

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BERNARDO PERAN, FELIX PIQUERO, AND JUNIOR NARIDO, ACCUSED-APPELLANTS.

G.R. No. 95259, October 26, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

On February 8, 1990, the Honorable Celso P. Lagro, presiding judge of the Regional Trial Court, Branch 21, Cagayan de Oro rendered judgment in Criminal Case No. 89-051 entitled “People of the Philippines vs. Bernardo Peran, et. al.”, convicting the three accused for murder as follows:

“WHEREFORE, this Court finds Bernardo Peran, Fortunato Narido, Jr., and Felix Piquero all guilty beyond reasonable doubt of the crime of Murder. There being no mitigating or aggravating circumstance attendant to the commission of the offense and pursuant to the ruling laid by the Supreme Court in the cases of *People vs. Millora*, G.R. No. 38968, February 9, 1989; *People vs. Almario*, G.R. No. 69374, 16 March 1989; *People vs. Muñoz*, G.R. No. 38968-70, 9 February 1989, where our Supreme Court held:

‘The penalty for the crime of Murder is Reclusion Temporal to Death. If the crime has not been attended by any aggravating or mitigating circumstance, the penalty shall be applied in its medium period which is Reclusion Perpetua.’

“Consequently, this Court hereby sentences all and each of the accused to suffer the penalty of Life Imprisonment and to indemnify jointly and severally the heirs of the late Jose Namoc in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

“The accused being detention prisoners, they are entitled to four/fifth (4/5) credit only of the preventive imprisonment that they have undergone, it appearing that they have not agreed in writing to abide by the same disciplinary rules imposed on convicted prisoners.

“SO ORDERED.”[1]

The accused-appellants appealed from this decision assigning the following errors:

I

THE LOWER COURT ERRED IN FINDING THE TESTIMONY OF ROBERTO CAWASAN CREDIBLE;

II

THE LOWER COURT ERRED IN NOT FINDING THE TESTIMONY OF BERNARDO PERAN AND HIS CORROBORATIVE WITNESSES CREDIBLE;

III

THE LOWER COURT ERRED IN NOT ACQUITTING THE THREE (3) ACCUSED FOR FAILURE OF THE PROSECUTION TO PROVE THE GUILT BEYOND REASONABLE DOUBT;

IV

IF EVER THE ACCUSED ARE GUILTY OF A CRIME, IT IS ONLY HOMICIDE AND NOT MURDER;

V

ASSUMING THE ACCUSED ARE GUILTY OF MURDER THE PENALTY IMPOSABLE IS FROM 18 YEARS TO 20 YEARS AND NOT LIFE SENTENCE.

The facts of the case as may be gathered from the evidence presented at the trial may be summarized as follows:

In the morning of May 10, 1988 at about 7:00 o'clock, in the presence of prosecution witness Roberto Cawasan, Jose Namoc, the deceased, and Bernardo Peran, one of the accused-appellants, engaged in an altercation regarding the ownership of a puppy wherein the latter ended up fuming mad. When Bernardo left, witness Roberto and Jose agreed to go to the house of Castor Namoc, but Jose asked Roberto to go ahead of him because he still had to feed the chickens.

Roberto left immediately. While he was barely 25 meters from Jose's house, he looked back and saw the three accused-appellants heading towards Jose's house. Worried about what may happen, he decided to stay and watched the trio. He saw Bernardo Peran and Junior Narido take Jose, holding both of his arms, and lead him towards the creek, with Felix Piquero following from behind.

Eyewitness Roberto Cawasan hid behind the tall grass and observed what the three would do with Jose. Upon reaching the creek, Bernardo got hold of a piece of wood, about two feet long and as thick as an arm, and hit the victim on the forehead. The victim instantly fell. Wherefore, Junior Narido gave the victim second blow, again hitting him in the forehead, with a stone. The third accused, Felix Piquero, gave the last blow with his fist, hitting the victim on his mouth while holding him on his head.

Roberto immediately ran away and went towards his house after this incident. He kept silent concerning the crime he witnessed, for fear of his life.

Several days later, Castor Namoc, a cousin of the deceased went to the latter's house and was surprised to find his house in disarray. Worried of what may have caused the disappearance of Jose, he formed a search team composed of his neighbors and Bernardo Peran. After forty seven (47) days of searching, on June 25, 1988 they finally found his cadaver in an advanced state of decomposition, near the Calabasa Waterfalls. A close examination of the victim's remains revealed a broken forehead and three missing teeth.

The next day, June 26, 1988, Castor in company with the Barangay Captain and several other persons, one of whom was Roberto, went back to the Calabasa Waterfalls to retrieve the remains of Jose and give it a decent burial.

On June 27, 1988, eyewitness Roberto broke his silence. He went to the Barangay Captain, Redemptor Salvallon and narrated the entire story, pointing to the three accused as the perpetrators of said crime. On the very same day, Bernardo Peran was invited by the Barangay Captain for questioning. Bernardo was picked up and brought to the house of a certain Fuentes where he admitted killing Jose and executed a confession, implicating his two other co-accused, Junior Narido and Felix Piquero. He also revealed to Salvallon where these two other accused may be

found. This disclosure by Bernardo led to the arrest of his two co-accused.

