

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO DE GUZMAN Y SAN PEDRO, VICENTE JIMENEZ Y BUSTAMANTE, JOSEPH CAILANG Y SUAN, RUEL BACLAYON Y GELLEMER, LEOPOLDO CAILANG...

G.R. Nos. 98321-24. June 30, 1993

Ponente: MELO, J.

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MELO, J.:

Ricardo de Guzman y San Pedro, Vicente Jimenez y Bustamante, Joseph Cailang y Suan, Ruel Baclayon y Gellemer, Leopoldo Cailang y Suan, Alex Barreto, Constantino Villanueva y Hermogenes, Victor Nunez, Jr. and Celso Bustamante were charged before the Regional Trial Court of Cebu with three counts of murder and one count of frustrated murder in four Informations, the first of which reads as follows:

That on or about the 4th day of April, 1989, at about 7:45 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, who were then 9 in number, armed with an unlicensed firearm thereby constituting themselves as a band, conniving and confederating together with several others who are still at large and whose case will be separately considered as soon as procedural requirements are complied with, and mutually helping one another, with treachery and evident premeditation, with deliberate intent, with intent to kill, did then and there attack, assault and shoot one Jose Bantug, hitting him on the different parts of his body thereby inflicting upon said Jose Bantug the following physical injuries, to wit:

"GUNSHOT WOUNDS OF THE HEAD,
BODY AND (R) SKULL"

as a consequence of which the said Jose Bantug died later. (pp. 20-21, Rollo.)

Three other Informations identically worded as the one aforequoted, charged the accused with the murder of Francisco Carteciano y Sorilla and Antonio S. Carteciano, and the frustrated murder of Lorna V. Carteciano (pp. 22-29, Rollo).

Following joint trial, the court a quo rendered a decision on July 31, 1990, the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused Victor Nunez, Jr. guilty beyond reasonable doubt of the crimes of murder (3 counts) and frustrated murder, for which he is hereby sentenced as follows:

In Criminal Case No. CBU-15224 - reclusion perpetua and to further indemnify the Heirs of Engr. Jose Bantug, Jr. in the sum of P30,000;

In Criminal Case No. CBU-15228 - reclusion perpetua and to further indemnify the Heirs of Francisco Carteciano, Jr. in the sum of P30,000;

In Criminal Case No. CBU-15229 - reclusion perpetua and to further indemnify the Heirs of Major Antonio

Carteciano in the tune of P30,000 and the further sum of P31,000 representing funeral/burial expenses; and

In Criminal Case No. CBU-15230 - six (6) years and one (1) day of prision mayor as minimum to twelve (12) years and one (1) day of reclusion temporal as maximum, and to further indemnify the offended party Lorna Carteciano in the sum of P12,665.25 representing hospitalization/medical expenses.

On the sole ground of reasonable doubt, a verdict of acquittal is hereby entered in all the above-entitled cases for the accused Ricardo De Guzman, Vicente Jimenez, Joseph Cailang, Ruel Baclayon, Leopoldo Cailang, Alex Barreto, Constantino Villanueva and Celso Bustamante, and their immediate release from custody is ordered unless they are facing some other charge. The bail bonds posted by Vicente Jimenez, Ricardo De Guzman and Celso Bustamante are hereby cancelled. (pp. 73-74, Rollo)

Victor Nunez, Jr., the only accused found guilty, is now before us, assigning the following alleged errors:

I

FIRST ASSIGNMENT OF ERROR: THE HONORABLE TRIAL COURT HAS FAILED TO TAKE INTO CONSIDERATION THE VARIOUS HUMAN RIGHTS VIOLATIONS PERPETRATED UPON THE PERSON OF THE ACCUSED-APPELLANT DURING HIS ARREST AND CUSTODY.

II

SECOND ASSIGNMENT OF ERROR: THE HONORABLE TRIAL COURT'S FINDINGS OF FACTS ARE VIOLATIVE OF TESTIMONIAL AND DOCUMENTARY EVIDENCE ON RECORD AND HAD THEY BEEN PROPERLY APPRECIATED AND CONSIDERED IT WOULD RESULT IN ACCUSED-APPELLANT'S ACQUITTAL, RATHER THAN HIS SOLE CONVICTION.

