

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO PAJARIT Y VALENCIA, RODOLFO PAGADOR, JAIME OBRA
AND JOHN DOES, ACCUSED-APPELLANT.**

G.R. No. 82770, October 19, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

For love of a woman, one man has been stabbed to death and his rival, together with his companion, has been convicted of the killing. The judgment is now before us. The accused-appellants pray for reversal, claiming that the circumstantial evidence against them was not sufficient to convict.

The information for murder was originally filed in the Court of First Instance of La Union against Ricardo Pajarit, Rodolfo Pagador, Jaime Obra, and several John Does. The charge against Obra was dropped when he died during the trial of the case.

The series of events leading to the tragedy began in the afternoon of May 11, 1975, when Rogelio Carig and Rodolfo Pagador found themselves paying court to Cecilia Palanas at her parents' store in Oya-oy, Bacnotan, La Union. One thing led to another until Pagador, who had some companions with him, stepped out and challenged Carig to a fight. Carig ignored the challenge. Cecilia's mother, Etang Almojuela, pacified the two and Pagador's group left. But they were heard to say that they would return that night.

They did return, walking around Carig's house until midnight. The group consisted of Pagador, Ricardo Pajarit, Jaime Obra, and several others. Obra was carrying a gun. Their movements so alarmed Eulalia Carig, Rogelio's mother, that she reported the matter to the police the following morning.

In the evening of May 12, 1987, the group went back to Eulalia's house. She had guests that night and had come down to the yard, at about eight o'clock, to catch some chickens for their supper. Rogelio was with her. She was carrying a kerosene lamp. By the light of the lamp, she recognized Pajarit, Pagador and Obra as they approached. Obra had a flashlight that he pointed at her face. She asked the men where they had come from and was told they had been to Etang Almojuela's place. Sensing trouble, she told her son Rogelio to go upstairs. She did so herself, preceding Rogelio.

As Rogelio ascended the steps, he suddenly cried out, "Mother, bring out the light! I have been stabbed by Carding!" Eulalia and her other son, Juan Gañola, ran to the victim's aid and found he had been stabbed in the left buttock. They saw the group running away. Rogelio was rushed to the Lorma Hospital, but it was too late. He was dead on arrival as a result of the massive hemorrhage caused by the stab wound. The autopsy later revealed that his assailant was in a lower position, and behind his victim, when he struck.

The above narration was made by the several witnesses for the prosecution, notably Eulalia Carig,[1] Juan Gañola,[2] the victim's half-brother, Crispin Ancheta,[3] one of the supper guests on that fatal night, and Dr. Ernesto Gallardo, the medico-legal officer who performed the autopsy.[4]

Both the accused-appellants testified, each pleading separate alibis.

Pagador testified that on May 11 and 12, 1975, he was busy gathering and flue-curing tobacco leaves in his farm. He worked from 6 o'clock in the morning until midnight, stopping only for lunch and supper. At seven o'clock in the evening of May 12, he attended to his mother, who was suffering abdominal pains. He denied that he was with Ricardo Pajarit and Obra during those days. He was corroborated by Bernardo Pajarit[5] and Feliciano Teofilo.[6]

Accused Pajarit testified that he was nowhere in Barrio Oya-oy on May 11, and 12, 1975, but in his grandmother's farm in Bangar 400 kilometers away. He left Bangar only in the morning of May 13, 1975, to bring food for his grandmother's workers in Barrio Oya-oy, arriving there at about 9:30 a.m. There was no corroboration of this testimony. On the contrary, Etang Almojuela, who testified for the defense, declared that he was one of the persons who visited at her house on May 12, 1975.[7]

After considering the evidence of the parties, Judge Vicente A. Pacquing found both Pajarit and Pagador guilty as charged and sentenced them to reclusion perpetua and civil indemnity in the sum of P30,000.00 plus costs. The trial court found that the victim had been treacherously attacked and that the accused had acted in concert, making the act of one the act of the other.

In the present appeal, the accused-appellants maintain that they had not been positively identified as the killers; conspiracy between them had not been proved; treachery did not attend the commission of the crime; and that their separate defenses of alibi should not have been rejected by the trial court.

The conviction of the accused-appellants was based on circumstantial evidence. This kind of evidence is sufficient if (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[8]

It is true that there was no eyewitness to the stabbing of the deceased. Even so, the circumstances all point to the accused-appellants as the culprits. The most telling of these circumstances is Rogelio's cry that he was "stabbed by Carding" moments after his mother left Ricardo Pajarit and his group at the yard of her house. As she immediately responded to her stricken son's call, she saw these same men running away from the scene of the crime.

The utterance of the deceased was correctly appreciated as part of *res gestae* under Rule 130, Sec. 36, of the Rules of Court providing that "statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*."

The said utterance was heard not only by the mother and the brother of the victim but also by Crispin Ancheta, who was at their house at that particular moment. The accused-appellants argue that it should not be given credence because the testimonies of the three prosecution witnesses on what was actually said are inconsistent. We do not agree. The record reveals that the inconsistencies are trivial and do not detract from the substance of the declaration of the deceased that he "was stabbed by Carding." If at all, these minor discrepancies reinforce rather than weaken the credibility of the three witnesses.

