

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO ARROYO AND RITO MINA, ACCUSED-APPELLANTS.

G.R. No. 99258. September 13, 1991

Ponente: REGALADO, J.

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REGALADO, J.:

With the imposition of the penalty of reclusion perpetua by the Court of Appeals on one of the herein accused-appellants in their appeal thereto, this case has been certified and the entire record thereof elevated to us in accordance with Section 13, Rule 124 of the 1985 Rules on Criminal Procedure.

Accused-appellants Francisco Arroyo, alias "Diotay," and Rito Mina, alias "Tano," were indicted for murder in an information[1] filed on August 30, 1988 alleging:

"That on or about July 10, 1988 in the morning thereof, at Tumalonton, Barangay Guinbanwahan, Municipality of Balud, Province of Masbate, Philippines, and within the jurisdiction of this Court, the said accused, with intent to kill, evident premeditation, treachery, conspiring together and helping one another, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a deadly weapon one Nonito Villarosa, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused instantaneous death."[2]

After the trial, the court a quo rendered the following judgment:

"WHEREFORE, it having been established beyond reasonable doubt that accused Francisco Arroyo alias 'Diotay' and Rito Mina alias 'Tano' committed the offense charged, employing superior strength qualified by treachery in the process, which aggravating circumstance is offset by one mitigating circumstance of voluntary surrender in the case of Francisco Arroyo, who is penalized under Article 248 of the Revised Penal Code and is hereby sentenced to suffer an indeterminate imprisonment of from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional in its maximum period as the minimum of the indeterminate penalty to TEN (10) YEARS of prision mayor in its maximum of the indeterminate penalty, while Rito Mina is hereby sentenced under the same article to suffer an indeterminate imprisonment of from TEN (10) YEARS and ONE (1) DAY of prision mayor in its maximum period as the minimum of the indeterminate penalty to FOURTEEN (14) YEARS and FOUR (4) MONTHS of reclusion temporal as maximum of the indeterminate penalty; and that both Francisco Arroyo and Rito Mina are further sentenced each to indemnify the heirs of the victim in the sum of P30,000.00 without subsidiary imprisonment in case of insolvency; to suffer the accessory penalties provided for by law; and to pay the costs."[3]

In their appeal to the Court of Appeals, docketed as CA–G.R. No. CR 08618, appellants argued that the court a quo erred (1) in giving weight to the partial and biased testimonies of the prosecution witnesses and in disregarding the evidence for the defense; (2) in relying on the weakness of the defense rather than on the strength of the prosecution's evidence; and (3) in convicting accused-appellants of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt.[4]

According to the decision of the Court of Appeals,[5] the evidence shows that on July 9, 1988, there was a dance

party in Barangay Guinbanwahan, Balud, Masbate. Among those who attended the party were appellants Arroyo and Mina, who are first cousins, the victim Nonito Villarosa, and one Giddy Diaz. All four were acquaintances.

After the dance party at around 2:00 A.M. of July 10, 1989, the four proceeded to walk home to Barangay Dao. Along the way, appellant Mina had a heated altercation with Villarosa regarding the former's indebtedness to the latter. They continued walking but upon reaching sitio Tumulonton, Diaz heard Villarosa shout that he had been stabbed by appellant Mina. Diaz and appellant Arroyo were then following the duo by a few meters. Diaz ran towards Villarosa to render assistance but he failed to do so since Arroyo pushed him away. Appellant Arroyo then stabbed Villarosa twice at the latter's back while Villarosa's left arm was being held by appellant Mina.

Diaz ran to Barangay Dao and reported the incident to Villarosa's parents. It being around 4:00 A.M., Villarosa's father waited for daybreak and then informed the police authorities of Balud about the incident. At around 6:30 A.M., appellant Arroyo surrendered at the Balud Police Station and gave to the policemen the knife used in the stabbing of Villarosa. Patrolmen Leo Arguelles and Salvador Ado proceeded to the scene of the crime and, together with the victim's parents and some other persons, they searched for the body of the victim. After three (3) hours, they found the body under buri palms some two hundred (200) meters away from the crime scene.[6]

As established by the findings in the post-mortem report of Dr. Oscar Acuesta, the victim sustained these injuries:

"1.

