

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO MANERO, JR., EDILBERTO MANERO, ELPIDIO MANERO, SEVERINO LINES, RUDY LINES, EFREN PLEÑAGO, ROGER BEDAÑO, RODRIGO ESPIA...*G.R. Nos. 86883-85. January 29, 1993*

Ponente: BELLOSILLO, J.

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This was gruesome murder in a main thoroughfare an hour before sundown. A hapless foreign religious minister was riddled with bullets, his head shattered into bits and pieces amidst the revelling of his executioners as they danced and laughed around their quarry, chanting the tune “Mutya Ka Baleleng”, a popular regional folk song, kicking and scoffing at his prostrate, miserable, spiritless figure that was gasping its last. Seemingly unsatiated with the ignominy of their manslaughter, their leader picked up pieces of the splattered brain and mockingly displayed them before horrified spectators. Some accounts swear that acts of cannibalism ensued, although they were not sufficiently demonstrated. However, for their outrageous feat, the gangleader already earned the monicker “cannibal priest?killer”. But what is indubitable is that Fr. Tulio Favali[1] was senselessly killed for no apparent reason than that he was one of the Italian Catholic missionaries laboring in their vineyard in the hinterlands of Mindanao.[2]

In the aftermath of the murder, police authorities launched a massive manhunt which resulted in the capture of the perpetrators except Arsenio Villamor, Jr., and two unidentified persons who eluded arrest and still remain at large.

Informations for Murder[3], Attempted Murder[4] and Arson[5] were accordingly filed against those responsible for the frenzied orgy of violence that fateful day of 11 April 1985. As these cases arose from the same occasion, they were all consolidated in Branch 17 of the Regional Trial Court of Kidapawan, Cotabato.[6]

After trial, the court a quo held -

“WHEREFORE x x x the Court finds the accused Norberto Manero, Jr. alias Commander Bucay, Edilberto Manero alias Edil, Elpidio Manero, Severino Lines, Rudy Lines, Rodrigo Espia alias Rudy, Efren Pleñago and Roger Bedaño GUILTY beyond reasonable doubt of the offense of Murder, and with the aggravating circumstances of superior strength and treachery, hereby sentences each of them to a penalty of imprisonment of reclusion perpetua; to pay the Pontifical Institute of Foreign Mission (PIME) Brothers, the congregation to which Father Tulio Favali belonged, a civil indemnity of P12,000.00; attorney’s fees in the sum of P50,000.00 for each of the eight (8) accused or a total sum of P400,000.00; court appearance fee of P10,000.00 for every day the case was set for trial; moral damages in the sum of P100,000.00; and to pay proportionately the costs.

“Further, the Court finds the accused Norberto Manero, Jr. alias Commander Bucay GUILTY beyond reasonable doubt of the offense of Arson and with the application of the Indeterminate Sentence Law, hereby sentences him to an indeterminate penalty of imprisonment of not less than four (4) years, nine (9) months, one (1) day of prision correccional, as minimum, to six (6) years of prision correccional, as maximum, and to

indemnify the Pontifical Institute of Foreign Mission (PIME) Brothers, the congregation to which Father Tulio Favali belonged, the sum of P19,000.00 representing the value of the motorcycle and to pay the costs.

“Finally, the Court finds the accused Norberto Manero, Jr. alias Commander Bucay, Edilberto Manero alias Edil, Elpidio Manero, Severino Lines, Rudy Lines, Rodrigo Espia alias Rudy, Efren Pleñago and Roger Bedaño GUILTY beyond reasonable doubt of the offense of Attempted Murder and with the application of the Indeterminate Sentence Law, hereby sentences each of them to an indeterminate penalty of imprisonment of not less than two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and twenty (20) days of prision mayor, as maximum, and to pay the complainant Rufino Robles the sum of P20,000.00 as attorney’s fees and P2,000.00 as court appearance fee for every day of trial and to pay proportionately the costs.

“The foregoing penalties shall be served by the said accused successively in the order of their respective severity in accordance with the provisions of Article 70 of the Revised Penal Code, as amended.”[7]

From this judgment of conviction only accused Severino Lines, Rudy Lines, Efren Pleñago and Roger Bedaño appealed with respect to the cases for Murder and Attempted Murder. The Manero brothers as well as Rodrigo Espia did not appeal; neither did Norberto Manero, Jr., in the Arson case. Consequently, the decision as against them already became final.

