

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SEGUNDO MANUEL, LUCILA MANUEL, JOHN DOE AND PETER DOE, ACCUSED, LUCILA MANUEL, ACCUSED-APPELLANT.

G.R. Nos. 93926-28. July 28, 1994

Ponente: VITUG, J.

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VITUG, J.:

An aftermath of the killing of Jesus Tolentino, Jr., and his driver, Dominador Santos, was an indictment on 02 April 1984, under three separate informations, of (a) Segundo Manuel, Lucila Manuel, John Doe and Peter Doe for the murder of Tolentino, (b) Segundo Manuel, John Doe and Peter Doe for the murder of Santos, and (c) Segundo Manuel for his violation of Presidential Decree No. 1866. The only information which included herein appellant Lucila Manuel read:

“That on or about the 20th day of March, 1985, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery, and without any justifiable cause, did then and there wilfully, unlawfully and feloniously employ personal violence upon the person of JESUS TOLENTINO, JR. y DE LEON, by then and there shooting him with the use of a gun hitting the latter on the right temple and right ear thereby inflicting upon said Jesus Tolentino, Jr. y de Leon serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said Jesus Tolentino, Jr. y de Leon in such amount as may be awarded under the provisions of law.[1]

After trial, the court a quo[2] rendered judgment on 14 August 1987 thusly:

“WHEREFORE, the accused Segundo Manuel is declared guilty beyond reasonable doubt of the double murder of Jesus Tolentino, Jr. and Dominador Santos, aggravated by nighttime (sic), and (the Court) imposes the maximum penalty of Double Life Imprisonment. This Court declares Lucila Manuel guilty for the murder of Jesus Tolentino as principal and sentences her to life imprisonment.

“Furthermore, accused Segundo Manuel is found guilty beyond reasonable doubt of illegal possession of firearms in violation of P.D. 1866 and is hereby imposes (sic) on said accused the penalty of ten (10) years and one (1) day in the minimum and seventeen (17) years, four (4) months and one (1) day in the maximum.

“Both accused are jointly and severally ordered respectively to pay the heirs of both victims the sum of P30,000.00 for each set of heirs as actual damages of P100,000.00 as moral damages and P50,000.00 as exemplary damages.

“SO ORDERED.”[3]

On 27 August 1987, the trial court issued a supplemental decision, the decretal portion of which read:

“WHEREFORE, the accused Segundo Manuel is found guilty beyond reasonable doubt of the crimes (sic) of murder of Dominador Santos and Jesus Tolentino, Jr. and the further crime of illegal possession of firearms as charged in the above informations, and Lucila Manuel is found guilty beyond reasonable doubt of the crime of

murder of Jesus Tolentino as charged in the above information, and this Court imposes upon them the penalties of life imprisonment, one for each victim, and Segundo Manuel the further penalty of seventeen (17) years four (4) months and one (1) day for illegal possession of firearm, and to indemnify the heirs of Dominador Santos and Jesus Tolentino with the amount of P30,000.00 for each set of heirs. Lucila Manuel likewise ordered (sic) to pay indemnity for Jesus Tolentino's heirs jointly and solidarily with co-accused Segundo Manuel, plus costs.

"SO ORDERED." [4]

Lucila Manuel moved for the reconsideration of the decision. On 11 June 1987, fire gutted the 7th to 14th floors of the Quezon City Hall [5] destroying, among other things, the court records in the above cases. The defense moved for the reconstitution of the records and for the resolution of Lucila's motion for reconsideration. By agreement of the parties, the court, on 14 April 1989, ordered the reopening of the cases and set the re-arraignment of Lucila. [6] On 27 June 1989, the prosecution filed a motion to admit a reconstituted information which also included, this time, Lucila among the defendants for the murder of Santos. [7] On arraignment, Lucila pleaded not guilty to the charge. Meanwhile, the records of the case (pertinent to this appeal) were reconstituted. [8] On 19 April 1990, after hearing the argument raised in Lucila's motion for reconsideration and reviewing the reconstituted records, the trial court denied her motion and instead affirmed its 14 August 1987 decision and the supplemental decision of 27 August 1987. [9]

