

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RALPHY ALCANTARA AND ANDRES JOSE Y GERONIMO A.K.A. BOY JOSE, ACCUSED-APPELLANTS.

G.R. Nos. 112858-59. March 06, 1996

Ponente: PUNO, J.

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PUNO, J.:

Appellants Raiphy Alcantara, a patrolman of the Western Police District, Metro Manila, and Andres "Boy" Jose appeal from the Decision[1] of the Makati Regional Trial Court Branch 148 finding them guilty beyond reasonable doubt of the crime of Murder for the killing of the former Mayor of Amadeo, Cavite, Jeremias Villanueva,[2] and his close-in security, Pat. Virgilio Lascano.[3]

The evidence shows that on February 15, 1989, at around nine o'clock in the morning, Mayor Villanueva was cleaning his car at the basketball court in front of the Casimiro Townhomes he owned at Las Piñas, Metro Manila. There were persons within the vicinity of the townhouse. The mayor's unit was undergoing additional construction and Apolinario Dimaano, a carpenter, was then piling hollow blocks. Lilibeth Malinis, Mayor Villanueva's housemaid, was sweeping near the front door of the mayor's house. Pat. Virgilio Lascano of Amadeo, Cavite, the mayor's personal security, was also around. Out of nowhere, a dark blue car with four (4) persons on board, stopped and parked near the said basketball court. Noticing a gun at the car's window, Lilibeth called Mayor Villanueva's attention by shouting, "Kuya, may tao!" The warning came late. The occupants of the car started firing at Mayor Villanueva who scampered to the direction of his house. The car screeched backward to the center of the basketball court, and two men jumped out of it and mowed down Mayor Villanueva with their M-16 and M-14 armalites. Heedless of danger, Pat. Lascano tried to help the fallen mayor but the two gunmen also shot him dead. The assailants quickly boarded the car and sped away, leaving the lifeless bodies of the victims sprawled on the ground.[4]

Members of the Las Piñas police headed by P/Cpl. Leopoldo Africa rushed to the crime scene and conducted an investigation. They interviewed the witnesses to the incident. They found empty shells of M-16 and M-14 armalites near the bodies of the victims and submitted them to the National Bureau of Investigation (NBI) for ballistic examination. P/Cpl. Africa invited the two eyewitnesses, Apolinario Dimaano and Lilibeth Malinis, to the police station to get their statements. Both refused as they were still in a state of shock. However, on February 27, 1989, the two yielded to P/Cpl. Africa's invitation. In their statements, they narrated how Mayor Villanueva and Pat. Lascano were gunned down by two assailants. Nevertheless, they did not disclose the identity of the assailants.[5]

In March 1989, the NBI received a confidential information naming the suspects as Boy Jose, Rolly (sic) Alcantara, Teody Batino, Jimmy Mojica and a certain "Otso," with hide-out at No. 52 Road 5-B, United Paranaque Subdivision, Paranaque, Metro Manila. The NBI and the Paranaque police raided the said address on March 16, 1989. The team recovered two high powered firearms, one M-16, one M-14, one hundred rounds of

ammunitions of different calibers and three stolen cars, one of which was a blue Toyota Corolla DX. They also apprehended the occupants of the house, namely: Ralphy Alcantara, a patrolman of the Western Police District, Mario Concepcion, Alex Mojica and Domingo Mojica.[6]

On March 16, 1989, Lilibeth Malinis gave a statement[7] to the NBI. From a line-up of twelve men, she singled out Raiphy Alcantara as one of the two men who shot Mayor Villanueva and Pat. Lascano.[8] She also identified the car used by the assailants at the NBI motorpool.[9] It was a blue Toyota Corolla DX with plate number PBG 943.[10]

Apolinario Dimaano likewise gave a statement[11] to the NBI on March 20, 1989. He disclosed the identities of two of the killers - Teodulo Batino and Ralphy Alcantara. He also identified the car used by them at the NBI motorpool.[12] It was the same car identified by Lilibeth Malinis.[13]

On August 10, 1989, Assistant Prosecutor Domingo A. Allena charged Pat. Ralphy Alcantara, Pat. Victoriano Mendoza (a.k.a. Tuying), Teodulo Batino, Jaime Mojica (a.k.a. Jimmy), Rodelio Sabater (a.k.a. Otso) and Andres Jose (a.k.a. Boy Jose) with two counts of Murder. The respective Informations state:

Criminal Case No. 1130:

"That on or about the 15th day of February, 1989, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually helping and aiding one another, with intent to kill, by means of treachery, with evident premeditation, with the use of motor vehicle and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack and assault one MAYOR JEREMIAS VILLANUEVA y CAPARAS with the use of high powered firearms which they provided themselves, thereby inflicting upon him serious and mortal gunshot wounds which directly caused the death of said MAYOR JEREMIAS VILLANUEVA y CAPARAS." [14]

Criminal Case No. 1131:

"That on or about the 15th day of February, 1989, in the Municipality of Las Piñas, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually helping and aiding one another, with intent to kill, by means of treachery, with evident premeditation, with the use of motor vehicle and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack and assault one PAT. VIRGILIO V. LASCANO with the use of high powered firearms which they provided themselves thereby inflicting upon him serious and mortal gunshot wounds which directly caused the death of said PAT. VIRGILIO V. LASCANO." [15]

All the accused entered a plea of "not guilty" upon arraignment.

Trial ensued.

After the prosecution rested its case, accused Rodelio Sabater (a.k.a. Otso) filed a Demurrer to Evidence.[16] The case against him was dismissed for failure of the prosecution to establish a prima facie case.[17]

The case against accused Jaime Mojica was likewise dismissed as he died before the trial court obtained jurisdiction over his person.[18]

On June 14, 1993, the trial court rendered a Joint Decision acquitting accused Victorio Mendoza and Teodulo Batino for failure of the prosecution to prove their guilt beyond reasonable doubt. The trial court, however, convicted Raiphy Alcantara and Andres Jose on both charges. The dispositive portion of the Decision states:

"WHEREFORE, premises considered:

1. And finding the existence of strong reasonable doubt and insufficiency of evidence with respect to the guilt of accused Victoriano Mendoza is hereby ACQUITTED, in both cases;
2. And finding likewise the existence of reasonable doubt and insufficiency of evidence with respect to the guilt of accused Teodulo Batino, he is hereby ACQUITTED in both cases;
3. And finding accused Andres "Boy" Jose and Ralphy Alcantara guilty beyond reasonable doubt for the crime of murder in Criminal Cases No. 1130 and 1131, defined and penalized under Article 248 of the Revised Penal Code, both accused, Ralphy Alcantara and Andres Boy Jose in Criminal Case No. 1130 are hereby sentenced to Reclusion Perpetua, with all the accessories of the law. And in Criminal Case No. 1131, accused Ralphy Alcantara and Andres Boy Jose are hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessories of the law.

Both accused, Ralphy Alcantara and Andres "Boy" Jose conformably with the provisions of Article 100 of the Revised Penal Code are hereby further ordered:

With respect to the death of Mayor Jeremias Villanueva to pay the heirs of said late Mayor the following:

1. the sum of P50,000.00 for and as indemnity for causing his death;
2. the sum of P250,000.00 for loss of income;
3. the sum of P 100,000.00 for moral damages;
4. the sum of P60,000.00 for funeral, wake and burial expenses;
5. the sum of P25,000.00 for exemplary damages;

With respect to the death of Pat. Virgilio Lascano, to pay the heirs of said late Patrolman the following:

1. the sum of P50,000.00 for and as indemnity for causing his death;
2. the sum of P150,000.00 for loss of income;
3. the sum of P50,000.00 for moral damages;
4. the sum of P25,000.00 for funeral, wake and burial expenses;
5. the sum of P 15,000.00 for and as exemplary damages.

With costs against both accused in both cases."[19]

Not satisfied with the Decision, accused Ralphy Alcantara and Andres "Boy" Jose interposed the present appeal contending:

- I. The trial court erred in giving credence to the testimony of prosecution alleged eyewitnesses Apolinario Dimaano and Lilibeth Malinis, identifying accused-appellant Alcantara as one of the gunmen, instead of discrediting it as fabricated or perjured.
- II. The trial court erred in convicting accused-appellant Jose, in spite of total lack of evidence of complicity in the slayings, direct, circumstantial, or conspiratorial.
- III. The trial court erred in convicting accused-appellants upon the same evidence it discredited in acquitting their co-accused.
- IV. The trial court erred in discrediting the defense of accused-appellants.
- V. The trial court erred in finding that the guilt of the accused-appellants has been established beyond

reasonable doubt." [20]

We affirm the conviction of the accused.

