

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. VICENTE PACAÑA Y SENARLO, BERNARDO PACAÑA, VIRGILIO PACAÑA AND VICTORIANO PACAÑA, ACCUSED-APPELLANTS.

G.R. Nos. 97472-73. November 20, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For the death and near death of Raul Leyson and Felizardo del Solo, respectively, accused-appellants were charged with murder and frustrated murder, based on the following facts:

At around 5:30 p.m. on January 28, 1979, after playing basketball, Edwin Sormillon passed by a store along V. Rama Avenue, Cebu City. Accused-appellant Vicente Pacaña was at the store drinking with friends. He invited Edwin for a drink but the latter begged off as he had to go home to take a bath. When he got home, Edwin was told by his sister that Vicente maligned her and challenged their father to a fight. Edwin immediately went out to talk to Vicente. Their confrontation led to a fistfight.

Later, a friend of Edwin, Felizardo del Solo, accompanied by his cousin, Raul Leyson, tried to talk to Vicente to settle his dispute with Edwin. Vicente brought Felizardo and Raul upstairs to accused-appellant Victoriano Pacaña's house. At the balcony, Felizardo was met by Victoriano, Virgilio and Bernardo Pacaña. Felizardo asked Vicente what was the cause of his quarrel with Edwin. Vicente suddenly hit Felizardo in the face. Felizardo hit him back. While the two were fighting, Bernardo stabbed Felizardo but he was able to parry it, and was injured on the right wrist. Bernardo again tried to stab Felizardo, this time hitting him on the chest. Meanwhile, Raul tried to stop the fight and was struck at the back of the neck with a lead pipe by Victoriano. This caused Raul to stagger forward. Bernardo, Vicente and Virgilio ganged up on him and stabbed him. He then fell backwards, and Victoriano also stabbed him at the back. Suddenly, the lights went off. Felizardo slowly went downstairs and met Edwin Sormillon at the yard. Together, they boarded a jeepney to the Cebu City Medical Center. He was later transferred to another hospital where he was treated for several days and later released.

Raul was rushed to the hospital, where he was pronounced dead on arrival.

On September 10, 1979, accused-appellant Vicente was charged with homicide for the killing of Raul Leyson. The Information was later amended, wherein the three other accused-appellants were included and the crime charged was elevated to murder. The Amended Information, docketed as Criminal Case No. CU-4170, reads:

That on or about the 28[th] day of January, 1979, at about 6:30 o'clock in the afternoon in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with knives, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly attack, assault and use personal violence upon one Raul Leyson by stabbing said Raul Leyson hitting him on the different parts of his body, thereby inflicting upon him the following injuries: x x x and as a consequence of which said Raul Leyson died a few hours later.

That the crime was committed with the attendance of the aggravating circumstances of the accused taking advantage of superior strength the deceased unarmed at the time.[1]

Another Information was filed on the same date against the four accused-appellants for the frustrated murder of Felizardo Del Solo. The Information, docketed as Criminal Case No. CU-4908, reads:

That on or about the 28[th] day of January, 1979, at about 6:30 o'clock in the afternoon in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused armed with knives, conniving and confederating together and mutually helping one another, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there suddenly attack, assault and use personal violence upon one Felizardo del Solo, by stabbing him on different parts of his body, thereby inflicting upon him the following injuries: x x x which injuries under ordinary circumstances would cause the death of the victim, 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 causes independent of the will of the herein accused, that is, by the timely and able medical assistance rendered to said Felizardo del Solo, which prevented his death.[2]

Accused-appellant Vicente appeared at the arraignment and pleaded not guilty. The other accused had not yet been apprehended. Invoking his right to speedy trial, Vicente moved for a separate trial, which the trial court granted. Later, accused-appellants Bernardo and Virgilio were arrested. They pleaded not guilty at their arraignment. Victoriano posted bail and was granted provisional liberty.[3] He, too, pleaded not guilty.

