

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALMUDE LIZA AND WILDE LIZA, ACCUSED-APPELLANTS.*G.R. Nos. 72316-17. July 27, 1987*

Ponente: CRUZ, J.

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It was quiet in that evening of March 17, 1975, in the house of Juanito Somblingo in Passi, Iloilo. The clock had just tolled the hour of nine. He and several others were discussing the planting of sugar cane, which they would do the next morning. Suddenly a group of persons barged into the house and a shot rang out. Felipe Paniza fell mortally wounded. Panic ensued. Upon seeing his brother shot down, Prudencio Paniza ran out to flee but was met by one of the intruders who shot him point-blank. Somblingo hid and escaped injury. The attackers left as abruptly as they had arrived. Somblingo immediately reported the matter to the barangay captain and got a truck to bring the victims to the hospital, with a policeman accompanying him. Felipe Paniza died on the way. Prudencio Paniza survived, later to become the principal witness of the prosecution.[1]

Following investigation of the incident, informations were filed against Balmude Liza and Wilde Liza for murder and frustrated murder allegedly committed by them in conspiracy with Rodolfo Liza, Ricardo Castor, and a certain John Doe who were all still at large.[2] The two charges were tried jointly. The prosecution based its case on the eyewitness testimony of Prudencio Paniza and Somblingo and the medical reports of the injuries sustained by the victims. The accused-appellants relied on the defense of alibi, corroborated by several witnesses. After trial, Judge Edgar D. Gustillo rendered judgment, the dispositive portion of which read:

"WHEREFORE, the prosecution having proven the guilt of the accused Balmude Liza and Wilde Liza, for the crime of Murder for the killing of Felipe Paniza and Frustrated Murder for the serious wounding of Prudencio Paniza, beyond reasonable doubt, they are hereby found guilty of the crime of Murder as charged in the aforequoted information in Criminal Case No. 5133 and Frustrated Murder in Criminal Case No. 5132.

"Both accused are hereby sentenced to reclusion perpetua for Murder in Criminal Case No. 5133, and suffer imprisonment ranging from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years, four (4) months and one (1) day, reclusion temporal for Frustrated Murder in Criminal Case No. 5132, to indemnify jointly and severally, the heirs of Felipe Paniza in the amount of P30,000.00, to reimburse Prudencio Paniza for his hospital expenses in the amount of P3,600.00, and to pay the costs."[3]

The accused-appellants are now before us, complaining that the trial court did not give credence to their evidence. They both insist that they were not at the scene of the crimes when these were committed and so should not have been found guilty of the charges. They also fault the testimonies of Prudencio Paniza and Somblingo as unreliable and fabricated and invoke the constitutional presumption of innocence.[4]

The medical evidence is uncontroverted. According to Dr. Virgilio Sales who conducted the autopsy on Felipe Paniza, the deceased sustained five gunshot wounds, two of which were fatal.[5] For his part, Dr. Arturo Muyco, who examined Prudencio Paniza, declared that the latter suffered multiple gunshot wounds in the chest, shoulder

and back. The injuries were not very serious but the patient could have died of infection without medical attention.[6]

The most telling testimony came from Prudencio Paniza himself, who declared under oath that it was Balmude Liza who blocked and shot him while he was trying to escape following the shooting of his brother Felipe. Balmude had a shotgun. Prudencio could recognize him because they met face to face and the house was lit with several gas lamps. Moreover, he knew Balmude as they had earlier often seen each other in the grazing lands. Prudencio also identified his brother's killer as Rodolfo Liza, one of those who were not arrested and could not be tried.[7]

In the hospital where he was brought for treatment, he was asked by Patrolman Roberto Jino-o who his assailants were, and Prudencio named Rodolfo Liza, Balmude Liza, Wilde Liza and Ricardo Castor.[8]

Prudencio's testimony was corroborated by Juanito Somblingo, who said, however, that he did not actually see Wilde Liza on the night in question.[9] He was positive, though, about seeing Balmude Liza, Rodolfo Liza, Ricardo Castor and one other person he could not recognize.[10] Somblingo also declared categorically that Prudencio Paniza was shot by Balmude Liza, whom he had known for eighteen years.[11]

