

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DANTE DONATO AND BEN CATUIRAN, ACCUSED-APPELLANTS.

G.R. No. 94530. March 06, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is an appeal from the decision of the Trial Court finding the accused-appellants, Dante Donato and Ben Catuiran, guilty of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua with all the accessories provided for by law; to pay, jointly and severally, indemnity to the heirs of the victim Perjulio Batarina the sum of P30,000.00; and to pay proportionately the cost.[1]

The Information charging the accused-appellants for the offense of murder reads:

"The undersigned, Provincial Fiscal, accuses Alberto Bautista alias Berting, Dante Donato, y Catuiran, Segundo Catuiran, Ben Catuiran y Bañares and Lito Mamanao of the crime of Murder, defined and penalized under Article 248, of the Revised Penal Code, committed as follows:

"That on or about March 24, 1980, in the municipality of Amulung, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Alberto Bautista alias Berting, Dante Donato, Segundo Catuiran, Ben Catuiran and Lito Mamanao together with Carlito Balbuena alias Andres alias Rene, who is already dead, and several John Does who were not identified, all armed with guns and bolos, conspiring together and helping one another with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously attack, assault, box, maul, kick and stab one, Perjulio Batarina, inflicting upon him several wounds on his body which caused his death.

"Contrary to law."[2]

Upon arraignment, accused Dante Donato and Ben Catuiran pleaded not guilty. Accused Segundo Catuiran jumped bail without being arraigned, while Alberto Bautista is at large.[3] Accused Lito Mamanao died during the proceeding, thus the case against him was dismissed.

Evidence presented by the prosecution showed that at about 9:00 o'clock in the evening of March 24, 1980 in Pacac Pequeño, Amulung, Cagayan, Dominador Pascual, a resident of the said place was called by Dante Donato and Alberto Bautista to come with them. He was brought to a hill where a certain Andres Balbuena was. The latter then ordered Donato and Bautista to call people to attend a meeting. Pascual, together with Donato and Bautista called the people of the barrio to a meeting which was held on a lot owned by Perjulio Batarina. They also fetched Perjulio Batarina and brought him to the same place.

During the meeting, which was presided by Andres Balbuena, Marcela Maguddayao, one of the companions of Balbuena, complained that the lot where the meeting was being held is a portion of her father's property which was grabbed by Batarina. Batarina was asked to come forward and was allegedly mauled by Andres Balbuena, Michael Tong, Alberto Bautista, Segundo Catuiran, Dante Donato, Ben Catuiran and others in the presence of the people who attended the meeting.

Batarina fell to the ground, but upon regaining consciousness, he ran towards his house. He was chased and upon catching up with him, the group of Balbuena tied his hands at his back then boxed and hacked him. Batarina was subsequently brought towards Tana, Amulung, Cagayan, to a place near a creek south of the house of Alberto Bautista and there Batarina was stabbed many times by the group of Balbuena. Ben Catuiran stabbed Batarina with a knife while he was still standing while Dante Donato hacked him. Andres, Balbuena then ordered Alberto Bautista to get a crowbar and spade and when the latter arrived, he hit Batarina's head with the crowbar and spade. Andres Balbuena then ordered that a grave be dug to bury Batarina's body. Batarina's remains was found only after nine days when Dominador Pascual pointed to where the grave was located.

The prosecution presented three (3) witnesses namely: Dominador Pascual, Dra. Dulce Baculi, who testified on the result of the autopsy she conducted on the body of the victim, and Melita Batarina, wife of the victim.

The accused-appellants interposed the following assignments of errors:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE THEORY OF THE PROSECUTION AND IN DISREGARDING THAT OF THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANTS OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THERE EXISTS CONSPIRACY IN THE CASE AT BAR.

IV

THE TRIAL COURT GRAVELY ERRED IN REJECTING ACCUSED-APPELLANT'S DEFENSE OF DENIAL AND ALIBI.

The appellants argued that the prosecution's evidence is sadly deficient to sustain a verdict of conviction beyond reasonable doubt.[4]

This contention is devoid of merit.

It has been held that the testimony of only one witness if credible and positive and if it satisfies the court beyond reasonable doubt is sufficient to convict.[5] More so, if corroborated by the other evidence on the record. The defense failed to successfully discredit or cast doubt upon the veracity and credibility of the prosecution witness identifying accused-appellants as among those who attacked Perjulio Batarina.