Wound, Stabbed at the third Intercostal space left parasternal line 1.8 cm. length; 0.6 cm. width; 8.7 cm. depth

2.

Wound, Stabbed, neck left anterior triangle about 0.7 cm. length, 0.4 cm. width, 5.2 cm. depth

3.

Lacerated wound left supraclavicular area about 5 cm. in length, 1 cm. width, 0.3 cm. depth

4.

Stabbed wound back at the level of the thoracic vertebra about 0.7 cm. width, 1.6 cm. length, 10.6 cm. depth

5.

Stabbed wound about 1.5 cm. in length, 0.6 cm. width, 11.3 cm. depth at left posterior axillary fold at the level of sixth Intercostal space probably penetrating the thoracic cavity"

and the cause of death was stated as: "Hemorrhage, severe, secondary to stabbed WD, at the 3[rd] intercostal space left parasternal line 1.8 cm. length, 0.6 cm. width, 8.7 cm. depth."[7]

Appellant Mina denies any participation in the crime, alleging that at around 3:00 A.M. on July 10, 1988, he was sleeping in their house in Barangay Dao, Balud, which is around five (5) kilometers from Guinbanwahan, Balud, Masbate, the scene of the killing.[8] Such denial and disclaimer necessarily constitute the defense of alibi.

Appellant Arroyo's story, on the other hand, is that on July 10, 1988, he met Nonito Villarosa at the dancing hall

in Guinbanwahan at about 12:00 o'clock midnight and that the latter was drinking. He was then asked by Villarosa to go to the latter's home. They dropped by at Villarosa's brother-in-law where Villarosa got a chicken and they then proceeded to Dao, Balud, Masbate. On the way, Arroyo told the victim that they should kill the chicken for "pulutan." Villarosa struck Arroyo with the chicken and this led to an altercation where the victim allegedly unsheathed his knife. They thereupon grappled and Arroyo was able to wrest the knife from Villarosa, after which this was what allegedly transpired:

"Q

What did you do with the knife?

A

Because I was 'nabigla' I stabbed him.

Q

And was he hit when you stabbed him?

A

Yes, sir.

Q

How many times?

A

When he was about to grab the knife I stabbed him twice.

Q

Before you were able to grab the knife from him, was he already wounded during the process of grappling?

A

Yes, sir.

Q

What part of his body?

A

(Witness pointed to his left chest...left part of his body.)

Q

Now after he was hit, as you said, what else took place?

A

He ran."[9]

Contrary to the defense posture, we find the testimony of witness Diaz credible. It was he who was with the victim immediately before the latter was killed. The general rule has always been that the trial court's findings on the witnesses' credibility should be given the highest respect because it has the advantage of observing the demeanor of the witnesses and can discern if such witnesses are telling the truth.[10] While there may be settled exceptions to said rule, we do not discern that any of them obtain in this case.

Furthermore, findings of fact of trial courts are accorded great weight by an appellate tribunal for the latter can only read in cold print the testimony of the witnesses which commonly is translated from the local dialect into English. In the process of converting into written form the statements of living human beings, not only fine nuances but a world of meaning apparent to the judge present, watching and listening, may escape the reader of the written translated words.[11]

Appellants expectedly seek to discredit the testimony of the star prosecution witness, Giddy Diaz, on the ground that Diaz did not see Mina pull a knife from his body, neither did he see Mina stab the victim. It was only when the victim was stabbed for the second time that Diaz ran towards the victim and, when asked why he did not run to the victim when the deceased first shouted, Diaz answered by saying, "What will I do there when he was stabbed?"[12]

Appellants seize upon this statement as a supposed irregular behavior of Diaz in not rescuing a friend when the latter was being attacked or in such a predicament that may cause him life or limb. Per contra, we have repeatedly held, and this is a matter of common observation and knowledge, that the reaction or behavior of persons when confronted with a shocking incident varies.[13] Thus, we heretofore explained under similar circumstances in *People vs. Bolima*[14] that:

"As to the alleged failure of witness Nipolo to come to the aid of Lelis, the Court observes that this is not unnatural. He must have been caught by surprise by the turn of events and the better part of discretion prevented him to come to his aid as it may jeopardize his own life thereby."

