

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LUCILO BERNARDO Y MENDOZA AND ANTONIO FAVOR Y BUCOY, ACCUSED-APPELLANTS.

G.R. Nos. 97141-42. May 24, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

This is an appeal from the judgment of the Regional Trial Court, Branch 13, Zamboanga City, convicting Lucilo Bernardo and Antonio Fabor in Criminal Case No. 2581 of murder and in Criminal Case No. 2582 of frustrated murder.

The Information filed in Criminal Case No. 2581(9739) reads as follows:

"That on or about February 18, 1990, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a Batangas knife, conspiring and confederating together, mutually aiding and assisting with one another, by means of treachery and with intent to kill, did then and there wilfully, unlawfully and feloniously, assault, attack and stab with the use of said weapon that they were then armed with, at the person of ARMANDO A. MARCOS, thereby inflicting mortal stabbed wounds upon the latter's person which directly caused his death to the damage and prejudice of the heirs of said victim."

"CONTRARY TO LAW."

The information in Criminal Case No. 2582(9740) reads as follows:

"That on or about February 18, 1990, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a Batangas knife, conspiring and confederating together, mutually aiding and assisting with one another, with treachery and with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and stab with the use of the said weapon that they were armed with, the person of ARTEMIO FERNANDO y ILACIO, thereby inflicting upon the latter's person serious stab wound which ordinarily would cause his death, thus, performing all the acts of execution which would have produced the crime of MURDER, as a consequence, but which nevertheless did not produce it by reason of some cause or causes independent of the will of the above-named accused, that is, said Artemio Fernando y Ilacio was able to run away from the scene of the incident, and by the timely and proper medical attention rendered to him which prevented his death, to the latter's damage and prejudice."

"CONTRARY TO LAW." (Rollo, p. 15-16)

Both the accused pleaded "not guilty" to the offenses charged in the two informations. After a joint trial, the trial court rendered judgment, with the following decretal portions:

"WHEREFORE, in view of all the foregoing, the Court finds both the accused LUCILO BERNARDO y MENDOZA and ANTONIO FAVOR y BUCOY guilty beyond reasonable doubt as principals of the crimes in both Informations for MURDER and FRUSTRATED MURDER and hereby sentences each of them to suffer

the following penalties:

"1). For the Crime of Murder in Crim. Case No. 2581(9739)

Reclusion Perpetua or Life Imprisonment and to indemnify in proportionate amount the heirs of the deceased-victim ARMANDO MARCOS in the sum of P30,000.00.

2). For the Crime of FRUSTRATED MURDER in Crim. Case No. 2582(9740)

The indeterminate penalty of EIGHT (8) YEARS and TWENTY (20) DAYS of PRISION MAYOR as the minimum to FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY (20) DAYS of RECLUSION TEMPORAL as the maximum

and to pay the costs in both cases." (Decision, pp. 7-8; Rollo, pp. 21-22)

We accept as correct the operative facts as found by the trial court and as stated by the appellee in his brief. These facts are:

"A barrio dance was held in the evening of February 17, 1990 at Barangay Cabaluay, Zamboanga City. Among those present were private complainant Artemio Fernando and his cousin Armando Marcos. The appellants Lucilo Bernardo and Antonio Fabor were also present in the said dance. Around midnight, Artemio Fernando and Armando Marcos left the dance and proceeded to go home. After walking for about 100 meters from the dance place, they were taken aback as they were waylaid by Lucilo Bernardo and Artemio Fabor whom Fernando easily recognized. Bernardo and Fabor, for no reason at all, hurled sharp stones at them and Fernando was instantly hit at his lower back portion. Noticing that Fabor was armed with a bladed weapon, Fernando ran but Fabor chased him and stabbed him hitting the lower left portion of his nape. When he turned, he saw his cousin Armando Marcos being held by Bernardo pleading for his life. He ran as fast as he could until he reached a billiard hall where he sought help. After which he proceeded to a doctor for treatment. (TSN, May 16, 1990, pp. 7-16)

PFC Quiterio Cuatrocruz, an investigator stationed in Manicahan Police Sub-Station was also presented by the prosecution. He testified that immediately after receiving reports regarding the stabbing incident he proceeded to the scene of the crime. They found thereat the body of Armando Marcos with stab wounds on different parts of his body. He then had the body taken for a post-mortem examination. Thereafter, he proceeded to the place of Lucilo Bernardo having been earlier tipped that Bernardo was responsible for the crime. Cuatrocruz was able to talk to the mother of the accused but she refused to surrender her son to him. Cuatrocruz therefore sought the assistance of the Barangay Captain of that place (TSN, May 17, 1990, pp. 3-7).