III

THIRD ASSIGNMENT OF ERROR: THE TRIAL COURT GRAVELY ERRED WHEN IT HAS FAILED TO APPRECIATE THE VITAL INCONSISTENCIES, SUBSTANTIAL CONTRADICTIONS OF THE WITNESSES FOR THE PROSECUTION, AS WELL AS, INCORRECT APPRECIATION OF THE TWO CONFIRMED "CONTRADICTORY ROLE" (HITMAN/BACK-UP MAN) OF VICTOR NUNEZ, JR. (DECISION, p. 4; DECISION, pp. 8-9, IN RELATION TO TSN-DUMDUM, JULY 10, 1989, pp. 39-42), WHICH WHEN CORRECTLY APPRECIATED WOULD RESULT IN ACQUITTAL FOR HAVING DEBUNKED MORAL CERTAINTY/PROOF BEYOND REASONABLE DOUBT ON THE "POSITIVE IDENTIFICATION OF THE ACCUSED BY THE WITNESSES OF THE PROSECUTION WHOSE CREDIBILITY [HAS] BEEN ASSAILED (PEOPLE VS. ATENECIO, 128 SCRA 22; PEOPLE VS. RECIMIENTO, JR., 128 SCRA 95; PEOPLE VS. CASTELO, 133 SCRA 667) BY THIS HONORABLE COURT/APPELLANT.

IV

FOURTH ASSIGNMENT OF ERROR: THE DISPOSITIVE PORTION OF THE DECISION (DECISION, p. 13) OF THE TRIAL COURT WITH ASSUMED/INFERRED "EXISTENCE OF CONSPIRACY" INSPITE OF NO PROOF TO THAT EFFECT AS REFLECTED IN THE PROCEEDING (12 PAGES OF THE DECISION NOW UNDER CONSIDERATION GLARINGLY VIOLATES CONSTITUTIONAL DUE PROCESS (SEC. 1; SEC. 14(1), ART. III, 1987 CONSTITUTION) AND THE RULING OF PEOPLE VS. BENAVIDEZ, 127 SCRA 188; PEOPLE VS. ZOSA, 130 SCRA 77).

V

FIFTH ASSIGNMENT OF ERROR: INASMUCH AS THE TRIAL COURT ACQUITTED THE SEVEN ACCUSED, LEAVING ONLY HEREIN ACCUSED-APPELLANT, SO CONSPIRACY HAS NOT BEEN SUFFICIENTLY PROVEN; AND CONSEQUENTLY, IT IS LEGALLY ERRONEOUS FOR THE TRIAL COURT TO LET THE ACCUSED-APPELLANT SUFFER FOR NON-EXISTING CONSPIRACY AND PENALIZING HIM FOR CONSPIRING HIMSELF. (pp. 1-2, Appellant's Brief following p. 149, Rollo.)

The facts of the case, as established by the evidence, are as follows:

At around 7:45 A.M. of April 4, 1989, Major Antonio Carteciano was driving his private jeep toward Camp General Arcadio Maxilom in Lahug, Cebu City where he was stationed as medical officer of the PC/INP Provincial Command. With him in the jeep were his wife, Lorna Carteciano, who was seated beside him, his mother-in-law, Juanita Ricaplaza, his 13-year old son Reiser, his brother, Francisco Carteciano, Jr., a neighbor, Engr. Jose Bantug, Jr., and Bantug's daughter, Jennifer. Except for Major Carteciano and his wife, the rest were seated at the back of the jeep.

Near the intersection of M. Velez and V. Rama streets, the sound of gunfire was heard coming from the left side of the street. Major Carteciano drew his .45 caliber pistol and fired toward his left. Immediately thereafter, gunshots were fired in succession, hitting Major Carteciano, Francisco Carteciano, Jose Bantug, and Lorna Carteciano.

When the jeep came to a full stop, several gunmen emerged from their hiding places and approached the jeep. Accused-appellant Victor Nunez, Jr., demanded from Lorna Carteciano her husband's firearm. Lorna pleaded that there was nothing to give, offering instead her valuables. Thereupon, accused-appellant Nunez fired at Major Carteciano point-blank, hitting his head which was resting on Lorna's lap. Then the gunmen withdrew toward a jeepney. Nunez aimed a gun at the driver of the jeepney, Rosalito Tibio, and ordered him to drive toward V. Rodriguez Street. The passengers of the jeepney were ordered by Nunez to disembark. All the gunmen then boarded the jeepney and when they reached the cemetery at Barangay Calamba they alighted.

As a result of the shooting, Major Antonio Carteciano, Francisco Carteciano, and Engineer Jose Bantug died. Lorna Carteciano was seriously wounded, and would have died were it not for the timely medical assistance rendered to her.

