

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. MODESTO OREHUELA AND ANECITO CAÑIZARES, ACCUSED-APPELLANTS. JOHN DOE (AT LARGE), ACCUSED.

G.R. Nos. 108780-81. April 29, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is an appeal from the Joint Decision in two (2) Criminal Cases of the Regional Trial Court of Tagbilaran City.

In Criminal Case No. 6021, appellants Modesto Orehuela and Anecito Cañizares, and one John Doe, were charged with murder committed as follows:

"That on or about the 29th day of January 1989 at barangay Tomoc, municipality of San Miguel, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping each other, with intent to kill and with treachery by suddenly attacking the victim without giving him the opportunity to defend himself and without justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and shoot one Teoberto Cañizares with the use of a firearm of unknown caliber thereby inflicting upon the vital parts of the body of the victim mortal wounds or injuries which resulted directly [in] the immediate death of the victim Teoberto Cañizares; to the damage and prejudice of the heirs of said victim.

Acts committed contrary to the provisions of Article 248 of the Revised Penal Code."[1]

In Criminal Case No. 6134, appellant Orehuela alone was charged with qualified illegal possession of firearm and ammunition, in an information which read as follows:

"That on or about the 29th day of January 1989 at barangay Tomoc, municipality of San Miguel, province of Bohol, Philippines within the jurisdiction of this Honorable Court, the above-named accused, with intent to possess firearm and ammunition, did then and there willfully, unlawfully and feloniously carry and have in his possession, custody and control one firearm, .38 caliber revolver and with ammunition, which firearm was carried by the accused outside of his residence and was used by him in the commission of the crime of Murder against one Teoberto Cañizares, without first obtaining the necessary permit or license to carry and possess the said firearm and ammunition from proper authorities; to the damage and prejudice of the Republic of the Philippines.

Acts committed contrary to the provisions of Presidential Decree No. 1866."[2]

Orehuela and Cañizares were arrested and brought before the trial court to answer the charges filed. The third accused in Criminal Case No. 6021 has remained to date at large.

Both Orehuela and Cañizares pleaded not guilty to the charge of murder. In respect of the information for qualified illegal possession of firearm and ammunition, Orehuela also entered a plea of not guilty.

On motion of the prosecution, the trial judge, Presiding Judge Fernando S. Ruiz, ordered the consolidation of Criminal Case No. 6134 for qualified illegal possession of firearm and ammunition with Criminal Case No. 6021 for murder.[3]

Soon after the prosecution rested its case, counsel for Anecito Cañizares filed a motion for leave to file a demurrer to the evidence. Judge Ruiz denied the motion holding that:

"After a review of the evidence presented by the prosecution, this Court believes that without any exculpatory evidence on the part of the accused Anecito Cañizares, his participation in the crime has been shown.

Resultantly, accused Anecito Cañizares' motion to file demurrer to evidence is hereby denied." [4]

Sometime later, Judge Ruiz retired from the service, and Judge Achilles L. Melicor was assigned to the sala thus vacated. The proceedings in the consolidated criminal cases continued. Counsel for Orehuela and Cañizares called to the stand their respective witnesses. After trial, Judge Melicor found Orehuela and Cañizares guilty of murder, and as well convicted Orehuela of qualified illegal possession of firearm and ammunition. The dispositive portion of the Joint Decision[5] dated 21 November 1992 read as follows:

"WHEREFORE, judgment is hereby rendered as follows:

1. Under Criminal Case No. 6021, the Court finds accused Modesto Orehuela and Anecito Cañizares guilty beyond reasonable doubt, as co-conspirators, of the crime of Murder qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code, and sentences each of them to suffer the penalty of RECLUSION PERPETUA with accessory penalties therefor; to indemnify jointly and severally the heirs of the deceased Teoberto Cañizares in the amount of P50,000.00 and to reimburse the said heirs in the sum of P10,000.00 for the expenses they incurred during the wake and burial of the deceased, without subsidiary imprisonment in case of insolvency. The case against John Doe is ordered archived.
2. Under Criminal Case No. 6134, the Court finds accused Modesto Orehuela guilty beyond reasonable doubt of the crime of Qualified Illegal Possession of Firearm and Ammunition, defined and penalized under the provision of Presidential Decree 1866, and sentences him to suffer the penalty of RECLUSION PERPETUA. The .38 caliber slug (Exhibit C) is confiscated in favor of the government.

