; People v. Alcantara, 33 SCRA 812; People v. Colman, 103 Phil. 6; People v. Mejia, 55 SCRA 453; People v. Candado, 81 SCRA 1; People v. Roncal, 79 Phil. 509; and People v. Veloso, *supra*). The appellant and Bonifacio Lumanglas are brothers-in-law. The attack by Bonifacio Lumanglas on the victim was simultaneous with the appellant's holding and stabbing del Valle from behind. Prior to the stabbing incident, there was an altercation between the appellant

and del Valle where-in the latter pushed the appellant causing him to fall to the ground, face down, yet, the appellant did not accept the challenge of del Valle to a fight. The appellant's bold attack on del Valle was only made later when the assurance of assistance from his brother-in-law was pre-sent. These circumstances indicate conspiracy between them.

WHEREFORE, the JUDGMENT appealed from is hereby AFFIRMED. Costs against the appellant.

SO ORDERED.

Fernan, (Chairman), Paras, Padilla, Bidin, and Cortes, JJ., concur.

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