

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO PETALLAR SACRISTAN ALIAS “ROLANDO PARDILLA,” CELSO CARDAÑO ALIAS “ELY,” ROGER BALINGIT, DEMOCRITO MANTILLA (AT LARGE) ...

G.R. No. 74298. June 04, 1993

Ponente: ROMERO, J.

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ROMERO, J.:

Of the five persons accused of murder for the killing of Ildefonso Maranga in Cebu City, Democrito Mantilla and Margarito Amacna remain at large while Rolando Petallar Sacristan, Celso Cardaño and Roger Balingit were arrested, tried and convicted. Only Roger Balingit interposed the instant appeal.

The five accused were charged with murder in an information dated January 13, 1983 which reads as follows:

"That on or about the 25th day of July, 1982, at about 9:00 o'clock in the evening more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, all armed with knives, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack assault and use personal violence upon one Ildefonso Maranga, by taking turns in stabbing said Ildefonso Maranga with said knives on different parts of his body, thereby inflicting upon said Ildefonso Maranga, the following physical injuries, to wit:

'STAB WOUNDS, MULTIPLE, CHEST AND BACK' and as a consequence of which said Ildefonso Maranga died instantaneously.

CONTRARY TO LAW."

Balingit was arrested by operatives of the Cebu Metropolitan District Command on January 26, 1983 by virtue of a warrant issued by the then Circuit Criminal Court for Cebu-Bohol.[1] Cardaño and Petallar were arrested and detained, respectively, on June 8 and 9, 1983 when Balingit was being tried for the crime.

When arraigned on February 4, 1983, Balingit pleaded not guilty to the offense charged and on August 17, 1983, Cardaño and Petallar entered the same plea. At the trial the prosecution proved the following:

In the evening of July 25, 1982, Eduardo Cardaño, the brother of one of the accused, set out to ask for the hand of Perlita Abejo in marriage[2] in appropriate ceremonies (known as "pedimiento" or "pamalaye") following the custom and tradition of the locality. The event was to take place at the residence of Perlita in Barrio Wakwak, Pasil, Cebu City.[3]

Between 8:30 and 9:00 o'clock in the evening of said date, Cornelia Maranga was on her way to the "pedimiento" to fetch her daughter Elvira. She chanced upon her son Ildefonso Maranga, who was then seated on a cart in front of the Abejo residence, listening to a jukebox playing inside a nearby mini grocery.[4]

Before Cornelia could approach her son, she saw, to her shock, Rolando Petallar Sacristan (known to her as

Rolando Pardilla) coming from the house of Abejo and suddenly plunging a knife at the back of her son who exclaimed, "Ayay!" As he stood up to run away, he was accosted from out of nowhere by the four (4) other accused, namely: Democrito Mantilla, Margarito Amacna, Celso "Ely" Cardaño and Roger Balingit.[5] All four, who were each carrying a bladed weapon, ganged up on the hapless victim taking turns in stabbing him.[6] Thereafter, the five (5) assailants fled together. Elvira, who had emerged from the Abejo residence and saw how her brother was assaulted, cautioned her mother Cornelia not to go near Ildefonso for she might also be killed.[7]

Ildefonso, 25 years old, was brought to the PC-INP, Cebu Metrodiscom for autopsy. Dr. Jesus P. Cerna, medico-legal officer, conducted a postmortem examination of the body and found out that Ildefonso, who had died instantaneously, sustained four (4) incised wounds and fourteen (14) stab wounds which were inflicted by "more than one assailant" carrying "different instruments." [8] Dr. Cerna's necropsy report shows the following findings:

"Body in state of rigor mortis.

Pallor, marked, generalized.

Incised wounds, gaping; arm, distal third, anterior aspect, left, 6.0 x 0.3 cm.; back, thoraco--abdominal region, left, 6.0 x 1.3 cm.

Stabs Wounds:

(1) Elliptical, 5.0 cm. long, supero-anterion extremity sharp, infero-posterior extremity contused, edges clean-cut, running obliquely upward and anteriorly, mandibular region, left, directed backward and downward, involving skin and the underlying soft tissues, attaining an approximate depth of 3.0 cm., non-penetrating.

