

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VALERIO CARMINA, ACCUSED-APPELLANT.

G.R. Nos. 81405-06. May 07, 1990

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

A farmer and his two sons were shot and decapitated for failure to pay the P500 "tax" demanded by the accused, allegedly a member of the dreaded New People's Army or "NPA".

On September 30, 1986, Valerio Carmina, Israel Carmina alias "Boy" and Danilo Catundag alias "Danny," were charged with murder and double murder in separate informations which were docketed as Criminal Cases Nos. 1543 and 1544, alleging as follows:

CRIMINAL CASE NO. 1543

"That on or about April 24, 1986, in the Municipality of Tarragona, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with treachery and evident premeditation, armed with firearms and a bolo and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, shoot and hack and/or stab with said weapons one GENARO GAMBOA, thereby inflicting upon the latter mortal wounds which caused his death.

"CONTRARY TO LAW."

CRIMINAL CASE NO. 1544

"That on or about April 24, 1986, in the Municipality of Tarragona, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, armed with firearms and a bolo, and with intent to kill, did then and there willfully, unlawfully, and feloniously attack, assault, shoot, stab and/or hack with said weapons JOELITO GAMBOA and OSCAR GAMBOA, thereby inflicting upon the said victims mortal wounds which caused their death.

"CONTRARY TO LAW." (pp. 20--21, Rollo.)

Valerio Carmina entered a plea of not guilty to both charges. His co-accused have remained at large. Both cases were jointly tried by agreement of the parties.

The prosecution, through the testimonies of Edgar and Orestes Gamboa, established that at about five o'clock in the morning of April 24, 1986, Genaro Gamboa, and his four sons, Joelito, Oscar, Edgar and Orestes, arrived at their farm in Sitio Baesan, Tarragona, Davao Oriental. They had come from their residence in Sitio Maitum, Tubaon, also in Tarragona. They brought with them three laborers, named Jun Cotabato (Gabato), Winny Quiboto

and Federico de Lima, to clear the fields in preparation for planting corn. Except for Edgar Gamboa who worked in his vegetable garden "five fathoms away," the Gamboas and their laborers started clearing the fields, working side by side.

At around 11:00 o'clock in the morning, a group of three men arrived. They were Valerio Carmina who was armed with a carbine rifle, Israel Carmina who was armed with a garand rifle, and Danilo Catundag who was armed with a bolo. They ordered Genaro and his sons, Joelito and Oscar, to approach them, shouting: "Dali mo diri!" (Come here quick!). As they did, Valerio shouted: "Here come the persons who have no respect in paying the P500 as demanded." Joelito was asked about the whereabouts of an airgun. He replied that it was in the farmhouse and directed his 11-year old brother, Orestes, to get the airgun. Meanwhile, the armed group ordered the laborers, Jun Cotabato and Winny Quiboto, to leave the place. They did not notice the third laborer, Federico de Lima, who hid behind a narra tree.

When Orestes Gamboa returned with the airgun, Israel Carmina grabbed it from him and fired one shot. Orestes scampered for safety and hid behind a tree. Genaro, Joelito and Oscar were ordered by the armed men to lie face down on the ground. As soon as they obeyed, they were shot by Valerio and Israel Carmina with their guns. Joelito died on the spot. Oscar was able to stagger "ten fathoms away" before he succumbed to his wounds. The volley of shots missed Genaro Gamboa, who got up and ran toward a nearby creek. Danilo Catundag chased him and mercilessly hacked and beheaded him. Catundag returned to the spot where the Carminas were, his bolo dripping with Genaro's blood. Federico de Lima and Orestes Gamboa witnessed the decapitation of Genaro. Orestes and Edgar fled in terror from their separate hiding places toward the Kinunuan River. Upon encountering Edgar there, Orestes hysterically embraced his brother. They rushed home to Sitio Maitum, Tubaon and reported the bloody incident to their mother, Eustaquia. In the afternoon, Edgar reported the crime to Kagawad Rosendo. The barangay officer's letter reporting the incident was personally delivered by Edgar to the INP (Integrated National Police) station commander.

Aside from the eyewitnesses, Edgar and Orestes Gamboa, the other prosecution witnesses, Eustaquia Vda. de Gamboa, Abraham T. Loganio and Cpl. Epimaco Cabilleda, adduced corroborative testimony about the murder scene, the death of the victims and the registration of their deaths.

Only Valerio Carmina was apprehended. He testified during the trial that he tended his farm in Pagsilaan, Manay, Davao Oriental, where he resides, but he also used to commute regularly to Ompao, Davao because he was a member of the NPA. In 1970 he allegedly was an informer for the ICHDF in San Ignacio, Davao Oriental, but he got into trouble with the Badadao family in 1982 and in 1985 he became a fugitive and joined the NPA after shooting to death Elnoro Badadao.

When the Gamboas were murdered, he allegedly was in the house of Francisco Antao in Bolong-bolong, Ompao, Tarragona, with other NPA members named Alex Antao, Felix Maguinsay and Ricardo Mandabon.

Francisco Antao affirmed that Valerio had "come down from the forest" to be in his (Antao's) house in Bolong-bolong at the time of the killing.

The trial court rendered judgment on October 23, 1987, finding the accused guilty beyond reasonable doubt as principal in the commission of the three murders and sentenced him to suffer the penalty of reclusion perpetua in each case with the accessory penalties provided by law, to indemnify the heirs of each of the three victims in the sum of P30,000 without subsidiary imprisonment in case of insolvency, and to pay the costs.

The appellant alleges that the court a quo erred in convicting him despite the absence of evidence proving his guilt beyond reasonable doubt.

The appeal has no merit.

The testimonies of three eyewitnesses for the prosecution: the eleven-year-old Orestes Gamboa, his older brother Edgar Gamboa, and the laborer, Federico de Lima, were consistent with each other and were not overturned in any way by the defense.

The allegation of Valerio that he did not participate in the killing of the Gamboas by his son, Israel, and Danilo Catundag, is not credible for, on the contrary, it was he who had a motive for revenge for he resented Genaro's refusal to pay the P500 tax demanded by the NPA. His active participation in the triple murders was proven by the testimonies of the eyewitnesses whose credibility the defense failed to shake. He and his co-accused arrived together at the scene of the crime and they left the place together, also convincing proof of conspiracy on the part of all the accused in the commission of the heinous crime.

Valerio's defense of alibi crumbles in the face of direct and positive identification of Valerio at the scene of the crime by the prosecution witnesses. Considering further the absence of proof that the distance from the house of Antao in Ompao, Tarragona to Genaro's farm in Baesan, also in Tarragona was such as would have made it physically impossible for him to have been at the scene of the crimes (People v. Jara, 144 SCRA 516; People v. Alcantara, 33 SCRA 812; People V. Cabanit, 139 SCRA 94), the trial court properly rejected his alibi.

WHEREFORE, the decision sought to be reviewed is hereby **AFFIRMED** in toto. Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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