SO ORDERED."

Appellants Orehuela and Cañizares filed separate briefs. Orehuela assigned the following as errors on the part of the trial judge:

- "1. The trial court erred in giving full weight and credence to the testimony of lone eyewitness Teofilo [Marimon] despite its loopholes and inconsistencies;
2. The trial court erred in rejecting the defense of alibi of Modesto Orehuela despite overwhelming evidence to that effect;
3. The trial court erred in finding that the two (2) accused conspired together based on the side statement of Anecito Cañizares in his memorandum 'that there is no law that punishes a person for having walked with a murderer, the former not knowing that the latter is a murderer' and the animosity that existed between Anecito Cañizares and the victim;
4. The honorable trial court erred in convicting the accused beyond reasonable doubt of the crime of murder defined under Art. 248 of the Revised Penal Code and qualified illegal possession of firearm and ammunition defined and penalized under Presidential Decree No. 1866 despite weak evidence for the prosecution." [6]

Appellant Cañizares, for his part, urged that Judge Melicor had committed the following errors:

- "1. The lower court erred in convicting accused Anecito Cañizares despite the miserable failure of the prosecution to present any prima facie evidence against him.
2. The lower court erred in failing to honor the constitutional right of accused Anecito Cañizares as to his innocence unless proven guilty."[7]

On the charge of murder, the prosecution relied principally on testimonial evidence. The prosecution presented four (4) witnesses: namely, Rosalina Cañizares, widow of the deceased victim; Teofilo Marimon, a resident of Tomoc, San Miguel, Province of Bohol; P/Cpl. Jovino Nunez; and Bonifacio Ayag, a National Bureau of Investigation ("NBI") Ballistics Technician.

The facts of the case, as presented by the prosecution, may be culled from the testimony of the prosecution witnesses.

Rosalina Cañizares testified that on the evening of 29 January 1989, she and her husband, Teoberto Cañizares, lodged for the night at the house of their neighbor Elias Cañizares, to help nurse a sick child. At around 7:30 o'clock in the evening, Rosalina and Teoberto heard their dogs barking persistently. The couple returned to their own house, some twenty (20) meters away from Elias Cañizares' home. Finding no apparent cause for their dogs' behavior, Teoberto and Rosalina decided to return to their neighbor Elias' house. Rosalina recalled that she walked ahead of her husband who, at the last moment, decided to take a last look and returned to their own house. When Rosalina reached Elias' house, she heard two (2) gunshots in quick succession. She then heard her husband crying for help, evidently in pain. She rushed out of Elias' house, with a lamp on hand. Upon reaching their own house, Rosalina saw her Teoberto sprawled on the floor, dead.

Teofilo Marimon recalled that as he passed by the house of Teoberto Cañizares on his way to the house of Elias Cañizares to attend to the sick child, he noticed that the window panels in the house of Teoberto were drawn wide open. There was a light inside the house, and Teofilo saw Teoberto inside. Teofilo also observed that there was a man standing outside the window holding a gun and aiming it at Teoberto Cañizares. Teofilo recognized the man wielding the gun to be appellant Orehuela. Teofilo testified that he was approximately ten (10) meters away from Teoberto's house as he observed the foregoing. Then he heard two (2) gunshots fired. Teofilo ran and hid himself in some bushes approximately twenty (20) meters away from Teoberto's house. While hiding among the bushes, Teofilo soon saw three (3) persons hurriedly walking, one after the other, away from Teoberto's house. Teofilo did not recognize the first man who apparently was not from Tomoc, San Miguel, Bohol; however, he saw and recognized clearly the faces of Orehuela and Anecito Cañizares, both of whom had resided for a long time in the same town that Teofilo lived in; Orehuela, with a flashlight and a handgun followed the unidentified person, while Anecito Cañizares made up the rear. Teofilo did not rush out of hiding as soon as the three (3) persons had gone by, but rather waited in the bushes for sometime. The following day, Teofilo Marimon learned that Teoberto Cañizares had been shot to death.

