

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RONITO BOLLER ALIAS OBAT, DIANITO BOLLER ALIAS NONOY AND FRANCISCO BOLLER ALIAS BAYANI, ACCUSED-APPELLANTS.

G.R. Nos. 144222-24. April 03, 2002

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is an appeal from the decision of the Regional Trial Court, Calbayog City, Branch 31, in Criminal Cases Nos. 3022, 3023 and 3024, finding accused-appellants Ronito Boller, Dianito Boller and Francisco Boller guilty beyond reasonable doubt of three counts of Murder for the killing of Lolito dela Cruz, Jesus Orquin and Arsenio Orquin, sentencing each accused-appellant to suffer the penalty of reclusion perpetua in each count, and ordering them to indemnify, jointly and severally, the surviving heirs of the victims in the amount of P50,000.00 and to pay the costs in each case.[1]

On December 22, 1995, accused-appellants were charged with Murder under three informations, similarly worded save for the name of the victim, committed as follows:

That on or about the 27[th] day of October, 1995, at about 8:00 o'clock in the morning, at the coconut plantation of Barangay Hinayagan, Municipality of Gandara, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, and shot one Lolito de la Cruz with the use of firearms (M-14 rifle, M-1 rifle and shotgun), which the accused conveniently provided themselves for the purpose, thereby inflicting upon the latter fatal gunshot wound on his body, which caused the untimely death of said Lolito de la Cruz.

CONTRARY TO LAW.

When arraigned, the three accused-appellants, assisted by counsel, pleaded not guilty to the crime charged in each case.[2] Thereafter, the three cases were consolidated and tried jointly.[3]

It appears that at 8:00 in the morning of October 27, 1995, brothers Jacinto and Jesus Orquin, their father Arsenio Orquin, and their uncle Lolito de la Cruz, were working at their copra kiln in Barangay Hinayagan, Gandara, Samar.[4] They heard dogs barking, so Jacinto went outside to see what was wrong. He saw accused-appellants Obat Boller, Nonoy Boller and Bayani Boller, about three meters away. Obat was holding an M-14 Garand, Bayani Boller was holding a shotgun, and Nonoy Boller was armed with a Garand. All of them were pointing their firearms at the copra kiln. Jacinto ran away. Accused-appellants opened fire at the copra kiln, hitting Arsenio Orquin, Jesus Orquin and Lolito de la Cruz.[5]

As Jacinto was running across the river, he heard Jesus shout, "Entoy, don't leave me, I will die!" Jacinto looked back and saw his brother in the water. Jacinto went back and brought Jesus to the river bank. He lay Jesus down and covered him with cogon grass.[6]

Jacinto proceeded towards Barangay Hinayan. As he was running, he met Roberto Tolin. Jacinto told Roberto that accused-appellants shot his brother, father and uncle, and asked him to go to the copra kiln and to save them.[7]

Moments later, Nixon de la Cruz reported to Barangay Captain Gutardo Berbis that his father, Lolito, was wounded and was in the house of Claro Arterio. Upon instruction of Berbis, Kagawad Pedro Sumagdon proceeded to the house of Arterio, bringing with him a pen and paper on which to write down any statement that Lolito would make.[8] Sumagdon found Lolito lying on his right side. He asked Lolito, "Why are you wounded?" Lolito answered, "I was shot by Obat Boller, Nonoy Boller and Bayani Boller." [9] Sumagdon wrote down the statement, which is translated in English as follows:

Statement of Lolito de la Cruz who was shot and these were the persons whom he saw, Nonoy Boller, Obat Boller and Bayani Boller, and they were clothed with military uniforms and some of them are members of CHDF of Bu-aw and the place where the shooting incident took place is near the coconut plantation of Arsenio Orquin.

Lolito's declaration was witnessed and heard by Roberto Tolin and Ponciano Orquin. The written statement, entitled "Ante-Mortem," was signed by Sumagdon, Tolin and Orquin. According to them, Lolito was unable to move his right hand at that time.[10]

Lolito was carried on a hammock and brought to Bu-aw for treatment, but he died before reaching the hospital.[11]

Roberto Tolin and others went to the scene of the crime and found the lifeless body of Arsenio Orquin lying face up. Across the river, they found the corpse of Jesus Orquin. Roberto and his companions gathered several empty shells on the ground about five arms' length from the copra kiln.[12] The bodies of Jesus and Arsenio Orquin were brought to Gandara for autopsy.[13]

Dr. Cresilda Teston-Aguilar of the Rural Health Unit of Gandara, Samar, who conducted the autopsy, reported the following findings:

- On the victim Lolito de la Cruz:

- Exhibit "D" – The Autopsy Report with the following physical findings:

"A. Avulsed gunshot wound 4 x 3 inches at the umbilical area, transecting the superior and inferior apigastric arteries and veins with evisceration of the large intestines.

