

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WALTER NACIONAL ALIAS “KA DENNIS,” ABSALON MILLAMINA ALIAS “KA ALVIN,” EFREN MUSA, RUDY LUCES, JAVIER MIRABETE ALIAS “COMMANDE...

G.R. Nos. 111294-95. September 07, 1995

Ponente: PUNO, J.

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PUNO, J.:

This is an appeal from the decision of the Regional Trial Court, Branch 9, Legazpi City in Criminal Cases Nos. 4854-4855.

On December 18, 1989, Walter Nacional alias "Ka Dennis," Absalon Millamina alias "Ka Alvin," Efren Musa, Rudy Luces, Javier Mirabete alias "Commander," and Zacarias Militante alias "Care" were charged with murder in two separate informations. The first information reads as follows:

"That on or about the 21st day of February 1985 at Brgy. Salvacion, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping one another, with evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously shoot with a firearm one QUIRINO LAGASON, inflicting upon the latter injuries resulting to his death, to the damage and prejudice of his immediate heirs." [1]

The second information reads:

"That on or about the 21st day of February 1985 at Brgy. Salvacion, Municipality of Daraga, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, conspiring, confederating and helping one another, with evident premeditation and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously shoot with a firearm one JOEL LAGASON, inflicting upon the latter injuries, resulting to his death, to the damage and prejudice of his immediate heirs." [2]

When arraigned, all the accused, except Absalon Millamina who was at large, pleaded "not guilty." The two informations were later consolidated and assigned to the Regional Trial Court, Branch 9, Legazpi City. [3] Trial thereafter ensued.

On May 31, 1993, the trial court rendered a decision finding the accused (except Millamina) guilty of two counts of murder qualified by evident premeditation and attended by a conspiracy. The dispositive portion of the decision reads as follows:

"WHEREFORE, having been convinced beyond reasonable doubt of the guilt of the accused, Walter Nacional, Efren Musa, Rudy Luces, Javier Mirabete and Zacarias Militante of the crime of Murder in both of the above-entitled cases, judgment is hereby rendered:

In Criminal Case No. 4854:

- Sentencing each of the above-mentioned accused to undergo the penalty of Reclusion Perpetua;
- To indemnify the heirs of the deceased the sum of P50,000.00; and
- To pay the costs.

In Criminal Case No. 4855:

- Sentencing each of the above-named accused to undergo the penalty of Reclusion Perpetua;
- To indemnify the heirs of the victim the sum of P50,000.00; and
- To pay the costs."^[4]

All five (5) accused appealed to this Court. We accepted their appeal in a Resolution dated November 8, 1993.^[5]

On March 1, 1994, Walter Nacional, Zacarias Militante and Efren Musa, through counsel, moved to withdraw their appeal. They claimed that the charges against them were political in nature "committed while they were members of the New People's Army (NPA)."^[6] They informed the Court that as political prisoners, they applied for and were recommended by then Secretary of Justice Franklin M. Drilon for conditional pardon by the President of the Philippines.^[7] The Court granted their motion on May 11, 1994.^[8]

On February 1, 1995, Rudy Luces, through counsel, also moved to withdraw his appeal for becoming moot and academic.^[9] He claimed that he had been granted conditional pardon by the President of the Philippines and had been released from prison per instruction. In its Comment, the Office of the Solicitor General opined that Rudy Luces abandoned his appeal when he accepted the pardon granted him. We now therefore dismiss his appeal.

With these developments, only accused Javier Mirabete has remained and pursued his appeal to this Court.

The judgment convicting the five accused is based on the evidence presented by the prosecution. It is derived mainly from the testimonies of two eyewitnesses — Bienvenida Lagason, Quirino's widow and Joel's mother, and Crisanto Miranda, a neighbor of the Lagasons — and accused Walter Nacional.

