

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO ESWAN, PEDRO ESWAN, ELIGIO ESWAN AND CARLOS CASTRO, JR., ACCUSED-APPELLANTS.

G.R. No. 84713. June 04, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

An information for murder was filed on March 23, 1983 against Carlito Eswan, Pedro Eswan, Moises Eswan, Eligio Eswan, Diego Sabaldo, Carlos Castro, Jr., William Navarro and Egod Arevalo. The information reads:

"That on or about January 20, 1983, in the evening thereof, at barangay Palani, Municipality of Balud, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused confederating together and helping one another, with intent to kill, evident premeditation, treachery, superiority of strength and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault, stab with knife and shoot with a gun one policeman Arestedes Pajimola, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused his instantaneous death." (Original Record, p. 10)

Of the aforementioned accused, William Navarro and Egod Arevalo remained at large. Benedicto Eswan, one of the members of the group, died before the action was commenced while Moises Eswan died during the pendency of the case so that trial proceeded against the remaining accused only. Upon arraignment, they pleaded not guilty to the charge of murder.

After weighing the evidence presented by both the prosecution and the defense, the Regional Trial Court of Masbate rendered a decision on May 4, 1988 acquitting Diego Sabaldo for absence of proof of guilt, while Carlito Eswan, Pedro Eswan, Eligio Eswan, and Carlos Castro, Jr. were found guilty as charged. The dispositive portion of said decision reads:

"WHEREFORE, from the presentation of the evidence of both the prosecution and the defense, the court is convinced beyond reasonable doubt that Carlito Eswan, Pedro Eswan, Eligio Eswan and Carlos Castro, Jr. are guilty beyond reasonable doubt of the crime of murder, and since they were acting in confederacy, the act of one is the act of all as shown in their action which is concerted and shows planning. For this finding, since there are no mitigating circumstances in order to lower the penalty of the crime committed, they are hereby sentenced to suffer the penalty of reclusion perpetua to be served at the National Penitentiary at Muntinlupa, Rizal.

As to the guilt of Diego Sabaldo, since no proof was presented to show a guilt beyond reasonable doubt, he is hereby acquitted of the charge. As to the two accused, William Navarro and Egod Arevalo, and the court not having acquired jurisdiction over their persons and at the same time no evidence was ever presented in order that they could be convicted of murder, they are hereby exculpated from the crime of murder.

The accused are hereby ordered to pay an indemnity of THIRTY THOUSAND (P30,000.00) PESOS in a joint and solidarity (sic) capacity to be paid in favor of the heirs of Patrolman Pajimola in the form of damages, and to pay the cost of the suit". (Rollo, pp. 30-31)

The case is now before us on joint appeal by the four accused, specifically assigning the following as errors of the trial court:

I

"THE LOWER COURT ERRED IN GIVING CREDENCE TO THE TESTIMONY OF PROSECUTION'S PRINCIPAL WITNESS JOEL VILLARUEL.

II

THE LOWER COURT ERRED IN FINDING THAT ACCUSED-APPELLANTS ACTED IN CONFEDERACY IN THE CRIME OF MURDER AGAINST COMPLAINANT.

III

THE LOWER COURT ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF DEFENSE OF A RELATIVE IN FAVOR OF CARLITO ESWAN, ELIGIO ESWAN AND PEDRO ESWAN.

IV

THE LOWER COURT ERRED IN ADMITTING AFFIDAVIT OF CARLOS CASTRO, JR. AS EVIDENCE FOR THE PROSECUTION.

V

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER BEYOND REASONABLE DOUBT." (Rollo, p. 48)

Interposing the defense of alibi, the accused-appellants present their version of the incident as follows:

"Pedro Eswan testified during his direct and cross-examination on the following matters:

He was in his house together with his son Eligio Eswan in the evening of January 20, 1983; both of them did not leave the whole evening of January 20, 1983, (t.s.n., June 25, 1986, pp. 3-4); Joel Villaruel is not his relative, (t.s.n., June 25, 1986, p. 7); he slept at around 8:00 o'clock in the evening of November 20, 1983 and woke up early in the morning while Eligio slept with his mother, (t.s.n., June 25, 1986, p. 12).

