

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO UMBRERO, ALFREDO COSTALES ALIAS PIDO, JIMMY AGLUBA AND LEON CERIA, ACCUSED. MARIANO UMBRERO, ALFREDO COSTALES @ PIDO, ...

G.R. No. 93021. May 08, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Aparri, Branch 8, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Mariano Umbrero, Jaime (Jimmy) Agluba and Alfredo Costales alias Pido, guilty of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code and therefore sentences each of them to suffer the penalty of RECLUSION PERPETUA; to pay jointly and severally an indemnity of THIRTY THOUSAND (P30,000.00) PESOS to the heirs of Alfonso Urbi; and each of them to pay 1/7 of the costs." (Rollo, p. 31)

The information filed against the accused reads:

That on or about November 29, 1980, in the Municipality of Lal-lo, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Mariano Umbrero, Alfredo Costales alias Pido, Jimmy Agluba and Leon Ceria, together with Eugenio Rigon alias Inyong, Bartolome Tangonan and Danny Costales who are still at-large and not yet arrested, armed with guns, conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there wilfully, unlawfully and feloniously assault, attack and shoot one, Alfonso Urbi, inflicting upon the latter wounds on his body which caused his death.

That the offense was committed with the following aggravating circumstances, to wit: (a) that it was committed with abuse of superior strength, and (b) that it was committed by a band." (Records, p. 33)

The accused Mariano Umbrero, Alfredo Costales, Jimmy Agluba and Leon Ceria pleaded not guilty on arraignment. The other accused, Eugenio Rigon, Bartolome Tangonan, and Danny Costales were not arraigned as they were still at large.

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is as follows:

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". . . Angelina Urbi Ragsac, daughter of the victim Alfonso Urbi testified: She was at home in Sta. Teresa at about 2:00 in the afternoon of November 29, 1980 when several armed men came, two (2) of whom shot her father under the house, accused Alfredo Costales and Danny Costales. She was not able to recognize the other armed men. She was two (2) meters from her father when he was shot. Of the two accused mentioned, she only

identified in Court accused Alfredo Costales, Danny Costales was not present. He was the one who shot her father. He followed her father when he ran outside the house but the companions of Alfredo Costales followed and killed him. Alfredo Costales and Danny Costales shot her father with short firearms. Their companions had long firearms. All the accused ran after killing her father. She and her mother did not do anything because they were afraid; however, they went to get the body of her father later on. He sustained five (5) gunshot wounds on his breast and stomach. She reported the killing of her father to barangay captain Felix Villamin. Thereafter she executed an affidavit marked as Exhibits "E" and "E-1" which were admitted by the defense as part of the record. Mariano Umbrero was among the armed men who came to their house in the afternoon of November 29, 1980. She knows him personally.

"On cross-examination defense counsel Atty. Alfredo J. Donato made reference to question No. 5 and the corresponding answer, in the affidavit of the witness (Exhibits "E" & "E-1") to be marked as Exhibit "1" for the defense. She admitted that the first one to shoot her father was Danny Costales of Jurisdiccion, Camalaniugan, known and called Dominador Costales who executed an affidavit. She knew that Alfredo Costales was apprehended. As to Danny Costales, she does not know whether or not he was apprehended. In 1980 their place was infested with NPA and she believed that Danny Costales and his companions were members of the NPA. She does not know of any motive of the armed men in killing her father. She, her father and mother and her children were then eating on the ground floor of their house when the armed men arrived. Her father stood up when Danny Costales asked for water to drink. Her father went to the door to see him and his companions. It was there where Danny Costales shot him.