Also, even inconsistencies such as in the sequence of the events narrated by the prosecution witnesses have been held to be trivial and need not impair their credibility, especially when such testimonies are corroborated on material points in establishing that a crime was committed,[15] and much more so when we consider the rapidity of the acts of the participants during the incident. We have thoroughly scrutinized the testimony of Diaz and we do not see any of the purported serious inconsistencies imputed by defense counsel.

Appellants also make capital of the supposed inconsistencies in the testimonies of the other prosecution witnesses, a stance again adopted to cast doubt on the finding of appellants' guilt. To repeat, this is untenable for, as invariably stressed by this Court, minor inconsistencies are not sufficient to blur or cast doubt on straightforward attestations. Far from being badges of fraud and fabrications of the truthfulness on material points of the prosecution witnesses, these little deviations also confirm that the witnesses had not been rehearsed. The most candid witness oftentimes makes mistakes but such honest lapses do not necessarily impair his intrinsic credibility.[16]

The defense belabors the fact that the initial report of the incident only implicated appellant Arroyo who admitted having stabbed the victim, but said report failed to include appellant Mina therein. Only the police blotter, they insist, mentions the name of Rito Mina. It will be noted, however, that the said initial report was based only on the

facts gathered by the police during their investigation at the scene of the crime. It should also be made clear, on this point, that the conviction of both appellants was not based solely on the testimony of the police. The unimpeached testimony of Diaz categorically established the criminal participation of both appellants. Said positive testimony, as corroborated by the medico-legal examination of the victim's corpse was correctly relied upon by the appellate court.

Appellant Arroyo invokes self-defense, thereby admitting the fact that he did stab the deceased on that fatal day. Correspondingly, if an accused invokes self-defense, it is incumbent upon him to prove by clear and convincing evidence that he acted in self-defense. He must rely on the strength of his own evidence and not on the weakness of that of the prosecution for, even if the prosecution evidence is weak, it could not be disbelieved after the accused himself admitted the killing.[17]

Accordingly, on the incontrovertible facts of record, the Court cannot but agree with the Solicitor General who found the strained and uncorroborated self-defense version of Arroyo unworthy of credence on these considerations:

"In the first place, it is hard to believe that appellant Arroyo was able to wrest the fatal knife from the victim with only a little scratch he allegedly sustained on his finger. For that matter, his version that the victim sustained the fatal wounds on his chest while grappling for possession of the knife cannot inspire belief, considering the locations and seriousness of said wounds. In fact, by his own version, appellant Arroyo stabbed the victim three (3) more times after he had already wrested the knife from the victim who turned his back to run (tsn, pp. 159-161, Records).

"Upon the other hand, the testimony of eyewitness Giddy Diaz is categorical and positive that appellant Arroyo stabbed the victim at the back while the latter was being held by appellant Rito Mina, who himself had stabbed the victim ahead. This was corroborated by the extent and number of stab wounds (5 in all) sustained by the victim indicating that they were inflicted not by one defending himself but by an aggressor.

"Indeed, if the victim were the aggressor, appellant Arroyo would have divulged this at the first opportunity when he surrendered voluntarily to Pat. Leo Arguelles of the Balud Police Station immediately after the incident. Instead, he surrendered the weapon he allegedly used in stabbing the victim with nary a statement that he wrested the same from the victim, much less claim that he acted in self-defense.

"Since the appellant Arroyo failed to establish aggression on the part of the victim, his plea of self-defense must perforce fail, as there was nothing to repel or prevent to speak of. Hence, there is no necessity of discussing the other elements thereof." [18]

Verily, the number of stab wounds, five (5) of them, which appellants were proved to have inflicted on the victim, their location on the chest and back, and their depth and penetration constitute ample physical evidence belying self-defense.[19] In fact, even indulging appellant Arroyo in his claim that he wrested the knife from Villarosa, he likewise agreed that his life was consequently thereby no longer in danger, but he still stabbed the victim twice at the back.[20]

Turning now to appellant Mina, as earlier stated he interposed the defense of alibi. Eyewitness Giddy Diaz, however, positively identified Mina and the latter's participation in the crime, in this wise:

"Q.

And you said, you were going home to Dao, what happened on the way?

A.

While we were walking to Dao, this Rito Mina and Nonito Villarosa has (sic) a hated argu-ments (sic).

