

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX PACAÑA Y MONTEROLA, ALIAS “ALEX,” ACCUSED-APPELLANT.

G.R. Nos. 93518-19. February 02, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The decision of the Regional Trial Court, 7th Judicial Region, Branch 10, Cebu City, in Criminal Case No. CBU-10107, found the accused-appellant guilty beyond reasonable doubt of the crime of murder, and sentenced him to suffer the penalty of reclusion perpetua, to pay death indemnity in the sum of P30,000.00 to the heirs of the deceased, Leonardo Plarizan, Jr., and to pay the costs. The case has been elevated to us for review.

Felix Pacaña y Monterola, alias "Alex," was charged in the Regional Trial Court of Cebu City of violation of PD No. 1866 (illegal possession of firearms and ammunitions) in Criminal Case No. CBU-10100. Along with Edgar Allega y Abella alias "Ed-Ed" and Dindo Abaya, he was charged with murder in Criminal Case No. CBU-10107.

The information for murder against Felix Pacaña, Edgar Allega and Dindo Abaya alleged:

"That on or about the 12th day of December, 1986, at about 4:30 P.M., in the City of Cebu, Philip-pines, and within the jurisdiction of this Honorable Court, the said accused, armed with a revolver, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill and with treachery and evident premeditation, did then and there attack, assault and shot one Leonardo E. Plarizan, Jr. with the use of revolver hitting the latter upon vital parts of his body and inflicting upon him the following physical injuries:

""GUNSHOT OF THE HEAD AND FACE'

and as a consequence of said injuries Leonardo E. Plarizan, Jr. died a few minutes later." (p. 12, Rollo.)

On December 15, 1986, when arraigned for illegal possession of firearm, the accused, Felix Pacaña, entered a plea of not guilty. Edgar Allega pleaded guilty and was sentenced accordingly.

On June 20, 1988, all three accused pleaded not guilty to the murder charge. Considering that both charges of murder and illegal possession of firearm are based on the same facts, the parties agreed, and the Court granted, a consolidated trial of the cases.

Before the end of the trial, Dindo Abaya died and was dropped from the case.

On March 12, 1990, the trial court rendered a joint decision acquitting Pacaña of the charge of illegal possession of firearm and ammunitions in Criminal Case No. CBU-10100 for insufficiency of evidence, but convicted him and his co-accused, Edgar Allega, of Murder in Criminal Case No. CBU-10107. The dispositive portion of the decision reads:

"WHEREFORE:

"In Cr. Case No. CBU-10100, Illegal Possession of Firearm and Ammunition -- for insufficiency of evidence, accused Felix Pacaña y Monterola alias Alex is hereby ACQUITTED.

"The unlicensed and unauthor-ized paltik revolver, Cal. 5.56 and six (6) live ammunitions are hereby confiscated and forfeited in favor of the Government.

"-And-

"In Cr. Case No. CBU 10107, Murder -- finding accused Edgar Allega alias Ed-Ed and Felix Pacaña y Monterola alias Alex, GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, appreciating the generic aggravating circumstance of use of motor vehicle (par. 20, Art. 14, RPC), and applying the rules for application of penalties containing three (3) periods (par. 3, Art. 64, RPC) each accused is hereby sentenced to reclusion perpetua, to indemnify the heirs of deceased Leonardo Plarizan, Jr. the sum of P30,000.00 and to pay the costs." (p. 71, Rollo.)

On appeal by both accused, Criminal Case No. CBU--10107 was elevated to this Court for review. However, Allega's appeal was dismissed pursuant to Section 8, Rule 124 of the Rules of Court for failure to file his brief within the reglementary period. Partial entry of judgment (for Edgar Allega only) was made on February 28, 1992.

The scene of the crime was a "sari-sari" store cum "carinderia" on the groundfloor of Nanding Solon's house on Salvador Street in Labangon, Cebu. A partition separated the carinderia on the right side from the sari-sari store on the left. Outside the sari-sari store was a table with chairs for customers.

The records show that at around three o'clock in the afternoon of December 12, 1986, Alex or Felix Pacaña, a jeepney driver residing in Capaculan, Laban-gon, his friends, Dindo Abaya and Edgar Allega, backrid-ing on a motorcycle belonging to the brother of Pacaña, passed by Solon's store on Salvador Street, where they saw Rolando Quibilan with two companions, Junior and Obet, drinking rum on a table outside the store. Pacaña parked the motorcycle across the road, walked to the store and conversed with Quibilan about the latter's older brother, who was Pacaña's friend and who had gone to Saudi Arabia. While Pacaña and Quibilan were talk-ing, Allega entered the carinderia where Leonardo Plari-zan, Jr., Julius Navaja, Rolando Saceda, Tiago and Junie Allega were drinking beer. Allega motioned his younger brother Junie to come outside where they talked briefly. After Edgar Allega left, his brother Junie went back to join his companions.

