

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DOMINGO LOPEZ Y CABAIS, ROBERTO ANSALE Y TAMBULI, JOHN DOE, PETER DOE AND PAUL DOE, ACCUSED-APPELLANTS.

G.R. Nos. 71875-76. January 25, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Accused-appellants, Domingo Lopez and Roberto Ansale, appeal from the judgment* of the Regional Trial Court, National Capital Judicial Region, Branch 84, Quezon City, finding them guilty of Murder in Criminal Case No. Q-18861, and of Frustrated Murder in Criminal Case No. Q-18862.

The evidence for the prosecution is summed up as follows:

"On January 31, 1982 at about 6:00 p.m., Adelina Magtoto and her husband, Federico Malinao, Jaime Cano, Jaime Gloria, Danilo Misa, Basilisa and Jun Polinar who were all staying in the house of Mr. and Mrs. Magtoto in 119 Rodriguez Avenue, Quezon City, entered the Encounter Disco at Welcome Rotonda, España, Quezon City (pp. 1-5, TSN, May 12, 1982; p. 2, TSN, Mar. 31, 1982; p. 1, TSN, Aug. 11, 1982).

"At about 7:30 p.m., they all went out for home. Adelina and her husband went ahead. While the others were outside in front of Encounter waiting for a ride, all of a sudden appellants appeared and attacked Jaime Cano. Appellant Roberto Ansale hit Cano on the neck with his balisong. Unarmed and sensing danger Cano with his other companions started to run and disappeared. The assailants however were able to gang up on Jaime Gloria who was just beside and about three (3) arms length away from Cano. Appellants Lopez and Ansale took turns in stabbing Gloria in various parts of his body (pp. 3-5, TSN, Mar. 31, 1982; pp. 2-8, TSN, May 12, 1982; pp. 2-4, TSN, Aug. 11, 1982).

"Gloria died on the same night at 9:00 in the National Orthopedic Hospital on account of hemorrhage case caused by secondary to multiple stab wounds inflicted by appellants as found by Dr. Orlando Salvador, Medico-Legal Officer of NBI (Exhibits M and N).

"Cano took a ride and proceeded to the De los Santos Clinic for the treatment of his wound. After staying there for 24 hours, he was transferred to the Quirino Memorial Hospital where he was confined for two (2) days (pp. 5-6, TSN, Mar. 31, 1982)" (Appellee's Brief, pp. 4-6).

In their defense, on the other hand, accused-appellants deny being the perpetrators of the crimes. Accused Domingo LOPEZ, who takes charge of the parking area of the Grand Inihaw Beer House immediately next to the Encounter Disco, testified that he knew of no unusual incident in the area in the evening of January 31, 1982; but that just the same he was taken to the police headquarters around midnight where he was pointed to by some people, to which he retorted "nagakamali kayo"

For his part, accused-appellant, Roberto ANSALE, who also works in the same parking area near Encounter Disco testified, corroborated by his wife, that he did not report for work in the evening of the incident and that policeman merely arrived at their home at 1:00 o'clock A.M. of February 1, 1982, took him to headquarters, and

implicated him in the killing.

The Manager of the Grand Inihaw Beer House, Ambrosio Enrile, also declared that he knew of no incident between 7:00 o'clock P.M., and 1 1:00 o'clock P.M. of January 31, 1982 and confirmed that ANSALE did not report for work that evening.

The Trial Court gave no credence to the versions of accused- appellants and sentenced them as follows:

"WHEREFORE, this Court finds the accused Domingo Lopez y Cabais and Roberto Ansale y Tambuli GUILTY as principals and beyond reasonable doubt of the crime of Murder in Criminal Case No. Q-18861 and the crime of Frustrated Murder in Criminal Case No. Q-l 8862 with no attending mitigating or aggravating circumstance (except the qualifying circumstance of treachery in both cases).

In Criminal Case No. Q-18861, both accused are sentenced to suffer the penalty of life imprisonment (reclusion perpetua) together with all the accessory penalties thereof. Also, they are sentenced to indemnify jointly and solidarily the parents of Jaime Gloria, Mario Gloria and Porfiria Catalan, in the amount of P4,300.00 for actual damages, P12,000.00 as civil indemnity, and P10,000.00 as moral damages.

