

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALVADOR CARITATIVO, ET AL., ACCUSED-APPELLANTS.

G.R. Nos. 92271-72. April 01, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In deciding this appeal, the Court finds occasion to reiterate some well-settled doctrines in determining the guilt of the accused, particularly in appreciating treachery as a qualifying circumstance in the crime of murder.

This is an appeal from the twin decisions[1] dated April 13, 1989 of the Regional Trial Court of Iloilo City, 6th Judicial Region, Branch 33 convicting accused Salvador Caritativo and Victor Solas of the crime of murder and sentencing them to reclusion perpetua.

The victims were Fred (Wilfredo) Pama and his eleven-year-old son Joey; the man succumbed to (4) stab wounds and one gunshot wound, while the boy died from three (3) incised wounds and eleven (11) stab wounds. Another son, Jeffrey, lived to recount the tale of horror only because he managed to escape from the scene of the killings and hide in nearby ricefields.

Witnesses disclosed to police the identities of the perpetrators: Salvador Caritativo, Victor Solas and Gregorio (Gogoy) Solomon. The first two were arrested, but Solomon fled and remained at large. Thus, only Caritativo and Solas were charged in two (2) Informations - one for the slaying of Joey Pama, docketed as Criminal Case No. 18986, and the other for the killing of Fred Pama, docketed as Criminal Case No. 18987.

The first-mentioned Information reads as follows:

"That on or about April 6, 1984, in the municipality of Dueñas, province of Iloilo, Philippines, and within the jurisdiction of this Court, the abovenamed accused, conspiring, confederating and working together with Gregorio Solomon, who is still at large, armed with knives, with treachery and evident premeditation, and with deliberate intent and decided purpose to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Joey Pama with weapons with which they were then provided, thereby inflicting upon the latter stab wounds (sic) on the vital parts of his body which caused his death thereafter.

CONTRARY TO LAW."[2]

The other information is similarly worded except for the name of the victim which was changed to Fred Pama.[3]

Arraigned on September 3, 1985, both accused, assisted by counsel de oficio, pleaded "not guilty." [4] Thereafter, joint trial was held in these two cases.

The Facts of the Case

According to the Prosecution

The prosecution's version of what transpired as culled from the testimonies of the prosecution witnesses is as follows:

On April 6, 1984 at around 8:00 o'clock in the morning, Wenifreda Pama together with her two sons, Joey and Jeffrey, went to a birthday party at the house of Ofelia Caritativo, Salvador Caritativo, brother of Ofelia, and Victor Solas, his first cousin, were also living in the same house. After having lunch, Joey and Jeffrey went home while Wenifreda stayed behind and helped wash the dishes. At around 2:00 p.m., Wenifreda joined Salvador, Victor and Gregorio alias Gogoy in drinking "tuba" and a native white wine called "biti-biti." After drinking, she helped in cooking merienda, and then left for home late in the afternoon.[5]

Meanwhile, worried that it was getting dark and his wife was not yet home, Fred Pama, husband of Wenifreda, together with his sons Joey and Jeffrey, rode on their carabao to the house of Ofelia to fetch Wenifreda: Along the way, they met and were suddenly waylaid ("Ginsulang kami") by Salvador Caritativo, Victor Solas and Gregorio (Gogoy) Solomon. Solomon stabbed Fred but missed, hitting the carabao instead. Injured, the beast bolted, and the three riders were thrown off. Jeffrey was able to run away. While running, he looked back and saw Solomon stabbing his father Fred, and Caritativo and Solas holding Joey and stabbing him. Jeffrey then hid behind the ricefield dike, from where he heard two gunshots.[6] He remained hidden there the whole night and went home early the following morning. He then related the incident to his mother.[7]

Fely Gonzales, elder sister of Fred Pama, testified that at around 6:30 in the afternoon of April 6, 1984, she was with her five-year-old son walking home towards Barangay Sto. Niño from Barangay Angari (an adjacent barrio). Suddenly, she heard the voice of her nephew Joey shouting for help. She immediately proceeded to the place where the voice came from. At a distance of around 20 meters, she saw Solas, Caritativo and Solomon stabbing her brother Fred and nephew Joey. She wanted to help them but was afraid for her own life. She hid herself beside the rice paddy with mora grasses and silently cried until after the killings. When the three left, she approached the scene of the murders, and after ascertaining that Fred and Joey were already dead, she went home. She didn't tell her husband about the incident for fear that the latter and his relatives will go after the culprits.[8]

In the early morning of April 7, 1984, the dead bodies of Fred and Joey were recovered. The autopsy conducted on the body of Fred Pama revealed that he sustained four (4) stab wounds and a gunshot wound. On the other hand, Joey Pama suffered three (3) incised wounds and eleven (11) stab wounds.[9]