Diagnosis: Irreversible shock secondary to hemorrhage secondary to gunshot wounds."

- Exhibit "E" - The Anatomical Report.

- Exhibit "F" - The Certificate of Death.

- On the victim Jesus Orquin:

- Exhibit "G" – The Autopsy Report with the following findings:

"1. Avulsed gunshot wound 7 ½ inches x 4 ½ inches lower end of the anterior aspect of the left thigh transecting the femoral artery and veins with fracture of the distal end of the femur, left.

Diagnosis: Irreversible shock secondary to hemorrhage secondary to gunshot wound."

- Exhibit "H" - Anatomical Chart Series.

- Exhibit "I" - Certificate of Death.

- On the victim Arsenio Orquin:

- Exhibit “J” – Autopsy Report with the following post-mortem findings:

“1. Avulsed gunshot wound 3 ½ inches in diameter 2 inches deep at the anterior aspect of the right upper thigh transecting the lateral femoral circumflex artery and vein.

2. Avulsed gunshot wound 7 ½ x 3 inches at the upper chart, posterior aspect of the right leg transecting the posterior tibial artery and the small saphenous vein.

Diagnosis: Irreversible shock secondary to hemorrhage secondary to gunshot wounds.”

- Exhibit “K” - Anatomical Chart Series.

- Exhibit “L” - Certificate of Death.[14]

Accused-appellants proffered the following defense:

The first witness, Ronito Boller, alias Obat, is one of the accused. He testified that on October 27, 1995 at around 7:00 a.m., he was fetched by Luz Villocero at their house to work in the latter’s farm which was about ten (10) minute hike away from their house. They stayed at the farm until 5:00 p.m., after which, he proceeded home. He said that it was Jacinto Orquin, the private complainant in this case, who killed his cousin Tantoy Boller. He was with Tantoy when the latter was killed. The elder brother of Tantoy, Eduardo, filed a case against Jacinto but the latter likewise killed Eduardo. He denied that he is a member of the CAFGU.[15]

The second witness, Luz Villocero, was presented to corroborate the testimony of Ronito Boller. She testified that on October 27, 1995 at around 7:00 a.m., she fetched Ronito Boller from their house to have him help them in harvesting the corn. They stayed at the farm till 5:00 p.m. She disclosed that, all the time, Ronito was with them.[16]

The third witness, Dianito Boller, is one of the accused. He testified that on October 27, 1995 at around 6:00 a.m., he was at their house taking his breakfast, after which he proceeded to the Camp because he was on duty up to 6:00 p.m. He took his lunch at their house at 12:00 p.m. and he returned to the Camp. He was with Sgt. Espiritu, Sgt. Palalay and PFC Raginal Narcing Selages who was his partner, and they stayed at the Camp until 6:00 p.m.[17]

The fourth witness, Zosimo Suarelo, hired the services of Francisco Boller on October 27, 1995. He testified that on October 27, 1995 at around 7:00 a.m., Francisco Boller was at their house because he hired the services of the latter to fix the nipa roof of their house. Francisco ate lunch at his house and he stayed until 4:00 p.m. He paid Francisco P50.00.[18]

The fifth witness, Narciso Selajes, is a CAFGU member and the duty partner of Dianito Boller on October 27, 1995. He testified that on October 27, 1995 at around 6:00 a.m., he saw Dianito Boller enter the camp because they were on duty from 6:00 a.m. to 6:00 p.m. They were issued firearms but after their duty they left their firearms behind inside the camp.[19]

The last witness, Francisco Boller, is one of the accused. He testified that on October 24, 1995, he arrived at Barangay Buan because his father called for him to work in the farm. He arrived at Barangay Buan from Barangay Hinayagan where he is residing. He likewise helped his father on October 26, 1995 at around 5:00 p.m. But he did not return to Barangay Hinayagan because he promised Zosimo Suarino that he will repair his roof. He stayed at the house of Zosimo up to 4:00 p.m. At around 10:00 a.m., Zosimo left because he was called by their commandant at the camp on account of the fact that something happened. Upon the return of Zosimo, he was informed that Arsenio and Jesus Orquin were killed but the killers were not yet known. On October 28, 1995, they were arrested by the police in connection with the killing of Arsenio and Jesus Orquin.[20]

