

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANACLETO FURUGGANAN, ALIAS "BOY"; ACCUSED-APPELLANT.*G.R. Nos. 90191-96. January 28, 1991*

Ponente: REGALADO, J.

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The developmental annals of our criminal justice system provide certain basic rules of governance in determining the fate of one caught in the toils of the law. Elementary as these tenets may now appear to be, yet they are not infrequently overlooked or ignored. We are forced to repeat them for purposes of this case.

At bottom is the presumption of innocence, *juris tantum* to be sure but constituting the take-off point for criminal actions. Doctrinally, this presumption yields only to the requisite quantum of evidence of guilt beyond reasonable doubt. Any doubt shall be considered in favor of the accused. The prosecution has the inexorable burden of producing the mandated degree of proof. The guilt of the accused shall be gauged by the strength of the evidence for the People and not by the weakness of that for the defense.

This case presents an opportune situation to review said precepts which hold life and liberty sacrosanct. On the accused here has been imposed five (5) sentences of reclusion perpetua for as many crimes of murder and an indeterminate sentence for one (1) case of frustrated murder. Even with the application of Article 70 of the Revised Penal Code, he faces the unnerving and bleak prospect of at least forty (40) years in gaol. Hence, the need for a most scrupulous and discerning review of this case, for along with the possibility of depriving an innocent man of his freedom is the contrapuntal theme of denying justice to six (6) hapless victims of the said heinous crimes.

In six (6) different informations,[1] herein accused-appellant, together with Danilo Balao alias "Ebot," Eleazer Payongan, Diomedes Palattao, Martin Furugganan and Basilio Gomer, Jr., were charged before the Regional Trial Court of Cagayan, Branch VIII,[2] in five (5) cases of murder and one (1) case of frustrated murder, for allegedly conspiring and shooting to death Leopoldo Magara, Celso Urtiz, Lucio Magara, Alejandro Magara and Romeo Cordova and wounding Joseph Ferrer on the night of December 9, 1986.

Subsequently, on motion of Prosecuting Fiscal Rafael L. Pacis and supported by an affidavit of retraction of victim Joseph Ferrer, the charges against accused Danilo Balao alias "Ebot" in all the aforesaid cases were dismissed.[3] Herein appellant, together with Martin Furugganan and Diomedes Palattao, on the other hand, were arraigned and pleaded not guilty to the crime charged; while accused Eleazer Payongan and Basilio Gomer, Jr. had heretofore and have up to now remained at large. The aforesaid criminal cases were jointly tried. After the prosecution rested its case, however, the court *a quo* granted the demurrer to evidence filed by accused Martin Furugganan and Diomedes Palattao and consequently acquitted them of all the charges against them.[4]

Thus, trial proceeded only against appellant who was thereafter found guilty as charged and was sentenced to suffer the penalty of reclusion perpetua in each of the five (5) cases for murder, and an indeterminate sentence of ten (10) years of prision mayor, as minimum, to fourteen (14) years, ten (10) months and ten (10) days of

reclusion temporal, as maximum, for the frustrated murder. Further, appellant was ordered to indemnify the heirs of the five (5) victims in the murder cases in the sum of P30,000.00 for each victim and one-fifth (1/5) of the costs in each of the six (6) cases.[5]

The genesis of said cases, as verified from the transcribed notes of the proceedings and summarized by the Solicitor General in his brief, inclusive of the arguments of appellant, are as follows:

"On December 9, 1986, Joseph Ferrer, Celso Urbiz (sic, Urtiz), Leopoldo Magara, Alejandro Magara, Lucio Magara, and Romeo Cordova decided to go to the ricefield of Froilan Clemente situated at Sitanga, Dodan, Aparri, Cagayan. They arrived at the place of Froilan Clemente at around one o'clock in the afternoon. Upon arrival, they cast their fishing line. After a while, they rested in a nipa hut (pp. 3-4, TSN, June 10, 1988). They fell asleep and while in a deep slumber, the prosecution witness Joseph Ferrer heard a firing of a gun (id.) After the shooting stopped, somebody climbed up the hut and he saw Eleazer Payongan, Basilio Gomer and accused-appellant, Boy Furugganan (p. 6, TSN, id.). Joseph Ferrer pretended that he was already dead by placing his right arm over his forehead (p. 8, TSN, id.)

