

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEJANDRO MARQUITA AND JOSEPH MARQUITA,
ACCUSED-APPELLANTS.**

G.R. Nos. 119958-62. March 01, 2000

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision of the Regional Trial Court of Molave, Zamboanga del Sur, Branch 23,[1] convicting appellants of five (5) counts of murder, imposing upon them five (5) terms of reclusion perpetua, and ordering them to solidarily indemnify the heirs of the victims P50,000.00 for each count of murder.

The facts are as follows:

On July 3, 1987, late in the afternoon in Alang-alang, Tambulig, Zamboanga del Sur, appellants Joseph Marquita and Alejandro Marquita were having a drinking session with Sergio Pampilo in the store/house of the latter. The drinking session lasted up to 4:00 o'clock the following morning. Thereafter, an altercation started between Joseph and Sergio over some "small matter." [2] Apparently, Sergio was prohibiting everyone to pass through his dike. [3] Suddenly, Sergio struck Joseph in the face with a bottle of Tanduay Kulafu. When Joseph felt the blood on his face, he became angry and retaliated by stabbing Sergio in the stomach. [4] Alejandro tried to intervene but could not separate them since Joseph was holding a bolo. [5] Alejandro started to run away. [6]

After stabbing Sergio, Joseph totally lost control of himself and went on a rampage. He continued to stab even Sergio's wife, Rosalinda, who was sleeping inside the house. He also stabbed Sergio's daughters, Merlene, Rosalie and Sherly, who were also sleeping inside the house. [7] Romeo Pampilo, Sergio's 16 year-old son survived by hiding himself inside a cabinet. [8] Ruby Pampilo, Sergio's 4 year-old daughter survived because Alejandro, as he was fleeing, picked her up and brought her to the back of the house. [9]

Guillermo Rebutazo, Romeo's uncle and a nearby neighbor, heard the cries for help. He rushed to the house and Romeo pointed to two persons running away in different directions as the perpetrators of the massacre. Rebutazo chased Joseph but did not catch up with him. When Rebutazo went back to the Pampilo residence, he saw the bodies of the five victims. [10]

On October 7, 1987, appellants were charged with the crime of murder under five (5) separate Informations containing the same allegations except for the names of the victims. The Information as to Merlene Pampilo states: [11]

"The undersigned Asst. Provincial Fiscal of Zamboanga del Sur accuses Joseph Marquita and Alejandro Marquita of the crime of MURDER, committed as follows:

That on July 4, 1987 at about 4:30 o'clock in the morning at barangay Alang-alang, Municipality of Tambulig, Province of Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with treachery, evident premeditation and with abuse of superior

strength conspiring, confederating and mutually helping each other did then and there wilfully, unlawfully and feloniously, with the used (sic) of hunting knives, stabbed and hacked Merlene Pampilo, inflicting mortal wounds on his (sic) body which caused his death.

Contrary to law."

On April 14, 1988, upon arraignment, appellants entered pleas of "not guilty." [12] Joint trial ensued.

The prosecution presented Romeo Pampilo as its main witness. Romeo testified that appellants and his father started their drinking session late in the afternoon of the day before the incident. That night, he slept beside his father and sister Rosalie. His mother Rosalinda and sisters, Sherly and Merlene slept outside the room. Romeo claimed that he was awakened by blood spurting on his face when Joseph stabbed his father. Then he saw Joseph stab his sister Rosalie. He hid inside a cabinet and left the door half-open. Through the crack, he saw his mother Rosalinda and sisters Sherly and Merlene run downstairs where Alejandro, who was waiting for them, repeatedly hacked them to death. [13]

Guillermo Rebutazo and Juan Rebutazo, relatives of the victims and neighbors, also testified as to the incidents subsequent to the killings.

SPO3 Carlos Monsanto, Designated Deputy Station Commander of the PNP, Tambulig, Zamboanga del Sur, received the report about the killings and his office conducted an investigation. He testified that while appellants were detained at the municipal jail, he had a "conversation" with them. One of the appellants (he did not specify which one) told him where the hunting knife used in the killings was hidden. Accompanied by Alejandro and the latter's cousin, SPO3 Monsanto recovered a bloodstained hunting knife. [14] During trial, however, he failed to present the hunting knife because its custodian was already dead. [15]

SPO1 Margarito Orimaco of the PNP-Zamboanga del Sur, likewise testified that he proceeded to the crime scene where he found the five dead members of the Pampilo family. [16]

For the defense, appellants testified on their behalf. Joseph Marquita admitted that he hacked Sergio Pampilo because the latter hit him on the face with the Tanduay bottle. He was then so drunk that he totally lost control of himself.

