

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIXTO VIÑAS, SR., SIXTO VIÑAS, JR., JESSIE VIÑAS, MATIAS CERENO, JUNIOR FAVIO ALIAS “LAMPONG,” AND JOHN DOES, ACCUSED. SIXT...

G.R. Nos. 112070-71. June 29, 1995

Ponente: VITUG, J.

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VITUG, J.:

This appeal was interposed from the decision, dated 22 April 1993, of the Regional Trial Court ("RTC") of Pili, Camarines Sur, finding accused-appellant Sixto Viñas guilty of murder (Criminal Case No. P-1646) and frustrated murder (Criminal Case No. P-1685) under two amended informations that read:

(1) Criminal Case No. P-1646:

"The undersigned Assistant Provincial Fiscal of Camarines Sur accuses SIXTO VIÑAS, SR., SIXTO VIÑAS, JR., JESSIE VIÑAS, MATIAS CERENO, JR. alias `JUNIOR CERENO,' JUNIOR FAVIO alias `LAMPONG' and other persons whose identities are not yet known and who are herein designated as John Does, of the crime of MURDER defined and punished under Article 248 of the Revised Penal Code, committed as follows:

""That on or about the 16th day of August, 1985 in Barangay San Isidro, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, constituting themselves as a band, they being all armed with guns of various calibers and with Matias Cereno, Jr. alias `Junior Cereno' armed with a sharp bladed weapon, conspiring, and confederating together and mutually helping one another, with intent to kill and with treachery, the accused having consciously adopted a mode of attack without risk to themselves arising from the defense that the victim might make, that is by attacking the victim suddenly and while riding a motorcycle, did then and there wilfully, unlawfully and feloniously attack, assault and shoot for several times with their firearms one BARANGAY CAPTAIN PABLO ALMAZAN, the aforesaid victim, and thereafter stabbed and cut with a bladed weapon the latter's face, neck, chin and chest, thereby inflicting several mortal gunshot wounds and incised wounds on the different vital parts of the body of said Barangay Captain Pablo Almazan which caused his instantaneous death.'

"ACTS CONTRARY TO LAW."[1]

(2) Criminal Case No. P-1685:

"The undersigned Assistant Provincial Fiscal of Camarines Sur accuses SIXTO VIÑAS, SR., SIXTO VIÑAS, JR., JESSIE VIÑAS, MATIAS CERENO, Jr. alias `JUNIOR CERENO,' JUNIOR FAVIO alias `LAMPONG' and ANTONIO VILLA ISRAEL of the crime of FRUSTRATED MURDER defined and punished under Article 248 in connection with Articles 6 and 50 of the Revised Penal Code, committed as follows:

""That on or about the 16th day of August, 1985 in Barangay San Isidro, Municipality of Bula, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused consisting themselves as a band, they being all armed with guns of various calibers and with Matias Cereno, Jr.

alias Junior Cereno armed with a sharp bladed weapon, conspiring and confederating together and mutually helping one another, with intent to kill and with treachery, did then and there wilfully, unlawfully and feloniously attack, assault and shot with their guns one Justiniano Almazan, Jr. which would have caused his death, the accused thus performed all the acts of execution of the crime of Murder, and if the accused did not accomplish their purpose it was by reason of causes independent of the will of the perpetrators, that is by the timely medical assistance rendered to the victim which prevented his death.'

"ACTS CONTRARY TO LAW."[2]

The factual findings of the trial court might be narrated thusly:

On 16 August 1985, at about four o'clock in the afternoon, San Agustin Chief of the Tanod Brigade Justiniano Almazan, Jr., and his brother, San Agustin Barangay Captain Pablo Almazan, were cruising on board a motorcycle along San Isidro, Bula, Camarines Sur, when they were suddenly fired upon by a group of six armed men that sent the motorcycle crashing down the road. Justiniano and Pablo were hit, Justiniano at his lower left thigh and Pablo at his back and legs. Pablo urged his brother, Justiniano, to escape while he (Pablo) began exchanging shots with their assailants.

Seeing Pablo in a disabled condition, now with four gunshot wounds, accused-appellant Viñas and another member of the armed group advanced towards Pablo and, closing in, delivered stab wounds on his chest, neck and face. Pablo died on the spot. The assailants thereupon noticed the presence of Cipriano Prestado who was across the road not distant away from where the motorcycle fell. Viñas approached and warned Prestado against reporting the killing to the authorities or else "be next in the liquidation list."

Jose Almazan, Pablo's son, also witnessed the exchange of gun fire. He rushed home to get his father's carbine rifle. When he returned to the scene, the assailants had already begun to retreat. Jose then saw the lifeless body of his father.