Culled from the records, the facts are: On 11 April, 1985, around 10:00 o’clock in the morning, the Manero brothers Norberto, Jr., Edilberto and Elpidio, along with Rodrigo Espia, Severino Lines, Rudy Lines, Efren Pleñago and Roger Bedaño, were inside the eatery of one Reynaldo Diocades at Km. 125, La Esperanza, Tulunan, Cotabato. They were conferring with Arsenio Villamor, Jr., private secretary to the Municipal Mayor of Tulunan, Cotabato, and his two (2) unidentified bodyguards. Plans to liquidate a number of suspected communist sympathizers were discussed. Arsenio Villamor, Jr. scribbled on a cigarette wrapper the following: “NPA v. NPA, starring Fr. Peter, Domingo Gomez, Bantil, Fred Gapate, Rene alias Tabagac and Villaning.” “Fr. Peter” is Fr. Peter Geremias, an Italian priest suspected of having links with the communist movement, “Bantil” is Rufino Robles, a Catholic lay leader who is the complaining witness in the Attempted Murder; Domingo Gomez is another lay leader, while the others are simply “messengers”. On the same occasion, the conspirators agreed to Edilberto Manero’s proposal that should they fail to kill Fr. Peter Geremias, another Italian priest would be killed in his stead.[8]

At about 1:00 o’clock that afternoon, Elpidio Manero with two (2) unidentified companions nailed a placard on a streetpost beside the eatery of Deocades. The placard bore the same inscriptions as those found on the cigarette wrapper except for the additional phrase “versus Bucay, Edil and Palo.” Some two (2) hours later, Elpidio also posted a wooden placard bearing the same message on a street cross-sign close to the eatery.[9]

Later, at 4:00 o’clock, the Manero brothers, together with Espia and the four (4) appellants, all with assorted firearms, proceeded to the house of “Bantil”, their first intended victim, which was also in the vicinity of Deocades’ carinderia. They were met by “Bantil” who confronted them why his name was included in the placards. Edilberto brushed aside the query; instead, he asked “Bantil” if he had any qualms about it, and without any provocation, Edilberto drew his revolver and fired at the forehead of “Bantil”. “Bantil” was able to parry the gun, albeit his right ring finger and the lower portion of his right ear were hit. Then they grappled for its possession until “Bantil” was extricated by his wife from the fray. But, as he was running away, he was again fired upon by Edilberto. Only his trousers were hit. “Bantil” however managed to seek refuge in the house of a certain Domingo Gomez.[10] Norberto, Jr., ordered his men to surround the house and not to allow any one to get out so that “Bantil” would die of hemorrhage. Then Edilberto went back to the restaurant of Deocades and pistol-whipped him on the face and accused him of being a communist coddler, while appellants and their cohorts

relished the unfolding drama.[11]

Moments later, while Deocades was feeding his swine, Edilberto strewed him with a burst of gunfire from his M-14 Armalite. Deocades cowered in fear as he knelt with both hands clenched at the back of his head. This again drew boisterous laughter and ridicule from the dreaded desperados.

At 5:00 o'clock, Fr. Tulio Favali arrived at Km. 125 on board his motorcycle. He entered the house of Gomez. While inside, Norberto, Jr., and his co-accused Pleñago towed the motorcycle outside to the center of the highway. Norberto, Jr., opened the gasoline tank, spilled some fuel, lit a fire and burned the motorcycle. As the vehicle was ablaze, the felons raved and rejoiced.[12]

Upon seeing his motorcycle on fire, Fr. Favali accosted Norberto, Jr. But the latter simply stepped backwards and executed a thumbs-down signal. At this point, Edilberto asked the priest: "Ano ang gusto mo, padre (What is it you want, Father)? Gusto mo, Father, bukon ko ang ulo mo (Do you want me, Father, to break your head)?" Thereafter, in a flash, Edilberto fired at the head of the priest. As Fr. Favali dropped to the ground, his hands clasped against his chest, Norberto, Jr., taunted Edilberto if that was the only way he knew to kill a priest. Slighted over the remark, Edilberto jumped over the prostrate body three (3) times, kicked it twice, and fired anew. The burst of gunfire virtually shattered the head of Fr. Favali, causing his brain to scatter on the road. As Norberto, Jr., flaunted the brain to the terrified onlookers, his brothers danced and sang "Mutya Ka Baleleng" to the delight of their comrades-in--arms who now took guarded positions to isolate the victim from possible assistance.[13]

In seeking exculpation from criminal liability, appellants Severino Lines, Rudy Lines, Efren Pleñago and Roger Bendaño contend that the trial court erred in disregarding their respective defenses of alibi which, if properly appreciated, would tend to establish that there was no prior agreement to kill; that the intended victim was Fr. Peter Geremias, not Fr. Tulio Favali; that there was only one (1) gunman, Edilberto; and, that there was absolutely no showing that appellants cooperated in the shooting of the victim despite their proximity at the time to Edilberto.

