

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIXBERTO FRANCISCO, PASCUAL ORE, ALEJANDRO ORE, SONNY
BOY FRANCISCO, NEONEL HONRUBIA ALIAS "BABY,"
AND FEDERICO ORE, ACCUSED...**

G.R. No. 99058. October 25, 1995

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellants Felixberto Francisco, Pascual Ore, Alejandro Ore, Sonny Boy Francisco, Neonel Honrubia alias "Baby" and Federico Ore were charged with the crime of murder committed as follows:

"That on or about the first day of November 1985 in the evening, at Barangay Panitian, Municipality of Quezon, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with evident premeditation and treachery, conspiring, confederating together and mutually helping one another, armed with deadly weapons and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one Andronico Angeles, hitting him on the various parts of his body and inflicting upon him multiple injuries which were the direct and immediate cause of his death shortly thereafter.

CONTRARY TO LAW and committed with the following aggravating circumstances:

1. That the crime was committed with evident premeditation and alevosia;
2. That the accused took advantage of their superior strength and under cover of darkness;
3. That the crime was committed by six (6) armed persons that insured impunity against them."^[1]

The prosecution established that on November 1, 1985, at about 8:00 in the evening, Andronico Angeles and Marcelo Gapanaga were walking in Barangay Panitian, Quezon, Palawan on their way to their homes in Barangay Malatgao and Sitio Candiz. Andronico decided to buy cigarettes at the sari-sari store of David Rumbawa and Marcelo waited on the street. Andronico met Felixberto Francisco and Pascual Ore at the store. Andronico greeted Felixberto saying "Pare, you are here." Felixberto answered with belligerence, "O, pare, ano ang kailangan mo sa amin? May atraso ba kami?" Fighting then broke loose. Pascual Ore, who was behind Andronico, suddenly stabbed him hitting the left side of his mouth. Andronico cried "Pare, may tama ako!" Sonny Boy Francisco then appeared and shouted "Tapusin natin siya!" Alejandro Ore, Federico Ore and Neonel Honrubia also manifested and, with their bolos, took turns hacking Andronico. Andronico fell, motionless. One of the members of the group shouted a challenge, "Those who are brave can come forward!" Nobody dared to come forward. Appellants surrounded Andronico, one of them declared him dead, and then, they all left and disappeared.

David Rumbawa, the storeowner, turned off his petromax lamps and closed his store. Marcelo Gapanaga, who was taken aback by the incident, rushed towards Andronico, lifted his head and shouted for light. Rumbawa lighted his lamp. Adolfo Moralde, who was a few meters behind, fetched a jeep and brought Andronico to the

Health Center. The doctor at the Health Center declined to accept him explaining she was not capable of treating the victim's wounds. They took Andronico to Almar's Hospital. He died the following night.[2]

Andronico sustained the following wounds:

- "1. Hack clean cut wound 7 inches in length, 2 inches in depth severing right ear, right temporal bone and brain tissue;
2. Hack clean cut wound 2 inches in length, one inch in depth left angle of the mouth;
3. Stab wound one inch in width, 6 inches in depth upward piercing the lungs, right infra clavicular area."[3]

Andronico died of "cardio-respiratory arrest secondary to intracranial hemorrhage and pulmonary hemorrhage" due to the wounds he sustained.[4]

The accused denied their participation in the killing of the victim and gave their own versions of his death. Felixberto Francisco and his son Samuel "Sonny Boy" Francisco testified that they met Andronico on their way to David Rumbawa's store. Andronico drew something from his pocket and suddenly stabbed Felixberto hitting him in his right arm. He then turned on Sonny Boy and stabbed him four times, hitting him in different parts of his body. The wounded Felixberto shouted to his son to run and they ran away. They met a certain David and told him that they were stabbed by Andronico. David looked for Andronico and then they (Felixberto and Sonny Boy) heard stabbing sounds. They ran to the house of the barangay captain but failed to find him. Instead, they saw the captain's son-in-law, Pascual Ore, the barangay secretary and the designated acting barangay captain. Pascual Ore took them to Dr. Olid who refused to treat them because he had no license. They went to Quezon to see Dr. Borbon who also claimed he had no license. So they went to Narra where Dr. Hubo treated them.[5]