Q.

What was their argument?

A.

Regarding the indebtedness of Tano Mina to Nonito Villarosa.

Q.

And what happened when they exchanging (sic) words?

A.

When we reached Tumulonton, this Nonito Villarosa shouted, why did you stab me Tano?

Q.

And what did you do when this Nonito Villarosa said 'Nano kay sinaksak mo ako Tano?'

A.

I ran towards them but when I arrived there Arroyo pushed me and stabbed Nonito Villarosa.

x x x x x x x x

Q.

At that time that Francisco Arroyo stabbed Nonito Villarosa, what was Rito Mina doing?

A.

He was holding him.

Q.

You mean Rito Mina was holding Nonito?

A.

Yes, sir.

x x x x x x x x

Q.

You also said, Rito Mina help(ed) in holding Nonito Villarosa, aside from that, what did Rito Mina do?

A.

He stabbed him with a long knife.

Q.

Nonito Villarosa was stab(bed) also by Rito Mina?

A.

Yes, sir.

Q.

For how many times?

A.

Twice.

Q.

And where was Nonito Villarosa stabbed?

A.

Witness pointed to his right side of his stomach and left side of his breast.

Q.

And when Rito Mina stabbed Nonito Villarosa, what was his position in relation to Nonito Villarosa?

A.

(Witness demonstrating that both of them were walking on the trail and witness demonstrating by thrusting his hands).

Q.

And did you see the weapon used by Rito to (sic) Nonito?

A.

Yes, sir.

Q.

Can you describe that weapon?

A.

(Witness demonstrating at about 8 inches)

Q.

After you saw Francisco Arroyo and Rito Mina stabbed Nonito Villarosa, what else happen(ed)?

A.

Nothing, I left them there."[21]

Alibi is undeniably a weak defense. In the face of the clear and positive testimony of the prosecution witness, regarding the participation of the accused in the crime, the accused's alibi dwindles into nothingness.[22] For the positive identification of the accused by the witness as the perpetrator of the crime cannot be overcome by the mere denial of the accused himself and the defense witnesses. Positive identification of the accused by the witnesses that he killed the victim establishes the guilt of the accused to moral certainty.[23] Parenthetically, as observed by the trial court, appellant Mina himself conceded that Diaz has no ill reason to testify against him.[24]

Furthermore, the place of the incident is merely five (5) kilometers away from Mina's residence in Barangay Dao. Said appellant utterly failed to prove that it was physically impossible for him to be in Tumulonton. The trial court held that the distance could be negotiated easily by hiking or motorbiking. This Court has time and again held that if there is no physical impossibility for the accused to be at the scene of the crime, alibi will not prosper as a defense.[25]

Accordingly, with the guilt of both appellants having been established beyond peradventure of a doubt, the only issue left for determination is the extent of their respective participations and the corresponding penalties therefor. The trial court convicted both appellants as co-conspirators in the commission of the offense charged. From the testimony of Giddy Diaz, both appellants aided each other in stabbing the victim to death. There is conspiracy since the evidence presented by the prosecution clearly indicates that the acts and behavior of both appellants reveal their common purpose to assault and inflict harm upon the deceased and that there was a concerted execution of that common purpose,[26] apparently triggered by the preceding altercation between Mina and the victim.

A conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such misdeed. That must be their intent. There is a need for concurrence of wills or unity of action or purpose, or common and joint purpose and design. At times, reference is made to previous concert of the criminal design. Its manifestation could be shown by united and concerted action. Thus, a conspiracy need not be proved by direct evidence. It may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of the common design to accomplish a criminal purpose and objective. If there is a chain of circumstances to that effect, then conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others.[27]

Herein appellants are undoubtedly guilty of murder as they took advantage of superior strength when the killing was committed or, as the information states, "conspiring together and helping one another," with both of them

being armed and the victim being unarmed. However, there is some doubt as to whether treachery can be appreciated, which doubt we resolve in their favor, since treachery depends on the suddenness of the attack by which the victim is rendered hors de combat, as in an ambush, or any manner in which the victim is deprived of all defense, and in which the malefactors face no risk to themselves.[28] Such a manner of attack must have been chosen by them.