In Criminal Case No. Q-18862, both accused are sentenced to each suffer an indeterminate penalty consisting of imprisonment of THREE (3) YEARS AND TWO (2) MONTHS of prision correctional as minimum to EIGHT (8) YEARS, EIGHT (8) MONTHS AND ONE (1) DAY of prision mayor as maximum. Also, they are sentenced to indemnify jointly and solidarily Jaime Cano in the amount of P1,485.00 for actual damages and P3,000.00 as representing loss of income.

In both cases, they are sentenced to pay jointly the costs of the proceedings."

Accused-appellants now ascribe the following errors to the Trial Court:

I

"The Honorable Court erred in ruling that the accused-appellants were the perpetrators of the crimes charged.

II

"The Honorable Trial Court erred in giving more weight to the testimonies of the prosecution witnesses than to the testimonies of witnesses for the accused.

III

"The Honorable Trial Court erred in ruling that both accused conspired together in killing Jaime Gloria and in wounding Jaime Cano and in convicting them jointly of the two crimes charged, assuming accused were the assailants.

IV

"The Honorable Trial Court erred in not ruling the accused responsible only for their individual acts, assuming the accused were the assailants.

V

"The Honorable Trial Court erred in convicting the accused of the crimes of murder and frustrated murder as charged in the informations, rather than of the lower offenses of homicide and frustrated homicide, assuming the accused were the assailants.

VI

"The Honorable Trial Court erred in convicting, rather than in acquitting, the accused."

The errors assigned are not well taken.

The general denial by accused-appellants is limp. It is highly improbable that LOPEZ would not have known of the stabbing incident immediately near the parking area that he was tending. Obviously, he was not telling the truth. Neither was the Manager of the Beer House whom the Trial Court found to be "evasive, talkative and pretending to be smart." Moreover, such denial cannot prevail over the positive identification made by prosecution witnesses. Thus, Alex Pilapil, who works as a parking boy in the compound of the Encounter Disco, and who happened to be eating at the time of the incident, saw the stabbing of the two victims from a distance of four (4) armlengths. Three other witnesses, Jaime Cano, Federico Malinao and Basilisa Polinar, identified accused-appellants as the assailants. Alex Pilapil, Federico Malinao and Basilisa Polinar all gave written statements to the police in the early morning of February 1, 1982 soon after the incident (Exhibits "C", "D" & "1"). Jaime Cano, himself a victim, testified that while running away and when he was about three (3) armlengths distant, he looked back and saw accused-appellants stab the victim Gloria with their balisongs.

Accused ANSALE himself gave a Statement (Exhibit "P") admitting having stabbed Gloria but stating that he and LOPEZ were hit with belts by the victims for which reason they retaliated. He repudiated the Statement, however, in open Court.

The defense contention that the identification of accused-appellants by said witnesses was merely upon suggestion or coaching by the police is bereft of factual basis. The evidence shows that they gave their statements in the early morning soon after the incident and were already at the police headquarters to volunteer what they knew and to identify the assailants even before the latter were arrested. No satisfactory proof has been submitted to show that the police merely coached those witnesses and suggested the persons or names of accused-appellants. Police officers are presumed to have performed their duties in a regular manner absent evidence to the contrary (People vs. Natipravat, No. L-69876, November 13, 1986, 145 SCRA 483).

And while the eyewitnesses gave divergent testimonies on the number of assailants, with some mentioning three or more, that factor does not detract from their unwavering declarations that accused-appellants were the malefactors. They may have differed as to the precise accused-appellant who attacked one or the other of the victims but that is understandable considering the suddenness and the rapidity of the occurrence. The vital fact remains, however, that both accused-appellants simultaneously attacked and stabbed the victims.

ANSALE's defense of alibi in that he did not report for work the evening of the incident but stayed home cannot prevail over the positive identification made of him by credible eyewitnesses. Besides, it has not been shown that it was not physically impossible for him to have been at the scene of the incident at the time of its commission, his residence being merely in Kamuning, Quezon City, a fifteen to twenty-minute ride away from the place of the occurrence.

