

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO MALLARI, ACCUSED-APPELLANT.

G.R. No. 94299. August 21, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal by accused-appellant Ricardo Mallari from the decision[1] dated April 11, 1990 of the Regional Trial Court of Palawan and Puerto Princesa City, 4th Judicial Region, Branch 47 in Criminal Case No. 6334, the dispositive portion of which reads:

"WHEREFORE, premises considered, the Court finds the two (2) herein accused JOSINO RAMOS and RICARDO MALLARI guilty beyond reasonable doubt as co-principals, of the crime of MURDER charged against them by the Provincial Prosecution Office in this case as defined and penalized under Article 248 of the Revised Penal Code, and there being no modifying circumstance that attended the commission of this offenses, hereby sentences each of them to suffer the penalty of RECLUSION PERPETUA; each to pay the heirs or family of the victim, EDMUNDO TUYAK, moral, exemplary and actual damages of FIFTY THOUSAND PESOS (P50,000.00) and to pay the costs.

"With this conviction, the bailbonds posted for the provisional liberty of the accused are hereby ordered revoked, cancelled and terminated, and both accused should immediately be placed behind bars and shipped to the national penitentiary, Muntinlupa, Metro Manila, for imprisonment and to serve their sentences there."[2]

On June 5, 1986, an information was filed against Josino Ramos and Ricardo Mallari for the crime of MURDER committed as follows:

"That on or about the 7th day of May, 1986 at barangay Rio Tuba, Municipality of Bataraza, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another with evident premeditation, treachery and with intent to kill, did then and there wilfully [sic], unlawfully and feloniously attack, assault and stab with a bladed weapon [,] to wit: a Batangas knife [sic], one Edmundo Tuyak [,] hitting him in a vital part of his body and inflicting upon him mortal injuries which was the direct and immediate caused [sic] of his death shortly thereafter."[3]

Upon arraignment accused Josino Ramos and accused-appellant Ricardo Mallari pleaded "Not Guilty" to the offense charged.

The facts as found by the trial court are as follows:

At around 5:00 p.m. of May 7, 1986, the victim Edmundo Tuyac and his companion Danilo Culaban left the store at Rio Tuba in Bataraza, Palawan where they were celebrating their basketball championship with their teammates. As they were walking towards the townsite, a Mazda minibus driven by accused-appellant Ricardo Mallari suddenly stopped beside the victim and accused Josino Ramos, who was the lone passenger in said bus, and who was seated at the back of the driver stabbed the victim once with a Batangas knife on his clavicular area

while the latter was in a standing position and a foot away from the vehicle.

The stabbing incident was seen by Silvino dela Peña, who was about five (5) arms length away from the victim, and heard one of the accused say "sibat na tayo."

Quirico Bañadera, a teammate of the victim, likewise saw Ramos stab the victim Edmundo Tuyac as he was just coming out of a house which is about seven (7) meters away from the scene of the stabbing incident. Thereafter, accused-appellant Mallari speedily drove away from the scene of the crime. Bañadera rushed to the victim, who fell to the ground after being stabbed by the accused Ramos, and with the assistance of Edgar Galvero brought the latter to the hospital on board a Gumba jeep which was parked nearby.

On their way to the hospital and upon reaching the military checkpoint, Bañadera and dela Peña saw the minibus used by the accused and accordingly shouted at the personnel manning said checkpoint to stop said minibus. Immediately, the military officer stopped the bus and, after a search found a bloodied knife under one of the seats of the bus.

