

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO CARPIO, EDWIN BABLIS, AND ARNOLD CARPIO, ACCUSED, PEDRO CARPIO, APPELLANT.

G.R. Nos. 82815-16. October 31, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is an appeal from the joint decision of the Regional Trial Court, Branch 12, Sanchez Mira, Cagayan in Criminal Case No. 863-S (79) entitled "People vs. Pedro Carpio and Arnold Carpio" and Criminal Case No. 1214-S (81) entitled "People vs. Edwin Bablis", convicting the accused-appellant Pedro Carpio and Edwin Bablis of the crime of murder, and acquitting the accused Arnold Carpio.

Pedro Carpio and Arnold Carpio were charged of murder in an information which states:

"That on or about February 20, 1979, in the municipality of Claveria, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, Pedro Carpio and Arnold Carpio, together with one Edwin Bablis, who is still at large and not yet apprehended, armed with a gun and a dagger, conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there wilfully and feloniously assault, attack, shoot and stab one Luis Pacis, Jr., inflicting several wounds on his body, which caused his death.

"That the crime was aggravated with superior strength and without due regard to the rank of the deceased who was a policeman at the time of the commission of the crime.

CONTRARY TO LAW." (Rollo, p. 26)

Accused Edwin Bablis who was apprehended later was charged of the crime of murder allegedly as follows:

"That on or about February 20, 1979, in the municipality of Claveria, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Edwin Bablis y Tadena, together with Pedro Carpio and Arnold Carpio who were already charged in Criminal Case No. 863-S (79) of the same offense before this Honorable Court, armed with a sharp pointed instrument, conspiring together and helping one another, with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully and feloniously assault, attack and stab one Patrolman Luis Pacis, Jr., inflicting upon him wounds on his body which caused his death.

CONTRARY TO LAW." (Rollo, p. 27)

The case against the Carprios and Bablis were jointly tried upon agreement of the counsel for the accused and the prosecution. After Bablis was arraigned, he escaped from detention. He was later recaptured but escaped for the second time and has remained at-large up to the present. He was tried in absentia by the trial court. After trial, he and appellant, Pedro Carpio were found guilty beyond reasonable doubt of the crime of murder and were sentenced to suffer the penalty of reclusion perpetua while Arnold Carpio was acquitted. The dispositive portion

of the decision states:

"IN VIEW OF ALL THE FOREGOING established facts, events and incidents, the court finds the accused Pedro Carpio and Edwin Babilis guilty beyond reasonable doubt of the crime of Murder attended by the aggravating circumstances of the (sic) treachery, evident premeditation and superior strength and hereby sentences Pedro Carpio, accused in Criminal Case No. 863-S (79) to Reclusion Perpetua and Edwin Babilis, accused in Criminal Case No. 1214-S (81), also to Reclusion Perpetua and to pay jointly and severally the heirs of the victim the amount of P40,000.00 as actual and moral damages and to pay the costs.

"The accused Arnold Carpio is hereby absolved and acquitted for lack of sufficient evidence to prove his guilt beyond reasonable doubt.

"SO ORDERED". (Rollo, p. 49)

Not satisfied with the decision, Carpio appealed and assigned the following errors:

"I. THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESS AND IN DISREGARDING THE THEORY OF THE DEFENSE.

"II. THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT PEDRO CARPIO GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE INSUFFICIENCY OF EVIDENCE."

The facts of the case as gathered from the records are as follows:

Appellant Pedro Carpio and Pat. Luis Pacis, Jr. were neighbors in Narangtayan, Sanchez Mira, Cagayan, the former having bought a parcel of land adjacent to the land of the latter, from the same vendor. When Pat. Pacis decided to erect a fence on his land, he met with the vendor and the appellant for them to define the extent of their respective boundaries. It turned out that some trees planted by appellant on the lot he thought was part of the land sold to him were inside the lot bought by Pat. Pacis. The latter uprooted the trees and this caused a serious rift between the two. Thereafter, appellant challenged Pat. Pacis to a fight but he was ignored by the latter. At one time, Arnold, the son of appellant, was reported by Pat. Pacis to the barangay captain for being drunk during curfew hours and Arnold was made to clean the barangay auditorium as penalty. After the incident, appellant while drunk again challenged Pat. Pacis to a fight but the latter kept his cool (TSN, pp. 288-293, Hearing of June 15, 1984).

On February 14, 1979, Edwin Babilis, a cousin of appellant and his co-accused, visited him and his family. He stayed for six (6) days in the house of appellant.