On the other hand, Alejandro Marquita testified that after he saw Joseph stab Sergio, he started to run away. He saw Ruby Pampilo and instinctively picked her up and brought her to the back of the house. He denied taking part in the killings.

On February 13, 1995, the trial court rendered a decision [17] finding appellants guilty of five counts of murder, the killing having been attended by treachery, evident premeditation and abuse of superior strength. The trial court likewise found that appellants acted in conspiracy with each other. Appellants were accordingly sentenced to suffer the penalty of reclusion perpetua for each count of murder, and ordered to pay solidarily the sum of P50,000.00 for each murder.

In this appeal, appellants contend that the trial court erred in: [18]

"I. ... CONVICTING ALEJANDRO MARQUITA OF THE CRIME OF MURDER DESPITE THE INSUFFICIENCY OF EVIDENCE THAT WOULD WARRANT A CONVICTION BEYOND REASONABLE DOUBT.

II. ... FINDING ACCUSED-APPELLANT JOSEPH MARQUITA GUILTY OF MURDER DESPITE THE INSUFFICIENCY OF AGGRAVATING CIRCUMSTANCES THAT WOULD QUALIFY THE OFFENSE TO MURDER."

In their consolidated brief, appellant Joseph prays for the modification of his conviction from murder to homicide, considering that conspiracy and treachery did not attend the commission of the crime. Appellant Alejandro pleads for his acquittal in view of Joseph's judicial admission that he alone committed the killings.

The Office of the Solicitor General, for the State, contends that the trial court correctly disregarded Alejandro's bare denials in view of Romeo Pampilo positive identification of both appellants as the killers. Further, considering the simultaneous attacks on the victims, it is evident that appellants acted in conspiracy with each other. The killings were qualified by treachery since the victims, according to Romeo's version, were all sleeping at the time of the attack.

In sum, the first issue pertains to Joseph's plea for a conviction for the lesser crime of homicide. The second issue pertains to Alejandro's plea for acquittal on the basis of Joseph's judicial admission that he alone committed the killings.

As to Joseph's liability, the prosecution's evidence is overwhelming. Joseph admitted that he had stabbed Sergio because the latter struck him first in the face with the Tanduay bottle. Being drunk, he went on a rampage and stabbed the other members of the Pampilo family.[19] His testimony amounts to a judicial admission of guilt which may be given in evidence against him under Section 26 of Rule 130 of the Rules of Court. In addition, his co-appellant Alejandro testified that he saw Joseph stab Sergio.[20] Prosecution witness Rebutazo also saw Joseph running away from the scene of the crime carrying a knife.[21] The foregoing considered, we find that Joseph's guilt has been proven beyond reasonable doubt.

As to the second issue, the trial court convicted Alejandro on the basis of Romeo Pampilo's identification in court and the finding of conspiracy. As a general rule, the assessment of credibility of witnesses is a function best undertaken by the trial court, and its findings are accorded great weight, if not finality, unless it has plainly overlooked certain facts of substance or value that, if considered, might affect the result of the case.[22] In this case, we find certain material inconsistencies in the testimony of Romeo Pampilo, which militate against the finding of guilt as to Alejandro. During trial, Romeo Pampilo testified that he saw Joseph Marquita stab Sergio because he was awakened when blood spurted from Sergio's stab wound. He also saw Joseph stab his mother, and sister, Rosalie.[23] Thus -

FISCAL CAGOCO: Where was your father hit when Joseph Marquita stabbed him?

ROMEO PAMPILO: In the stomach.

Q: After he was hit by the stabbed (sic) of Joseph Marquita, what else took place?

A: My mother and younger sisters.

...

Q: Where was your mother hit by the stabbed (sic) of Joseph Marquita?

(The witness pointed to the right armpit)

...

Q: How about your sister Shirley, where was she hit by the stabbed (sic) of Joseph Marquita?

A: It was only Rosalie who was hit by Joseph Marquita.