But the evidence on record does not agree with the arguments of accused-appellants.

On their defense of alibi, accused brothers Severino and Rudy Lines claim that they were harvesting palay the whole day of 11 April 1985 some one kilometer away from the crime scene. Accused Roger Bendaño alleges that he was on an errand for the church to buy lumber and nipa in M'lang, Cotabato, that morning of 11 April 1985, taking along his wife and sick child for medical treatment and arrived in La Esperanza, Tulunan, past noontime.

Interestingly, all appellants similarly contend that it was only after they heard gunshots that they rushed to the house of Norberto Manero, Sr., Barangay Captain of La Esperanza, where they were joined by their fellow CHDF members and co-accused, and that it was only then that they proceeded together to where the crime took place at Km. 125.

It is axiomatic that the accused interposing the defense of alibi must not only be at some other place but that it must also be physically impossible for him to be at the scene of the crime at the time of its commission.[14]

Considering the failure of appellants to prove the required physical impossibility of being present at the crime scene, as can be readily deduced from the proximity between the places where accused-appellants were allegedly situated at the time of the commission of the offenses and the locus criminis,[15] the defense of alibi is definitely feeble.[16] After all, it has been the consistent ruling of this Court that no physical impossibility exists in instances where it would take the accused only fifteen to twenty minutes by jeep or tricycle, or some one-and-a-half hours by foot, to traverse the distance between the place where he allegedly was at the time of

commission of the offense and the scene of the crime.[17] Recently, We ruled that there can be no physical impossibility even if the distance between two places is merely two (2) hours by bus.[18] More important, it is well-settled that the defense of alibi cannot prevail over the positive identification of the authors of the crime by the prosecution witnesses.[19]

In the case before Us, two (2) eyewitnesses, Reynaldo Deocades and Manuel Bantolo, testified that they were both inside the eatery at about 10:00 o'clock in the morning of 11 April 1985 when the Manero brothers, together with appellants, first discussed their plan to kill some communist sympathizers. The witnesses also testified that they still saw the appellants in the company of the Manero brothers at 4:00 o'clock in the afternoon when Rufino Robles was shot. Further, at 5:00 o'clock that same afternoon, appellants were very much at the scene of the crime, along with the Manero brothers, when Fr. Favali was brutally murdered.[20] Indeed, in the face of such positive declarations that appellants were at the locus criminis from 10:00 o'clock in the morning up to about 5:00 o'clock in the afternoon, the alibi of appellants that they were somewhere else, which is negative in nature, cannot prevail.[21] The presence of appellants in the eatery at Km. 125 having been positively established, all doubts that they were not privy to the plot to liquidate alleged communist sympathizers are therefore removed. There was direct proof to link them to the conspiracy.

There is, conspiracy when two or more persons come to an agreement to commit a crime and decide to commit it.[22] It is not essential that all the accused commit together each and every act constitutive of the offense.[23] It is enough that an accused participates in an act or deed where there is singularity of purpose, and unity in its execution is present.[24]

The findings of the court a quo unmistakably show that there was indeed a community of design as evidenced by the concerted acts of all the accused. Thus -

“The other six accused,[25] all armed with high powered firearms, were positively identified with Norberto Manero, Jr. and Edilberto Manero in the carinderia of Reynaldo Deocades in La Esperanza, Tulunan, Cotabato at 10:00 o'clock in the morning of 11 April 1985 x x x they were outside of the carinderia by the window near the table where Edilberto Manero, Norberto Manero, Jr., Jun Villamor, Elpidio Manero and unidentified members of the airborne from Cotabato were grouped together. Later that morning, they all went to the cockhouse nearby to finish their plan and drink tuba. They were seen again with Edilberto Manero and Norberto Manero, Jr., at 4:00 o'clock in the afternoon of that day near the house of Rufino Robles (Bantil) when Edilberto Manero shot Robles. They surrounded the house of Domingo Gomez where Robles fled and hid, but later left when Edilberto Manero told them to leave as Robles would die of hemorrhage. They followed Fr. Favali to Domingo Gomez' house, witnessed and enjoyed the burning of the motorcycle of Fr. Favali and later they stood guard with their firearms ready on the road when Edilberto Manero shot to death Fr. Favali. Finally, they joined Norberto Manero, Jr. and Edilberto Manero in their enjoyment and merriment on the death of the priest.”[26]