Justiniano was able to get help from the military in Panoypoyan, Bula, Camarines Sur. It was too late; the gunmen were already gone by the time the soldiers arrived. Prestado was asked to give a statement but the latter, out of fear, did not identify the assailants. Prestado left for Manila shortly after the incident; however, upon learning that Viñas was in the custody of the authorities, he decided to return to Bula to testify.

The trial court did not need the defense of alibi proffered by accused-appellant who maintained that, at the time of the commission of the crime, he was working at a vulcanizing shop in Camp Crame, Quezon City, where he and his wife resided until some time in 1989 when the couple returned to Camarines Sur.

The trial court adjudged:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court renders judgment:

"1. In Criminal Case No. P-1646, finding the accused Sixto Viñas, aka Sixto Viñas, Sr., guilty beyond reasonable doubt, of the crime of Murder, as defined and penalized under Art. 248, RPC, qualified by treachery, with the attending aggravating circumstances of having been committed by a band, and hereby sentences him to suffer imprisonment of Reclusion Perpetua, with all the accessories of the law; to indemnify the heirs of Pablo Almazan the sum of P50,000.00 for the fact of death of the victim, and P50,000.00 moral damages to Irene Almazan; and

"2. In Crim. Case No. P-1685, finding the accused Sixto Viñas, aka Sixto Viñas, Sr., guilty, beyond reasonable doubt, of the crime of Attempted Murder, as defined and penalized by Art. 248, in relation to Art. 6, par. 4, of the Revised Penal Code, with the qualifying circumstance of treachery, and the aggravating circumstance of having been committed by a band, and applying the Indeterminate Sentence Law, hereby sentences him to

suffer imprisonment ranging from 4 years and 2 months of prision correccional, as minimum, to 8 years and 21 days of prision mayor, as maximum, with all the accessories of the law.

"The accused is credited in full for his preventive detention.

"SO ORDERED."[3]

In this appeal, Viñas asseverates that:

"I.

THE COURT A QUO GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF CIPRIANO PRESTADO JOSE ALMAZAN AND JUSTINIANO ALMAZAN, JR.

"II.

THE COURT A QUO GRAVELY ERRED IN FAULTING SIXTO VIÑAS FOR HIS FAILURE TO DENY CIPRIANO PRESTADOS ALLEGATION AGAINST HIM.

"III.

THE COURT A QUO GRAVELY ERRED IN HOLDING THAT SIXTO VIÑAS FAILED TO EXPLAIN HIS ABSENCE FROM HIS RESIDENCE FOR FOUR (4) YEARS.

"IV.

THE COURT A QUO GRAVELY ERRED IN APPRECIATING THE AGGRAVATING CIRCUMSTANCE OF TREACHERY AND OF HOLDING THAT THE CRIME WAS COMMITTED BY A BAND.

"V.

THE COURT A QUO GRAVELY ERRED IN CONVICTING SIXTO VIÑAS OF THE CRIMES CHARGED."

Well-settled is the rule that where the culpability or innocence of an accused hinges on the issue of credibility of witnesses, as well as the veracity of their testimonies, the assessment made by the trial court thereover is entitled to a great degree of respect and, absent strong reasons to the contrary, will not be disturbed by the appellate tribunal.[4] The reason is obvious. A trial court gets an opportunity, that is not equally open to an appellate court, to observe the expression of witnesses on the stand and their demeanor under questioning which matters make up the most significant factors in evaluating their sincerity.[5] There is no justification in this instance for us to deviate from the rule.

While the prosecution witnesses might not have been certain on the identity of some of the assailants, they, nevertheless, were unequivocal on the participation of accused-appellant in the commission of the crime. Justiniano Almazan, Jr., positively identified Viñas; thus:

"Q

You said that you were fired upon by a group of armed men, how many persons were they?

"A

Six (6) persons.

"Q

Did you recognize those armed men who fired upon you?

"A

Yes sir.

"Q

Who were they? Name them.

"A

Sixto Viñas, Sr., Jessie Viñas, Sixto Viñas, Jr., a person named alias Lampong and one Cerino, Jr."[6]

On cross-examination, he reiterated:

"Q

Now, when you saw the six at one time, you already knew them, you recognized them already?

"A

Yes sir.

"Q

And they were the persons you named on direct examination by Prosecutor Valencia?

"A

Yes sir.

"Q

Now, you are sure of that?

"A

Yes sir.

"Q

You mean, all the six were in a form of a line, single file?

"A

Yes sir.

"Q

Who was the person, if you were facing the six, who was the person in the last most on the left?

"A

Sixto Viñas, Sr.

"Q

Who was next to him?

