

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSELITO VILLALOBOS AND ROBERTO VILLALOBOS, ACCUSED-APPELLANTS.

G.R. No. 71526. May 27, 1992

Ponente: BIDIN, J.

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BIDIN, J.:

This is an appeal from the decision* dated March 29, 1985, of the Regional Trial Court, Branch XXVI, Iloilo City in Criminal Case No. 14182, finding accused Joselito Villalobos and Roberto Villalobos guilty beyond reasonable doubt of the crime of murder defined and penalized under Article 248 of the Revised Penal Code, as amended, sentencing them both "to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Eduardo Alarba, the sum of P30,000.00 for his death and P7,000.00 for and as actual damages, without subsidiary imprisonment in case of insolvency, together with all the necessary penalties provided for by law and to pay the costs."

The complaint for murder was filed against Joselito, Roberto and Victorino, all surnamed Villalobos before the Municipal Circuit Court of Passi-San Enrique, Iloilo. After conducting the requisite preliminary investigation, said court issued the corresponding warrant of arrest against the accused.

Of the three accused, only Joselito and Roberto were arrested. Victorino remained at large and the case with respect to Joselito and Roberto only was transmitted to the Regional Trial Court of Iloilo City for further proceedings. (Rollo, p. 13)

Both accused were charged with murder in an information filed by the Provincial Fiscal which reads:

"The undersigned Provincial Fiscal accuses JOSELITO VILLALOBOS and ROBERTO VILLALOBOS of the crime of MURDER, committed as follows:

"That on or about the 31st day of October, 1981, in the municipality of San Enrique, Province of Iloilo, Philippines and within the jurisdiction of this court, the above-named accused, armed with homemade gun or "pugakhang" together with one Victorino Villalobos who is still at large, conspiring, confederating and helping each other, with treachery, evident premeditation, with deliberate intent and a decided purpose to kill, did then and there wilfully, unlawfully and feloniously shot Eduardo Alarba with the gun with which they were provided at a time thereby inflicting upon said Eduardo Alarba gunshot wounds on his body which caused his immediate death.

CONTRARY TO LAW."

Upon arraignment, both accused entered a plea of not guilty and trial on the merits ensued.

As summarized by the Solicitor General, the facts of this case are as follows:

"Around seven o'clock in the evening of October 31, 1981 at Barangay Cubay, San Enrique, Iloilo, Norberto dela Cruz who just came from Barangay Garitas after visiting his brother-in-law heard and saw a flash of gunfire some thirty meters away from the road where he was walking (p. 2, tsn, March 29, 1982). Upon seeing

three persons emerging from the site of the gunfire, Norberto hid himself behind the bushes along the road. When the three persons came near the place where he was, he was able to recognize Victorino Villalobos who was holding a long firearm and accused-appellant Roberto Villalobos at a distance of one and a half meters (p. 3, *tsn, ibid*). He also saw two carabaos at the scene of the gunfire and noted that the house of the victim Eduardo Alarba is located just fifty meters away from the crime site (p. 4 *tsn, March 29, 1982*).

"On that same occasion, Alejandro Alagos was also in the same vicinity on his way home after attending to the cattle of his aunt in Barangay Hilonoc. Like Norberto, he also heard and saw the flash of gunfire forty meters away (p. 7, *tsn, Feb. 24, 1982*). He sought cover for a while and later on continued his way towards the direction of the gunfire. There, he met the three persons seen by Norberto but he was only able to recognize Victorino Villalobos who was carrying a firearm (*ibid*). Alejandro asked Victorino what the shot was all about but the latter did not answer (p. 8, *tsn, ibid*). Instead, Victorino together with his two companions hurriedly left (p. 9, *tsn, ibid*).

"In the evening of the incident in question (prior to the shooting), Openiano Berona, a neighbor of the victim Eduardo Alarba, saw accused-appellant Joselito Villalobos go to the store of the Alarbas to buy cigarettes. He was surprised why Joselito was there when his house was a kilometer away. He also saw two companions of Joselito a few meters away but whom he could not recognize (pp. 33-44, *tsn, April 26, 1982*).

