

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEES, VS.
DOMINADOR SALCEDO Y RUBI, DIOSCORO SALCEDO, JR. Y RUBI,
AND OSCAR RABINO Y DIMANARIG, ACCUSED-APPELLANTS.**

G.R. No. 78774. April 12, 1989

Ponente: CORTES, J.

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CORTES, J.:

Accused-appellants were charged with the crime of murder under the following information:

That on or about the 26th day of March, 1981 at about 11:00 o'clock in the evening at barangay De Los Angeles, municipality of Buhi, province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the said accused, armed with a home made "Indian Arrow", with intent to kill and with treachery and evident premeditation, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, attack, assault and shot [sic] with the said "Indian Arrow", one IGNACIA QUINGQUING Y CATANGUI, thereby inflicting upon the latter mortal wounds on the different parts of her body, which directly caused the death of said Ignacia Quingquing y Catangui.

That in the commission of the crime the following aggravating circumstances were present:

That the accused took advantage of their superior strength and the offense was committed at nighttime to better facilitate the commission of the crime.

That as a consequence of the death of the said Ignacia Quingquing y Catangui, her heirs suffered damages in the total amount of P20,000.00 Pesos, Philippine Currency.

CONTRARY TO LAW. [Record, p. 122.]

Upon arraignment, the accused-appellants pleaded "Not Guilty" [Id. at p. 123.] After trial, the court a quo rendered judgment finding the accused guilty beyond reasonable doubt of the crime of murder and accordingly sentenced them to suffer the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of the victim in the amount of P30,000.00 and to proportionately pay the costs [Rollo, p. 38.]

The accused moved for reconsideration of the trial court's decision, but their motion was denied [Record, p. 301.] Hence, the instant appeal, in which error is attributed to the court a quo:

1. IN GIVING WEIGHT TO PROSECUTION'S WEAK AND INCREDIBLE EVIDENCE;
2. IN FINDING CONSPIRACY AND USE OF SUPERIOR STRENGTH;
3. IN ADMITTING AND RELYING ON THE EXTRAJUDICIAL CONFESSION OF ACCUSED DOMINADOR SALCEDO;
4. IN NOT CONSIDERING THE DEFENSE OF ALIBI IN THE FACE OF UNCLEAR IDENTIFICATION OF SUPPOSED ASSAILANTS. [Rollo, p. 54.]

What transpired on that fateful night, as culled from the testimony of witnesses, was summarized by the Solicitor General, as follows:

This incident happened at Barangay de los Angeles, Municipality of Buhi, Province of Camarines Sur (TSN, Oct. 30, 1981, p. 4).

On March 26, 1981 at around 11:00 o'clock in the evening, Plaridel Manaog saw three (3) men (the herein appellants) coming out of the house of Ignacia Quingquing (the herein victim). Appellants were dragging a person whom he (Plaridel Manaog) recognized as the victim (TSN, May 5, 1983, pp. 12 and 14).

The victim was bleeding (TSN, Dec. 3, 1982, p. 10). She was on the ground (on her back) while her two arms were held by Dioscoro Salcedo, who was dragging her out of the house (TSN, Dec. 3, 1982, p. 12). At the same time, Oscar Rabino stood at the feet of the victim, while Dominador Salcedo stood at the victim's side (TSN, Dec. 3, 1982, p. 12). Appellants stopped dragging the victim three (3) meters away from her house (TSN, May 5, 1983, p. 15). There, he (Plaridel Manaog) heard the victim pleading for mercy but she was ignored by appellants (TSN, Dec. 3, 1982, p. 13; TSN, May 5, 1983, p. 14).

Instead, Dominador Salcedo asked the victim "Where is Angeles, where is Angeles?" (TSN, Dec. 3, 1982, p. 13). Dominador Salcedo was then armed with an Indian arrow while Dioscoro Salcedo and Oscar Rabino had bolos tucked on their waists (TSN, May 5, 1983, p. 3). The victim did not answer (TSN, Dec. 3, 1982, p. 13). A few moments after the victim was asked where her son Angeles Quingquing was, she died (TSN, Dec. 3, 1982, p. 13). Appellants carried her body away from her house (TSN, May 5, 1983, p. 17; Oct. 30, 1981, p. 4).