"A

I cannot remember it anymore who was next to Sixto Viñas Sr.

"Q

Although you could not tell the Honorable Court how they were positioned, you are sure that all the six persons you named were the persons who were there?

"A

Yes sir."[7]

Prosecution witness Cipriano Prestado, in his testimony, clearly recalled:

"Q

How far were you at that particular moment from Pablo Almazan who was being stabbed and shot at by the group?

"A

More or less 10 meters because I was only on the other side of the road.

"Q

Do you know anybody from the group which fired at and stabbed Almazan?

"A

Yes sir.

"Q

And who was that among the group whom you recognized?

"A

I recognized Sixto Viñas.

"xxx xxx xxx.

"Q

So Mr. witness, did the military request you to make a statement in connection with this case?

"A

I was asked to execute an affidavit about the incident but I refused to execute the affidavit because I was afraid.

"Q

Why are you afraid?

"A

After the shooting incident, the group went to me and I was warned not to talk about the incident because the person who told me knew I recognized him and he warned me that I will be the next to be liquidated if I reveal who shot at Almazan.

"Q

Was this person who talked to you, among the group?

"A

Yes sir.

"Q

Do you know the name of that person?

"A

Sixto Viñas.

"INTERPRETER: Witness pointing to the accused who responded to the name Sixto Viñas.

"Q

During that time that the accused Sixto Viñas talked to you, you recognized him as Sixto Viñas, is that correct?

"A

At the time Sixto Viñas warned me not to reveal who shot Pablo Almazan, I already knew him as Sixto Viñas."^[8]

On further questioning, Prestado insisted:

You have seen Mr. witness who stabbed the victim Pablo Almazan?

"Q

"A

Yes sir.

"Q

Who?

"A

Two persons were stabbing Pablo Almazan; one of them was Sixto Viñas, the other one I did not recognize.

"Q

Who fired at Pablo Almazan?

"A

Sixto Viñas was among those who fired and after firing from a far when Pablo Almazan was already in the ditch, they shot him again and after that two of them approached him and stabbed Pablo Almazan, one of which was Sixto Viñas."^[9]

Moreover, Prestado was able to make a detailed narration of what transpired, a matter which the court could not have failed to consider.

"Q

Indicate in this sketch where the ricemill is?

"INTERPRETER: Witness drawing a figure.

"COURT: One figure perpendicular to the road and another figure mark it as exh. B-1, exh. B-2 the ricemill

and A-3 is the house of Francisco Jardinel and exh. B-4 is the road. In this sketch exh. B, where is the canal you are referring to?

"INTERPRETER: Witness indicating the parallel line above exh. B-4 to be the canal.

"Q

Will you indicate in this exh. B where you were when you heard the shots for the first time?

"A

I was at the gate of exh. B-1 which is exh. B-5.

"Q

When you heard the shots, what did you do?

"A

I glanced.

"Q

Indicate in this exh. B-4 the road going to the direction of Sto. Domingo, Bula?

"COURT: The arrow indicating to Sto. Domingo as exh. B-6.

"COURT: Indicate to the court the direction going to San Ramon?

"INTERPRETER: Witness indicating in this sketch the direction going to San Ramon.

"COURT: Mark it as exh. B-7.

"Q

When you glanced as you said, to what direction were you looking, to the direction of San Ramon or Sto. Domingo?

"A

I glanced at the direction of San Ramon.

"Q

Indicate in this sketch where the motorcycle fell?

"INTERPRETER: Witness indicating an 'X.'

"COURT: Now, to which direction in the sketch did Pablo Almazan flee? Make a broken lines from 'X' to the ditch or mark it as exh. B-8.

"Q

How about Justiniano Almazan, Jr., to which direction did he flee?

"A

Justiniano Almazan fled to the other side of the canal.

"Q

When you first saw the two persons being shot at who were on the motorcycle, indicate in this sketch the person shooting them, where they were situated?

"A

The persons shooting the motorcycle riders were in this place indicated by Y & Z.

"Q

How many persons were in group in place `Y'?

"A

I cannot see how many.

"Q

But definitely more than one?

"A

More than one.

"Q

How about in this place, there were many people at points Y and Z?

"A

There were many persons.

"Q

Tell this court where these persons in site Y & Z shooting at the motorcycle riders?

"A

Only the persons in point Z were shooting.

"Q

Now, tell me where Sixto Viñas was at the time you saw him shooting Pablo Almazan in point Z or Y?

"A

Sixto Viñas was among the group in point Z.

"Q

Now, after the motorcycle fell at point `X' and Pablo Almazan hid at point exh. `B-8,' where was Sixto Viñas?

"A

When Pablo Almazan was fleeing along the irrigation canal, the persons at group Z were also accosting him, shooting and hitting him.

