

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PETER HATAGUE AND ORLANDO MIRADOR, ACCUSED-APPELLANTS.

G.R. No. 97308. April 07, 1992

Ponente: REGALADO, J.

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REGALADO, J.:

Accused-appellants interposed the present appeal from the judgment of the Regional Trial Court, Branch 164 in Pasig, Metro Manila, finding them guilty of the crime of murder and imposing on them "the penalty of reclusion perpetua; and to reimburse the funeral expenses incurred by Miguela B. Abad, the mother of the victim, in the amount of P13,000.00; and to indemnify the heirs of the victim in the amount of P30,000.00 pro indiviso." [1]

For purposes which will hereinafter be explained, we deem it necessary to quote from the information, under which the appellants were charged and tried, the particulars of how the felony was allegedly committed:

"That on or about the 2nd day of October, 1989 in the Municipality of Marikina, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously stab one Guillermo Abad y Botardo on the different parts of his body, thereby inflicting upon him multiple stab wounds which directly caused his death." [2]

The summary of the evidence for the prosecution, [3] upon which the trial court based its finding of guilt beyond reasonable doubt, shows that at around 12:15 o'clock in the early morning of October 2, 1989, Abad and his companions, Carlito Mitra and Edilberto Niegos, went out for an evening of fun after a hard day's work. They went to Jerez Restaurant located along Marcos Highway, corner Tuazon Street, Marikina, Metro Manila. There, they settled themselves at a table in the second floor of the restaurant and ordered a round of drinks for each of them. Niegos then called appellant Hatague, a waiter in the same restaurant, and asked the latter if he could get a woman companion for them. Hatague obliged and momentarily brought a female receptionist named Millet to their table. Millet drank with the three (3) customers and even danced with them. [4] After a while, Millet excused herself and went downstairs. She complained to the floor manager that her drink was sprinkled with "vetsin" (monosodium glutamate) or ashes. [5]

Niegos denied Millet's accusation and stated that they were leaving, whereupon they hastily paid their bill and prepared to go. Abad and Mitra went down to the first floor ahead of Niegos. Abad proceeded to the comfort room and Mitra went in after him. When Mitra came out, he saw Abad walking toward the front door of the restaurant. As Mitra approached the same door, two men, later identified as appellants Hatague and Mirador, brushed past him while rushing outside as if they were out to catch someone. Mitra saw that the object of their chase was Abad. Mitra was not able to follow Abad because Virgilio Masanque, the owner of the restaurant, blocked his way and poked a gun at his head. He saw from the door that when appellants caught up with Abad, they hit him with a barrage of blows which knocked him down. Appellant Mirador repeatedly swung a two-foot long steel bar while Hatague, who was armed with a pointed instrument, stabbed the victim several times. [6]

Still, Abad managed to get up and feebly tried to flee. Mirador returned to the restaurant while Hatague continued chasing Abad. After catching up with the victim, Hatague again stabbed him till he collapsed. Hatague then walked back to the club. The floor manager Benigno Albitos, met him and asked whether he had stabbed the customer, to which Hatague replied in the affirmative.[7] Meanwhile, the victim was aided and rushed by Niegos to the hospital where the former expired shortly after his arrival.

A postmortem examination, conducted by Dr. Dario L. Gajardo of the PC/INP Crime Laboratory Services on the cadaver of the victim, shows that he died of cardio-respiratory arrest due to shock and hemorrhage after sustaining multiple blows on the head and legs and multiple stab wounds on different vital parts of the body caused by a pointed instrument.[8]

The defense contends,[9] on the other hand, that appellant Hatague arrived at Jerez Restaurant at about midnight of October 2, 1989. He first rested in one of the rooms on the second floor of the club with Benigno Albitos. Shouts were heard from the restaurant and Albitos went out of the room and approached a table where three customers were being confronted by receptionist Millet. Later, Hatague again heard shouts so he went down to the ground floor and saw Benigno Albitos poking a gun at two customers. Hatague further testified that a certain Eric Albitos, a former waiter in the restaurant and brother of Benigno Albitos, was chasing another customer whom he later identified as the victim, Guillermo Abad. Later, after the reported stabbing incident, Benigno Albitos returned to the restaurant and instructed everyone to tell investigators that the trouble happened between club customers. Hatague denied having stabbed Abad. During the investigation by the National Bureau of Investigation (NBI), Hatague claimed he could not do anything when Benigno Albitos insisted on pointing to him as Abad's assailant.[10]