The findings of the trial court as supported by the evidence are summarized as follows:

The six (6) accused, including accused-appellant, were all civilian members of the barangay organization of the Communist Party of the Philippines (CPP) - NPA at Daraga, Albay.^[10] A few days before February 21, 1985, their organization had a pulong-pulong (conference) at Barangay Lacag, Daraga for the purpose of identifying suspected informers of the military whom they perceived as posing a threat to the NPA's operations within the vicinity. They identified Quirino and Joel Lagason, both residents of Barangay Salvacion, Daraga as military informers and were targeted for liquidation. Elevino Rincopan, their team leader, however, disapproved the proposal for lack of clearance and approval from the higher NPA authorities.^[11]

On February 21, 1985, at 4:00 P.M., the six (6) accused and Wilson Lita alias "Ka Cris" were gathered in front of the RCPI building at Lacag, Daraga. Wilson Lita informed them that they were to go on a mission at Salvacion, Daraga to talk to two (2) military informers, Quirino and Joel Lagason. Some members of the group were to confront the two about their being informers and if they "resisted" they were to be killed.^[12] The others were instructed to provide maximum security during the confrontation.^[13] Wilson Lita and Absalon Millamina were each armed with a short firearm and the whole group left Lacag at 4:30 P.M. and walked towards Salvacion, four kilometers away.^[14]

At about 5:00 P.M., the group stopped at the sari-sari store of Genita Miranda and asked Genita for directions to

the house of Quirino and Joel Lagason.[15] They continued walking and passed by a waiting shed where they met Crisanto Miranda. They requested Crisanto to accompany them to the Lagasons' house. Wilson Lita, Zacarias Militante and accused-appellant remained at the waiting shed and the rest of the group proceeded on their mission.[16]

Along the way, the group saw two men walking on the road whom Crisanto identified as Quirino and Joel Lagason. Rudy Luces told Crisanto to leave but the latter did not. Walter Nacional approached Quirino and said something to him. Walter then pulled out a gun from his waist and shot Quirino in the face, hitting him between the eyebrows. Quirino fell to the ground and died instantly. A few seconds later, Absalon Millamina shot Joel Lagason on the head. The group then fled towards the direction of the RCPI Relay Station. Joel's mother, who was at the scene of the crime, rushed him to the hospital where he died a few hours later.[17]

The defense set up by the accused consisted of denials. Walter Nacional claimed that Quirino was killed by Wilson Lita alias "Ka Cris" while Joel was allegedly shot by Absalon Millamina.[18] He further averred that he and the other accused merely provided security to Absalon Millamina and Wilson Lita who later on was reportedly killed in an encounter with the military.[19] Rudy Luces, Zacarias Militante, Efren Musa and Javier Mirabete denied being members of the NPA. They denied any participation in the killings. They declared that their presence in the vicinity of the crime was merely incidental. Rudy Luces testified that he merely showed Wilson Lita and Absalon Millamina the way to the Lagasons' house.[20] Zacarias Militante claimed that he gave the two the directions to the RCPI building.[21] Efren Musa alleged that he gave a glass of water to Wilson Lita and Absalon Millamina who were passing by his house.[22] Javier Mirabete testified that he was watching a volleyball game near the scene of the crime when the shooting happened.[23]

The trial court rejected the denials of the accused and convicted them.

In this appeal, accused-appellant Javier Mirabete insists on his claim that he was merely watching a volleyball game when the shooting happened.[24] He denies being a member of the NPA or any rebel organization. He likewise denies the existence of a plot and a conspiracy to kill the Lagasons. Accused-appellant claims that he is a mere farmer, already 69 years old and had barely finished Third Grade in school. According to him, his advanced age made it impossible for him to join the NPA at the time of the incident. He contends that the testimonies of Bienvenida Lagason and Crisanto Miranda identifying him with the group that killed the Lagasons are unreliable and hearsay because both witnesses never knew him. It was only four years after the shooting that Crisanto Miranda purportedly learned of the members' identities and revealed the same to Bienvenida.[25]

Reviewing the records, we find that accused-appellant was part of the group that conspired to kill and actually killed the Lagasons. The identification of accused-appellant was made not only by Bienvenida Lagason and Crisanto Miranda but by other witnesses as well, including prosecution witnesses Elevino Rincopan, Genita Miranda, and appellant's co-accused Walter Nacional himself.

