

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TEOFILO OBANDO, DOMINADOR OBANDO, RECTO CABANBAN,
FRANCISCO CABANBAN AND VICTOR CABANBAN,
ACCUSED-APPELLANTS.**

G.R. No. 72742. February 12, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from the decision of the Regional Trial Court (RTC) of Lingayen, Pangasinan convicting accused-appellants of the crime of MURDER committed against one Oscar Magarro, and imposing upon each of them the penalty of Reclusion Perpetua.

The antecedent facts are as follows:

On January 23, 1984, the Assistant Provincial Fiscal of Pangasinan filed before the RTC of Lingayen, Pangasinan an Information[1] dated January 17, 1984, charging the accused, Teofilo Obando, Dominador Obando, Recto Cabanban, Francisco Cabanban and Victor Cabanban with the crime of Murder committed as follows:

"That on or about November 18, 1983, in the afternoon, at Barangay Burgos, Municipality of Natividad, Province of Pangasinan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, together with Candido Vicente, Teofilo Vicente, Cipriano Obando and Benjamin Obando who are still at large, conspiring together and mutually helping one another with intent to kill, with treachery, abuse of superior strength and evident premeditation did then and there wilfully, unlawfully and feloniously shot, attack, assault, club and stab Oscar Magarro thereby inflicting upon him multiple wounds on the different parts of his body which caused his immediate death."

Upon arraignment on February 15, 1984,[2] the accused assisted by their counsel pleaded NOT guilty to the crime charged. Trial followed. On August 27, 1985, the trial court through Judge Antonio M. Belen, rendered a decision,[3] the dispositive portion reading as follows:

"ACCORDINGLY, in view of all the foregoing consideration, this Court finds and holds the accused, TEOFILO OBANDO, DOMINADOR OBANDO, RECTO CABANBAN, FRANCISCO CABANBAN and VICTOR CABANBAN guilty beyond preadventure of doubt as principals of the crime of MURDER defined and penalized under the provisions of Article 248 of the Revised Penal Code and conformable thereto, hereby sentences each of the accused to serve the penalty of RECLUSION PERPETUA and to pay proportionately the costs of the proceedings.

"The Court also orders the accused to indemnify jointly and severally the heirs of the late Oscar Magarro the sum of Thirty Thousand (P30,000.00) Pesos as moral damages and another sum of Five Thousand (P5,000.00) Pesos as actual damages."

Hence the present appeal.

The prosecution's version of the incident in question is drawn substantially from the testimonies of Virginia and Woody Magarro, wife and son, respectively, of the victim, thus:

On November 18, 1983 at around 2:30 in the afternoon, the victim Oscar Magarro, his wife Virginia and son Woody were riding on their tricycle proceeding towards the house of Virginia's parents in Barangay Canarem, Natividad, Pangasinan. While nearing an acacia tree, Cipriano Obando and Dominador Obando suddenly appeared on the road and held the steering wheel of the tricycle. Thereupon, Gregorio Vicente appeared with a gun and fired at Oscar Magarro. The latter got his gun behind his seat, alighted from the tricycle and returned fire. In the ensuing gunfight, Gregorio Vicente was hit and fell. Meanwhile, Oscar's gun jammed and while he was cocking it, somebody threw a stone at him, causing him to fall. While in this vulnerable position, Cipriano Obando, got Oscar's gun and shot him several times. Teofilo Obando, Cipriano Obando, Francisco Cabanban, Recto Cabanban, Victor Cabanban and Dominador Obando then dragged Oscar towards the house of Felix Vicente and Felising Cabrera, where they continued to inflict bodily harm on the victim. Cipriano Obando shot him several more times, while Teofilo Obando stabbed him with a knife. Recto Cabanban struck him with a stone; Victor Cabanban, with a dustpan; and Dominador Obando, with a shovel. Francisco Cabanban took an iron harrow and a big piece of wood. He hit Oscar on different parts of his body with the iron harrow and used the piece of wood in crushing Oscar's head. Candido Vicente hacked Oscar's neck with a bolo, Teofilo Vicente hit his leg with an iron bar and Benjamin Vicente used a piece of wood in striking the victim on different parts of his body.

Virginia and Woody Magarro shouted for help but Cipriano Obando pointed a gun at them and chased them. They had to leave and hide in the house of their relatives for fear of their lives.