"After Joselito had left, the deceased Eduardo Alarba who was inside the house where the store was located instructed his wife Evangelina to prepare their supper. After eating with his wife and children, the deceased told his wife to close the store and then he went towards the field to attend to his carabaos (pp. 2-3, *tsn, June 16, 1982*). Shortly after Eduardo had left, a gun explosion coming from the direction of the creek was heard. Evangelina did not mind it as she was busy attending to her children until she fell asleep. (p. 3, *tsn, ibid*).

"The following morning, Josefino Alio, uncle of Evangelina came to their house and told her that there was a dead man found near the creek some fifty meters away from their house. Evangelina together with her uncle hurriedly went to the place and there, she saw the lifeless body of her husband Eduardo riddled with bullets lying prostrate on the ground (p. 3, *tsn, June 16, 1982*).

"Policemen together with Dr. Leonardo Deza, Rural Health Physician of San Enrique went to the crime site and conducted an investigation. Dr. Deza autopsied the body of the victim and found multiple gunshot wounds which he indicated in his autopsy report (Exh. "A") as follows:

'3. Gunshot wound located 1 inch below the superior border of the left scapula 2 inches from the vertebral column measuring 1.5 x 1.5 cm. in diameter perforating the skin, muscle, bone then penetrating the superior portion of the left lung.

'4. Gunshot wound located at the left latero-posterior portion of the thoracic re-gion at the 11th rib measuring 1.5 x 1.5 cm. in diameter penetrating the skin, muscle, 11th rib then lodging at the internal portion of the posterior thoracic cavity.

'5. Gunshot wound located at the middle portion of the left arm medial side measuring 1.5 x 1.5 cm. in diameter. No wound of exit.

'6. Gunshot wound located 1 inch below the right scapula 5 inches from the vertebral column measuring 1.5 x 1.5 cm. in diameter. No exit wound at the thoracic cavity.

'7. Gunshot wound located at the level of the 5th intercostal space about 4 inches from the vertebral column measuring 1.5 x 1.5 cm. perforating the posterior thoracic wall penetrating the superior portion of the right lung.' (pp. 2-3, *Decision*)

"The police, acting on leads that accused appel-lant Joselito Villalobos went to the store of Eduardo Alarba in

the evening of October 31, 1981, investigated him (to) verify(ing) the truth of his presence at the store. Joselito however denied having gone to the store that evening and so the police brought him to the store where he was positively identified by Evangelina Alarba and Openiano Beronio as the person who bought cigarettes from the former some hours before the shooting incident (p. 21, tsn, Aug. 16, 1982). Thereafter, accused-appellant Joselito was taken to the municipal building where upon further investigation he broke down and pointed to accused-appellant Roberto Villalobos and Victorino Villalobos as his companions in the killing of Eduardo Alarba (pp. 20-22, tsn, Aug. 16, 1982).

"The police then went to look for Roberto and Victorino. However, they were only able to pick up accused-appellant Roberto in the latter's house. When confronted, accused-appellant Roberto Villalobos told the police that the firearm they had used in the killing of Eduardo Alarba was brought by them to the house of Severino Petrola (p. 22, tsn, Aug. 16, 1982). The police accompanied by Roberto and Joselito then proceeded to the house of Petrola and recovered the firearm (p. 23, tsn, Aug. 16, 1982).

As found by the trial court -

"The policemen brought Roberto and Joselito to the house of Severino Petrola, where they recovered the fatal gun, a 12-gauge "pugakang" (Exh. "E"). Severino Petrola informed the policemen that Joselito and Roberto came to his house in the evening of October 31, 1981 at around 9:30 o'clock and handed to him the said firearm requesting him to hold the same in the meantime that they wash themselves at the well nearby. The two spent the night in the house of Petrola. Early the next morning, Petrola went out to look for some coconuts and when he returned, Joselito and Roberto were no longer in the house leaving behind the subject firearm. Petrola gave a written statement which he subscribed and swore to before Judge Mariano Basa of San Enrique (Exh. "D")."