When Angeles Quingquing arrived at around 1:00 o'clock in the morning of March 27, 1981, he looked for his mother (Ignacia Quingquing) who he found was not inside the house (TSN, Oct. 27, 1983, p. 6). He saw the victim lying dead on the pathway, about 50 meters from their house, with an Indian arrow embedded on the left side of her back (TSN, Oct. 27, 1983, p. 7). Suddenly, Angeles Quingquing heard Oscar Rabino say: "Angeles is here already, he will be the next one. We will kill him next" (TSN, Oct. 27, 1983, p. 8). Fearing for his life, he ran away to his sister's house which was about 300 meters away from the crime scene. Together, Angeles Quingquing, his sister and his brother-in-law went back to where the victim was, but appellants were no longer there (TSN, Nov. 18, 1983, pp. 5-6). His brother-in-law then went to the Barangay Captain to report the incident (TSN, Nov. 18, 1983, p. 6).

An autopsy was conducted by Dr. Damiana Claveria, Municipal Health Officer of Buhi, Camarines Sur. She identified four (4) wounds on the victim's body. Wound No. (1) was a punctured wound located in the left armpit caused by a sharp pointed and small instrument. The other wounds were abrasions caused by friction against a rough surface (TSN, August 28, 1981, pp. 5-8). The punctured wound (Wound No. 1), according to Dr. Claveria, would cause the death of the victim one (1) hour after its infliction (TSN, Aug. 28, 1981, p. 8).

It was learned that prior to the incident, (at around 10:00 p.m. of March 26, 1981), Dominador Salcedo engaged Angeles Quingquing in a fistfight in front of the chapel of De los Angeles, Buhi, Camarines Sur (TSN, Oct. 27, 1983, p. 4). [Rollo, pp. 84-88.]

1. Accused-appellants were convicted on the basis of circumstantial evidence. No direct evidence was adduced to prove that they were the ones who killed Ignacia Quingquing, as no witness testified to the actual commission of the crime, although Pat. Palermo Manaog, who investigated the killing, surmised that it was the accused Dominador Salcedo who shot the victim with an "Indian arrow" [TSN, October 30, 1981, p. 4.]

The rule is that circumstantial evidence is sufficient to convict if: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt [Sec. 5, Rule 133 of the Revised Rules of Court.]

The circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is

guilty, and at the same time inconsistent with any other hypothesis except that of guilt [People v. Ludday, 61 Phil 216 (1935); People v. Contante, G.R. No. L-14639, December 28, 1964, 12 SCRA 653; People v. Trinidad, G.R. No. L-38930, June 28, 1988.]

In the instant case, the Court is of the considered view that the following proven circumstances, taken together, support a finding that the accused-appellants are guilty beyond reasonable doubt for the killing of Ignacia Quingquing:

a. On March 26, 1981, at about ten o'clock in the evening, a fistfight between Angeles Quingquing, son of Ignacia Quingquing, and accused Dominador Salcedo took place in the vicinity of the barangay chapel [TSN, October 27, 1983, p. 4; October 7, 1985, pp. 3-4.]

b. At about eleven o'clock that same evening, Plaridel Manaog, saw, from a distance of 10 to 15 meters, the accused-appellants dragging the victim, who was bleeding and pleading for mercy, out of her house. Accused Dioscoro Salcedo was holding the victim's arms while Oscar Rabino and Dominador Salcedo were standing by her feet and right side, respectively [TSN, December 3, 1982, pp. 10-12, 14.] Manaog was then on his way to Quingquing's store to buy some medicine for his ailing grandfather when he witnessed the incident [Ibid., at pp. 8-9.]