Three witnesses were presented by Balmude Liza to support his defense of alibi and all declared that he was with them the night the Paniza brothers were shot. His wife Juliet testified in 1982 that he slept beside her in the night of March 17, 1975.[12] Felix Aguirre affirmed that on that night he and several others slept downstairs in the house of Balmude's father, Francisco Liza, and Balmude also slept there with his wife and son. This witness categorically averred that Balmude could not have left without his knowing it because Balmude would have had to pass by him in the staircase.[13] Hilario Catequista, for his part, said Balmude slept that night about 3 meters away from where he himself was also sleeping, in the downstairs portion of Francisco Liza's house.[14]

What is suspicious about the common testimony of these witnesses is that none of them mentioned the important fact that on the same night they said they were sleeping with him, Balmude Liza was arrested in his father's house by the Passi police.[15] This happened at about midnight. Balmude himself so testified, thereby contradicting his own witnesses.[16] Aguirre was positive that he had breakfast with Balmude Liza at 7 a.m. the following day,[17] while Catequista testified that when he woke up at 6 a.m. Balmude was still asleep.[18] These witnesses were obviously lying because Balmude was at that time already in police custody, as he himself affirmed in his own testimony.

Wilde Liza also claimed alibi, saying he was on the date in question busy all day — and all night — helping with the construction of the stage to be used for the graduation ceremonies to be held in his school the following day.[19] Wilde and his witnesses declared there were ten of them who worked that day, not including the five girls who later decorated the stage, and he said they began at 7:30 a.m., finishing at about midnight of March 17, 1975.[20] The following morning, Wilde claims, he even participated in the commencement program and sang a song with some classmates.[21]

Asked about the size of the stage they constructed, Agustin Castellanes declared it was six meters by four meters,[22] and that it was made of bamboo. He said, moreover, that they started at 9 o'clock in the morning and took one hour to cut, clean and split the bamboo, which meant that all that needed to be done later was to assemble the makeshift structure.[23] With ten persons working together, however, the work was completed only after past midnight, or in fifteen hours, excluding the meal breaks. (Reckoning from 7:30 a.m., following Wilde's testimony, the period would have been sixteen and a half hours.)

The testimony of some of the defendant's witnesses was given as late as seven years after the occurrence of the

crimes, and at the request of the accused-appellants made only a short period before they appeared in court. Castellanes was asked to testify only the day before he actually did, on February 20, 1980,[24] on what happened five years earlier. Aguirre was 76 years old when he recounted in 1980 what happened in Francisco Liza's house on the night of March 17, 1975, when he was already 71 years old. Hilario Catequista's recollection dated six years back, from 1981,[25] and Victorino Piolo's testimony, requested in December 1980, was given in 1981, or also six years after the incident in question.[26] Given the lapse of time, it is not believable that they could recall in detail the events that supposedly transpired many years ago on that particular night, which held no special significance for them.

By contrast, Prudencio Paniza was testifying on a terrible event that involved him directly and in fact almost cost him his life. His near-killing is something he is not likely to forget, nor the memory of his assailant whom he encountered face-to-face. In the hospital where he was taken after he was shot, he readily identified the members of the group who attacked them, according to Patrolman Jino-o. Prudencio later confirmed this identification in court.

As for Somblingo, his testimony is more reliable than that of the witnesses for the defense because he was at the scene of the crimes and saw what happened the night his house was invaded. Significantly, his sworn statement of the events that transpired then was made only four days later, on March 21, 1975,[27] when his recollection of the shootings was still fresh. This statement coincided substantially with his testimony before the trial court three years later.

The Court is satisfied that there was a conspiracy among the accused-appellants and their companions when they together entered the house of Juanito Somblingo and shot the Paniza brothers, thereafter leaving together. No reason has been given why all five of them happened to be in Somblingo's house at the same time that the Paniza brothers were shot by two of them. Their unexplained presence at the same time in Somblingo's house is too coincidental to be innocent. Obviously, they were all there for a common purpose. There was an evident concert of design and action that moved all the five men who intruded into Somblingo's house and shot two of the persons inside.