"Prior to the killing, the deceased Eduardo Alarba had an altercation with Victorino Villalobos in connection with the loss of his plow. The victim left his plow in the canefield and the same got lost when Victorino passed by. The victim hence suspected Victorino to have taken his plow and this suspicion reached Victorino who, thereupon, confronted Eduardo saying that he would kill him someday (p. 4, tsn, June 16, 1982).

"Likewise, on October 24, 1981, a near-fight occurred between the victim Eduardo Alarba and accused-appellant Joselito and Roberto Villalobos. Eduardo drew his butcher's knife and pointed the same to Roberto and Joselito who both ran away saying that their path would meet someday (p. 5, tsn, June 16, 1982).

"On the basis of the foregoing facts, an information for murder was filed against Joselito, Roberto and Victorino, all surnamed Villalobos. Because Victorino could not be arrested and had remained at large, the case proceeded only with respect to the other two accused-appellants. While testifying in the witness stand, Roberto and Joselito repudiated what they admitted to the police. Instead, they invoke alibi as a defense.

"The trial court however did not believe their alibi and instead convicted accused-appellants of the (crime) charge(d)."

Accused-appellants raised the following assignment of errors:

"(1) THE TRIAL COURT ERRED IN HOLDING BOTH ACCUSED KILLED EDUARDO ALARBA;

"(2) THE TRIAL COURT ERRED IN HOLDING THAT THE DECEASED WAS KILLED WITH TREACHERY."

Admittedly, in the case at bar, there were no eyewitnesses to the shooting incident. Neither was there any direct evidence presented during the trial and the judgment of conviction of the trial court is predicated mainly on circumstantial evidence.

But the trial court found that the combination of facts and circumstances obtaining in this case, duly proven by

evidence and testified to by witnesses who have no improper motive to testify falsely, points to the complicity of the accused Joselito Villalobos and Roberto Villalobos in the killing of the deceased.

Rule 133, Section 5 of the Rules of Court provides the requisites to warrant conviction based on circumstantial evidence, to wit:

"Sec. 5. Circumstantial evidence, when sufficient. - Circumstantial evidence is sufficient for conviction if:

"(a) There is more than one circumstance;

"(b) The facts from which the inferences are derived are proven; and

"(c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt."

In determining the sufficiency of circumstantial evidence to support a conviction, this Court laid down the rule that "each case is to be determined on its own peculiar circumstances and all of the facts and circumstances are to be considered together as a whole, and when so considered, may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose." (People v. Jara, 144 SCRA 516 [1986]).

A careful review of the records shows the series of events as established by the direct and positive testimonies of prosecution witnesses and other evidence that culminated in the killing of the deceased. They are: (1) that prior to the incident, the deceased was twice involved in a near fatal confrontation with the accused; (2) that in the evening of October 31, 1981, accused Joselito went to the store of the deceased ostensibly to buy cigarettes when he could have made the purchase from other stores nearer to the residence of said accused; (3) that in the same evening the deceased went down to fetch his carabaos; (4) that shortly thereafter, a shot was heard in the direction of the creek where the carabaos were; (5) that at about the same time, the shot was heard by two witnesses Alejandro Alagos and Norberto de la Cruz who came from opposite directions; (6) that at the site of the gunfire, both saw the three accused emerge, with Victorino holding a gun; (7) that they positively identified the accused and could not have been mistaken as Alagos knew Victorino for ten years while Norberto de la Cruz knew Victorino and Roberto for eight years; (8) that de la Cruz saw the three accused from a distance of one meter and a half while Alagos saw them from a distance of three meters; (9) that Alagos even asked Victorino what the shot was all about but the latter hurried away; (10) that the next morning, the body of the deceased was found riddled with bullets near the creek, 50 meters away from his house in the vicinity of the spot where the gunfiring occurred the night before; and (11) that the fatal gun was recovered from the house of Petrola, the place pointed to the police by accused Roberto, who unwittingly confirmed the testimony of Petrola that the weapon in question was handed to him by the two accused on the night of the incident.