In the morning of February 20, 1979, appellant and Babilis were seen riding in the former's motorcycle and proceeded westward to the direction of Claveria, Cagayan. Once in Claveria, appellant left Babilis at one of the stores at the national highway in Pantoon (p. 4, Records of Criminal Case No. 1214-S(81), *People v. Babilis*) and proceeded to the municipal hall where he asked Cesar Domingo, a long acquaintance, about Pat. Pacis' whereabouts. After having been informed that Pat. Pacis was about to leave, appellant told Cesar Domingo "kursunada ko siya" and then went to the direction of the east riding in his motorcycle (pp. 16-20, Deposition of Cesar Domingo).

While Pat. Pacis was passing by the store where appellant left Babilis, the latter clapped his hands. This attracted the attention of Pat. Pacis and he stopped his motorcycle. Babilis went near him and requested that he hitch a ride (p. 4, Records of Criminal Case No. 1214-S(81), *Id.*). Pat. Pacis acceded and both rode in the motorcycle. While negotiating a sharp curve at barangay Dibalio, Claveria, Cagayan, Pat. Pacis slowed down. There, they were seen

by Virgilio Ravelo who was driving a jeepney (TSN, p. 329, Hearing of August 14, 1984).

Francisco Palpallatoc, a prosecution's eyewitness testified that at Camalaggaoan mountain in barangay Culao, of the same province, while he was riding in his motorcycle on the same road going westward towards Claveria, he saw four persons quarreling at about a distance of 50 meters ahead of him. He stopped to observe what was going on. He saw Babilis holding the right hand of Pat. Pacis from behind as Pedro Carpio, who was fronting Pat. Pacis, stabbed the latter on the breast while Arnold Carpio kept on delivering fist blows on the different parts of Pat. Pacis body. When the latter was able to free himself, he ran towards Palpallatoc and the three gave chase. Babilis shot Pat. Pacis five (5) times with a short firearm but missed. Pat. Pacis passed by Palpallatoc and when the three reached the place where he (Palpallatoc) was, they stopped and warned him not to reveal what he saw to anybody otherwise they will kill him. They ordered him to leave immediately and so Palpallatoc left hurriedly. At the place where Palpallatoc saw the four grappling, he noticed a motorcycle, a fatigue cap, and a pair of colored sunglasses. Despite passing by several police checkpoints/stations in going to, and from, his place of destination, Palpallatoc did not report what he witnessed (TSN, pp. 140-154, Hearing of May 3, 1984).

When Pfc. Ambrocio Arizabal, then OIC of the Police Station of Claveria, received information from a jeepney driver from Sanchez Mira, Cagayan that the motorcycle of Pat. Pacis was parked at the road near Camalaggaoan mountain, he sent Pat. Arturo Somera and Pat. Bonifacio Tabaldo to investigate. They found the motorcycle but did not find Pat. Pacis (TSN, pp.126-130, Hearing of April 4, 1983). The two thought Pat. Pacis met an accident and he must have been brought to the hospital at Namuac or to any clinic in Claveria. At the police station where they brought the motorcycle of Pat. Pacis, they were surprised that there was no report of any accident. They returned to the place where they found the motorcycle to look for Pat. Pacis. A few hundred meters away was a trail leading to a ravine about 10 meters deep. There, they saw the lifeless body of Pat. Pacis, his fatigue uniform hanging on a branch of a narra tree, his rubber shoes and a black belt with a buckle marked "boys scout of the Philippines". Immediately, they called for the Municipal Health Officer, the Municipal Trial Court Judge, and a photographer to view the body of Pat. Pacis (TSN, pp. 144-145, May 3, 1983). The postmortem examination conducted by the Municipal Health Officer of Claveria revealed that Pat. Pacis suffered:

- "1. Stab wound, 2 cms. with cleancut edges at right parasternal region between 2nd and 3rd rib, 15.5 cms. in depth, running antero-posteriorly and obliquely to the right traversing upper lobe of right lung.
- "2. Stab wound, 1 cm., superficial, left parasternal between 3rd and 4th rib.
- "3. Incised wound, 4 cms., superficial, running vertically across left Alae Nassi and upper lip.
- "4. Bite mark, 4 x 2 cms. at distal radius.
- "5. Skin avulsion, 2x2 cms. at right hypothenar.
- "6. Extensive abrasions inferior to left elbow, left knee and left anterior leg.

CAUSE OF DEATH: Profuse hemorrhage from stab wound at right parasternal area." (p. 3, Record of Criminal Case No. 1214-S (B1))

Sgt. Francisco Vinagrera, Chief Investigator of the 115th PC Company stationed at Curva, Pamplona, Cagayan investigated Pedro Carpio on February 20, 1979 based on an information he received from one Patricio Lazo to whom Palpallatoc confided what he saw. On April 30, 1979, Sgt. Vinagrera went to the residence of Palpallatoc to confirm the information. In the morning of May 1, 1979, Palpallatoc was brought to the residence of Atty. Rafael Pacis, brother of Pat. Pacis. On the same day, Palpallatoc executed an affidavit regarding the incident. He was again brought to the headquarters on May 3, 1979, where he gave another statement.

