

EN BANC

[G.R. Nos. 148712-15, January 21, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. DOMINADOR CACHOLA Y SALAZAR, ERNESTO AMAY Y PASCUA, NESTOR MARQUEZ Y MANUEL, BENJAMIN LAEGEN Y CAMADO, RODOLFO SAGUN Y JIMENEZ, RODEMIR GUERZO Y LATAOAN, MELLKE IGNACIO Y SALVADOR, AND NELSON C. ECHABARIA, APPELLANTS.

DECISION

PER CURIAM:

In just an instant, 12-year-old Jessie E. Barnachea lost his mother, an elder brother, an uncle, and a cousin as a result of the carnage that took place at around 6:00 p.m. of 28 December 1999 right inside their house in Barangay Calumbaya, Bauang, La Union. Their horrible death was attributed to herein appellants, who, however, pleaded not guilty to the four separate informations for murder.

At the trial before the Regional Trial Court of Bauang, La Union, Branch 67, the prosecution presented as witnesses Jessie and his brother and neighbors, as well as several police officers. Their testimonies disclose as follows:

Jessie was about to leave their house to watch cartoons in his uncle's house next door when two armed men suddenly entered the front door of their house. The two ordered Jessie to drop to the floor, and then hit him in the back with the butt of a long gun. Without much ado, the intruders shot to death Jessie's uncle, Victorino V. Lolarga, who was then in the living room. Jessie forthwith crawled and hid under a bed, from where he saw the feet of a third man who had also entered the house. The men entered the kitchen and continued shooting. When the rampage was over and after the malefactors had already departed, Jessie came out of his hiding place and proceeded to the kitchen. There he saw his mother, Carmelita Barnachea; his brother Felix Barnachea, Jr.; and his cousin Rubenson Abance - all slaughtered.^[1]

Meanwhile, Jessie's eldest brother, Robert E. Barnachea, was in his uncle's house watching television with his aunt and young cousins when he sensed a commotion outside. When Robert went out to see what was transpiring, he saw armed men running towards their house. One of them turned and pointed a gun at him, prompting him to scamper away and hide at the back of his uncle's house. From where he was hiding, he noticed a stainless jeep, with blue rim and marking "fruits and vegetables dealer," parked in front of the fence of their house. Standing behind the jeep were three armed men wearing bonnets, with only their nose and eyes exposed. In the next instant, he heard gunshots and then saw men running from his house. The men hurriedly boarded the jeep and left the place.^[2]

The jeep did not go unnoticed by the neighbors. Russel Tamba was with some

friends in front of Roda's Store, around 100 meters away from the Barnachea residence, when the jeep passed by very slowly going towards the Barnachea residence. According to him, the jeep had a marking "*El Shaddai*" in front, aside from the marking "fruits and vegetables dealer" on the sides.^[3] Francisco Andrada was also talking with some people in front of the Calumbaya Barangay Hall, only five meters away from Roda's Store, when he noticed that jeep, with the "*El Shaddai*" marking, pass by.^[4] Not long after, both heard gunshots and later saw the jeep pass by again, this time running very fast.^[5]

The incident was immediately reported to the police, and the description of the "*El Shaddai*" jeep used by the malefactors was relayed through radio to the police stations in the province of La Union.^[6] At around 7:45 p.m., the jeep was intercepted at a checkpoint set up in the highway by the police force in Aringay, La Union. On board were the eight appellants. No firearms were found in the vehicle. The jeep and the eight appellants were thereafter brought to the Aringay police station and then turned over to the Bauang police.^[7]

When the Chief of Police of Bauang Benjamin M. Lusad was informed of the apprehension of the eight appellants, he went to the Barnachea residence, where he came to know that Jessie was an eyewitness. He invited Jessie to ride with him to pick up the suspects. While Lusad was supervising the boarding of the suspects into the vehicle, Jessie was in another police vehicle with PO3 Juan Casern, Jr., to see whether he could recognize any one of the eight men. Jessie pointed to Dominador Cachola and Ernesto Amay as the two armed men who entered his house and killed his relatives. During the police line-up at the Bauang Police Station, Jessie again identified Cachola and Amay as the assailants.^[8] The next day, when the police conducted the third confirmatory investigation, which was to present Jessie with photographs of the suspects, Jessie identified the two for the third time.