Undoubtedly, the requirements for circumstantial evidence to sustain a conviction are present in this case. Verily, these circumstances constitute an unbroken chain leading to one fair and reasonable conclusion pointing to the guilt of the accused. Mere denials of the accused as to their participation in the crime are only self serving, negative evidence which cannot outweigh circumstantial evidence clearly establishing their active participation in the crime (People v. Jara, *supra*).

Nonetheless, appellants assail before this Court the credibility of the prosecution witnesses and in effect would have this Court give more weight to the testimonies of the witnesses for the defense.

The oft-repeated aphorism that the appellate court will not disturb the factual findings of the trial court especially as to credibility of witnesses, as the latter is in a better position to decide said question, having heard the witnesses themselves and having observed their demeanor and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case (People

vs. Adones, 144 SCRA 364 [1986]; People vs. Patog, 144 SCRA 429 [1986]; People vs. Veloso, 148 SCRA 60 [1987]; People vs. Acelajado, 148 SCRA 142 [1987]; People vs. Alcid, 135 SCRA 280 [1985]; People vs. Lopez, 132 SCRA 188 [1984]) deserves reiteration.

In assailing the veracity of the testimony of the victim's widow, appellants' main objection is her alleged failure to establish the motive of Joselito and Roberto Villalobos to kill Eduardo Alarba. They pointed out that even assuming there was in fact a misunderstanding between the victim and Victorino, such was purely personal to Victorino himself and does not extend to his nephews Joselito and Roberto.

From the clear testimony of the victim's wife, it was established that while the initial argument was between the victim and Victorino Villalobos when the former suspected the latter of having taken his plow which resulted in confrontation between them where Victorino stated that he will kill the victim Eduardo someday, the incident was repeated on October 4, 1981 where the deceased again figured in a near fight, this time with Victorino's nephews, appellants Joselito and Roberto, who reportedly ran away when the victim drew his butcher's knife but left a warning that "someday our path will meet."

Taken as a whole, the two successive incidents indubitably show that all the three accused were impelled by the same motive and/or resentment against Eduardo Alarba. In fact, in a similar case, this Court took cognizance of motive of the accused in committing the crime involving a matter of honor, sufficient to establish the direct participation of the accused. Thus:

"By contrast, the motive of the Tamayos cannot be lightly brushed aside as it involved a matter of honor. Orlando took umbrage at the imputation that he had something to do with the theft of Ruben's kitchen stove. Carlos, the father was also angry over the suspicion that had been cast upon his son and, indeed, uttered an ominous warning to Ruben's wife. While it would have been unnatural for the prosecution witnesses to implicate the Tamayos if in fact they were not guilty, it was, on the other hand, quite natural for the Tamayos to be resentful over the insinuation that Orlando had something to do with the theft of Ruben Estanislao's kitchen stove. It is easier to accept that the Tamayos' ire toward the victim manifested itself in their direct participation in the stabbing by Guardo of Ruben Estanislao as the object of their common wrath." (People vs. Guardo, et al., 156 SCRA 152 [1987]).

In any event, even in the absence of a known motive, the time-honored rule is that motive is not essential to convict when there is no doubt as to the identity of the culprit (People vs. Pacada, Jr., 142 SCRA 428 [1986]; People v. Perante, Jr., 143 SCRA 56 [1986]). Lack of motive does not preclude conviction when the crime and the participation of the accused therein are definitely shown (People v. Abigan, 144 SCRA 132 [1986]); that is, there is no doubt as to the identities of the perpetrators of the crime (People v. Tan, Jr., 145 SCRA 615 [1986]).

