

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARTURO PANDIANO, FELIPE ERGO AND FERNANDO ERGO, ACCUSED-APPELLANTS.

G.R. No. 90893, May 30, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ARTURO PANDIANO, FERNANDO ERGO, FELIPE ERGO, Reynaldo Borac, Jovencio Nuguit and John Doe were charged with murder for the killing of Emmanuel “Manny” Janson. Of the six (6) accused, John Doe was never apprehended while Borac and Nuguit were convicted of the lesser offense of homicide after pleading guilty thereto on 7 September 1988.[1] Thus, only Arturo Pandiano, Felipe Ergo and Fernando Ergo were tried and convicted of murder.

All three appealed; however, since Fernando Ergo escaped from Jail during trial,[2] his conviction by the trial court must stand.[3] Consequently, only the appeal of Arturo Pandiano and Felipe Ergo is subject of this review.

Culled from the eyewitnesses’ account, the version of the prosecution is that at about eleven o’clock in the evening of 1 September 1985, accused Jovencio Nuguit and Felipe Ergo, both drunk, arrived at Felix Restaurant & Disco Pub in Parañaque and started molesting the dancer-girlfriend of Emmanuel “Manny” Janson who, upon learning of the incident, confronted the duo: “Bakit ‘nyo naman hinipuan ang babaing ‘yan (Why did you fondle that girl)?” Then an argument ensued which for all appearances was settled as the two accused left the restaurant shortly thereafter. However, three hours later, at about two o’clock the following morning, Jovencio Nuguit and Felipe Ergo returned, this time accompanied by Arturo Pandiano, Reynaldo Borac, Fernando Ergo, and an unidentified “John Doe.” “Manny” Janson and his companion Felipe Labor were then standing outside the restaurant when they noticed Felipe Ergo acting suspiciously and moving around Janson. Consequently, Janson asked Felipe Ergo what he wanted, but the latter replied “none,” and moved as if to walk away.

Suddenly, however, Felipe Ergo made an abrupt turnaround saying, “Hindi ninyo kaya ang mga Waray (You cannot beat the Warays)!” and then attacked “Manny” Janson. A struggle ensued and the accused ganged up on Janson by boxing him while the others held him back. Labor tried to intervene but had to seek refuge in the restaurant when Felipe Ergo pulled out a double-bladed knife. Labor came out later together with several others to help Janson. But they were rather too late. Felipe Ergo, Jovencio Nuguit, Reynaldo Borac, Fernando Ergo, Arturo Pandiano and “John Doe” had already run away leaving Janson on the street lying in his own pool of blood with a double-bladed knife still stuck to his body. Labor and his companions, instead of pursuing the aggressors, rushed the victim to the hospital but Janson was declared dead on arrival. He had five (5) stab wounds on various parts of his body, three (3) of them fatal.[4]

The following day, an Information for murder was filed against Pandiano, Nuguit, Borac, Felipe Ergo, Fernando Ergo and an unidentified “John Doe” charging them with “mutually helping and aiding one another with x x x evident premeditation and treachery” in killing Emmanuel Janson.[5]

Upon arraignment on 13 November 1985, all five (5) accused pleaded “not guilty.”[6]

The prosecution presented Felipe Labor, Edwin Yorac and Roberto Samonte as its principal witnesses (the latter two being floor manager and waiter, respectively, of Felix Restaurant). Yorac, who was situated some four to five meters away from the accused at the time of the incident, testified that Jovencio Nuguit held “Manny” Janson back while Fernando Ergo boxed the latter; that Felipe Ergo stabbed Janson while Reynaldo Borac threw an adobe stone at Janson’s face. Roberto Samonte corroborated Yorac’s account and reaffirmed his testimony that it was Felipe Ergo who stabbed Janson and that it was Borac who threw the adobe stone at the latter.