After trial, the Regional Trial Court of Cebu, Branch 11, rendered judgment as follows:

"WHEREFORE, in view of all the foregoing, the accused VICENTE PACAÑA, BERNARDO PACAÑA, VICTORIANO PACAÑA AND VIRGILIO PACAÑA are all found GUILTY beyond reasonable doubt of the crimes of MURDER and FRUSTRATED MURDER and hereby sentences each to a penalty of imprisonment of RECLUSION PERPETUA for the murder and to indemnify, jointly and severally, the heirs of Raul Leyson, the sum of P30,000.00. In the case of the Frustrated Murder, and applying the Indeterminate Sentence Law, each of the accused is hereby sentenced to suffer a penalty of imprisonment of 10 years of prision mayor as minimum and 17 years of reclusion temporal as maximum, and to indemnify, jointly and severally, Felizardo del Solo the sum of P10,000.00 in the form of damages.

No pronouncement as to costs."[4]

All the accused appealed.

During the pendency of their appeal, appellants Vicente, Bernardo and Virgilio, who are confined at the National Bilibid Prison, filed a motion to withdraw their appeal. In a Resolution dated August 30, 1999, the Court, after confirming the voluntariness of their withdrawal of appeal, granted the motion insofar as Vicente and Virgilio were concerned.[5] Accused-appellant Bernardo, on the other hand, was required to confirm the voluntariness of his motion to withdraw appeal. However, a return from the Bureau of Corrections shows that he died on April 5, 1999.[6]

The death of an accused extinguishes his criminal liability even if his death should occur during the pendency of his appeal.[7] Accused-appellant Bernardo's death not only extinguished his criminal liability concerning the personal penalties but also whatever pecuniary penalties have been imposed on him, considering that he died before final judgment, as provided in Article 89 (1) of the Revised Penal Code:

Art. 89. How criminal liability is totally extinguished. --- Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

X X X X X X X X.

Both Bernardo's civil and criminal liability were extinguished by his death.[8]

Where a person is charged with homicide, for instance, the civil liability for indemnity is based solely on the finding of guilt. If he is acquitted because of self-defense, the heirs of the deceased have no right to indemnity. Should the offender die before final judgment, their right to indemnity is likewise extinguished as there is no basis for the civil liability. Civil liability exists only when the accused is convicted by final judgment.[9]

Therefore, the appeal of accused-appellant Bernardo Pacaña should be dismissed. Only the appeal of Victoriano Pacaña is left for adjudication.

At the outset, the Court has noted that this case contains no record of Victoriano Pacaña's commitment in the National Penitentiary. It appears that said accused-appellant is not confined therein.[10] The records reveal that accused-appellant Victoriano posted bail before the trial court. However, it does not appear that after his and his co-appellants' conviction, his bail was cancelled. The Rules prevailing at the time of appellants' conviction in 1990 provides that, "an accused who is charged with a capital offense or an offense punishable by reclusion perpetua shall no longer be entitled to bail as a matter of right even if he appeals the case to this Court since his conviction clearly imports that the evidence of his guilt of the offense charged is strong." [11] In consonance therewith, this Court issued Administrative Circular No. 2-92 dated January 20, 1992, which explicitly states:

X X X X X X X X

3) When an accused charged with a capital offense or an offense which under the law at the time of its commission and at the time of application for bail is punishable by reclusion perpetua and is out on bail, and after trial is convicted by the trial court of the offense charged, his bond shall be cancelled and the accused shall be placed in confinement pending resolution of his appeal.

As to criminal cases covered under the third rule abovesited, which are now pending appeal before this Court where the accused is still on provisional liberty, the following rules are laid down:

1) This Court shall order the bondsman to surrender the accused within ten (10) days from notice to the court of origin. The bondsman thereupon, shall inform this Court of the fact of surrender, after which, the cancellation of the bond shall be ordered by this Court;

2) The RTC shall order the transmittal of the accused to the National Bureau of Prisons thru the Philippine National Police as the accused shall remain under confinement pending resolution of his appeal;

3) If the accused-appellant is not surrendered within the aforesaid period of ten (10) days, his bond shall be forfeited and an order of arrest shall be issued by this Court. The appeal taken by the accused shall also be dismissed under Section 8, Rule 124 of the Revised Rules of Court as he shall be deemed to have jumped his bail. (Emphasis supplied)

The trial court should have ordered the commitment of accused-appellant Victoriano to the New Bilibid Prisons during the pendency of his appeal.