Segundo Manuel escaped from custody while attending a hearing relative to another crime. [10] The instant appeal was interposed solely by Lucila Manuel. [11]

From the records, it would appear that appellant Lucila Manuel, then around 20 years old, first met Jesus Tolentino, Jr., on or about 15 November 1984 at the Marbella Condominium in Pasay City. She was a receptionist at the Hot City Club and Restaurant. She, along with two other female employees of the club, was brought by their manager to the Marbella Condominium "to keep company" to a group of people, among them Tolentino, who were then indulged in some kind of gambling.

From this initial meeting until February 1985, Tolentino became Lucila's lover. He would see her almost daily and would, each time, hand over to her P1,500 that she could spend at a gambling table. [12] On 11 February 1985, Segundo Manuel, Lucila's first cousin, also became her lover even while she maintained her relationship with Tolentino. [13]

According to prosecution witness Teresa Manuel, on several occasions prior to 20 March 1985, she would be requested by Lucila to call up Tolentino to arrange their tryst. [14] On the particular evening of 20 March 1985, Dominador Santos, the driver of Tolentino, was instructed by the latter to fetch Lucila in San Bartolome, Novaliches, where she and Teresa were staying. Lucila, however, refused to go with Dominador, saying that she preferred to be fetched by Tolentino personally. At around 10:30 that evening, Santos returned with Tolentino. [15] Lucila corroborated this portion of Teresa's testimony. [16]

The main variance in the versions of the prosecution and defense evidence lies in what transpired after the arrival of Tolentino. According to prosecution witness Teresa Manuel, Lucila left San Bartolome, Novaliches, in the company of Segundo Manuel, Santos and Tolentino aboard the latter's Toyota car. At around 1:30 the following morning (21 March 1985), Lucila came back bringing with her Tolentino's bag the contents of which Lucila did not allow Teresa to see. Segundo Manuel arrived at about four o'clock that same morning and later left with Lucila. [17]

Lucila, on her part, denied having asked Teresa to call up Tolentino to arrange any meeting on the evening of 20 March 1985. Lucila said that Teresa on her own called up Tolentino because Tolentino had the habit of giving

some money to Teresa whenever he would come to visit them. Lucila also denied having gone out with Tolentino that fateful night of 20 March 1985. She insisted that while she was talking with Tolentino outside their house in San Bartolome, Novaliches, Segundo Manuel showed up and asked her to get inside the house. Lucila did and directly went to bed with her child and Teresa. At around 1:30 in the morning, Segundo arrived. She went with him to the house of a friend, a certain Dondi Tomlos, in Malate, Manila. Along the way, Segundo informed her that he had killed Santos and Tolentino in self-defense. At 8:30 in the morning, they went to the house of Segundo's mother, which was some thirty (30) meters away from the house of Dondi Tomlos.[18] Lucila left Malate at around ten o'clock in the morning and then proceeded back to San Bartolome, Novaliches. There, she relayed to Teresa what Segundo had told her while on their way to Malate.[19] Teresa corroborated this part of the testimony of Lucila.[20]

According to Teresa, fearful of the arrival of police officers, she and Lucila left the house in San Bartolome. Lucila proceeded to San Andres while she (Teresa) went to Queen's Row in Bacoor, Cavite.[21] Teresa testified that before she and Lucila left the house together, she first went to Capri, Novaliches, to fetch Marifi, a baby-sitter of Lucila's child, where she called up Vicky Tolentino, the victim's sister, to inform her of the incident. Teresa did not tell Lucila about this particular phone call.[22]