Gregorio Vicente was later rushed to the Tayug Emergency Hospital where he died that night.

The defense has another version of the incident. It is alleged that on November 18, 1983, at Barangay Burgos, Natividad, Pangasinan, a gunfight transpired between Oscar Magarro and Gregorio Vicente inside the premises of Felix Vicente. Oscar Magarro died on the spot with several gunshot wounds while Gregorio Vicente was brought to the Tayug Emergency Hospital. The PC investigators conducted an investigation and interviewed the wife and son of Oscar Magarro. The accused herein, together with four other persons who are still at large, were implicated.

In response to the charges, the accused maintain their innocence by flatly denying any participation in the crime and invoking the defense of alibi.

Teofilo Obando stated that at the time of the incident in question, he was with his mother at his landholding, 1 1/2 kilometers from the crime scene, preparing the same for transplanting.[4]

Dominador Obando alleged that he was in the house with his wife when Oscar Magarro arrived on his tricycle. He saw Oscar alight from the tricycle, armed with a gun. Because he was then afraid, he hid himself and peeping through a hole, saw Oscar chasing Cipriano Obando. He returned to the bed of his wife, at which time he heard gunshots. He did not know what actually happened because his wife did not allow him to go out. He further stated that Oscar Magarro was alone in the tricycle having no passenger inside.[5]

Recto Cabanban on his part maintains that he was in the field with his wife gathering snails for supper. He only knew of the shooting incident when he returned home at six in the evening.[6]

Francisco Cabanban declared that at two in the afternoon on November 18, 1983, he went to the house of Candido Vicente, which he finds airy and breezy, for an afternoon nap. While he was lying down, he heard a gunshot and saw Oscar Magarro with a carbine going inside the yard of Candido Vicente. Then Oscar Magarro and Gregorio

Vicente had a gunfight. He became afraid and ran to the field.[7]

Victor Cabanban, on the other hand, stated that during the shooting incident he was at the house of Timoteo Vicente playing bingo. He saw Oscar Magarro running after Cipriano Obando. Sensing trouble and danger, the people inside the house closed the doors and windows. He alleged that he went out of the house at five in the afternoon.[8]

From the maze of testimonies, pieces of evidence and documents contained in the records, We are convinced that the accused did in fact participate in the brutal killing of the victim Oscar Magarro.

The Autopsy Report[9] submitted by Dr. Bienvenido G. Allas, Rural Health Physician of Tayug, Pangasinan reveals that the victim sustained ten (10) gunshot wounds on the face, neck, thorax and abdomen. The victim likewise suffered a stab wound and a superficial wound on the upper right extremity. An examination of his head revealed the following:

"The cranial bone, bone of the face were completely severed, there was a crush-like appearance of the head with multiple, comminuted, (sic) fragmented, depressed fractures. Some parts of the cranial bone and scalp were missing and parts of the brain tissues macerated (sic) were coming out from the cranial bone. The oval or round shape of the head was flattened towards the left side."

It can be gleaned from the records that the victim was himself a notorious character. He was a bully in his barrio, probably drawing courage and confidence from the fact that his father was the barangay captain. He carried a gun and in fact during the shooting incident, a live hand grenade and the handle of a shovel were seen tucked in his waist.

A number of reports involving the victim have been submitted by various persons to the Natividad Police Sub-station in Pangasinan. In the Certification of Records[10] dated April 30, 1984 by Norberto R. Socrates, Officer-in-Charge, entries were made in the Police Blotter, to wit:

"Page — 050 — Entry No. 538 — 14 July 1982:

Brgy. Captain Reyes of Canarem, Natividad, Pangasinan, reported and complained that last night 13 July 1982, Oscar Magarro of Brgy. Burgos, this Mplty, while he was drunk committed trouble by firing gunshots, fearing (sic) residents of said barangay."

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"Page 068 — Entry No. 710 — 28 July 1983:

One Marcelino Obando of Burgos this juris, reported and complained to this Station, that at about 1730, 127 July 1983, one Oscar Magarro, challenging the Obando family and threatened them to death by uttering words in Ilocano dialect saying, "RUMMUAR CAYO AMIN NGA OBANDO TA PATAYEN CAYO AMIN TATTA," further alleged that they entered to (sic) the premises of the reportee (M. Obando) and immediately thereafter, they fired a gun before they lift (sic) out. Suspects were Oscar Magarro, Antonio Magarro and their younger brother unknown name. Said suspects challenging Obando family while they were out working in their farm, while the reportee was alone taking care of their children, when the said suspects got in. For record purposes."