Similarly, the contention of accused-appellant that the alleged failure of the widow Evangelina to immediately report the above incident to the authorities is an indication that they did not actually happen, is without merit. It is but natural for the victim's wife not to report the incidents that took place prior to the death of her husband in order to prevent the further escalation of the trouble between her husband and the accused--appellants and due to her apprehension about getting involved in a criminal case (People v. Pacabes, 137 SCRA 158 [1985]).

Appellants laid much stress on the fact that the testimony of the victim's widow and so with the testimonies of the other defense witnesses, were never corroborated.

It has already been settled by this Court that there is no law which requires that the testimony of a single witness has to be corroborated except where expressly mandated. In determining the value and credibility of evidence, witnesses are to be weighed, not numbered. In fact, the testimony of a single witness, if credible and positive is sufficient to convict (People v. Canada, 144 SCRA 121 [1986]; People v. Lucas, 125 SCRA 813 [1983]; People v.

Demeterio, 124 SCRA 914 [1983]; and *People v. Romero*, 119 SCRA 234 [1982]).

The fact that the principal witness is the victim's wife even lends more credence to her testimony as her natural interest in securing the conviction of the guilty would deter her from implicating persons other than the culprits for otherwise the latter would thereby gain immunity (*People v. Canada*, supra; *People v. Radomes*, 141 SCRA 548 [1986]; *People v. Jabequero*, 125 SCRA 144 [1983]; *People v. Alcantara*, 33 SCRA 812 [1970]).

Conversely, the negative testimonies of the appellants denying the said incidents cannot prevail over the positive straight-forward and candid testimony of the wife of the deceased. As ruled by this Court, the defense of denial is inherently weak especially when wanting in material corroboration (*People v. Balbuena*, 129 SCRA 12 [1984]). Categorical declarations of witnesses for the prosecution on the details of the crime are more credible than denials and uncorroborated alibi interposed by the two co-accused (*People v. Tan, Jr.*, 145 SCRA 614 [1986]).

For the same reason, the objections of accused-appellants to the testimonies of Norberto de la Cruz and Alejandro Alagos do not deserve serious consideration. It was unrefuted that the said witnesses as aforesaid knew the appellants for a long time, eight (8) years for de la Cruz and ten (10) years for Alagos, so that it is highly improbable that they would have been mistaken in their identification from a distance of one meter and a half, and three meters, respectively, not to mention the fact that Alagos even asked Victorino what the shot was all about.

The fact that Petrola, another witness, never asked questions about the gun when handed to him does not prove that his statements were coached and rehearsed. The circumstance was explained by the fact that Joselito who gave him the gun was accompanied by Roberto who knew Petrola ever since he reached the age of reason (TSN, Hearing of June 20, 1983, p. 15). More than that, it was Roberto who disclosed to the policemen the house of Petrola as the place where they brought the fatal gun. On reaching the said house, the gun was indeed recovered therefrom (Rollo, p. 13).

On the other hand, the accused interposed the defense of alibi to the effect that when the incident happened, they were far from the scene of the crime. Appellants claimed that they were at Sitio Agluya, Barangay Manganese, Anilao, Iloilo allegedly attending the baptism of the son of Zenaida Arante (Hearing, June 27, 1983, TSN, pp. 88; 91; 106).

Well-entrenched is the rule that for alibi to prosper, it is not enough that the accused was somewhere else when the crime was committed, but it must likewise be demonstrated that he was so far away that he could not have been physically present at the place of the crime or its immediate vicinity at the time of its commission (*People v. Santillan*, 157 SCRA 535 [1988]; *People v. Perante, Jr.*, 143 SCRA 56 [1986]; *People v. Gapasin*, 145 SCRA 178 [1986]).

In the case at bar, assuming that the accused really went to Anilao in the morning of October 31, 1981, it is still possible for them to be at the scene of the crime at 7:00 o'clock in the evening of October 31, 1981 as it requires only two hours travel time (Hearing, June 27, 1988; TSN, p. 106).