On 7 September 1988, as the prosecution was about to rest its case, except for the civil aspect which it still had to prove, accused Jovencio Nuguit and Reynaldo Borac, thru counsel, manifested their intention to change their plea of “not guilty” to “guilty” to the lesser offense of homicide, to which Assistant Fiscal Apolinar Quetulio, Jr. interposed no objection. Thus, then and there, Judge Consuelo Ynares-Santiago of the trial court convicted the two (2) accused of homicide and sentenced them to twelve (12) years and one (1) day to twenty (20) years of reclusion temporal.[7]

Thereafter, trial continued against the remaining accused with Arturo Pandiano and Felipe Ergo interposing the defense of alibi. Both claimed to be in their respective residences at the time of the incident on 2 September 1985. They also alleged that they met their co-accused for the first time only in jail where they learned that they were being charged jointly for the killing of Emmanuel “Manny” Janson. Felipe, however, admitted his blood relationship with co-accused Fernando Ergo upon cross-examination.[8]

On 31 August 1989, the trial court rendered its decision finding the accused Arturo Pandiano, Felipe Ergo and Fernando Ergo guilty of the murder of Janson and imposing upon them the penalty of reclusion perpetua. They were also ordered to pay the heirs of the deceased the sum of P30,000.00 as moral damages and P16,000.00 as compensatory damages.[9]

Appellants Arturo Pandiano and Felipe Ergo maintain that the testimonies of prosecution witnesses Roberto Samonte, Edwin Yorac and Felipe Labor are seriously flawed, hence, unworthy of credence. Specifically they contend that (a) while Samonte and Labor testified on the initial confrontation involving Janson’s dancer-girlfriend, Yorac who claimed to be an eyewitness completely failed to mention such incident, and that Samonte and Labor did not agree on the time when it occurred, Samonte testifying that it happened at around eleven o’clock in the evening while Labor stated that it was already one o’clock in the morning of the following day; (b) it is incredible that Edwin Yorac continued to watch the incident despite the danger allegedly posed by appellants; and, (c) all three (3) witnesses failed to identify the culprit who actually caused the victim’s death and to specify appellant Pandiano’s participation therein.

We shall deal with the contentions separately.

First. Appellants contend that while Yorac claimed to be an eyewitness, he failed to mention that there was an initial confrontation between the victims on one hand, and accused Felipe Ergo and Jovencio Nuguit on the other, which was triggered off by the latter’s advances at Janson’s girlfriend. In other words, appellants maintain that since Edwin Yorac was not present during the eleven o’clock altercation, he could not possibly be competent to testify on the stabbing incident which followed three hours after.

We cannot agree. Three hours separated the two incidents. Without need of an explanation, appellants ought to realize that it is possible for persons to be at one place at a certain time although they may not be there three hours before. Thus it is not incredible at all for Edwin Yorac not to know anything about the eleven o’clock incident and yet still be competent to testify on the stabbing incident three hours later. For, indeed, he might have been

somewhere else at eleven o'clock and arrived at the scene of the crime shortly before the stabbing incident.

With respect to the discrepancy between the testimonies of Samonte and Labor on the time when the initial confrontation occurred, we hold that the same is not fatal. Since time is not an essential element of murder, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to, that is, the fact of killing. This is so, especially considering that witnesses Samonte, Labor and Yorac were unanimous in saying that the stabbing incident took place at two o'clock of 2 September 1985.

Second. Appellants contend that Yorac is not credible since his reaction in trying to intervene, instead of running away from the fight, is contrary to human nature and experience. Thus, they argue that it is natural for a person faced with danger to run as far away as possible to protect himself, and not stay on as Yorac did.

It is true that people usually react to danger by running away from it. However, it also happens that there are individuals, fired with humanitarian zeal to help, who will stay on and lend assistance to a person in distress. That was what witness Yorac did. It should be borne in mind that different persons have different reactions to similar situations,[10] hence, man's behavior and reactions can never be stereotyped.[11] Besides, it was not as if Yorac pursued his chivalry to its heroic end. For as soon as he realized that he could do nothing by himself and that he was hopelessly outnumbered, he ran away and sought refuge inside the Felix Restaurant & Disco Pub.[12]