On April 7, 1989, 15 persons were presented to Juanita Ricaplaza at the VISCOM Hospital and she identified 7 of them as the perpetrators of the crimes, namely:

1. Victor Nunez
2. Constantino Villanueva
3. Ruel Baclayon
4. Leopoldo Cailang
5. Joseph Cailang
6. Ricardo de Guzman and
7. Vicente Jimenez

On the same day, 15 persons were likewise presented to Lorna Carteciano at the VISCOM Hospital where she was undergoing treatment for the wounds she sustained during the shooting and she identified the following as

participants in the shooting:

1. Victor Nunez
2. Ruel Baclayon
3. Leopoldo Cailang
4. Constantino Villanueva and
5. Alex Barreto

On April 8, 1989, Reiser Carteciano identified Celso Bustamante as another participant in the shooting.

During the joint trial of the cases, Juanita Ricaplaza, Lorna Carteciano, and Reiser Carteciano positively identified the afore-mentioned persons as the perpetrators of the crimes. Lorna Carteciano further testified that Victor Nunez was the gunman who shot her husband, Major Carteciano, in the head.

Accused-appellant contends that no warrant of arrest was issued against him and his co-accused, and that, therefore, their arrest was unlawful. It appears according to the findings of the trial court that –

In the early dawn of 6 April 1989 combined PC/INP elements who were equipped with search warrants (Exhs. X, X-1, X-2; Y, Y-1, Y-2; Z, Z-1, Z-2; AA, AA-1, AA-2; BB, BB-1, BB-2; CC, CC-1, CC-2; DD, DD-1, DD-2; & EE, EE-1, EE-2) went to Sambag II and searched several houses thereat. The operation was launched on the basis of intelligence reports about the presence of armed men in that area who were suspected to have pulled the Carteciano ambush. They did not find any firearm but they were able to pick up 10 suspects who were later turned over to the Cebu METRODISCOM. The next day the suspects were taken to Camp Lapu Lapu Station Hospital where Lorna Carteciano was confined. They were made to join a police lineup and from a distance of 5 meters Juanita Ricaplaza pointed to 7 persons as among those who staged the ambush. They gave their names as Victor Nunez, Jr., Constantino Villanueva, Ruel Baclayon, Leopoldo Cailang, Joseph Cailang, Ricardo de Guzman and Vicente Jimenez. For her part, Lorna Carteciano identified 5 of them, namely, Victor Nunez, Jr., Ruel Baclayon, Leopoldo Cailang, Constantino Villanueva and Alex Barreto. (p. 62, Rollo)

It is much too late for accused-appellant to raise the question of his arrest without a warrant of arrest. It bears emphasis that accused-appellant, together with his co-accused, pleaded not guilty upon arraignment. Appellant is, thus, estopped from questioning the legality of his arrest. Any irregularity attendant to his arrest was cured when he voluntarily submitted himself to the jurisdiction of the trial court by entering a plea of not guilty and by participating in the trial (*People vs. Rabang*, 187 SCRA 682 [1990]). Furthermore, the illegal arrest of an accused is not sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after trial free from error (*U.S. vs. Grant and Kennedy*, 18 Phil. 122 [1910]; *People vs. Briones*, 202 SCRA 708 [1991]).

Next, accused-appellant assails the credibility of the prosecution witnesses. The arguments advanced on this point are far from persuading. The inconsistencies pointed out by accused-appellant in the testimony of the prosecution witnesses are so minor and trivial that they cannot impair the main thrust of their testimony that they saw accused-appellant at the scene of the shooting, describing with clarity his active participation in the commission of the crimes. At any rate, the trial judge's assessment of the credibility of the witnesses' testimony is to be accorded great respect on appeal (*People vs. Gerones*, 193 SCRA 263 [1991]; *People s. Natan*, 193 SCRA 355 [1991]), and in the absence of any showing that the trial court had over-looked certain substantial facts, said factual findings are entitled to great weight and indeed are binding even on the Supreme Court (*People vs. Umali*, 193 SCRA 493 [1991]). An assiduous examination of the evidence fails to unearth any fact of substantial weight to negate the correctness of the findings of fact of the trial. Lorna Carteciano, the wife of victim, Major

Carteciano, who was herself wounded in the shooting, positively identified accused-appellant as the gunman who shot Major Carteciano point-blank in the head. Accused-appellant was only 2 feet away from Lorna Carteciano, who was cradling the head of Major Carteciano, when he shot Major Carteciano in the head. At that distance the possibility of Lorna Carteciano making a mistaken identification is remote. She could not have been impelled by any evil motive in identifying accused-appellant as the killer of her husband. Her motive, laudable at that, is to obtain justice for the murder of her husband.

