

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALTAZAR ALAN ALITAO, HENRY OCCENA AND WILFREDO APUNGAN (AT LARGE), ACCUSED, BALTAZAR ALAN ALITAO AND HENRY OCCENA, ACCUSED-AP...

G.R. No. 74736. February 18, 1991

Ponente: NARVASA, J.

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NARVASA, J.:

The appellants, Baltazar Alan Alitao and Henry Occena -- both security guards of the Talisay-Silay Milling Company (TASIMICO) --- and a third person, Wilfredo Apungan, were accused of murder for the killing of Jason Concepcion y Esparista on or about February 24, 1981 in Talisay, Negros Occidental. The information alleged that "armed with a shotgun and bladed instrument (and) conspiring, confederating and helping one another, with evident premeditation and treachery, taking advantage of superior strength (and) with intent to kill," they did, "attack, assault, box, strike and stab ** (the victim, Jason Concepcion) thereby inflicting multiple stab wounds and other injuries on ** different parts of the body of the latter," causing his death.[1]

Only Alan Alitao and Henry Occena were arrested, arraigned, and stood trial after entering a plea of innocent. Wilfredo Apungan was never apprehended and remains at large to this day.

The trial resulted in a judgment on May 21, 1985 by the Regional Trial Court at Bacolod City,[2] finding the accused Alitao and Occena guilty as charged. The dispositive part of the judgment reads as follows:[3]

"WHEREFORE, this Court finds accused BALTAZAR ALAN ALITAO and HENRY OCCENA guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, without the presence of any aggravating nor mitigating circumstances and hereby sentences both accused to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim JASON CONCEPCION y ESPARISTA jointly and severally, the amount of P30,000.00 for the death of the victim, without subsidiary imprisonment in case of insolvency and to pay costs.

"Accused are advised of their rights to appeal within the reglementary period. Since they have been convicted of the capital offense of Murder, they are ordered detained at the Provincial Jail.

"Since the third accused Wilfredo Apungan remains still at large, let a warrant of arrest be issued against him and the record of this case be sent to the archives until he is apprehended."

Both accused have taken an appeal to this Court, attributing to the Trial Court the following errors:

- 1) holding that there was conspiracy because of their simultaneous and concerted acts despite the absence of any iota of evidence that such acts were done pursuant to a common design;
- 2) holding that the accused took advantage of their superior strength thus qualifying the crime to murder even when there is no evidence on record to that effect; and

3) not acquitting appellants there being no evidence of conspiracy or of their individual culpability for the injuries sustained by the deceased.

The appeal is without merit. The Trial Court's judgment must be affirmed.

The conviction has been made to rest mainly on the testimony of two (2) eyewitnesses -- Paterno Gallanero and Carlos Jalandoon who, like the appellants, were employees of TASIMICO --corroborated by evidence of the victim's dying declaration and the results of the autopsy.

Paterno Gallanero testified that at around 1:30 o'clock in the morning of February 24, 1981, while he was at his place of work at the cable room of TASIMICO, he saw security guard Alitao and Jason Concepcion coming from the company coffee shop. Alitao had a shotgun slung on his shoulder and was holding Jason by the shoulder. Paterno went to the stock room shortly thereafter and from that place saw Alitao and Jason, and another security guard, Occena, near a cane car (Lifter No. 2). Alitao and Occena were hitting Jason. Jason went up to the (cane) flat car. Alitao hit Jason on the left shoulder with the butt of his shotgun. Jason staggered back and fell from the flat car to the cement floor. Alitao continued to hit Jason with the butt of his shotgun, and Occena, to box Jason on different parts of the body. As a member of the "Barangay Brigade," Gallanero felt called upon to intervene; he went to guards Alitao and Occena and told them, "That's enough;" but they both replied, "Nobody should intervene!" Jason Concepcion ran from that place and was pursued by Alitao and Occena. Gallanero followed and coming upon Jason Concepcion in a bloody state, forthwith called for an ambulance.[4]

