

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RUPERTO GIMONGALA ALIAS PERTO, JEREMIAS SEBLOS ALIAS TENDIGOY AND LUDOVICO PASKO ALIAS RUDY, ACCUSED, JEREMIAS SEBLOS ALIAS TE...

G.R. Nos. 62968-69. February 27, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

In the morning of October 30, 1977, Alfonso Cadungog and his wife Soledad Ynoy, with their son Eliaquim and his daughter Felisa, went to Barangay Bago in Asturias, Cebu City, to do some marketing in preparation for All Saints Day. They stayed there until the late afternoon, when they started for home, bringing with them the articles they had purchased. As fate would have it, the elderly couple never reached their house in Banban for tragedy was waiting for them on the way to claim their lives. Their son nearly met the same end but was fortunately spared although not without serious injuries. Only Felisa, the fourteen-year old girl was to escape unscathed except only as to the gory memories.

In due time, Ruperto Gimongala, Jeremias Seblos, and Ludivico Pasko were arrested and accused in three separate informations of the murder of Alfonso Cadungog, the murder of Soledad Ynoy, and the frustrated murder of Eliaquim Cadungog.[1] After a joint trial, all the three accused were found guilty as charged and sentenced accordingly.[2] Gimongala did not appeal and is now serving his prison term. For their part, the herein accused-appellants went to the Court of Appeals, where their conviction was affirmed in toto.[3] They are now before this Court still protesting their innocence.

In their brief, the accused-appellants claim that the trial court erred in giving credence to the testimony of Eliaquim Cadungog and Felisa Cadungog; in admitting the extra-judicial confession of Ruperto Gimongala against them; and in not acquitting them for insufficiency of the evidence of the prosecution.[4]

We sustain at the outset the challenge to the extra-judicial confession of Gimongala which should not have been considered at all. As it is clear that it was obtained from Gimongala without according him the right to the advice and assistance of counsel, it should not have been admitted in evidence for any purpose and in any proceeding conformably to the prohibition of the Bill of Rights.[5]

We note that the decision of the trial court placed much reliance on this confession in sustaining the finding of guilt against all the three accused. If that had been the only basis of the judgment, the conviction must surely fall. As it happens, however, there are other findings independent of the said confession which, standing by themselves, are sufficient to establish the participation of the accused-appellants in the crimes imputed to them. It is on the basis of such evidence that we shall affirm the sentence now before us.

The case of the prosecution was established principally by Eliaquim Cadungog,[6] who was himself a victim of the violence on that fateful afternoon, and Felisa Cadungog,[7] his daughter and companion at the time, who also

testified on the attack against him and her grandparents.

From their testimony, the trial court found that on their way home from their marketing in Barangay Bago, the Cadungog family was waylaid by the three accused, under the leadership of Romualdo Seblós. They were then in the middle of Pasko's cornfield and it about six o'clock in the afternoon. Romualdo Seblós first approached Eliaquim Cadungog and felled him with a fist blow. Alfonso Cadungog went to his son's rescue and was met with a volley of stones that also knocked him down. Soledad Ynoy, seeking to succor her husband, was likewise stoned and fell to the ground with a fractured skull. The attackers continued to stone them when they were already injured and helpless on their backs and it was probably at that time that Alfonso and Soledad died. Turning their attention to Eliaquim, the group then divested him of his money, and Gimongala, saying he should be eliminated as a possible witness, bashed his head with a rock. The four attackers thereafter went their separate ways, leaving their victims for dead.[8]

The reason Romualdo Seblós was not among those prosecuted in these cases is this. Seeing Leonardo Ynoy, Jr in the vicinity and fearful that he might testify against them. Seblós gave chase to Leonardo, who ran to his house and there stabbed Romualdo dead.[9]

The medical evidence submitted by three different doctors affirmed the prosecution's version of the tragedy in question. Dr. Felicísimo del Rosario, who examined the cadavers of Alfonso Cadungog and Soledad Ynoy, certified that the former's cause of death was "cardio-respiratory arrest due to shock and massive cerebral hemorrhage as a result of a comminuted fracture of the skull involving the frontal, temporal and occipital bones." [10] Soledad Ynoy died as a result of "cardio-respiratory arrest due to shock and massive cerebral hemorrhage as a result of a comminuted fracture of the skull involving the frontal, temporal and occipital bones." [11] Dr. Eugenio Ungab, Jr. certified that Eliaquim Cadungog was admitted to the Taburan Emergency Hospital in serious physical condition with a "lacerated wound with comminuted fracture skull, frontal region, right." [12] Dr. Arcadio Espina declared that the x-ray examination showed "a depressed fracture appreciated at the right temporal-parietal." [13]

These declarations are not disputed by the accused-appellants.

We are not concerned with the defense of Ruperto Gimongala who has not chosen to appeal and has thus impliedly accepted the judgment against him. We deal here only with the appeals of Jeremias Seblós and Ludovico Pasko, who claim they should have been acquitted because they were not anywhere near the scene of the crimes imputed to them when these were committed. They also argue that, in any event, the evidence against them is weak and has not overcome the constitutional presumption of innocence in their favor.

Their common alibi is that at the time of the crimes in question Ludovico and Jeremias were in the latter's house and sharing a chicken supper in thanksgiving for a bountiful harvest. [14] This was corroborated only by Leonerio Gimongala, possibly a relative of Ruperto Gimongala, and at any rate no more credible than the eyewitnesses for the prosecution. [15] Significantly, Jeremias's house is only three kilometers from that place in Pasko's cornfield where the Cadungog family was attacked at the time of the alleged repast. [16] Besides being inherently weak, this particular alibi has a decidedly hollow ring that invites disbelief rather than credence.