The appeal is based on the following assignment of errors:

I

THE TRIAL COURT ERRED IN SWEEPINGLY STATING IN THE ASSAILED DECISION/JUDGMENT THAT "TAKING THE ENTIRE EVIDENCE IN ITS TOTALITY, THE COURT IS OF THE OPINION, AND SO HOLDS, THAT THERE WAS CONSPIRACY AMONG THE FOUR ACCUSED IN THE KILLING OF RAUL LEYSON AND THE INFLICTING OF THE SERIOUS INJURIES SUFFERED BY

FELIZARDO DEL SOLO," CONSIDERING THAT THERE IS ABUNDANCE OF PROOF ON RECORD TO THE CONTRARY.

II

THE TRIAL COURT ERRED IN FINDING ALL THE FOUR (4) ACCUSED GUILTY "BEYOND REASONABLE DOUBT" OF THE CRIME OF "MURDER AND FRUSTRATED MURDER," AND IN IMPOSING ON ALL OF THEM THE PENALTIES AND INDEMNITIES STATED IN THE DISPOSITIVE PORTION OF THE ASSAILED JUDGMENT/DECISION OF OCTOBER 26, 1990.

III

THE LOWER COURT ERRED IN SAYING THAT THE TESTIMONY OF ONE ANTONINA HERASMEO FOR THE DEFENSE (SHE BEING THE SISTER OF BIENVENIDA, WIFE OF ACCUSED VICTORIANO PACAÑA), "SHOULD BE TAKEN WITH SOME MISGIVING AS SHE IS AN INTERESTED WITNESS OUT TO PROTECT HIS BROTHER-IN-LAW VICTORIANO," CONSIDERING THAT FELIZARDO DEL SOLO IS AN ADMITTED "FIRST COUSIN" OF RAUL LEYSON AND THAT THE COURT SHOULD HAVE ALSO TAKEN INTO CONSIDERATION THAT IT SHOULD HAVE ALSO TAKEN CAUTION OF HIS TESTIMONY DUE TO DIRECT BLOOD RELATIONSHIP AS DISTINGUISHED FROM AFFINITY ONLY IN THE CASE OF ANTONINA HERASMEO.

Victoriano Pacaña's conviction must stand. The killing of a person with the attendant qualifying circumstances, such as treachery, constitutes murder in its consummated stage. In cases where the victim did not die for causes independent of the will of the perpetrator, the murder is considered frustrated. The gravamen of the two charges herein - murder and frustrated murder - were proven against the remaining appellant Victoriano. He threw the first blow on the deceased Raul by striking the latter at the back of the neck with a lead pipe, without warning. Raul staggered forward and was rendered defenseless. In that position, he became vulnerable to the other three accused-appellants, who proceeded to stab him. As found by the medico-legal officer, Raul sustained fatal wounds on the right chest and the left part of his back. The other wounds sustained by Raul though not fatal contributed to the hemorrhage that caused his death.[12] With respect to Felizardo, the penetrating stab wound on the chest was fatal and could have caused his death had it not been for the timely medical attention.[13]

The suddenness and severity of the attack on Raul and Felizardo constitute treachery.[14] Moreover, the congruence of these acts show that appellants acted in conspiracy. Proof of previous agreement to commit the crime is not essential, it being sufficient that the malefactors acted in concert pursuant to the same objective.[15] Due to conspiracy, the act of one is the act of all.[16]

Against the strong evidence of the prosecution, appellants could only offer denial and alibi. Settled is the rule, however, that such defenses which are inherently weak in nature cannot be given credence in the light of positive identification,[17] which in this case was made by no less than one of the surviving victims, Felizardo:

Q

When did you first when I come to know that Victoriano had a pipe with him?

