

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LOPE MARALIT AND ROMY PASIA, ACCUSED-APPELLANTS.

G.R. No. 71142. September 19, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For the killing of Jaime Cordelin, 63 years old, of Carmona, Cavite, on 16 October 1982, a criminal complaint was filed before the Municipal Court of Carmona, Cavite, against four (4) individuals, namely: Romy Pasia, Maning Mendoza, Pedro Pacheca and Lope Maralit.

After the filing of the complaint, Romy Pasia surrendered to the PC/INP, Imus, Cavite, on 15 November 1982. Maning Mendoza remained at-large and did not stand trial. Pedro Pacheca, while in the custody of the PC, died on 9 November 1982 (t.s.n., April 18, 1983, p. 37). Lope Maralit was, for a time, at-large but was subsequently apprehended and, together with Romy Pasia, were charged with Murder in an Amended Information.

Upon arraignment, both Maralit and Pasia pleaded "Not Guilty." After trial, the lower Court[*] acquitted Pasia "on grounds of reasonable doubt" but convicted Maralit of Murder, qualified by treachery, and sentenced him to reclusion perpetua; to indemnify the heirs of the victim in the amount of P30,000.00; to pay moral damages of P10,000.00, and exemplary damages of P5,000.00; and to pay the costs.

Hence, this appeal by accused Lope Maralit.

It is not disputed that Pasia, Maralit and Mendoza were employees and laborers of the International Realty Corporation (briefly, the Corporation). Pedro Pacheca was their overseer. Maralit was their foreman. Neither is it controverted that the victim, Jaime Cordelin, had a pending land dispute with said Corporation (t.s.n., April 18, 1983, pp. 25 & 26).

The prosecution version of the incident, as narrated by two eyewitnesses, Bienvenido and Danilo Cordelin, who are the sons of the victim, runs thus: On 2 October 1982, at about 7:00 A.M., at Barrio Davilan, Carmona, Cavite, accused Maralit and Pasia in the company of Pedro Pacheca (deceased) and Maning Mendoza (at-large) fired shots at the victim and his two sons, Bienvenido and Danilo. At that time the latter were on their way to their farm to work. The brothers heard the first gunshot. The victim, who was ahead of his son Danilo, followed by Bienvenido, slumped to the ground. Successive shots were later fired and heard. The brothers looked at the direction from where the shots were fired and saw the assailants clearly. They were situated on an elevated portion on the side of the road about 5 to 7 meters high (t.s.n., May 26, 1983, p. 5). Fearing for their lives, the brothers ran away (t.s.n., April 18, 1983, p. 8).

The authorities found the dead body of the victim at the crime scene, with bits of brain scattered on the ground and the intestines protruding from his abdomen. Also found by the police investigator in the area where the assailants were seen by the brothers were seven (7) empty shells of an M-16 armalite rifle and one (1) empty shell of a .45 caliber pistol (Exhibits "J", "J-1" & "J-1-A"; t.s.n., February 14, 1984, pp. 7 & 8).

The medico-legal necropsy report disclosed gunshot wounds at the back of the victim's head, the left upper arm, the left, infrascapular region, and the left scapular region. The examining physician declared that most of the wounds were located at the back of the victim. The cause of death was described as "cerebral, intrathoracic and intra-abdominal hemorrhage due to multiple gunshot wounds" (Exhibit "D").

Providing the motive and reason for the killing of the victim, the prosecution disclosed that all the perpetrators of the crime were workers of the Corporation where accused-appellant was the foreman and Pacheca, the overseer; that Pacheca and accused-appellant are "bilas", both of them being married to the daughters of Generoso Panopio, the plantation manager; that the area being worked by the victim was planted to palay and fruit bearing trees (t.s.n., May 27, 1983, p. 13), and that on one occasion, accused Pacheca (deceased), who, was the overseer of the Corporation, and his companions were forcing the victim to leave the land or to sell it to the Corporation (t.s.n., April 18, 1983, p. 17; May 27, 1983, p. 13). When the victim refused, Pacheca's group became angry so that a day after, five (5) huts of the victim, including the fruit-bearing and banana trees, were burned by Pacheca, Maning Mendoza, Proso Panopio, and accused-appellant Maralit (t.s.n., April 18, 1983, p. 14). A criminal case was filed by the Cordelins against the above-mentioned workers but the same was eventually dismissed (t.s.n., May 27, 1983, pp. 16 & 17). Accused-appellant, together with Pacheca (deceased) and Mendoza had also threatened to kill the victim for his refusal to give up the area he was working on (t.s.n., July 8, 1983, pp. 86-87). This prompted the victim to warn his sons to be careful (t.s.n., July 8, 1983, p. 86).