On his part, appellant Mirador allegedly reported for work at Jerez Restaurant in the late evening of October 2, 1989. He was attending to customers at the ground floor when a commotion occurred at the second floor of the club and customers from that floor rushed outside. Benigno Albitos ordered that the door of the club be closed and he did not allow customers to go out. Mirador was unaware of what happened outside as he continued attending to customers. He asserted that Benigno Albitos and Eric Albitos were Abad's assailants as they were the ones who chased the customers involved in the commotion.[11] Irineo Antazo, Jr., claiming that he was one of the companions of Abad, corroborated Mirador's testimony and testified that Mirador continued attending to the customers' orders during the commotion outside the restaurant.[12]

Cecilia Abad, widow of the victim Guillermo Abad, testified for the defense and declared that she was informed by William Vista and Irineo Antazo, Jr. that her husband was killed by Eric Albitos and Benigno Albitos. On October 16, 1989, she filed a complaint with the NBI charging Eric Albitos for the killing of Guillermo Abad. However, during the investigation wherein appellants Hatague and Mirador were being charged, she failed to inform the fiscal that these two were supposedly not responsible for the incident. This was allegedly due to the fact that her relatives advised her to go into hiding.[13] No effort was made by her to pursue the case against Eric and Benigno Albitos and it was only during the trial that she insisted on her accusations against the Albitos brothers.

Furthermore, as found by the trial court, this witness admitted that she executed an affidavit of desistance in favor of herein appellants because of the pleas of the relatives of one of them and she further admitted that she executed said affidavit not because these appellants are guiltless but because she had forgiven them for causing the death of her husband.[14] This is reflected in the corresponding transcript of her testimony on this point,[15] and betrays her unreliability as a witness.

After trial, as earlier stated, the court a quo found both appellants guilty as charged and rendered the assailed

judgment. Feeling aggrieved with the decision, appellants are now before this Court and contend that the trial court erred (a) in giving full weight and credit to the testimonies of the prosecution witnesses and in disregarding the evidence for the defense, and (b) in convicting accused-appellants despite the absence of evidence required to prove their guilt beyond reasonable doubt.[16]

Apparently, the resolution of the issues raised by appellants hinges on the credibility of the testimony of the prosecution and defense witnesses. In this regard, we are constrained to once again reiterate the well-settled rule in our jurisdiction that the findings of the trial court on the credibility of witnesses are accorded great weight and respect by the appellate courts in the absence of any showing that the trial court has overlooked some substantial and material facts.[17]

Corollarily, the Court has also consistently ruled that credibility is a matter that peculiarly falls within the province of the trial judge who had first-hand opportunity to watch and observe the demeanor and behavior of witnesses, both for the prosecution and the defense, at the time of their testimony.[18]

We find no cogent reason in the case at bar to deviate from the aforestated rulings. The findings of the trial court are well supported by evidence, both testimonial and documentary, adduced during the trial. As further held by said court, neither does it appear that the prosecution witnesses had any untoward motives or reasons to falsely testify against appellants.

Moreover, the defense of appellants is anchored on denial and alibi. Alibi, according to settled jurisprudence, is the weakest defense that can be availed of by the accused because it can easily be manufactured and fabricated.[19] For this defense to prosper and warrant acquittal, it is not enough that the accused was somewhere else when the crime was committed but he must also be able to demonstrate that it was physically impossible for him to be at the scene of the crime.[20]

Applying the rule to the case at bar, we find appellants' pretensions to be unavailing. Firstly, appellants do not deny that they were in the very place where the killing occurred. They merely denied their participation therein. Secondly, the appellants were positively identified by the prosecution witnesses as the assailants of the victim.

Prosecution witness Benigno Albitos, the floor manager of the restaurant, testified:

"Q And will you please tell us what is that unusual incident?

