

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. PRIMO CAMADDO, SOTERO BANGIYAO AND SANTIAGO BALAE-OD, ACCUSED, PRIMO CAMADDO, ACCUSED/APPELLANT.

G.R. No. 97934. January 18, 1993

Ponente: BIDIN, J.

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BIDIN, J.:

Appellant Primo Camaddo together with Sotero Bangiyao and Santiago Balae-od were charged with the crime of murder before the Regional Trial Court of Tabuk, Kalinga-Apayao, Branch XXV, in an information alleging:

"That on or about February 3, 1990 at Calaccad, Tabuk, Kalinga-Apayao, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, conspiring and confederating, with treachery and evident premeditation, taking advantage of superior strength and with the use of high-powered firearms, wilfully, unlawfully and feloniously and with intent to kill, shot and killed Catalino Baculi.

CONTRARY TO LAW." (Rollo, p. 4)

Upon arraignment, all the accused pleaded not guilty to the charge (Record, p. 26). After trial, the court a quo rendered a decision dated October 22, 1990, finding appellant and his two co-accused guilty beyond reasonable doubt of the crime of murder. The dispositive portion of said decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused PRIMO CAMADDO Y SANGLAYAN, SOTERO BANGIYAO Y APALIS, AND SANTIAGO BALAE-OD Y CADDOMLAY guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 Revised Penal Code for shooting to death Catalino Baculi, qualified by treachery with aggravating circumstances of abuse and (sic) superior strength and abuse of authority the accused being CAFGU, sentencing each of the accused to suffer RECLUSION PERPETUA, with the accessory penalties provided for by law, to indemnify the heirs of Catalino Baculi the sum P30,000.00 without subsidiary imprisonment in case of insolvency pursuant to Art. 39 of the Revised Penal Code as amended by RA 5465.

"The detention of the accused starting from February 28, 1990 is hereby credited in favor of the accused in the service of their sentence in accordance with Article 29 of the Revised Penal Code as amended by RA 2167.

SO ORDERED." (Decision, p. 4; Rollo, p. 19).

Accused Camaddo filed a motion for reconsideration of the decision on the ground that there is no sufficient, positive and convincing evidence to warrant that he conspired with the other accused in shooting the victim (Record, pp. 71-80). The motion was denied by the trial court for lack of merit.

The facts of the case as summarized in the Brief filed by the Solicitor General are as follows:

"Appellant Primo Camaddo and Sotero Bangiyao are both CAFGU members while their co-accused Santiago Balae-od is a civilian. All three of them belong to the Suyang Tribe, which then had an existing heated conflict with victim Catalino Baculi's Naneng tribe (TSN, p. 101-102).

"On February 3, 1991, victim Catalino Baculi, his brother Romeo and sister-in-law Reynalda went to Cugawe, Tabuk, Kalinga-Apayao to attend a native wedding celebration. There also at the feast was appellant, then carrying his M-14 rifle (Ibid, p. 15), and his two co-accused.

"By lunch time, Catalino had drunk too many a wine that he began to be rowdy in behavior to the point of disrupting the solemn ceremony. He then had to be brought home by Reynalda and Romeo with the assistance of Ollo Magwaki to their home in Macacabet, Callacad Tabuk, Kalinga-Apayao.

"The people then in attendance, appellant and his co-accused included, were deeply offended by Catalino's troublesome behaviour during the ceremony (TSN, p. 102).

"Appellant and his co-accused Sotero, notwithstanding their duty to maintain peace and order, refrained themselves from accosting the troublemaker, lest further trouble erupt. Instead, they waited for an opportune time to get near to Catalino (TSN, p. 131). The three accused decided instead to leave Cugawe and follow Catalino Baculi and his group, who by then had already left for Macacabet (Ibid, pp. 102-103, 130-131). Of the three accused, two were armed --- Sotero with his garand rifle and Santiago who, by then, was carrying appellant Primo Camaddo's M14 rifle (Ibid, p. 14, 124, 144). Appellant had with him his bandoleer (Ibid, P. 128).

"Catalino's group had been in their house in Macacabet for about thirty minutes when appellant and his co-accused arrived. It was then about three o'clock in the afternoon.

"Anger readily apparent in his face, Santiago required Catalino "to come with them back to Cugawe and settle the dispute between him and the elders of Cugawe" (Ibid, p. 19). Catalino, who was still intoxicated, readily submitted and prepared himself to go with the three accused. On the other hand, Reynalda, fearful for her brother-in-law's safety in the hands of these armed men who belong to an enemy tribe, insisted in accompanying Catalino. Ollo Magwaki, too, joined them back to Cugawe.