Barangay Captain Hipolito Solis for his part testified that he was able to convince Bernardo's mother to surrender his son to him. When he spoke to Bernardo, the latter admitted having stabbed Marcos with a knife. He voluntarily turned over the knife to Solis. Having named Antonio Fabor as his companion, Bernardo accompanied Solis to the house of Fabor. Solis spoke to Fabor who at first denied participation in the crime but when he saw Bernardo, he finally admitted to Solis that he was indeed with Bernardo during the incident. Solis then asked Fabor to dress up and if possible for him to use the same t-shirt he had on during the incident. When Fabor returned, he informed the Barangay Captain that he could not wear the same shirt as it was soaked with blood. They then proceeded to the Manicahan Police Sub-Station. (TSN, May 17, 1990, pp. 30-38)

Lastly, the prosecution presented Assistant City Health Officer Efren Apolinario who conducted the post-mortem examination on the body of Armando Marcos. He testified that Marcos' death was caused by internal hemorrhage secondary to multiple stab wounds. He further stated that the deceased sustained twelve stab wounds." (Appellee's Brief, pp. 5-8; Rollo, pp. 83-86)

In their appeal, appellants simply reiterated the denials they made in open court of the charges against them, thus:

"Atty. Castillo:

Q. Mr. Bernardo, you are accused of the crime of murder and attempted murder, please tell this Honorable Court, Mr. Bernardo did you or did you not kill Mr. Armando Marcos?

A. No, sir.

Atty. Castillo:

Q. We have no further question your Honor.

x x x x x x x x

Atty. Castillo:

Q. Mr. Fabor, you are accused of the crimes of Murder and Frustrated Murder, please tell this Honorable Court?

A. Yes, sir.

Atty. Castillo:

Q. Tell this Honorable Court, did you or did you not stab Mr. Artemio Fernando?

A. No, sir.

Atty. Castillo:

Q. Did you or did you not kill Armando Marcos?

A. No, sir.

Atty. Castillo:

Q. We have no further question Your Honor."

(TSN, May 23, 1990, pp. 10-13)

In their Brief, appellants fault the trial court:

I

"X X X IN FINDING THE EXISTENCE OF TREACHERY WHICH QUALIFIED THE OFFENSE TO MURDER.

II

X X X IN CONVICTING ANTONIO FAVOR FOR FRUSTRATED MURDER.

III

X X X IN ACCEPTING THE TESTIMONY OF ARTEMIO FERNANDO AS GOSPEL TRUTH WHEN HIS EARLIER DECLARATION TO THE POLICE INVESTIGATOR, WHICH IS PART OF THE RES GESTAE MATERIALLY AND SERIOUSLY CONTRADICT HIS TESTIMONY.

IV

X X X IN FINDING THE EVIDENCE OF THE PROSECUTION SUFFICIENT TO ESTABLISH BEYOND REASONABLE DOUBT THE GUILT OF BOTH ACCUSED FOR THE CRIMES CHARGED, AND, IN CONVICTING THEM THEREFOR.

V

X X X IN FINDING THE EXISTENCE OF CONSPIRACY BETWEEN THE ACCUSED IN THE INSTANT CASE." (Appellant's Brief pp. 1-2; Rollo, pp. 35-36)

We shall first discuss the last three assignments of errors, which all deal with the credibility of the complaining witness, Artemio Fernando.

To discredit the testimony of Artemio Fernando, the defense pointed out before the trial court that in his affidavit, Exhibit "1," executed before the police, Fernando stated that he saw Armando Marcos being chased by appellant Bernardo while in open court, he testified that Marcos was held by said appellant. The defense also contended that Fernando reported to the police investigator, Quiterio Cuatrocruz that it was appellant Bernardo who killed Marcos but in his sworn statement, Exhibit 2, he stated that it was appellant Fabor who was the assailant. (Appellants' Brief, pp. 12-14; Rollo, pp. 46-48) The trial court dismissed as "not crucial" the alleged inconsistency between Fernando's testimony in open court on one hand and his affidavit, Exhibit 1, and the police report, Exhibit 2, on the other hand, attributing it to the inaccuracy of the translation of Fernando's testimony in the Chavacano dialect to English. (Decision, p. 7; Rollo, 21) Besides, Fernando's statement in the affidavit that he saw Marcos being chased by appellant Bernardo and his statement in open court that he saw Marcos being held by said appellant, can be reconciled inasmuch as it referred to sequential actions, i. e. the victim was chased first and after being overtaken, was held by appellant Bernardo.