A

After I was already hit was leaning I saw Victoriano had a pipe because the distance was very near.

Q

And at that very moment that was the time Victoriano hit Raul at his neck?

A

Yes.

x x x x x x x x

Q

And Virgilio and Bernardo were directly in front of you?

A

Yes.

Q

And this is only about 2 meters by 2 meters?

A

Yes, it was only small.

Q

Is it not a fact that you were most concerned of your safety?

A

Yes, I kept on pressing my chest.

Q

And since, according to you, it was Bernardo who stabbed you three times, your attention was more focused on Bernardo that Bernardo might stab you again?

A

When Bernardo stabbed me I parried and I was wounded on my wrist and so Bernardo made another thrust and I was hit on my chest. That was the time when I was able to move back and faced Raul and that was the time when Victoriano hit Raul with a pipe.

Q

Did you actually see Victoriano or you just saw Raul just leaning forward?

A

Yes, I saw Victoriano hit Raul and Raul seemed to fall so I went down.[18] (*Italics supplied*).

If the accused was positively identified by the victim himself who harbored no ill motive against the former, the defense of alibi must fail.[19] No ill motive can be attributed to the prosecution witnesses. In any event, proof of motive is not indispensable for conviction when there is positive identification.[20] Motive assumes significance only when there is no showing of who the perpetrator of the crime might be.[21] Bare denial is a negative declaration, which deserves no consideration and cannot prevail over the affirmative testimony of the victim, which is corroborated by evidence.[22] It cannot survive positive identification by the victim. Affirmative testimony is far stronger than a negative one, especially when it comes from the mouth of a credible witness.[23] Denial is inherently weak, can easily be fabricated and, to warrant acquittal, must be proved by clear and convincing evidence. The trial court has a valuable advantage of observing the witness' deportment and manner of testifying, their "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or

the scant or full realization of an oath," all of which are useful aids for an accurate determination of a witness' honesty and sincerity.[24]

At the time of the commission of these crimes in 1979, murder carried a penalty of reclusion temporal in its maximum period to death; for frustrated murder, the penalty one degree lower should be imposed, which is prision mayor maximum to reclusion temporal medium.[25] In such complex penalty comprising of three distinct penalties, each of these penalties shall form a period in accordance with Article 77 of the Revised Penal Code. There being neither mitigating nor aggravating circumstances attending, the penalty shall be imposed in its medium period pursuant to Article 64(1), which in this case is reclusion perpetua. The Indeterminate Sentence Law is not applicable when the penalty actually imposed is reclusion perpetua.[26]

The trial court erred in imposing the penalty for frustrated murder. There being neither mitigating nor aggravating circumstance, the medium period of the penalty shall be imposed, namely, reclusion temporal minimum. The maximum term of seventeen years fixed by the trial court is within reclusion temporal medium. Under the Indeterminate Sentence Law, the maximum term of the penalty should be that which, "in view of the attending circumstances, could be properly imposed;" and the minimum term which shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." Thus, the indeterminate penalty imposed on accused-appellant for frustrated murder should be from six years and one day of prision mayor, as minimum to twelve years and one day of reclusion temporal, as maximum.

An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.[27] Hence the reduction of the indeterminate penalty for the frustrated murder case shall affect not only the remaining appellant but also the others who withdrew their appeal.

With respect to the civil liability, the trial court held accused-appellants solidarily liable for civil indemnity of P30,000.00 to the heirs of Raul Leyson, and P10,000.00, to Felizardo del Solo. The civil indemnity for the deceased victim should be increased to P50,000.00 in line with latest jurisprudence.[28] As for the civil indemnity in the frustrated murder case, the same is increased to P30,000.00. Both awards are given without need of proof other than the commission of the crime and the culprits' liability therefor. Although, the higher indemnities granted herein appears not favorable to those who withdrew their appeal, they shall all be held solidarily liable for the higher amounts since they are not in the form of penalty. The medical and hospital expenses in the amount of P4,000.00 incurred by Felizardo del Solo was duly established by evidence on record. However, lost earnings cannot be awarded for lack of factual basis.

