

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BLADEMIR DEVARAS, PABLO DEVARAS AND RONILO CAISEK, ACCUSED-APPELLANTS.*G.R. Nos. 100938-39. December 15, 1993*

Ponente: CRUZ, J.

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A pedicab driver and his passenger were attacked without provocation by two men who hacked them to death and later threw their bodies over the bridge with the help of another person. Investigation that same night disclosed the participation of the herein appellants, who were subsequently accused of murder in two informations alleging that they committed the offenses in conspiracy with each other and with treachery and abuse of superior strength.

After the joint trial, Judge Pedro S. Espina of the Regional Trial Court of Palo, Leyte, finding the presence of treachery but no conspiracy, convicted Blademir Devaras as principal and Pablo Devaras as accessory in the murder of Efren Verzosa, and Ronilo Caisek for the murder of Felix Verzosa.[1] All three have appealed on the grounds that the trial court erred a) in convicting them of murder instead of homicide; and b) in not holding that Ruel Animos should also have been charged and convicted as an accessory like appellant Pablo Devaras.

The principal witness for the prosecution was Raul Animos, who claimed to have witnessed the killing of the two victims. He said that on July 10, 1990, at about 7 o'clock in the evening, the three appellants were drinking tuba with him in the house of Pablo Devaras and that thereafter they joined him on his tour of duty as bantay-bayan. They had been making the rounds in the town for about four hours when, while at the Daguitan bridge, they saw a zigzagging pedicab approach. When the pedicab was halfway across the bridge, Blademir Devaras, who was carrying a long bolo known as a "sansibar," suddenly attacked Efren Verzosa, the pedicab driver. Efren fell from his seat but Blademir continued hacking him with the bolo, hitting him in the head and neck. At about that same time, Ronilo Caisek, who was also carrying a long bolo, attacked Felix Verzosa, the passenger, who tried to parry the blows with his arms as he got out of the vehicle. He fell, staggered and ran but was overtaken by Ronilo, who continued striking the helpless old man in the head, neck, chest and shoulders.[2]

Ronilo said that he was barely 5 meters away from the assailants and was so shocked at what had happened that he could barely move or say anything. Pablo Devaras also did not participate in the brutal slaying but later helped his cousin Blademir throw Efren's body over the bridge into the river below.[3] Ronilo himself was ordered to help throw the body of Felix and, although he initially hesitated, had to comply in the end because he was threatened with death if he refused to obey.[4]

The abandoned pedicab was found by Doring Leaño, who reported this, curiously enough, to the three accused. Together, they went to see barangay captain Benigno Taden, who immediately went to the bridge and thereafter, suspecting foul play, notified the police. Pat. Romulo Perido went to investigate with several policemen. When he noticed blood on the back of Ruel's shirt, he forthwith took Ruel into custody for questioning, during which the suspect revealed what had happened earlier and implicated the three appellants.[5]

The body of Felix was found the following morning under the bridge. The body of Efren was found about three hours later near the seashore. The autopsy revealed that Felix had sustained twenty wounds and nine wounds had been inflicted on Efren.

All three accused denied participation in the killings. Blademir swore that he was alone in his house at the time of the incident but on cross-examination admitted he was with the two accused.[6] Ronilo confirmed that he was then in his house with Blademir and Pablo.[7] Pablo maintained that he was with his mother that evening but changed his testimony when confronted with Ronilo's statement, which he affirmed to be true.[8]

After assessing the evidence of the parties, the trial court decided in favor of the prosecution, rejecting the alibis and denials of the accused for being inconsistent and incredible.

Blademir Devaras and Caisek were both sentenced to reclusion perpetua and each was ordered to pay civil indemnity in the amount of P50,000.00 to the heirs of their respective victims. Pablo Devaras was convicted as an accessory in the murder of Efren Verzosa and sentenced to an indeterminate penalty of 6 years, 1 month and 11 days to 8 years and 20 days.

We defer to the factual findings of the trial court, there being no showing that they were reached arbitrarily or without basis. The evaluation of the credibility of the witnesses is better made by the judge presiding at the trial rather than by the appellate court because of the former's opportunity to observe the deportment of the witnesses and to ascertain therefrom whether they are narrating the truth or falsifying it.

Moreover, the assignment of errors is in effect an admission by the appellants of their participation in the killings of the two victims. As we see it, their appeal is only an attempt to reduce their penalties.

The first error assigned by the appellants is untenable because the evidence of record clearly shows that Blademir and Ronilo suddenly attacked their unarmed victims with bolos, thereby insuring the commission of the offense without risk to themselves arising from the defense the victims might make.[9] Alevosia qualified the crime to murder. The killings would have been homicide only without the attendance of treachery, which is one of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code.