Carlos Jalandoon testified that at about the same time and date, he was having a snack in the company repair shop. He heard someone shout, "There's a fight!" He went out and saw Jason Concepcion lying on the railway tracks. Alitao was poking his gun at him, Occena was pushing him and Wilfredo Apungan was stabbing him. Both Alitao and Occena were in uniform, being on duty at the time.[5]

It was Jason's brother, Ramon, who, according to his testimony, brought Jason to the Riverside Hospital in an ambulance. On the way he asked Jason who had caused his injuries. Jason said he was manhandled by Alitao and Occena, and stabbed by Wilfredo Apungan.[6]

Dr. Teodoro Lavada, medico-legal officer, conducted a post-mortem examination of the corpse and concluded that the victim's wounds were caused by different weapons such as a sharp bladed instrument like a hunting knife or a bayonet, and a blunt object; the victim's contusions could have been caused by the butt of a shotgun, or by fist blows; and it was possible for the victim to still talk within a few seconds after the infliction of the stab wounds.[7]

The defense version of the fatal occurrence -- presented by both appellants, and two of their fellow security guards -- is quite different, as might be expected.

According to Alitao, at around 1:00 o'clock in the morning of February 24, 1981, while he was on duty, he saw Jason Concepcion in the company premises. There was a standing order for Jason's apprehension because four (4) days earlier, he had boxed a security guard. Patricio Gomez. Alitao called up the Security Guards' Office and reported Jason's presence. He then went to apprehend him, but Jason was no longer at the place where he had first been; he had gone to the coffee shop. There he asked Jason to go with him to the Guards' Office. After initial reluctance, Jason agreed. As they were going to the Office, they were joined by Guard Occena whom Alitao had earlier asked to assist in arresting Jason. When they reached a dark area where there was a road leading to Jason's house, Jason tried to escape but was restrained by Alitao, who held him by the shoulder. At this juncture, several persons, one of whom was Wilfredo Apungan, moved to attack Jason but were prevented from doing so by Alitao who aimed his shotgun at them. When he looked back, Alitao saw Occena and Jason Concepcion wrestling with

each other. They fell to the ground, still struggling with each other. Alitao thereupon hit Jason with the butt of his shotgun. Jason tried to grab the gun, so Alitao hit him again in the stomach. Jason finally stopped resisting.

Jason then got permission from them to relieve himself. But instead he jumped over an empty flat car and ran away. Alitao tried to pursue him but slipped and hurt his leg. Occena told him not to follow because Jason had gone to a dark place. After a short while, they heard someone shouting from the place to which Jason had fled, that there was a fight and somebody was asking for help. Alitao and Occena went to the place and saw Jason lying on the railroad tracks. Jason told them he had been stabbed by Wilfredo Apungan.[8]

Substantially the same story was given to the Trial Court by Occena[9] and two (2) other security guards, Lope Joseph[10] and Ronnie Billote.[11] In addition, the latter two deposed that Wilfredo Apungan and some four other persons had run after Jason Concepcion.

Now the errors assigned by appellants all go into the sufficiency of the evidence upon which they were convicted or, more concretely, into the correctness of the Trial Court's conclusion that said evidence was sufficient, appellants' own countervailing proof notwithstanding, to establish guilt beyond a reasonable doubt. Such a conclusion or finding, arrived at by comparing the body of proof presented by the prosecution with that offered by the defense and assessing or weighing their relative merits, is without doubt one of fact.[12] As such, its review by this Court must necessarily and as a primary consideration follow the guiding principle, long-established and constantly reconfirmed, that unless arbitrary or without sufficient basis, the findings of trial courts on questions of fact " * * are accorded the highest respect on appeal, if not indeed regarded as conclusive, * * ."[13]

The rule is of special relevance and applicability where it is the credibility of witnesses that is mainly in contention, and as to which a trial court's findings will not be disturbed unless the record plainly shows that in making them said court overlooked facts of substance or value which might, if considered, yield a different conclusion. The reason is that:

"(t)he appellate court goes only by the sterile record. By contrast, the trial court can discern the nuances of tone or voice or flush or blanch of face or dart of eyes or forthright gaze, that will draw the line between fact and prevarication. Enjoying this advantage, the trial court is less likely than the reviewing court to commit an error in assaying the conflicting evidence." [14]

There is nothing in the record here to indicate that the Trial Court failed to take into account any substantial evidence or misperceived its weight and import in arriving at the conclusion that the proofs presented by the prosecution established appellants' guilt beyond reasonable doubt.

