

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EXEQUIEL CANTRE Y BON AND EMMANUEL MARIANO Y DALISAY ALIAS MANNY, ACCUSED-APPELLANTS.

G.R. No. 70743. June 04, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from the decision of the Regional Trial Court, National Capital Region, Branch 102 (Quezon City) dated August 31, 1984, finding accused-appellants Exequiel Cantre y Bon and Emmanuel Mariano y Dalisay alias "Manny" guilty beyond reasonable doubt of the crime of murder and sentencing them to the penalty of reclusion perpetua and to indemnify the heirs of the victim, Ramon D. Sanchez, in the sum of P30,000.00 for his death, including P42,354.65 as actual damages and P20,000.00 as moral damages without subsidiary imprisonment in case of insolvency, and to pay the costs.[1]

On June 9, 1984, at about four o'clock in the morning, while drinking beer at Cecile's Eatery located at 73 Timog Avenue, Quezon City, Ramon D. Sanchez, 31 years old, businessman, son of a former representative from Agusan del Norte, was approached by accused Exequiel Cantre, 38 years old, a waiter at the Bluebird Cocktail Lounge located across the street. An argument ensued. To calm himself, Sanchez stood up and walked towards his car which was parked in front of the eatery. While standing beside his car, Sanchez was pelted with fist-sized stones by the other accused, Emmanuel Mariano, 21 years old, a cook at the nearby Vincent Barn House, and his three companions named Mike, Jimmy and an unidentified person. Sanchez was hit on the head. Thereafter, Cantre, armed with an eight-inch long kitchen knife, stabbed Sanchez several times while Mariano continued stoning the besieged victim.[2]

Seriously wounded and dying, Sanchez collapsed on the ground. Upon seeing the fallen Sanchez, Mariano lifted the victim bodily, pulled him towards the back of the car and laid him on the sidewalk near the gutter.[3] There he divested Sanchez of his Seiko wristwatch worth P900.00 and hastily left the scene of the crime with the other assailants.[4]

An hour later, or about five o'clock in the morning, two responding Quezon City policemen arrived at Cecile's Eatery and took the young Sanchez by taxi to the Capitol Medical Center where he died the following day, June 10, 1984.[5] The autopsy report disclosed that in addition to contused abrasions, lacerated wounds and one incised wound, Sanchez sustained seven stab wounds, several of which penetrated the liver and the ascending colon. The cause of death was hemorrhage, secondary to stab wounds of the abdomen.[6]

In an information dated June 20, 1984, Exequiel Cantre y Bon alias "Sequel", Emmanuel Mariano y Dalisay alias "Manny", Mike Doe, John Doe alias "Junior" and Peter Doe were charged with murder committed as follows:

"That on or about the 9th day of June, 1984 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping each other, with intent to kill and without any justifiable cause, qualified with grave abuse of superior strength,

did then and there, wilfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of RAMON SANCHEZ by then and there stabbing the latter on the different parts of his body, hitting him with stone while laying prostrate on the ground, thereby inflicting upon said RAMON SANCHEZ serious and mortal wounds which were the direct cause of his death, to the damage and prejudice of the heirs of said RAMON SANCHEZ in such amount as may be awarded to them under the provisions of the Civil Code of the Philippines. x x x"[7]

Of the several malefactors, only Cantre and Mariano were apprehended. Upon their arraignment on June 25, 1984, both accused pleaded "not guilty" and trial proceeded against them.[8] On August 31, 1984, the lower court rendered the judgment of conviction now under review.

In their appellants' brief, accused-appellants Cantre and Mariano contended that the trial court erred in appreciating the aggravating circumstances of treachery and abuse of superior strength to qualify the offense to murder and therefore they should only have been convicted of homicide; in holding that there was conspiracy, and in considering their extrajudicial confessions against them despite the evidence of police maltreatment.[9]

To change the nature of the crime from homicide to murder, the aggravating circumstance of treachery must be alleged in the information.[10] Since treachery was not alleged in the information filed against appellants, we can only consider treachery as a generic aggravating circumstance, and only if it is duly proven. But as correctly contended by the appellants, the killing was not treacherous. To recall, the fatal assault on Sanchez was preceded by a heated argument between him and Cantre. Sanchez apparently resented that Cantre chose to sit at his table when there were other vacant tables.[11] The verbal altercation with Cantre must have placed Sanchez on guard. As a general rule, treachery must exist at the inception of the attack.

Moreover, Dr. Garcia, who performed the autopsy, noted that except for the stab wounds on the right side of the chest and body of the deceased, "more on the back portion", the rest had been inflicted frontally.[12] In other words, Sanchez was face-to-face with his killer when the latter drew his knife. For treachery to be appreciated as an aggravating circumstance, the offender should have deliberately employed means or methods in the execution of the crime which tended directly to ensure its accomplishment without any risk to himself arising from the defense which the offended party might make.[13]

Nonetheless, the slaying of Sanchez was correctly categorized as murder because of the qualifying aggravating circumstance of abuse of superior strength which was alleged in the information and proven during trial. There were five (5) malefactors, one of whom (Cantre) was armed with an eight-inch kitchen knife and the others with fist-sized stones who all took full advantage of their combined strength in assaulting and overwhelming their unarmed victim.

