

JOSE NAVARRO Y BORLONGAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 84423. January 31, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, Jose Navarro y Borlongan, together with Nestor Quezon y Villegas, and one John Doe, Alias Talao, were charged with the crime of murder in an information[1] which reads as follows:

That on or about December 29, 1983 in Sitio Saay, Brgy. Reformista, Municipality of Limay, Province of Bataan, Philippines and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and helping one another, with intent to kill, did then and there willfully, unlawfully and feloniously, with evident premeditation and treachery, attack, assault and use personal violence upon Leonardo Enriquez y Empeno, a patrolman in the Integrated National Police of the Philippines, stationed at Orion Police Station, Orion Bataan, by [sic] did then and there shooting him with a firearm, thereby inflicting upon the said Pat. Leonardo Enriquez gunshot wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Pat. Leonardo Enriquez.[2]

When arraigned on August 14, 1984, the accused Navarro and Quezon entered separate pleas of not guilty to the charge while the accused Alias Talao, having successfully evaded arrest, remains at large.

The Regional Trial Court of Balanga, Bataan, Branch IV,[3] rendered on February 26, 1987 a decision, the dispositive portion of which reads:

Wherefore, premises considered, the Court finds the accused Jose Navarro y Borlongan guilty beyond reasonable doubt as an accomplice in the crime of homicide as defined and penalized under Article 249 of the Revised Penal Code, and appreciating in his favor the mitigating circumstance of passion and obfuscation, without any aggravating circumstance to off-set the same, hereby sentences him to an indeterminate penalty of two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum, to suffer the other accessory penalty provided for by law, to indemnify the heirs of the deceased-victim Pat. Leonardo Enriquez in the sum of P15,000.00 for the death of the latter; in the sum of P10,000.00 by way of actual or compensatory damages; in the sum of P20,000.00 by way of moral damages, without subsidiary imprisonment in case of insolvency, and to pay the proportionate share of the costs.

The accused Nestor Quezon y Villegas is hereby acquitted of the charge against him as his guilt has not been proven beyond reasonable doubt.

SO ORDERED.[4]

The accused Navarro appealed to the Court of Appeals interposing a single assignment of error:[5]

THE TRIAL COURT COMMITTED A SERIOUS REVERSIBLE ERROR IN CONVICTING THE ACCUSED (JOSE B. NAVARRO) BASED ON UNSTABLE, CONFLICTING, UNCORROBORATED CIRCUMSTANTIAL EVIDENCE, COMING SOLELY FROM THE LIPS OF A SINGLE WITNESS WHO ALSO ADMITTEDLY WAS A FRIEND, CO-EMPLOYEE AND LONG TIME COMPANION OF THE DECEASED VICTIM.

In discussing the sole assigned error, the appellant raised the following sub-issues:

1. The Trial Court Should Have Confined Itself to a Determination as to Whether or Not the Prosecution Evidence Standing by Itself, Would Suffice to Satisfy the Requirement of Proof Beyond Reasonable Doubt.
2. Pat. Florante G. Mendoza's Testimony was Circumstantial and Uncorroborated.
3. There Were Several Persons Pre-sent at the Time the Incident Occurred. Yet Only Pat. Mendoza Was Made to Testify in Court.
4. Pat. Mendoza's Testimony Admittedly Circumstantial Could Have Had a Worth Only Had it Been Corroborated by Other Witnesses.
5. Pat. Mendoza's Testimony Con-flicts in Significant Areas With His Testimony During the Preliminary Investigation and With His Affidavit Executed Before the Investigating Police Officers.
6. The Acts Imputed Against Appellant Jose Navarro are Equivocal.
7. Even if Granted as Established, the Factual Averments of Pat. Mendoza Still Cannot Justify the Conviction of the Appellant as an Accomplice; the Award of Exemplary Damages was also Erroneous.[6]

The Court of Appeals however affirmed the decision of the trial court as to the guilt of Navarro, but increased his culpability to that of a co-principal, and accordingly modified the penalty, to wit:

WHEREFORE, the decision appealed from is hereby MODIFIED to read as follows:

The Court finds Jose Navarro y Borlongan guilty beyond reasonable doubt as co-principal of the crime of Homicide as defined and penalized under Article 249 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of passion and obfuscation, hereby sentences him to:

- (1) Suffer the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum up to twelve (12) years and 1 day of reclusion temporal as maximum together with the accessory penalties provided by law. (2) Indemnify the heirs of the deceased victim Leonardo Enriquez in the amount of P30,000.00 for the latter's death; P10,000.00 for actual or compensatory damages and P20,000.00 for moral damages, but without subsidiary imprisonment in case of insolvency.

