

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROGELIO PELONES, ACCUSED-APPELLANT.

G.R. Nos. 86159-60. February 28, 1994

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

GUILLERMO SOLINA and JOSE MALTO were resting in a poultry farmhouse one late evening enjoying the music from a cassette player unmindful that moments later one of them would be dead and the other critically wounded. For the death of Solina and the injuries of Malto, Rogelio Pelones was prosecuted for and later convicted of murder penalized under Art. 248 of the Revised Penal Code, and frustrated murder under the same Art. 248 in relation to Art. 6 of the same Code,[1] the dispositive portion of the decision stating thus -

WHEREFORE, judgment is hereby rendered convicting the accused, Rogelio Pelones, of the crime of Murder, qualified by evident premeditation and with the following aggravating circumstances: abuse of superior strength, the crime committed during nighttime (and) by a band and he is sentenced to suffer the penalty of reclusion perpetua with its accessory penalties and to indemnify the offended party in the amount of P30,000.00 without subsidiary imprisonment in case of insolvency in Criminal Case No. 87-11, and likewise, he is found guilty of the crime of Frustrated Murder qualified also by evident premeditation and with the following aggravating circumstances also: abuse of superior strength, the crime committed during nighttime (and) by a band and he is hereby sentenced to suffer the indeterminate penalty of TEN (10) YEARS and ONE (1) DAY to TWELVE (12) YEARS of prision mayor as minimum to SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal as maximum and to indemnify the offended party, Jose Malto, in the amount of P30,000.00, without subsidiary imprisonment in case of insolvency in Criminal Case No. 86-676.

Jose Malto and Guillermo Solina were co-employees of Rogelio Pelones in the New Star Farm located at Talisay, Tiaong, Quezon. Pelones was however subsequently dismissed from the service when Solina reported to Rudy Tan, owner of the farm, that he (Pelones) stole chickens and brought a girl to the nipa hut in the farm.

Shortly before midnight of 18 August 1986, Malto and Solina were inside the poultry farmhouse when Pelones, together with five others, armed with bladed weapons, suddenly appeared, forcibly dragged the two outside, and made them face the wall. Upon signal of one of the malefactors, Pelones started attacking Solina, and after a second, another unidentified attacker assaulted Malto with a bladed weapon. Although critically wounded, Malto was able to escape finally from his assailants. He sought refuge in the office of the New Star Farm where he fainted and regained consciousness only in the Quezon Memorial Hospital, Lucena City. Although his wounds were considered fatal, he nonetheless survived to testify against Pelones. Solina was not as lucky; he succumbed to his injuries.

Pelones professed innocence. He claimed that at the time of the incident he was at home with his wife some three (3) kilometers away from the New Star Farm. Although his alibi was corroborated by the testimony of his wife and his mother-in-law, the Court a quo did not believe his defense and proceeded instead to convict him.

In attempting to reverse the verdict of the trial court, appellant engages in pathetic excuses, concocting a scenario of what might have happened instead, and posing questions that should have been asked during the trial. Worse, without questioning the competence of the doctor who conducted post-mortem examination on the remains of victim Solina, appellant challenges as without basis the doctor's findings that wounds Nos. 1 and 2 of Solina were fatal and instantaneous cause of death, absent any indication that such wounds penetrated the heart. In the same vein, appellant asserts that "the probability is strong that the wounds were inflicted much x x x earlier than ten (10) hours before 10:30 A.M. of August 18 because death due to loss of blood is not instantaneous upon infliction of the wound." [2] Under the Rules of Court, the opinion of a witness on a matter requiring special knowledge, skill, experience or training, may be received in evidence only when he is shown to possess such competence. [3] Hence, the supposed medical evaluation made by appellant or his counsel, without showing their competence in the field of medicine, must give way to the expert testimony of the examining physician that Solina's wounds Nos. 1 and 2 were fatal and that he expired about midnight of 18 August 1986.

At any rate, the transcript of stenographic notes evidently shows the competence of Dr. Vicente G. Umali, a 1957 graduate of the College of Medicine, University of Santo Tomas, who has been in medical practice since then, a municipal health officer from 13 March 1971, and has performed more than 100 autopsies and post mortem examinations. [4]

Pelones then trains his attack on the credibility of principal witness Malto and fabricates a convenient but incredible tale that Solina and Malto could have engaged in a duel that resulted in the death of the former and injuries to the latter.