The second assigned error must also be dismissed. The determination of the persons to be prosecuted on the basis of the evidence against them rests primarily with the prosecutor, who is vested with quasi-judicial discretion in the discharge of this function.[10] We have held that, as an exception, the prosecutor can be compelled by mandamus if he abuses this discretion and refuses to include a person as a co-accused against whom there appears to be at least prima facie evidence.[11] However, this extraordinary writ is available only if the petitioner shows that he has first exhausted all remedies in the ordinary course of law, such as a motion filed with the trial court for the indictment of the person or persons excluded by the prosecutor.[12] It does not appear that such a motion was filed by the appellants in the case at bar.

We agree that there was no conspiracy between the appellants to justify their common conviction for both murders. There is no evidence that Blademir and Ronilo had earlier come to an agreement to kill the Verzosas; on the contrary, it would appear that they had acted on impulse, independently of any common plan. The trial court was correct in finding Blademir guilty of the murder only of Efren Verzosa and Ronilo guilty of the murder only of Felix Verzosa instead of holding them equally liable for both murders.

An accessory is defined as one who, having knowledge of the commission of the crime, and without having participated therein, either as a principal or an accomplice, takes part subsequent to its commission by concealing or destroying the body of the crime, or the effects or instruments thereof in order to prevent its discovery.[13] For having assisted in throwing Efren's dead body into the river, Pablo Devaras was correctly held guilty as an

accessory.

Article 53 of the Revised Penal Code provides that “the penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.” Since the prescribed penalty for murder is reclusion temporal in its maximum period to death,[14] the penalty two degrees lower to be imposed on Pablo Devaras as accessory is prision correccional in its maximum period to prision mayor in its medium period.

Applying the Indeterminate Sentence Law, after noting that no mitigating or aggravating circumstance attended his participation in the crime, we further reduce the penalty of Pablo Devaras to four years and two months of prision correccional as minimum, to eight years of prision mayor as maximum.

If both Bladimir Devaras and Pablo Devaras had been convicted as principals, they would have been solidarily liable for the civil indemnity to the heirs of Efren Versoza. But inasmuch as Pablo Devaras was convicted only as an accessory, he and Blademir Devaras shall be directly liable only for their respective shares in the award of P50,000.00, and subsidiarily liable for the other’s share. The following articles of the Revised Penal Code are applicable:

Art. 109. Share of each person civilly liable. - If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

Art. 110. Several and subsidiary liability of principals, accomplices and accessories of a felony - Preference in payment. - Notwithstanding the provisions of the next preceding article, the principals, accomplices and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable.

The subsidiary liability shall be enforced, first against the property of the principals; next against that of accomplices, and lastly against that of the accessories.

Whenever the liability in solidum or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.

In the exercise of our discretion, we hereby require Blademir Devaras, as principal, to indemnify the heirs of Efren Verzosa in the amount of P40,000.00 and Pablo Devaras, as accessory, to pay the amount of P10,000.00, provided that each shall be subsidiarily liable for the other’s share in case of the latter’s insolvency.

The Court can only wonder at what might have moved Blademir and Ronilo to suddenly attack their unsuspecting victims when, while patrolling the town as its supposed protectors, they turned predators instead and killed two defenseless persons. From bantay-bayan, they turned bantay-salakay in an incomprehensible rampage that needlessly wasted two innocent lives. Was it the liquor in their brain that urged them to kill, or was it simple, inexplicable wickedness? The answer lies in the dark recesses of their minds, and of their prison cells.

WHEREFORE, the decision of the trial court is **AFFIRMED**, but with modification. The penalty of reclusion perpetua for both Bladimir Devaras and Ronilo Caisek, and the civil indemnity of P50,000.00 to be paid by Caisek to the heirs of Felix Verzosa, are maintained. But the indeterminate penalty to be imposed on Pablo Devaras shall be four years and two months of prision correccional, as minimum, to eight years of prision mayor, as maximum, and that of the civil indemnity of P50,000.00 due the heirs of Felix Verzosa, P40,000.00 shall be paid by Blademir Devaras and P10,000.00 by Pablo Devaras, provided that each shall be liable for the other’s share in case of insolvency. Costs against the appellants.

SO ORDERED.

Davide, Jr., Bellosillo, and Quason, JJ., concur.

[1] Decision penned by Regional Trial Court Judge Pedro S. Espina, Branch VII, Government Center, Palo, Leyte.

[2] TSN, October 11, 1990, pp. 12-17.

[3] Ibid., p. 18.

[4] Id., pp. 18-19.

[5] id., p. 4.

[6] TSN, October 17, 1990, p. 25.

[7] TSN, October 24, 1990, p. 3.

[8] Ibid., pp. 5, 8-9.

[9] TSN, October 11, 1993, pp. 15-17.

[10] Paderanga v. Drilon, 196 SCRA 86.

[11] Guiao v. Figueroa, 50 O.G. 4828.

[12] Aquino v. Mariano, 129 SCRA 532.

[13] Article 19, paragraph 2 of the Revised Penal Code.

[14] Article 248 of the Revised Penal Code.

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