Eligio Eswan testified during his direct and cross-examination that:

He was in their house in the evening of January 20, 1983; he slept at about 7:30 p.m. on that same night and woke up at 7:30 a.m. on the following day (t.s.n., June 25, 1986, pp. 18-20);

Carlos Castro, Jr. testified during the direct and cross-examination that:

He was sleeping in his house at Sitio Salipsip, Balud, Masbate at 11:00 o'clock p.m. on January 20, 1983 (t.s.n., July 30, 1986, pp. 2-3); he did not go out of the house that night and woke up at about 6:00 o'clock in the morning, (t.s.n., July 30, 1986, p. 3); Joel Villaruel has a grudge on him. (t.s.n., July 30, 1986, pp. 6-7)

Diego Sabaldo testified on the following matters during his direct and cross-examination:

He was fishing at the seashore in Palani from 7:00 o'clock p.m. of January 20, 1983 to 3:00 o'clock a.m. on the next day; he does not know the Eswans, (t.s.n., August 4, 1986, p. 9).

Carlito Eswan testified during his direct and cross-examination on the following matters:

He passed by the public plaza of Palani, Balud, Masbate at about 10:00 o'clock p.m. of January 20, 1983; he

saw Jesus Pabeto, Jose Beruela, Benedicto Eswan and Pajimola drinking whisky at a store outside the plaza and Pajimola asked him to drink with them, (t.s.n., August 5, 1986, pp. 2-3); Jesus dropped the glass which he offered to Benedicto; an argument between the two followed and Pajimola drew his gun; Benedicto embraced Pajimola to pacify him but the latter pushed Benedicto (t.s.n., August 5, 1986, p. 5); Benedicto fell down and was shot by Pajimola thrice when Benedicto was about to stand up; Benedicto was hit at his back and Carlito grabbed the gun of Pajimola and shot Pajimola when the latter followed, (t.s.n., August 5, 1986, pp. 6-7); Barangay Captain Andrade intervened and grabbed the gun so Carlito lifted Benedicto and proceeded to the pumpboat going to Mandaon, (t.s.n., August 5, 1986, pp. 8-10); he did not see Pedro, Eligio, Moises, Diego nor Carlos during the time that he was at the public plaza on the same evening of January 20, 1983, (t.s.n., August 5, 1986, pp. 9-10); he presented a death certificate evidencing the death of his brother Benedicto, (t.s.n., August 5, 1986, p. 11); Pajimola was responsible for the gun report and not him as testified earlier by Joel Villaruel and Mamerto Bañez, (t.s.n., August 5, 1986, p. 13); he did not see Joel Villaruel and Mamerto Bañez when he arrived at the plaza up to the time of the incident of January 20, 1983, (t.s.n., August 5, 1986, pp. 14-15); he saw Pajimola already drunk at the time of his arrival at the plaza, (t.s.n., August 5, 1986, p. 21)." (Appellant's Brief, pp. 8-10)

The prosecution on the other hand presents its version, thus:

"At around 9:00 o'clock in the evening of January 20, 1983, Balud INP Patrolman Arestedes Pajimola, in company of Mamerto Bañez, went to Barangay Palani, Municipality of Balud, Masbate, on official mission to watch and observe a public dance being held at the public plaza (tsn, July 24, 1984, pp. 19-20). The place was well lighted by electric fluorescent lamps (tsn, January 11, 1984, p. 6; July 24, 1984, p. 20). On arrival at the plaza, Patrolman Pajimola and Bañez settled themselves by sitting on a bench made of cut-off coconut trunk (tsn, July 24, 1984, p. 20). While thus seated, they heard a gun report (tsn, January 11, 1984, pp. 6-7; July 24, 1984, p. 20). It was accused Carlito Eswan who fired a shot towards the ground (tsn, January 11, 1984, p. 6-7). Patrolman Pajimola stood up to verify what was the gun report about and found that it was accused Carlito Eswan who fired a shot (tsn, January 11, 1984, pp. 6-7; July 24, 1984, p. 21). Patrolman Pajimola tried to get Carlito Eswan's handgun and arrest him (tsn, January 11, 1984, p. 7; July 24, 1984, p. 21) but Benedicto Eswan, brother of Carlito Eswan, intervened, telling the policeman not to be strict with his brother (tsn, January 11, 1984, p. 7; July 24, 1984, p. 22). When Patrolman Pajimola insisted on apprehending Carlito Eswan, Benedicto Eswan immediately pushed the policeman and without any warning stabbed him on the stomach (tsn, January 11, 1984, pp. 9-10; July 24, 1984, p. 22). Patrolman Pajimola, realizing that he was stabbed, pulled his service pistol tucked at his waist and fired at Benedicto Eswan who was hit at the back (tsn, January 11, 1984, p. 10; July 20, 1984, p. 22). Accused Carlito Eswan, upon seeing that his brother Benedicto Eswan was fired upon by Patrolman Pajimola, approached the policeman and, using his own handgun, shot the policeman hitting him three times (tsn, January 11, 1984, pp. 18-19; July 24, 1984, p. 2; July 22, 1984, pp. 12-13). At that moment, several persons, namely: accused Pedro Eswan, Moises Eswan, Eligio Eswan and Carlos Castro, Jr.'s respective knives left embedded on the body of Patrolman Pajimola, while accused Diego Sabaldo boxed and hit the policeman on the head with a flashlight (tsn, January 11, 1984, pp. 19-24; July 24, 1984, pp. 23-25). Thereafter, William Navarro and Egod Arevalo arrived and both boxed Patrolman Pajimola while the latter was lying down (tsn, January 11, 1984, p. 24). Patrolman Pajimola died almost instantaneously (tsn, January 11, 1984, pp. 25-26; July 24, 1984, p. 24).

The necropsy report (Exhibit 'B') on the autopsy conducted on the body of Patrolman Pajimola revealed that the deceased sustained three (3) gunshot wounds on the chest and stomach which penetrated the lung and other internal organs, and eight (8) stab wounds on the head, chest and stomach which pierced the heart, liver and other internal organs, with his death attributed to severe hemorrhage secondary to multiple gunshot and stab wounds (tsn, May 22, 1984, pp. 9-10, 13-16)." (Appellee's Brief, pp. 2-5)

As can be gathered from the narration of facts of the appellants, their defense is mainly alibi. As held in *People v. Tamayo, et al.*, G.R. Nos. 79418-21, March 20, 1990, it is commonplace learning that alibi is a weak defense

because it can be so easily manufactured. Because of the positive testimony pinpointing his direct participation in a killing, the accused must not only show that he was at some other place at the time that the crime occurred but also that it was physically impossible for him to have been at the scene of the crime in order to sustain his defense. In fact, Carlito Eswan testified that he passed by the plaza where Benedicto, Pajimola and some other persons were drinking. The rest of the appellants testified that they were either in their respective houses or fishing.

The fact remains that the witnesses saw the accused appellants shoot, stab, and gang-up on the victim, Pajimola. The positive testimony of the prosecution witnesses who actually saw the incident at close range and who have no reason at all to testify falsely against the accused, established beyond reasonable doubt the culpability of the latter. The positive identification established the guilt of the accused to a moral certainty. (*People v. Besa*, G. R. No. 78899, March 22, 1990).

The appellants assail the trial court for giving credence to the testimony of prosecution witnesses, Joel Villaruel and Mamerto Bañez. They contend that their testimonies were inconsistent. Said inconsistencies, as the records show, are merely on collateral matters which are not material nor fatal to the prosecution's case (*People v. Bautista*, 148 SCRA 155 [1987]). In fact, they bolster the truth that indeed these witnesses were present during the incident and in the confusion, excitement and horror of what they were witnessing, cannot anymore accurately recount each little detail of the incident (*People v. Obando, et al.*, G. R. No. 72742, February 12, 1990) as when Villaruel said Pedro Eswan stabbed the victim but when asked about the position of Pedro Eswan, he could not recall it.

The evidence, as borne out by the records clearly manifests the appellants' guilt.

The question of kinship between prosecution witness Villaruel and the victim Pajimola has likewise been raised by the appellants. There is nothing in the records which shows any improper motive on the part of the prosecution witness, Villaruel to testify falsely against the accused. This court has time and again held that mere relationship of the witnesses to the victim is not sufficient to affect their credibility (*People v. Paras*, 147 SCRA 594 [1987]; *People v. Masangkay*, 155 SCRA 133 [1987]; *People v. Atencio*, 156 SCRA 242 [1986]).