According to the Defense

In contrast to the prosecution's theory that Caritativo, Solas and Solomon "conspired, confederated, and helped one another with treachery and evident premeditation kill Fred Pama and x x x Joey Pama," the accused contend that "it was only Gregorio Solomon who perpetrated both killings laying the blame on Gregorio Solomon alone who has conveniently disappeared to defeat the ends of justice." [10] Their version of the events is as follows:

On April 5, 1984 while Ofelia Caritativo and Wenifreda Pama were weeding the grass in a sugarcane field, Ofelia invited Wenifreda to have lunch at her house the following day, April 6, as it was the birthday of her daughter. At around 11:00 the following morning, Wenifreda arrived at Ofelia's house and shortly thereafter was followed by her sons Joey and Jeffrey. Aside from themselves there were other invited guests, mostly relatives of Ofelia.

After lunch, Joey and Jeffrey went home, while Wenifreda stayed behind. Victor Solas and Salvador Caritativo together with their uncles and cousins were drinking "tuba" and, later, whiskey. Gregorio Solomon who was present also joined in the drinking, as did Wenifreda. Drunk after partaking of "tuba" and whiskey, Wenifreda started dancing with Gregorio. While dancing Gregorio would kiss Wenifreda. Seeing this, Salvador allowed (encouraged) them to leave because he did not want his sisters to witness such behavior.

Wenifreda, accompanied by Gregorio who had not drank as much, left before 6:00 o'clock that afternoon. After they had gone, Salvador and his cousins continued their Storytelling. When they were preparing to go to bed around 6:30 that evening, Salvador heard Gregorio calling his name. He went down whereupon Gregorio told him

that he had stabbed Fred and Joey Pama. When Salvador asked him why, Gregorio replied that on their way to Wenifreda's house, they met Fred who saw Wenifreda holding him (Gregorio); Fred reacted by hacking him, so he stabbed Fred and his son. After relating this to Salvador, Gregorio left. Fearing a reprisal, Salvador told his sister Ofelia to forthwith transfer to their aunt's house as the family of the deceased might suspect that they were responsible for the killings. After that, Salvador together with Victor went to Gil Catalan, the Barangay Captain of Barangay Sto. Niño, to report the incident; however, the latter was in Barangay Angari attending the fiesta. Salvador then informed Vilma Catalan, wife of Gil, that Gregorio was responsible for the killings.

On April 9, 1984, Vilma sent a telegram to Gregorio's father Gorgonio, who was in Dadiangas, General Santos, to inform him of his son's crime. Gorgonio returned to Dueñas on April 15, and was promptly informed by his children and mother-in-law of the tragic and dastardly deed. Subsequently, on September 30, 1984, Gorgonio was able to talk to his son when the latter returned home. Asked where he was hiding, Gregorio told his father that he hid in the mountains, and again admitted that he slew Fred and Joey. Gorgonio insisted that he give himself up but the latter refused and instead fled. They met again in March 1985 in the mountains of Pughanan, Lambunao when the former went there. After that meeting, he lost contact with his son.

The Trial Court's Ruling

On April 13, 1989, the trial court rendered two separate decisions convicting Caritativo and Solas for two counts of murder. The dispositive portion of the decision in Criminal Case No. 18986 reads as follows:

"WHEREFORE, in view of the foregoing, the guilt of both accused Salvador Caritativo and Victor Solas having been proved beyond reasonable doubt for the killing of Joey Pama, the accused are hereby sentenced to suffer the penalty of reclusion perpetua.

The accused Salvador Caritativo and Victor Solas are hereby jointly (and) severally ordered to pay the heirs of Joey Pama the sum of P30,000.00 for the death of Joey Pama.

SO ORDERED."[11]

The dispositive portion of the decision in the other case is the same except that the name of the victim was changed to Fred Pama.

In their appeal brief, both accused raised a lone assignment of error, to wit:

"THE HONORABLE TRIAL COURT, BRANCH XXXIII REGIONAL TRIAL COURT, SIXTH JUDICIAL REGION, ERRED IN CONVICTING THE TWO ACCUSED ON THE BASIS PRINCIPALLY OF THE EVIDENCE FOR THE PROSECUTION."

This Court's Ruling

In effect, the defense contends that the trial court did not give credence to the testimonies of their witnesses, nor to their theory which consists mainly in avoidance and alibi. However, such argument deserves little if any consideration.