On the question of conspiracy, it being an equally well-settled and familiar rule that conspiracy need not be proved by direct evidence, but can be inferred from the acts of the accused,[15] the Trial Court, having accorded credence to the testimony of two eyewitnesses that the appellants assaulted the deceased victim in concert, taking turns in hitting with fist blows and the butt of a shotgun in addition to stabbing him with a knife or some bladed weapon, correctly attributed such acts to a common design; in the circumstances there was no logical or realistic alternative to that conclusion. The contention that the evidence does not pinpoint individual culpability for the injuries inflicted on the victim must therefore be rejected, not only because it is objectively incorrect, but also because the result of a conspiracy is imputable to all conspirators whatever the part, big or small, each may have played in its accomplishment. It is furthermore obviously only a desperate attempt to foist off sole responsibility for the killing on the absent Wilfredo Apungan, the person identified by the witness Carlos Jalandoni as the knife-wielder and who, if the post-mortem report is any indication, probably inflicted the fatal wounds.

The existence of a conspiracy among the appellants and Wilfredo Apungan is further supported by the testimony of the victim's brother, Ramon Concepcion, who declared that as the former was being taken to the hospital, he

had identified the appellants and Wilfredo Apungan as his attackers. The Trial Court correctly admitted said testimony as either evidence of a dying declaration or part of the *res gestae* and an exception to the hearsay rule. Conspiracy is also inferentially established by the number and nature of the victim's injuries which, in the opinion of the medico-legal officer who issued and testified on the post-mortem report, were inflicted by different means or instruments.

The contention that the Trial Court erred in finding that the appellants took advantage of superior strength is without merit, given the fact that as the evidence showed, the victim, himself unarmed, was simultaneously attacked by the two appellants and Wilfredo Apungan, all of them with weapons.

The Trial Court's verdict must therefore be upheld. However, conformably to current doctrine, the award of damages should be increased to P50,000.00.

WHEREFORE, as above modified, the appealed decision is hereby **AFFIRMED** in toto, with costs against appellants.

SO ORDERED.

Cruz, Gangayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Record, p. 45. The case was docketed as Criminal Case No. 814 and assigned to Branch XLI of the RTC, Bacolod City.

[2] Rendered by Hon. Quirino Abad Santos, presiding over Branch 41 of said Court

[3] Record, p. 21

[4] TSN, Nov. 17, 1981, pp. 24-31

[5] TSN, Sept. 29, 1982, pp. 7-10

[6] *Id.*, pp. 27-28

[7] TSN, Nov. 17, 1981, pp. 9-11, 19-20

[8] TSN, May 24, 1983, pp. 11-27

[9] TSN, April 26, 1983, pp. 2-13

[10] TSN, June 6, 1983, pp. 3-4

[11] TSN, June 7, 1983, pp. 4-8

[12] *Paterno vs. Paterno*, 183 SCRA 630, 636-637

[13] *People vs. Francisco*, 182 SCRA 305, 309; see also *People vs. Canamo*, 138 SCRA 141; *People vs. Cruz* 142 SCRA 576; *People vs. Monteverde*, 142 SCRA 668; *Vallarta vs. IAC*, 151 SCRA 679; *People vs. Laureta* 159 SCRA 256; and *People vs. Javier*, 183 SCRA 702

[14] *People vs. Francisco*, *supra*

[15] *People vs. Pineda*, 157 SCRA 71; *People vs. Palino* 183 SCRA 680

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