(2) Elliptical, 11 in numbers (sic), one extremities (sic) contused, other extremities sharp, edges clean-cut, running either vertically downward and laterally or medially, or obliquely upward and laterally or horizontally and medially; all located on the chest, right and left anterior aspects; all directed backward, upward and medially or laterally, involving skin and the underlying soft tissues, 10 penetrating thoracic cavity, perforating heart 6 times, incising lungs, left upper lobe 2 times, right upper lobe 3 times attaing (sic) an approximate depths (sic) ranging from 6.5 to 11.0 cms. (sizes ranging from 1.7 to 5.5).

(3) Elliptical, 3.0 cm. long, supero-medial extremity contused, infero-lateral extremity sharp, running obliquely downward and laterally, edges clean-cut, back, thoracic region, left, directed forward, downward and laterally, involving skin and the underlying soft tissues, attaining an approximate depth of 5.5 cm., non-penetrating.

(4) Elliptical, 4.5 cm. long, supero-medial extremity contused, infero-lateral extremity sharp, running obliquely downward and laterally, edges clean-cut, back, thoracic region, right; directed forward, downward and medially, involving skin and the underlying soft tissues, incising diaphragm, into peritoneal cavity, incising liver, right lobe, attaining an approximate depth of 8.0 cm.

Other viceral organs, pale.

Stomach, full with undigested food particles.

Hemothorax, 1,200 cc.

Hemoperitoneum, 800 cc.

CAUSE OF DEATH:

Stab wounds, multiple, chest and back." [9]

On his part, Balingit interposed alibi as a defense. After allegedly taking a bath in the sea that day, he came home

very tired and slept as early as 6:00 o'clock in the evening of July 25, 1982. He woke up only the following morning. After leaving the house that morning, he learned from his friends that Ildefonso was killed the night before by Rolando Sacristan, Democrito Mantilla and Ely Cardaño.[10]

According to Balingit, Cornelia Maranga implicated him in the crime because he refused to accede to her request to testify at the trial of this case. He refused to do so because he allegedly did not witness the killing of Ildefonso on that fateful day.[11]

To corroborate Balingit's alibi, the defense presented an alleged eyewitness by the name of Valentina Monio (or Nonio). According to Mrs. Monio, on July 25, 1982, at around 9:00 o'clock in the evening, she went to the store of Crisanta Balingit, appellant's mother, to buy some matches.[12] It was then that she noticed Roger Balingit sleeping under his house. Suddenly, she saw Ildefonso Maranga being pursued by Mantilla, Pardilla and Cardaño. When the three caught up with Ildefonso, they ganged up on him and delivered stabbing blows.[13] It was only after Ildefonso was killed that she saw Cornelia and Elvira Maranga at the scene of the crime.[14]

After trial, the court a quo promulgated the decision of December 15, 1983,[15] the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Rolando Petallar Sacristan (also known as Rolando Pardilla and Rolando Petallar), Celso Cardaño (nicknamed Ely), and Roger Balingit guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code. There being neither mitigating nor aggravating circumstances, the aforementioned accused should be, as they each are, hereby sentenced to the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of the deceased Ildefonso Maranga in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency; and to pay proportionate costs.

SO ORDERED."

Alleging that he was not notified of the date of promulgation of said decision so that he failed to be present thereat and that he had discovered new and material evidence which he could not, with reasonable diligence, have produced at the trial, Balingit moved for a new trial of the case.[16] The motion was granted[17] but after Balingit's motion for postponement of the hearing on the motion was reset to February 17, 1984, the lower court, on said date denied orally Balingit's manifestation to present two of his co-accused as witnesses.[18]

Hence, Balingit filed the instant appeal with assigned errors focussed on the credibility of the prosecution witnesses. He contends that the testimonies of Cornelia and Elvira Maranga are flawed by substantial inconsistencies and errors which are material in proving his guilt beyond reasonable doubt. Specifically, he points out Elvira's testimony that she did not see her brother being stabbed by all the accused; that her mother, Cornelia, fainted during the incident; that she erred in estimating her distance from the scene of the crime; that while her affidavit states that the assailants used kitchen knives during the trial, she testified that the weapons used were long, bladed ones, and that she had no other relatives present at the scene of the crime. With respect to the testimony of Cornelia Maranga, appellant contends that she admitted that she did not see exactly what part of her son's body was stabbed by Ely Candaño.

Appellant's contentions, being untenable, his appeal must necessarily fail.