"Q

Do you mean to tell this court that Sixto Viñas was pursuing Almazan while fleeing?

"A

Yes sir because at point opposite exh. B was the place where Pablo Almazan died.

"COURT: Mark it as exh. "B-9."

"Q

Where were you when Pablo Almazan died in place exh. B-9?

"A

I was near the gate in exh. B-5 holding on to a palomaria tree.

"Q

Indicate in this sketch where Pablo Almazan was stabbed?

"INTERPRETER: Witness indicating in exh. B-9.

"Q

You said Sixto Viñas approached you and after the shooting and stabbing incident, where did he come from when he approached you?

"A

Sixto Viñas left the place indicated as exh. `B-9' and approached me from my position while I was standing by exh. `B-5.'

"Q

Is it not a fact that you were holding your sack of palay when you were holding the palomaria tree?

"A

No sir, at the time they were stabbing Pablo Almazan, I already unloaded the palay along the gate.

"Q

How soon did the army reach you in exh. `B-1' after the shooting?

"A

I cannot determine but it did not take long.

"Q

After Almazan was killed, where was it taken, do you know?

"A

Almazan was loaded on a vehicle.

"Q

On direct examination by Prosecutor Soriano, you were asked where you were on August 16, 1985 between 3:00 to 4:00 in the afternoon and you told him you were at the ricemill in San Isidro, Bula, Camarines Sur, do you remember that?

"A

Yes sir.

"Q

You were asked if any unusual incident happened and you said that unusual incident according to you was the shooting incident of Pablo Almazan, do you remember that?

"A

Yes sir.

"Q

Can you now tell this court when was that when Pablo Almazan was shot and stabbed?

"A

I still could not tell the month and date when Pablo Almazan was killed.

"Q

But can you definitely tell where Pablo Almazan was killed?

"A

Just in front of the ricemill of Jardinel.

"Q

Was it not that it was Ka Ferdie who warned you not to talk about the shooting incident?

"A

It was Sixto Viñas who warned me."^[10]

Certainly, the trial court could not be faulted for not considering accused-appellant's alibi. Besides being basically a weak defense, alibi would have to yield to the positive identification made by the prosecution witnesses.^[11]

Accused-appellant raises a number of other points. He avers that if Prestado did, indeed, witness the shooting he would have promptly gone into and remained in hiding "for self-preservation." Ordinarily perhaps but not necessarily, for there is no standard human behavioral response we know when one is confronted with a strange, startling or frightful experience.^[12] The actions and reactions of a man are not always stereotype.^[13] So, also, Prestado's failure when initially asked to disclose to the authorities the identities of the assailants is not strange. The natural reluctance of a witness to get involved in a criminal case, as well as to give information to the authorities, is a matter of judicial notice.^[14] Fear of reprisal can well explain the temporary silence of witnesses.^[15]

The court a quo did not err in appreciating against accused-appellant the aggravating circumstance of treachery. There is treachery when the offender commits any of the crimes against person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.^[16] The established facts clearly would reveal that the attack made on Pablo and Justiniano was planned and consciously adopted in order to surprise and make it hard for the victims to defend themselves.

The trial court likewise rightly held that the criminal act was committed by a band. Article 14, paragraph 6, of the Revised Penal Code would so consider the crime to have been committed by a band whenever more than three armed malefactors would have so acted together in its commission.^[17]

WHEREFORE, the decision, dated 22 April 1993, of the Regional Trial Court, Branch 32, Pili, Camarines Sur, is AFFIRMED in toto. Costs against accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 28-29.

[2] Rollo, pp. 29-30.

[3] Rollo, pp. 32-33.

[4] People vs. Manuel, 234 SCRA 532; People vs. Miranda, 235 SCRA 202.

[5] People vs. Manuel, supra; People vs. Divina, 221 SCRA 209.

[6] TSN, 22 November 1990, pp. 4-5.

[7] Ibid, pp. 11-12.

[8] TSN, 24 April 1991, pp. 5, 9-10.

[9] Ibid, p. 11.

[10] Ibid, pp. 17-21.

[11] See People vs. Dominguez, 217 SCRA 170; People vs. De la Cruz, 217 SCRA 283; People vs. Magallanes, 218 SCRA 109.

[12] See People vs. Flores, 217 SCRA 613.

[13] See People vs. Salazar, 221 SCRA 170.

[14] People vs. Dominguez, supra; People vs. Viente, 225 SCRA 361.

[15] People vs. Dulay, 217 SCRA 103.

[16] Article 14, paragraph 16, Revised Penal Code.

[17] TSN, 22 November 1990, pp. 9-10.

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