Abuse of superior strength is present in a case of three (3) armed men against a helpless victim.[14] Where the attack is not made with alevosia, the number of assailants and the simultaneousness of the attack upon a defenseless person may constitute abuse of superior force.[15]

Appellants assert that there was no conspiracy because they had varying degrees of participation in the crime charged. We cannot agree. The evidence presented by the prosecution all pointed to a complicity among the appellants and their unidentified companions. Note the fast sequence of events which unfolded in the dawn hours of June 9, 1984 from the time Sanchez stepped out of the eatery and stood beside his car in an effort to calm himself. Mariano and his companions began the assault by throwing stones at Sanchez, hitting him on the head; then the fatal thrusts of the knife in quick succession by Cantre while Mariano and his cohorts continued to stone the victim; the act of Mariano in dragging the barely conscious victim to the sidewalk next to the gutter; and the assailants' final escape from the scene by running away together but in different directions.

Conspiracy is established by concerted action, it is also shown by a unity of purpose at the time of the commission of the felony and unity in its execution.[16]

It is a primary rule that if two or more persons combine or perform a criminal act, each is responsible for all the acts of the others done in furtherance of the common design and the result is the same if the act is divided into parts and each proceeds with his part unaided.[17] In legal contemplation, the act of each confederate is the act of all.[18] While only one of the conspirators might have inflicted the fatal wounds, nevertheless, they must all be held liable for the killing because it was the result of a conspiracy.[19]

As a final argument, appellants maintain that their extrajudicial confessions are inadmissible against them because the waiver of their "Miranda" rights was made without the benefit of counsel. They also complained of police maltreatment.[20]

Appellants' confessions assume very little significance in the face of the overwhelming evidence presented by the prosecution to prove to a degree of moral certainty that appellants Cantre and Mariano are guilty of the murder of Sanchez. In other words, even without appellants' admissions, their criminal culpability has been established by other competent evidence.

Indeed, during the trial, the defense fought a losing battle. Cantre interposed an alibi but this was correctly rejected by the lower court after it was shown that it was not impossible for the accused to be at the situs of the crime. More significantly, Cantre and his co-accused Mariano were unerringly identified by eyewitnesses Shirley Pocsidio, a waitress at Cecile's Eatery, and Sonia Albarracin and Erlinda Ranoco, both waitresses at Helen's Kitchenette, who narrated in detail how Cantre fatally knifed Sanchez and how Mariano and his other companions stoned the victim while he was standing next to his parked car. The area fronting Cecile's Eatery where the crime took place was well lighted.[21] Pocsidio, Albarracin and Ranoco were approximately between two to five yards away from the protagonists. They were familiar with the appellants. They had known each other for at least a month before the violent incident. As a matter of fact, Albarracin was so certain about Cantre that during the line-up of suspects at the Bicutan Metrocom Office on June 19, 1984, she noticed that Cantre had shaved off his moustache and sported a new haircut.[22]

WHEREFORE, the guilt of the accused-appellants having been proved beyond reasonable doubt, the appealed decision is hereby AFFIRMED. With costs.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Criminal Case No. Q-33950, Original Record, p. 82.

[2] TSN, July 5, 1984, pp. 19-21; July 6, 1984, pp. 35-37.

[3] TSN, July 11, 1984, p. 91.

[4] Exh. T, Original Exhibits, p. 76.

[5] TSN, July 6, 1984, pp. 41-42.

[6] Exh. G, Original Exhibits, pp. 7-8.

[7] Original Record, p. 1.

[8] Original Record, pp. 4-5.

[9] Rollo, p. 57.

[10] *People v. Posada, Jr.*, 142 SCRA 427.

[11] TSN, July 5, 1984, p. 36.

[12] TSN, July 19, 1984, pp. 116-117.

[13] *People v. Delgado*, 77 Phil. 11; *People v. Lanseta*, No. L-30413, January 22, 1980, 95 SCRA 166; *People v. Manalo*, G.R. No. 55177, February 27, 1987, 148 SCRA 98; *People v. Bacho*, G.R. No. 66645, March 29, 1989; *People v. Bustarde*, G.R. No. 79160, February 23, 1990.

[14] *People v. Estrada*, No. L-34036, November 29, 1983, 126 SCRA 94; *People v. Abejero y Villon*, No. L-36039, May 17, 1980, 97 SCRA 647.

[15] *US v. Santiago Lasada*, 21 Phil. 287.

[16] *People v. Bravante*, G.R. No. 73804, May 19, 1987, 150 SCRA 569; *People v. Rosas*, G.R. No. 72782, April 30, 1987, 149 SCRA 464; *People v. Petil*, G.R. No. 70223, March 31, 1987, 149 SCRA 92.

[17] *People v. Cabrera*, 43 Phil. 64.

[18] *People v. Remigio*, 37 Phil. 599.

[19] *People v. Cariñgan*, 61 Phil. 416.

[20] Exhs. S and T, Original Exhibits, pp. 74-76.

[21] TSN, July 5, 1984, p. 27; July 6, 1984, p. 59.

[22] TSN, July 10, 1984, p. 71.

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