Prefatorily, the rule is well-settled that appellate courts will not disturb the factual findings of the trial court with respect to credibility of witnesses because it is in a better position to observe the demeanor of witnesses as they testify. The appellate court, on the other hand, reads only in cold print the testimony of witnesses which is usually translated from the local dialect into English. In the process of translation, "not only the fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated

words."[19] Necessarily, the appellate court is placed at a disadvantage in this regard. Hence, in the absence of glaring misapprehension of facts on the part of the trial court, the appellate court places great reliance on its findings of facts.

This applies with more reason when the appellant selectively lifts or quotes only certain portions from the testimony of witnesses to favor his cause as was done by the herein appellant. A thorough in-depth reading of the entire testimony of the herein prosecution witnesses will show that the alleged inconsistencies or errors, aside from being taken out of context, were obviously trivial. As correctly observed by the Solicitor General, these alleged inconsistencies may be attributed solely to the frailty of human memory.[20] Special consideration should be given the fact that it is unusual for a mother and a sister to witness her son or brother being killed right before their very eyes. Neither may such witnesses' relationship to the victim affect their credibility as such witnesses. Their clear and positive testimony may not be considered less worthy of full faith and credit merely because of such relationship.[21]

Moreover, minor lapses are to be expected when a witness recounts details of an experience which are quite painful to recall. On the other hand, uniformity of testimonies to the last detail cautions the hearer as to their veracity. What is important is that the witnesses positively identified the accused as one of the assailants and their collective narration of the manner of commission of the crime points to none other than the culpability of the accused.

Although appellant's alibi that he was asleep, when the crime was committed was corroborated by an alleged eyewitness to the crime, it was not sufficiently proven as to leave a doubt in the mind of the Court that he in fact was a participant in the killing. Alibi, being an inherently weak defense as it can easily be fabricated "even between those not related,"[22] does not carry weight where first, the accused is positively identified by prosecution witnesses and, second, if it is not shown that it was physically impossible for him to have been present at the scene of the crime during its commission.[23]

Appellant was positively identified by the victim's mother and sister as a participant in the grisly killing of Ildefonso. Cornelia and Elvira had not been shown by the appellant to be motivated by ill-feelings as to implicate him in such a serious charge. In fact, appellant himself admitted in court that he had such a harmonious and friendly relationship with the Marangas that he would take meals in their house.[24] His contention therefore, that the Marangas implicated him because he refused to testify for the prosecution is, aside from being uncorroborated, too tenuous to be true. Murder is not a trivial offense for which a person, no matter how closely related he or she might be to the victim, would recklessly hurl at another if the charge were not true.

Neither was it impossible for appellant to have been at the place where the crime was perpetrated. Appellant's house was just a stone's throw away from the scene of the crime. As he himself admitted on the stand, his house was a mere fifteen (15) meters away from the place where Ildefonso was slain.[25] This testimony certainly creates a doubt as to the truth of appellant's story that he slept from 6:00 o'clock in the evening till morning of the following day for, granting that he was not a participant in the assault, he could not have slept throughout the commotion created by the incident - Ildefonso's mother shouting for help[26] and people milling around the place where the betrothal of a neighbor was to take place, scampering for safety after the stabbing incident. Likewise open to doubt is the corroborating testimony of Mrs. Monio who revealed upon cross-examination, that she never offered any statement to the police investigators, notwithstanding her claim that she witnessed the incident. As she herself admitted, she volunteered to be a witness only after appellant's arrest[27] or six months from the commission of the crime.

The culpability of appellant was sealed by proof beyond a shadow of doubt that conspiracy was present in the

commission of the crime. A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[28] It need not be established by direct evidence but may be proved through a series of acts done by each of the accused in pursuance of the common unlawful objective. As such the identity of the assailant who inflicted the fatal blow becomes immaterial.[29]

The physical evidence presented by the prosecution showing the number of wounds sustained by Ildefonso, some of which penetrated his internal organs, such as the heart which was perforated six (6) times, leaves no room for doubt that conspiracy did exist. The concerted effort of the accused in surrounding the defenseless victim clearly manifested their decision to kill him, not at the spur of the moment but as planned beforehand. The same criminal intent was shown by the fact that all the accused carried deadly weapons which they eventually used in assaulting Ildefonso. There can, therefore, be no other conclusion than that the accused had a community of purpose and unity in the execution of their common criminal design, such that the act of one became the act of all.[30]