Elevino Rincopan, a former CPP-NPA team leader at Daraga, Albay identified accused-appellant as one of the civilian members of their barangay organization. Elevino testified that accused-appellant was present at the pulong-pulong before February 21, 1985 where the Lagasons were identified and proposed to be liquidated.[26] The fact that Elevino Rincopan alias "Ka Boy" was the NPA team leader at Daraga, Albay was corroborated by Walter Nacional himself.[27] Walter Nacional likewise identified accused-appellant as present at the meeting on February 21, 1985 at 4:00 P.M. in front of the RCPI building at Lacag, Daraga. It was at this meeting that the group was instructed by Wilson Lita alias "Ka Cris" to seek out the Lagasons and shoot them.[28] Later, Genita Miranda, who was tending her sari-sari store recognized and identified accused-appellant as part of the group that passed by her store and asked her for directions to the victims' house.[29]

Accused-appellant was also identified by Crisanto Miranda who testified that he recognized all of the accused when they approached him at the waiting shed.[30] Crisanto explained that he recognized them because they all came from neighboring barangays.[31] In fact, Crisanto was able to clearly identify and distinguish three of the group who remained at the waiting shed and the rest whom he accompanied in their search of the Lagasons.[32] His credibility is not adversely affected by the fact that he did not reveal their identities to the authorities immediately after the shooting. He averred that Efren Musa threatened him to remain silent. For fear of his life, Crisanto fled to Manila.[33] He stayed in Manila for almost two years and returned to Daraga, Albay after some time.[34] It was only in 1989 that Crisanto revealed to Bienvenida Lagason the identities of her husband's and son's assailants, and voluntarily gave his statement to the police.[35]

Clearly, the evidence proves beyond doubt that accused-appellant was a civilian member of the CPP-NPA at Daraga, and was part of the group of CPP-NPA members that deliberately planned the killing of the Lagasons.

The events that led to the victims' deaths also show that this group of CPP-NPA members deliberately planned, plotted and premeditated their victims' deaths.

Evident premeditation exists when the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent. There must be, between the reflection and execution of the crime, a space of time sufficient for the offender to arrive at a calm judgment.[36]

Indeed, there was more than sufficient time for the group to reflect on their criminal intentions between the decision to shoot the victims and the actual shooting itself. At the pulong-pulong a few days before February 21, 1995, the Lagasons were identified as military informers and the idea of killing them was openly suggested. On February 21, 1985, all the accused were gathered at one place where the decision to kill the Lagasons was made. The group planned the execution of the crimes, assigned the participation of each member, and armed two of them. The group thereafter deliberately and intentionally searched for the victims and more than an hour later, shot them as planned.

We also hold that the prosecution has clearly and convincingly established the existence of a conspiracy in the planning and execution of the crimes. Conspiracy arises at the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith to actually pursue it.[37]

The conspiracy in the instant case was established at the meeting of February 25, 1985 at 4:00 P.M. Apparently, nobody disagreed with the plan to shoot the victims because immediately after the meeting, all the accused and Wilson Lita were seen walking as a group towards Barangay Salvacion. When they saw their intended victims, they shot them and fled towards the RCPI building. Even those left at the waiting shed likewise fled towards the same direction. Clearly, the shooting of the Lagasons was characterized by a unity of purpose, intention and design.[38]

It hardly matters that accused-appellant was not actually present at the specific place of the shooting. He was at the waiting shed but this was for the purpose of providing security to those who carried out the shooting. The waiting shed was located along the way to the Lagasons' house, strategically at the entrance to and exit from it.[39]

A conspiracy, once established, makes each of the conspirators liable for the acts of the others.[40] All conspirators are liable as co-principals regardless of the extent of their participation because in contemplation of law, the act of one is the act of all.[41]

We also agree with the trial court that the aggravating circumstance of abuse of superior strength cannot be appreciated against the appellant. Mere superiority in number does not prove abuse of superior strength.[42]

We likewise find no mitigating circumstance in the commission of the crimes. The analogous circumstance of age of over 70 years cannot be considered mitigating because accused-appellant was only 59 years old at the time of the commission of the offense.

Since there is no mitigating nor generic aggravating circumstance, the penalty of reclusion perpetua was correctly imposed by the trial court against the accused-appellant.