P/Cpl. Jovino Nuñez stated on the witness stand that he had learned of the slaying of Teoberto Cañizares on the day following the shooting, from Elias Cañizares and one Marciano Orilla. P/Cpl. Nuñez immediately went to the deceased's house. There he found that the victim had sustained two (2) gunshot wounds. He also recovered the slug of a bullet from a wall of the house of the victim Teoberto, and brought the slug to Cebu City for ballistic examination.

Bonifacio Ayag, an NBI ballistics technician, conducted the ballistic examination on the slug recovered from the wall of the victim's house. He testified that the slug was a caliber .38 copper lead bullet fired through the barrel of a .38 caliber firearm, the rifling of which "inclined to the right."

The appellants controverted the prosecution's version of the events of that tragic night. Each of the appellants

disclaimed any participation in, or knowledge of, the circumstances surrounding the murder with which they were charged.

Appellant Orehuela principally asserted that, at about 7:30 o'clock in the evening of 29 January 1989, he was in his house in Sitio Ligid-Ligid, San Carlos, Danao, Bohol, some twenty-five (25) kilometers away from Tomoc, San Miguel, Bohol. He was celebrating his first wedding anniversary with friends. He testified that it was not possible for him to have been at the scene of the crime, considering that no road connected Tomoc and Ligid-Ligid which was passable by motor vehicles. A journey from Ligid--Ligid to Tomoc had to be made on foot and would take about three (3) to four (4) hours. Orehuela's statement that he was in Ligid-Ligid celebrating at the time Teoberto Cañizares was slain, was corroborated by two (2) defense witnesses. The first, Camilo Persegas, testified that there was indeed a celebration on 29 January 1989 which many people attended. Persegas declared that he slept in appellant Orehuela's house that night and had breakfast with him the next morning. The second defense witness testified that he too was at Orehuela's wedding anniversary celebration. There, he saw Camilo Persegas and several other people naming them; he, however, left the party at around 7:00 o'clock in the evening.

Appellant Anecito Cañizares, for his part, testified that he had left Tomoc on 27 January 1989 for Katipunan, Bohol to work in his fields. The distance from Tomoc to Katipunan, approximately thirty (30) kilometers, was negotiated by Anecito Cañizares on foot and the journey took him the whole morning. On the 29th of January 1989, he went to see one Aniana Butil to request help from her sons in working the landholding of Anecito. He learned about the death of Teoberto Cañizares, his second cousin, only on the next day. Anecito returned to Tomoc on foot on 31 January 1989 and paid his last respects to the dead Teoberto. Anecito sought to bolster his story by presenting two (2) witnesses. The first, one Leoncio Matabilas, testified that he was a carpenter working for Anecito Cañizares and that he had stopped working on Cañizares' house the day before Anecito was scheduled to leave for Katipunan. Aniana Butil, a resident of Katipunan, testified that she saw Anecito Cañizares on 29 January 1989, at around 7:30 in the evening in Katipunan. Aniana confirmed that Anecito Cañizares had requested assistance from her sons in working his agricultural landholding.

The firmly settled rule is that, in respect of the appraisal of credibility of witnesses, the findings of fact of the trial judge are to be accorded great weight and are not to be disturbed, unless the judge had clearly overlooked facts of substance and value which, if taken into account, would affect the result of the case.[8] After careful examination of the record of this appeal, the Court is unable to find any compelling reason to depart from this rule insofar as the trial court's conclusion that Orehuela was guilty of the murder of Teoberto Cañizares is concerned.