Q: Where was Rosalie hit by the stabbed (sic) made by Joseph Marquita?

A: At the stomach.

Subsequently, however, Romeo claimed that it was Alejandro who stabbed his mother, Rosalinda, and two sisters Merlene and Sherly. Thus -[24]

FISCAL CAGOCO: Who was stabbed by Alejandro?

ROMEO PAMPILO: My mother, Merlyn (sic) and Shirley, (sic).

On cross-examination, Romeo testified that after stabbing Sergio, Joseph's next victim was not his mother, but his sister Rosalie. He testified-[25]

"ATTY. TECSON: Now, who was stabbed first?

A: My father.

Q: And next?

A: Rosalie."

On re-direct examination, Romeo again insisted that it was not Joseph, but Alejandro who stabbed his mother -[26]

"FISCAL CAGOCO: Who stabbed your mother?

ROMEO PAMPILO: Alejandro."

These material inconsistencies in Romeo Pampilo's testimony as to the identity of the alleged killers and their respective victims, coupled with the judicial admission of Joseph that he alone committed the killings impresses on us reasonable doubt as to the actual participation of Alejandro in the killings.

As to the finding of conspiracy, we have said time and again that the same degree of proof required for establishing the crime is required to support a finding of conspiracy. Conspiracy, like the crime itself, must be proven beyond reasonable doubt and one's presence in the crime scene does not make an accused a conspirator.[27] Conspiracy transcends mere companionship.[28] Mere knowledge, acquiescence or approval of the act, without cooperation or agreement to cooperate, is not enough to constitute one a party to a conspiracy. Likewise, there must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.[29]

In this case, Alejandro was present at the locus criminis merely as a drinking companion. He did not take part in the argument between Joseph and Sergio, neither did he join the subsequent scuffle between them. Neither was his presence and company necessary nor essential to the perpetration of the killings. The fact that Alejandro was seen fleeing from the locus criminis does not suffice to prove the conspiracy. As he already explained, he ran away after Joseph stabbed Sergio and did not see the others being stabbed by Joseph. There is no evidence to convince us that his running away from the scene had been interwoven with a preconceived plan or agreement to kill the victims. Fear of implication in the crime could have been a plausible reason for Alejandro's act of fleeing.[30]

It is oft-repeated that the conviction of the accused must rest not on the weakness of the defense but on the strength of the prosecution. It is thus required that every circumstance favoring his innocence must be duly taken into account. The proof against him must survive the test of reason and the strongest suspicion must not be permitted to sway judgment. The conscience must be satisfied that on the defendant could be laid the responsibility for the offense charged; that not only did he perpetrate the act but that it amounted to a crime. What is required then is moral certainty.[31] All experience has shown that a party may be wholly innocent of the offense of which he is accused, although appearances may be against him.[32]

Admittedly, the defense of denial of Alejandro appears weak, but this alone is no reason for us to sustain his conviction, as the burden of proof still lies with the prosecution to establish his participation in the killings. The circumstances proffered by the prosecution only go so far as to create a suspicion that considering the number of the victims, Alejandro could have participated in the killings. But suspicion alone is insufficient, the required quantum of evidence being proof beyond reasonable doubt. We have held that "the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass." [33] Though reservations remain as to the innocence of appellant Alejandro, mere suspicion cannot serve as the basis for his conviction. In our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. [34]

All these considered, the evidence of the prosecution with respect to Alejandro is insufficient to support a finding of guilt and he must perforce be acquitted.

Having determined Joseph's sole culpability for the killings, we find him guilty of the crime of homicide for the killing of Sergio, and of the crime of murder for the killing of the other four victims.

The Information alleged that the killing was attended by treachery, evident premeditation and abuse of superior strength. As to Sergio, treachery did not attend the commission of the crime because the attack was preceded by an argument. [35] In treachery, the mode of attack must be planned and must not spring from the unexpected turn of events. [36] Likewise, evident premeditation and abuse of superior strength were not proven by clear and convincing evidence. The generic aggravating circumstance of dwelling did not attend the killing of Sergio because he gave sufficient and immediate provocation for the attack when he hit Joseph with the tanduay bottle. Dwelling is aggravating under Article 14, No. 3 of the Revised Penal Code only if the offended party has not given provocation.

