

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. IGNACIO TONOG, JR., ALIAS ABDUL TONOG, ALLAN SOLAMILLO, “JOHN DOE” AND “PETER DOE”; ACCUSED-APPELLANTS.

G.R. No. 94533, February 04, 1992

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Charged along with three (3) others, Ignacio Tonog, Jr., alias "Abdul" was convicted of Murder and sentenced to reclusion perpetua in a Decision rendered by the Regional Trial Court of Dumaguete City, Branch XXXIV,[1] promulgated on 3 July 1990. He is now before us, seeking a reversal. The cases against his co-accused, Allan Solamillo and two (2) other unidentified individuals, were archived as the latter three have eluded arrest and have yet to be apprehended.

The evidence of the prosecution linking the accused-appellant to the crime charged discloses that on 25 April 1988, at around 6:00 o'clock in the morning, the Dumaguete City Police Station received a report that there was a "lifeless person found lying at the crossing of Cantil-e, Dumaguete City" (TSN, 6 January 1989, p. 6). The deceased, who had stab wounds all over his body, was later identified as Efren Flores, son of the Deputy Station Commander of the Dumaguete City Police Force (Id., pp. 2-3).

That same morning, after receiving the report, Patrolman Walter Leguarda went to the place where the body was found and conducted an investigation. He learned from his investigation that a "motorcab" with side car number 0164 had stopped near the place where the deceased was found. His investigation likewise revealed that "the person responsible for the death of Efren Flores was a certain Abdul Tonog of Bacong, Negros Oriental" (Id., p. 6). Pat. Leguarda based his conclusion principally from the information given to him by one Liberato Solamillo (Id., p. 12). He was also informed by the girlfriend of Abdul Tonog's co-accused, Allan Solamillo, that prior to the stabbing incident, "there were grudges between Efren Flores and Abdul Tonog" (Id., p. 9).

In the afternoon of that same day, 25 April 1988, Pat. Leguarda, together with P/Sgt. Orlando Patricio and other police operatives, without a warrant (Id., p.13), "proceeded to Bacong, Negros Oriental, to look for and effect the apprehension of Abdul Tonog," (Id., pp. 6-7) who, upon being "invited for questioning," voluntarily went with the law enforcers to the police station, unaccompanied by counsel (Id., p. 13).

P/Sgt. Patricio narrated that while they were on their way to the police station on board the patrol jeep, he noticed the presence of blood stains on the pants of the Accused-appellant. When asked where the stains came from, the latter allegedly answered that they were blood stains from a pig (TSN, July 12, 1989, pp. 4-5). He was then requested to take off his pants for examination at the PC/INP Crime Laboratory in Cebu, to which request, he supposedly acceded upon reaching the police station (Id.).

Also at the police station, the Accused-appellant cried and looked for the Station Commander. He then confessed to the officer-in-charge of the police station (TSN, January 6, 1989, p. 7), which confession was not recorded nor reduced to writing (Id., p. 14). He admitted that he was one of the assailants of Efren Flores and that he used his

Batangas knife (Id., p. 7).

After about a month, due to lack of funds, Policewoman Vilma Beltran brought and turned over the "blood-stained" pants and stainless knife, which was recovered by Pat. Patricio from the grassy portion where the deceased was found (TSN, July 12, 1989, p. 15), to the PC/INP Crime Laboratory in Cebu (TSN, August 23, 1989, p. 4).

The forensic chemist thereat affirmed that the blood stains found on the pants of the Accused-appellant and those on the stainless knife were of type "O" (Id., p. 14), the same as the victim's blood type (TSN, December 4, 1989, p. 3).

Liberato Solamillo, whom Pat. Leguarda had investigated, was likewise called to testify. He attested that around 7:00 o'clock in the evening of 24 April 1988, he was drinking with the Accused-appellant and the latter's co-accused, Allan Solamillo, at Nora's Store located in Bacong, Negros Oriental (TSN, February 20, 1989, pp. 2-3). Accused-appellant then left at around 9:30 p.m. together with a certain Patrolman Biyok on the latter's motorcycle (Id., pp. 6-7). At 11:00 o'clock that evening, Allan and Liberato then headed for Pat. Biyok's house to look for the Accused-appellant. They rode on a "motorcab" with side car number 0164, the "motorcab" regularly driven by Allan. Upon reaching Pat. Biyok's house, they were informed that the Accused-appellant was not there. They then saw the victim, Efren Flores, who requested that he be conveyed to Dumaguete City (Id., p. 8).