The trial court had accepted as straightforward and worthy of credence the positive identification by Teofilo Marimon of Orehuela as the slayer of Teoberto, over the testimonies of appellant Orehuela and his corroborating witnesses claiming alibi. Orehuela contended that the testimony of Rosalina Cañizares, widow of the victim, conflicted with the testimony of Teofilo Marimon, the prosecution's eye-witness. Orehuela asserted that while Marimon had declared that there was light inside the house where Teoberto Cañizares was fatally shot, Rosalina, upon the other hand, stated that she had to come back to her neighbor Elias Cañizares to fetch a lamp because it was dark inside Rosalina's and Teoberto's house. Orehuela claims that the eye-witness account of Marimon should not have been accorded any weight or credence by the trial judge.

We are not persuaded. The recollection of different witnesses with respect to the time and place and other circumstances of a criminal event would naturally differ in various details.[9] The inconsistencies adverted to by accused Orehuela, if inconsistency there was, refer to a detail of circumstance which did not bear upon the basic aspects of the crime.[10] At all events, the inconsistency was more supposed than real: the light in the house of Teoberto seen by Teofilo Marimon just before the firing began, could very well have been snuffed out promptly

upon the shooting, possibly by Teoberto himself as he cried for help, with the result that by the time Rosalina had reached their home, it was dark inside the house.

The contention of Orehuela that Teofilo may have mistaken him for some other person of similar physical build, does not deserve prolonged consideration. That Teofilo Marimon, from a distance of about ten (10) meters, had observed Orehuela aiming at the victim, was not successfully rebutted. The light inside the house, observed through the open windows, had enabled Teofilo to recognize Orehuela by face. Orehuela had been Teofilo's friend and barriomate for a considerable period of time. Teofilo was himself familiar with the physical features of Orehuela's persona, which familiarity facilitated visual identification. Moreover, Marimon had a second opportunity to verify his initial recognition when Orehuela, with flashlight and gun on hand, passed by Marimon concealed in the bushes at a distance of about one (1) fathom.[11]

The Court considers that the evidence of the prosecution had shown beyond reasonable doubt Orehuela's guilt. He had aimed and fired a pistol at the unsuspecting victim who sustained fatal gunshot wounds. The trial court held that Orehuela's denials were not enough to set at naught the positive and credible identification of the eye-witness Teofilo Marimon: those denials constituted self-serving negative evidence which can hardly be considered as overcoming the straightforward and credit-worthy eye-witness account.[12] We find no basis for overturning this conclusion.

We find too that treachery had been properly appreciated. The means, method or manner of execution employed ensured the offender's safety; and such means were consciously chosen by the accused.[13] In the case at bar, the victim was suddenly and without warning shot by appellant Orehuela who had stationed himself outside Teoberto's house and thus incurred no risk to himself. The means of attack obviously took the victim by surprise and the latter could not offer any effective defense or retaliation against the slayer hidden from the victim's view.

Turning to the case against appellant Anecito Cañizares, we find quite a different situation. After examination of the evidence submitted against him, we are compelled to conclude that Anecito's guilt is open to reasonable doubt. The case of the prosecution against Anecito Cañizares rested entirely upon the basic premise that Orehuela and Cañizares were co-conspirators. On that basis, Anecito Cañizares was found by the trial court equally liable for the act personally committed by Orehuela, the physical act, that is, of firing at the victim Teoberto Cañizares with deadly consequences.

It is familiar doctrine that conspiracy, as with any other ingredient of an offense, must be established not by mere conjecture[14] but by evidence which satisfies the requirement of proof beyond reasonable doubt.