Third. Appellants question the credibility of the prosecution witnesses for their failure to identify the culprit who actually dealt the fatal blow. But, such identification is unnecessary in view of the presence of conspiracy. When conspiracy is directly established, a showing as to who inflicted the fatal blow or wound is not required to sustain a conviction inasmuch as the guilt or culpability is imputable to all in equal degree regardless of who actually dealt the lethal blow.[13] In the case at bench, the coordinated acts of the accused, except as to the participation of Arturo Pandiano which is discussed hereunder, point to a joint purpose and community of interests which justify a finding of collusion. According to the combined testimony of the prosecution witnesses, the six accused attacked the lone Janson by surrounding and boxing him; that, specifically, Fernando Ergo was the one who started punching the deceased; that Jovencio Nuguit held Janson back to prevent him from defending himself; that Felipe Ergo pulled out a double-bladed knife which he used to stab the deceased; and, that Reynaldo Borac threw an adobe stone at Janson's face when the latter was already down. These concerted acts point to only one thing: that the accused were in unison in inflicting injuries to Janson which eventually resulted in his death. This is evident when not one of them stopped or cautioned the others to stop, and it was not until Janson was already down and gasping his last that they wavered in their assault and fled to escape apprehension.

With respect to the circumstances qualifying the killing to murder, the information alleges evident premeditation and treachery. However, while the facts do not justify a finding of treachery, evident premeditation is sufficiently established to qualify the killing to murder.

Three elements must concur for a finding of evident premeditation, to wit: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and, (3) a sufficient lapse of time between the determination and the execution to allow the accused to reflect upon the consequences of his act.[14] All three requisites are present in the case at bench. The trial court found that at eleven o'clock in the evening of 1 September 1985 accused Felipe Ergo and Jovencio Nuguit on one hand, and the deceased on the other, almost came to blows inside Felix Restaurant & Disco Pub when Janson confronted the two about their behavior towards Janson's dancer-girlfriend; that Felipe Ergo and Nuguit came back approximately three hours later armed and accompanied by Fernando Ergo, Reynaldo Borac, Arturo Pandiano and an unidentified John Doe, and that they all ganged up on Janson and did not stop until the latter was down and fatally wounded. These circumstances clearly indicate evident premeditation.

We note that while the information does not allege abuse of superior strength the evidence clearly proves it. Hence, we are constrained to consider such circumstance as generic aggravating since it was obvious that the accused exploited their numerical superiority to insure the success of their mission with hardly any risk to themselves.

With respect to appellant Arturo Pandiano, however, the defense contends that the fact that all three eyewitnesses were silent as to his specific individual participation, other than saying that “he was among the group who participated in the incident,” should be counted in Pandiano’s favor and work towards his acquittal.

In this regard, we cannot disagree with the defense. Although we affirm the trial court’s finding of conspiracy among the accused, we hold that the records justify the exclusion of Arturo Pandiano therefrom. It must be remembered that conspiracy here was not directly established, that is, no direct evidence of an actual agreement between the six accused to commit the crime exists. Conspiracy was inferred merely from their coordinated acts which were specifically pointed out and testified to by the three eyewitnesses. Thus, according to the latter’s combined testimony, Fernando Ergo boxed the deceased while Jovencio Nuguit held the latter back, that Felipe Ergo pulled out a double-bladed eight-inch knife which he used in stabbing the deceased, and that Reynaldo Borac threw an adobe stone at Janson’s face when the latter was already down. However, with respect to Arturo Pandiano’s individual participation, witness Labor could only say that he was “among Felipe Ergo’s companions who boxed Manny Janson[15]” while Roberto Samonte recounted that Pandiano “helped” in the assault,[16] and witness Edwin Yorac even admitted that he “did not see what he (Pandiano) did, but he was among the group who participated in the incident.”[17]

To our mind, such general testimony passing off as evidence for conviction is grossly insufficient to hold Arturo Pandiano liable for murder. To justify such conviction, there must be stronger evidence other than that on hand tending to establish that Arturo Pandiano was there to accomplish the evil design of killing Janson or at least help his companions in doing so. That there was a marked absence of testimony identifying his specific individual participation while the eyewitnesses apparently had no trouble in pinpointing that of the other accused, engenders in our mind a reasonable doubt as to Pandiano’s criminal liability. The possibility cannot be discounted that Arturo Pandiano arrived at the scene of the crime totally ignorant of what his other companions intended to do what merely rooted to the spot and unable to shake off his shock at what was being perpetrated before his eyes. More, it may even be that he intended to stop his companions and help Janson, as witness Yorac intended to do, but was simply overcome by fear. Hence, we consider his mere presence alone as inadequate evidence for his conviction. However, we are not in any way proclaiming his innocence. We are only saying that a doubt has been created in our mind serious enough to bar a conviction. This Court is constrained by the fundamental and most basic precept in the administration of justice that to justify a conviction, a man’s guilt must be established to a moral certainty, that is, precluding all reasonable doubt as to his guilt.