"On August 5, 1985 the prosecution presented Eugenia Urbi, surviving spouse of the victim Alfonso Urbi. Her testimony is hereby reproduced substantially: In the afternoon of November 29, 1980, at about 2:00 o'clock, she and her deceased husband were in the house of their daughter Angelina Urbi Ragsac in Sta. Teresa, Lallo. To their surprise, armed men came to ask for water. When her husband went to them to give water he was shot by Johnny Costales. Mariano Umbrero, Jimmy Agluba and Pido Costales were his companions. She identified in Court Pido Costales who gave his name as Alfredo Costales, Mariano Umbrero and Jaime Agluba. Johnny Costales was not in Court. She knows Leon Ceria he being her barriomate. She saw him the following day after the killing of her husband when he passed by their house. She did not see Leon Ceria with the group of armed men who went to their house. She was about a meter from her husband when he was shot by Johnny Costales in the presence of his companions. Johnny and Danny Costales was admitted as one and the same person. At the time Danny Costales shot her husband, some of his companions were near him and some were a little bit far. Those who were near him were the accused Pido Costales, Mariano Umbrero and Jimmy Agluba. They were all armed. Danny Costales and his companions left after shooting her husband. Thereafter the killing of her husband was reported to barangay captain Felix Villamin who instructed Juan Urbi to get the body of her husband. She could not be compensated for the killing of her husband. She was investigated, and in connection therewith she executed an affidavit (Exhibits "F" and "F-1").

On cross-examination, she testified that Danny Costales shot her husband three (3) times. She clarified that when they were eating, Danny Costales and his companions suddenly arrived. They asked for water. Her husband stood up and went to see them. That was the time when Danny Costales shot her husband for the first time. Her husband ran outside, followed by Danny Costales and shot him again. Danny Costales and his companions then left. She did not go immediately to the place of her husband because she was afraid. At the time Danny Costales shot her husband, accused Alfredo Costales, Jaime Agluba and Mariano Umbrero were holding their firearms at their sides. They drew their guns when her husband ran outside the house; however, they did not prevent her husband from running outside the house. She could not tell as to whether or not Mariano Umbrero, Jimmy Agluba and Alfredo Costales fired their guns.

"Exhibit "B", sworn statement of Eugenia Urbi, was also adopted as Exhibit "4" for the defense, to show that the victim sustained five (5) gunshot wounds, the entrance of which were 0.5 cm. showing that the fatal weapon was fired by one person.

On August 28, 1985 the prosecution presented Martin Pagaduan, also a resident of Sta. Teresa, Lallo, Cagayan. He was in his ricefield north of the house of Alfonso Urbi on the day he was shot to death. He saw more than ten (10) armed men passed by going westward. Not long thereafter, he heard gun reports from the house of Alfonso Urbi which is less than fifty (50) meters from his ricefield. The armed men returned and proceeded eastward. They took his brother Juan Pagaduan. He was able to identify Mariano Umbrero, Jimmy Agluba, Pido Costales, Inyong Rigon, Florante Tabunal and Romy Arellano who were with the group of armed men he saw. When he heard gun reports he saw the armed men surrounding the house of Alfonso Urbi. The persons in the house cried loudly. He went to hide because he was afraid. When the armed men were already gone, he went to the house of Alfonso Urbi. He saw him already dead in his yard. He sustained gunshot wounds. He identified in Court accused Mariano Umbrero, Jimmy Agluba and Alfredo Costales. They were all holding firearms when they passed by. He was confronted with his affidavit taken during the investigation conducted by the Integrated National Police of Lallo which was marked as Exhibits "G" and "G-1".

"On cross-examination he admitted that he was examined during the preliminary investigation conducted by the Municipal Trial Court of Lallo. His signature appearing therein was marked as Exhibit "2" and the signature of Judge Pascual as Exhibit "2-B". The question of the Court: "How did you know that there were ten (10) heavily armed men who were present in the house of Alfonso Urbi on November 29, 1980 at around 2:00 o'clock in the afternoon when he was gunned down by these heavily armed persons? Ans. I was around forty (40) meters away from these heavily armed persons preparing my harrow when I was attracted by the presence of those armed persons when one of them by the name of Doming Arellano shot the late Alfonso Urbi with an armalite was marked as Exhibit "2-D". (Rollo, p. 22-24)

The case as against Leon Ceria was dismissed for insufficiency of evidence.