To establish conspiracy, two (2) or more persons must be shown to have come to an agreement concerning the commission of a felony. It is not, of course, indispensable that direct proof be adduced to establish the agreement to commit the felony; the availability of such direct proof of the agreement to commit the felony is, in the nature of things, clearly the exception rather than the rule. Conspiracy must commonly be inferred from acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[15] In the great majority of cases, conspiracy is established by proof of acts done in concert, that is to say, acts which yield the reasonable inference that the doers thereof were acting with a common intent or design. Analytically, therefore, the task in every case is that of determining whether the particular acts established by the requisite quantum of proof do reasonably yield that inference.

In the case at bar, as noted earlier, Anecito Cañizares, per the testimony of eye-witness Teofilo Marimon, was seen walking hurriedly away from the house of the victim, apparently following the John Doe and Modesto Orehuela. The eye-witness did not testify that he saw Anecito Cañizares with Orehuela immediately before or at the precise time when Orehuela fired at the victim. No act physically performed by Anecito Cañizares was

perceived and reported by the eye-witness, save only the act of walking away, in a hurried manner, from the house of the victim. In other words, no overt act on the part of Anecito Cañizares was established other than that of leaving the vicinity of the slaying, apparently following appellant Orehuela and the John Doe. We must conclude that that act, by itself, was insufficient to establish beyond reasonable doubt that Anecito Cañizares was privy to the intent of Orehuela to slay Teoberto Cañizares and that he had participated in the carrying out of that intent.[16] The only inferences that appear to the Court to have been reasonably established by the testimony of Teofilo Marimon was that Anecito Cañizares was in the vicinity or not far away from the house of Teoberto Cañizares at or about the time of the shooting and that he probably heard the two (2) gunshots and, possibly, the cries of Teoberto for succor. But these inferences, without more, do not adequately establish participation in a criminal conspiracy. Our mind and conscience do not rest at ease with the conclusion of the trial court, based solely thereon, that Anecito had conspired with Orehuela and an unidentified third man in murdering Teoberto Cañizares.[17]

The failure or inability of the defense to show any ill motive on the part of Teofilo Marimon to perjure himself and falsely to accuse his friend Anecito Cañizares of such a grievous crime, does not by itself warrant the inference that a criminal conspiracy between Modesto Orehuela and Anecito Cañizares did in fact exist.[18] The testimony of Teofilo Marimon, while sincerely given and truthful and accurate so far as it went, simply did not encompass the acts of Anecito Cañizares before he was seen walking away from the victim's house. That testimony, in other words, did not by itself suffice to establish clearly and convincingly a reasonable nexus between Anecito Cañizares and the fatal shooting of Teoberto by Modesto Orehuela.

We are mindful that the testimony of the widow Rosalina Cañizares tended to establish the existence of a dispute about land boundaries between the victim Teoberto Cañizares and appellant Anecito Cañizares. Assuming, however, *arguendo* only, that such a dispute had been adequately shown, and assuming further that that dispute was of a nature sufficiently weighty and serious as to have arguably led to a resolve on the part of Anecito to kill Teoberto Cañizares, such motive nevertheless does not dispense with the necessity of proving participation or acts in concert before a criminal conspiracy may be regarded as established between specified persons. Proof of motive is no substitute for proof of physical acts of participation; motives are not always or inevitably externalized into actions.

Turning to Criminal Case No. 6134 for qualified illegal possession of firearm and ammunition, we observe that the defense of appellant Orehuela consisted simply of a non-corroborated and self-serving denial that he had ever possessed a firearm in his entire life.[19] Upon the other hand, we note also that the allegedly unlicensed murder weapon was not presented in evidence by the prosecution. What the prosecution did present to show absence of a license or permit to possess the firearm used to kill Teoberto, was a certification issued by the Bohol Regional Headquarters of the Integrated National Police, dated 20 December 1989, certifying that:

"x x x x x x x x x

x x x according to records of this Headquarters, the name of Modesto Orehuela, does not appear in the list of licensed and/or registered firearm holders this province as of this date. Subject Modesto Orehuela was not authorized by this Headquarters to carry firearm outside his residence on January 29, 1989.