The determination of the integrity of witnesses, as a rule, is within the realm of the trial judge for he has the opportunity to observe their deportment and detect any badge of falsity. Absent any showing that the conclusion of the trial judge is without basis, his factual determination is accorded great respect. Hence, as to the claim that Malto's testimony was "very unnatural," the same must yield to the observation of the trial court that "x x x x [h]e took the witness stand with all honesty and candidness."

The accused doubts whether the New Star Farm management could have allowed Malto and Solina to play the cassette player and tolerated unnecessary noise in the farmhouse during such "unholy hour." The weakness of this argument is the absence of factual basis, and resort to speculation is indicative of paucity of evidence. But assuming that unnecessary noise was forbidden in the area, this does not render improbable the attack on the hapless victims. Corroborative evidence is not necessary to prove the presence of the victims at the crime scene about the time of the assault, since the testimony of one credible witness is adequate to sustain conviction.

Appellant also questions the coherence of the testimony of Malto on how he and Solina were being dragged, for while he stated on direct examination that appellant was the one who dragged him out, on cross-examination he maintained that appellant was at the back of Solina. If this was really material to his defense, appellant could have asked Malto while still on the witness stand, to explain the perceived inconsistency and not at this time when the parties have long finished presenting evidence; in fact, this case is now under review.

In fact, we find no inconsistency in the testimony of Malto. He stated that Solina was brought out first, [5] hence, it was possible for him to be at the back of Solina and at the same time in front of him, with one hand of the accused poking at Solina and the other dragging him (Malto) out. In this regard, we find the explanation of the Solicitor General plausible:

A reading of the testimony cited as evincing an alleged inconsistency, however, shows that the question posed to Malto on direct examination was vague and worded as "can you recognize the three men who dragged you out" (p. 6, TSN, Aug. 7, 1987; emphasis supplied).

Since the word "you" is both singular and plural it is evident that Malto understood it to refer to both Solina and himself x x x x

The alleged inconsistency and seeming contradiction is thus shown to have been caused by the manner of examination, not by any untruth on the part of Malto.[6]

The accused argues that Malto could not have witnessed the stabbing of Solina because he (Malto) himself was too afraid and nervous to notice what was then happening around him.[7] He is however disproved by the transcript of stenographic notes:

ATTY. ZURBANO:

Q And the truth is because of your fright and you were only concerned on what may happen to you, you did not know what was happening to Solina, is it not?

A Yes, sir:

Q And the truth is, you did not come to know who was first stabbed, you or Solina, is it not?

A He was the first one to be stabbed, sir.

Q But I thought you said that when you were already placed in front of the wall, you did not care anymore what was happening to others, other than you?

A I was able to look at him, that's why I know, sir.[8]

As against this positive testimony of Malto regarding the stabbing of Solina, the contrary innuendo of appellant must yield. In fact, he does not at all believe in his own insinuation that fear rendered Malto unaware of his surroundings when he admitted that Malto could have seen the signal by the man at his left.[9]

The accused further claims that Malto could not have seen the stabbing of Solina "without craning his neck backwards or turning somewhat to the left" as his "view would have been blocked by his upraised left arm" while his full attention would have been to the three men surrounding him.[10] It should be noted that Malto made a demonstration at the trial on how he raised his arms,[11] but the reviewing court has no way of appreciating the alleged physical impossibility unless that fact is made on record. Again, the positive statement of Malto that he saw Solina being stabbed by Pelones should prevail.

Accused Pelones disputes the claim that the critically wounded Malto could have escaped from the grips of the two (2) aggressors who were holding his shoulders, with a third one behind him. The accused belittles Malto's explanation that "I tried to free myself from the two who were holding me and then I ran, Your Honor." [12] Notably, Malto's narration of the events after he was stabbed was quite hazy, as he recounted that "I only uttered 'Aray, sinaksak ako,' and then I ran, Your Honor." [13]

But far from being indicative of fabrication, this circumstance could be considered a manifestation of candor since a person mortally wounded, struggling to bolt from eventual death, would not be in a position to notice details of his own escape.