"Page — 077, Entry No. 793 — 20 Oct. 1983:

One Luis Obando resident of Brgy. Burgos, this mplty. came and reported this Station, that Oscar Magarro, Ernesto Castillo, Fabian Castillo and Tony Magarro, uttered defamatory words/threatened and challenging the Obando families, for (sic) a fight. Further reported at the same time, said persons stoned the houses at the Obando compound/families. For record purposes."

The records also reveal that prior to the incident leading to the death of the victim, criminal cases had been filed by the accused against the victim and vice-versa: one for Frustrated Murder[11] against the victim Oscar Magarro filed by Candido Vicente and another for Frustrated Murder[12] filed against Candido Vicente, Teofilo Vicente, Cipriano Obando, Janim Obando, Ador (Dominador) Obando, Alex Lagola, Evangeline Obando and Francisco Cabanban by Oscar Magarro.

From this factual backdrop, it cannot be doubted that Oscar Magarro had become the object of anger, hate and revenge by the people he had harassed and badgered or by those persons who had witnessed his abominable doings.

Although his death was something inevitable, the perpetrators of such untimely and brutal event must not condoned. The character of a person, however bad or evil, does not justify an evil act against him.

The crux of the instant case therefore is whether the accused herein were present and aided one another in killing the victim.

The accused-appellants offered a uniform defense: alibi. We find this untenable in view of the clear, direct and positive identification made by the witnesses for the prosecution.

As a rule, alibi is a weak defense and cannot prevail over the positive testimony of truthful witnesses. The reason is that it is easy of fabrication.[13] Alibi is so easily manufactured and usually so unreliable that it can rarely be given credence.[14] When defendants are identified by witnesses for the prosecution by clear, explicit and positive testimony, alibi will not be credited.[15]

To establish an alibi, a defendant must not only show that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time, that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place.[16]

Furthermore, an alibi should be proved by probable evidence which reasonably satisfies the court of the truth of said defense.[17]

In the case of *People vs. Brioso*, G.R. No. L-28482, January 30, 1971, 37 SCRA 336, this Court held:

"The appellant's main defense in exculpation is alibi. It must be stressed at the outset that alibi is one of the weakest defenses that can be resorted to by an accused, especially if there is direct testimony of an eyewitness duly corroborated by that of another, not only because it is inherently weak and unreliable but also because of the ease of fabricating evidence of alibi and the difficulty of checking or rebutting it. *People vs. Estrada*, 22 SCRA 111 was cited in support of such view. Thus: 'No jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused has been sufficiently and positively established by eyewitnesses to the crime. Alibi is easy to concoct and difficult to disprove. For alibi to prosper, it is not enough to prove that defendant was somewhere else when the crime was committed. He must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time.'"

Taking into account the above-cited jurisprudential dicta, We find the accused's defense of alibi weak and uncorroborated. The testimonies of both Virginia and Woody Magarro are clear and positive. Even on cross-examination, both consistently maintained that these accused were present and helped each other in killing the victim.

The defense tried to cite some inconsistencies or contradictions committed by Virginia Magarro and Woody Magarro, such as: Virginia testified that it was Victor Cabanban who used the dustpan in hitting her husband while Woody stated that it was Dominador Obando who held the dustpan and struck his father. Also, that Virginia

pointed at Dominador Obando as the person who used the shovel while Woody testified that it was Recto Cabanban who used it and that Virginia testified that Candido Vicente used the bolo in stabbing her husband while Woody stated that it was Teofilo Obando.

We find the above inconsistencies and contradictions minor and trivial and are not enough to discredit the veracity of their testimonies. In fact, it bolsters the truth that indeed these witnesses were present during the incident and in the confusion, excitement and horror of what they were witnessing, cannot anymore accurately recount each detail of the incident.

In the case of *People vs. Secapuri, et al.*, Nos. L-17518-19, February 28, 1966, 16 SCRA 199, We held:

"Admittedly, the testimonies of the prosecution witnesses suffer from a few flaws and inconsistencies. But on the whole such variance and defect pertain only to minor matters of the incident. In relation to the incident itself, and to the identification of the appellants as the participants thereof, the testimonies of the witnesses are consistent, relevant and convincing."

