

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO VIRAY ALIAS BOROKIO, DEFENDANT-APPELLANT.

G.R. No. 72892. January 07, 1987

Ponente: PARAS, J.

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PARAS, J.:

Francisco Viray (together with Alejandro, Eulogio, Gregorio, Alberto, and Juan all surnamed Paras) was charged with the crime of murder in an Information reading as follows:

"That on or about the 12[th] day of October 1980, between the hours of 4:00 and 5:00 o'clock in the afternoon, in Barangay Sta. Lucia, Municipality of Masantol, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the said accused conspiring together and mutually helping one another, taking advantage of their superior strength with treachery and evident premeditation, with intent to kill, did then and there willfully, unlawfully and feloniously attack, stab with bladed weapons and struck with hollow blocks, the person of ROSELLER CAYANAN, inflicting upon the victim fatal and mortal wounds, which caused his death thereafter.

ALL CONTRARY TO LAW".

After trial, all the accused (with the exception of appellant Viray, who was then at large) were convicted of murder (qualified by treachery). [1] On December 13, 1984, appellant was arrested by the Integrated National Police. After trial he was found guilty in the decision of September 9, 1985, the decretal part of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered finding the accused Francisco Viray alias "Borokio" guilty beyond reasonable doubt of the crime of murder qualified by treachery and hereby sentences said accused Francisco Viray alias "Borokio" to suffer the penalty of Reclusion Perpetua with the accessory penalties provided for by law and to pay the heirs of Roseller Cayanana the sum of THIRTY THOUSAND PESOS (P30,000.00). Philippine Currency, by way of indemnity for the death of said Roseller Cayanana and to pay the costs of this suit.

SO ORDERED".

Hence, the present appeal raising the following as the sole assignment of error:

ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF MURDER QUALIFIED BY TREACHERY DESPITE INSUFFICIENCY OF EVIDENCE ADDUCED BY THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

The prosecution evidence as synthesized by the People's Brief tends to show the following facts:

In the late afternoon of October 12, 1980, Consolacion Manansala was on her way home walking along the narrow street of Ilang-Ilang in Sta. Lucia, Masantol, Pampanga. Her companions were the deceased Roseller Cayanana, nephew of her husband, Librado Manansala, and her eleven year old son Charlie Manansala.

Consolacion was walking behind the deceased, followed by her son, when suddenly the brothers Alejandro and Eulogio Paras rushed them from behind. Alejandro pulled the deceased by the shoulder, while Eulogio held his hands behind to prevent him from defending himself. (tsn., pp. 5-9, Feb. 6, 1985). Eulogio then picked up a piece of hollow block from the road and hit Roseller on the head with it. Whereupon, Alejandro drew out a hunting knife and stabbed the victim in the stomach. At this instance, accused-appellant Francisco Viray, alias "Borokio", uncle of the Paras brothers, assisted by their father, Juan Paras, and the latter's two other sons, Alberto and Gregorio Paras, took turns in boxing, kicking and throwing hollow blocks at the victim. Consolacion Manansala tried to pacify the attackers by shouting, "Do not kill him, do not kill him", and by embracing the victim from behind to the extent of injuring her hands in the process and had to be treated at the Macabebe Emergency Hospital. (tsn., pp. 9-12, February 6, 1985).

The assailants then fled leaving the deceased lying on his back unconscious. Consolacion started shouting for help and some persons responded and brought the victim to the Macabebe Emergency Hospital in a tricycle (tsn., pp. 13-16, Feb. 6, 1985). Upon arrival at the hospital, the victim was pronounced dead by Dr. Ladislao H. Yuchongco, Jr., Chief of the Hospital. His findings were contained in a medical report. Said findings revealed that the victim sustained several injuries, the fatal ones being that which damaged the brain and a stab wound which penetrated the heart. (Exh. "B", tsn., pp. 7-11, Feb. 18, 1985).

The day following the incident, October 13, 1980, Consolacion Manansala informed the police investigator that a person by the name of alias "Borokyo" (appellant Francisco Viray) also participated in the killing of the deceased. (tsn., pp. 17-18, 21-22, February 13, 1985).

Upon the other hand, the following appears in the Appellant's Brief:

The defense presented Francisco Viray, Pat. Rogelio Alfonso and Prudencio Viray.

Francisco Viray testified that he was residing at 7024 Jasmin Street, Makati, Metro Manila and worked as an inspector with Jonel Transportation Company plying the Quiapo-Guadalupe route (tsn, pp. 8-9, Feb. 20, 1985). Eulogio, Gregorio, Alberto and Alejandro, all surnamed Paras, were his nephews, while Juan Paras was the latter's father. On October 12, 1980, he went to Sta. Lucia, Masantol, Pampanga and arrived thereat in the afternoon. While he was walking along sitio Ilang-Ilang, Sta. Lucia, he saw his nephew, Lucio Paras, wounded lying on the road, Lucio Paras requested him to carry him but because he was afraid he ran to the house of his Kakang Ising and reported the same to her. He stayed in that house, slept there and did not leave the place.