The accused-appellants also assail the claim of the prosecution that they were positively identified by the victim's mother, stressing that the crime was committed on a dark night. It was clearly established by the prosecution, however, that Eulalia was carrying a lighted kerosene lamp that night to catch the chickens intended for their visitors' supper. Eulalia was then standing at the foot of the stairs and the accused-appellants were merely 7 1/2 meters away from her. The light coming from the kerosene lamp, not to mention Obra's flashlight, was enough to enable Eulalia to recognize the accused-appellants, who were her barrio mates and known neighbors.

Pajarit's alibi should be dismissed outright in view of the testimony of Etang Almojuela. Although she was supposed to testify for the defense, she contradicted Pajarit and said that he was in fact in Oya-oy, Bacnotan, on the night of the stabbing.

As for Pagador, he has not established the physical impossibility of his presence at the scene of the crime, given the fact, which he himself revealed on the stand, that his residence was in the same barrio, merely 500 meters away from the victim's house.

At any rate, the accused-appellants' alibis cannot stand against their positive identification by Eulalia Carig and Juan Gañola as two of the men who were at Eulalia's yard moments before and after the victim cried out to his mother that he has been stabbed.

The finding of the trial court that there was conspiracy between the appellants becomes persuasive when viewed in light of the incident the day before and during the actual stabbing. Pagador was heard to have challenged the victim to a fight when they both happened to visit Cecilia at the same time. The night after the incident, the accused-appellants and his companions walked to the house of the victim, roaming the vicinity until midnight. They returned the following night, and it was then that the victim was stabbed to death.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[9] It is enough for it to exist that, at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from attendant circumstances.[10] Conspiracy need not be proved by direct evidence. Circumstantial evidence, provided it is competent and convincing, is sufficient to establish conspiracy.[11]

We come now to the finding of treachery.

There is treachery "when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might take." [12]

The mere fact that the victim was stabbed in the buttock, indicating that the assailant was behind the victim, did not necessarily make the act treacherous. There is no showing that the accused-appellants employed any means to directly and specially insure the execution of their act without any risk to themselves. The victim himself cannot be said to have been surprised by the stabbing, particularly after his mother, fearing danger, had told him to go up the house. He must have felt apprehensive too and so cannot be said to have been totally unprepared for the aggression. We have held that when the manner of attack has not been proven, the appellant should be given the benefit of the doubt and the killing should be considered as homicide only.

There being no mitigating or aggravating circumstances, the prescribed penalty under Articles 249 and 64 of the Revised Penal Code is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, we hereby impose on the accused-appellants an indeterminate sentence within the range of prision mayor as minimum and reclusion temporal medium as maximum. The award of indemnity will be increased to P50,000.00, conformably to existing policy. In all other respects, the decision of the trial court will be sustained.

WHEREFORE, the appealed decision is **AFFIRMED** as above modified. The accused-appellants are hereby declared guilty of homicide and sentenced to suffer the indeterminate penalty of six years and one day of prision mayor as minimum to fourteen years, eight months and one day of reclusion temporal medium as maximum. They are further required to pay the heirs of the victim, jointly and severally, the sum of Fifty Thousand Pesos (P50,000.00), plus the costs of the suit.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

Padilla, J., on leave.

[1] TSN, July 27, 1976, pp. 2-35.

[2] TSN, March 17, 1977, pp. 98-128.

[3] TSN, February 15, 1978, pp.1-9.

[4] TSN, December 14, 1977, pp. 214-225; Exhibit "A", Record, p. 3.

[5] TSN, January 12, 1981, pp. 139-163.

[6] TSN, May 19, 1981, pp. 28-36.

[7] TSN, September 29, 1980, p. 12.

[8] Sec. 5, Rule 133, Rules of Court; *People v. Pajanustan*, 97 SCRA 699 (1980); *People v. Austria*, 195 SCRA 700 (1991); *People v. De la Cruz*, 200 SCRA 379 (1991); *People v. Tonog, Jr.*, 205 SCRA 772 (1992).

[9] Article 8, Revised Penal Code, *People v. Cadag*, 2 SCRA 288 (1961); *Siton v. Court of Appeals*, 204 SCRA 473 (1992); *People v. Ballinas*, 202 SCRA 516 (1992).

[10] *People v. Sy*, 113 SCRA 207 (1982); *People v. Villason*, 115 SCRA 716 (1982); *People v. Castro*, 11 SCRA 699 (1964); *People v. Pagadduan*, 29 SCRA 54 (1969).

[11] *People v. Candado, et al.*, 84 SCRA 508 (1978); *People v. Tonog, Jr.*, supra citing *People v. Aldeguer*, 184 SCRA 1 (1990); *People v. Roa*, 163 SCRA 783 (1988).

[12] Article 14 (16), Revised Penal Code; *People v. Devaras*, 205 SCRA 676 (1992).

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