Costs against the appellant.

The case for the prosecution, built principally on the facts as narrated by Pat. Florante Mendoza, 33 years old, a policeman assigned to the Orion Police Station, Integrated National Police, Orion, Bataan and undisputed, is stated thus:[7]

... On December 29, 1983 at about one o'clock in the afternoon, he and the deceased victim, Pat. Leonardo Enriquez, 30, a co-policeman of the same station, proceeded to Joriz Farm, a beach resort located in the town of

Limay, Bataan, riding a passenger jeepney. They went there to attend a get-together (salo-salo) upon the invitation of the accused Navarro, a Barangay Captain of Balut, Orion, Bataan. Upon their arrival, there were already many guests all male, most of whom were quite known to both of them. When the accused Navarro noticed their presence, he waved at them to join the group, some of whom, including the accused Quezon, were huddled around a table inside an open shed ('palapala'), a structure of nipa roofing, with four posts and without wallings. At that time, those inside the open shed were enjoying themselves, i.e., by drinking beer, partaking of food and exchanging pleasantries. They then mixed with the guests and seated themselves on the bamboo bench beside the table. Not long thereafter, i.e., about three o'clock that afternoon, a heated argument unexpectedly ensued between Pat. Enriquez and the accused Navarro, in the course of which, the latter (Navarro) was collared ('pinitsarahan') by the former (Pat. Enriquez). Both protagonists, however were pacified through the timely intervention of some of the guests. Shortly after, both accused Navarro and Quezon, left the beach resort on board a light blue Volkswagen (Beatle) car with plate no. CDS-410 owned and driven at the time by the accused Quezon. Meanwhile, he (Pat. Mendoza) invited his companion, Pat. Enriquez, to leave the place with him but the latter grudgingly replied: "It will be better if we settle our differences once and for all". About thirty minutes since they left both accused returned in the same Volkswagen car. They were with the accused alias Talao. At that juncture, he (Pat. Mendoza) noticed Pat. Enriquez still in the same position as he was before the altercation, while the accused Quezon was seen by him to be around five (5) arms length (or 10 meters) away from where Pat. Enriquez was. All of a sudden, Alias Talao approached from behind Pat. Enriquez who was then standing at the open shed facing the sea, pointed a gun (which he described as an "Eskwalado" 380, similar to but smaller than a .45 cal.) directed toward the latter's head immediately below the right ear and fired two successive shots. As Pat. Enriquez slumped on the ground mortally wounded, the gunman Alias Talao, forthwith pointed the same gun at him (witness) so that what he did in such trying situation was to cover his face and hide behind a guest, Federico Gonzales. At that instance, while cowering in fear, he felt the accused Navarro wresting his service pistol from his waistline and at that stage, he overheard a voice saying "Talao, sibat na". Momentarily, he was embraced by the accused Navarro and then dragged toward a waiting tricycle which they both boarded. The tricycle driven by Federico Gonzales then proceeded towards Orion, and on the way, the accused Navarro returned to him his service pistol but minus its six (6) bullets. Upon reaching the Poblacion of Orion, he was told to alight near the public market but not without being warned by the accused Navarro not to report the shooting incident lest his family will be involved. He then immediately repaired to his police station and reported to Major Mario D. Lopez, the Station Commander, the tragic incident that befell his colleague. The following day, December 30, 1983, he executed a written statement (Exh. "A") before Cpl. Fernando Flores, a police investigator of his station. Therein, he narrated the details of the incident but did not divulge the identity of the assailant, which he came to know by the name of Talao, because of the threats to his life made by the gunmen and the accused Navarro as earlier adverted to and which might also endanger the safety of his family.

Pat. Mendoza further testified that during the preliminary investigation of the case before the office of the Provincial Fiscal of Bataan, he also suppressed the identity of the gunman as he was still entertaining fear to (sic) his life and that of his family because of the threats that were hurled against him.

