

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOHNNY LAGO, ACCUSED-APPELLANT.

G.R. No. 96090. March 30, 1993

Ponente: MELO, J.

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MELO, J.:

Accused-appellant was charged with the crime of multiple murder with frustrated murder in an Information reading as follows:

That on or about the 6th day of April, 1985 at 2:00 o'clock dawn, more or less, in Sitio Ladao, Barangay Sapad, Municipality of Sapad, Province of Lanao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another with JOHN DOE, who is still at large and whose case is still pending in the lower court, armed with Garand rifles, with treachery (alevosia), evident premeditation, taking advantage of superior strength and nighttime and with intent to kill, did then and there wilfully, unlawfully and feloniously assault, attack and shoot at the Caburnay family, who were then inside their house, hitting and resulting to the death of the following persons, namely:

1. Crispin Caburnay;
2. Efren Caburnay;
3. William Caburnay;
4. Joven Caburnay; and
5. Criselyn Caburnay;

and the serious wounding of one Erlinda Caburnay inflicting upon her gunshot wounds at her right and left thigh, which wounds would have caused her death as a consequence, thus, the above-named accused performed all the acts of execution which would produce the crime of Murder, but which nevertheless, did not produce it by reason of causes independent of the will of the accused that is by the timely and able medical assistance rendered to said Erlinda Caburnay which prevented her death.

The above-named accused be adjudged to indemnify the heirs of the deceased the sum of P30,000.00 and to pay them another sum of P30,000.00 representing moral and exemplary damages and another sum of P20,000.00 for medical and hospitalization expenses.

CONTRARY TO and in violation of Article 248 of the Revised Penal Code and Article 250 in relation to Article 6 of the same Code. (pp. 7-8, Rollo)

After trial, the lower court on April 18, 1990 found accused-appellant guilty and accordingly disposed:

WHEREFORE, premises considered, the court finds the accused JOHNNY LAGO guilty beyond reasonable doubt of the crimes of Multiple Murder under Article 248 with Frustrated Murder under Article 250 of the Revised Penal Code and hereby sentenced him to suffer the penalty of Reclusion Temporal in its maximum period to Reclusion Perpetua or 17 years, 4 months and 1 day to Reclusion Perpetua; and the penalty of prision mayor in its maximum period to reclusion temporal in its medium period or 10 years and 1 day to 12 years and 4 months for Frustrated Murder.

To indemnify the heirs of the deceased in the sum of P30,000.00 plus P20,000.00 as moral and exemplary damages.

To pay another sum of P20,000.00 for medical and hospitalization expenses. (pp. 28-29, Rollo)

Dissatisfied, accused-appellant has interposed the instant appeal, assigning the following alleged errors of the trial court:

I

The trial court erred in placing undue weight upon the testimony of prosecution witness Erlinda Caburnay.

II

The trial court erred in not giving credence to the defense of denial and alibi raised by the accused as corroborated by the other defense witnesses.

III

The trial court erred in finding the accused guilty beyond reasonable doubt of the crime of murder.

IV

On the assumption that accused is guilty, the trial court nevertheless erred in not imposing the proper penalty. (p. 40, Rollo)

Upon a review of the record, we find the following facts clearly established by the evidence.

At around 2 o'clock in the morning of April 6, 1985, in Sitio Ladao, Barangay Sapad, Municipality of Sapad, Lanao del Norte, Crispin Caburnay and his wife Erlinda Caburnay and their children, Efren, 8 years old, William, 5 years old, Joven, 3 years old, and Criselyn, 11 months old, were sleeping in their house, the front door of which was covered only by a sack cloth. Suddenly, accused-appellant armed with a garand rifle and an unidentified person, opened the sack cloth door and entered the house, waking up the Caburnays. Accused-appellant demanded money from Crispin Caburnay. Crispin pleaded, "Don't kill us Johnny because we do not have money." Upon hearing the answer of Crispin, accused-appellant shot Crispin point blank, killing him instantly. In succession, accused-appellant shot Efren, William, Joven, Criselyn, and Erlinda. All were killed except Erlinda who was seriously injured. Her wounds were diagnosed as (1) compound comminuted fracture (R) thigh secondary to gunshot wound and (2) compound fracture forearm (L) secondary to gunshot wound.