The averred inconsistency in the testimonies of the prosecution witnesses appears only in minor details, and reinforces rather than weakens their credibility for it is usual that witnesses to a stirring event should see differently some details of a startling occurrence. This has been judicially taken notice of by the courts.[18]

In addition, it has been found by the trial court that the accused herein confederated, helped and aided one another in killing the victim. The trial court in its decision stated, thus:

"After studying and evaluating the narration of facts made by these two eye-witnesses in relation to the other evidence, physical, documentary and testimonial adduced by the prosecution, the Court is fully convinced that the herein accused confederated, helped and aided one another in snuffing the life of the victim, Oscar Magarro. The narration of facts made by both Virginia Magarro and Woody Magarro as to the manner the killing was done and the individual participation of each of the herein accused, convinces the Court satisfactorily that they (accused) really committed the offense imputed to them. These witnesses were frank, and straightforward in answering questions, bereft of any artificiality and hesitancy that is easily detected in one who tells a false and concocted story." [19]

It is well-settled that the conclusions of fact of the trial judge are entitled to great weight [20], because the trial court is in a better position to examine real evidence as well as to observe the demeanor of the witnesses while testifying in the case. [21]

The individual participation of each accused-appellant, particularly as to who among them rendered the fatal blow causing the death of the victim will no longer be looked into. Obviously, all the accused shared a common purpose or design which motivated their actions. As correctly observed by the Solicitor General, "(A)ccused-appellants are all related by blood; Bad blood existed between the victim and appellants; and the spontaneity of the attack on the victim and the simultaneous actions of the accused in ganging up against Oscar Magarro are proofs positive that they had one objective in mind — to do away with Oscar." [22]

In fine, there was conspiracy, which makes the act of one as the act of all and all persons taking part in the crime shall be held guilty as principals.

In the case of *People vs. Serante*, G.R. No. 46724, July 31, 1987, this Court held:

"When conspiracy has been proved, the act of one conspirator becomes the act of all. It is of no moment that not all the accused took part in the actual commission of every act constituting the crime."

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 as if the act is divided into

parts and each person proceeds with his part unaided.[23]

WHEREFORE, in view of the foregoing, the appealed decision is hereby affirmed with the modification that the civil indemnity is set at P30,000.00. Costs against accused-appellants.

SO ORDERED.

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

[1] Original Record, p. 42.

[2] Ibid., p. 44.

[3] Ibid., pp. 214-234, Rollo, pp. 54-74.

[4] t.s.n., October 2, 1984, pp. 61-96.

[5] t.s.n., December 14, 1984, pp. 28-55.

[6] t.s.n., December 11, 1984, pp. 37-80.

[7] t.s.n., October 2, 1984, p. 4-60.

[8] t.s.n., November 13, 1984, pp. 19-77.

[9] Rollo, p. 31.

[10] Original Record, p. 187.

[11] Criminal Case No. T-546, RTC Branch 51, Tayug, Pangasinan (Exhibit "18").

[12] Criminal Case No. T-547, RTC Branch 37, Lingayen, Pangasinan (t.s.n., December 14, 1984, pp. 58-59).

[13] People vs. Badilla, 48 Phil. 718; People vs. De Asis, 61 Phil. 384; People vs. Japitana, 77 Phil. 175.

[14] People v. Badilla, supra.

[15] People v. Medina, 58 Phil. 330.

[16] People vs. Alban, G.R. No. L-15203, March 29, 1961; People vs. Corpuz, et.al., G.R. No. L-12718, February 24, 1960; People vs. Dagatan, et. al., G.R. No. L-1085, August 28, 1959; People vs. Bulan, et. al., No. L-14934, July 15, 1960.

[17] U.S. vs. Oxiles, 29 Phil. 587.

[18] People vs. De Garcia, et. al., No. L-21419, Sept. 29, 1966.

[19] Original Record, p. 230.

[20] People vs. Anastacio, 128 SCRA 22.

[21] Chase v. Buencamino, Jr., 136 SCRA 365.

[22] Rollo, p. 320.

[23] People vs. Cabrera, 43 Phil. 64; People vs. Puno, 56 SCRA 659.

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