The testimony of Lorna Carteciano finds ample corroboration in the testimony of Juanita Ricaplaza that accused-appellant was pointing his gun at Lorna Carteciano, and by the testimony of Rosalito Tibio who testified that accused-appellant commandeered his jeepney at gunpoint.

It is further contended that accused-appellant was deprived of his constitutional right to counsel when he was subjected to a paraffin test without the assistance of counsel. Accused-appellant's reliance on his constitutional right to counsel at the time he was given a paraffin test is misplaced for he was not then under custodial investigation. The right to counsel attaches only upon the start of an investigation, that is, when the investigating officer starts to ask questions to elicit information and/or confessions or admissions from the accused. At such point or stage, the person being interrogated must be assisted by counsel to avoid the pernicious practice of extorting false or coerced admissions or confessions from the lips of the person undergoing interrogation (*Gamboa vs. Cruz*, 162 SCRA 642 [1988]). In *People vs. Loveria* (187 SCRA 47 [1990]), this Court held that during a police line-up where the accused was identified by the victim, the accused's right to counsel was not violated because he was not, at that moment, under custodial investigation.

Accused-appellant also protests that there was no proof of conspiracy. Although the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy, meaning that conspiracy must be shown to exist as clearly and convincingly as the commission of the offense itself (*People vs. Custodio*, 47 SCRA 289 [1972]; *People vs. Llamera*, 51 SCRA 48 [1973]; *People vs. Geronimo*, 53 SCRA 246 [1973]; *People vs. Tumulip*, 60 SCRA 303 [1974]), conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated (*People vs. Ogapay*, 66 SCRA 210 [1975]; *People vs. Alonzo*, 73 SCRA 484 [1976]), and spontaneous coordination of the attack by the accused establishes the existence of conspiracy (*People vs. Aleta*, 72 SCRA 542 [1976]).

There is ample evidence to establish conspiracy among accused-appellant and the other perpetrators of the crimes charged. In this connection we quote with approval the following observations of the Solicitor General:

As correctly found by the trial court, the assailants "were waiting in ambush", at the intersection of M. Velez and V. Rama Streets in the morning of April 4, 1988. When the jeep being then driven by Major Carteciano came into view, a single gun shot was fired as an apparent signal that the target of the ambush had arrived at the appointed place. Thereupon, shots were fired in quick succession hitting Major Carteciano, his brother Francisco and Engineer Jose Bantug -- the only occupants of the jeep who could have offered resistance to the attack. Thereafter, the assailants surrounded the jeep to ascertain whether their criminal objective had been accomplished and thereupon demanded the firearm of Major Carteciano from his wife (who offered, instead, her valuables) evidently to eliminate all means of defense or retaliation from the victims.

Having failed to obtain the firearm, the assailants, particularly appellant Victor Nunez, ensured the accomplishment of their purpose by shooting Major Carteciano in the head.

Immediately thereafter, appellant made a sign to his companions that their objective had been accomplished (*Vide*, *tsn*, 6/22/89, pp. 4-45).

Thereupon, appellant led his companions in their escape by commandeering a passenger jeepney and

instructing the driver thereof to take them away from the scene of the crimes.

The foregoing circumstances, no doubt, show that appellant and his group, indeed, conspired in the execution of the offenses charged. The acts performed by them relative to the commission of the crimes were so concerted indicating unity of purpose and unity in the execution of their unlawful objective. (pp. 23-24, Appellee's Brief, following p. 156, Rollo)

It is, however, argued that the acquittal of the other accused persons negates conspiracy; hence accused-appellant's conviction as principal in all the offenses charged is improper. The argument is fallacious. The trial court's judgment of acquittal of the co-accused of accused-appellant is anchored on its findings that the identities of the others were not duly established by the prosecution witnesses. Their acquittal is not based on any findings that it was accused-appellant alone who was the perpetrator of all the crimes. On the contrary, the evidence on record clearly establishes the fact that accused-appellant and several persons committed the crime in a planned, synchronized, and concerted action.

We, therefore, find that the conviction of accused-appellant for the crimes charged has been established beyond reasonable doubt and the penalty imposed is in accordance with law. However, the civil indemnity imposed by the trial court should be increased to P50,000 in conformity with our recent rulings on the matter.

WHEREFORE, except for the modification that the civil indemnity to be paid by accused-appellant Victor Nunez, Jr. to the heirs of each victim who died is hereby increased to P50,000, the appealed decision is hereby affirmed in all other respects, with costs against accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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