However, the alternative circumstance of intoxication should be considered as mitigating in favor of Joseph since it was sufficiently shown that (a) at the time of the commission of the criminal act, he has taken such quantity of alcoholic drinks as to blur his reason and deprive him of certain degree of control, and (b) that such intoxication is not habitual, or subsequent to the plan to commit the felony. [37] It was this intoxication which led to his impetuous, frenzied and furious attack on the victims.

As to Sergio's wife, Rosalinda, the killing was attended by treachery since she was sleeping at the time of the attack, and was in no position to flee or defend herself. [38] As to the three children, Merlene, Rosalie, and Sherly, ages 7, 4, and 2 respectively, the killing was also attended by treachery since they were mere children of tender years who were killed while they were sleeping. [39] Treachery absorbs the generic aggravating circumstance of abuse of superior strength. [40] Evident premeditation was not proven with clear and convincing evidence. Considering that the killings were committed in the domicile of the four victims, without provocation on their part, the aggravating circumstance of dwelling is present. Dwelling is considered an aggravating circumstance by reason of the sanctity of privacy the law accords to human abode, for "he who goes to another's house to hurt him or do him wrong, is more guilty than he who offends him elsewhere." [41]

Going now in to the imposition of the proper penalty, at the time of the commission of the crime on July 4, 1987, the penalty for homicide under Article 249 of the Revised Penal Code was reclusion temporal. The killing of Sergio being attended by the mitigating circumstance of intoxication, the penalty of reclusion temporal should be imposed in its minimum period. [42]

As to the other members of the Pampilo family, the killings were qualified by treachery. The penalty for Murder under Article 248 of the Revised Penal Code was reclusion temporal maximum to death. There being one aggravating circumstance of dwelling and one mitigating circumstance of intoxication, the penalty should be

imposed in its medium period, which is reclusion perpetua for each murder committed. In the service of his sentences, appellant Joseph should be accorded the benefits of the three-fold rule under Article 70 of the Revised Penal Code.

The trial court correctly imposed the penalty of P50,000.00 as indemnity under Article 2206 of the New Civil Code in favor of the heirs of each of the victims. Actual and moral damages cannot be awarded for lack of competent proof.

WHEREFORE, the joint decision of the Regional Trial Court of Zamboanga del Sur, Branch 23, in Criminal Case Nos. 90-10,023 (5556), 90-10,024 (5557), 90-10,025 (5558), 90-10,026 (5559) and 90-10,027 (5560) is set aside and a new one entered so that appellant ALEJANDRO MARQUITA is hereby ACQUITTED of five (5) counts of Murder on the ground that a reasonable doubt has been raised as to his participation in the killings, while appellant JOSEPH MARQUITA is hereby CONVICTED of one (1) count of HOMICIDE for the killing of Sergio Pampilo and sentenced to suffer the penalty of reclusion temporal in its minimum period, and four (4) counts of MURDER for the killing of Rosalinda, Merlene, Rosalie and Sherly Pampilo, and sentenced to four (4) terms of reclusion perpetua, subject to the three-fold rule in the service of his sentence, and ordered to indemnify the heirs of the victims P50,000.00 for each victim. Costs against appellant Joseph Marquita.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Buena, and De Leon, Jr., JJ., concur.

[1] In Criminal Case Nos. 90-10,023 (5556), 90-10,024 (5557), 90-10,025 (5558), 90-10,026 (5559), 90-10,027 (5560).

[2] TSN, August 11, 1993, pp. 7-9.

[3] TSN, September 7, 1994, pp. 17-18.

[4] TSN, August 11, 1993, p. 10.

[5] Id. at 17.

[6] TSN, September 7, 1994, p. 11.

[7] TSN, August 11, 1993, p. 11.

[8] TSN, October 8, 1990, p. 10.

[9] TSN, September 7, 1994, p. 19.

[10] TSN, December 19, 1990. pp. 5-9.

[11] Records, p. 1. In Criminal Case No. 5556, the victim was Merlene Pampilo; in Criminal Case No. 5557, Rosalinda Pampilo; in Criminal Case No. 5558, Sherly Pampilo; in Criminal Case No. 5559, Rosalie Pampilo ("Roselle" in the Decision, Records, pp. 290, 298; "Rosalie" in the TSN dated October 8, 1990, pp. 5, 7, 15, 17, 23-25); in Criminal Case No. 5560, Sergio Pampilo.