At 11:30 a.m. of May 8, 1986, an autopsy of the victim was conducted by Medico Legal Officer Joaquin B. Fabellon at Brooke's Point District Hospital, who stated in his Partial Autopsy Report that the victim incurred a wound at the clavicular area of his body hitting the thoracic cavity and perforating the left upper portion of his lung and that the probable weapon used in inflicting said wound is a Batangas knife.[4]

Accused Ramos, however, disputes the foregoing facts and stated that what actually happened on that fateful afternoon is as follows:

At around 6:20 p.m. of May 7, 1986, while he and accused-appellant Mallari were on their way to the pier terminal at Rio Tuba, Bataraza, with the latter driving the Mazda minibus with two (2) passengers, a group of about 20 drunk men started stoning their vehicle. The victim Edmundo Tuyac boxed his face several times, and as Tuyac was pulling him out of the vehicle by his left hand, he got hold of a tool from the opened tool box inside the minibus and hit the victim with it without any intention of killing him since he never met the victim before nor had he any motive to kill the latter. Thereafter, he and accused-appellant Mallari went to the Marine Detachment to ask for assistance.

On the otherhand, accused-appellant Mallari testified that at around 6:00 p.m. of May 7, 1986, he and accused Ramos were at the lower portion of the pier to unload cargoes. As they were about to leave, the two (2) passengers inside the minibus said "Takbo". Instinctively, he immediately drove the minibus and proceeded to the Marine Detachment for assistance although he noticed no unusual incident happening inside or outside the bus while driving from the pier to the Marine Detachment since an iron backrest separates the driver's compartment from the other passengers of the bus. Accused-appellant contends that he has no reason to conceive of a plot to kill the victim whom he never knew nor met before the incident in question much less to have any ill-feeling against him.

For the failure of the accused and his counsel to appear in court on February 12, 1990 without justification or explanation despite notice that the defense has to terminate its case that day, the trial court issued an Order submitting the case for decision.

We find no merit in the appeal.

Accused-appellant contends that there was a mistrial since he was not represented by a counsel of his own choice during the latter stage of the trial and that he was denied due process of law for not being allowed to present further evidence considering that it was the accused Ramos and his counsel who were absent during the trial held

on February 12, 1990.

The records belie accused-appellant's contention. He was duly represented by a member of the Bar and was accorded all the opportunities to be heard and present evidence to substantiate his defense during the entire trial proceedings. As aptly pointed out by the Solicitor General:

"Initially, appellant and his co-accused were represented in court by Atty. Demaala, Sr. (p. 2, tsn March 28, 1988 a.m.). At said session, Atty. Demaala entered his appearance as counsel for both accused for purposes of direct examination, to be conducted by the prosecution. On cross-examination, Atty. Demaala appeared as counsel for both accused (p. 2, March 28, 1988 P.M.). On the trial court's sessions of June 1, 1988 and July 11, 1988 wherein Dr. Fabellon testified on his Autopsy Report and the deceased's mother on the expenditures incurred relative to her son's death, Atty. Demaala appeared for appellant Mallari while Atty. Rocamora appeared for accused Ramos. In the trial court's session of November 12, 1989, Atty. Rocamora entered his appearance as counsel "for the accused" (p. 2, tsn, November 13, 1989) without any qualification. The same appearance was again entered by Atty. Rocamora in the court's session of February 9, 1990.

"Since afore-named counsels had, at one court session or another, interchangeably appeared in court as counsel either for both accused or for a named accused, it is safe and logical to assume that both are corroborating counsels for both accused. Such that, when one counsel enters his court appearance in the absence of the other, such appearance was meant for both accused. This was evidently the court's perception, in the absence of any qualification of counsels' court appearances. In fine, there was an understanding between both counsels in this regard, consented to by both accused as shown by their silence. Moreover, if there is any truth that appellant Mallari was not represented or properly represented by counsel of his choice, why did he fail to immediately inform the court of it. Why did appellant wait until his conviction to raise this question? The inevitable conclusion is that he knew that he was properly represented by a counsel of his own choice." [5]

As to the accused-appellant's contention that he was denied due process when the trial court considered the case submitted for decision thereby depriving him of presenting further evidence for his defense, We simply find the same to be untrue. The trial court was merely following the continuous trial method mandated by the Supreme Court on certain pilot courts. Accused-appellant was not, in any way, deprived of his substantive and constitutional right to due process as he was duly accorded all the opportunities to be heard and to present evidence to substantiate his defense but he forfeited this right, through his own negligence for not appearing in court together with his counsel at the scheduled hearings.

