

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALAS MEDIOS AND RUBEN CABURAL, ACCUSED,

G.R. Nos. 132066-67. November 29, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the decision dated October 20, 1997, of the Regional Trial Court of Lingayen, Pangasinan, Branch 37, in Criminal Case Nos. 3411-R and 3412-R, finding appellant guilty of murder and attempted murder. In said decision the trial court decreed:

WHEREFORE, judgment is hereby rendered -

(1) Under Criminal Case No. 3411-R, finding the accused Balas Medios guilty beyond reasonable doubt of the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of imprisonment of RECLUSION PERPETUA, and to indemnify the heirs of Jose "Jinggoy" Deguerto in the amount of P50,000.00.

(2) Under Criminal Case No. 3412-R, finding the accused, Balas Medios guilty beyond reasonable doubt of the crime of ATTEMPTED Murder, defined and penalized under Article 248, in connection with Articles 6 and 51 of the Revised Penal Code, and he is hereby sentenced to suffer the penalty of imprisonment under the Indeterminate Sentence Law, of Three (3) Months of arresto mayor to three (3) Years and Three (3) Months of prision correccional.

And to pay costs.

SO ORDERED.[1]

In an information dated March 3, 1993, Assistant Provincial Prosecutor Jose Israel charged appellant with the crime of murder, docketed as Criminal Case No. 3411-R, committed as follows:

That on or about the 7th day of December, 1992, in Brgy. San Miguel, municipality of Balungao, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with boloes (sic), conspiring, confederating and mutually helping one another, with intent to kill with treachery and evident premeditation and taking advantage of superior strength, did then and there, willfully (sic), unlawfully, and feloniously attack and hack Jose Deguerto[2] on the different (parts) of his body, inflicting upon him the following injuries:

Hacking wound, 14 cm from superciliary (eyebrow) to zygomatic area extending to sternocleidomastoid (near clavicle) (L)

Hacking wound, 4 cm clavicle (middle) (L)

Hacking wound, 4 cm neck (R)

Abrasion, linear, 8 cm neck (R)

Avulsion of skin, abdomen (L) at level of 12th rib.

which caused the death of Jose Deguerto as a consequence, to the damage and prejudice of the heirs of the said deceased.

Contrary to Article 248, Revised Penal Code.[3]

In the other information of even date, appellant was charged with the crime of frustrated murder, docketed as Criminal Case No. 3412-R, committed as follows:

That on or about the 7th day of December, 1992, in Brgy. San Miguel, municipality of Balungao, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with boloes (sic), conspiring, confederating and mutually helping one another, with intent to kill, with treachery and evident premeditation and taking advantage of superior strength, did then and there, wilfully, unlawfully and feloniously attack and hack Artemio Palpalatoc[4] on the different parts of his body, the accused having thus performed all the acts of execution which would have produced the crime of Murder as a consequence but which nevertheless did not produce it by reason of causes independent of the will of the accused and that is due to the timely medical assistance rendered to the offended party which prevented his death, to his damage and prejudice.

Contrary to Article 248, in relation to Articles 6 and 50, Revised Penal Code.[5]

Only appellant was arrested while his co-accused Ruben Cabural remains at large. Upon arraignment, appellant, assisted by counsel, entered a plea of not guilty to both charges. Thereafter, trial on the merits ensued.

The prosecution evidence is summarized by the trial court as follows:

On December 7, 1992, at between the hours of 7:00 and 8:00 o'clock in the evening, three (3) men -- namely, 42-year old Artemio Palpal-latoc, 32-year old Manolito C. Ramos, and 43-year old Jose R. de Guerto -- were walking along the barangay road at Barangay San Miguel, Balungao, Pangasinan, proceeding west to get Artemio Palpal-latoc's water pump. Suddenly, as they approached the culvert, two (2) men, whom they recognized to be Balas Medios and Ruben Cabural, emerged from both sides of the road armed with boloes (sic) and stopped them, saying "Here are the two persons we are waiting for" and, immediately, Ruben Cabural stabbed and hacked Artemio Palpal-latoc, hitting him first on the forehead above his left eye, then on his left shoulder and different parts of his body including his left thigh where the blade of the bolo broke and got stuck, then on the stomach and armpit when the bolo no longer had the pointed blade. Simultaneously, Balas Medios stabbed and hacked at Jose de Guerto and Artemio Palpal-latoc. Ruben Cabural also stabbed Manolito Ramos, but the latter evaded the thrust and was able to run away unhurt.