Segundo Manuel, for his part, did not deny that he had killed Santos and Tolentino but that he did so in self-defense. At first, he exonerated Lucila of any involvement in the crime. According to Segundo, after killing Santos and Tolentino, he drove to "Shakey's" in Malate where he stayed until closing time. He then proceeded to Novaliches and, seeing Lucila asleep, he went to bed. At about five o'clock in the morning of the following day, 21 March 1985, he left with Lucila for Malate and stayed in the house of Dondi until 12:00 noon. He sent Lucila back to Novaliches while he went to his mother's house in San Andres. Lucila later joined him, and they stayed together in his mother's house until 25 March 1985. On that day, he and Lucila went to Capri, Novaliches, to get Lucila's child from Marifi. It was on the way to Marifi's house that the police arrested the couple.[23]

On cross-examination, conducted two months later, Segundo retracted partly his previous testimony. This time, he asserted that on that fateful evening of 20 March 1985, while on his way home from a store, he chanced upon Lucila and Tolentino conversing. The latter requested a few minutes of his time. Segundo obliged. The three, Lucila, Segundo and Tolentino, then boarded the car of Tolentino, while Santos drove. Segundo sat beside Santos while Lucila was seated at the rear with Tolentino. They headed towards Baesa, Quezon City. During the ride, Tolentino accused Segundo of carrying on with Lucila which the latter both denied. When the car stopped somewhere in Quezon City, they alighted. At this point, Santos pulled out a gun. Segundo grappled with Santos for possession of the gun. Segundo succeeded in grabbing the gun from Santos and forthwith fatally shot Santos. With the help of Tolentino, Segundo placed the body of Santos at the compartment of the car. Segundo then aimed the gun at Tolentino and shot him twice in the head. Segundo left the scene of the crime with Lucila and went back to Novaliches to hide the clutch bag of Tolentino. They proceeded to Malate and then to Del Pan where he intended to dump the body of Santos. His plan was foiled on noticing a police checkpoint in Del Pan. He dumped the body, instead, in front of the office of the People's Journal.[24]

In this appeal, Lucila faults the trial court for relying too much on the testimony of Teresa Manuel, who, Lucila claims, is biased (citing *People v. Pampaluna*[25]) because she has been staying with Vicky Tolentino, the victim's sister, since 21 March 1985 (until at least the time when she took the witness stand). Lucila also contends that the trial court should not have believed the testimony of Segundo on cross-examination who, she asserts, evidently has become hostile to her upon learning of Lucila's having gotten pregnant while on detention. Lucila additionally points out that she and Segundo have retained the same counsel, Atty. Bince, who, however, has ceased to be Segundo's counsel before his cross-examination. Lucila contends that Atty. Bince could not have

possibly cross-examined his own previous client for its unethical implications (calling our attention to the case of *People v. Manlapaz*[26]). Lucila also disputes the finding by the trial court of conspiracy and the qualifying circumstance of evident premeditation. She claims that the plan to kill Tolentino has been hatched by Segundo alone.

In an appeal, where the culpability or innocence of an accused hinges on the issue of credibility of witnesses and the veracity of their testimonies, the trial court's findings are entitled to the highest degree of respect and will not ordinarily be disturbed by an appellate tribunal absent, of course, any clear showing that it has overlooked, misunderstood or misapplied some facts or circumstances of weight or substance which could affect the results of the case.[27] The reason for this rule, we have repeatedly explained, is because of a good chance on the part of the trial court, an opportunity that is not equally open to an appellate court, of being able to personally observe the expression of witnesses on the stand and their demeanor under questioning.[28]

Appellant's bare denials cannot prevail over positive testimony.[29] Such denials, in essence, merely constitute self-serving negative evidence which cannot generally be accorded greater evidentiary weight than the declarations of witnesses testifying on affirmative matters.[30] The fact, in this case, that prosecution witness Teresa Manuel stayed with the victim's sister immediately after the commission of the crime is not shown to have colored her testimony to a point of its being of no value. Most importantly, there is nothing on record to indicate any ulterior motive on the part of Teresa that would have urged her to wrongly implicate Lucila.[31]