Immediately after the shooting, accused-appellant left. Erlinda tied her wounds and crawled to the kitchen and ate as she felt the pangs of hunger. After eating she shouted for help but nobody came to her succor as her nearest neighbor was one kilometer away. At five o'clock in the morning Esteban de la Cruz and Noel Patalinghug arrived and helped her. Esteban de la Cruz and Victoria Tachado brought her to a hospital where she was confined for four months.

Erlinda Caburnay positively identified accused-appellant as the killer. She testified that she had personally known accused-appellant before the killing because he is the brother-in-law of the owner of the land they tenanted and he was the one who usually got the share pertaining to the owner of the landholding.

Erlinda's testimony being clear, positive, and straight-forward, deserves full credit and belief. It has been held that the weight to be given to the testimony of witnesses possessing integrity and intelligence who have no motive to fabricate facts and foist a very serious crime against an accused depends chiefly upon their observation and means of knowing the facts testified by them (People vs. Fontillas, 23 SCRA 74 [1968]). Nothing in the record shows that Erlinda harbored ill motives against accused-appellant. The members of her family, from her husband to her nursing child, were mercilessly gunned down and she certainly would not impute the heinous deed to a person otherwise innocent. Her only motive, a noble one at that, was to see to it that the culprit be brought to justice and meted just penalty. Furthermore, she had all the means of observing the killing as she was in the room where the

killing took place and she herself was seriously wounded. She was able to see accused-appellant because the room was lighted and there was a moon shining outside.

The defense of alibi posed by accused-appellant to the effect that he was in his house drinking with some friends deserves scant consideration. The defense of alibi is the weakest defense and cannot prevail over positive identification of the accused (*People vs. Esmael*, 37 SCRA 601 [1971]; *People vs. Carandang*, 52 SCRA 259 [1973]). More so where it was not physically impossible for the accused to be at the scene of the crime (*People vs. Esmael*, supra; *People vs. Tamani*, 55 SCRA 153 [1974]). The house of accused-appellant is only a scant 1 kilometer away from the house of the Caburnays, a distance which does not preclude the physical possibility for him to be at the scene of the crime.

Finally, accused-appellant assails the penalty imposed by the trial court, contending that, since the murder is qualified by treachery and there are no aggravating circumstances, the circumstances of abuse of superior strength and nocturnity being absorbed by treachery, the penalty that should be imposed is reclusion temporal in its maximum period, citing Art. 63 (2) of the Revised Penal Code in relation to paragraph 2 of Art. 77 thereof. Indeed, the trial court erred in imposing the penalty of reclusion temporal in its maximum period to reclusion perpetua or 17 years, 4 months and 1 day to reclusion perpetua for murder but not in the manner contended by appellant. Under the facts of the case, accused-appellant is guilty beyond reasonable doubt of five separate crimes of murder, for the killing of Crispin, Efren, William, Joven and Criselyn as their deaths were not the result of a single act but of several gunshots (*People vs. Pascual*, 81 SCRA 548 [1978], qualified by treachery, as the killing was sudden and unexpected and the victims were completely defenseless (*People vs. Liston*, 179 SCRA 415 [1989]), with the generic aggravating circumstance of dwelling, as the crimes were perpetrated in the very dwelling place, humble as it was, of the victims. The penalty for each murder should be imposed in its maximum period, reclusion perpetua. Appellant should therefore, be sentenced to five reclusion perpetua.

For the frustrated murder which is likewise qualified by treachery and aggravated by dwelling, the imposable penalty is 14 years, 8 months, and 1 day to 17 years and 4 months of Reclusion Temporal. The civil liability should be increased to P50,000 for each death (*People vs. Sison*, 189 SCRA 643 [1990]).

WHEREFORE, the appealed decision is hereby AFFIRMED with the following modifications:

1. For the commission of five crimes of murder, accused-appellant is hereby sentenced to suffer the penalty of Reclusion Perpetua for each crime of murder;
2. For the frustrated murder, accused-appellant is hereby sentenced to an imprisonment term of fourteen (14) years, eight (8) months, and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, both within the range Reclusion Temporal;
3. Accused-appellant is hereby ordered to indemnify the heirs of the victims Fifty Thousand Pesos (P50,000) for the death of each victim. Costs against appellant.

SO ORDERED.

Feliciano, (Acting Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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