"Joseph Ferrer, while pretending to be dead, observed that the three malefactors, namely, Eleazer Payongan, Basilio Gomer and accused-appellant were making sure that their victims were already dead. Eleazer Payongan lighted a lamp and knocked the head of Joseph Ferrer to confirm that he was indeed dead. Joseph Ferrer saw Basilio Gomer holding a small gun and Eleazer Payongan an armalite (pp. 6-7, TSN, Sept. 28, 1988).

"Eleazer Payongan further searched the hut. After satisfying themselves that they had accomplished what they had intended, Eleazer Payongan, Basilio Gomer and accused-appellant left the scene of the crime.

"After the assailants had left, Joseph Ferrer, the lone survivor, went home despite the fact that he sustained wounds in his leg leaving behind all his companions who were then all dead (p. 15, TSN, id.). He was subsequently brought to the hospital by his brother and cousin (pp. 10-11, TSN, Sept. 28, 1988).

"Accused-appellant, on the witness stand, corroborated the testimony of Joseph Ferrer on material points. He testified that as of November 26, 1986, he was a member of the Civil Home Defense Force (CHDF).

"On December 9, 1986, at around sunset, Martin Furugganan, also a member of the CHDF, and Barangay Captain Eleazer Payongan, Basilio Gomer, Jr. and Diomedes Palattao, also a member of the CHDF, dropped by the house of accused-appellant. They invited him to the place of Eleazer Payongan for a drink (pp. 8-9, TSN, March 16, 1989).

"Eleazer Payongan was armed with a rifle and was carrying two bottles of gin placed in plastic bag while Basilio Gomer was armed with a garand rifle (p. 13, id.).

"From the house of accused-appellant, they went directly to the hut of Eleazer Payongan. While thereat, Eleazer Payongan checked his fish trap and was able to get some fish for their 'pulutan' (p. 14, id.). After a while, accused-appellant and his companions drank the gin. Thereafter, accused-appellant sought permission to go home, but Eleazer Payongan prevented him from doing so by telling him that they were going somewhere else (id.). Accused-appellant asked Eleazer Payongan where they were going and Eleazer Payongan replied that accused-appellant 'not be worry (sic) as he (Payongan) would be responsible for what will happen'. Because of the assurance, accused-appellant followed him (p. 16, id.).

"From the hut of Eleazer Payongan, they hiked to the hut of Froilan Clemente. Upon arrival at the hut of Froilan Clemente, Basilio Gomer and Eleazer Payongan went to the door of the hut and started firing their guns (p. 18, id.). The shooting lasted for about three (3) minutes and while Payongan and Gomer were firing their guns, accused-appellant, together with Furugganan and Palattao, allegedly stayed at the back. After the shooting, Eleazer Payongan told accused-appellant to follow him and when he refused, Payongan allegedly aimed his gun to (sic) appellant. Payongan told the accused-appellant to come up to see if those inside the hut

were already dead. He was accordingly threatened by Payongan by saying that he will shoot him (accused-appellant) if he will not go up to (sic) the hut. When accused-appellant went up the hut, Eleazer Payongan and Basilio Gomer followed him. When they were already upstairs, Eleazer Payongan saw a lamp and lighted it (pp. 19-20, id.).

"According to accused-appellant, Basilio Gomer and Eleazer Payongan would shot (sic) any occupant who was still moving (p. 20, id.).