On the other hand, the theory of the defense is alibi and simple denial.

It appears that the accused Pedro Carpio is the father of Arnold Carpio his co-accused in Criminal Case No. 863-s (79) while Edwin Bablis is the first degree cousin of Pedro Carpio, the father of the latter being the brother of the mother of the Bablis (TSN, pp. 453; September 25, 1986).

On February 14, 1979, Edwin Bablis arrived at the house of Pedro Carpio at Nagrangtayan, Sanchez Mira, Cagayan. Edwin stayed in the house of Pedro Carpio until 5:00 o'clock early morning of February 20, 1979 when he left their place. Pedro Carpio and Edwin Bablis usually conversed after taking their supper about their relatives in Abulug, Cagayan and never planned anything during the latter's sojourn in Nagrangtayan, Sanchez Mira, Cagayan (TSN, pp. 482-483; Hearing of September 25, 1986).

Pedro Carpio contends that he left their house at Nagrangtayan, Sanchez Mira, Cagayan at about 6:30 in the early morning of February 20, 1979 rode his motorcycle and arrived at the Taggat Industries Incorporated at 7:00 o'clock of the same morning then reported for work. He never left the compound of Taggat Industries, Inc. until he left for home at about 4:00 o'clock in the afternoon (TSN, pp. 475-482; Hearing of September 25, 1986).

Arnold Carpio stated that he woke up at about 6:30 early morning of February 20, 1979 then went directly to the basketball court nearby and played with Henry Bagaso, Leony Sabuyo, Edgar Cenal, Vicente Labasan and others. After playing, he went home, piled firewood then helped his mother cook their lunch. After helping his mother cook, he went to take a bath then took his lunch (TSN, pp. 450-452; Hearing of September 25, 1986).

Appellant alleged that: (a) the key prosecution witness, Francisco Palpallatoc was rehearsed before he testified as shown by the fact that before the latter gave his statement to the police, he was first brought to the house of Atty. Rafael Pacis, brother of Pat. Pacis; (b) Palpallatoc's testimony is incredible because he failed to report the commission of the crime to the police despite passing by several military and police precincts; (c) if it were true that Palpallatoc was at the scene thereof, the deceased could have requested his assistance or borrowed his motorcycle to escape when being pursued by his attackers; (d) since Pat. Pacis was seen with only one companion by Virgilio Ravelo prior to his death, he could not have been attacked by three (3) men as claimed by Palpallatoc; (e) he was in his place of work at Taggat Industries, Inc., when the crime was committed; (f) his presence at the scene of the crime was not sufficiently proven and added that no evidence was adduced to prove conspiracy and evident premeditation.

Appellant's contentions are devoid of merit.

This Court has always adhered to the rule that where the issue is one of credibility of witnesses, the appellate court will not disturb the findings of the trial court unless certain facts have been overlooked and if considered might affect the result of the case (*People v. Abonada*, G.R. No. 50041, January 27, 1989, 169 SCRA 530; *People vs. Tejada*, G.R. No. 81520, February 21, 1989, 170 SCRA 497).

On cross-examination Palpallatoc admitted that he did not immediately report the incident to the police authorities because he was afraid. But when asked by Sgt. Vinagrera and Pat. de la Cruz if he has knowledge of the incident, he answered in the affirmative. He was brought to the police headquarters and later to the house of Atty. Rafael Pacis, one of the private prosecutors (Decision of the trial court; pp. 8-9; Original Records, pp. 688-689) which is but proper, being a witness for the prosecution and does not necessarily imply that he was rehearsed before he gave his statement to the police.

In the same manner, mere delay in reporting cannot reduce his credibility. The Court in many instances has acknowledged the fact that people are naturally reluctant to get involved in criminal prosecutions and has consistently refused to regard such delay as a necessarily negative factor in the evaluation of his testimony

(Rodriguez v. Sandiganbayan, 177 SCRA 220-221 [1989]).

Furthermore, the defense failed to prove that in testifying against appellant, Francisco Palpallatoc was motivated by ill motive. In the absence of convincing evidence that the principal prosecution witness acted because of improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit (People v. Paco, G.R. No. 76893, February 27, 1989, 170 SCRA 681; People vs. Castillo, G.R. No. 32864, March 8, 1989, 171 SCRA 30).