Allan asked Liberato to stay behind so that the former could take Efren Flores to Dumaguete City. Liberato stayed behind and conversed with Pat. Biyok until 11:45 that evening. After Allan failed to return, Liberato decided to ride with a certain Gorio, who happened to pass by, on the latter's "pedicab" (TSN, March 8, 1989, p. 3).

On his way home, Liberato saw the "motorcab" with side car number 0164 parked outside a store. He alighted from Gorio's "pedicab" and proceeded to where the "motorcab" was. He saw Accused-appellant, Abdul Tonog, inside the "motorcab." He then heard Allan tell Elvis Bueno, son of the owner of the store: "Kuha na gyod, 'Vis.'" (He is already taken, 'Vis. (Id., pp. 4-5). He also noticed the presence of blood stains (many red spots) on Allan's fatigue shirt, which was not the same shirt the latter was wearing when they were drinking. Allan then allegedly got angry when asked why there seemed to be red spots on his shirt (Id., p. 6).

The City Health Officer also took the witness stand. It was he who examined the body of the deceased. His findings revealed that the corpse of victim, Efren Flores, had twenty-seven (27) wounds, several of which were fatal, and which may have been caused by a long sharp-bladed instrument (TSN, May 25, 1989, pp. 3-6).

For his part, Accused-appellant categorically denied having had anything to do with the victim's death. He asseverated that at around 7:00 o'clock in the evening of 24 April 1988, he was drinking with his co-accused, Allan Solamillo and prosecution witness, Liberato Solamillo, at Nora's Store in Bacong. During the drinking spree, a heated argument ensued between him and Allan, prompting the latter to fire his gun. Accused-appellant immediately left the place to look for a policeman who could arrest Allan and confiscate the latter's gun (TSN, February 13, 1990, p. 9). Some policemen arrived but failed to find Allan's gun.

Afraid to spend the night in Bacong, where he shares his place with Allan, Accused-appellant, at around 9:30 p.m., requested Pat. Biyok to convey him to Tinago where he could stay for the night (Id.). Upon arrival at Tinago, he immediately slept and woke up at 7:00 o'clock the following morning.

Later that afternoon, after Liberato Solamillo pointed to Accused-appellant and told the policemen: "That fellow is Abdul. He is Abdul" (Id., p. 10), he was taken to the Dumaguete City Police Station and detained. He disavowed having had any conversation with any policeman on their way to the police station (Id.).

Accused-appellant averred that at the police station, he was told to admit the killing of Efren Flores. The police authorities also ordered him to take off his pants (Id., p. 21). He vehemently denied that his trousers were stained with blood (Id., pp. 11, 21). He also denied having known or having met the victim (Id., p. 12).

After trial, the Court a quo rejected the alleged Accused-appellant's extra-judicial confession, as the latter was not represented by counsel and because it had not been reduced to writing. Nonetheless, on the basis of circumstantial evidence, it rendered a judgment of conviction, the dispositive portion of which is quoted hereunder:

"WHEREFORE, the accused Ignacio Tonog, Jr., alias "Abdul" Tonog is hereby found guilty beyond reasonable doubt of the crime of murder and the court hereby imposes on him the penalty of Reclusion Perpetua.

Accused is likewise ordered to indemnify the heirs of the deceased victim the sum of THIRTY THOUSAND PESOS (P30,000.00) and to pay the costs.

"The case filed against his co-accused Allan Solamillo and two other unidentified individuals are hereby ordered archived, without prejudice to their further prosecution, considering that until this time they have not yet been apprehended and still remain at large" (Rollo, pp. 180-181).

Accused-appellant, still professing innocence, now faults the Trial Court for admitting in evidence his "acid-washed maong" pants and the stainless knife; in declaring that sufficient circumstantial evidence was adduced to warrant his conviction; in concluding that the presumption of innocence in his favor has been overcome; in holding that the killing of the victim was attended by the qualifying circumstance of cruelty; and in appreciating the aggravating circumstance of the use of a motor vehicle in the commission of the crime (Appellant's Brief, pp. 3-4).

Except for the aggravating circumstances considered, we find ourselves in disagreement.