A One of our customers, Sir, had a fight with some of our waiters.

Q And do you know where they were fighting?

A After I went out, I already saw, Sir, that they were chasing to (sic) each other to the direction of a corner street.

Q Will you please tell us the person whom they are (sic) chasing?

A I do not know, sir.

Q And who were chasing at the time?

A Peter Hatague and Orlie Mirador, Sir.

x x x

Q Why do you know the names of these two accused?

A Because they were co-employees of mine, Sir."[21]

This testimony was corroborated by another prosecution witness, Carlito Mitra, thus:

"Q And what is the name of the person who stabbed Guillermo Abad?

A The person who stabbed Guillermo was Peter Hatague, Sir.[22]

Finally, as earlier stated, witness Albitos established without any refutation by the defense that appellant Hatague definitely admitted his complicity in the alleged murder, as follows:

"ATTY. TURIANO:

Q And after your conversation with Liza, what did you do, if any?

A I ran upstairs, Sir.

Q While you were upstairs, what happened?

A I immediately talked or informed Peter and asked him, 'Peter, sinaksak mo nga ba ang customer?' Peter, did you really stabbed (sic) the customer?

Q What was the answer of Peter Hatague?

A 'Oo, kuya Boy. Sobra na sila.'"[23]

Appellants Hatague and Mirador, in a last-ditch effort to absolve themselves from liability, sought to ascribe the liability for the killing to Eric and Benigno Albitos. Withal, no evidence whatsoever was adduced in their behalf to prove such imputation. William Vista, the person alleged by the defense to have seen the incident, was never presented as a witness. On the other hand, the testimony of Irineo Antazo, Jr., the person whom Cecilia Abad referred to as her husband's companion, belies the theory espoused by the defense.

As found by the court below, Antazo did not make any averment in his testimony that he was with Abad on the night that the latter was killed. It even appears that he does not personally know the victim. He never testified that it was Eric or Benigno Albitos who killed Abad. Moreover, he was not able to personally witness the alleged incident because, as claimed by him, he was inside the restaurant when the killing occurred. He could not, therefore, have informed Abad's widow that Eric and Benigno Albitos killed her husband.[24]

Also of significance are the admitted facts that appellant Hatague remained silent when the killing was attributed to him and that, when he was arrested, he was found to be in possession of a fan knife, which admissions unsatisfactorily tried to explain away in this manner:

"FISCAL:

Q And it was Benigno Albitos who pointed to you as one of the persons who stabbed the victim?

A Yes, sir.

Q And despite being pointed to by Benigno Albitos, you did not protest or make any action to prove that that is not true?

A I could not do anything about that matter, sir, because you see when I was investigated at the NBI, he insisted and pointed out to me as the person responsible for the crime.

Q In fact, do you agree with me that when you were arrested by the NBI, a fan knife was also found in your possession?

A Yes, sir, they did find a fan knife in my person yet that is not mine. It was Boy Albitos', sir.

x x x

Q Now, with respect to the fan knife which was allegedly found in your possession, why is (sic) it found in your possession?

A That fan knife, sir, was given to me by Albitos after the incident as a sort of a weapon for my self-protection." [25]

We do not have to belabor the ridiculous explanation of said appellant for his failure to protest or deny Albitos' attribution to him of such a grave felony. We also agree with the trial court that the excuse given by Hatague regarding his possession of the knife was absurd because if he really knew that it was Eric and/or Benigno Albitos who killed Abad, he would never have accepted it, knowing full well that it could have been the very same knife used by them in stabbing the victim.