The eight appellants were thereafter subjected to paraffin test. But only the right hands of Cachola and Amay yielded positive results for gunpowder nitrates.^[9]

The Death Certificates attest to the gruesome and merciless killings. Carmelita sustained one gunshot wound on her head and three on her body;^[10] Felix, Jr., two gunshot wounds on his head and on his body, and stab wounds on his chest and arms;^[11] Victorino, two gunshot wounds on his head, three on his body, and with his penis excised;^[12] Rubenson, one gunshot wound on his head and a stab wound that lacerated his liver.^[13]

The testimonies of the other prosecution witnesses were dispensed with upon the stipulation by the public prosecutor and the counsels for the appellants that the nature of their testimonies would be that (1) PO3 Juan Casern, Jr., was inside the police car with Jessie when the latter recognized appellants Cachola and Amay; (2) Mark Garcia would corroborate the testimony of Felix Andrada regarding the description of the jeep; (3) Felix Barnachea, Sr., suffered actual damages amounting to P177,000 as a result of the death of his wife Carmelita and son Felix, Jr.; (4) a police officer of Aringay, La Union, flagged down the jeep at the checkpoint and saw the appellants on board; and (5) a police officer of Bauang, La Union, would identify the pictures taken at the crime scene.

After the prosecution had rested its case, the defense counsels orally asked for leave of court to file a demurrer to evidence. The trial court denied the motion outright and set the schedule for the presentation of the evidence for the defense.^[14] Instead of presenting their evidence, however, the appellants, through their respective counsels, filed a Demurrer to Evidence^[15] even without leave of court.

On 26 September 2000, the trial court rendered a decision^[16] (1) convicting (a) Cachola and Amay, as principals, of four counts of murder and sentencing them to suffer four counts of the supreme penalty of death; and (b) Marquez, Laegen, Sagun, Guerzo, Ignacio, and Echabaria, as accomplices, of four counts of murder and sentencing them to suffer four counts of the indeterminate penalty of eight years of *prision mayor* as minimum to twelve years and one day of *reclusion temporal* as maximum; and (2) ordering all of them to pay the heirs of the victims a total of P300,000 as death indemnity; P200,000 as moral damages; and P177,000 as actual or compensatory damages.

Before us on automatic review, appellants Cachola, Sagun, Ignacio, and Marquez contend that the trial court erred (1) in finding conspiracy among them and their co-appellants; (2) in finding proof beyond reasonable doubt; and (3) in not dismissing the informations outright despite a motion before arraignment, there having been a clear illegal arrest and denial of due process.

As for appellants Amay, Guerzo, Laegen, and Echabaria, they assert that the trial court erred (1) in finding appellant Amay guilty beyond reasonable doubt as principal in the crime of murder; and (2) in not acquitting appellants Guerzo, Laegen, and Echabaria for insufficiency of evidence and on reasonable doubt.

In its Consolidated Reply Brief, the Office of the Solicitor General (OSG) recommends the affirmance of the conviction for murder of appellants Cachola and Amay, and the acquittal of the other appellants for failure of the prosecution to establish their identity and participation beyond reasonable doubt.

We agree with the recommendation of the OSG to acquit appellants Sagun, Ignacio, Marquez, Guerzo, Laegen, and Echabaria. Upon a thorough review of the records of the case, we found nothing that would show their participation in the commission of the crimes. Not one of the prosecution witnesses identified them as among the malefactors who were at the Barnachea residence on that fateful day. Surprisingly, even as the trial court declared that the prosecution failed to establish the actual participation of the other appellants in the commission of the crime, it found that "they cooperated in the execution of the offense by previous or simultaneous acts."

^[17] It appears, however, that the only reason why they were implicated was that they were with Cachola and Amay on board the jeep that was intercepted in Aringay, La Union, almost two hours after the killings. What constitute previous or simultaneous acts that would make them liable as accomplices are not found in the decision or in any evidence on record.

To hold a person liable as an accomplice, two elements must concur: (1) community of design, which means that the accomplice knows of, and concurs with, the criminal design of the principal by direct participation; and (2) the performance by the accomplice of previous or simultaneous acts that are not indispensable to the commission of the crime.^[18] In the present case, neither element was proved. The

mere presence of the six appellants in the company of appellants Cachola and Amay on board a jeep is not evidence of their knowledge of, or assent to, the criminal design to perpetuate the massacre.^[19] That they were found to be with appellants Cachola and Amay almost two hours *after* the commission of the crime does not constitute previous or simultaneous act. Absent a link between the crime and their presence in the jeep two hours later, we cannot consider their participation even as accessories to the crime.

It is a basic evidentiary rule in criminal law that the prosecution has the burden of proving the guilt of the accused beyond reasonable doubt.^[20] If the prosecution fails to discharge that burden, the accused need not present any evidence.^[21] Thus, for utter lack of evidence against the six appellants, their acquittal is in order.