c. Manaog then heard Dominador Salcedo ask the victim "Where is Angeles, where is Angeles?", but there was no answer from the victim. Oscar Rabino then told the other accused-appellants "Let's bring her outside", as the victim was already dead. The accused-appellants proceeded to carry the victim's body outside her yard towards the eastern direction [Ibid. at pp. 13-14.] At this juncture, Manaog ran home and narrated the incident to his mother, who advised him to switch off the lights of the house as he could have been followed by the accused-appellants. The next day, he informed Luz, the victim's daughter, what he had witnessed [TSN, May 5, 1983, pp. 17-20.]

d. At the time of the incident Dominador Salcedo was armed with a "pana" or "Indian arrow" (dart) in a rubber sling and Dioscoro Salcedo and Oscar Rabino with bolos tucked in their waists, according to witness Plaridel Manaog [Ibid., at p. 3.]

e. When Angeles Quingquing returned home at around one o'clock after attending to his carabao, he found the lifeless body of his mother on the pathway some fifty (50) meters from their house with an "Indian arrow" embedded on her back. Then he heard Rabino say "Angeles is here already, he will be the next one. We will kill him next." [TSN, October 27, 1983, pp. 6-8.] Thereupon, he ran to his sister's house as he feared for his life and, upon arriving there, told her that their mother was dead. Angeles, his sister and his brother-in-law then returned to where Ignacia Quingquing's body lay. Thereafter, his brother-in-law reported the matter to the Barangay Captain [TSN, November 18, 1983, p. 4-6.]

f. Pat. Palermo Manaog, the investi-gating policeman, found the lifeless body of Ignacia Quingquing some fifty (50) meters from her residence, with an "Indian arrow" embedded on the left side of her body [TSN, October 30, 1981, p. 4.]

g. Dr. Damiana Claveria, the Municipal Health Officer who conducted the autopsy on the body of Ignacia Quingquing, found that she had a punctured wound near the left armpit which could have been the cause of death [TSN, August 18, 1981, pp. 5, 7.]

2. The accused-appellants assail the trial court's finding that they conspired to kill the victim.

The rule is that where a conspiracy is proven, a showing as to who inflicted the fatal wound is not required to sustain a conviction [People v. Tala, G.R. Nos. 69153-54, January 30, 1986, 141 SCRA 240.] A conspiracy must be shown to exist as clearly and convincingly as the commission of the crime itself [People v. Vicente, G.R. No. L-26241, May 21, 1969, 28 SCRA 247.] However, it need not be proved by direct evidence; it may be inferred

from the acts of the accused [People v. Abueg, G.R. No. 54901, November 24, 1986, 145 SCRA 622.] The conduct of the accused-appellants before, during and after the commission of the crime may be considered to show the existence of a conspiracy [People v. Cabiltes, G.R. No. L-18010, September 25, 1968, 25 SCRA 112.]

Proof of a previous agreement to commit the crime is not essential to establish a conspiracy. It is sufficient that the accused be shown to have acted in concert pursuant to the same objective [People v. Abueg, supra.]

In the instant case, the accused were shown to have acted as one in carrying out their common criminal design. They acted together in dragging the wounded victim from her house, carrying her body away from her yard after she died and lying in wait for Angeles Quingquing to return. The accused were shown to have performed specific acts incidental to the commission of the crime with such closeness and coordination indicative of a common purpose [People v. Petenia, G.R. No. 51256, August 12, 1986, 143 SCRA 361.]

Consequently, the act of one in killing the victim becomes the act of all the accused.

3. Accused-appellants assail the alleged reliance of the trial court on the extrajudicial confession of Dominador Salcedo which they claim was extracted without observance of the requirements laid down by the Court in People v. Galit [G.R. No. 51770, March 20, 1985, 135 SCRA 465]. Thus, they contend, the confession is inadmissible in evidence.