Both accused are deemed to have waived their right to present other evidences considering that the trial court had repeatedly admonished them to resume the presentation of their defense as can be gleaned from the trial court's Order of November 13, 1989, to wit:

"The parties are advised that this being a continuous trial, the ninety-day (90) period to terminate this case starts today, November 13, 1989. x x x." [6]

And the trial court's Order of February 9, 1990, which reads:

"AS PRAYED FOR, let this hearing be continued on February 12, 1990, at 8:30 o'clock in the morning. The defense is reminded that its time to terminate its case is on the 12th of February, 1990, so it must be ready to close its case on that date." [7]

but which both accused ignored. It cannot be said then that they were denied due process as they were given ample opportunity to be heard during the trial of the case but they chose not to appear in court on said dates.

With regards to accused-appellant's contention that the trial court erred in finding that the killing of Edmundo Tuyac was attended by the qualifying circumstances of conspiracy, evident premeditation and treachery, We find

the trial court's justification in accordance with the law and evidence. The trial court found that the minibus driven by the accused-appellant stopped a foot away from the victim who was standing on the road when accused Ramos, who was seated inside the bus, suddenly stabbed the latter. Thereafter, accused-appellant responding to the accused Ramos order "let's go" or "sibat na tayo" speedily drove the minibus away from the scene of the crime.

These acts of the accused Ramos and accused-appellant Mallari positively indicate the existence of a common unlawful purpose to kill and both were united in seeing to its fulfillment by consciously and purposely adopting means and method to ensure its commission. Thus, a person may be convicted for the criminal act of another where, between them, there was conspiracy or unity of purpose and intention in the commission of the crime charged. Once the assent is established, each and everyone of the conspirators is made criminally liable for the crime actually committed by anyone of them,"[8] as in the case at bar. Furthermore, the positive testimonies of the prosecution witnesses show clear indicia of conspiracy. Indeed, the trial court was of the same opinion that conspiracy and treachery attended the killing of the victim. Said the Court:

"x x x The way the crime was executed gives a clear indication that this was the result of a pre-arranged or pre-planned killing that was neatly and precisely carried out. The Court takes into account that the two (2) accused had always been together as driver and conductor of the passenger jeepney of Mrs. Magura."

x x x x x x x x

"The Court also believes and holds that the stabbing of the victim was attended by treachery because while the victim was walking on the left side of the road, the passenger jeepney driven by accused Ricardo Mallari suddenly stopped without turning off its engine right in the place where he (victim) was and in that precise moment, the other accused, Josino Ramos fatally stabbed the victim. The assault was sudden and unexpected because nobody, let alone the victim knew or even anticipated subject passenger jeepney [minibus] would stop right beside him and he would be suddenly stabbed."[9]

To constitute treachery, two conditions must be present, to wit: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution were deliberately or consciously adopted.[10] In the present case, the position of accused Ramos, who was inside the minibus, from the victim, who was standing a foot away from the minibus, gave undue advantage to the former since the latter was not in a position to defend himself or to retaliate. Moreover, the location of the lone stab wound on the victim indicates that accused Ramos deliberately and consciously aimed for the victim's vital organ to ensure the commission of the offense without any risk to himself which the victim might make.

As regards the qualifying circumstance of evident premeditation, We agree with the accused-appellant that the same may not be appreciated against them absent proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out.[11]

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby **AFFIRMED** in toto. Costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.
Melo, J., no part.

[1] Penned by Judge Eustaquio Z. Gacott, Jr..

- [2] Rollo, p. 63.
- [3] Original Record, p. 2.
- [4] T.S.N., June 1, 1988, pp. 3-7.
- [5] Rollo, p. 316.
- [6] Original Record, p. 231.
- [7] Id., at p. 272.
- [8] People vs. Talla, 181 SCRA 133 [1990].
- [9] Rollo, p. 85.
- [10] People vs. Mabubay, 185 SCRA 675 [1990].
- [11] People vs. Peñones, 200 SCRA 624 [1991].

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