Upon arraignment, on March 30, 1989, all three accused entered a plea of not guilty. At the trial, Bernardo repudiated the alleged confession saying that it was signed under duress, and presented another version of how the victim died.

According to him, Jose's death, which was on May 13, 1988 (not May 10, 1988, as alleged by the prosecution), was caused by an unfortunate accident. While he and the victim were out on said Calabasa Waterfalls for the purpose of catching frogs, the latter fell from the top of the falls, hit his head and died instantly. He never told anybody of the freak accident because he was afraid he would be blamed for Jose's death.

The Trial Court gave credence to the version of the prosecution, rejected the version of the accused as incredible, and convicted the three accused of murder qualified by conspiracy, treachery and superior strength.[2]

The first three assigned errors concerns the reliability of the findings of fact of the trial court and these may be treated jointly.

The general rule is that findings of the judge who tried the case and heard the witnesses are not to be disturbed on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered, might affect the result of the case.[3] Such findings, except for good cause, are generally not disturbed on appeal.[4]

Where the issue concerns the credibility of witnesses, the trial court's findings gains greatest significance, because it had seen the witness face to face at the witness stand and observed their demeanor closely. The trial courts are found to be in better position than the appellate courts, who rely entirely on the inanimate transcript of stenographic notes of the case. Thus, the findings will generally be upheld on appeal save for exceptional cases. We find no such exceptions in the case at bar, which may warrant the reversal of its verdict.

Eyewitness Roberto Cawasan, at the time of the incident, was a boy of sixteen years of age and had not had an opportunity for education above the second grade. As the trial court did, we find it most natural for him to be overcome by the fear for his life should he divulge the crime to the authorities. It would be too demanding for us to expect a barrio boy of such age and level of education to know that he should report to the authorities this kind of crime at the earliest opportunity, lest his testimony may be discredited for such a delay. Thus, we reiterate this court's rulings that fear of reprisal is a valid excuse for the momentary silence of a prosecution witness.[5]

The appellants next contend that Roberto's testimony had statements inconsistent with those of the other witnesses. According to him, the victim's corpse was left in the same creek as that where he saw the victim killed by the three appellants, whereas the members of the search team actually found the corpse at the Calabasa Waterfalls. This matter is not of such significance as compared to the circumstances and the very act of killing which constitute the elements of the crime. We take note of the fact that Roberto testified that after Felix Piquero gave the third blow, he fled from the scene of the crime for fear of being discovered by the appellants. He did not see what transpired thereafter. This explains the apparent inconsistency as to the location of the victim's body after the victim was killed. We are not discounting the possibility that the victim's body was transferred to another place after he was killed to hide the body. This is not the first time for us to rule that inconsistencies in minor details do not impair a witness' credibility but rather strengthen it.[6]

In a last attempt to discredit the eyewitness, the appellants pointed to the possibility of Roberto testifying falsely against appellants to counter-act suspicion against himself (Roberto) and his family because, for some reason or another, the Cawasan family and the victim Jose Namoc previously had some feud concerning a piece of agricultural land. This claim is an afterthought for nowhere in the records did we find evidence to this effect. We

find no proof on record that witness Roberto had ill motive to testify adversely against the defendants nor did he serve as witness for the prosecution to draw any suspicion away from him. This court cannot sustain such theory even if the appellants claim that the witness harbored a grudge or hatred against them, to such extent as to implicate them for a crime so grave as murder.[7]

We find no circumstance whatsoever to discredit eyewitness Roberto Cawasan and we afford full faith and credit to his version. Once the prosecution witness is afforded full faith and credit, the defense version necessarily stands totally unworthy of belief.[8]

In disregarding the version of accused-appellant Bernardo, we find further support in the fact of his silence despite allegedly having knowledge of the circumstance surrounding the death of Jose. His invocation of the doctrine laid down in *People vs. Cunanan*,[9] which incidentally the lawyer for the appellant misquoted and even took out of context, from which he intends to draw an excuse for his silence even constitutes an implied admission of his guilt. A guilty conscience makes a man such a coward as to bring himself out in the open, whereas a strong conviction of being innocent makes him fearless. The accused-appellant's situation differs from that of eyewitness Roberto Cawasan in that the latter came out to testify in open court out of his own volition while defendant was only forced to present a version different from that of the latter, as a matter of self preservation for his own defense.

With regards to the other two accused-appellants, Junior Narido and Felix Piquero, there was no evidence that they could not have possibly been at the scene of the crime at the time and date of its commission. Thus, their defense of alibi necessarily fails.[10] Besides, their alibi cannot prevail over the positive identification by eyewitness Roberto Cawasan and for an alibi to be given full faith and credit it must be clearly established and must not leave any doubt as to its plausibility and verity.[11]

It has been established beyond reasonable doubt that Jose Namoc, was killed by accused-appellants Bernardo Peran, Fortunato Narido, alias Junior Narido and Felix Piquero. What remains to be determined, however, is whether or not the Trial Court erred in convicting them for murder under the information which reads:

“On or about 7:00 o'clock in the morning of May 10, 1988 at Sitio Calabasa, Barangay Molugan, Municipality of Claveria, Misamis Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused/s with deliberate intent to kill, did then and there, willfully, unlawfully and feloniously conspire, confederate and help one another in attacking, assaulting and killing the victim Jose T. Namoc, by first striking a piece of wood on the forehead of the victim and afterwards, when enfeebled and unable to defend himself as the victim lay on the ground, one of the other accused smash a big stone also on his forehead and thereafter box the other accused which concerted action caused the direct and immediate death of said victim. With intent to conceal the corpus delicti of the crime, the dead body of the victim was hidden in a small cave near the Calabasa waterfall.