The culpability of the appellant notwithstanding, we do not agree with the lower court in a number of its other conclusions. The elements of conspiracy, like the physical acts constituting the crime itself, must be proven beyond reasonable doubt. While conspiracy itself need not be established by direct evidence, for it may be inferred from the conduct of the accused before, during and after the commission of the crime, all taken together, however, the evidence therefor must reasonably be strong enough to show a community of criminal design.[32] The trial court has assumed the existence of conspiracy only from appellant's insistence that Tolentino personally should come to fetch her knowing that her other lover, Segundo, was around; from her presence during the commission of the crime without doing anything to prevent its commission, and from her subsequent flight with Segundo.[33] Uncontroverted, however, were also other undeniable facts, i.e., that Segundo was apparently unarmed when he agreed to join Tolentino for a ride on board the latter's car; that the shooting incident started after Santos, one of the victims, pulled out a gun and Segundo grappled for its possession; and that, succeeding, Segundo then fired the gun at Santos and subsequently, as aforesaid, also at Tolentino. Lucila's presence may have encouraged Segundo to kill Tolentino, or she may have even clearly cooperated with him in its commission but, beyond that, her own direct participation in the crime is not sufficiently shown.

Conspiracy transcends companionship.[34] Conspiracy arises when the offenders "come to an agreement concerning the commission of a felony and decide to commit it." [35] While it is not indispensable that the "act of agreement" be demonstrated, "the fact of agreement must nevertheless be convincingly shown." [36] It is essential that there must be unity of purpose and unity in the execution of the unlawful objective.[37]

In *People vs. Ubina, et al.*, [38] the Court elucidated:

"The problem as above indicated has received the attention of the Supreme Court of Spain in cases involving similar circumstances. In its decision of December 7, 1885, it held that a person who assists one who commits the crime of arson and who knows the latter's purpose, but whose participation in the arson is not disclosed, may not be considered as a principal because his acts were neither direct, nor absolutely necessary for the commission of the offense, nor did it induce the said commission (2 Viada, pp. 369-370). In another decision dated December 6, 1902, it said that where the accused accompanied the killer on a road where the victim was going to pass and with open knife encouraged him (the killer) with his presence, the former is not guilty of the

crime as principal because his participation is neither direct as defined in Article 13 of the Penal Code, nor does it constitute the inducement necessary to bring about the execution of the crime as defined in paragraph 2 of the same Article, or that of cooperation as defined in paragraph 3 thereof as his act is not indispensable in the commission of the crime (Ibid, pp. 383-384). In still another decision dated June 20, 1892, it held that the mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed (Ibid, pp. 455-456). In another one, dated January 27, 1887, it was held that the presence of the accused, who was armed with a stick, when his companion assaulted the victim with his own stick, makes him responsible only as accomplice for the reason that he only participated in the manner defined in Article 15 of the Penal Code, because he is not a principal by cooperation in the commission of the offense by acts, previous or simultaneous (Ibid, pp. 428-429).

“In the case at bar, other than being present and, perhaps, giving moral support no act of theirs may be said to constitute a direct participation in the acts of execution, and their presence and company was not necessary and essential to the perpetration of the murders. The act of Romero Pagulayan in following the deceased Carag as the latter went to Bañgag, and thus assuring the conspirators of his presence at said place, is also merely an act of complicity. Neither did they in any manner induce the commission of the offense; they joined the conspirators after the latter had decided to commit the act. Under the circumstances, they do not fall under any of the three concepts defined in Article 17 of the Revised Penal Code, and may only be considered guilty as accomplices. The same conclusion is strengthened by the principle that when doubt exists as to whether persons acted as principals or accomplices, the doubt must be resolved in their favor and they should be held guilty only as accomplices (People vs. Tamayo, 44 Phil, 38; People vs. Bantagan, 54 Phil. 834).”