Pascual Ore testified he was at home with his family on the night of November 1, 1985 when Felixberto and Sonny Boy Francisco barged in for help. They complained they were stabbed by Andronico Angeles. Pascual immediately brought them to Dr. Olid. Meanwhile, Pascual's brother, Federico Ore, arrived from work and was instructed by Pascual's wife to follow the three because they had no companions. Federico carried a gas lamp and did as he was told. He, however, did not follow them further to Dr. Olid's residence. He waited at the road and then went home.[6]

Alejandro Ore testified that he was not in Barangay Panitian from October 28, 1985 to November 2, 1985. He alleged he was confined in a hospital in Aborlan, five (5) to six (6) hours away by jeepney ride from Panitian.[7] Neonel Honrubia claimed that he was also in Aborlan where he and some of his farmhands celebrated All Souls' Day by visiting several houses in the vicinity. They finished celebrating at 12:00 midnight and thereafter, they all went to his house to sleep.[8]

On October 12, 1990, the trial court convicted all accused-appellants of murder qualified by treachery. The court found the existence of a conspiracy and the aggravating circumstance of abuse of superior strength and sentenced them as follows:

"WHEREFORE AND IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered finding all the accused in the above-entitled case guilty beyond reasonable doubt as principals of the crime of murder as the same is defined and penalized under the Revised Penal Code sentencing each and every accused to suffer the penalty of reclusion perpetua with all the accessory penalties provided for under the law as well as to pay the cost. They are furthermore ordered to pay the heirs of the deceased, jointly and severally, the sum of Thirty Thousand (P30,000.00) Pesos as and for the death of the deceased and the further sum of Twenty Thousand (P20,000.00) Pesos as and for moral damages.[9]

Hence, this appeal.

We affirm the findings of the trial court, with modifications.

Reviewing the records, we find that the prosecution has proved beyond doubt that appellants killed Andronico Angeles. All six of them were positively identified by two eyewitnesses -- Marcelo Gepanaga and Adolfo Moralde. The testimonies of these two witnesses corroborate each other on all material points. They are clear, straightforward and consistent, without any tinge of fabrication.

In this appeal, appellants[10] contend that the trial court overlooked certain material facts which, if considered, would result in their acquittal. According to them, the court failed to consider the following: (1) the relationship of the eyewitnesses to the victim; (2) the omission of Adolfo Moralde to report the killing to the police immediately; (3) Marcelo Gepanaga's sworn statement did not implicate Neonel Honrubia and Federico Ore; (4) Neonel Honrubia's alibi that he was in Aborlan at the time of the incident and Alejandro Ore's medical certificate supporting his alibi; and (5) the unlawful aggression by the victim when he stabbed Felixberto and Sonny Boy Francisco.

Mere relationship of the eyewitnesses to the victim does not impair the witness' positive and clear testimony and render it unworthy.[11] Marcelo Gepanaga may be Andronico Angeles' "balae," and Adolfo Moralde the victim's brother-in-law, but this fact has not been shown to detract from their credibility and the veracity of their respective testimonies. Appellants have not shown ill motive that would have impelled the witnesses to conjure up the charges and testify falsely against them.

Neonel Honrubia, in his brief, assails the testimony of Adolfo Moralde as incredible because he never reported the killing to the police immediately thereafter.[12] Delay or vacillation in reporting a crime does not necessarily impair the credibility of the witness and render his testimony unworthy.[13] Moralde testified that his wife, who is the victim's sister, actually prevented him from reporting the incident and testifying in the case for fear of reprisal.[14] In fact, two weeks after Andronico's death, appellants threatened Marcelo Gepanaga from testifying for the victim. This made Marcelo afraid and he transferred his residence to Puerto Princesa, Palawan until the time he testified.[15] This fact has never been denied nor refuted by appellants.

Three days after the killing, Marcelo Gepanaga gave to the police his sworn statement narrating the stabbing of Andronico.[16] The statement reads:

"03.

T -

Ano naman ang nangyari kay Andronico Angeles?

S -

Si Andronico Angeles ay tinaga at sinaksak.

04.

T -

Alam mo ba kung sino ang mga taong tumaga at sumaksak kay Andronico Angeles?

S -

Opo.

05.

T -

Kung alam mo, kilala mo ba sila?