From the foregoing narration of the trial court, it is clear that appellants were not merely innocent bystanders but were in fact vital cogs in perpetrating the savage murder of Fr. Favali and the attempted murder of Rufino Robles by the Manero brothers and their militiamen. For sure, appellants all assumed a fighting stance to discourage if not prevent any attempt to provide assistance to the fallen priest. They surrounded the house of Domingo Gomez to stop Robles and the other occupants from leaving so that the wounded Robles may die of hemorrhage.[27] Undoubtedly, these were overt acts to ensure success of the commission of the crimes and in furtherance of the aims of the conspiracy. The appellants acted in concert in the murder of Fr. Favali and in the attempted murder of Rufino Robles. While accused-appellants may not have delivered the fatal shots themselves, their collective action showed a common intent to commit the criminal acts.

While it may be true that Fr. Favali was not originally the intended victim, as it was Fr. Peter Geremias whom the

group targeted for the kill, nevertheless, Fr. Favali was deemed a good substitute in the murder as he was an Italian priest. On this, the conspirators expressly agreed. As witness Manuel Bantolo explained[28] ?

“Q

Aside from those persons listed in that paper to be killed, were there other persons who were to be liquidated?

“A

There were some others.

“Q

Who were they?

“A

They said that if they could not kill those persons listed in that paper then they will (sic) kill anyone so long as he is (sic) an Italian and if they could not kill the persons they like to kill they will (sic) make Reynaldo Deocades as their sample.”

That appellants and their co-accused reached a common understanding to kill another Italian priest in the event that Fr. Peter Geremias could not be spotted was elucidated by Bantolo thus[29] -

“Q

Who suggested that Fr. Peter be the first to be killed?

“A

All of them in the group.

“Q

What was the reaction of Norberto Manero with respect to the plan to kill Fr. Peter?

“A

He laughed and even said, ‘amo ina’ meaning ‘yes, we will kill him ahead.’

x x x x

“Q

What about Severino Lines? What was his reaction?

“A

He also laughed and so conformed and agreed to it.

“Q

Rudy Lines?

“A

He also said ‘yes’.

“Q

What do you mean ‘yes’?

“A

He also agreed and he was happy and said ‘yes’ we will kill him.

x x x x

“Q

What about Efren Pleñago?

“A

He also agreed and even commented laughing ‘go ahead’.

“Q

Roger Bedaño, what was his reaction to that suggestion that should they fail to kill Fr. Peter, they will (sic) kill anybody provided he is an Italian and if not, they will (sic) make Reynaldo Deocades an example?

“A

He also agreed laughing.”

Conspiracy or action in concert to achieve a criminal design being sufficiently shown, the act of one is the act of all the other conspirators, and the precise extent or modality of participation of each of them becomes secondary.[30]

The award of moral damages in the amount of P100,000.00 to the congregation, the Pontifical Institute of Foreign Mission (PIME) Brothers, is not proper. There is nothing on record which indicates that the deceased effectively severed his civil relations with his family, or that he disinherited any member thereof, when he joined his religious congregation. As a matter of fact, Fr. Peter Geremias of the same congregation, who was then a parish priest of Kidapawan, testified that “the religious family belongs to the natural family of origin.”[31] Besides, as We already held,[32] a juridical person is not entitled to moral damages because, not being a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. It is only when a juridical person has a good reputation that is debased, resulting in social humiliation, that moral damages may be awarded.

Neither can We award moral damages to the heirs of the deceased who may otherwise be lawfully entitled thereto pursuant to par. (3), Art. 2206, of the Civil Code,[33] for the reason that the heirs never presented any evidence showing that they suffered mental anguish; much less did they take the witness stand. It has been held[34] that moral damages and their causal relation to the defendant’s acts should be satisfactorily proved by the claimant. It is elementary that in order that moral damages may be awarded there must be proof of moral suffering.[35] However, considering that the brutal slaying of Fr. Tulio Favali was attended with abuse of superior strength, cruelty and ignominy by deliberately and inhumanly augmenting the pain and anguish of the victim, outraging or scoffing at his person or corpse, exemplary damages may be awarded to the lawful heirs,[36] even though not proved nor expressly pleaded in the complaint,[37] and the amount of P100,000.00 is considered reasonable.

With respect to the civil indemnity of P12,000.00 for the death of Fr. Tulio Favali, the amount is increased to P50,000.00 in accordance with existing jurisprudence, which should be paid to the lawful heirs, not the PIME as the trial court ruled.