Appellant's insinuation that three (3) men could not have attacked the victim because he was seen only with Bablis before his death, is untenable. While it was established that Virgilio Ravelo saw Pat. Pacis with one passenger in his motorcycle before his death, such circumstance is not incompatible with the fact that Pat. Pacis was attacked by at least two (2) men, Bablis and appellant as found by the trial court. It must be noted that the place where Virgilio Ravelo saw Pat. Pacis with his companion was different from the place where Palpallatoc saw Pat. Pacis being attacked by appellant, his son and Bablis.

Appellant's defense of alibi is unavailing. He was positively identified by Francisco Palpallatoc, whose credibility was not successfully assailed, as the one who stabbed Pat. Pacis while the right hand of the latter was being held by Bablis from behind. In case of positive identification, the defense of alibi must be proven by clear and convincing evidence (People vs. Alvarez, G.R. No. 70446, January 31, 1989, 169 SCRA 730). Appellant utterly failed to prove that he was doing his job at Taggat Industries Inc. during the commission of the crime. He did not even request his co-employees to testify and confirm his presence thereat. The defense of alibi merits outright rejection when it could have been corroborated by other persons and yet no such corroborating evidence was presented. (People vs. Alvarez, supra).

Appellant's claim that no evidence was adduced by the prosecution to prove conspiracy between him and the other accused, Edwin Bablis deserves scant consideration. For conspiracy to exist, the evidence need not establish the actual agreement which shows the preconceived plan, motive, interest or purpose in the commission of the crime (Antonio v. Sandiganbayan, 166 SCRA 595 [1988]). Conspiracy is manifested in the coordinated acts of the assailants (People v. Tala, 141 SCRA 240 [1986]) as shown in the case at bar where Bablis was seen holding the hand of the victim while Carpio was stabbing the latter and Arnold kept on delivering fist blows on the victim's different parts of the body. When the victim was able to escape, the accused gave chase and Bablis shot the deceased five (5) times although he missed. Undoubtedly the malefactors acted in concert pursuant to the same objective; hence, the presence of conspiracy (People v. Maralit, 165 SCRA 427 [1988]).

But the presence of treachery or abuse of superiority was not convincingly established. For treachery to be appreciated, the culprits must have employed means directly and specially tending to insure the killing without risk to themselves and that such means of execution was deliberately or consciously adopted (People v. Rellon, 167 SCRA 75 [1988]; People v. Marciales, 166 SCRA 436 [1988]). The victim in the instant case was not rendered totally helpless and defenseless because only his right hand was held by the other accused while the appellant stabbed him. The victim even succeeded in freeing himself from his assailants and still managed to escape to a distance of about 100 meters from the scene of the incident. Witness Palpallatoc testified that there were three (3) assailants. However, the participation of the other accused, Arnold Carpio, son of appellant, was not given credence by the trial court. In fact, the trial court acquitted him on reasonable doubt. Thus, it appears then that only two persons took part in the commission of the crime, the appellant, Pedro Carpio and the other accused Edwin Bablis.

The fact that there were two (2) male persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength there being no proof of the relative strength of the aggressors and the

victim.

The aggravating circumstance of abuse of superior strength depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of by him in the commission of the crime. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked (*People v. Cabato*, G.R. No. L-37400, April 15, 1988, 160 SCRA 101). The prosecution failed to prove that there was indeed a notorious inequality between the ages, sizes and strength of the antagonists and that these notorious advantages were purposely sought for or used by the accused to achieve his ends.

The trial court correctly found that commission of the felony was not attended by the qualifying circumstance of evident premeditation. The fact that the accused-appellant and Edwin Bablis were seen riding together on the former's motorcycle does not by itself prove that they were then determined to commit the crime. Not even appellant's remark, "kursunado ko siya" (referring to the victim) uttered to Cesar Domingo in the municipal hall when he was looking for the victim, constitute a sufficient proof that it was during that time that he was determined to kill Pacis. Evident premeditation cannot be considered to qualify murder where it is not shown when the plan to kill was hatched, or what time elapsed before it was carried out (*People v. Corpus*, 107 Phil. 44 [1960]; *People v. Acaya*, No. 72998, July 29, 1988, 163 SCRA 768).

In the absence of any qualifying circumstance, the crime committed is only homicide. The penalty for homicide under Article 249 of the Revised Penal Code is reclusion temporal. There is no mitigating and no aggravating circumstance. Applying the Indeterminate Sentence Law, the accused-appellant is sentenced to an indeterminate penalty ranging from twelve (12) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. In line with the new policy of this Court to grant an increased indemnity to the heirs of the deceased, the award of P40,000.00 is hereby increased to P50,000.00 (*People v. Daniel Sison*, G.R. No. 86455, September 14, 1990).

ACCORDINGLY, except for the above modification, the decision appealed from is AFFIRMED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Grino-Aquino, JJ., concur.

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