The prosecution also clearly proved beyond reasonable doubt that treachery attended the commission of the crime. Thus, at the initial stage of the attack, the first assailant, Rolando Sacristan, suddenly and unexpectedly came from behind the unarmed victim and without any previous provocation or altercation, stabbed the latter at the back. As pointed out by the Court in *People v. Gonzales*,[31] that, basically, is the essence of treachery. There being a notorious inequality of forces between the deceased and his armed aggressors, abuse of superior force is also attendant in the crime.[32]

The lower court, therefore, correctly found that the crime committed was murder as defined in Art. 248 of the Revised Penal Code. It, however, erroneously stated in the dispositive portion of the decision aforequoted that no aggravating circumstance attended the commission of the crime. As earlier discussed, two circumstances had been proven beyond reasonable doubt to exist: treachery and abuse of superior strength. As such, treachery, which was alleged in the information, qualified the killing as murder. The other proven aggravating circumstance, abuse of superior strength, should, however, be considered as absorbed by treachery.

There being no aggravating or mitigating circumstances, under Arts. 64 (1) and 248 of the Revised Penal Code, the penalty of reclusion perpetua was correctly imposed by the lower court. With respect to the twelve thousand pesos (P12,000.00) indemnity awarded by the lower court to the heirs of Ildefonso Maranga, the same should be increased to fifty thousand pesos (P50,000.00) pursuant to existing jurisprudence.[33]

WHEREFORE, the decision of the lower court convicting appellant Roger Balingit for the crime of murder and imposing on him the penalty of reclusion perpetua is hereby **AFFIRMED** subject to the modification that said appellant shall **INDEMNIFY** the heirs of Ildefonso Maranga in the amount of fifty thousand pesos (P50,000.00) instead of twelve thousand pesos (P12,000.00).

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Melo, JJ., concur.

[1] Record, pp. 13-14.

[2] TSN, March 8, 1983, p. 15.

[3] TSN, May 11, 1983, p. 3.

[4] TSN, March 8, 1983, p. 5.

[5] Ibid, pp. 5-6.

- [6] TSN, May 11, 1983, p. 21.
- [7] Ibid, p. 12.
- [8] TSN, March 11, 1983, pp. 3-4.
- [9] Exh. A, Record, p. 69.
- [10] TSN, August 4, 1983, p. 3.
- [11] Ibid, p. 5.
- [12] TSN, August 2, 1983, p. 6.
- [13] Ibid, p. 7.
- [14] Id., p. 10.
- [15] Penned by Judge Regino Hermosisima, Jr.
- [16] Record, p. 144.
- [17] Ibid, p. 149.
- [18] Ibid, p. 157.
- [19] People v. Pajares, G.R. No. 96444, June 23, 1992, 210 SCRA 237, citing People v. Arroyo, G.R. No. 99258, September 13, 1991, 201 SCRA 616.
- [20] Appellee's Brief, p. 13.
- [21] People v. Lardizabal, G.R. No. 89113, November 29, 1991, 204 SCRA 320.
- [22] People v. Ampo-an, G.R. No. 75366, July 4, 1990, 187 SCRA 173, citing People v. Pecato, L-41008, June 18, 1987, 151 SCRA 14.
- [23] People v. Tiu, G.R. Nos. 75032-33, December 1, 1992; People v. Cabactulan, G.R. No. 84398, December 2, 1992; People v. Villalobos, G.R. No. 71526, May 27, 1992, 209 SCRA 304.
- [24] TSN, August 4, 1983, p. 8.
- [25] TSN, August 4, 1983, p. 13.
- [26] TSN, March 8, 1983, p. 7.
- [27] TSN, August 2, 1983, pp. 11-12.
- [28] Art. 8 (2), Revised Penal Code.
- [29] People v. Donato, G.R. No. 94530, March 6, 1992, 207 SCRA 125.
- [30] People v. Degoma, G.R. Nos. 89404-05, May 22, 1992, 209 SCRA 266.
- [31] G.R. No. 96928, June 16, 1992, 210 SCRA 44.
- [32] People v. Canciller, G.R. No. 97296, March 4, 1992, 206 SCRA 827.
- [33] People v. Arevalo, G.R. No. 93406, October 7, 1992; People v. Sazon, G.R. No. 89684, September 18, 1990, 189 SCRA 700.

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