More than that, the records show that their alibi is inconsistent with their admissions to the police and with their presence at the scene of the crime as established by the testimonies of credible witnesses. The presence of Joselito in the store that evening negated his defense of alibi and so is the presence of all three of them at the site of the gunfire.

No less important is the fact that the defense of alibi put up by the accused to the effect that they attended the baptism of the son of Zenaida Arante on October 31, 1981 at the Roman Catholic Church of Anilao, Iloilo was completely controverted by evidence (Exhibit "F"), a certification issued by the parish priest to the effect that no baptism of the aforesaid parties took place in said church. In fact, Fr. Gerardo Tanilog himself testified to that

effect as rebuttal witness for the prosecution (Hearing, April 16, 1984, TSN, pp. 2-11). Besides, during the trial, accused failed to present Zenaida Arante nor the baptismal certificate of Robert Arante, Zenaida's son.

It is likewise well-settled that alibi cannot prevail over the positive testimony of prosecution witnesses and their clear identification of the accused as the perpetrator of the crime (People v. Garcia, 141 SCRA 336; People v. De las Pinas, supra; People v. Cabanit, 139 SCRA 94 cited in People v. Andres, 155 SCRA 290 [1987]). The accused-appellants were positively identified by no less than three witnesses, Norberto de la Cruz, Alejandro Alagos and Severino Petrola.

Be that as it may, appellants vehemently object to the findings of the trial court that conspiracy in the case at bar exists which implicates all the accused as principals by common design.

There appears to be no argument that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it, whether they act through physical volition of one or all, proceeding severally or collectively (People v. Laguardia, 148 SCRA 133 [1987]; People v. Petenia, 143 SCRA 361 [1986]; People v. Agda, 111 SCRA 330 [1982]; People v. Sy, 113 SCRA 207 [1982]; People v. Monaga, 118 SCRA 466 [1982]; People v. Dayag, 98 SCRA 235 [1980]). While it is desirable that the conspiracy be proved by direct evidence, like an expressed understanding among the parties affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence (People v. Patil, 149 SCRA 92 [1987]; Castillo v. Sandiganbayan, 151 SCRA 425 [1987]; People v. Ancheta, 148 SCRA 178 [1987]; People v. Viray, 147 SCRA 146 [1987]). Conspiracy is likewise established by evidence of unity of purpose at the time of the commission of the offense and unity in its execution (People v. Bravante, 150 SCRA 569 [1987]; People v. Rosas, 149 SCRA 464 [1987]).

The chain of circumstances found by the trial court shows complicity between the appellants and Victorino Villalobos who remained at large. A careful review of the records shows that all three accused were together in the execution of their criminal design. But more than that, they were animated by one and the same purpose, that of cooperating with the other co-accused in bringing about the death of the victim and evidence showed that by their very acts during and after the commission of the crime, they were acting in concert. Therefore, as conspirators, the accused are equally responsible for the acts of their co-conspirators (People v. Manlolo and Garcia, G.R. No. L-40778, January 28, 1989; People v. Tamba, 147 SCRA 427 [1987]).

On the question of whether the offense was committed with treachery, it is clear from the testimony of Dr. Deza which was based on his actual findings regarding the gunshot wounds sustained by the deceased, that the entrance wounds are all located at the back of the victim Eduardo Alarba, a clear indication that the victim was shot from behind with his back towards the assailants. In a number of cases, it has been held that there is treachery when the defenseless victim was shot from behind without risk to his assailants (People v. Melgar, 157 SCRA 718 [1988; People v. Asil, 141 SCRA 286 [1986]).

WHEREFORE, the appealed decision is Affirmed with the modification that the civil liability is increased to P50,000.00.

SO ORDERED.

Gutierrez, Jr., (Chairman), Feliciano, Davide, Jr., and Romero, JJ., concur.

* Penned by Judge Ricardo M. Ilarde, RTC, Branch XXVI, Iloilo City

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