On May 16, 2000, the trial court rendered judgment, the dispositive portion of which reads:

WHEREFORE, this Court declares all the accused, namely: Ronito Boller alias Obat, Dianito Boller alias Nonoy and Francisco Boller alias Bayani, GUILTY beyond reasonable doubt for three (3) counts of Murder in the above-entitled cases and hereby sentences each of them to suffer the penalties consisting of:

(1)

In Crim. Case No. 3022:

a.

Reclusion Perpetua;

b.

To jointly and severally indemnify the surviving heirs of the late Lolito de la Cruz in the amount of P50,000.00;

c.

To pay the costs.

(2)

In Crim. Case No. 3023:

a.

Reclusion Perpetua;

b.

To jointly and severally indemnify the surviving heirs of Jesus Orquin in the amount of P50,000.00;

c.

To pay the costs.

(3)

In Crim. Case No. 3024:

a.

Reclusion Perpetua;

b.

To jointly and severally indemnify the surviving legal heirs of the late Arsenio Orquin, and

c.

To pay the costs.

In the service of the sentence, each of the accused shall be credited with the full period of their preventive imprisonment, provided each of them has voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall only be entitled to four-fifths thereof pursuant to the provisions of Art. 29 of the Revised Penal code, as amended.

SO ORDERED.[21]

Accused-appellants appealed directly to this Court raising the following assignments of error:

I

THE LOWER COURT ERRED IN CONSIDERING THE STATEMENT MADE BY LOLITO DE LA CRUZ AS A DYING DECLARATION WHEN IT FAILED TO COMPLY WITH THE FORMAL REQUIREMENTS OF LAW.

II

THE LOWER COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY AGAINST ACCUSED-APPELLANTS WHICH WAS NOT PROVEN BY THE PROSECUTION

III

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIME OF MURDER, WHEN THEIR GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

In order that a dying declaration may be admissible in evidence, four requisites must concur:

- That the declaration must concern the cause and surrounding circumstances of the declarant's death;
- That at the time the declaration was made, the declarant was under a consciousness of an impending death;
- That the declarant is competent as a witness; and
- That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is a victim.[22]

All the above requisites are present in the case at bar. The statement of Lolito de la Cruz certainly pertains to the cause and surrounding circumstance that eventually led to his death. The victim was able to identify who the perpetrators were, their appearances and the place where the incident happened. The victim sustained fatal wounds and survival was a remote possibility. He pleaded that he be brought to a hospital.[23] He had to be carried in a hammock by several people,[24] but he died before reaching the hospital.[25] The autopsy conducted by Dr. Cresilda Teston-Aguilar confirmed the cause of his death as gunshot wounds.

The above circumstances indicate that the victim was conscious of his impending death. The records are bereft of any fact that would otherwise consider the victim an incompetent witness. Finally, the statement was offered in a criminal case in which the declarant was the victim.

Accused-appellants argue that the dying declaration is inadmissible in evidence, saying that "the barangay tanod reduced the dying declaration of the victim into writing using his own words and not that of the declarant himself worse, he didn't read the same to Lolito de la Cruz after preparing it, nor did he ask the latter to sign or authenticate the statement." [26] Nevertheless, the Rules do not require that the witness repeat the exact words of

the victim, it being sufficient that he testify on the substance of what was said by the declarant. Pedro Sumagdon, on cross-examination, explained:

Q

Now, it appears that what you have written here appears to be merely abstract, that these are not actually the exact words that were given to you but your own words as a result of what you deduced from the statements given to you?