Accused-appellant Dante Donato denied any participation in the killing of Batarina which he attributed to nine armed men who struck and hit the victim with the butts of their guns. This contention, however, was disregarded by the trial court as being contrary to the autopsy findings, Exhibits "A" and "A--1". Said the trial court:

"If it were true that Batarina was hit by butts of guns, the effects would have been marked by swellings, lacerated wounds, contusions and abrasions. The findings of the examining doctor belies his claim for there were fourteen stab wounds, two cut wounds and only one lacerated wound with slight fracture of the skull."[6]

(underscoring supplied)

Not only is Donato's assertion not supported by corroborative evidence, the trial court also noticed that while giving his testimony, Donato lacked candor and was insincere in responding.

Ben Catuiran's defense is likewise predicated on simple denial and alibi. That at 9:00 o'clock that evening of March 24, 1980, he left the meeting and went home to sleep. He claimed that nothing unusual happened at the meeting. In disregarding his defense of alibi, the trial court stated as follows:

"The accused' [sic] defense of denial and alibi are too fragile to overcome the overwhelming evidence against him.[7] For the defense of alibi to succeed, the accused must establish physical impossibility and improper motive of the prosecution witness, which the accused failed to prove.[8] According to the accused, Tana is only one and a half kilometers to the meeting place at Pacac Pegueño. He resided in Tana. It is more likely then that he was with the group of persons who went to his very barangay where Batarina was killed.[9]

The sole witness to the killing, Dominador Pascual related in his testimony that Andres Balbuena and his companions, including appellants took turns in stabbing and hacking Batarina.[10]

"Q. Now when they arrived in that place what happened next?

A. They stabbed him for many times.

Q. Who were those persons who did that?

A. All the company of Andres Balbuena, sir.

Q. At the time that they were doing that to him, where was Ben Catuiran?

A. They were all beside Perfulio Batarina.

Q. How about Dante Donato where was he at that time?

A. They were all with the group, sir.

Q. And what was Ben Catuiran doing when he so [sic] Perfulio Batarina?

A. All of them are in the group, sir.

Q. What was he doing?

A. He also used his knife (immuco), sir.

Q. What do you mean by that "he also used his knife"?

A. He also used it to stab Perfulio Batarina.

Q. Whom did he stab?

A. It was Perfulio Batarina.

Court:

Q. How many times did you see Ben Catuiran stabbed Batarina?

A. It was only once which I saw.

Q. What part of the body of Batarina?

A. I don't know.

Q. What was the position of Batarina when Ben Catuiran stabbed him?

A. Perfulio Batarina was standing sir.

Q. What about Dante Donato, what participation did he make during the stabbing?

A. He hacked also Perfulio Batarina.

Q. What part of the body was hacked by Dante Donato?

A. I only saw that Dante Donato hacked Perfulio Batarina but I don't know what part of the body."

Pascual further testified that he could not calculate how many persons stabbed Batarina because each and every person who came near him stabbed him.

The testimony of Pascual was supported by the autopsy findings of Dra. Baculi, which was reduced to writing and presented as Exhibits "A" and "A-1", thus:

"FINDINGS:

1. Both hands tied with a plastic rope

2. Chest tied with a plastic rope

3. State of advanced decomposition

A. Stab wound at the left anterior portion of the neck about 2 inches long and 1/2 inch deep.

B. Stab wound at the left lateral portion of the neck about 2 inches long and 1/2 inch deep.

C. Stab wound at the right hypogastric region with a portion of the large intestine exposed.

D. Stab wound at the 3rd intercostal space, right side about 1 1/2 inches long and 1/2 inch deep.

E. Stab wound at the level of the 2nd intercostal space left side about 2 inches long and 1/2 inch deep.

F. Stab wound at the level of the 6th intercostal space left side about 2 inches in length and 1/2 inch deep.

G. Stab wound 1 inch long just about the level of the umbilicus 1/3 inch deep.

H. Stab wound anterior portion at the left side, at the level of the 8th rib about 2 inches long and 1/8 inch deep.

I. Lacerated wound at the right side frontal region with slight fracture of the skull about 2 1/2 inches long.

J. Stab wound at the left of the 4th intercostal space 2 inches long and 1 1/2 inches deep.

K. Cut wound about 4 1/2 inches long at the right antero posterior of the neck cutting the arteries and cartilages.

L. Cut wound at the right upper forearm antero lateral portion about 4 1/2 inches long cutting the skin muscle.

M. Stab wound at the left posterior portion of the scapular 2 1/2 inches long and 1/2 inch deep.

N. Stab wound at the 3rd vertebral angle 1 1/2 inches and 1/8 inch deep.

O. Stab wound right posterior portion at the level of the 6th ribs 2 1/2 inches long and 1 inch deep.

P. Stab wound at the scapular region right side about 1 1/2 inches long and 1/2 inch deep.

Q. Stab wound just below the nape of the neck right side posterior portion about 1/2 inch long & 1/2 inch deep.

CAUSE OF DEATH:

Shock due to massive hemorrhage caused by multiple stab and cut wounds & slight fracture of the skull."