"Eleazer Payongan told Basilio Gomer that all the occupants of the hut were already dead. Accused-appellant went down immediately after which Basilio Gomer and Eleazer Payongan extinguished the kerosene lamp and went down. Subsequently, they left the hut. From where the incident took place, accused-appellant went home and told his wife what had happened and because they were afraid, they slept in the house of his in-laws (pp. 6-7, May 24, 1989)." [6]

As explained by the court a quo in its decision, the lone survivor, Joseph Ferrer, testified in the preliminary examination conducted by the Municipal Trial Court of Aparri, Cagayan, Branch II, on January 12, 1987 in its Criminal Cases Nos. II-7239, 7242 and 7243, that he and his companions were fired upon in the hut by appellant and his companions; and he repeated this testimony implicating appellant in the preliminary examination conducted on January 13, 1987 by Branch I of the same court in its Criminal Case No. A-7247. The trial court moreover noted that Ferrer made the same identification of appellant as one of the assailants in his purported ante mortem statement taken on December 10, 1986 in the Aparri District Hospital and also in his extra-judicial statement given in the course of an investigation conducted by Pat. Porfirio G. Divina on December 17, 1986 in the same hospital.[7]

To exculpate himself from liability, appellant in his brief substantially reiterates his version of the incident as hereinbefore narrated and alleges that he was threatened by Eleazer Payongan to go up the hut or else he himself would be shot. Overwhelmed by said threat, appellant claims he had no other recourse but to follow as directed. Further, he would like this Court to focus its attention on the testimony of prosecution witness Joseph Ferrer himself that appellant was unarmed when he went up the hut, as in fact his firearm was surrendered days before the shooting incident. Anent the allegation of conspiracy, the defense contends that there is not even a hint of the existence of a preconceived plan or agreement to commit the crimes charged, appellant having been invited only by his co-accused to a drinking session.[8]

Appellant admits that he was a member of the Civil Home Defense Force but that on December 3, 1986 he returned to the local constabulary headquarters the Garand rifle theretofore issued to him. He submitted as proof thereof, as his Exhibits 1 and 2, respectively, the receipt for the rifle signed by Sgt. Antonio M. Domingo and a certification to that effect of Capt. James Andres B. Melad, both of said constabulary unit.

Hence, assailing his conviction by the court below, appellant comes to us with the following assignment of errors:

- I. The court a quo gravely erred in giving weight and credence to the theory of the prosecution and in disregarding that of the defense.
- II. The court a quo gravely erred in finding that there exists conspiracy in the case at bar.
- III. The court a quo gravely erred in convicting accused-appellant of the crimes charged despite the prosecution's failure to prove his guilt beyond reasonable doubt.[9]

We find merit in the arguments and submissions of appellant in the petition at bar.

As earlier noted, the rule is firmly entrenched that a judgment of conviction must be predicated on the strength of the evidence for the prosecution and not on the weakness of the evidence for the defense. Accusation can never be

made synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies and the freedom of the accused can be forfeited only if the requisite quantum of proof necessary for conviction is in existence.[10]

In the present case, we find the evidence for the prosecution leaving much to be desired vis-a-vis the moral certitude exacted by law to prove the guilt of the appellant. Pathetically, said evidence which consisted primarily of the testimony of the lone survivor, Joseph Ferrer, is replete with irreconcilable inconsistencies which are neither trifling nor unimportant as to be of little consequence.

Thus, while the trial court noted that Ferrer on the two occasions when he was under preliminary examination testified, that he saw appellant and his companions fire upon the hut where he and his friends were resting, he twice categorically declared in open court that they were all fast asleep when he heard a sudden burst of gunshots.[11] One can only wonder how Ferrer could have witnessed the firing from outside when he was, as he stated, in deep slumber. This disposes of Ferrer's statement in his so-called ante mortem statement[12] and his extrajudicial statement before Pat. Porfirio G. Divina[13] that herein appellant was one of those who shot him and his companions on that occasion.

More telling is Ferrer's prevarications in his aforesaid purported ante mortem statement and extrajudicial statement where he positively stated that appellant was armed with an armalite. This was obviously intended to support his story that appellant also fired fatal shots in that incident. During the trial, however, he diametrically contradicted himself and declared not only once but twice, on direct examination and cross-examination, that appellant was definitely unarmed.[14] Parenthetically, his alleged ante mortem statement clearly cannot qualify as such, not having been made under the consciousness of an impending death, the injuries he sustained which were all in the lower extremities not being fatal.[15] Even considered as such, its credibility and weight are subject to the same rules as any other testimonial evidence[16] and, as we have already seen, said witness has himself established the falsity of his pertinent declarations therein.