Firstly, as pointed out by the Solicitor General, the desperate attempt of the accused to hide behind their alibi cannot prevail over the positive identification made by the eyewitnesses at the scene of the crime, viz., Jeffrey Pama and Fely Gonzales, that the accused were among the assailants of the deceased. The following excerpts from the transcripts of stenographic notes will drive home the point:

(Prosecution witness Fely Gonzales testifying)

"Q

Please tell the court why you were not able to go to the very place where Joey Pama was?

A

When I heard his voice I approached near the place where they were situated.

Q

Whom did you see?

A

I saw Victor, Salvador and another person by the name of Gregorio Solomon.

Q

Now, that Salvador and Victor that you saw where (are) they now?

INTERPRETER: Witness pointing to the two accused.

COURT: (To the Witness)

Q

This Salvador is Salvador Caritativo who is the accused in this case?

A

Yes, sir.

Q

And this Victor is Victor Solas who is also the accused in this case?

A

Yes, sir.

COURT: (To Fiscal Barrios)

Go ahead.

FISCAL BARRIOS:

Q

What were they doing when you saw them together with a certain Gregorio Solomon?

A

They were stabbing my brother and his son.

Q

You mentioned they were stabbing your brother and his son(,) who is your brother whom they were stabbing?

A

Fred Pama was being stabbed by Salvador.

Q

And what is the name of your nephew whom they were also stabbing?

A

Joey Pama.

COURT: How old was this Joey Pama at that time?

A

Eleven (11) years old." (TSN, September 18, 1986, pp. 4-5)

xxx xxx xxx

(Prosecution witness Jeffrey Pama testifying)

"Q

While on your way riding on a carabao together with your father and younger brother going to the place where your mother was at that time, was there any incident that happened to you, your father and your younger brother?

A

Ginsulang kami' (We were waylaid, we were meet)

Fiscal R. Barrios:

Q

You were meet by whom?

A

Salvador Caritativo, Victor Solas and Gogoy (Gregorio) Solomon.

Q

Now these persons who waylaid or met you on your way to the house where your mother was at that time by the name of Salvador Caritativo and Victor Solas, where are they now?

A

The two accused are here in court. The other one is still at-large.

Q

When you said Salvador Caritativo and Victor Solas, you were referring to those two persons you identified earlier before the Honorable Court?

A

Yes, Sir.

Q

And what happened when you said you, your father, your younger brother were met on the way by the accused Salvador Caritativo and Victor Solas and Alias Gogoy Solomon?

A

Gogoy Solomon stabbed my father but he was not hit instead the carabao was hit.

Q

And what happened after you said Gogoy Solomon stabbed your father but was not hit hitting instead the carabao, what else happened?

A

When the carabao was hit, the carabao ran fast and we all fell down and I was able to run away.

xxxxxxxxxx

Q

Now you said that when the three of you fell down from the carabao because it runs fast after it was hit by the stab of Gogoy Solomon, were you able to turn your back to the place where you left your father?

A

While I was running, I was looking back.

Q

And what did you see when you said while running you were looking back?

A

I saw that Gogoy was stabbing my father.

Q

What about the other two accused whom you identified to be inside the courtroom as Salvador Caritativo and Victor Solas, what were they doing when you were able to look back while running away?

A

The two Salvador Caritativo and Victor Solas were holding my younger brother.

Fiscal R. Barrios:

Q

And what was your younger brother doing when you said he was being held by the two accused Salvador Caritativo and Victor Solas?

A

They were stabbing him." (TSN, November 4, 1986, pp. 4-7)

Secondly, as correctly concluded by the trial judge, the physical facts of the case totally contradict and belie the defense's theory that both Fred and Joey Pama were slain by only one attacker.

"The witnesses for the accused would like the court to believe that it was Gregorio Solomon alone who perpetrated the killing and as a consequence, the two accused Salvador Caritativo and Victor Solas should be exonerated. The court has encountered so many theories of this nature being propounded by the defense where there are many accused in the killing and only one would take the blame for everybody and the rest of the accused acquitted. In a killing where the victim sustained only one injury which caused his death indicating that only one person delivered the fatal blow, this theory of the defense might succeed if the prosecution fails

to prove conspiracy.

"In this case, however, the injuries sustained by the deceased Fred Pama consisted of a gunshot wound and four (4) stab wounds strongly indicated that there were more than one assailant. The injuries sustained by the victim, the small child Joey Pama, were three incised wounds and eleven (11) stab wounds. These stab wounds were of different sizes and diameter indicating that more than one sharp pointed bladed weapon inflicted the injuries on Joey Pama and again strongly indicating that more than one assailant perpetrated the killing." [12]

As this Court has had occasion to hold, numerous wounds in the body of the victims indicate plurality of assailants. [13]

Thirdly, we are not persuaded by the accused's contention that the trial court should have believed the testimony of Gorgonio Solomon, father of Gregorio, to the effect that Gregorio admitted to him that he (Gregorio) was responsible for the slayings. [14] The alleged confession of Gregorio Solomon made to his father may be admissible only as against him (Gregorio) but not against nor in favor of the two accused. [15] The alleged declaration of Gregorio Solomon is pure hearsay when testified to by Ofelia Caritativo, accused Salvador Caritativo and Vilma Catalan, and as such is inadmissible in evidence as to the actual killing.