CONTRARY TO and in violation of Article 248 of the Revised Penal Code.” [12]

The trial court erroneously appreciated conspiracy as a qualifying circumstance. Although there was conspiracy in the case at bar, as evident from concert of action and unity of purpose, it could not elevate the motive of the crime to a more serious offense.

Conspiracy is neither aggravating nor qualifying but rather a manner in incurring collective criminal liability among every co-conspirator in an equal degree, whereby the effect is that the act of one becomes the act of all. The presence of conspiracy cannot per se qualify a killing to murder.

The trial court likewise erred in holding that the killing was qualified by treachery. Treachery has neither been alleged nor has it been proved by the evidence. Treachery cannot be presumed, it must be proved by clear and

convincing evidence or as conclusively as the killing itself.[13]

Bernardo Peran and Junior Narido held the victim while Felix Piquero followed them on their way from Jose's house in the direction of the creek. When they reached the place, Bernardo Peran hit the victim with a piece of wood while facing the victim. There was no other description offered by the witness on how the attack was carried out. We cannot presume the presence of treachery in the manner the criminal act was committed.

In order that alevosia may be considered as a qualifying circumstance to raise the classification of the crime, or as an aggravating circumstance to augment the penalty, it must be shown that the treacherous acts were present and preceded the commencement of the act which caused the injury complained of. After the commencement of such an attack, and before its termination, an accused person may have employed means or methods which were of a treacherous character, and yet such means or methods would not constitute the circumstance of alevosia. One continuous attack cannot be broken up into two or more parts and made to constitute separate, distinct, and independent attacks so that treachery may be injected therein, and considered as qualifying or aggravating circumstance.[14] The second blow delivered on the victim when he was in such a position where he could not have defended himself cannot constitute treachery. The established rule is that treachery must be present from the commencement of the attack.

The trial court correctly appreciated the circumstance of abuse of superior strength. This was evident from the injury sustained by the victim. The accused-appellant could not have broken the victim's skull had it not exerted excessive force out of proportion to the means of the defense available to the person attacked. The force used on the victim in hitting his head again with a stone after he had already fallen to the ground after being hit on the forehead with a piece of wood was clearly excessive. There was abuse of superior strength but it could not qualify the killing to murder because it has not been sufficiently alleged in the information.[15] It may only be considered as a generic aggravating circumstance.

The only qualifying circumstance alleged in the information, which was employing means to weaken the defense of the victim was not present in the case at bar.

WHEREFORE, premises considered, the appealed decision is SET ASIDE and a new one entered finding the accused-appellants Bernardo Peran, Fortunato Narido alias Junior and Felix Piquero, guilty of homicide with the aggravating circumstance of abuse of superior strength and hereby sentences the accused-appellants to an indeterminate penalty of 10 years one (1) day of prison mayor to 17 years and four months and one (1) day of Reclusion Temporal and to indemnify jointly and severally the heirs of the late Jose Namoc in the amount of P50,000.00. No pronouncement as to costs.

SO ORDERED.

Feliciano, Regalado, and Nocon, JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

[1] Records, p. 131.

[2] Records, p. 130. Decision rendered by Branch 21, RTC Cagayan de Oro City on February 8, 1990.

[3] *People vs. Dilao*, 100 SCRA 358 (1980); *People vs. Sibayan*, 116 SCRA 180 (1982).

[4] *People vs. Cielo*, 133 SCRA 117 (1984).

[5] *People vs. Hernandez*, 14 SCRA 89 (1989); *People vs. Guevarra*, 94 SCRA 642 (1979).

[6] People vs. Selfaison, 1 SCRA 235, (1961); People vs. Escalomo 1 SCRA 891 (1961).

[7] See People vs. Repato, 6 SCRA 202 (1962); People vs. Villaroya, 101 Phil. 1061 (1967).

[8] People vs. Dayag, 98 SCRA 235 (1980).

[9] 19 SCRA 769 (1967).

[10] People vs. Osias, 199 SCRA 574 (1991).

[11] People vs. Lee, 204 SCRA 900 (1991).

[12] Records, p. 2.

[13] People vs. Tiozon, 198 SCRA 368 (1991); People vs. Sarabia, 96 SCRA 714 (1980); People vs. Ardisa, 55 SCRA 245 (1974).

[14] U.S. vs. Balagtas 19 Phil. 164 (1911).

[15] People vs. Acusar, et al., 82 Phil. 490 (1948); People vs. Garcia y Cabarse, 94 SCRA 14 (1979).

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