Finally, we rule that the grant of conditional pardon and the consequent dismissal of the appeals of Walter Nacional, Zacarias Militante, Efren Musa and Rudy Luces does not exempt them from payment of the civil indemnity. A conditional pardon, when granted, does not extinguish the civil liability arising from the crime.^[43] The indemnity of P50,000.00 imposed by the trial court for each of the deaths of Quirino and Joel Lagason must be shared solidarily by all the accused.

IN VIEW WHEREOF, the decision appealed from is hereby **AFFIRMED** insofar as the criminal liability of accused-appellant Javier Mirabete is concerned, and insofar as the civil liability of all the accused in Criminal Cases Nos. 4854-4855.

SO ORDERED.

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

- [1] Criminal Case No. 4854, Records, p. 2.
- [2] Criminal Case No. 4855, Records, p. 2.
- [3] Criminal Case No. 4855, Records, p. 39.
- [4] Criminal Case No. 4854, Records, p. 302.
- [5] Rollo, p. 36.
- [6] Rollo, p. 51.
- [7] Rollo, pp. 50-52.
- [8] Rollo, p. 63.
- [9] Rollo, p. 155.
- [10] Records, TSN of February 27, 1992, pp. 9-10; Id., TSN of March 25, 1992, p. 6.
- [11] Id., TSN of March 25, 1992, p. 8; Id., Criminal Case No. 4854, p. 8, Exhibit 2-Nacional.
- [12] Id., pp. 12, 26, 41.
- [13] Id., p. 42.
- [14] Id., pp. 14-15.
- [15] Records, TSN of October 20, 1992, pp. 28-29; Id., TSN of July 26, 1990, pp. 5-10.
- [16] Decision, pp. 2-3; Records, Criminal Case No. 4854, pp. 294-295; Records, TSN of January 21, 1992, pp. 6-13.
- [17] Decision, pp. 3-4; Records, Criminal Case No. 4854, pp. 296-297; Records, TSN of July 26, 1990, pp. 15-18,

- 38; Id., Criminal Case No. 4854, p. 12; Id., Id., Exhibits A & B, pp. 10-11).
- [18] Records, TSN of October 20, 1992, pp. 16-17.
- [19] Id., Id., pp. 34, 42.
- [20] Id., TSN of November 24, 1992, pp. 14-17.
- [21] Id., TSN of February 11, 1993, pp. 9-10.
- [22] Id., TSN of March 2, 1993, pp. 7-8.
- [23] Id., TSN of December 10, 1992, pp. 14-15.
- [24] Appellant's Brief, pp. 13-14; Rollo, pp. 81-82.
- [25] Id., pp. 14-16; Rollo, pp. 82-84.
- [26] Id., TSN of February 27, 1992, pp. 9-10; Id., TSN of March 25, 1992, p. 6.
- [27] Id., TSN of October 20, 1992, p. 20.
- [28] Id., pp. 11-12.
- [29] Id., pp. 5,10.
- [30] Id., TSN of January 21, 1992, pp. 7, 10.
- [31] Id., p. 7.
- [32] Id., pp. 11, 15; Records, Criminal Case No. 4854, p. 10, Exhibit 1-A- Nacional.
- [33] Id., TSN of January 21, 1992, pp. 12-13,16-17.
- [34] Id., p. 20.
- [35] Id., p. 32.
- [36] *People v. Parangan*, 231 SCRA 682 [1994]; *People v. Pandiano*, 232 SCRA 619 [1994].
- [37] *People v. Talla*, 181 SCRA 133 [1990].
- [38] *People v. Talla*, supra.; *People v. Munoz*, 170 SCRA 107 [1989].
- [39] Records, TSN of January 21, 1992, pp. 11-12.
- [40] *People v. Timple*, 237 SCRA 52 [1994]; *People v. Linsangan*, 205 SCRA 659 [1992]; *People v. Buligon*, 205 SCRA 766 [1992].
- [41] *People v. Apawan*, 235 SCRA 355 [1994]; *People v. Linsangan*, supra; *People v. Buligon*, supra.
- [42] *People v. Bigcas*, 211 SCRA 631 [1992]; *People v. Castor*, 216 SCRA 410 [1992]; *People v. Carpio*, 191 SCRA 108 [1990].
- [43] Revised Penal Code, Article 36; *Monsanto v. Factoran, Jr.*, 170 SCRA 190 [1989].

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