As for Mariano Umbrero, Alfredo Costales and Jimmy Agluba, their version is summarized as follows:

". . . Mariano Umbrero corroborated his witness Alejandrino Umangay, that they left Sta. Teresa and Rosario, respectively because the soldiers ordered them to evacuate; they and other residents of the barangay were suspected as members of the NPA. On November 29, 1980, Alejandrino Umangay went to collect from Mariano Umbrero an indebtedness of P200.00. To pay the same Mariano Umbrero sought to mill his palay in Bical, Lallo, a distance of three kilometers in the ricemill of Gregorio Cabulay. As they were putting in a sack the palay, two men arrived Ka Al the leader of the NPA and Danny Costales. They invited Mariano Umbrero to the house of Alfonso Urbi. Mariano Umbrero excused himself for they were going to mill his palay, and they told him to follow. At 4:00 o'clock their palay was milled and Mariano Umbrero started for his house at 5:00 o'clock. Mariano Umbrero denied having been with Danny Costales, when he shot to death Alfonso Urbi.

The accused Alfredo Costales corroborated the testimony of his wife Maria Umoso, that on November 29, 1980 when Alfonso Urbi was killed he was not in Sta. Teresa, Lallo, for he was in Aparri, Cagayan on the burial of Benilda Espino, their granddaughter who died on November 23, 1980 (Exh. 4, Death Certificate) who was buried on November 28, 1980 in the afternoon, and went back to Sta. Teresa at 5:00 o'clock and arrived at 9:00 o'clock in the evening. In 1980, the soldiers ordered them to evacuate Sta. Teresa due to the presence of the NPA. Alfredo Costales denied having been with Danny Costales (no relation) when he killed Alfonso Urbi on November 29, 1980, at about 2:00 o'clock in the afternoon. (pp. 7, 8 Decision)

The accused Jaime Agluba, corroborated the testimony of his wife Laureta Agluba, who testified that in 1980 soldiers ordered residents of Sta. Teresa to evacuate due to the presence of NPA. On November 29, 1980, were not in Sta. Teresa but they were in Newagac, Gattaran, a distance of about 50 kilometers. (should be 15 kilometers, TSN, January 17, 1989, pp. 10-11) As is their usual work the accused Jaime Agluba, during farming time always went to help his sister Estrella Villarin, married to Rufino Villarin. They left Sta. Teresa on November 23, 1980 and continued living in Newagac, until their return to Sta. Teresa, Lallo, on December 20, 1980. Jaime Agluba denied having been with Danny Costales when he killed Alfonso Urbi on November 29, 1980." (Appellants' Brief, pp. 3-4)

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The appellants raise the following assignment of errors, to wit:

I

THAT THE HON. LOWER COURT ERRED IN NOT DISMISSING THE INFORMATION AS AGAINST THE ACCUSED MARIANO UMBRERO, THERE BEING NO CRIMINAL COMPLAINT OR PRELIMINARY INVESTIGATION IN THE MUNICIPAL COURT OR WAS THERE A PRELIMINARY INVESTIGATION IN THE OFFICE OF THE PROVINCIAL PROSECUTOR, THUS DENYING HIM THE CONSTITUTIONAL RIGHT TO DUE PROCESS.

II

THE HONORABLE LOWER COURT ERRED IN CONVICTING ALL THE ACCUSED TO RECLUSION PERPETUA AND THE PAYMENT OF P30,000.00 INDEMNITY. (Rollo, p. 50)

In the first assigned error, Mariano Umbrero alleges that he was denied his right to due process. He states that there was no preliminary investigation conducted as his name was not included in the criminal complaint filed with the municipal court which conducted the preliminary investigation.

The allegation is unmeritorious.