The prosecution presented two witnesses who saw the ruthless slaying of Mayor Villanueva and Pat. Lascano. They were Apolinario Dimaano and Lilibeth Malinis who stood a few meters from the spot where the victims were shot. They positively identified appellant Raiphy Alcantara as one of the two persons who alighted from the car and shot Mayor Villanueva and Pat. Lascano. [21] They also described the, firearm he used as an M-16 armalite. [22]

The testimonies of Dimaano and Malinis are supported by other evidence on record. On March 16, 1989, appellant Raiphy Alcantara was apprehended by the NBI during the raid it conducted at No. 52, Road 5-B, United Paranaque Subdivision, Paraflaque, Metro Manila, the suspects' hide-out. On the same occasion, the raiding team seized one M-14 armalite owned by accused Jaime Mojica and one M-16 armalite belonging to appellant Raiphy Alcantara. [23] The ballistic examination revealed that the M-14 owned by accused Jaime Mojica was one of the firearms used in slaying Mayor Villanueva and Pat. Lascano. [24] The gun taken from appellant Alcantara tallied with the testimony of Dimaano and Malinis that said appellant shot Mayor Villanueva and Pat. Lascano with an M-16 armalite.

Dimaano and Malinis also positively identified appellant Andres Jose as the person seated at the back of the car while the two gunmen were firing at Mayor Villanueva. [25] His presence in the car is not an innocent presence. The facts show that appellant Jose conspired with the other accused in killing Mayor Villanueva. Prosecution witness Mario Concepcion, one of those arrested by the NBI when they raided the suspects' house but who turned state witness, narrated the following facts: [26]

1. In December 1988, he (Mario Concepcion), together with Andres Jose, Teody Batino and Jaime Mojica, leased the premises at No. 52, Road 5-B, United Paranaque Subd., Paraflaque, Metro Manila to be used by them in their trucking business.
2. In the early morning of February 15, 1989, he saw Jaime Mojica, Raiphy Alcantara, Teodulo Batino and Andres Jose in the house at No. 52, Road 5-B, United Paranaque Subd., Parañaque, Metro Manila. At that time, he saw Jaime Mojica cleaning his gun which he identified as an M-14.
3. At around six o'clock in the afternoon of the same day, he found the wife of Teodulo Batino, Riza, crying in the house. He asked her why she was crying and she told him that Teodulo Batino met a car accident in Cavite. Moments later, Jimmy Mojica's wife, Cora, called Riza and told her "Heto na, nasa T.V. na." They both went to Jimmy Mojica's apartment and he saw a news report showing that a certain Mayor Villanueva of Cavite was killed. He asked Riza and Cora who were responsible for the killing but they both remained silent.
4. The following morning, February 16, 1989, he saw Jimmy Mojica's car, a blue Toyota Corolla, parked in front of the house.
5. On February 17, 1989, he saw Andres Jose, Teody Batino, Otso, Raiphy Alcantara and Jimmy Mojica together in the house. They were in a jolly mood and he heard Andres Jose utter a remark "Itong si Jimmy parang si Rambo kung bumaril."
6. Andres Jose is the acknowledged leader of the group which is engaged in various illegal activities.

All these circumstances and the manner of the killing reveal a well-laid plot to liquidate Mayor Villanueva. Appellant Andres Jose, as leader of the group, is privy to such plan. His presence in the assassins' vehicle at the time of the murder proves his involvement in the conspiracy.

There is conspiracy when -two or more persons come to an agreement concerning the commission of a felony and

decide to commit it.[27] Conspiracy need not be proved by direct evidence and may be inferred from the conduct of all the accused before, during and after the commission of the crime.[28]

The appellants fault the trial court for giving credence to the testimonies of Apolinario Dimaano and Lilibeth Malinis. They denounce their testimonies as fabricated. They aver that it took several months before they identified Ralph Alcantara, although they knew him before the shooting incident. The argument is untenable. The delay in the witnesses' disclosure of the assassins' identity was satisfactorily explained by the prosecution. In her testimony before the trial court, Mrs. Villanueva, the mayor's widow, explained that after her husband was killed, she sought the assistance of then Senator Aquilino Pimentel to apprehend the culprits. Senator Pimentel told her he would refer the matter to then Director Antonio Carpio of the NBI, and advised her not to divulge immediately the names of the killers so as not to give them the chance to abscond. Following Senator Pimentel's advice, Mrs. Villanueva instructed Dimaano and Malinis not to reveal the identities of the assailants to anybody, except to the NBI.[29] Accordingly, Dimaano and Malinis declined to divulge the names of the killers before the Las Piñas police. They, however, broke their silence when they gave their statements to the NBI. Delay in revealing the names of the perpetrators of the crime does not necessarily impair the credibility of the witness if such delay is sufficiently explained.[30]