The Court, however, is in agreement with the Solicitor General's view that the admissibility of the confession is not at all an issue in this appeal, as there is nothing in the trial court's decision that alludes to the confession as the basis for the accused-appellants' conviction. It is clear from the decision that the conviction was based on the testimonies of the witnesses. [See Brief for the Appellee, p. 17; Rollo, p. 99.]

4. The trial court's rejection of the defense of alibi, which accused-appellants assail, is in accord with the facts and the law.

Alibi is an inherently weak defense as it is so easy to fabricate [People v. Badilla, 48 Phil. 718 (1926).] Thus, it cannot prevail over positive identification [U.S. v. Garcia, 9 Phil. 434 (1907); People v. Ocaya, G.R. No. 75074, September 15, 1986, 144 SCRA 165.] It is settled that for such defense to prosper it must be shown that it was physically impossible for the accused to have been at the scene of the crime or at the vicinity thereof at the time it was committed [People v. Oxiles, 29 Phil. 587 (1915); People v. Coronado, G.R. No. 68932, October 28, 1986, 145 SCRA 250; People v. Detuya, G.R. No. L-39300, September 30, 1987, 154 SCRA 410.]

In the instant case, the defense of alibi raised by the accused is unavailing in the light of their positive identification by witness Plaridel Manaog [TSN, December 3, 1982, pp. 10-14.] Moreover, it has been established that the houses of the accused and the scene were only a short distance apart and were in fact in the same barangay [TSN, November 20, 1984, pp. 9-10; October 7, 1985, pp. 9-10.] It was therefore not impossible for the accused to have been at the scene of the crime at the moment of its commission.

5. However, the Court finds that the trial court's conclusion that accused-appellants are guilty of murder, the crime charged, does not find support in the established facts and the law. There is no evidence to show that treachery and/or evident premeditation, the qualifying circumstances alleged in the information, attended the commission of the crime. It is well-settled that the circumstances that would qualify the crime to murder have to be proven as indubitably as the crime itself [People v. Vicente, G.R. No. L-31725, February 18, 1986, 141 SCRA 347, citing U.S. v. Sellano, 10 Phil. 498 (1908) and U.S. v. Bisandre, 40 Phil. 78 (1919).]

Thus, in the absence of any qualifying circumstances, the crime committed was only homicide [Art. 249, Revised Penal Code.]

6. Also, the circumstance of abuse of superior strength [Art. 14, para. 15, Revised Penal Code], which was alleged as an aggravating circumstance in the information, cannot be appreciated in this case. For superior strength to qualify or aggravate a crime, it must be clearly shown that there was deliberate intent to take advantage of it [People v. Bello, G.R. No. L-18792, February 28, 1964, 10 SCRA 298.] In the instant case, there is no evidence to show that the accused purposely sought to use their superior strength to their advantage. Moreover, in the absence of direct evidence on how the killing was actually done, the actual participation of each accused in the killing and who actually inflicted the fatal wound, a finding that there was abuse of superior strength cannot be sustained [People v. Tulagan, G.R. No. 68620, July 22, 1986, 143 SCRA 107.]

Neither may nocturnity [Art. 14, para. 6 of the Revised Penal Code] be considered to aggravate the crime because, as correctly held by the trial court, the prosecution failed to show that the accused purposely sought to commit the crime at nighttime in order to facilitate the achievement of their objective, prevent discovery or evade capture [Rollo, p. 38.]

WHEREFORE, the judgment of the trial court is MODIFIED, and the accused-appellants Dominador Salcedo y Rubi, Dioscoro Salcedo y Rubi and Oscar Rabino y Dimanarig are found GUILTY beyond reasonable doubt of the crime of HOMICIDE. Applying the Indeterminate Sentence Law, and in the exercise of the Court's discretion pursuant thereto, the accused-appellants are hereby sentenced to suffer the indeterminate penalty of from eight (8) years and one (1) day of prision mayor to seventeen (17) years and four (4) months of reclusion temporal. The award of indemnity, in the amount of P30,000.00, and costs is AFFIRMED.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., and Bidin, JJ., concur.

Feliciano, J., on leave.

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