Francisco Viray likewise declared that he was not with Gregorio Paras, Alberto Paras, Eulogio Paras and Juan Paras in assaulting Roseller Cayanan. He stayed in the house of Feliciano Usi for three days and returned to Manila thereafter. He went home to Masantol, Pampanga many times and all the while he did not know that he was being implicated in the case. When he was arrested on December 19, 1984 by the INP of Masantol, Pampanga, he was not informed of the reason why he was being apprehended (Ibid., pp. 11-27).

Pat. Rogelio Alfonso testified that he is a member of the Masantol, Pampanga Police Station. On March 11, 1985 he presented to the court the police blotter of their station dated October 12, 1980 and read the entries made therein regarding the death of Roseller Cayanan wherein accused Francisco Viray was not among those reported as suspect in the death of said Roseller Cayanan (tsn, pp. 3-6, March 11, 1985).

Prudencio Viray averred that Francisco Viray is his cousin and that Alejandro, Eulogio, Alberto and Gregorio all surnamed Paras, were his nephews while Juan Paras is his brother-in-law. On October 12, 1980 between 4:00 and 5:00 o'clock in the afternoon he was in Sta. Lucia, Masantol, Pampanga due to the death of his brother-in-law, Flaviano Sunga. While they were making an accounting of the expenses on the death and burial of Flaviano Sunga he heard about the stabbing incident. He along with his brothers and his brother-in-law went to the road and saw Eulogio Paras laying down and being stabbed by Roseller Cayanan. Thereafter he heard Consolacion Manansala saying "do not kill him" at the same time embracing Roseller Cayanan. Later on he saw Roseller Cayanan lying dead and Eulogio Paras crawling. His brother brought Eulogio Paras to Batasan

Emergency Hospital. He did not see Francisco Viray at the place of the incident. (tsn, pp. 7-11, March 11, 1985).

After a study of the case, We have come to the conclusion that, there is greater credibility on the part of the prosecution.

There is of course no question about the participation and liability of the Paras' family. We are concerned here merely with the actuations of appellant Viray.

We do not believe Viray's assertion that he did not participate at all in the attack and that he was not present when the crime was taking place. Witness Consolacion Manansala saw him leading the second attack on the fallen Roseller Cayanan. And on this matter she was corroborated by her young son Charlie Manansala. Both saw Viray pick up a piece of hollow block with which he hit Roseller Cayanan.

We quote from the transcript (quoted in the Appellant's Brief). re the testimony of Consolacion Manansala:

Q Then what happened with Roseller Cayanan when he was hit with a hollow block and stabbed on the stomach by the two parasites?

A He fell on the ground.

Q When Roseller Cayanan was already lying on the ground, what else happened?

A Thereafter, his father and brothers came led by Francisco Viray then Alberto Paras, then Gregorio Paras and Juan Paras, sir.

Q When these persons you have just mentioned arrived at the place where Roseller Cayanan was lying, what did they do?

A They got pieces of hollow block and hit him on the head, they kicked him and boxed him, sir." (pp. 9-11, Feb. 6, 1985).

With respect to the existence of a conspiracy, We quote with approval the following apt observations of the Solicitor General:

However, he contends that the prosecution failed to establish by clear and convincing evidence that his participation was by virtue of a pre-conceived plan or conspiracy between him and the other accused. In support thereof, he points out, that, according to Manansala's testimony, when appellant, along with Alberto, Gregorio and Juan, all surnamed Paras, arrived at the scene of the incident, the deceased was already lying on the ground seriously wounded, if not already dead.

This pretence is devoid of merit. True, that the same degree of proof necessary to establish the crime is required to support a finding of the presence of a criminal conspiracy. But it is equally true that direct proof is not essential to prove conspiracy which may be established by the facts and circumstances surrounding the case. And in the instant case, the existence of conspiracy is amply shown by the circumstances surrounding the commission of the crime. The mode and manner in which the offense was perpetrated indubitably show that the malefactors acted in concert pursuant to the same objective. While appellant was not in sight when the brothers Alejandro and Eulogio Paras commenced mauling and stabbing the deceased, the fact that he appeared immediately thereafter and, together with the other two Paras brothers, Gregorio and Alberto, and their father, Juan, joined in assaulting the victim by kicking and hitting him with hollow blocks, can lead to no other logical conclusion that that appellant was part of the conspiracy to kill the deceased. Surely, no one will believe that appellant just happened to be around at the time and that he acted independently of the four Paras brothers and their father. Moreover, his flight after the incident leans heavily against his innocence.

Anent treachery or alevosia be it noted among other things that appellant (and the rest) continued to hit and kick

the victim, even when he was already unconscious, to make sure he would die.

WHEREFORE, the appealed decision is hereby AFFIRMED.

SO ORDERED.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

[1] They are now serving their sentence (reclusion perpetua) in Muntinlupa.

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