Both accused Maralit and Pasia predicated their defense on denial and alibi. They claimed that on 2 October 1982, they arrived at their place of work at about 6:30 A.M. with twenty (20) other workers of the Corporation. Maralit, as foreman, prepared the daily attendance report and signed it at 7:00 A. M. of the same date. Their schedule of work was from 6:30 A.M. to 11:30 A.M, and from 1:00 P.M. to 4:00 P.M.

Generoso Panopio, the plantation manager, and the father-in-law of accused Pedro Pacheca (deceased) (t.s.n., April 3, 1984, p. 7) and of accused-appellant Maralit, corroborated the foregoing defense by declaring that he was present when accused-appellant Maralit prepared the attendance report on 2 October 1982 and when the workers signed the said report at 6:30 A.M. on the same date. He admitted, however, that he did not sign the report.

Severino Orias, Administrative Manager of the Corporation, identified the attendance report and the payroll (Exhibits "1-A" & "2").

Lourdes Panopio, daughter of Generoso Panopio and the sister-in-law of accused Pacheca (deceased) and Maralit, also confirmed the presence of Maralit and Pasia at 6:30 A.M. on 2 October 1982 at the Corporation farm and declared that she herself had witnessed the preparation of the attendance report by accused-appellant.

The defense version rated no credibility from the Trial Court which, as heretofore stated, convicted accused-appellant Maralit after finding that "from the sequence of events and facts established by the prosecution accused Maralit conspired with Pedro Pacheca and Maning Mendoza in killing the victim" (Rollo, p. 37).

Before us, accused-appellant now contends:

"I

Pursuant to the rigid injunction in consistent jurisprudence that every circumstance favorable to the accused must be looked into, the court a quo erred in not finding that the conspiracy to take the life of the victim involved only the two gun wielders, namely, Mendoza (the one at large) and Pacheca (the one shot dead by PC authorities).

"II

In view of the fact that appellant Maralit did not carry any firearm and consequently did not fire any shot, the

court a quo erred in not finding appellant's presence at the scene of the crime -- assuming his given alibi, supported as it were by two (2) witnesses, to be unworthy of belief -- merely passive, warranting his acquittal on reasonable doubt. Indeed, the court a quo misapplied the fixed principles on proof of conspiracy." (Appellant's Brief, p. 1)

We disagree with those submissions.

The two brothers who witnessed the commission of the crime positively declared, both in their sworn statements and in their testimonies in open Court, that accused-appellant was in the company of Pedro Pacheca (deceased) and Maning Mendoza (at-large) on the elevated area from where they shot the victim. The fact that accused-appellant was not carrying a firearm does not negate conspiracy. The fact is that, with Pacheca and Mendoza, accused-appellant lay in ambush in an isolated mountain waiting for the victim to pass by. The place where the crime took place was the usual route where the victim used to pass on the way to the farm that he was tenancing. Accused-appellant was also seen by the brothers in a crouching position, just as Pacheca and Mendoza were, and close to one another, as the shots were fired (t.s.n., May 26, 1983, p. 49,; July 8, 1983, p. 80). In other words, he was not merely near the scene of the crime but right thereat. All the foregoing circumstances coupled with prior antecedents, like having been with the assailants when they threatened the victim, closeness of personal association, and concurrence of sentiment, evidence knowledge of and intentional participation in the furtherance of the common criminal intent. It cannot be said, as the defense contends, that accused-appellant's presence was merely "passive." Neither could he have been there out of a "sense of good fellowship" only. He was there lending, at the very least, moral if not material aid. He is, therefore, equally liable for the death of the victim. Each conspirator is said to be the agent of the other. In contemplation of law, the act of one is the act of all (People vs. Liza, G.R. No. L-72316-17, July 27, 1987, 152 SCRA 321; People vs. Beltran, G.R. No. L-37168-19, September 13, 1985, 138 SCRA 522).