WHEREFORE, the trial court's decision convicting accused-appellant Victoriano Pacaña is AFFIRMED with the following MODIFICATIONS. Accused Victoriano Pacaña, Vicente Pacaña and Virgilio Pacaña are found guilty of the murder of Raul Leyson in Criminal Case No. CV-4170, and sentenced to suffer the penalty of reclusion perpetua. Likewise, said accused are found guilty of the frustrated murder of Felizardo del Solo in Criminal Case No. CV-4908, and sentenced to suffer an indeterminate penalty of six years and one day of prision mayor, as minimum, to twelve years and one day of reclusion temporal, as maximum. They are also ordered, jointly and severally, to pay the heirs of Raul Leyson, civil indemnity in the amount of fifty thousand pesos (P50,000.00), and to pay Felizardo del Solo civil indemnity in the amount of thirty thousand pesos (P30,000.00), and actual damages in the amount of four thousand pesos (P4,000.00).

Pursuant to Administrative Circular No. 2-92, let a Warrant of Arrest be issued against Victoriano Pacaña. His bail is ordered FORFEITED.

The appeal with respect to the deceased appellant Bernardo Pacaña is DISMISSED, his liabilities having been

extinguished by his death.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Rollo, pp. 14-15.

[2] Rollo, pp. 30-31.

[3] RTC Records, pp. 320-322.

[4] Decision dated October 26, 1990 penned by Judge Pedro C. Son in Criminal Case Nos. CU-4170 and CU-4908; RTC Records, p. 546.

[5] Rollo, p. 283.

[6] Certificate of Death; Rollo, p. 294.

[7] Revised Penal Code, Article 89(1).

[8] *People v. Yanson-Dumancas*, G.R. No. 133527-28, December 13, 1999; *People v. Sambulan*, 289 SCRA 500 (1998); *People v. Alison*, 44 SCRA 523 (1972).

[9] I Reyes, *THE REVISED PENAL CODE*, p. 828 (1998).

[10] Rollo, p. 287; Certification from the Chief of Administrative Division of the Bureau of Corrections.

[11] See *Padilla v. CA*, 328 Phil. 1266 (Resolution) citing *People v. Ricardo Galvez*, G.R. L-92560 (En Banc Resolution), October 15, 1991.

[12] TSN, April 18, 1980, pp. 56-57.

[13] TSN, July 10, 1981, p.p. 150-151.

[14] *People v. Base*, G. R. No. 109773, March 30, 2000.

[15] *People v. Sazon*, 189 SCRA 713 (1990).

[16] *People v. Jose*, 37 SCRA 450 (1971).

[17] *People v. Lopez*, G.R. No. 131151, August 25, 1999 citing *People v. Andal*, 344 Phil. 889; *People v. Garcia*, 281 SCRA 463 (1997); *People v. Abellanos*, 264 SCRA 722 (1996); *People v. Alcantara*, 240 SCRA 122 (1995).

[18] TSN, March 2, 1981, pp. 23-25.

[19] *People v. Sta. Ana*, 291 SCRA 188 (1998).

[20] *People v. Sandoval*, 254 SCRA 436 (1996).

[21] *People v. Padlan*, 290 SCRA 388 (1998) cited in *People v. Lozada*, G.R. No. 130589, June 29, 2000.

[22] *People v. Ramirez*, 266 SCRA 335 (1997); *People v. Francisco*, 258 SCRA 558 (1996); *People v. Atop*, 286 SCRA 157 (1998).

[23] *People v. Diasanta*, G.R. No. 128108, July 6, 2000 citing *People v. Digno, Jr.*, 250 SCRA 237 (1995).

[24] *People v. Diaz*, 262 SCRA 723 (1996) and *People v. Delovino*, 247 SCRA 637 (1995).

[25] Revised Penal Code, Article 248, in relation to Article 6 and Article 50.

[26] Act No. 4103, Section 2, as amended.

[27] Rules of Court, Rule 122, Section 11(a).

[28] *People v. Aliviano*, G.R. No. 133985, July 10, 2000.

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