The three accused returned to their motorcycle, but instead of leaving, they suddenly dismounted and returned with drawn guns to Solon's store. Allega entered the carinderia while Abaya positioned himself on the left side of the door facing Quibilan's group out-side the store. Pacaña posted himself on the right side of the carinderia door facing Salvador Street. Sensing trouble, the victim, Junior Plarizan, immediately ran outside through the sari-sari store. Abaya aimed his gun at Plarizan who raised his hands and pleaded: "Wait, Bay, let's talk this over!" (p. 13, Appellee's Brief; p. 76, Rollo.)

At this juncture, Allega pursued the fleeing Plarizan into the sari-sari store, warning him menacing-ly: "Don't ever try to run away from me!" While Plarizan's back was turned to him, Allega shot the former twice with his revolver. After Plarizan had fallen, Allega left the carinderia, wearing Plarizan's Ray Ban sunglasses. Together with Pacaña and Abaya, they sped toward Banawa Street on Pacaña's motorcycle.

Plarizan was rushed to Miller Sanitarium Hospital by neighbors, but he expired on the way. At about seven o'clock that evening, Dr. Jesus Cerna, medico-legal officer of the PC/INP in Cebu City, conducted a post--mortem examination of the victim's body and found two gunshot wounds, one above his right ear and another on his lower right jaw. A .38 caliber slug which had caused the wound behind the victim's left ear was imbed-ded in the brain tissue in the right portion of his forehead. The wound was fatal.

Following the trajectory of the bullet that hit the left ear and travelled toward the front and upward to the right, Dr. Cerna testified that the assailant must have been behind the victim, on his left, when he fired the first shot, and the second wound must have been inflicted when the victim faced his assailant who was oblique to the victim's right and in front of the latter.

Pacaña in his appeal, alleges that the trial court erred:

1. in finding that there was a conspiracy or common design among the accused to kill Leonardo Plarizan, Jr.;
2. in giving credence to the testimony of the prosecution witnesses Quibilan and Saceda; and
3. in not giving credence to his (Pacaña's) defense of alibi.

There is no merit in the appeal.

The evidence clearly shows a community of purpose and design among Pacaña and his two co-accused to kill Plarizan. They were together on the motorcycle, driven by Pacaña, in going to Solon's store where the victim was drinking beer with some companions. They pretended to leave the store after Allega had made sure that his target was inside the carinderia. They regrouped on the motorcycle across the street and, after a brief huddle, they returned to the carinderia with drawn guns to liquidate Plarizan. Allega sought out the victim inside the carinderia with Abaya and Pacaña as look-outs guarding both entrances of the carinderia the better to prevent the victim's escape and to lend assistance to Allega in case of a hitch in their pre-conceived plan. When the victim ran into the sari-sari store, Abaya stopped him at gunpoint. Allega who was following the victim, shot him twice, then appropriated the victim's sunglasses. The three malefactors sped away together from the scene of the crime. There was undoubtedly a conspiracy among the accused for their behaviour re-vealed their common purpose to harm the deceased and they acted in concert to carry out that purpose. In *People vs. Arroyo*, 201 SCRA 616, we held that:

"A conspiracy in the statutory language exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such misdeed. That must be their intent. There is a need for concurrence of wills or unity of action or purpose, or common and joint purpose and design. At times, reference is made to previous concert of the criminal design. Its manifestation could be shown by united and concerted action. Thus, a conspiracy need not be proved by direct evidence."

The trial court believed the prosecution witnesses Rolando Quibilan and Rolando Saceda because they testified "in a spontaneous and straightforward manner" (p. 41, Rollo.). Its assessment of their credibility should be accorded full respect.

Pacaña's alibi is undeniably a weak defense. In the face of clear and positive identification by the prosecution witnesses that he was a participant in the commission of the crime, his alibi crumbles. His guilt was established to a moral certainty.

WHEREFORE, the appealed decision is AFFIRMED, with modification of the death indemnity which is hereby increased to P50,000.00 in accordance with existing jurisprudence on the matter.

SO ORDERED.

Cruz, (Chairman), Padilla, and Bellosillo, JJ., concur.

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