Anent the alleged attendance of evident premeditation in the crime, the trial court correctly ruled that the same was not sufficiently proved by the prosecution. No evidence was adduced during the trial which shows the time when the offenders determined to commit the crime, any act manifestly indicating that they clung to their determination, and a sufficient lapse of time between the determination and execution to allow them to reflect upon the consequences of their act. [26]

Also, this time contrary to the findings of the trial court, we find that the killing of Abad was likewise not attended by treachery. We have repeatedly ruled that treachery cannot be presumed. [27] The existence thereof must be as indubitably proved as the crime itself. [28] To establish treachery against the accused, the prosecution must be able to prove that, at the time of the attack, the victim was not in a position to defend himself and that the offender consciously adopted the means, method or form of attack employed by him. [29]

It is quite apparent that the prosecution failed to prove that the victim was deprived of any means of defending himself. True, the victim was unarmed when he was attacked by appellants. However, the mere fact that he was unarmed cannot by itself adequately sustain a finding of treachery. [30] Moreover, the records show that the victim was chased before he was attacked. He was even able to run for another twenty-five (25) meters after the first stage of the felonious assault. It must also be recalled that prior thereto, there was an altercation between the victim and appellants and this could have placed the former on his guard. [31]

More importantly, there is no showing that appellants deliberately or consciously adopted the particular mode of aggression that they employed against the victim in order to ensure the accomplishment of their criminal purpose without any risk to themselves. The killing was just a result of a casual encounter; the attack was impulsively done; and appellants had no time to reflect on the method of executing the crime. [32] It cannot, therefore, be said that treachery was adopted and employed in the commission of the felony.

But this pronouncement notwithstanding, we find that the modifying circumstance of taking advantage of superior strength attended the killing of Abad. When it is shown that the attack was not made with alevosia, the number of assailants and the simultaneity of the attack upon a defenseless person may constitute abuse of superior force. [33] Here, it is undeniable that, by reason of the synchronal attack on the victim by two armed persons, the latter cooperated and intended to use or to secure advantage from the superiority of their combined strength. This is especially manifest where, as in this case, the victim was unarmed and trying to flee, while the two felons were armed and used their weapons in perpetrating the crime. [34]

Nonetheless, the abuse of superior strength, while constitutive of a qualifying circumstance for murder, [35] was not alleged in the information filed in this case, as we have made evident by reproducing the indictment at the outset of this opinion, although such circumstance was proved by the prosecution. The rule is that qualifying

circumstances must be pleaded and if not pleaded but proved, the same shall be considered only as generic aggravating circumstances.[36] Consequently, the fact that herein appellants took advantage of their superior strength shall only aggravate their liability for simple homicide to determine the period of the penalty therefor.

Coming now to the respective liabilities of appellants, we find that the court below correctly appreciated the existence of a conspiracy between them. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[37] To establish conspiracy, prior agreement between both accused to kill the victim is not essential for the same may be inferred from their own acts showing a joint purpose and design,[38] which was illustrated in this case by the concerted acts of appellants.

The evidence reveals that both appellants concurrently chased the victim with physical assaillment in mind. Mirador was armed with a steel bar while Hatague had a pointed instrument. After catching up with Abad, both of them inflicted blows on the latter. The autopsy report shows, and the eyewitnesses testified, that Mirador hit Abad with the steel bar on the upper portion of his leg while Hatague was lethally using his knife on him. While Mirador returned to the restaurant ahead of Hatague, this does not affect or negate the findings of the trial court since the fatal wounds could have been inflicted during the first or second attack. At any rate, conspiracy having been proven, the acts of each appellant shall be considered and appreciated against the other.

WHEREFORE, on the foregoing premises, the judgment appealed from is ANNULLED and a new one is RENDERED finding accused-appellants guilty of the crime of homicide with an aggravating circumstance of abuse of superior strength, and imposing upon them an indeterminate sentence of ten (10) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum.

Accused-appellants are also hereby ordered, jointly and severally, to pay Miguela B. Abad, the mother of the victim, the amount of P13,000.00 representing the funeral expenses incurred by her, to indemnify the heirs of the victim in the increased amount of P50,000.00 in accordance with current jurisprudence, and to pay the costs.

SO ORDERED.

Melencio-Herrera, Acting C.J., (Chairman), Paras, and Nocon, JJ., concur.
Padilla, J., see separate opinion.

[1] Per Judge Apolonio R. Chavez; Rollo, 14-31.

[2] Original Record, 1.

[3] Appellee's Brief, 2-4.

[4] TSN, May 9, 1990, 7-8.

[5] TSN, May 17, 1990, 16; May 30, 1990, 12.