To establish conspiracy, it is not essential, as opined in the dissenting opinion, that a co-conspirator be implicated also by the actual assailants. Besides, that would have been impossible in this case since Pacheca had died and Mendoza has remained at-large till the present. Nor need there be proof as to a previous agreement to commit the crime. It is sufficient that the malefactors have acted in concert pursuant to the same objective (People vs. Labinia, G.R. No. L-38140, July 20, 1982, 115 SCRA 224; People vs. Garcia y Cabarse, G.R. No. L-30449, October 31, 1979, 94 SCRA 15). Conspiracy need not be established by direct evidence of acts charged, but may and generally must be proven by a number of indefinite acts, conditions and circumstances (People vs. Ancheta, G.R. No. L-70222, February 27, 1987, 148 SCRA 179; People vs. Belen, G.R. No. L-13895, 118 Phil. 880 [1963]). The very existence of a conspiracy is generally a matter of inference deduced from certain acts of a person accused, done in pursuance of an apparent criminal or unlawful purpose in common between them (People vs. Laguardia, G.R. No. L-63243, February 27, 1987, 148 SCRA 137; People vs. Palon, G.R. No. L-33271, February 20, 1984, 127 SCRA 529; People vs. Malleda, G.R. No. L-34248, November 21, 1978, 86 SCRA 667). In People vs. Cadag, G.R. No. L-13830, May 31, 1961, 2 SCRA 388, it was even acknowledged that conspiracy can seldom be proved except by circumstantial evidence.

The brothers could not have been mistaken as to their identification of the malefactors as the latter were known to them for quite some time (t.s.n., April 18, 1983, p. 39; May 27, 1983, p. 8). The elevated area from where the brothers saw the culprits was only about five (5) to seven (7) meters high (t.s.n., February 14, 1984, p. 7; May 26, 1983, p. 5) and the brothers were only about three (3) to four (4) meters from where the shots originated. There may have been some small trees on both sides of the street (t.s.n., May 26, 1983, p. 2) but according to the police investigators themselves, the assailants could still be seen even if they were in a crouching position (t.s.n., February 14, 1984, p. 7). Visibility from where the eyewitnesses were, therefore, was not impaired.

Maralit's alibi that at the time of the incident, he was working at the farm of the Corporation and, therefore, could not have been at the crime scene cannot prevail over the positive identification made by credible prosecution witnesses (*People vs. Pecato*, G.R. No. L-41008, June 18, 1987, 151 SCRA 14; *People vs. Ocaya*, G.R. No. L-75074, September 15, 1986, 144 SCRA 165). Besides, the situs of the crime was only about four (4) kilometers from the place of work of accused-appellant so that it was not impossible for him to have been at the place of the commission of the crime at the time it was committed. It was held by this Court in *People vs. Manangan*, G.R. No. L-32733, September 11, 1974, 59 SCRA 31, that the defense of alibi cannot be believed where the distance of two (2) barrios is only eight (8) kilometers and can be traversed by walking in one and a half hours. In this case, the two sites were easily accessible to vehicles (t.s.n., April 18, 1983, p. 23; July 23, 1983, p. 7). For alibi to be considered, it must be established that it was impossible for the accused to be at the scene of the crime at the same time (*People vs. Ornoza*, G.R. No. L-56283, June 30, 1987, 151 SCRA 495; *People vs. Magdueno*, G.R. No. L-68699, September 22, 1986, 144 SCRA 210; *People vs. Catipon*, G.R. No. L-49264-66, October 9, 1985, 139 SCRA 192; *People vs. Urgel*, G.R. No. L-34851, February 25, 1985, 134 SCRA 483).

The crime committed is Murder, qualified by treachery. The sudden and unexpected attack caught the victim completely unaware (*People vs. Beltran*, G.R. No. L-38049, July 15, 1985, 137 SCRA 508). The four wounds with entrances on the back of the victim further bolster the attendance of treachery. Thus, in *People vs. Abubakar Asil*, G.R. No. L-32102, February 10, 1986, 141 SCRA 286, it was held that there was alevosia or treachery because the defenseless victim was shot from behind without risk to his assailants specially in this case where the latter perched themselves on an elevated area.

The penalty imposed by the Trial Court, however, calls for modification.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. In the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the judgment appealed from is hereby AFFIRMED except that the penalty is modified to an indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Costs against accused-appellant Lope Maralit.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur.

Sarmiento, J., dissents in a separate opinion.

[*] Judge Mariano M. Umali, presiding.

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