S -

Sina Felixberto Francisco, Sonny Boy Francisco, Pascual Ore at si Alejandro Ore, at may kasama pa na hindi ko kilala ang mga pangalan."[17]

Marcelo Gepanaga did not state that Andronico Angeles was killed only by Felixberto and Sonny Boy Francisco, Pascual and Alejandro Ore. He said that in addition to the four, he also saw other persons whose names he did not know. He later testified that he knew the nicknames of the other two but learned their real names as Federico Ore and Neonel Honrubia only after the killing.[18]

Neonel Honrubia's alibi that he was in Aborlan at the time of the incident is inherently weak. For one, Aborlan is merely five (5) to six (6) hours away by jeepney ride from Panitian. It was not physically impossible for Honrubia to be at the scene of the crime that night. In fact, Honrubia has been positively identified by Marcelo Gepanaga and Adolfo Moralde as one of Andronico's assailants. The defense of alibi cannot prevail over the positive identification of the accused.[19]

Alejandro Ore's medical certificate will not exculpate him. Signed by Dr. Rogelio Divinagracia, Health Officer of Aborlan, it stated that Alejandro was suffering from "acute plasmodial infection" and that he was examined and treated from October 28 to November 2, 1985.[20] The medical certificate is, however, dated April 28, 1986, five months after the stabbing incident. Dr. Divinagracia testified that he first treated Alejandro Ore on October 25, 1985 and that on that date, he did not advise confinement at the hospital but that Alejandro merely rest for one week. He saw Alejandro again on October 31, 1985 and he was not totally bedridden but actually ambulatory.[21]

At best, the medical certificate merely proved that Alejandro Ore was ill from October 28, 1985 to November 2, 1985. It did not support Alejandro's alibi that he was at the hospital on November 1, 1985 and that it was physically impossible for him to be at the scene of the crime that fateful night.

The alleged unlawful aggression on the part of the victim cannot extinguish nor mitigate the liability of Felixberto and Sonny Boy Francisco. In the first place, their claim is hard to believe. They did not present any witness to corroborate their story when, according to Felixberto, there were other people on the street who saw the incident.[22] Granting such aggression took place, Felixberto said that he saw Andronico draw a knife from his pocket. He was thereby forewarned of the attack. Andronico stabbed Felixberto first, but it was not impossible for both father and son to overpower their lone assailant. Felixberto sustained only one deep wound while all of Sonny Boy's wounds were superficial.[23]

Felixberto's and Sonny Boy's conduct after the alleged stabbing appears incredible and is not in accord with human behavior and the natural course of things. They did not rush to a doctor to have their wounds treated. They first went to see the barangay captain to report the stabbing. Since the captain was on leave, they looked for the acting barangay captain to take them to the doctor. The doctor in their locality refused to treat them allegedly because he had no license. The second doctor in a neighboring town also refused to treat them for the same reason. So they had to go to another town where they finally obtained the necessary medical attention.

In the meantime, father and son never exerted any effort to report the stabbing to the police. Neither did Pascual Ore, the acting barangay chairman, report such incident. The police learned about it only after a policeman chanced upon them at Dr. Borbon's house.[24]

These circumstances bolster the trial court's finding that no such stabbing took place, and that the wounds of

Felixberto and Sonny Boy were not and could not have been the direct result of their encounter with the victim.

Indeed, the defense of all appellants are self-serving, uncorroborated and weak. They have not been able to prove their claims well enough to overcome the evidence of the prosecution.

The prosecution has likewise shown that appellants' conduct immediately before, during and after the killing of Andronico indicated a conspiracy. All appellants were seen at David Rumbawa's store just before the killing.[25] Felixberto and Pascual were in front of the store while the four others were beside the road, very near the store. All were clad only in short pants and each of them had a bolo. Felixberto was talking to Andronico when Pascual delivered the first stab and the rest of the appellants followed suit. When Andronico fell, appellants surrounded him and only after they believed him dead that they retreated and disappeared into the night.

The fact that the victim sustained only three major wounds does not rule out a conspiracy. Marcelo Gapanaga and Adolfo Moralde testified that Neonel Honrubia and Federico Ore did not hit the victim when they stabbed him because the latter was already falling to the ground.[26] In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.[27]

When they killed Andronico, appellants deliberately employed means that ensured its success without any risk to themselves arising from any defense Andronico could have made to repel or evade their attack. Appellants strategically positioned themselves beside the store and along the road. They were all armed with bolos. Felixberto held the victim's attention when Pascual suddenly and without any provocation stabbed Andronico from behind. Seeing him injured and defenseless, the rest of the appellants appeared and attacked him and fully carried out their culpable intent. They killed him treacherously, taking advantage of their arms and numerical superiority.