On direct examination, Ferrer further testified that he saw appellant, Eleazer Payongan and Basilio Gomer, Jr. come up the hut and verify whether or not their victims were dead. In fact, he identified appellant in open court and declared that Payongan and Gomer were not present.[17] Upon continuation of the examination on a different date, however, he stated that it was appellant, Payongan and one Diomedes Pallatao who went up the hut to make the verification.[18] This is not just a minor or insignificant error since, in the very nature of this case, identification of the supposed malefactors is essential. But more important, on the basis of the foregoing discussions, is the indisputably vital conclusion that Joseph Ferrer is not the reliable and honest witness on whose uncorroborated testimony the fate of appellant can justly be adjudged by this Court.

While appellant admitted that he was with the other accused and was at the scene of the crime on the fateful night of the incident, he nevertheless rebuts the imputation of guilt against him by maintaining that he had no inkling of the murderous design of his co-accused - he having been invited only for a drink - and that he went up the hut only because he was threatened at gunpoint to do so or else he himself would be shot. We have carefully scrutinized and weighed appellant's testimony both during his direct examination and cross-examination[19] and find that he had declared the same facts and maintained the same theory with forthrightness and consistency under rigid inquisition.

Of course, it may be a possibility that at the outset appellant and his companions had no preconceived murderous plan and it was only during the drinking session or at any time between such session and the actual massacre that they agreed to commit the crime. Any amount of reliance on such probability, however, would be purely speculative and a departure not only from the established facts but also the settled doctrinal rule that surmises and

conjectures have no place in a judicial inquiry and are specially anathema in a criminal prosecution. Thus, although similarly circumstanced as appellant before and during the commission of the crimes, the other original accused, Danilo Balao, Martin Furugganan and Diomedes Pallatao were cleared of any complicity in or liability for the multiple killings. This cannot but constitute an evident repudiation of the conspiracy theory insofar as appellant and the others who merely accompanied Gomer and Payongan are concerned.

Furthermore, albeit no formal agreement is necessary to prove conspiracy and the same may be inferred from the circumstances attending the commission of the crime, yet conspiracy must be established by the same quantum of evidence as any other ingredient of the offense. Such evidence must show intentional participation in the transaction with a view to the furtherance of the common design or purpose. The same degree of proof necessary to establish the crime is required to establish a finding of criminal conspiracy, that is, proof beyond reasonable doubt. It cannot be established by conjectures but by positive and conclusive evidence.[20] Since conspiracy must be proved beyond peradventure of a doubt, it follows that it cannot be appreciated where the facts can be consistent with the non-participation of the accused in the fancied cabal.

In the case at bar, the fact that appellant was with the other accused when the crime was committed is not sufficient proof of the existence of conspiracy. Mere companionship does not establish conspiracy.[21] Neither can conspiracy be inferred from the mere fact that they had been drinking together prior to the shooting.[22] It strains credulity to assume that, on these antecedents alone, appellant readily enlisted in a murderous clique without any proven motive on his part and against victims whose relations with him, antagonistic or otherwise, have not even been shown.

No conspiracy can moreover be deduced where there is absolutely no showing that appellant performed any overt act of shooting although he was with the persons who fired the guns.[23] Indeed, the only incriminating evidence against appellant is that he was at the scene of the crime, but the reason for his presence was itself sufficiently explained by him as heretofore stated and the same has not been successfully refuted. Significantly, appellant, by his act of going up the hut, cannot also be said to have lent in any way even a whit of material or moral aid in the actual commission of the crimes charged as, by then, said crimes had already been consummated.