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On the basis of the foregoing, the trial court formed the corpus delicti as follows:[8]

1. That during the get-together at Joriz Farm, Navarro and Enriquez got embroiled in a heated argument, causing Enriquez to collar Navarro;
2. That the petitioner and Quezon left the beach resort in the same Volkswagen car, owned by Nestor Quezon, which they had taken in going to Loriz, and returned thirty minutes later with the gunman Talao;

3. That after Talao shot Enriquez, Talao pointed the gun at Mendoza and then Navarro allegedly embraced him and grabbed his pistol;
4. That Navarro later pulled him, took him to a waiting tricycle, and with another person sped away; and
5. That Mendoza's gun was later returned to him by petitioner without its bullets and with a warning not to report the incident or harm would befall his family.

Both the Regional Trial Court and the Court of Appeals concentrated on these areas of Mendoza's testimony and considered each statement as a separate circumstance corroborating the fact of Navarro's participation in the killing of Enriquez. Together, these events, according to the lower courts, constituted "circumstantial evidence".

In this petition for review on certiorari, we reverse the findings of the lower courts. Hence, we acquit the petitioner.

The issues raised in this appeal may be reduced to the following: whether or not the sole testimony of Mendoza satisfactorily complies with the requisites of circumstantial evidence under the law, and on the basis of such evidence, whether or not conspiracy existed to convict Navarro beyond reasonable doubt.

For circumstantial evidence to exist, the following requisites must concur:

- (1) There is more than one circumstance;
- (2) The facts from which the inferences are derived must be proven; and
- (3) The combination of all the circumstances is such that it will result in a conviction beyond reasonable doubt.[9]

In the case at bar, the testimony of Pat. Mendoza constituted only one circumstance as evidence of the crime. It cannot be fragmented into portions and then assessed as separate pieces of evidence corroborating each other. To do so would result in an uncorroborated circumstance as evidence, since they have all come from one source.[10]

While the circumstances must constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the guilt of the accused,[11] each circumstance must come from a source distinct from the source of the other. And yet, together, the circumstances must weave the certainty of conviction and fairly exclude every reasonable hypothesis of innocence.[12]

Circumstantial evidence as a basis for conviction should be acted on and weighed with great caution.[13] Thus the requisites must be strictly complied with if circumstantial evidence is to be the basis for proof beyond reasonable doubt.

Time and again this Court has held that it is the strength of the prosecution and not the weakness of the defense that leads to conviction beyond reasonable doubt.[14] Circumstantial evidence may be considered sufficient for conviction only when the proven circumstances are consistent with one another, consistent with the conclusion that the accused is guilty, and inconsistent with any other conclusion except that of guilt.[15]

On the matter of conspiracy, the same degree of proof necessary to establish the crime is required to support a finding on the presence of a criminal conspiracy.[16]

Conspiracy, like any other ingredient of the offense, must be established by clear and convincing evidence. There must be evidence of intentional participation in the transaction with a view to the furtherance of the common design and purpose,[17] a concert and coordination of acts.[18]

In the case at bar, the mere presence of Navarro at the shooting scene is not a sufficient basis to declare his conspiracy with the assailant.

While it is true that it is the presence of the concurrence of minds which is involved in conspiracy, the conspiracy may be inferred from proof of facts and circumstances.[19]

Nowhere does it appear from the testimony of Mendoza that Navarro had intended the social gathering to be the opportunity to have Enriquez killed. Mendoza neither established whether he knew that the group at Joriz Farm had agreed to be there[20] nor the identity of the host who had actually invited the group for the get-together.[21] He only presumed that Navarro was the host because among the men who were inside the open shed it was Navarro who had waved at them.[22]

Furthermore, Mendoza never saw the actual shooting of Enriquez, as the shooting had taken place very swiftly.[23] In another case, we ruled out the possibility of conspiracy when the alleged co-conspirators did not perform any overt act of shooting the victim although he was with the person who fired the gun.[24]

What the testimony of Mendoza seems to point out is that there was an event prior to the killing which makes it likely that the killer acted upon the orders or instigation of herein petitioner, namely the altercation between the deceased and Navarro.[25] Other than this inference, there is no other basis for a supposed bad blood existing between the petitioner and the deceased sufficient to constitute a motive.