In the last analysis, the issue posited in the first and second assignments of error is one of credibility, covered by the time-honored doctrine that the findings of the Trial Court in that regard are entitled to great weight and respect and will not be disturbed save under certain exceptions, which we find in-existent herein.

In the third and fourth assignments of error, the defense faults the Trial Court for finding that conspiracy existed and for not holding accused-appellants responsible only for their individual acts, instead. That contention is untenable. It has been established through the testimonies of prosecution witnesses that accused-appellants acted in concert in stabbing the victims. They first attacked the victim Cano although it was ANSALE who was able to reach and slash Cano's neck. Then both assailants turned on the other victim Gloria. Cano saw accused-appellants

ganging up on Gloria from a distance of three armlengths when he looked back as he was running away. Witness Federico Malinao, who was with the victims' group, testified that LOPEZ hit Gloria on the stomach while ANSALE hit him on the back with the same balisong he used in slashing Cano's neck. It is thus evident that their specific acts were indicative of a common purpose and design.

Also evident is accused-appellants' intent to kill as shown by the wounds they had inflicted on their victims. Gloria suffered eight (8) stab wounds four (4) of which were fatal. Cano was slashed in the frontal aspect of the neck to a length of thirteen (13) centimeters, which required nine (9) sutures and hospitalization for two days.

The characterizations of the crimes as Murder and Frustrated Murder by the Trial Court, assailed in the fifth assignment of error, are apt considering that treachery attended the commission of the crime. Without any warning, accused-appellants attacked the victims. The latter furnished no provocation nor aggression whatsoever. ANSALE's statement that he and LOPEZ were whipped by the victims with their belts and were thus compelled to defend themselves by retaliating, as they did, is not borne out by the evidence. In fact, it even contradicts their version that they knew nothing of the incident. So sudden and unexpected was the attack that the victims were given no chance to defend themselves. Treachery was, thus, correctly appreciated by the Trial Court.

There is merit, however, in the defense contention that ANSALE's Statement, Exhibit "P", is inadmissible in evidence for having been taken in violation of his constitutional rights. Even the prosecution, in its Brief, agrees. Nonetheless, even discarding said Statement, there is ample evidence establishing the guilt of the accused to a moral certainty.

The penalties, however, will have to be modified. With the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua (People vs. Gavarra, No. L-37673, October 30, 1987 [En Banc]; People vs. Masangkay, G.R. No. 73461, October 27, 1987 [Second Division]). With no attending mitigating or aggravating circumstance, said penalty is imposable in its medium period or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years. The penalty next lower in degree for purposes of the Indeterminate Sentence Law is prision mayor, maximum, to reclusion temporal, medium, or from ten (10) years and one (1) day to seventeen (17) years and four (4) months (Article 61, para. 3, Revised Penal Code).

In respect of the crime of Frustrated Murder, the penalty prescribed by law is prision mayor in its maximum period to reclusion temporal in its medium period. In the absence of modifying circumstances, the penalty is imposable in its medium period, or from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months. The penalty next lower in degree for purposes of the Indeterminate Sentence Law is within the range of prision correccional, maximum, to prision mayor, medium, or from four (4) years, two (2) months and one (1) day to ten (10) years.

WHEREFORE, the appealed judgments are hereby modified as follows: 1) in Criminal Case No. Q-18861 for Murder each accused-appellant is sentenced to suffer the indeterminate penalty often (10) years and one (1) day of prision mayor, as minimum, to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal, as maximum. The civil indemnity is increased from P12,000.00 to P30,000.00 following current jurisprudence. The amount of P4,300.00 as actual damages and P10,000.00 as moral damages are affirmed.

In Criminal Case No. Q-18862 for Frustrated Murder, each accused-appellant is sentenced to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years, one (1) day of reclusion temporal, as maximum. The adjudgment of actual damages of P1,485.00, and of P3,000.00 representing loss of income is affirmed.

Costs in both cases against accused-appellants jointly.

SO ORDERED.

Yap (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

*Penned by Judge Eduardo C. Tutaan.

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