Nevertheless, the aggravating circumstance of abuse of superior strength should not have been separately considered by the trial court. This circumstance is absorbed in the qualifying circumstance of treachery.[28] The trial court, however, correctly found that evident premeditation had not been proven to have attended the commission of the crime. There being no mitigating circumstance, the penalty for murder which is reclusion temporal in its maximum period to death should be imposed in its medium period, i.e., reclusion perpetua.

Federico Ore, who was then sixteen (16) years of age at the time of the commission of the crime, is a youthful offender as defined under the provisions of the Child and Youth Welfare Code.[29] Pursuant to this Code, the lower court released him during trial to the custody of his parents under the supervision of the then Ministry of Social Services and Development.[30] When the trial court rendered its decision on October 12, 1990, Federico Ore already turned twenty one (21) years old on July 26, three months before.[31] When an accused is no longer eighteen (18) years of age at the time of sentencing, he cannot anymore avail of the benefit of suspension of his sentence under the Code.[32] The full time he spent in actual commitment and detention during trial shall, however, be credited in the service of his sentence.[33]

Federico should also be entitled to the privileged mitigating circumstance of minority. His penalty should be next lower in degree to that prescribed by law.[34]

The indemnity of P30,000.00 for the death of Andronico should be increased to P50,000.00 in line with established jurisprudence.[35]

IN VIEW WHEREOF, the appeal is dismissed and the decision appealed from is affirmed with the modification that accused-appellant Federico Ore is sentenced to an indeterminate penalty of eight (8) years of prison mayor as

minimum to fourteen (14) years and eight (8) months of reclusion temporal as maximum. The indemnity of P30,000.00 for the death of Andronico Angeles is increased to P50,000.00. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

- [1] Records, pp. 1-2.
- [2] TSN of May 2, 1986, pp. 13-15; TSN of September 24, 1986, pp. 15-16.
- [3] Records, p. 252; Exhibit B.
- [4] Id., Id..
- [5] TSN of May 18, 1988, pp. 3-10; TSN of March 31, 1989, pp. 2-11.
- [6] TSN of July 9, 1987, pp. 6-20; TSN of May 17, 1988, pp. 4-8.
- [7] TSN of July 7, 1988, pp. 3-9.
- [8] TSN of November 10, 1988, pp. 3-4; TSN of May 5, 1989, pp. 4-6.
- [9] Decision, p. 10; Records, p. 646.
- [10] Appellant Neonel Honrubia is represented by a separate counsel and has filed a separate brief.
- [11] People v. Libangan, 220 SCRA 315 [1993]; People v. Dominguez, 217 SCRA 170 [1993]; People v. Enciso, 223 SCRA 675 [1993].
- [12] Appellant's Brief for Neonel Honrubia, p. 7.
- [13] People v. Ocampo, 226 SCRA 1 [1993]; People v. Cordova, 224 SCRA 319 [1993].
- [14] TSN of July 9, 1986, pp. 8-9.
- [15] TSN of September 24, 1986, p. 7.
- [16] Records, p. 580, Exhibit 1.
- [17] Id., Id.; Underscoring supplied.
- [18] TSN of September 24, 1986, pp. 36-38.
- [19] People v. Abo, 230 SCRA 612 [1994]; People v. Matildo, 230 SCRA 635 [1994].
- [20] Records, p. 584, Exhibit 5.
- [21] TSN of January 12, 1989, pp. 3-6.
- [22] TSN of May 18, 1988, p. 22.
- [23] Id., pp. 10-11; Records, p. 582, Exhibit 3.
- [24] TSN of May 18, 1988, pp. 20-21.
- [25] TSN of November 12, 1986, pp. 16-17.

[26] TSN of May 2, 1986, pp. 12-13; TSN of November 13, 1986, p. 10.

[27] *People v. Silong*, 232 SCRA 487 [1994]; *People v. Campa*, 230 SCRA 486 [1994].

[28] *People v. Magtuloy*, 224 SCRA 153 [1993]; *People v. Amondina*, 220 SCRA 6 [1993]; *People v. Banez*, 214 SCRA 109 [1992].

[29] P. D. 603, Article 189.

[30] P. D. 603, Article 191.

[31] TSN of May 2, 1986, p. 15.

[32] *People v. de los Reyes*, 215 SCRA 63 [1992]; *Villanueva v. CFI*, 119 SCRA 208 [1982].

[33] P. D. 603, Art. 197, par. 3.

[34] Revised Penal Code, Article 68, No. 2; *People v. Diadid*, 236 SCRA 45 [1994].

[35] *People v. Ramos*, G.R. No. 104497, January 18, 1995.

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