The "acid-washed maong" pants (Exh. D) were admissible in evidence. They were taken from Accused-appellant as an incident of his arrest. It may be that the police officers were not armed with a warrant when they apprehended Accused-Appellant. The warrantless arrest, however, was justified under Section 5(b), Rule 133 of the 1985 Rules of Criminal Procedure providing that a peace officer may, without a warrant, arrest a person "when an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it." In this case, Pat. Leguarda, in effecting the arrest of Accused-appellant, had knowledge of facts gathered by him personally in the course of his investigation indicating that Accused-appellant was one of the perpetrators.

The "maong" pants having been taken from Accused-appellant as an incident to a lawful arrest, no infirmity may be attributed to their seizure without a warrant. Section 12 of Rule 126 of the Rules of Court explicitly provides that "A person charged with an offense may be searched for dangerous weapons or anything which may be used as proof of the commission of the offense."

We come now to the threshold question of whether or not there was sufficient circumstantial evidence to warrant Accused-appellant's conviction, enough to overcome the presumption of innocence in his favor.

It is undisputed that there was no eyewitness to the crime. But it is also well-settled that guilt may be established through circumstantial evidence. Direct evidence is not always necessary to prove the guilt of the accused (*People v. Aldeguer*, No. 47991, April 3, 1990, 184 SCRA 1 at 10, citing *People v. Roa*, No. 78052, November 8, 1988, 163 SCRA 783). For circumstantial evidence to succeed, the following requisites must be present, namely: (1) there must be more than one circumstance; (2) the inferences must be based on proven facts; and (3) the combination of all the circumstances produces a conviction beyond reasonable doubt of the guilt of the accused

(Sec. 5, Rule 133, Rules of Court; *People v. Alcantara*, No. L-74737, 29 July 1988, 163 SCRA 783, at 786).

Furthermore, in determining the sufficiency of circumstantial evidence to support a conviction, each case is to be determined on its own peculiar set-up and all the facts and circumstances are to be considered as a whole and, when so considered, may be sufficient to support a conviction, although one or more of the facts taken separately would not be sufficient for this purpose. (*People v. Jora*, Nos. L-61356-57, September 30, 1986, citing 23 CJS p. 555)

The foregoing requisites have been met. The chain of events circumstantially point to Accused-appellant's guilt.

As testified to by prosecution witness, Liberato Solamillo, he, Accused-appellant, and Allan Solamillo were drinking together in the evening of 24 April 1988 at around 7:00 P.M. Accused-appellant left at around 9:30 P.M. together with Pat. Biyok on the latter's motorcycle. At around 11:00 P.M., because Accused-appellant had not yet returned, Liberato and Allan headed for Pat. Biyok's house to look for him (Accused-appellant). They rode on a "motorcab" with side car number 0164, the "motorcab" regularly driven by Allan for hire. They did not find Accused-appellant at that house. They then saw the victim, Efren Flores, hail a pedicab to go to Dumaguete City.

Allan obliged, using the "motorcab" with side car number 0164, and drove off with the victim. In doing so, Allan asked Liberato to stay behind. The latter did as bidden and conversed with Pat. Biyok until 11:45 that evening. Since Allan failed to return, Liberato decided to go home and ride with a certain Gorio, who happened to pass by, on the latter's pedicab.

Notably, within that span of time, both Accused-appellant and Allan had mysteriously disappeared from the group of Pat. Biyok and Liberato, who continued trying to trail their whereabouts.

On his way home, Liberato saw the "motorcab" with side car number 0164, which was used by Allan to transport the victim, parked outside a store. He alighted from Gorio's pedicab and proceeded to where the "motorcab" was. He saw Accused-appellant seated therein. He also saw Allan inside the store buying sardines and Pepsi. He then heard Allan tell one Elvis Bueno, son of the storeowner: "Kuha na gyod, Vis." (He is already taken, 'Vis'). Then Liberato noticed the presence of blood stains on Allan's fatigue shirt, which was not the same shirt the latter was wearing when they were drinking. When queried on why there seemed to be red spots on his shirt, Allan reacted angrily.

As the events unfolded, it is evident that Accused-appellant and Allan had been together during the time that each one separately disappeared from Liberato's sight during which period they had done away with the victim. The victim was last seen with Allan in the latter's "motorcab." That was around 11:00 o'clock in the evening. Liberato waited for him to return. He never did. Roughly around midnight, the same "motorcab" was seen outside a store. Accused-appellant was in it, while Allan was in the store buying some items. Blood stains were noticed on Allan's shirt. Later, at the police station, blood spots were also seen on Accused-appellant's pants. The latter tried to conceal the crime by stating that the blood spots were those of a pig. Unwittingly, therefore, he admitted the presence of those stains except that he attributed them to some other cause.