[6] TSN, May 9, 1990, 4-7; May 17, 1990, 4-8.

[7] TSN, May 17, 1990, 8-9.

[8] TSN, May 23, 1990, 4-9; Exhibits E, F, G and H, Original Record, 77-80.

[9] Brief for the Accused-Appellants, 3-4.

[10] TSN, August 17, 1990, 2-9.

- [11] TSN, July 3, 1990, 2-9.
- [12] TSN, July 19, 1990, 2-12.
- [13] TSN, June 14, 1990, 4-16.
- [14] Rollo, 27-A.
- [15] TSN, June 14, 1990, 12.
- [16] Brief for the Accused-Appellants, 4.
- [17] *People vs. Espejo, et al.*, 36 SCRA 400 (1970); *People vs. Realon, et al.*, 99 SCRA 422 (1980); *People vs. Payumo*, 187 SCRA 64 (1990).
- [18] *People vs. Escabarte*, 158 SCRA 602 (1988); *People vs. Turla*, 167 SCRA 278 (1988); *People vs. De Jesus*, G.R. No. 93852, January 24, 1992.
- [19] *People vs. Baniaga*, 1 SCRA 283 (1961); *People vs. Pacada, Jr., et al.*, 142 SCRA 427 (1986); *People vs. Loveria*, 187 SCRA 47 (1990).
- [20] *People vs. Abaya, et al.*, 170 SCRA 691 (1989); *People vs. Arceo*, 187 SCRA 265 (1990); *People vs. Ruedas*, 194 SCRA 553 (1991).
- [21] TSN, May 17, 1990, 4-5.
- [22] TSN, May 9, 1990, 3.
- [23] TSN, May 17, 1990, 9.
- [24] Rollo, 27-A to 28.
- [25] TSN, August 17, 1990, 7-8.
- [26] *People vs. Quintos*, 186 SCRA 14 (1990); *People vs. Nabayra*, G.R. No. 96368-69, October 17, 1991.
- [27] *People vs. Caldito, et al.*, 182 SCRA 66 (1990); *People vs. Nabayra*, *supra*.
- [28] *People vs. Diaz, et al.*, 167 SCRA 239 (1988); *People vs. Tugbo, Jr.*, 196 SCRA 133 (1991); *People vs. Ramirez*, G.R. No. 80747-48, October 17, 1991.
- [29] *People vs. Sabado*, 168 SCRA 681 (1988); *People vs. Mabubay*, 185 SCRA 675 (1990).
- [30] *People vs. Raquipo*, 188 SCRA 571 (1990).
- [31] *People vs. Cantre*, 186 SCRA 76 (1990).
- [32] *People vs. Diaz, et al.*, *supra*; *People vs. Bacho, et al.*, 171 SCRA 458 (1989).
- [33] *U.S. vs. Lasada*, 21 Phil. 287 (1912); *People vs. Cantre*, *supra*.
- [34] *People vs. Bustos*, 51 Phil. 385 (1928); *People vs. Diokno, et al.*, 63 Phil. 601 (1963); *People vs. Verzo, et al.*, 21 SCRA 1403 (1967).
- [35] Article 248 (1), Revised Penal Code.
- [36] *People vs. Collado*, 60 Phil. 610 (1934); *People vs. Raquinio*, 17 SCRA 914 (1966); *People vs. Jovellano, et al.*, 56 SCRA 156 (1974).

[37] Article 8, Revised Penal Code.

[38] *People vs. Tachado, et al.*, 170 SCRA 611 (1989).

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SEPARATE OPINION

PADILLA, J.:

I concur with the decision penned by Mr. Justice Regalado, except that, in my view, the aggravating circumstance of taking advantage of superior strength should not be taken into consideration in the present case.