"Appellant, together with Ollo Magwaki, led the walk towards Cugawe while accused Santiago, victim Catalino, Reynalda and accused Sotero, in that order trailed behind them at a distance of about three to four (3-4) meters (Ibid, p. 20).

"During the hike, victim Catalino sensing real danger to his life, appealed to appellant and his co-accused by explaining and claiming his close affinity to them (Ibid, p. 29). It was then, at a distance of about 400 meters more or less from victim's house at Macacabet, when Sotero held Reynalda's arm while Santiago shot Catalino Baculi with the M14 rifle (Ibid, p. 26). Despite the fact that Catalino lay wounded on the ground, Sotero Bangiyao nevertheless fired his garand rifle at the victim, killing him. Their heinous act accomplished, the three fled leaving Reynalda to herself and the dead corpse. Ollo Magwaki was nowhere to be found as he had run away towards Cugawe after the first gunshots were heard (Ibid, p. 26)." (Appellee's Brief, pp. 4-7)

In this appeal, accused Camaddo raises this lone assignment of error:

"The trial court gravely erred in convicting the accused-appellant of the crime of murder anchoring its verdict of guilt not on established facts which clearly showed that Primo Camaddo did not conspire with the other accused in killing Catalino Baculi, but on presumptions." (Rollo, p. 38).

Appellant Camaddo contends that for conspiracy to exist, two or more persons must come to an agreement concerning the commission of a felony and decide to commit it. He asserts that according to jurisprudence, for conspiracy to exist, it should be established that there was unity of purpose at the time of the commission of the offense as well as unity in its execution (*People v. Bravante*, 150 SCRA 569 [1987]), and that mere relationship or association alone is not a badge of conspiracy (*People v. Saavedra*, 149 SCRA 610 [1987]).

Clearly then, Camaddo's guilt or lack of it centers on whether or not conspiracy has been established beyond reasonable doubt before the trial court.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (Art. 8, par. 2, Revised Penal Code). A conspiracy need not be established by direct evidence. Proof of previous agreement to commit the crime is not essential to establish a conspiracy. The conduct of the accused before, during, and after the commission of the crime may be considered to show the existence of a conspiracy (*People v. Pinzon*, 206 SCRA 93 [1992]; *People v. Uy*, 206 SCRA 270 [1992]). It is proven when two or more persons, aiming toward the accomplishment of the same unlawful object by their acts, do acts which, although apparently independent of each other, are in fact connected and cooperative thereby indicating a closeness of personal association and a concurrence of sentiment (*People v. Bausang*, 199 SCRA 355 [1991]; *People v. Manlolo*, 169 SCRA 394 [1989]). A conspiracy may be inferred without need of showing that the parties actually came together and agreed in expressed terms to enter in and pursue a common design (*Ramos v. CA*, 203 SCRA 657 [1991]).

In this case, while there is no direct evidence that the three accused met and hatched a plan to kill the victim, the trial court found the following indicia of conspiracy:

"4. There is conspiracy on the part of the accused for the reason that the firearm of Primo Camaddo used in the shooting of the victim by Santiago Balae-od was given to the latter even before the shooting which indicate that Primo Camaddo is in conformity with whatever Santiago Balae-od do (sic) with his own firearm.

"5. The claim of accused Primo Camaddo that he was far ahead of the group before the commission of the crime cannot be given weight by the court considering that the testimony of Reynalda Baculi he (Primo Camaddo) was present at the time of the shooting and he did not attempt to stop Santiago Balae-od in using his M-14 rifle, an evidence to prove that he is in conspiracy with the other accused." (Decision, p. 3; Rollo, p. 18).

More explicitly, the following proven circumstances point beyond reasonable doubt to accused Camaddo's culpability as a co-conspirator: Camaddo came to a tribal feast fully armed with his M-14 rifle; people in attendance at the wedding celebration were deeply offended by the victim's troublesome behavior that the elders demanded an explanation from him; despite their presence during the victim's show of rowdiness, Camaddo and his co-accused refrained from accosting the victim but waited for a more opportune time; before going to Macacabet to invite the victim back to Cugawe, Camaddo unlawfully delivered the M-14 rifle to Balae-od, allegedly a civilian volunteer; sensing danger to his life, the victim pleaded with the accused to spare his life considering his close affinity with them, and although he was but a few meters away from his co-accused, Camaddo did not attempt to stop Balae-od from shooting the victim with his (Camaddo's) M-14 rifle.