However, as regards appellants Cachola and Amay, we concur with the trial court and the OSG that the prosecution had presented sufficient evidence to prove their guilt beyond reasonable doubt. The credible testimony of, and positive identification by, Jessie Barnachea, which are corroborated by forensic evidence, i.e., the positive results of the paraffin test on the right hands of Cachola and Amay, constitute sufficient evidence to sustain their conviction.

As to the credibility of Jessie Barnachea, the trial court made the following observations:

The Court observed the demeanor of Jessie Barnachea on the witness stand and ... did not observe any indication of falsehood in his narration. He showed obvious readiness to answer questions propounded to him. His reactions and answers to the questions displayed evident respect for truth. He remained consistent on cross-examination. He positively identified accused Amay and Cachola as the one who shot and killed his family. The Court did not observe any hesitancy or indication of uncertainty - and his recital of the events appeared spontaneous.^[22]

There is nothing on record that gives this Court cause to interfere with the trial court's determination of the credibility of Jessie. Indeed, his testimony was unwavering despite attempts of the defense counsels to confuse or trap him. The alleged inconsistency between Jessie's sworn statement and testimony on the number of malefactors, if at all, does not detract from his credibility. That Jessie saw two armed men enter his house is clear. While the defense claims ambiguity as to the presence of a third man, Jessie's statement easily reveals that the third man was not immediately mentioned because he (the third man) only followed the two and Jessie did not see his face.

It is also pointed out that Jessie's identification of Cachola and Amay runs counter to Robert's testimony that the armed men were wearing bonnets. Again, from their testimonies, it is apparent that the brothers saw different men. Besides, Robert also stated that one of the men did not have his head covered. As to the alleged improbability of the lookouts wearing bonnets while the principal shooters were unmasked, or of the malefactors sparing Jessie, suffice it to say that such circumstances are not so incredible as to cast reasonable doubt on the truth of the narrated events.

In sum, none of the alleged inconsistencies, minor as they are, could leave us with

doubt that Jessie was present in his house and saw armed men shoot his relatives. Barely two hours had passed since he witnessed the gruesome murders when Jessie identified appellants Cachola and Amay as the malefactors. Reasonably, the memory of their faces was still fresh on his mind. Moreover, Jessie identified the two appellants two times more at the police station and once in open court, and he never faltered in his identification.

Significantly, the appellants have not imputed any ill motive to Jessie for testifying against Cachola and Amay. Where there is no evidence to show a doubtful reason or improper motive why a prosecution witness should testify against the accused or falsely implicate him in a crime, the said testimony is trustworthy and should be accorded full faith and credit.^[23]

In all, there does not appear on record to be "some fact or circumstance of weight and influence which the trial court has overlooked or the significance of which it has misapprehended or misinterpreted." ^[24] We rely, therefore, on the competence of the trial court to decide the question of credibility of the witnesses, having heard them and observed their deportment and manner of testifying during the trial."^[25]

The reliance by appellant Cachola on *People v. Teehankee*^[26] is misplaced. In that case the negative result of the paraffin test did not preclude a finding of guilt by the trial court, the reason being that the accused was tested for the presence of nitrates only after more than 72 hours had lapsed from the time of the shooting. In the present case, the paraffin test was conducted on the same night the shooting incident occurred; hence, the lapse of only a few hours increases its reliability. While the presence of nitrates on accused's hand is not conclusive of guilt, it bolsters the testimony of an eyewitness that the accused fired a gun.

As to whether the trial court erred in not allowing the appellants to present evidence after filing their demurrer to evidence without leave of court, then Section 15, Rules 119 of the Rules of Court^[27] is clear on the matter, thus:

SEC. 15. - *Demurrer to evidence.* - After the prosecution has rested its case, the court may dismiss the case on the ground of insufficiency of evidence: (1) on its own initiative after giving the prosecution an opportunity to be heard; or (2) on motion of the accused filed with prior leave of court.

If the court denies the motion for dismissal, the accused may adduce evidence in his defense. *When the accused files such motion to dismiss without express leave of court, he waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.* (Underscoring supplied).

The filing by the appellants of a demurrer to evidence in the absence of prior leave of court was a clear waiver of their right to present their own evidence. To sustain their claim that they had been denied due process because the evidence they belatedly sought to offer would have exculpated them would be to allow them to "wager on the outcome of judicial proceedings by espousing inconsistent viewpoints whenever dictated by convenience."^[28] Furthermore, it cannot be said that the waiver was not clear. The trial court postponed the hearings on the motion for