But did Navarro's warning to Mendoza not to mention the incident of the shooting to anyone, amount to a threat sufficient to justify the concealment of the fact of the crime or the real identity of the killer? We do not think so. The instruction was only mentioned once, when Navarro had asked Mendoza to board a tricycle and leave Joriz Farm.[26] It is more likely that Mendoza had created the pressure upon himself as he deliberately concealed facts in his testimony,[27] imagining fears that did not exist.

Whatever delay attended the discovery of the identity of the killer can only be attributed to the recalcitrance with which Mendoza corresponded to the duty to give justice to his comrade by giving an honest testimony in the first place. Today, the actual killer remains unidentified. And yet the fact that the real criminal cannot be apprehended is not a reason to pass judgment on the one who happens to be on hand.

WHEREFORE, the decision appealed from is hereby REVERSED and the petitioner Jose Navarro y Borlongan is ACQUITTED for lack of proof beyond reasonable doubt. No costs.

SO ORDERED.

Paras, Padilla, and Regalado, JJ., concur. Melencio-Herrera, (Chairman), see dissent.

[1] The information in *People v. Navarro et al.*, [RTC (Balanga, Bataan) Crim. Case No. ML-074, August 6, 1984], was first amended to exclude Ruperto Villegas as an original accused and amended a second time to name William Amparo as the John Doe, Alias Talao, Original Record, 61

[2] Original Record, 61.

[3] *People v. Navarro*, RTC (Balanga, Bataan IV), Crim. Case No. ML-078, February 26, 1987.

[4] Decision, Rollo, 67-68, rendered by Judge Pedro B. Villafuerte, Jr.

[5] *People v. Navarro*. CA-G.R. No. 04582, July 28, 1988, 5; Original Record, 1117-1118; Chua, Segundino G., Jr.; Purisima, Fidel P. and Lapena, Nicolas P., Jr., JJ.

[6] *Id.*, 6.

[7] *Id.*, 3-5.

- [8] Petition for review on certiorari, G.R. No. 84423, summarizing the discussions in *People v. Navarro*, RTC (Balanga, Bataan IV), Crim. Case No. ML-074.
- [9] RULES OF COURT, Rule 133, Sec. 5; *People v. Utrela*, No.L-38172, July 15, 1981, 105 SCRA 497; *People v. Cruz*, No. L-54183, February 25, 1985, 134 SCRA 513; *People v. Pimentel*, G.R. L-47915, January 7, 1987; *People v. Comendador*, No. L-38000, September 19, 1980, 100 SCRA 155; *People v. Modesto*, No. L-25484, September 21, 1968, 25 SCRA 36.
- [10] *People v. Orpilla*, No. L-30621, December 14, 1981, 110 SCRA 53.
- [11] *People v. Magallanes*, G.R. 63936, January 7, 1987; *People v. Pamintuan*, No. L-39563, February 29, 1984, 127 SCRA 820.
- [12] *Dorado v. Court of Appeals*, G.R. 57744, August 31, 1987.
- [13] *People v. Jara*, No. L-61356-57, September 30, 1986
- [14] *People v. Magallanes*, *supra*, note 11, at 100.
- [15] *People v. Demato*, No. L-38960, March 30, 1982, 113 SCRA 353.
- [16] *People v. Orodio*, G.R. No. 57519, September 13, 1988; *People v. Saavedra*, G.R. L-48738, May 18, 1987; *People v. Palon*, No. L-33271, February 20, 1984, 127 SCRA 529.
- [17] *People v. Agda*, No. L-36377, January 30, 1982, 111 SCRA 331.
- [18] *People v. Ehora*, No. L-31013, February 10, 1986, 141 SCRA 282; *People v. Tala*, Nos. 69153-54, January 30, 1986, 141 SCRA 240.
- [19] *People v. Orodio*, *supra*, note 23, citing *People v. Peralta*, 48 Phil. 868 (1926).
- [20] T.s.n., Session of December 17, 1984, 7.
- [21] T.s.n., Session of November 27, 1984, 6.
- [22] *Id.*, 13.
- [23] *Id.*, 40.
- [24] *People v. Benavidez*, No. L-59985, January 30, 1984, 127 SCRA 188.
- [25] T.s.n., Session of October 17, 1984, 17.
- [26] T.s.n., Session of November 27, 1984, 38.
- [27] *Id.*, 17, 19, 20.

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