We agree with the Solicitor General that:

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". . . [A]lthough appellant Umbrero was not named in the complaint filed by the police with the municipal trial court for the purpose of conducting a preliminary investigation, the municipal judge upon being informed that Mariano Umbrero was one of the perpetrators of the killing of Alfonso Urbi, issued a warrant of arrest and later ordered suspect Umbrero to file his counter-affidavit. The record shows that appellant Umbrero was given the opportunity to answer the charges against him during the preliminary investigation." (Appellee's Brief, pp. 6-7)

Moreover, it has been held in *Paredes v. Sandiganbayan* (G. R. No. 89989, January 28, 1991), reiterating this Court's ruling in *People v. Casiano* (1 SCRA 478, [1961]), that:

"The absence of a preliminary investigation does not affect the court's jurisdiction over the case. Nor does it impair the validity of the information or otherwise render it defective. If there was no preliminary investigation and the defendant, before entering his plea, calls the attention of the court to the absence of a preliminary investigation, the court, instead of dismissing the information, should conduct such investigation, order the fiscal to conduct it or remand the case to the inferior court so that the preliminary investigation may be conducted." (pp. 7-8)

The appellant never asked for or called the attention of the court before entering his plea, as to the absence of a preliminary investigation. His right to preliminary investigation, then is deemed waived as he failed to invoke such right prior to or, at least, at the time of the entry of his plea in the court of first instance. (*People v. Casiano*, p. 483, *supra*) The entry of their plea constituted a waiver of their right to preliminary investigation and any irregularity that attended it. (See *People v. La Caste*, 37 SCRA 767, 773 [1971])

Jurisdiction was acquired by the Court over the person of Mariano Umbrero as the accused appeared at the arraignment and pleaded not guilty to the crime charged. (See *Gimenez v. Nazareno*, 160 SCRA 1, 5 [1988])

In the second assigned error, the appellants contend that there was no conspiracy, thus, they should all be adjudged as innocent. They asserted that mere presence at the scene of the crime does not by itself indicate the

existence of conspiracy. There must be proof of their participation in the crime.

This contention must fail.

It is well-settled rule that conspiracy need not be proved by direct evidence but can be inferred from the acts of the accused. (*People v. Alitao*, G. R. No. 74736, February 18, 1991) The appellants' actuations immediately prior to, during, and right after the shooting of Alfonso Urbi indicate their common intention to commit the crime. The appellants were not merely present at the scene of the crime. The prosecution witnesses positively identified the appellants as among the armed men who arrived at the scene of the crime, shot Alfonso Urbi, and left together after apparently accomplishing their purpose. (TSN, April 10, 1985, pp. 2, 7; TSN, August 5, 1985, pp. 2, 6; TSN, August 28, 1985, pp. 2-3)

The trial court stated:

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"It will be recalled that accused Mariano Umbrero, Jaime Agluba and Alfredo Costales, alias Pido and others were all armed when they went together to the house of the victim Alfonso Urbi. They were close to Danny Costales when he (Danny) asked for water which was not their common purpose. Alfonso Urbi got near to see them. Suddenly he was shot by Danny Costales. He ran outside the house but was overtaken by Danny Costales who pumped more shots on him all located on the vital parts of the body, causing his instantaneous death. They all left together upon accomplishing their purpose. The accused were all holding their firearms on their sides, while others stood guard and surrounded the house. The acts performed by all the accused before, during and after the perpetration of the crime are indicative of a previous criminal design and unity of common purpose." (Rollo, p. 30)

The appellants although not active participants in the killing itself, made no effort to prevent it. In fact, the appellants even drew the guns that were tucked on their waists when Alfonso Urbi, after being shot for the first time, tried to run outside of his house. (TSN, August 5, 1985, pp. 18-19)

Conspiracy having been established, the appellants as co-conspirators are all guilty on the principle that the act of one is the act of all. (*People v. de Guzman*, 162 SCRA 145, 153 [1988])

The defense of alibi of the appellants is without merit. The appellants were positively identified by the prosecution witnesses as the witnesses were only a few meters away from the crime scene. (TSN, April 10, 1985, p. 3; TSN, August 5, 1985, p. 5)