In her testimony, Dra. Baculi said that wounds A, B, C, D, E, F, G, H, J, K, L, M, N, O, P and Q could have been caused by either a sharp edge or sharp pointed instrument while wound I by a blunt instrument. Wound C was fatal because as a consequence thereof, a portion of the large intestine was exposed. Wound D was likewise fatal because the upper lobe of the right lung was hit. Wounds A, B, C, and D could have been inflicted frontally while the victim was either standing, sitting or lying.[11]

Considering the testimonies of the prosecution witnesses, the trial court concluded that there was conspiracy among the assailants:

"Although witness Pascual did not state the number of persons who inflicted injuries upon the victim, he emphatically declared that Catuiran stabbed with a knife Batarina and that Donato hacked the victim. In any event, their acts in mauling Batarina up to the time that they stabbed and hacked him clearly reveal that they are co-conspirators and are thus liable."[12]

Indeed conspiracy existed in the slaying of the victim. Appellants were with Andres Balbuena when they chased the victim towards his house and when they caught up with him they repeatedly boxed and hacked him. They were also with the group that brought the victim to a place near a creek in Tana, where they hacked and stabbed him. There was unity of purpose, a preconceived plan and concerted action in liquidating the victim.

Conspiracy like any other ingredient of the offense, must be proved as sufficiently as the crime itself through clear and convincing evidence, not only by mere conjectures. Proof beyond reasonable doubt is required to establish a finding of criminal conspiracy.[13] There is conspiracy among the perpetrators of the crime where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. This need not be established by direct evidence but may be proved through a series of acts done by each of the accused in pursuance of the common unlawful purpose.[14]

In the case before Us, it can be gleaned from the circumstances that there was indeed a concerted effort among the assailants to inflict physical harm on the victim. Batarina was mauled and hacked simultaneously. It is now immaterial who inflicted the fatal wound. It has been held that when the accused performed specific acts incidental to the commission of the crime with such closeness and coordination indicative of a common purpose, conspiracy may be inferred from those circumstances.[15]

As to the attending circumstance of treachery the trial court correctly held, thus:

"... The evidence furnished by (Dominador) Pascual shows that Batarina's hands were tied at his back and while standing he was stabbed with a knife by Ben Catuiran, Dant(e) Donato hacked him and the group of several persons led by Andres Balbuena stabbed him several times."[16]

Batarina's hands having been tied, there was no opportunity for him to defend himself from the attacks of his assailants, who continued assaulting him at no risk to their lives. He was immobilized to render impossible any retaliation on the part of the deceased.

Nevertheless, evident premeditation cannot be appreciated as it was not sufficiently established by the prosecution.

In view of the foregoing We affirm the decision of the trial court finding appellants guilty beyond reasonable doubt of the crime of murder. The indemnity to the heirs of the deceased is raised to P50,000 in view of present jurisprudence.[17]

WHEREFORE, the appealed decision is hereby affirmed with the aforesaid modification as to indemnity.

SO ORDERED.

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

- [1] Rollo, p. 58.
- [2] Rollo, p. 3.
- [3] Rollo, p. 32.
- [4] Appellants' Brief, p. 10.
- [5] *People v. Salondre, Jr.*, G.R. 59438, February 28, 1989, 170 SCRA 763.
- [6] Decision, pp. 25-26.
- [7] *People v. Paton-og*, 115 SCRA 675.
- [8] *People v. Alfonso*, 153 SCRA 487.
- [9] Decision, pp. 26-27.
- [10] T.S.N., July 3, 1985, pp. 10-11.
- [11] T.S.N., July 20, 1983, pp. 6-11.
- [12] Decision, p. 20.
- [13] *People v. Cruz*, G.R. 74048, 191 SCRA 377 (1990).
- [14] *People v. Bicog*, G.R. 76529, 187 SCRA 556 (1990).
- [15] *People v. Salcedo*, G.R. 78774, 172 SCRA 78 (1989).
- [16] Decision, p. 27.
- [17] *People v. Sison*, G.R. No. 86455, 189 SCRA 643 (1990).

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