The circumstances obtaining in the case at bench are not that much in variance as, or different from, the above exemplifications given by the Court. All told, we must, as we hereby, so hold appellant Lucila to be no more than a mere accomplice in the commission of the offense.[39]

The crime committed is not murder qualified by treachery and evident premeditation. We must here stress that, other than Segundo, no eyewitnesses have testified on the perpetration of the crime. Segundo’s testimony itself is bereft of anything to indicate the attendance of such qualifying circumstances. We have consistently held that where no particulars are shown on the manner in which the aggression has been made or how the act which resulted in the death of the victim has begun and developed, treachery cannot be appreciated to qualify the killing.[40] Evident premeditation may not similarly be so considered where, as here, there is no direct evidence of any plan or preparation to kill the victim.[41]

Nighttime by itself is not an aggravating circumstance. Nocturnity must be shown that it has been especially sought by the offender or been taken advantage of to facilitate the commission of the offense or to ensure his immunity.[42] There being no proof thereof, the aggravating circumstance of nocturnity should also be disallowed.

In the absence of the qualifying circumstances of treachery and evident premeditation, the crime consummated is one of homicide, appellant so being guilty thereof as an accomplice. Under Article 249 of the Revised Penal Code, the penalty for homicide is reclusion temporal. Article 52 of the same Code provides that the penalty imposable on an accomplice is one degree lower (than that prescribed against a principal) which, in this case, is prision mayor. There being no mitigating or aggravating circumstances to consider, and applying the Indeterminate Sentence Law, the whole range of the penalty imposable by law on appellant is an indeterminate sentence of anywhere within prision correccional, as minimum, to within the medium period of prision mayor, as maximum. In line with the latest policy of this Court, the indemnity for the heirs of the deceased should be increased to P50,000.00.

WHEREFORE, the judgment of the lower court appealed from is MODIFIED insofar as sole appellant Lucila Manuel is concerned who is hereby found guilty as an accomplice in the commission of homicide for the killing of Jesus Tolentino, Jr., and is so sentenced to undergo imprisonment to an indeterminate period of a minimum of five (5) years of prision correccional to a maximum of nine (9) years and four (4) months of prision mayor; the payment by way of indemnity for the death of the victim is raised to P50,000.00.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

[1] Rollo, p. 12.

[2] Presided by Judge Oscar L. Leviste.

[3] Rollo, p. 15.

[4] Rollo, p. 18.

[5] Record, p. 1.

[6] Ibid., p. 35.

[7] Ibid., pp. 40-44.

[8] Ibid., p. 101.

[9] Ibid., p. 111.

[10] Appellant's Brief, p. 25.

[11] Three docket numbers were assigned to the appeal in view of the three informations involved in the crime.

[12] TSN, October 4, 1985, pp. 5-11.

[13] Ibid., pp. 12-13.

[14] TSN, June 14, 1985, pp. 8-12.

[15] TSN, May 27, 1985, pp. 15-16.

[16] TSN, October 4, 1987, pp. 16-17; pp. 21-22.

[17] TSN, May 27, 1985, pp. 17-27.

[18] TSN, October 4, 1985, pp. 22-31.

[19] Ibid., pp. 32-33.

[20] TSN, May 27, 1985, pp. 28-29; TSN, June 14, 1985, pp. 27-31.

[21] TSN, May 27, 1985, p. 33.

[22] TSN, June 14, 1985, pp. 33-37.

[23] TSN, December 11, 1985, pp. 2-8.

[24] TSN, February 10, 1986, pp. 3-22.

[25] 96 SCRA 787.

[26] 183 SCRA 300.

[27] People v. Lase, 219 SCRA 584.

[28] People v. Divina, 221 SCRA 209.

[29] People v. Sarence, 214 SCRA 780.

[30] People v. Mendoza, 210 SCRA 517.

[31] People v. Villa, 221 SCRA 661.

[32] People v. Degoma, 209 SCRA 266.

[33] People v. Garcia, 215 SCRA 349.

[34] People vs. Padrones, supra, citing People vs. Custodio, 47 SCRA 289.

[35] Article 8, paragraph 2, Revised Penal Code.

[36] People vs. Padrones, 189 SCRA 496.

[37] People vs. Delgado, 77 Phil. 11.

[38] 97 Phil. 515, 533-534.

[39] Art. 18. Accomplices. - Accomplices are those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

[40] People v. Castor, 216 SCRA 410.

[41] People v. Wenceslao, 212 SCRA 560.

[42] People v. Pasiliano, 215 SCRA 163.

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