It is true that to justify a conviction, the government must rely not on the weakness of the defense but on the strength of the prosecution. Invoking this rule, the accused-appellants argue that even supposing their alibi to be weak, the prosecution must fall just the same because its own evidence is weaker. In support, they cite certain specific inconsistencies and discrepancies in the testimony of Eliaquim Cadungog and his daughter Felisa which they say prove that these witnesses were lying on the stand.

The Court agrees that there are such contradictions, as meticulously pointed out by the defense. More than this, we have held in some cases that we cannot be too careful with such lapses where we are dealing with a criminal prosecution, which involves the liberty and honor of the accused.[17] In the present case, however, we find that the claimed differences between the declarations of the two witnesses do not impair their credibility as a whole. On the contrary, the separate versions of the incident are substantially identical and tally with each other in the material points.

Let it also not be forgotten that Eliaquim was one of the victims of the attack and categorically identified this persons who killed his parents and nearly killed him too. It may be that he might have missed a few details about the surprise and unnerving attack but he surely could not have been mistaken about the most important fact of all, viz., the identity of the accused-appellants. As for the fourteen-year old Felisa, who also saw everything, it is far-fetched to suppose that she was merely fabricating her testimony and had been coached to maliciously implicate the accused-appellants. It does not appear she had an earlier grudge against them nor has any evidence been offered to show that she was lying under oath.

Given the conflicting factual averments of the parties, the trial judge has the competence to discover the truthful narration and on the basis of his evaluation thereof pronounce the guilt or innocence of the persons on the dock. Once that factual determination is made by the court a quo, the appellate court is concluded by such finding unless it comes within any of the accepted exceptions that will justify its reversal. As none of such exceptions has been demonstrated, we say here as we said in an earlier case:

"We see no reason to reverse the factual findings of the trial judge, who had the opportunity to observe the demeanor of the witnesses and to assess their credibility. The written record will not show that nuance of tone or voice, the meaningful contrast between the hesitant pause and the prompt reply, and the expression or color or tilt of face that will affirm the truth or expose the fabrication. All these subtle factors could be considered by the trial judge in weighing the conflicting declarations before him and we do not find that he has erred." [18]

From the facts established, we agree with the trial court that there was a conspiracy among the four men who attacked the Cadungogs on that fateful afternoon of October 30, 1977. As the Court held in *People v. Rojas*: [19]

"A conspiracy exists when two or more persons come to an agreement to commit a crime and decide to commit it. While it is desirable that the conspiracy be proved by direct evidence, like an express understanding among the plotters affirming their commitment and defining their respective roles, it may nevertheless be established at times by circumstantial evidence only. Thus, to repeat established doctrine, where the accused move in concert toward a common purpose, conspiracy may be inferred from their joint acts and design, without need of direct evidence of the criminal agreement. We have held in many cases that the conduct of the accused before, during and after the commission of the crime, are circumstances that can show whether or not there was a conspiracy among them."

There is much to say about the prosecution theory that the four assailants had earlier planned the attack after they had thoroughly deliberated on it. Nevertheless, we shall give the accused-appellants the benefit of the doubt and accept the finding of the trial court that there was no evident premeditation among them when they attacked their victims.

But we shall also sustain the finding of treachery against them as it is clear that they had adopted means and methods to insure the commission of the offenses without risk to themselves from any defense their unwary victims might make. It bears stressing that their victims were totally unprepared for their sudden attack and also without any weapons to resist it. The Cadungog group consisted of an elderly couple, a teen-age girl, and only one young man, as against four full-grown assailants with stones in their hands and the intent to kill.

Treachery qualifies the crimes committed as murder and frustrated murder. There being no aggravating or mitigating circumstances, the trial court was correct in meting out the penalties of reclusion perpetua for each of the "two murders and the indeterminate penalty of "from eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum," for the frustrated murder. Following the present policy, however, we shall increase the civil indemnity in each of the two murders to P30,000.00 and in the frustrated murder to P5,000.00, also to be solidarily charged.

WHEREFORE, the appealed judgment is AFFIRMED as above modified. No costs.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Original Records, Crim. Case No. 1471, p. 1; Ibid., Crim. Case No. 1472, p. 1; Id., Crim. Case No. 1473, p. 1.

[2] Decision, Rollo, pp. 28-29, penned by Judge Regino Hermosisima, Jr.

[3] Ibid., p. 95 Busran Jr., ponente, Coquia and Zosa, JJ., concurring.

[4] Brief for the Appellant, pp. 7, 16, 21; Rollo, p. 69.

[5] Article III (12) 1987 Constitution.

[6] TSN, June 21, 1978, pp. 1-13.

[7] TSN, March 30, 1978, pp. 1-12.

[8] Decision, Rollo, pp. 17-18.

[9] Ibid., p. 18.

[10] Exhibit C-1, p. 4, Folder of Exhibits.

[11] Exhibit C, p. 3, Folder of Exhibits.

[12] Exhibit A, p. 1, Folder of Exhibits.

[13] TSN, October 30, 1978, p. 2.

[14] TSN, August 21, 1979, pp. 9-10,16-17.

[15] Ibid., pp. 2-4.

[16] Id., p. 3.

[17] People v. Fernando, 156 SCRA 35.

[18] People v. Guardo, 156 SCRA 152.

[19] 147 SCRA 175.

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