After being hacked and stabbed on different parts of his body, Artemio Palpal-latoc ran away, and, as he was running, he felt something sticking in his left thigh, and when he looked, he saw the broken blade of the bolo that was thrust at him by Ruben Cabural, stuck through and through at his left thigh, and removed it by himself. He went to the house of his sister-in-law, 56-year old Lolita Mendijar, a sister of his wife, calling for her husband, Rodrigo Mendijar. They went out, he told them he was stabbed by Balas Medios and Cabural. They accompanied him on a tricycle to the hospital, dropping by the house of Brgy. Kagawad Remedios Cacananta; Palpal-latoc turned over to her the broken pointed blade of the bolo; and she rode with them on the tricycle to the hospital.

Neither Artemio Palpal-latoc nor Manolito Ramos knew what happened to their companion, Jose de Guerto, who they last saw being hacked and stabbed by Balas Medios with a bolo. It was not until the following morning, at about 8:00 o'clock that they came to know that Jose de Guerto was found lying dead at the middle of the barangay road, about 50 meters away from where he and his companions were attacked the previous night.[6]

Dr. Ingrid Gancenian, Municipal Health Officer, Rosales, Pangasinan, conducted an autopsy on the cadaver of Jose Deguerto. Her autopsy report showed that Deguerto sustained the following injuries: hacking wound, 14 cm. from superciliary (eyebrow) to zygomatic arch extending to sternocleidomastoid (near clavicle, L); hacking wound, 4 cm. clavicle (middle, L); hacking wound, 4 cm. neck (R); abrasion, linear, 8 cm. neck (R); avulsion of skin, abdomen (L) at level of 12th rib. She opined that the cause of death is hemorrhagic shock due to hacking wounds.[7] Her testimony was dispensed with in view of the manifestation of the defense admitting the aforesaid autopsy report and the findings contained therein.[8]

Dr. Reynaldo Ordoñez of Ordoñez Medical and Children's Clinic, Poblacion, Villasis, Pangasinan, treated Artemio Palpal-latoc. The attending physician found that the patient sustained the following injuries: stab wound, distal third through and through, entrance - anterior, exit - posterior; stab wound, 0.5 inch, shoulder (L); wound, incised, eyebrow (L). He stated that the wound on the left thigh of Palpal-latoc which is through and through could have been caused by a bolo. He opined that had the wound not been sutured and Palpal-latoc not injected with anti-tetanus serum, the latter would have died. He said that the injury will heal in about two weeks if no complication occurs.[9]

Appellant maintained his innocence. He put up the defense of alibi, presenting his own testimony and that of his brother, Amado Medios.

The trial court summed up appellant's story as follows:

...On December 7, 1992, at between 7:00 and 8:00 in the evening Amado Medios, his brother Balas, and their parents, Epifanio and Lolita Medios were in their house in Brgy. San Miguel, Balungao, Pangasinan. They had their supper at past 7:00 P.M., and they slept beside each other at about 8:00 o'clock that evening. The following day, December 8, 1992, they came to know of the incident that took place on the night December 7, about one kilometer away from their house wherein Jose ("Jinggoy") Deguerto was stabbed to death and Artemio Palpalatoc (sic) suffered stab wounds. Accused Balas Medios learned of the incident from one Simeon Cachicho, a neighbor of Artemio Palpalatoc (sic).[10]

His brother, Amado Medios, corroborated appellant's testimony.

Gil Villapa, the barangay captain of San Miguel, also testified and lent some degree of persuasiveness to appellant's story. However, we note that Villapa's wife is a sister of appellant's mother. According to Villapa, he was not aware of any unusual incident in his barangay on the night of the incident and it was only the following morning that he was informed that Deguerto was stabbed to death with a bolo the previous night.

The trial court found the testimonies of prosecution witnesses credible. In contrast, it found appellant's alibi unworthy of belief. Accordingly, the court held that appellant is guilty of murder and attempted murder, and sentenced him per the abovequoted judgment dated October 20, 1997. Expectedly, appellant filed his notice of appeal. In his brief, he assigns the following errors:

I

THE COURT A QUO ERRED IN APPRECIATING THE EXISTENCE OF CONSPIRACY IN THE CASE AT BAR.

II

THE COURT A QUO GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE TESTIMONIES OF ARTEMIO PALPALLATOC AND MANOLITO RAMOS.

