

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REYNATO ASUNCION AND LEONARDO AGUINALDO, DEFENDANTS-APPELLANTS.**

*G.R. No. 83870, November 14, 1989*

Ponente: GRIÑO-AQUINO, J.

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**GRIÑO-AQUINO, J.:**

The appellants, Reynato Asuncion, a policeman, and Leonardo Aguinaldo, a PC sergeant, were charged with MURDER for the killing of Gregorio Vergara in Criminal Case No. 933 of the Court of First Instance. (now Regional Trial Court) of Bayombong, Nueva Vizcaya.

As may be gleaned from the People's brief, the facts are as follows:

Gregorio Vergara was a member of the Catalina Intelligence Security Agency (CISA) in Canili, Alfonso Castañeda, Nueva Vizcaya. On November 6, 1978, he was the officer-in-charge of CISA.

Reynato Asuncion was a member of the Integrated National Police (INP) of Pantabangan, Nueva Vizcaya, and Leonardo Aguinaldo was a member of the Philippine Constabulary (PC). Both of them were assigned with the 183rd PC Company detachment in Canili, Asuncion as officer-in-charge and Aguinaldo as a member of the detachment.

CISA provided the security services at the National Irrigation Administration (NIA). The CISA coordinated with the PC detachment in Canili, on matters concerning the security, peace, and order within the NIA compound.

At seven o'clock in the evening of November 6, 1978, one Batungmalaki, property custodian of the NIA, requested Felomeno Sarmiento, security guard supervisor of the CISA in Canili, and appellants Asuncion and Aguinaldo to pacify a NIA security guard Eblacas and Rodolfo Tapat, a member of the CISA, who were fighting inside the warehouse in Post No. 3 in the NIA compound. Batungmalaki, Sarmiento, Asuncion and Aguinaldo proceeded to the warehouse. Vergara followed them.

They met Eblacas who was bleeding. He told them that he had a fight with Tapat.

The group proceeded to Post No. 3 to look for Tapat. The guards there did not know where he was. However, the appellants suspected that Vergara was hiding him.

Except for Batungmalaki who remained at the main gate of Post No. 3, the group which included Bayani Agustin, brother-in-law of Aguinaldo, proceeded to the Transbasin Canal within the NIA compound. Before reaching the Transbasin Canal, Aguinaldo ordered the group to stop at a place covered with tall "talahib" grass. Aguinaldo ordered Sarmiento and Vergara to bring out their bullets. Sarmiento answered that they had no bullets.

Aguinaldo ordered them to bring out their guns. Vergara obeyed.

Aguinaldo ordered him to throw his gun on the ground in front of him. After laying down his firearm,

Aguinaldo kicked him.

Asuncion fired a shot upward. Aguinaldo fired at Vergara's left leg and kicked his bleeding leg.

Vergara tied his wounded leg with a handkerchief. He begged the appellants: "Huwag ninyo akong papatayin. Maawa kayo sa mga anak ko" (p. 24, Rollo). He requested Sarmiento to get an ambulance so he could be brought to the hospital.

Agustin embraced Sarmiento to stop him from getting an ambulance. But Sarmiento was able to extricate himself from Agustin's embrace and left the place. In the meanwhile, the appellants had their guns pointed at Vergara who was seated.

Upon reaching Post No. 3 of the NIA compound, Sarmiento asked the guards, Presto and Martinez, to go and help Vergara, but they refused for fear that they might be sprayed with bullets. At that juncture, Sarmiento, Presto and Martinez heard a gunshot coming from the place where he had left the accused and Vergara.

Since the NIA's ambulance was out of order, Sarmiento requested Presto and Martinez to inform Vergara's wife about the shooting. Later that evening, Perla Luz Vergara, accompanied by two (2) security guards went to the scene of the crime. They did not find Vergara at the place where he was shot. Following a trail of blood, they found him dead at the edge of a canal.

Vergara sustained two (2) gunshot wounds: one on the head (face) and the other on the left leg. He died immediately due to "hemorrhage, severe, secondary to gunshot wound at the head (face)" (p. 41, Rollo).

The next day, November 7, 1978, the appellants left Canili. Aguinaldo reported the killing incident to Major Juanito Flores of the 183rd PC Company at Baloc, Santo Domingo, Nueva Ecija. He said: "Nakabaryl kami ni Asuncion, hindi ko alam kung patay" (p. 41, Rollo). Asuncion reported the incident to Sgt. Lorenzo Suelto.

A PC team was dispatched to investigate the crime. After the investigation, the appellants were required to surrender their guns to the PC Commander at Baloc, Sto. Domingo, Nueva Ecija.

The appellants were charged with murder in the following information:

"That on or about November 6, 1978, at nighttime, in the Barangay of Canili, Municipality of Alfonso Castañeda, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the accused Reynato Asuncion and Leonardo Aguinaldo, Policeman and PC Sergeant, respectively, both attached to the 183rd PC Company, with abuse of their public positions as such police officer and PC Sergeant, with the qualifying circumstances of treachery, advantage of superior strength and aid of armed men and the generic circumstances of nocturnity and evident premeditation, and with intent to kill, did then and there, willfully, unlawfully, and feloniously mortally shoot with their service firearms (carbines) one Gregorio Vergara, on different parts of his body which caused his instantaneous death.