The decision states: "x x x we find that the modifying circumstance of taking advantage of superior strength attended the killing of Abad. When it is shown that the attack was not made with alevosia, the number of assailants and the simultaneity of the attack upon a defenseless person may constitute abuse of superior strength (citing *U.S. vs. Lasada*, 21 Phil. 287 [1912]; *People vs. Cantre*, 186 SCRA 76 [1990]). Here, it is undeniable that, by reason of the synchronal attack on the victim by two armed persons, the latter cooperated and intended to use or to secure advantage from the superiority of their combined strength. This is especially manifest where, as in this case, the victim was unarmed and trying to flee, while the two felons were armed and used their weapons in perpetrating the crime (citing *People vs. Bustos*, 51 Phil. 385 [1928]; *People vs. Diokno*, 63 Phil. 601 [1936]; *People vs. Verzo, et al.*, 21 SCRA 1403 [1967]).

The *Bustos* and *Diokno* cases do not, in my view, support the conclusion reached in the case at bar.

In the *Bustos* case, the evidence adduced during the trial conclusively established that in the afternoon of 24 October 1925 the accused Francisco Bustos and Antonio Macaspac, on meeting Felipe del Castillo, son of Angel del Castillo, with whom Francisco Bustos had just had a quarrel, and in which Antonio Macaspac had intervened, the said accused pursued him; that Felipe del Castillo threw a stone at his pursuers which hit Francisco Bustos, thereby wounding him on the forehead; that the accused continued to pursue their victim until they overtook him, then inflicting several wounds upon him, as a result of which he died a few minutes later. This Court held that --

"In applying the penalty, no modifying circumstance of criminal liability can be taken into consideration, because neither can the fact that there were two aggressors be held to constitute abuse of superior strength, since the relative physical strength of the aggressors and the assaulted party does not appear of record; nor can the fact that the deceased stoned Francisco Bustos be considered a provocation, since it does not clearly appear that the deceased was provoked. On the contrary, it may be inferred from the ante-mortem declaration of Felipe del Castillo that he took to stoning only upon being pursued by the accused."

In the *Diokno* case, the deceased Chinaman, who was unarmed, was killed by his two assailants (father and son) who were armed with knives, while the deceased was in a kneeling position, imploring forgiveness from his assailants for having eloped with a woman who was daughter and sister of the assailants, respectively. The Court held that --

"x x x. The circumstance of abuse of superior strength, qualifying the crime of murder, has not been established beyond a reasonable doubt. In the case of *United States vs. Devila* (3 Phil. 625), this Court said that 'the mere fact that the number of the assailants is superior to that of those attacked by them is not sufficient to constitute the aggravating circumstance of abuse of superiority.' In this case we have the photographs of the body of the deceased x x x showing that he had strong constitution; but there is no evidence of the physical constitution of the accused, Epifanio Diokno and Roman Diokno. Therefore, we cannot

determine whether or not said accused were physically stronger than the deceased and whether or not they abused such superiority."

Upon the other hand, in the Verzo case, this Court held "x x x the facts proven leave no room for doubt that defendants herein (Getulio Verzo and his two sons Reynaldo and Roberto) were united in their purpose and in carrying out the same into execution. Indeed, no other conclusion may be drawn from the circumstance that they emerged from their house at the same time, each brandishing a bolo; that they immediately attacked Benjamin Camino and chased him as he tried to run away; that they did not desist, despite the shots of warning fired by Patrolman Jariel and his words of advice; that when, after sustaining six (6) wounds, Benjamin Camino managed to place himself beyond their reach, the defendants proceeded to attack Filemon Casis; and that Reynaldo Verzo embraced or held Filemon Casis from behind and then said: 'Go ahead, father stab him,' which Getulio Verzo did.

In the present case, it appears that at the initial stage of the attack, the appellants chased the deceased Guillermo Abad and when they caught up with Abad, they (accused) hit him with a barrage of blows which knocked him down. Appellant Mirador repeatedly swung a two-feet long steel bar while Hatague, who was armed with a pointed instrument, stabbed the victim several times. Thereafter, Mirador returned to the restaurant. Meanwhile, the deceased managed to get up and tried to flee but was chased by Hatague and after catching up with the victim, stabbed him until he collapsed. Then Hatague walked back to the club.

The foregoing facts show, to my mind, that the appellants herein were NOT, beyond reasonable doubt, shown to be united in their purpose and in carrying out the same into execution, as in the Verzo case. Moreover, the relative strength of the appellants and the deceased does not appear of record.

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