III

THE COURT A QUO ERRED IN FINDING ACCUSED-APPELLANT BALAS MEDIOS GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF MURDER AND FRUSTRATED MURDER DEFINED AND PENALIZED UNDER THE PROVISIONS OF THE REVISED PENAL CODE.[11]

At the heart of these assigned errors is the issue of the credibility of the witnesses. Secondly, we must determine the existence of conspiracy and treachery.

Appellant contends that the trial court erred in giving credence to the testimonies of Palpal-latoc and Ramos. He points out that the testimonies of said prosecution witnesses conflict with each other such as when Palpal-latoc declared that both appellant and Cabural were armed with bolos while Ramos stated that only one bolo was used by the two accused. Appellant insists that only Cabural is responsible for the crimes. He strongly disagrees with the findings of the trial court that there was conspiracy in the commission of the crimes. He argues that the prosecution failed to establish the existence of a previous agreement between appellant and Cabural to kill Deguerto and injure Palpal-latoc. Neither did the prosecution show that both accused acted concertedly towards a common purpose.[12]

After examining carefully the testimonies of witnesses for the prosecution as well as the defense, we find appellant's contentions devoid of merit. We agree with the trial court in giving full faith and credence to the testimonies of Palpal-latoc and Ramos who categorically declared that appellant and Cabural attacked and stabbed them on the evening of December 7, 1992. On the witness stand, Palpal-latoc declared that as they (he, Ramos and Deguerto) were walking along the barangay road, appellant and Cabural emerged from both sides of the road and stopped them. The two accused shouted, "Here are the two persons we are waiting for," and immediately stabbed them with their bolos. Cabural attacked Palpal-latoc and Ramos while appellant hacked Deguerto and Palpal-latoc. Palpal-latoc stated that he was hit on his head near his left eye, and on his left shoulder, left thigh and his abdomen. The blade of the bolo even stuck to his left thigh. Ramos corroborated Palpal-latoc's testimony. He declared that he was the one attacked first by Cabural but he managed to escape. He stated that appellant and Cabural also attacked his companions and even shouted, "We will kill you."

Admittedly, the testimonies of Palpal-latoc and Ramos do not jibe on the number of bolos used by the accused. While Palpal-latoc said that the accused have their respective bolos, Ramos stated that only one weapon was used by the accused. In view of the lapse of time and different capacities for observation, however, the witnesses cannot be expected to recall with accuracy or uniformity all matters connected to the main overt act. At any rate, the autopsy report and medico-legal findings are consistent with the testimonies of prosecution witnesses that Deguerto and Palpal-latoc sustained injuries which were apparently caused by a bolo.

Moreover, there is no reason to doubt the positive identification of the appellant by Palpal-latoc and Ramos. The said prosecution witnesses and the accused have known each other for a long time since they reside in the same barangay. The encounter among them was so close there was no way for the witnesses to have mistaken the identities of the accused. Besides, appellant has failed to prove any improper motive on the part of prosecution witnesses to falsely impute to him crimes as grave as murder.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from the acts that point to joint purpose and design, concerted action and community of intent. It is sufficient that at the time of the aggression, all the accused manifested by their acts, a common intent or desire to attack so that the act of one accused becomes the act of all.[13]

In this case, each of the accused performed specific acts in the commission of the crimes with clear coordination, indicating a common purpose. The accused waiting in ambush, one at each side of the road, suddenly attacked one

victim and then the other, upon the signal, "Here are the two persons we are waiting for." As Palpal-latoc declared, while Cabural was stabbing him (Palpal-latoc), appellant was hacking Deguerto. And while the attack was ongoing, accused even shouted, "We will kill you." Clearly, there was singleness of purpose existing between the two accused, which undeniably indicate the existence of conspiracy. Since the accused were in conspiracy through their concerted acts, there is collective criminal responsibility. Both conspirators are liable as principals regardless of the extent and character of their participation, because the act of one is the act of both.

We agree with the trial court that the killing of Deguerto was qualified by treachery. The essence of treachery is the sudden and unexpected attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor.[14] As the trial court observed, the two accused, one at each side of the road, waited in ambush before suddenly stabbing and hacking their unsuspecting and defenseless victims, resulting in the death of Deguerto and causing injuries to Palpal-latoc.

Appellant asserts that he was at home with his family when the crime was committed. This defense scarcely deserves consideration. The well-settled rule is that alibi is a weak defense which cannot prevail over positive identification of the accused by credible witnesses, as in this case. Further, alibi is hardly believable when posited only by the accused and his family members and associates.