While Camaddo did not perform any overt act during the actual shooting of the victim, his presence at the scene of the crime, his failure to dissuade Balae-od from shooting the victim and the hard and indelible truth that his M-14 rifle was the one used by Balae-od in taking the life of the victim, evidenced his conspiratorial design. Well-settled is the rule that it is not indispensable that a co-conspirator should take a direct hand in the commission of a felony. Conspiracy is the common design to commit a felony but not necessarily participation in all the details of the execution of the crime. Hence, all those who, in one way or another helped and cooperated in the consummation of the crime are considered as co-principals (*Venturina v. Sandiganbayan*, 193 SCRA 40 [1991]) for the degree of actual participation in the commission of the crime is immaterial in conspiracy (*People v. Maranion*, 199 SCRA 421 [1991]; *People v. Cantuba*, 183 SCRA 289 [1990]; *People v. Cantre*, 186 SCRA 76 [1990]).

It is readily apparent that in challenging the lower court's finding of conspiracy, the accused Camaddo also

attacked the sufficiency of the evidence presented. It is important to note that the same degree of proof required to establish the crime is required to support a finding of conspiracy, that is, proof beyond reasonable doubt (*People v. Lacao, Sr.*, 201 SCRA 317 [1991]). A finding of the sufficiency of the evidence to establish guilt by proof beyond reasonable doubt is one of fact. As such, its review by the appellate court must be guided by the principle that, unless arbitrary or without sufficient basis, the findings of trial courts on questions of fact are accorded the highest respect on appeal (*People v. Aguiluz*, 207 SCRA 187 [1992]; *People v. Uy*, *supra*; *People v. Alitao*, 194 SCRA 120 [1991]; *People v. Millarpe*, 134 SCRA 555 [1985]; *People v. Lopez*, 132 SCRA 188 [1984]).

In the same manner, the credibility of the witnesses is within the province of the trial court which, generally, the appellate court should not interfere with since the trial court is in a better position to examine real evidence as well as observe the demeanor of the witnesses (*People v. Lardizabal*, 204 SCRA 320 [1991]; *People v. Vinas*, 202 SCRA 720 [1991]). Worth noting is the fact that the court discredited the testimony of Ollo Magwaki, the principal defense witness to corroborate Camaddo's testimony. Magwaki admitted in court that Camaddo's brother married the sister of his (Magwaki's) mother (TSN, August 1, 1990, p. 75). While relationship does not by itself affect the credibility of witnesses (*People v. Tinampay*, 207 SCRA 425 [1992]; *People v. Peñones*, 200 SCRA 624 [1991]; *People v. Sanchez*, 199 SCRA 414 [1991]), the fact that the lower court failed to give credence to the defense version of the commission of the crime speaks of its well-founded hesitance to give weight and credence to Magwaki's testimony.

Indeed, the lower court correctly considered treachery as qualifying the offense committed, to murder. As held in a long line of cases, treachery exists when the offender adopts means, methods, or forms in the execution of the felony without risk to himself arising from any defense which the offended party might make (*People v. Tinampay*, *supra*; *People v. Balatucan*, 206 SCRA 81 [1992]; *People v. Uy*, *supra*; *People v. Cempron*, 187 SCRA 248 [1990]). The victim was entirely defenseless and not at all in a position to retaliate when he was attacked.

On the other hand, aside from sheer number, the accused were armed. Abuse of superior strength was therefore properly considered in the same way that abuse of authority was correctly appreciated since accused Camaddo and Balae-od were members of the CAFGU.

The penalty for murder is reclusion temporal in its maximum period to death (Art. 248, Revised Penal Code). As there are two aggravating circumstances and no mitigating circumstance attending the commission of the offense, the lower court correctly imposed the penalty of reclusion perpetua (Arts. 248, 64 (3), Revised Penal Code) pursuant to Section 19, Article III of the Constitution. The civil indemnity should, however, be increased to P50,000.00 (*People v. Callao*, 206 SCRA 420 [1992]; *People v. Sison*, 189 SCRA 643 [1990]).

WHEREFORE, the appealed decision is hereby AFFIRMED with the modification as to the indemnification for the death of the victim Catalino Baculi which is hereby increased from P30,000.00 to P50,000.00.

Costs against appellant.

SO ORDERED.

Gutierrez, Jr., (Chairman), Davide, Jr., Romero, and Melo, JJ., concur.

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