Note should also be taken of the proven fact that investigation by Pat. Leguarda revealed that the "motorcab" with side car number 0164, the vehicle that Allan drove with the victim as his passenger, was seen near the spot where the victim's body was discovered. This lead enabled Pat. Leguarda to zero-in on two suspects, Accused-appellant and Allan, which eventually led to the apprehension of the former the very same day.

Most telling of all is the proven fact that laboratory examination at the PC/INP Crime Laboratory of the blood stains on Accused-appellant's "acid-washed maong pants" revealed that they were positive for human blood, type "O," the same blood type as that of the victim (Exh. "J"). Again of significance is another proven fact that the

stainless knife recovered from the crime scene, upon similar laboratory examination, exhibited blood stains of the same blood-type "O."

While it may be that Accused-appellant had denied that his pants had blood stains, he nevertheless admitted that the pants subjected to laboratory testing and presented by the prosecution in this case were the same pair he wore in the evening when he was drinking with Allan and Liberato and on the following day when he was brought to the police station.

The foregoing circumstances, considered as a whole, and the inferences from which are derived from proven facts, constitute an unbroken chain that point to no other rational hypothesis except that of guilt of Accused-Appellant (*People v. Jara*, *supra*).

Liberato's credibility has not been overcome. On the contrary, as testified to by him, Accused-appellant admitted that he, Liberato and Allan had a drinking spree in the early evening of 24 April 1988. Accused-appellant's testimony, however, that he and Allan had a heated argument at the time and that Allan had fired a gun is belied by the fact that the police did not find such a gun on Allan's person, according to Accused-appellant's own version. Furthermore, Accused-appellant's declaration that he became afraid of Allan, by reason of his having fired a gun, is negated by the circumstance that they were together in front of a store at around midnight in the evening of 24 April 1988 and had eaten together thereafter.

As found by the Trial Court, there is no reason for Liberato to concoct a false story incriminating his cousin, Allan, and Accused-appellant, an acquaintance of his.

We agree with the defense, however, that the aggravating circumstance of cruelty should not have been appreciated by the Trial Court. For this aggravating circumstance to be appreciated, it is essential "that the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commission" (Art. 14 (21), Revised Penal Code). There having been no eyewitness to the commission of the crime, it can not justifiably be concluded that the wrong done had been deliberately augmented. The mere fact that wounds in excess of that necessary to cause death were inflicted upon the body of the victim does not necessarily imply that such wounds were inflicted with cruelty and with the intention of deliberately and inhumanly increasing the sufferings of the victim (*People v. Siblag*, 37 Phil. 703 1918). It is necessary to show that the accused deliberately and inhumanly increased the victim's sufferings (*People v. Luna*, No. L-28812, July 31, 1974, 58 SCRA 198; *People v. Manzano*, Nos. L-33643-44, July 31, 1974, 58 SCRA 250). The number of wounds is not the criterion for the appreciation of cruelty as an aggravating circumstance (*ibid.*).

The aggravating circumstance of use of a motor vehicle should neither be appreciated, the same not having been indubitably proven under the environmental facts of the case.

What may be appreciated, however, is the aggravating circumstance of abuse of superior strength, also charged in the Information. There is ample evidence to show that two individuals, one of them Accused-appellant, armed with a knife, attacked a single person, the victim. It is obvious that the perpetrators of this crime took advantage of their combined strength in order to consummate the offense. By reason of their superiority, not only in numbers but also in weaponry, they were able to inflict twenty-seven (27) stab wounds, fourteen (14) of which were fatal.

In fine, Accused-appellant's conviction for the crime of Murder is proper. The indemnity to the heirs of the victim, however, should be increased to P50,000.00 in line with current jurisprudence.

WHEREFORE, the judgment appealed from is hereby AFFIRMED, except with respect to the indemnity, which is hereby increased to P50,000.00. Costs against accused-appellant, Ignacio Tonog, Jr.

SO ORDERED.

Paras, Padilla, Regalado, and Nocon, JJ., concur.

[1] Hon. Rosendo B. Bandal, Jr., Presiding.

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