We take judicial cognizance at this juncture of the fact on record that the prosecution filed a motion below for appellant's discharge to make him a state witness.[24] The trial court denied the motion on the ground that appellant appears to be the most guilty without, however, any creditable explanation for so holding, beyond a cavalier advertence to the existence of the aforesaid discredited extrajudicial statements of prosecution witness Joseph Ferrer.[25]

Finally, it should be observed that flight as an indication of guilt[26] cannot likewise be appreciated from the fact that appellant left together with his co-accused after the shooting incident or from the circumstance that he and his family moved to the residence of his in-laws on the following day. As explained by him, he feared for the safety and security of his family against the threat made by his co-accused that he himself would be killed should he tell anybody about the murders. This threat may well be the same reason for appellant's failure to promptly report the incident to the proper authorities, not to mention the natural reticence of people to get involved in or be dragged into a criminal investigation.[27] In any event, there is no showing that he intentionally made his presence scarce in his community as in fact he was arrested in the community's marketplace.[28]

All told, we hold that the evidence against appellant Anacleto Furugganan is not sufficient to establish his participation or culpability in the alleged criminal conspiracy. Indeed, even if it is supposed that appellant's defense is not completely worthy of credence, the hard and indelible truth remains that the evidence for the prosecution is much less so, with all its flaws and improbabilities. Certainly, to stress the obvious, any doubt as to

the guilt of the accused should be resolved in favor of the presumption of his innocence. For, to paraphrase a dictum of ancient respectability which this Court has adopted with approval and consistency, it is better to let the guilty go scot-free than to convict an innocent person.[29]

Considering that in an adversarial criminal contest, the forces and powers of the state are marshalled against an accused who is often handicapped in many ways in the preparation and presentation of his defense, the protective rules recited at the outset of this opinion must be given full sway in our adjudication of this case in order to make equal that which is basically unequal. We have done so and we are convinced that a verdict of acquittal rests secure in the hands of justice and easy on the conscience of the Court.

WHEREFORE, the decision appealed from is REVERSED and SET ASIDE and the accused-appellant is hereby ACQUITTED on the ground of reasonable doubt, with costs de oficio. SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Criminal Cases Nos. VIII-499, VIII-500, VIII-501, VIII-510, VIII-538 and VIII-539; Rollo, 20-31.

[2] Presided over by Judge Felipe R. Tumacder.

[3] Original Record, Criminal Case No. VIII-510, 40.

[4] Original Record, Criminal Case No. VIII-539, 18-21.

[5] Rollo, 59.

[6] Brief for the Appellee, 4-9.

[7] Rollo, 56.

[8] Brief for the Accused-Appellant, 12-14.

[9] Ibid., 10-11.

[10] People vs. Nazareno, 80 SCRA 484 (1977); People vs. Go Bio, Jr., 142 SCRA 238 (1986); People vs. Rojo, 175 SCRA 119.

[11] TSN, June 10, 1988, 5-6.

[12] Original Record, Criminal Case No. VIII-501, 9-10.

[13] Ibid., Criminal Case No. VIII-500, 6-7.

[14] TSN, September 28, 1988, 7, 13.

[15] People vs. Lanza, 94 SCRA 613 (1979); Sec. 37, Rule 130, Rules of Court.

[16] People vs. Aniel, et al., 96 SCRA 199 (1980); People vs. Ola, 152 SCRA 1 (1987).

[17] TSN, June 10, 1988, 6.

[18] TSN, September 28, 1988, 5.

[19] TSN, March 16, 1989, 2-25; May 24, 1989, 2-21.

[20] People vs. Drilon, et al., 123 SCRA 72 (1983); People vs. Martinez, 127 SCRA 260 (1984).

[21] People vs. Sosing, 111 SCRA 368 (1982).

[22] People vs. Realon, et al., 99 SCRA 422 (1980).

[23] People vs. Benavidez, et al., 127 SCRA 188 (1984).

[24] Original Record, Criminal Case No. VIII-499, 92-93.

[25] Ibid., id., 115-117.

[26] See U.S. vs. Alegado, 25 Phil. 510 (1913).

[27] People vs. Estocada, et al., 75 SCRA 295 (1977); People vs. Realon, et al., supra.

[28] TSN, March 16, 1989, 185-186.

[29] People vs. Sadie, 149 SCRA 240 (1987).

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