The defense charges suppression of evidence in view of the non-presentation of an instrument used in the stabbing, allegedly in police custody.[14] For one thing, there was no demand for the production of such evidence; consequently, there was no occasion for any refusal, much less suppression. But more importantly, it is within the prosecution's prerogative what evidence to present and, in fact, the court agreed with the dispensability of the same piece of evidence when it convicted the appellant nonetheless.

Pelones also finds improbable the absolute silence of the conspirators while committing the crime, asserting that

since he allegedly had an ax to grind against Solina he could have at least confronted the latter by asking, "Bakit mo ako isinumbong." [15] In this regard, we agree with the Solicitor General that "the alleged silence is a strong indication of a well-planned crime, with each of the perpetrators knowing beforehand what he was to do, without need of conversations or instructions to accomplish the planned deed." [16]

Appellant asks why Malto did not name him when Malto was investigated twice by the police at the hospital, suggesting that Malto's alleged fear of being killed was without basis not only because the perpetrators were in Tiaong, which is far from where he was confined, but also because he could have sought police protection. [17]

Fear is a relative frame of mind; some are more courageous than others. When Malto got out of the hospital, he divulged the name of appellant as his assailant. If Malto was distrustful of police protection, the same was not without basis. Early and provident fear is the mother of safety. [18] As the Solicitor General points out -

x x x x [s]ince he only recognized appellant, his fear of reprisal at the hands of the other five (5) unrecognized persons in case he pointed out appellant to the police, was real and natural, considering that he was alone, in pain, and relatively helpless at the hospital. Under such conditions, the Supreme Court held as legitimate a delay in revealing the identity of the assailant where the witness was afraid that he might meet the same fate as the victim (People vs. Andres x x x citing 155 SCRA 290). [19]

We are not inclined to give credence to the posture of the accused that he did not leave their house on the night when Solina was killed primarily because his defense of alibi is inherently weak, and considering further that it is easily concocted. Since Pelones was allegedly sleeping in a house some three (3) kilometers away from the scene of the crime, it was not physically impossible for him to be there when Solina was slain.

On the other hand, we agree with the incisive analysis of the Solicitor General on the apparent incredibility of appellant's witnesses -

x x x x appellants witnesses are unconvincing, as shown by the very clarity with which they allegedly remembered events in detail almost two years after they occurred. For one, Salome de Castro, appellant's mother-in-law, testified (in 1988) that she remembered that August 18, 1986 was a Monday, that on that particular day she did not sell vegetables, the only time that she was unable to do so; and that her daughter cooked "guinataang papaya" for their evening meal (pp. 9-11, TSN, Jan. 6, 1988) x x x x For his mother-in-law to remember the exact detail of an uneventful day taxes human belief as being outside common experience and smacks of a well rehearsed attempt to get her daughter's husband off the hook. In fact, when appellant himself was asked the question of what he ate for dinner on August 18, 1986, his counsel objected to the question with the statement "(O)bjection, Your Honor. Nobody can remember that" (p. 4, TSN, April 8, 1988; emphasis supplied). [20]

Moreover, the excuse of alibi bows down to the primacy of positive identification in the absence of any compelling motive for Malto to falsely accuse another of committing a heinous crime.

While we agree with the court a quo that appellant is guilty, we nevertheless should make certain clarifications. Firstly, we cannot accept the presence of the aggravating circumstance of evident premeditation [21] because there was no "proof as to how and when the plan to kill was hatched or what time elapsed before it was carried out." [22] But, just the same, the killings could be categorized as murder and frustrated murder because the circumstance of superior strength [23] was alleged in the informations and proved at the trial. The conspirators outnumbered the unarmed victims two to one, and at least two (2) of them were armed as may be drawn from the fact that the two (2) victims were stabbed almost simultaneously.

As regards the aggravating circumstance of nocturnity, [24] it is not automatically appreciated considering that the scene of the crime was lighted, [25] which enabled Malto to identify appellant. In like manner, the aggravating

circumstance that the crime was committed by a band under Art. 14, par. 6, of the committed by a band under Art. 14, par. 6, of the Revised Penal Code finds no sufficient factual basis since the testimony of Malto does not disclose that at least four (4) of the aggressors were armed.[26]

While it was not shown that Pelones also stabbed Malto, Pelones is nonetheless liable therefor since conspiracy[27] among the perpetrators was indubitable as may be gleaned from their concerted, harmonious and methodical movements without need of express instructions, thereby proving undeniably an agreement to commit the crimes he actually perpetrated.