[12] Id. At 54.

[13] TSN, October 8, 1990, pp. 4-7, 13-19, 21.

[14] TSN, August 25, 1992, pp. 6-8.

[15] Id. at 8.

[16] Id. at 12.

[17] Records, pp. 290-298.

[18] Rollo, p. 43.

[19] TSN, August 11, 1993, pp. 7 -12.

[20] TSN, September 7, 1994, pp. 10-11.

- [21] TSN, December 19, 1990, p. 6.
- [22] *People v. Naguita*, G.R. No. 130091, August 30, 1999, p. 11.
- [23] TSN, October 8, 1990, pp. 4-6.
- [24] *Id.* at 8.
- [25] *Id.* at 17.
- [26] *Id.* at 26.
- [27] *People v. Desoy*, G.R. No. 127754, August 16, 1999, p. 16; *People v. Abrera*, 283 SCRA 1, 15 (1997).
- [28] *People v. Quinao*, 269 SCRA 495, 510-511 (1997); *People v. Manuel*, 234 SCRA 532, 542 (1994).
- [29] *People v. Aniel*, 96 SCRA 199, 208 (1980); *People v. Izon, et al.*, 104 Phil. 690, 698 (1958).
- [30] See *Orodió v. Court of Appeals*, 165 SCRA 316, 326 (1988).
- [31] *People v. Dulatre, Jr.*, 248 SCRA 107, 120-121 (1995); *People v. Austria*, 195 SCRA 700, 709 (1991); *People v. Dramayo*, 42 SCRA 59, 64 (1971).
- [32] *Binkley v. State*, 34 Neb. 757, 52 N.W. Rep. 708.
- [33] *Abad v. Court of Appeals*, 291 SCRA 56, 65 (1998); *People v. Geron*, 281 SCRA 36, 52 (1997).
- [34] *People v. Vasquez*, 280 SCRA 160, 164 (1997); *People v. Pagaura*, 267 SCRA 17, 24 (1997); *People v. Villagonzalo*, 238 SCRA 215, 230 (1994).
- [35] *People v. Macalino*, 177 SCRA 185, 194 (1989).
- [36] *People v. Santillana*, G.R. No. 127815, June 9, 1999, p. 15.
- [37] *People v. Boduso*, 60 SCRA 60, 70-71 (1974).
- [38] *People v. Quinao*, 269 SCRA 495, 511 (1997); *People v. De Guia*, 280 SCRA 141, 159 (1997).
- [39] *People v. Sancholes*, 271 SCRA 527, 542 (1997); *People v. Albarico*, 238 SCRA 203, 214 (1994); *People v. Magtuloy*, 224 SCRA 153, 162 (1993); *People v. Cabarrubias*, 223 SCRA 363, 369 (1993); *People v. Abuyen*, 213 SCRA 569, 583 (1992); *People v. Ganohon*, 196 SCRA 431, 446 (1991); *People v. Retubado*, 162 SCRA 276, 286 (1988); *People v. Lora*, 113 SCRA 366, 374 (1982); *People v. Valerio, Jr.*, 112 SCRA 208, 231 (1982); *People v. Mabilangan*, 111 SCRA 398, 403 (1982); *People v. Limaco*, 88 Phil. 35, 41 (1951); *People v. Espare*, 61 Phil. 140, 145 (1935); *U.S. v. Lansa-gan*, 27 Phil. 474, 476 (1914); *U.S. v. Baul*, 39 Phil. 846, 849 (1919).
- [40] *People v. Violin*, 266 SCRA 224, 233 (1997); *People v. De Guia*, 280 SCRA 141, 159 (1997); *People v. Panganiban*, 241 SCRA 91, 102 (1995); *People v. Albarico*, 238 SCRA 203, 214 (1994), citing RAMON C. AQUINO, Revised Penal Code, vol. I, 1987 ed., 376; *People v. Retubado*, 162 SCRA 276, 286 (1988); *People v. Layson*, 30 SCRA 92, 97 (1969); *U.S. v. Estopia*, 28 Phil. 97, 99 (1914).
- [41] *People v. Quinao*, 269 SCRA 495, 512 (1997).
- [42] Article 64, No. 2, Revised Penal Code.

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