"That as a consequence of the criminal act of the said accused, the heirs of Gregorio Vergara suffered actual, moral and exemplary damages in the amount of not less than fifty Thousand Pesos (P50,000.00)." (p. 3, Rollo.)

Upon arraignment, they pleaded "NOT GUILTY" to the charge.

On March 15, 1988, the trial court rendered judgment convicting both accused of the crime charged. The dispositive portion of the decision reads:

"WHEREFORE, premises considered, the Court finds both of the accused REYNATO ASUNCION and LEONARDO AGUINALDO guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248, paragraph 1, of the Revised Penal Code.

"The Court hereby sentences them to suffer the penalty of reclusion perpetua; to jointly and severally indemnify the heirs of the late GREGORIO VERGARA the sum of P30,000.00 for his death and the additional

sum of P15,000.00 incurred for his burial.

"Each of the accused shall pay his proportionate share of the costs." (p. 44, Rollo.)

The case was erroneously sent to this Court by the trial court for automatic review. Nevertheless, in a resolution dated April 3, 1989, the Supreme Court's First Division, exercising its discretion to entertain appeals notwithstanding defendant's failure to file a notice of appeal (Sec. 5, Rule 122, Rules of Court), resolved to review the case because of the gravity of the offense charged and the fact that appellants had already filed their brief (pp. 136-137, Rollo).

The appellants alleged that the trial court erred in finding that:

1. they committed the crime charged;
2. the crime was qualified by treachery and attended by the aggravating circumstance of 'taking advantage of public positions;' and
3. the victim died of gunshot wounds."

As there was no eyewitness to the killing of Vergara, the conviction of the accused was based on circumstantial evidence only. Those circumstances are:

1. that the appellants harbored resentment against Vergara because they suspected him of concealing the erring CISA guard, Tapat;
2. that when Aguinaldo disarmed Vergara, Asuncion positioned himself with his gun ready to assist Aguinaldo should Vergara resist;
3. that Aguinaldo shot Vergara in the leg and kicked him, while Asuncion merely watched;
4. that the appellants were both armed with guns;
5. that when Sarmiento escaped to summon help, the appellants had their guns pointed at Vergara who was seated on the ground;
6. that the security guards at Post No. 3 refused to intervene because they knew that the appellants were in a black mood and they (the guards) were afraid of being shot by the appellants; and
7. that Aguinaldo admitted to Major Flores that he and Asuncion had shot (nakabaryl kami) someone (p. 22, appellants' brief).

The combination of all the above circumstances is such as to produce the conviction of the appellants beyond reasonable doubt (Sec. 5, Rule 133, Rules of Court; *People vs. Modesto*, 25 SCRA 36; *People vs. Pajanustan*, 97 SCRA 699).

There is also hardly any doubt that the appellants had acted in concert and assisted each other in killing Vergara on the fateful evening of November 6, 1978. Asuncion acted as "back-up" for Aguinaldo who fired the first shot that disabled their victim before the final kill.

Conspiracy having been established, the act of one is the act of both, hence, it is not necessary to ascertain their individual participation in the final liquidation of Vergara (*People vs. Beltran*, 138 SCRA 321; *People vs. Garcia*, 141 SCRA 336).

"A conspiracy exists when two or more persons come to an agreement to commit a crime and decide to commit it. While it is desirable that the conspiracy be proved by direct evidence, like an express understanding among

the plotters affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence only. Thus, to repeat the established doctrine, where the accused move in concert toward a common purpose, conspiracy may be inferred from their joint acts and design, without need of direct evidence of the criminal agreement. We have held in many cases that the conduct of the accused before, during and after the commission of the crime, are circumstances that can show whether or not there was a conspiracy among them." (People vs. Rojas, 147 SCRA 175; Underscoring supplied.)

The common defense of the appellants was an alibi, the weakest of defenses. Asuncion alleged that at the time of the killing, he was in the store of Villagracia around 10 meters away from the NIA gate and 100 meters from the scene of the crime (p. 34, Rollo). For his part, Aguinaldo alleged that after he had shot Vergara in the leg, he left the place to summon an ambulance and from there, he heard a gunshot coming from the scene of the crime (p. 35, Rollo).

This Court has consistently held that if the defense of alibi is to be believed, it must not only appear that the accused was at some other place but also that it was physically impossible for him to be at the scene of the crime (People vs. Aquino, 133 SCRA 283).

The conflicting stories of the appellants at the trial, tending to impute responsibility for the crime on each other, not only proved that both of them are liars, but bolstered the prosecution's theory that they were the perpetrators of the felony (p. 22, Appellee's Brief).

Treachery qualifies the crime as murder for as held by this Court in the case of People vs. Guardo (156 SCRA 152):

"Although the attack was frontal, the crime committed was murder, qualified by treachery, as the accused employed means to insure the commission of the offense without risk to themselves from any defense the offended party might make."

We affirm the trial court's finding that the aggravating circumstance of "abuse of public position" (p. 42, Rollo) was present in the commission of the crime (People vs. Alegarbes, Jr., 154 SCRA 125), for the appellants used their authority as members of the police and constabulary to disarm Vergara before shooting him. Unarmed and unable to flee because Aguinaldo had shattered his leg, Vergara was completely defenseless before his attackers. Treachery was present because his killers had employed means to insure the commission of the offense with no risk to themselves.

WHEREFORE, the decision of the trial court is AFFIRMED in toto, with costs against the appellants.

**SO ORDERED.**

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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