WHEREFORE, the judgment appealed from being in accord with law and the evidence is **AFFIRMED** with the modification that the civil indemnity which is increased from P12,000.00 to P50,000.00 is awarded to the lawful

heirs of the deceased plus exemplary damages of P100,000.00; however, the award of moral damages is deleted.

Costs against accused-appellants.

SO ORDERED.

Cruz, (Chairman), Padilla, and Griño-Aquino, JJ., concur.

[1] “Tulio” is variably spelled as “Tullio” in certain parts of the records. Incidentally, the name “Fr. Peter Geremias” is likewise interchangeably referred to as “Fr. Peter Geremia.”

[2] TSN, 24 October 1985, pp. 55-56.

[3] Docketed as Crim. Case No. 1881 for the murder of Fr. Tulio Favali. Those charged are Norberto Manero, Jr., Edilberto Manero, Elpidio Manero, Severino Lines, Rudy Lines, Efren Pleñago, Rogelio Bedaño and Rodrigo Espia.

[4] Docketed as Crim. Case No. 1884 for the attempted murder of Rufino Robles. Those charged are the same accused in Crim. Case No. 1881 except Arsenio Villamor, Jr., John Doe and Peter Doe.

[5] Docketed as Crim. Case No. 1883 for arson for the burning of the motorcycle of Fr. Tulio Favali. The lone accused is Norberto Manero Jr.

[6] See Records, p. 445.

[7] Penned by Judge Benjamin M. Estaño, Regional Trial Court, Branch 17, Kidapawan, Cotabato; Records, pp. 860-61.

[8] See Note 2.

[9] *Id.*, pp. 68-70.

[10] *Id.*, pp. 70-79.

[11] *Id.*, pp. 57-60.

[12] *Id.*, pp. 82-89.

[13] TSN, 4 October 1985, pp. 91-108; TSN, 6 November 1985, pp. 68-78.

[14] *People v. Pugal*, G.R. No. 90637, 29 October 1992.

[15] All accused-appellants allege that they were in Tulunan, Cotabato, the town where the offenses were committed, albeit not at the very scene of the crime in Km. 125.

[16] *People v. Banez*, G.R. No. 95456, 18 September 1992, citing *People v. Sabater*, No. L-38169, 23 February 1978, 81 SCRA 110.

[17] *People v. De Guzman*, G.R. No. 105964, 4 November 1992.

[18] *People v. Abuyan, Jr.*, G.R. Nos. 95254-55, 21 July 1992.

[19] *People v. Antud*, G.R. No. 95684, 27 October 1992.

[20] Decision, p. 36; Rollo, p. 230.

[21] *People v. Serdan*, G.R. No. 87318, 2 September 1992.

- [22] *People v. Hasiron*, G.R. No. 100797, 15 October 1992, citing Art. 8, Revised Penal Code.
- [23] *People v. Sabornido*, G.R. No. 102141, 18 September 1992.
- [24] *People v. Martinado*, G.R. No. 92020, 19 October 1992.
- [25] Accused-appellants together with two (2) other unidentified persons.
- [26] Decision, p. 30; Rollo, p. 224.
- [27] TSN, 28 August 1986, pp. 93-94.
- [28] TSN, 4 October 1985, p. 118.
- [29] TSN, 6 November 1985, pp. 36-43.
- [30] *People v. de los Reyes*, No. L-44112, 22 October 1992, citing *People v. Degoma*, G.R. Nos. 89404-05; 22 May 1992.
- [31] See TSN, 28 August 1986, p. 51.
- [32] *Simex International (Manila), Inc. v. Court of Appeals*, G.R. No. 88013, 19 March 1990, 183 SCRA 360.
- [33] Art. 2206 (3) provides: “The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.”
- [34] *Raagas v. Traya*, 130 Phil. 846 (1968).
- [35] *Darang v. Belizar*, No. L-19487, 31 January 1967, 19 SCRA 214.
- [36] Art. 2230 provides: “In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party” (Civil Code); see also *Dempsey v. RTC*, Br. 75, G.R. Nos. 77737-38, 15 August 1988, 164 SCRA 384, and *People v. Marciales*, G.R. No. 61961, 18 October 1988, 166 SCRA 436.
- [37] *Singson v. Aragon*, 92 Phil. 514 (1953); *PAL v. CA*, G.R. Nos. 50504-05, 13 August 1990, 188 SCRA 461, citing *Kapoe v. Masa*, G.R. No. 50473, 21 January 1985, 134 SCRA 231.

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