For the consequences of the shooting, all the participants should be equally answerable. Although it is conceded that neither of accused-appellants killed Felipe Paniza, they and their three companions should be held guilty of killing him, each of them being a co-conspirator. The shooting of Prudencio Paniza, while actually committed only by Balmude Liza, is imputable to all the members of the conspiracy, also for the reason that in a conspiracy the act of one is the act of all.[28]

The crimes committed against Felipe Paniza and Prudencio Paniza were murder and frustrated murder, respectively, qualified by treachery. It is obvious from the manner they were attacked that it tended directly and specially to insure the execution of the assailants' plan without risk to themselves arising from any defense their intended victims might make.[29] There is treachery where, as in this case, the attack was made by a band of persons using firearms,[30] and it was deliberately made, suddenly and without warning.[31]

Treachery absorbs both superiority and nocturnity and so should not be separately considered. As for the claim of evident premeditation, we find that it has not been sufficiently established and so should also not be appreciated.

The penalty for the murder is reclusion perpetua, there being no aggravating or mitigating circumstances. For the frustrated murder, the Court, correcting the trial judge and applying the Indeterminate Sentence Law, imposes the penalty of four years, two months and one day of prision correccional as minimum and eight years and one day of prision mayor as maximum. All the civil awards are sustained.

Motive is not essential for conviction where the assailants are positively identified, but one wonders nonetheless what could have moved the accused-appellants and their companions to intrude into Juanito Somblingo's house that quiet evening of March 17, 1975, and without warning start shooting the surprised and defenseless victims. Why a life was taken and another almost lost on that fateful night must remain a mystery to all except the men who came to kill.

WHEREFORE, the judgment of the lower court is AFFIRMED except as above modified, with costs against the accused-appellants. It is so ordered.

Teehankee, C.J., Narvasa, Paras, and Gancayco, JJ., concur.

[1] Rollo, p. 30.

[2] Ibid., pp. 14-15.

[3] Decision, pp. 22-23.

[4] Appellants' Brief, pp. 13-15.

[5] Rollo, p. 21; Exh. F; TSN, Aug. 8, 1977, pp. 5-7.

[6] Rollo, pp. 20-21; Exh. b; TSN, Sept. 2, 1976, pp. 8-9.

[7] TSN, Aug. 3, 1976, pp. 17-19.

[8] Rollo, p. 22; TSN, Aug. 8, 1977, p. 18.

[9] TSN, Jan. 9, 1978, p. 7.

[10] Ibid., p. 9.

[11] TSN, Feb. 13, 1978, pp. 3-5.

[12] Ibid., March 3, 1982, p. 2.

[13] TSN., Jan. 9, 1980, pp. 11-12.

[14] TSN., May 18, 1981, p. 8.

[15] Rollo, pp. 33-34.

[16] TSN., April 28, 1982, p. 9.

[17] TSN., Jan. 9, 1980, p. 14.

[18] TSN., May 18, 1981, p. 9.

[19] TSN., Aug. 4, 1982, p. 4.

[20] Ibid., pp. 4, 6.

[21] Id., p. 7.

[22] TSN., Feb. 20, 1980, p. 13.

[23] Ibid., p. 20.

[24] Id., pp. 2-17.

[25] TSN., May 18, 1981, pp. 2-10.

[26] TSN., March 26, 1981, pp. 2-4; TSN, Jan. 28, 1981, pp. 2-9.

[27] Exh. "3".

[28] *People v. Loren*, 130 SCRA 311; *vs. Disney*, 120 SCRA 637; *vs. Villason*, 115 SCRA 716; *vs. Chan Lin Wat*, 50 Phil. 182; *vs. Roxas*, G.R. Nos. 46940-62, Jan. 8, 1987; *vs. Compacion*, 93 SCRA 339; *vs. Guillermo*, 93 SCRA 315.

[29] Art. 14, Sec. 16, Par. 2, Revised Penal Code.

[30] *People v. Buensoceso*, 132 SCRA 143; *v. Centeno*, 130 SCRA 198; *v. Chavez*, 117 SCRA 221.

[31] *People vs. Pampanga*, 139 SCRA 329; *vs. Beltran*, 138 SCRA 521; *vs. Beltran*, 137 SCRA 508; *vs. Villanueva*, 130 SCRA 75; *vs. Tajon*, 128 SCRA 656.

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