In Criminal Case No. 3412-R, wherein appellant was indicted for frustrated murder, the trial court convicted appellant of attempted murder on the ground that the injuries suffered by Palpal-latoc were superficial. There is evidence, however, that were it not for timely medical assistance, Palpal-latoc would have also died like Deguerto. Dr. Ordoñez testified that the through and through wound on the left thigh sustained by Palpal-latoc as a result of stabbing was sufficient to cause his death had this wound and his other injuries been left untreated. In other words, the thigh wound would have been fatal without anti-tetanus injection. Moreover, it must be stressed that it is not the gravity of the wounds alone which determines whether a felony is attempted or frustrated, but whether or not the subjective phase in the commission of an offense has been passed and the objective phase has been reached. As held in *People v. Listerio*: [15]

The reasoning of the lower court on this point is flawed because it is not the gravity of the wounds inflicted which determines whether a felony is attempted or frustrated but whether or not the subjective phase in the commission of an offense has been passed. By subjective phase is meant "[t]hat portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender which, with the prior acts, should result in the consummated crime. From that time forward, the phase is objective. It may also be said to be that period occupied by the acts of the offender over which he has control - - that period between the point where he begins and the point where he voluntarily desists. If between these two points the offender is stopped by reason of any cause outside of his own voluntary desistance, the subjective phase has not been passed and it is an attempt. If he is not so stopped but continues until he performs the last act, it is frustrated."

It must be remembered that a felony is frustrated when: 1.] the offender has performed all the acts of execution which would produce the felony; 2.] the felony is not produced due to causes independent of the perpetrator's will. On the other hand, in an attempted felony: 1.] the offender commits overt acts to commence the perpetration of the crime; 2.] he is not able to perform all the acts of execution which should produce the felony; and 3.] his failure to perform all the acts of execution was due to some cause or accident other than his spontaneous desistance.

Suffice it to state that the intent to kill of the malefactors who were armed with bolos can hardly be doubted given the circumstances of the present case. Considering further that the injuries sustained by Palpal-latoc as a result of stabbing were sufficient to cause his death had these been left untreated, we find that the felony committed is not

attempted but frustrated murder.

The penalty for frustrated murder is the penalty next lower in degree than that prescribed by law for the consummated felony, hence in this case the penalty imposable is prision mayor maximum to reclusion temporal medium. Applying the Indeterminate Sentence Law and in the absence of other modifying circumstances, the proper penalty for frustrated murder should be eight (8) years of prision mayor minimum as minimum to fourteen (14) years and eight (8) months of reclusion temporal minimum as maximum.[16]

WHEREFORE, the judgment of the Regional Trial Court of Lingayen, Pangasinan, Branch 37, in Criminal Case No. 3411-R, is AFFIRMED. Appellant BALAS MEDIOS is declared GUILTY of the crime of MURDER and is sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Jose Deguerto, the amount of P50,000 as civil indemnity. However, the judgment in regard to Criminal Case No. 3412-R, is MODIFIED. Appellant is found GUILTY beyond reasonable doubt of FRUSTRATED MURDER and he is hereby sentenced to suffer the indeterminate penalty ranging from eight (8) years of prision mayor minimum as minimum to fourteen (14) years and eight (8) months of reclusion temporal minimum as maximum.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, and De Leon, Jr., JJ., concur.
Buena, J., on official leave.

[1] Rollo, pp. 65-66.

[2] Also referred as "De Guerto" in the records.

[3] RTC Records, Criminal Case No. 3411-R, p. 1.

[4] Also referred as "Palpal-latoc" in the records.

[5] RTC Records, Criminal Case No. 3412-R, p. 1.

[6] Rollo, pp. 61-62.

[7] RTC Records, Criminal Case No. 3411-R, p. 5.

[8] TSN, September 12, 1994, pp. 3-4.

[9] TSN, October 12, 1994, pp. 3-13.

[10] Rollo, p. 63.

[11] Id. at 40.

[12] Id. at 51-56.

[13] People vs. Baltar, Jr., G.R. No. 125306, December 11, 2000, p. 8.

[14] People vs. Tan, G.R. No. 132324, 315 SCRA 375, 393 (1999).

[15] G.R. No. 122099, 335 SCRA 40, 62-63 (2000), citing Aquino and Griño-Aquino, I Rev. Penal Code, 98-109 (1997 ed.).

[16] People vs. Francisco, G.R. Nos. 118573-74, 332 SCRA 305, 338 (2000).

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