This certification is issued upon request of Second Assistant Provincial Prosecutor, Reinerio S. Namocatcat and Third Assistant Provincial Prosecutor, Toribio S. Quiwag, City of Tagbilaran, to support the complaint for Illegal Possession of Firearm and Ammunition against above-named person.

Records Verified by:

(Signed)

Misericordio C. Spong

Msg. PC

Firearm NCO, Bohol CC

Certified Correct :

(Signed)

Cesar C. Veloso, MNSA

Lt. Colonel. (CSC) PC

Provincial Commander

and

Police Superintendent"[20]

We consider that the certification was adequate to show that the firearm used by Modesto Orehuela in killing Teoberto Cañizares was a firearm which Orehuela was not licensed to possess and to carry outside his residence on the night that Teoberto Cañizares was shot to death. That that firearm was a .38 caliber pistol was shown by the testimony and report of NBI Ballistician Bonifacio Ayag. When the above circumstances are taken together with the testimony of the eye-witness that Modesto Orehuela was in fact in possession of a firearm and used the same to kill Teoberto Cañizares, we believe that accused Orehuela was properly found guilty of aggravated or qualified illegal possession of firearm and ammunition.

WHEREFORE, for all the foregoing,

1. the Decision in Criminal Case No. 6134 for qualified illegal possession of firearm and ammunition is hereby AFFIRMED in its entirety; and

2. the Decision in Criminal Case No. 6021 is hereby AFFIRMED in respect of Modesto Orehuela; but is REVERSED insofar as Anecito Cañizares is concerned. Anecito Cañizares is hereby ACQUITTED of the charge of murder, his guilt thereof not having been established by proof beyond reasonable doubt.

No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Folder of Records for Murder, p. 23.

[2] Records for Illegal Possession of Firearm, p. 20.

[3] Records for Illegal Possession of Firearm, p. 30.

[4] Folder of Records for the Charge of Murder, p. 51.

[5] Rollo, p. 21; Folder of Records for Murder, p. 74.

[6] Accused-appellant Orehuela's Brief, Rollo, p. 71.

[7] Accused-appellant Cañizares' Brief, Rollo, p. 26.

- [8] *People vs. Arenas*, 198 SCRA 172 (1991); *People vs. Somera*, 173 SCRA 684 (1989); *People vs. Baysa*, 172 SCRA 706 (1989); *Aguirre vs. People*, 155 SCRA 337 (1987).
- [9] *People vs. Fuertes*, G.R. No. 104067, 17 January 1994; *People vs. Arbois*, 138 SCRA 24 (1985).
- [10] *People vs. Madariaga*, 211 SCRA 698 (1992); *People vs. Bigcas*, 211 SCRA 631 (1992)
- [11] TSN, 13 December 1989, p. 11.
- [12] *People vs. Sariol*, 174 SCRA 237 (1989); *People vs. Viray*, 164 SCRA 135 (1988).
- [13] *People vs. Fuertes*, G.R. No. 104607, 17 January 1994.
- [14] *People vs. Lug-aw, et. al.*, G.R. No. 85735, 18 January 1994; *People vs. Donato*, 207 SCRA 125 (1992).
- [15] *People vs. Dimdam, et. al.*, G.R. No. 87555, 16 November 1993; *People vs. Largo*, 46 SCRA 597 (1972).
- [16] See, in this connection, *People v. Lug-aw, et al.*, G.R. No. 85735, 18 January 1994; *People v. Furuganan*, 193 SCRA 471 (1991); *People v. Taaca*, 178 SCRA 56 (1989); *People v. Benavides*, 127 SCRA 188 (1984).
- [17] See also *People v. Taaca*, 178 SCRA 56 (1989); *People v. Tividad*, 20 SCRA 549 (1967).
- [18] *People v. Mangco and Sakilan*, G.R. Nos. 108963-68, 1 March 1994; *People v. Redulla*, 220 SCRA 670 (1993).
- [19] Brief for Accused Modesto Orehuela, Rollo, p. 87.
- [20] Folder of Evidence, p. 3.

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