Appellants further argue that the trial court erred in convicting the appellants upon the same evidence it disregarded in acquitting their co-accused, Teodulo Batino. We reject the argument. In acquitting Teodulo Batino, the trial court said:

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"In the appreciation of the Court, with the doubtful identification of accused Teodulo Batino coupled by the fact that his participation in the conspiracy has not been established beyond reasonable doubt, and that the circumstantial evidence against him is wanting, his acquittal is in order." [31]

The trial court acquitted Teodulo Batino because there is no evidence on record to support his conviction other than the identification made by Dimaano and Malinis which the trial court doubted. The case of appellants Ralph Alcantara and Andres Jose stand on a different footing. As earlier stated, aside from the testimonies of Dimaano and Malinis, there are other circumstantial evidence which prove beyond doubt the culpability of appellants Ralph Alcantara and Andres Jose. The court is not compelled to reject the entire testimony of a witness if it finds portions thereof to be incredible. The trial court has the discretion to reject portions of witness' testimony which it believes to be false and accept those which it may deem credible, especially if the latter is corroborated by other independent evidence.[32]

We reject the alibis interposed by appellant Ralph Alcantara and Andres Jose. For alibi to be credible, the accused must not only prove his presence at another place at the time of the commission of the offense, but he must also demonstrate that it would be physically impossible for him to be at the scene of the crime at that time.[33] Appellant Alcantara claimed that he was at the WPD headquarters the whole day of February 15, 1989 while appellants Jose claimed that he was at home on that day. The records show that the felony was committed between eight-thirty and nine o'clock in the morning in Las Piñas, Metro Manila. The WPD headquarters is located at United Nations Ave., Ermita, Manila, while Andres Jose's residence is in Taguig, Metro Manila, which are both a few minutes away from the crime scene. Thus, it is not impossible for both appellants to be at the scene of the crime at the time of its commission. More importantly, appellant's alibi cannot stand in the face of the positive identification made by Apolinario Dimaano and Lilibeth Malinis who both witnessed the shooting incident in broad daylight.

IN VIEW WHEREOF, the Decision in Criminal Case No. 1130-31 is AFFIRMED in toto.

SO ORDERED.

Regalado (Chairman), Romero, and Mendoza, JJ., concur.

[1] Rollo, pp. 64-202.

[2] Docketed as Criminal Case No. 1130

[3] Docketed as Criminal Case No. 1131.

[4] TSN, June 7, 1990, pp. 9-33; TSN, July 17, 1990, pp. 27-53.

[5] TSN, May 10, 1990, pp. 8-15; 38-39.

[6] TSN, December 20, 1989, pp. 5-25.

[7] Exhibit "P".

[8] Exhibits "L", "L- 1", "L-2".

[9] Exhibit "BB- 1".

[10] TSN, August 8, 1990, p. 21.

[11] Exhibit "HH".

[12] Exhibit "BB", "BB-2".

[13] TSN, June 8, 1990, pp.38-41.

[14] Original Records, p. 1.

[15] Original Records, p. 3.

[16] Original Records, pp. 382-384.

[17] Original Records, pp. 451-456.

[18] Decision, Rollo, p. 160.

[19] Decision, pp. 145-146, Rollo, pp. 201-202.

[20] Brief for Accused-Appellants, Rollo, p. 223.

[21] TSN, June 7, 1990, pp. 16-17; TSN, July 17, 1990, p. 35.

[22] TSN June 7, 1990, p. 17; TSN, July 17,1990, pp. 44-45.

[23] TSN, December 20, 1989, pp. 5-25; Exhibit "I"; Exhibit "L".

[24] Exhibit "X".

[25] TSN, June 7, 1990, p.23; TSN, July 17, 1990, pp.40-41.

[26] TSN, May 18, 1990, pp.29-58.

[27] Article 8, Revised Penal Code.

[28] People vs. Dalanon, 237 SCRA 607(1994); People vs. Zafra, 237 SCRA 664 (1994); People vs. Macam, 238 SCRA 306 (1994).

- [29] TSN, September 10, 1990, pp. 27-30.
- [30] People vs. Gornes, 230 SCRA 270 (1994).
- [31] Decision, Rollo, p. 195.
- [32] Lagunsad vs. CA, 229 SCRA 596(1994).
- [33] People vs. Lopez, G.R. No. 104662, June 16, 1995.

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