WHEREFORE, the judgment of the trial court finding the accused ROGELIO PELONES guilty of Murder in Crim. Case No. 87-11 and Frustrated Murder in Crim. Case No. 86-676, both of the Regional Trial Court of Lucena City, with the corresponding penalties therein imposed, is affirmed subject to the following modifications:

For the Murder of Guillermo Solina in Crim. Case No. 87-11, qualified by abuse of superior strength instead of evident premeditation, with no other aggravating circumstance, we affirm the imposition of the penalty of reclusion perpetua together with its accessory penalties provided by law, except the indemnity to the heirs of the deceased which we here increase from P30,000.00 to P50,000.00.

For the Frustrated Murder of Jose Malto, qualified by abuse of superior strength instead of evident premeditation, with no other aggravating circumstance, we modify the sentence and impose the indeterminate prison term of eight (8) years, four (4) months and ten (10) days of prision mayor medium as minimum, to twelve (12) years, six (6) months and twenty (20) days of reclusion temporal minimum as maximum, and to indemnify complaining witness Jose Malto in the amount of P30,000.00. Costs against accused-appellant in both cases.

SO ORDERED.

Cruz, (Chairman), Davide, Jr., Quason, and Kapunan, JJ., concur.

[1] Penned by Judge Rodolfo G. Palattao, Regional Trial Court, Br. 54, Lucena City, in Crim. Cases Nos. 87-11 and 86-676, respectively, both promulgated 28 July 1988.

[2] Brief for the Accused-Appellant, p. 8.

[3] Sec. 49, Rule 130, Rules of Court.

[4] TSN, 14 August 1987, p. 1.

[5] TSN, 7 August 1987, p. 16.

[6] Brief for the Appellee, pp. 13-14, Rollo, pp. 70-71.

[7] Brief for the Accused-Appellant, p. 11.

[8] TSN, 7 August 1987, p. 20.

[9] Brief for the Accused-Appellant, p. 11.

[10] Ibid., pp. 11-12.

[11] TSN, 7 August 1987, p. 21.

[12] Brief for the Accused-Appellant, p. 12, referring to TSN, 7 August 1987, p. 23.

[13] TSN, 7 August 1987, p. 24.

- [14] Brief for the Accused-Appellant, p. 12, referring to TSN, 7 August 1987, pp. 13-14.
- [15] Brief for the Accused-Appellant, pp. 12-13, referring to TSN, 7 August 1987, pp. 17-18.
- [16] Brief for the Appellee, pp. 18-19, Rollo, pp. 75-76.
- [17] Brief for the Accused-Appellant, p. 13.
- [18] Edmund Burke, cited in Bergen Evans, Dictionary of Quotations, 1968, p. 231.
- [19] Brief for the Appellee, p. 21, Rollo, p. 78.
- [20] Brief for the Appellee, pp. 30-31, Rollo, pp. 87-88.
- [21] The elements of evident premeditation, which is established under Art. 14, par. 13, of the Revised Penal Code, are: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and, (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will (Luis B. Reyes, The Revised Penal Code [13th ed.], Bk. 1, pp. 382-383, citing *People v. Lagarto*, G.R. No. 65833, May 6, 1991, and other cases).
- [22] *Ibid.*, citing *People v. Peñones*, G.R. No. 71153, Aug. 16, 1991, 200 SCRA 624, 635.
- [23] To take advantage of superior strength means to use purposely excessive force out of proportion to the means of defense available to the person attacked (Art. 14, par. 15 [1]; see footnote 21, p. 400, citing *People v. Cabiling*, No. L-38091, Dec. 17, 1976, and other cases).
- [24] Art. 14, par. 6, Revised Penal Code.
- [25] TSN, 7 August 1987, pp. 18-19.
- [26] *Ibid.*, p. 6.
- [27] Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it (Art. 8, 2nd, Revised Penal Code).

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