The fact that Mina held the victim while the latter was being stabbed by Arroyo does not necessarily demonstrate treachery as there is no showing that it was a mode of commission deliberately adopted by them. Definitely, however, what it proves is the qualifying circumstance of abuse of superiority, since both appellants acted in unison to overpower the victim by deliberately pooling their combined strength and weapons, and taking advantage of such superior strength to consummate their nefarious intent with impunity.

Hence, in view of the foregoing, the Court of Appeals acted correctly in finding appellants guilty of murder beyond reasonable doubt and, modifying the judgment of the court below, in imposing the proper penalty therefor, to wit:

"The penalty imposed by the trial court is erroneous. Accused-appellant Arroyo has in his favor the mitigating circumstance of voluntary surrender and should be sentenced to an indeterminate penalty of imprisonment, the minimum of which should be within the range of prision mayor in its maximum period to reclusion temporal in its medium period and the maximum of which should be within the range of reclusion temporal, in its maximum period. On the other hand, accused-appellant Mina should be meted out the medium period prescribed by Article 248 of the Revised Penal Code or reclusion perpetua, there being no mitigating circumstance in his favor. The indemnity awarded to the heirs of the victim should be increased from P30,000.00 to P50,000.00 in accordance with the ruling of the Honorable Supreme Court in *People vs. Sison*, G.R. No. 86455, September 14, 1990.

"IN VIEW WHEREOF, We affirm the finding of guilt of accused-appellants Francisco Arroyo and Rito Mina in *Crim. Case No. 5520 for Murder*. Accused-appellant Arroyo is sentenced to suffer imprisonment the minimum of which is 10 years and 1 day of prision mayor maximum and the maximum of which is 17 years, 4 months and 1 day of reclusion temporal in its maximum period. Accused-appellant Mina, on the other hand, is sentenced to suffer an imprisonment of reclusion perpetua. Both accused-appellants are directed to indemnify the heirs of the victim in the sum of P50,000.00 without subsidiary imprisonment in case of insolvency and to suffer the accessory penalties provided by law as well as the cost of the suit." [29]

WHEREFORE, the judgment of the Court of Appeals is hereby **AFFIRMED** in toto.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[1] Criminal Case No. 5520, Regional Trial Court, Branch 47, Masbate, Masbate.

[2] Original Record, 1.

[3] *Ibid.*, 203; per Judge Sinforoso S. Nano.

[4] Appellant's Brief, 10-11; Rollo, CA-G.R. No. CR 08618, 20.

[5] Penned by Justice Reynato S. Puno, with the concurrence of Justices Jaime M. Lantin and Cezar D. Francisco.

[6] Rollo, CA-G.R. CR No. 08618, 29-30.

- [7] Exhibit "A"; Original Record, 54.
- [8] TSN, September 27, 1989, 30-32.
- [9] TSN, September 27, 1989, 9-10.
- [10] People vs. Magdahong, et al. 176 SCRA 262 (1989).
- [11] People vs. Tadyo, 154 SCRA 349 (1987).
- [12] TSN, June 8, 1989, 18.
- [13] People vs. Yagong, 181 SCRA 479 (1990).
- [14] G.R. No. 96549, March 22, 1991.
- [15] People vs. Cariño, et al., 165 SCRA 664 (1988).
- [16] People vs. Pasco, 181 SCRA 233 (1990).
- [17] People vs. Ansoyon, 75 Phil. 772 (1946); People vs. Gadiano, 115 SCRA 559 (1982).
- [18] Appellee's Brief, 12-14.
- [19] People vs. Masangkay, et al., 155 SCRA 113 (1987).
- [20] TSN, September 27, 1989, 26.
- [21] TSN, June 8, 1989, 6-9.
- [22] People vs. Hortelano, et al., 148 SCRA 469 (1987).
- [23] People vs. Obenque, 147 SCRA 488 (1987).
- [24] TSN, September 27, 1989, 50.
- [25] People vs. Pecato, et al., 151 SCRA 14 (1987).
- [26] People vs. Batas, 176 SCRA 46 (1989).
- [27] People vs. Taaca, et al., 178 SCRA 56 (1989).
- [28] People vs. Agapinay, et al., 186 SCRA 812 (1990).
- [29] Rollo, 38.

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