Another issue raised by the accused-appellants is the trial court's finding that they acted in confederacy with each other. Carlito contends that he could not have conspired with the rest even if he shot Pajimola since there is no evidence that he participated in the ganging up. Pedro and Eligio for their part contend that they could not have agreed to kill Pajimola prior to the ganging up as they were dancing in the plaza. Their only objective for ganging up on Pajimola, as they claim, is to defend the life of Benedicto.

The arguments of the accused-appellants are not meritorious. The facts, as gathered from the records, establish conspiracy and community of purpose. First, the appellants were all at the scene of the incident. When Carlito was being arrested, Benedicto intervened and pushed and stabbed Pajimola. When the latter shot Benedicto, Carlito shot Pajimola in return. Pedro, Eligio and Carlos, on the other hand took turns in stabbing Pajimola until he was lifeless, afterwhich, they fled together. All these acts demonstrate community of purpose. They synchronized their actions towards the same objective which was the liquidation of the victim x x x (*People v. Tan, et al.*, G.R. No. 75530, December 19, 1989).

"Direct evidence is not necessary to prove conspiracy. It may be inferred from acts indicating concerted action or community of purpose x x x. 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 xxx." (*People v. Asuncion and Aguinaldo*, G.R. No. 83870, November 14, 1989 citing *People v. Rojas*, 147 SCRA 169).

The accused-appellants further question the trial court's failure to appreciate the justifying circumstance of defense of relative in favor of Carlito, Eligio, and Pedro; Benedicto being a brother of Carlito and Pedro, and Eligio being a nephew of Benedicto.

They contend that the elements for appreciating the defense of relative are present—that there was unlawful aggression on the part of Pajimola, when he shot Benedicto. It must be remembered that it was Carlito who fired a shot which Pajimola, as police officer, investigated. It was likewise Benedicto who first committed a felony by stabbing Pajimola. The latter only fired his gun after he was stabbed. He had to defend himself from his assailants as he was alone in contrast to the accused-appellants. At the instance when Pajimola fired his gun, Carlito shot him three times, after which, the other appellants took turns in stabbing Pajimola.

From the above circumstances, it cannot be concluded that Pajimola was the aggressor. He was only doing his duty. He was assigned to maintain order during the dance at the public plaza.

Carlito further claims that he employed reasonable means to prevent his brother from being killed and he used the gun to shoot at Pajimola as it was the only one available then.

Eligio and Pedro, on the other hand, claim that they both acted on the belief that Benedicto was the victim.

We cannot appreciate the justifying circumstance of defense of relative in favor of the accused-appellants. There was no necessity at all of defending the brother since his life was not actually in danger (*People v. Lingatong*, G.R. No. 34019, January 29, 1990).

On the other hand, we agree with appellants that the affidavit of Carlos Castro, Jr. is inadmissible in evidence on account of the absence of a counsel during its preparation. However, there are other independent evidence pointing to him as one of the assailants. He was directly implicated as having stabbed the victim.

Thus, we find no cogent reason to overturn the trial court's finding of guilt of the accused. For one, Villaruel's testimony jibes with the doctor's testimony and his autopsy findings. Further, there were several antagonists against Pajimola and Pajimola was the one who was first attacked. Lastly, the victim fired his gun only in self-defense considering that he was already wounded and the assailants were many.

Once more, we apply the oft-repeated rule that this Court will not disturb the findings of the trial judge unless he has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case (*People v. Javier*, G.R. No. 77756, March 26, 1990; *People v. Miranda*, G.R. No. 78900, March 21, 1990). There is no such showing in this case.

Insofar as William Navarro and Egod Arevalo are concerned, the trial court never acquired jurisdiction over them and, therefore, it can neither convict nor exculpate them. References in the judgment as to them are pure obiter with no binding effect.

WHEREFORE, premises considered, the judgment appealed from is hereby **AFFIRMED** except as to the exculpation from liability of WILLIAM NAVARRO and EGOD AREVALO which is stricken off, the trial court never having acquired jurisdiction over them.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, and Bidin, JJ., concur.
Cortes, J., no part.

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