The defense also makes capital out of the allegation in the information that the two accused were "armed with a Batangas knife," meaning that there was only one weapon used in the killing. So the defense argues, in an apparent attempt to get appellant Fabor exculpated, that if appellant Fabor chased Fernando while Marcos was being held by appellant Bernardo and appellant Fabor gave up the chase when he was about 40 meters from the place where appellant Bernardo was holding Marcos, appellant Fabor could not have been the one who inflicted the fatal wound on Marcos. The defense reasons out that Fernando was able to get the help of several persons inside the billiard hall, who forthwith chased appellant Fabor, and that the latter could not have inflicted the 12 wounds sustained by Marcos while he was running away. (Appellants' Brief, pp. 16-18; Rollo, pp. 50-52)

There is no need for the prosecution to pinpoint who of the two appellants inflicted the fatal wounds on Marcos after it was established by evidence that a conspiracy existed between appellants to inflict the injuries on the victims. Appellants waited for their victims, in a place which the latter would pass on their way home. Appellants started throwing stones simultaneously after the victims passed by the place where appellants were waiting. Each of the appellants performed his part to carry out the criminal enterprise. While appellant Bernardo held on to Marcos, appellant Fabor chased Fernando. The trial court, after hearing the testimony of the prosecution witness, found that the appellants acted in concert to achieve a common purpose.

In their first and second assigned errors, appellants seek to negate the attendance of alevosia, which the trial court used to qualify the offenses charged to murder and frustrated murder. (Appellant's Brief, pp. 3-11; Rollo, pp. 38-45)

Entrenched in our jurisprudence is the rule that the circumstances which would qualify the killing to murder must be indubitably proven as the crime itself (People v. Vicente, 146 SCRA 347 [1986]). In alevosia, it must first be

proven that the offender consciously adopted the particular means and methods to ensure the execution of the crime without risk to himself (*People v. Mabuhay*, 185 SCRA 675 [1990]).

In the case at bar, appellants initiated their attack on their victims by throwing stones at them. The stoning therefore forewarned the victims of the impending attack and gave them the chance to either prepare and defend themselves or to run away.

On cross-examination, Fernando testified that he was confident that he and Marcos could outrun their aggressors and that they were not in any danger. (TSN, May 16, 1990, p. 14)

As testified to by Dr. Efren Apolinario, a medico-legal expert, the wounds sustained by Marcos were on the front portion of his body except for the wound sustained in his right forearm and right deltoid region. (TSN, May 16, 1990, pp. 3-5)

Considering that Fernando testified that the stoning came from behind them and the wounds sustained by Marcos were inflicted frontally, it can be deduced that Marcos stopped on his tracks and turned about to face his assailant, instead of running away.

With respect to the wound sustained by Fernando, it appears that the same did not incapacitate him for more than one day as he was able to report the incident to the Manicahan Police Station shortly after being treated at the Zamboanga General Hospital. (TSN, May 16, 1990, p. 12) If the wound was serious, Fernando could not have run as fast and as far as he had described. Likewise, if appellant Fabor intended to kill Fernando, he could have stabbed the latter more than once or could have pursued him with more vigor.

In the absence of the qualifying circumstance of *alevosia*, appellants can only be convicted of homicide and slight physical injuries. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. There being no mitigating nor aggravating circumstance present, the maximum penalty to be imposed on the appellants should be within the range of *reclusion temporal* in its medium period or 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law, the minimum period shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for homicide which is *prision mayor* or 6 years and 1 day to 12 years.

The penalty for slight physical injuries under Article 266 of the Revised Penal Code is *arresto menor*.

The indemnity of P30,000 should be increased to P50,000 (*People v. Yeban*, 190 SCRA 409 [1990]).

WHEREFORE, this Court finds appellants guilty only of homicide and sentences them to the indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum, and to pay jointly and severally the heirs of Armando Marcos the sum of P50,000.00 as indemnity.

This Court also finds appellants guilty of the crime of slight physical injuries, and sentences them to suffer the penalty of *arresto menor*.

SO ORDERED.

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

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