The penalty prescribed for murder is reclusion temporal in its maximum period to death.[18] With the attendance of the aggravating circumstance of abuse of superiority without any mitigating circumstance, the penalty should be imposed in its maximum period which is death. But while death can now be imposed as a penalty with the passage of R.A. No. 7659,[19] Art. 21 of the Revised Penal Code specifically prohibits the imposition of a penalty for a felony which was not so prescribed at the time of its commission. Since R.A. No. 7659 was signed into law on 13 December 1993 and took effect on 1 January 1994, fifteen (15) days after its publication in two (2) newspapers of general circulation, the imposition of the penalty of reclusion perpetua upon appellant Felipe Ergo for the murder of Emmanuel “Manny” Janson on 2 September 1985 was proper.

WHEREFORE, the Decision dated 31 August 1989 of the Regional Trial Court of Makati, Branch 159, in Crim. Case No. 18812 finding accused-appellant FELIPE ERGO guilty beyond reasonable doubt of murder and

imposing upon him the penalty of reclusion perpetua is AFFIRMED with the sole modification that the civil indemnity to be paid the heirs of the victim Emmanuel “Manny” Janson is increased to P50,000.00 conformably with present jurisprudence.

However, insofar as it found appellant ARTURO PANDIANO similarly guilty, the decision is REVERSED and SET ASIDE and he is hereby ACQUITTED on the ground of reasonable doubt.

SO ORDERED.

Davide, Jr., and Quiason, JJ., concur.

Cruz, (Chairman) and Kapunan, JJ., are on leave.

[1] TSN, 7 September 1988, pp. 4-6; Original Records, pp. 94-96.

[2] TSN, 15 October 1986, p. 6; 16 September 1987, p. 12.

[3] See *People v. Mapalao*, G.R. No. 92415, 14 May 1991, 197 SCRA 79, 87-88, where the Court said that once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court including the right to appeal.

[4] TSN, 6 July 1988, p. 11; Original Records, p. 86.

[5] *Id.*, p. 1.

[6] *Id.*, p. 16.

[7] TSN, 7 September 1988, p. 6; Original Records, p. 96.

[8] TSN, 23 November 1987, p. 7.

[9] Rollo, pp. 18-21.

[10] *People v. Gonzales*, No. L-40727, 11 September 1980, 99 SCRA 697, 705; *People v. Realon*, No. L-30832, 29 August 1980, 99 SCRA 422, 455.

[11] *People v. Salazar*, G.R. No. 84391, 7 April 1993, 221 SCRA 170, 176; *People v. Flores*, G.R. No. 98069, 27 January 1993, 217 SCRA 613, 621; *People v. Danico*, G.R. No. 95554, 7 May 1992, 208 SCRA 472, 483.

[12] TSN, 15 October 1986, p. 5.

[13] *People v. Amondina*, G.R. No. 75295, 17 March 1993, 220 SCRA 6, 11; *People v. Villagrancia*, G.R. No. 94471, 1 March 1993, 219 SCRA 212, 217; *People v. Manero, Jr.*, G.R. Nos. 86883-85, 29 January 1993, 218 SCRA 85, 96; *People v. Familgan*, Nos. L-41022-23, 31 January 1981, 102 SCRA 578, 592.

[14] *People v. Claveria*, G.R. No. 94786, 6 April 1993, 221 SCRA 34, 40-41.

[15] TSN, 16 September 1987, p. 10.

[16] TSN, 28 May 1986, p. 3.

[17] TSN, 28 August 1986, p. 5.

[18] Art. 248, The Revised Penal Code.

[19] “An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code as Amended, Other Special Penal Laws, and For Other Purposes.”

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