Fourthly, we are in agreement with the trial court's finding that the defense theory that the victim Fred Pama in a fit of anger tried to bolo Gregorio Solomon when the former saw his wife Wenifreda with her arms around Gregorio, and as a consequence the latter retaliated by stabbing the victim, is unworthy of belief. The court a quo's candid observation that Wenifreda Pama when she testified in court "was a dried shell of a woman, unattractive, without any guile, and did not impress the court as one who could possibly be a flirt or one who could have evoked in the breast of any self-respecting male the passion of the ages" says it all. Likewise in accord with human experience is the lower court's conclusion that, even granting that Wenifreda while drunk did flirt with Gregorio thus inducing her husband Fred into attacking Gregorio in a fit of rage, still, if Gregorio really acted in self-defense, he would not have had to stab Fred four times and shoot him to boot; one or maybe two wounds would have been enough. Much less would there have been any need to hack and stab little Joey a total of fourteen times.

Perusing the questioned Decisions and the submissions of the parties in relation to the records of the case, we are convinced that the trial court correctly appreciated the existence of conspiracy among the appellants and Gregorio Solomon in the killings. The acts of the three attackers in helping one another kill the victims and leaving together after the murders clearly manifested a common purpose or design as well as concerted action on their part. The trial court established that the assailants are related: the two accused are first cousins, while Gregorio Solomon is also married to a Caritativo. Likewise, motive for the vicious killings was determined - "it was shown to the court that the accused had embarked on a trail of vendetta as there had been previous killings resulting in the filing of several cases with the Regional Trial Court involving the families of the accused and the victims herein." [16]

We also hold that the trial court correctly appreciated the qualifying circumstance of treachery. The suddenness of the attack on Fred and Joey Pama, completely without warning, caught them by surprise and gave them no chance to put up any defense. [17] Moreover, this Court has, time and again, held that the killing of minor children who, by reason of their tender years, could not be expected to put up a defense is considered attended with treachery. [18] Indeed, the merciless and heinous manner in which Joey Pama, an 11-year-old boy, was put to death deserves the all-out condemnation of every civilized society.

We however find that the trial court erred in taking into account the generic aggravating circumstance of abuse of superior strength which is considered "absorbed in alevosia because it facilitated the commission of the crime." [19]

WHEREFORE, the Court hereby sustains the trial court's finding that both accused are guilty of two (2) separate crimes of murder. Their sentence of two (2) penalties of reclusion perpetua stands. However, the indemnity due to the heirs of the victims is hereby increased to P50,000.00 each, in line with prevailing jurisprudence. As modified, the decisions of the trial court dated April 13, 1989 are hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Penned by Judge Sixto R. Guanzon.

[2] Rollo, p. 10.

[3] Ibid., p. 11.

[4] Records, Vol I, p. 23; Vol. II, p. 3.

[5] TSN, March 21, 1989, pp. 7-8.

[6] TSN, November 4, 1986, p. 28.

[7] Ibid., pp. 7-8, 23.

[8] TSN, September 18, 1986, Pp. 2-7.

[9] Exhibits "B" and "C" - Necropsy Reports on Fred Pama and Joey Pama; autopsies conducted by Dr. Ricardo Jaboneta, medico-legal officer of the National Bureau of Investigation, Region VI, Iloilo City; Records, Vol. II, pp. 50-51.

[10] Decision, p. 2; Rollo, p. 24.

[11] Rollo, p. 39; Decision, p. 17.

[12] Decision, p. 13; Rollo, p. 35.

[13] *People vs. Laredo*, 185 SCRA 383 (May 14, 1990).

[14] Brief for Accused-Appellants, p. 6.

[15] See *People vs. Fuster*, 179 SCRA 781, 786-787 (December 4, 1989).

[16] Decision, p. 15, Rollo, p. 37.

[17] Vide *People vs. Liston*, 179 SCRA 415 (November 15, 1989).

[18] *People vs. Limaco*, 88 Phil. 35 (January 9, 1951); *People vs. Mabilangan*, 111 SCRA 398 (January 30, 1982); *People vs. Lora*, 113 SCRA 366 (March 30, 1982), cited in *People vs. Abuyen*, 213 SCRA 569 (September 4, 1992).

[19] See *People vs. Liston*, supra.

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