The defense of alibi cannot prevail over the positive identification by the prosecution witnesses of the appellants (*People v. Kyamko*, G.R. No. 95263, December 18, 1990). There is nothing in the records which would show a motive or reason on the part of the witnesses to falsely implicate the accused. Identification, then, should be given full credit. As there is no showing that the prosecution witnesses were moved by improper motives, the presumption is that they were not so moved, their testimony therefore, is entitled to full faith and credit. (*People v. Doctolero*, G. R. No. L-34386, February 7, 1991)

In the instant case, the appellants failed to establish by clear and convincing evidence that they were at some other place and for such a period of time as to negate their presence at the time when and the place where the crime was committed. (See *People v. Solis*, G. R. No. 93629, March 18, 1991 citing *People v. Riego*, G. R. No. 90256, September 12, 1990)

The persons that the appellants presented to corroborate their alibis were their relatives.

Alfredo Costales and Jaime Agluba could have presented other people, aside from their wives, to corroborate their

testimony that they were at some place other than the scene of the crime. But even the testimony of Jaime Agluba's wife did not clearly show that Jaime Agluba was not in Sta. Teresa as she stated that during their stay in Newagac her husband would go to the field and it was only the wife's belief that her husband was in the field in the afternoon of November 29, 1980. (TSN, January 17, 1989, pp. 16-17) As regards Mariano Umbrero, he could have presented Gregorio Cabulay (TSN, April 21, 1986, p. 27) aside from Alejandrino Umangay to support his statement. Umangay's corroboration is not that credible as Umbrero and Umangay had known each other ever since they were still little boys (TSN, April 21, 1986, p. 31) and Umbrero's relative is Umangay's niece. (TSN, April 21, 1986, p. 32) It has been ruled that the defense of alibi is weak if it is established mainly by the accused themselves and their relatives and not by credible persons (See *People v. Flores*, G.R. No. 71980, March 18, 1991).

We agree with the finding of the trial court that the qualifying circumstance of treachery is present in the case at bar.

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 make. (*People v. Cempron*, G. R. No. 66324, July 6, 1990; *People v. Manzanares*, 177 SCRA 427, 434, [1989])

The shooting of Alfonso Urbi was sudden and unexpected. The victim was unarmed, unable to defend himself. He was an unsuspecting victim as the assailants just asked for a drink of water. (TSN, April 10, 1985, p. 20; TSN, August 5, 1985, p. 2) He was totally unprepared to be able to defend himself.

On the other hand, evident premeditation was not clearly established, contrary to the findings of the trial court. Although conspiracy existed, it was merely inferred from the acts of the accused in the perpetration of the crime, the requisites necessary to appreciate evident premeditation have not been met in this case. (See *People v. Repe*, 175 SCRA 422, 435 [1989]) The prosecution failed to prove all of the following: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused had clung to their determination to commit the crime; and (c) the lapse of sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act. (*People v. Iligan*, G. R. No. 75369, November 26, 1990; *People v. Montejo*, 167 SCRA 506, 513 [1988])

Aid of armed men should also not be appreciated in this case, considering that the assailant as well as the appellants were in conspiracy. (See *People v. Candado*, 84 SCRA 508, 524 [1978]; *People v. Piring*, 63 Phil. 546, 553 [1936])

The fact that Judge Tumacder did not preside at the trial of this case in its entirety, having taken over only when the second defense witness was to be presented, did not detract from his appreciation of the prosecution evidence. The full record was available to him. (See *People v. Abaya*, 185 SCRA 419, 424 [1990])

In view of the foregoing, the appellants were correctly found guilty beyond reasonable doubt of murder, but without the attendant circumstances of evident premeditation and aid of armed men. The penalty to be imposed is reclusion perpetua. The indemnity to the heirs of the deceased is raised to FIFTY THOUSAND PESOS (P50,000.00).

WHEREFORE, the appealed decision is hereby AFFIRMED with the aforesaid MODIFICATION.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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