A

What I wrote down there were statements coming from him but my mistake was, I was not able to let him sign on it.[27]

The rule is that a dying declaration may be oral or written. If oral, the witness who heard it may testify thereto without the necessity of reproducing the word of the decedent, if he is able to give the substance thereof. An unsigned dying declaration may be used as a memorandum by the witness who took it down.[28]

Accused-appellants raised the defense of alibi. It is well settled that courts have always looked upon this defense with caution if not suspicion, not only because it is inherently unreliable but likewise it is rather easy to fabricate.[29] For alibi to prosper, it is not enough that the accused prove that he has been elsewhere when the crime is committed. He must further demonstrate that it would have been physically impossible for him to be at the scene of the crime at the time of its commission. Accused-appellants failed to discharge this burden in the case at bar. More importantly, accused-appellants were positively identified by Lolito de la Cruz and Jacinto Orquin. The testimony of Jacinto Orquin was found by the trial court as “straightforward and equivocal.”[30] Hence, the defense of alibi cannot prevail over the dying declaration and the positive identification of accused-appellants.

However, the trial court erred in appreciating treachery as a qualifying circumstance. We find nothing in the records which show the exact manner of the killing.

Treachery cannot be presumed, it must be proved as clearly and convincingly as the killing itself. Any doubt as to the existence of treachery must be resolved in favor of the accused. We cannot, therefore, surmise from the circumstances that the accused perpetrated the killing with treachery.

However, we find that accused-appellants’ acts showed a common purpose, interest and design, thereby establishing a conspiracy among them. Hence, the act of one is the act of all, and each accused-appellant is equally guilty of the crime as the others.

Accused-appellants, therefore, are guilty of three counts of Homicide, each punishable by reclusion temporal under Article 249 of the Revised Penal Code. In the absence of either aggravating or mitigating circumstance, the prescribed penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, accused-appellants are therefore sentenced to suffer the penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

In addition to the civil indemnity, accused-appellants should also be held liable for moral damages in the amount of P50,000.00, which needs no proof other than the fact of death of the victim.[31]

WHEREFORE, in view of the foregoing, the decision of the Regional Trial Court of Calbayog City, Branch 31, in Criminal Cases Nos. 3022, 3023 and 3024, is **AFFIRMED** with **MODIFICATIONS**. Accused-appellants are found guilty beyond reasonable doubt of three counts of Homicide and each of them is sentenced in each count to suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum. Further, accused-appellant are

ordered to pay, jointly and severally, in each count the respective heirs of Lolito dela Cruz, Jesus Orquin and Arsenio Orquin, the sums of P50,000.00 as moral damages and P50,000.00 as civil indemnity.

Cost de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), and Kapunan, JJ., concur.
Puno, J., on official leave.

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- [1] Decision penned by Judge Sumoroy M. Ortego, pp. 11-12.
- [2] Records, p. 51.
- [3] September 16, 1996, pp. 1-2.
- [4] TSN, July 31, 1997, pp. 10-11; September 17, 1997, pp. 2-4.
- [5] TSN, July 31, 1997, pp. 12-15; September 17, 1997, pp. 5-9; September 18, 1997, pp. 5, 17-22.
- [6] TSN, July 31, 1997, pp. 16-18; September 18, 1997, pp. 23-24.
- [7] TSN, February 7, 1997, pp. 15-18; July 31, 1997, pp. 21-23.
- [8] TSN, September 16, 1996, pp. 10-16, 53-55.
- [9] Ibid., pp. 16-18.
- [10] Ibid., pp. 20-28, 49; Exhibit "A"; February 7, 1997, pp. 20-29.
- [11] TSN, July 31, 1997, p. 35.
- [12] Exhibit "B".
- [13] TSN, February 7, 1997, pp. 29, 44-45.
- [14] TSN, October 6, 1997, pp. 17-53.
- [15] TSN, July 21, 1999, pp. 3-11.
- [16] TSN, July 28, 1999, pp. 6-9.
- [17] TSN, July 28, 1999, pp. 24-27.
- [18] TSN, September 14, 1999, pp. 5-7.
- [19] TSN, January 12, 2000, pp. 6-8.
- [20] TSN, January 12, 2000, pp. 21-28.
- [21] Rollo, pp. 40-41.
- [22] *People v. Elizaga*, 167 SCRA 516 (1988).
- [23] TSN, September 16, 1996, pp. 26-55.
- [24] TSN, July 31, 1997, p. 30.

[25] TSN, July 31, 1997, p. 35.

[26] Rollo, p. 78.

[27] TSN, September 16, 1996, pp. 55-59.

[28] People vs. Odencio, et. al., 88 SCRA 1 [1979].

[29] People vs Cortes, 226 SCRA 91 [1993].

[30] RTC Decision, p. 10.

[31] People v. Ortiz, G.R. No. 133814, July 17, 2001.

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