

SECOND DIVISION

[G.R. No. 125966, January 13, 2004]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JUAN FACTAO ALIAS "BOYET," ALBERT FRANCIS LABRODA ALIAS "ABET," AND TIRSO SERVIDAD, APPELLANTS.

D E C I S I O N

TINGA, J.:

The defense of alibi is by nature weak but it assumes significance and strength where the evidence for the prosecution is also intrinsically weak.^[1] The contrasting weight of the prosecution evidence against appellants Juan Factao and Albert Francis Labroda, on the one hand, and appellant Tirso Servidad, on the other, accounts for the difference that the Court accords their respective alibis.

In the evening of August 23, 1991, Vicente Manolos was in a *kamalig* near the seashore in Barangay Sirawagan, San Joaquin, Iloilo with Eduardo Sardoma, Rolando Nierves, Noel Serrano and the hut's owner, Fernando Sardoma.^[2] Sometime past 8:00 p.m., Vicente felt the urge to defecate so he went beside a boat about four or five meters from the hut.^[3] As Vicente relieved himself, he saw Juan Factao and Albert Francis Labroda approach the hut.^[4] Factao was armed with a garand rifle.^[5]

As the two men neared the *kamalig*, Labroda looked around as if to see if there was anyone else about.^[6] Factao peeped into the hut, which was illuminated by an electric light bulb, aimed his gun at a hole in the hut's bamboo wall and fired.^[7]

Factao and Labroda then sped towards the Sirawagan River.^[8] In his haste, Factao tripped on the outrigger of the boat beside which Vicente was defecating.^[9] Fortunately, Factao did not notice Vicente, who tried to hide himself.^[10] Vicente quickly pulled up his pants and ran towards the hut.^[11]

From about five arms' length away,^[12] Jose Manuel Sermona also witnessed the shooting. Jose Manuel saw Juan Factao, Albert Francis Labroda and Tirso Servidad pass the hut where he was staying as they walked towards the *kamalig* of Fernando Sardoma.^[13] Factao was carrying a garand, although the other two were unarmed.^[14] Labrado looked on as Factao peeped into the *kamalig*, aimed and fired.^[15] Factao and Labrado then ran towards the river while Servidad separated from the two.^[16]

Inside the *kamalig*, Eduardo Sardoma was conversing with Rolando Nierves, Noel Serrano and Fernando Sardoma.^[17] The latter was on the floor lying on his side.^[18]

Suddenly, Eduardo heard an explosion.^[19] Immediately, he went outside and saw Tirso Servidad bending his body forward and moving his head sideways.^[20] Eduardo quickly wrapped his arms around Tirso. Eduardo also espied Juan Factao, who was carrying a garand, and Albert Francis Labroda running from the scene.^[21]

Eduardo then heard Fernando Sardoma pleading for help.^[22] Fernando said he had been shot and asked to be brought to the hospital.^[23] Eduardo went back inside the hut, where he found Fernando bathing in his own blood.^[24]

The same bloody sight greeted Vicente Manolos when he reached the hut.^[25] He cuddled Fernando and pushed inside the victim's protruding intestines.^[26] Vicente, Eduardo, Jose Manuel and Rolando Nierves loaded Fernando into a jeep and rushed him to the hospital.^[27] Their efforts were for naught, however, as Fernando was already dead upon arrival at the Pedro Trono Memorial Hospital in Guimbal, Iloilo.^[28]

The autopsy conducted by Dr. Irene Escanlar, Medical Officer III of said hospital, revealed that the victim sustained a gunshot wound at the eleventh left intercostal space with exit at the right hypochondriac area.^[29] The bullet perforated the left lower lobe of the lung, the pancreas, the whole lobe of the liver and the right diaphragm.^[30] The bullet also caused a fracture on the right tenth and eleventh ribs.^[31] Hypovolemic shock or massive blood loss, secondary to the rupture of the liver, was the victim's immediate cause of death.^[32] According to Dr. Escanlar, Fernando probably had his side towards the assailant when he was shot.^[33] Dr. Escanlar reduced her findings in a Post Mortem Report.^[34]

The police investigation resulted in the apprehension of Juan Factao, Albert Francis Labroda and Tirso Servidad. The three were subsequently charged with Murder in an *Information* reading:

That on or about the 23rd day of August, 1991, in the Municipality of San Joaquin, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, conspiring, confederating and mutually helping one another to better realize their purpose, with deliberate intent and decided purpose to kill, armed with Garand, US Rifle Caliber .30 M1, with treachery and evident premeditation and without any justifiable cause or motive, did then and there, willfully, unlawfully and feloniously assault, attack and shoot one FERNANDO SARDOMA with the weapon they were then provided, inflicting upon their said victim gunshot wound on the vital part of his body which caused the immediately (*sic*) and instantaneous death of said Fernando Sardoma.

CONTRARY TO LAW.^[35]

When arraigned, all three accused pleaded not guilty.^[36] Trial ensued, during which the prosecution offered the testimonies of Jose Manuel Sermona, Eduardo Sardoma, Vicente Manolos and Dr. Irene Escanlar. The prosecution witnesses testified to the foregoing narration.

The accused denied any participation in the killing of Fernando Sardoma. They invoked alibi as their defense.

Factao and Labrado, both members of the Citizens Armed Forces Geographical Unit (CAFGU), claimed that at the time of the incident they, along with Noel Lupase and Carlos Garcia, were celebrating the birthday of Labroda in the latter's house.^[37] The party ended at around 10:00 p.m.^[38] Thereafter, Carlos Garcia repaired to his home while Juan Factao returned to camp.^[39] Noel Lupase, who corroborated Labroda and Factao's presence at the party,^[40] spent the night at Labroda's house.^[41] They learned about the tragedy only the following day.^[42]

Factao and Labrado, suspected that the victim's companions, the principal prosecution witnesses, were sympathizers of the New People's Army (NPA).^[43] Factao also imputed ill motive on prosecution witness Vicente Manolos with whom he had a quarrel during a basketball game five days before the killing of Fernando Sardoma.^[44]

Accused Servidad, also a CAFGU member,^[45] presented a different account of his whereabouts. Servidad was on his way home when he met Sirawagan Barangay Captain Faustino Nierves at about 8:30 in the evening of 23 August 1991.^[46] The two then heard an explosion from the direction of the seashore.^[47] Barangay Captain Nierves instructed Servidad to investigate the explosion.^[48]

Some ten meters from Fernando's hut, Servidad came upon Rolando Nierves and Vicente Manalos,^[49] and inquired about the explosion.^[50] Rolando and Vicente replied that Fernando had been shot.^[51] Servidad asked them to call for other people to help bring Fernando to the hospital.^[52] Servidad then proceeded to the *kamalig* and peeped through the door.^[53] Inside, he saw a bleeding Fernando.^[54] Servidad asked people to help him lift Fernando to the jeep.^[55] Thereafter, he headed back home.^[56]

Servidad denied being with Factao and Labroda on that fateful evening or that Eduardo Sardoma grabbed him right after the explosion.^[57] Servidad said he was not in good terms with prosecution witnesses Eduardo Sardoma and Jose Manuel Sermona, whom he suspected were NPA sympathizers.^[58] He denied harboring a grudge against the victim, who he claimed was a good friend.^[59]

Servidad's alibi was corroborated by Barangay Captain Nierves, who testified having met Servidad right before the explosion, and instructing the latter to investigate the incident.^[60] Later that evening, Servidad informed him that Fernando Sardoma had been shot.^[61]

The defense also presented Juan Roweno Secuban, likewise a CAFGU member, whose testimony was offered to disprove that the killing of Fernando Sardoma was in retaliation for Secuban's hacking.^[62] According to Secuban, he was hacked by a certain Ronaldo San Miguel over a girl they were both courting.^[63] Fernando, allegedly a witness to the incident, even executed an affidavit in favor of Secuban.

On July 14, 1995, the Regional Trial Court (RTC) of Iloilo City, Branch 25, rendered judgment finding all three accused guilty of Murder and sentencing them to suffer the penalty of *reclusion perpetua*. The dispositive portion of the *Decision* reads as follows:

WHEREFORE, premises considered and finding the accused, Juan Factao alias "Boyot," Albert Francis Labroda alias "Abet" and Tirso Servidad, guilty of murder as charged beyond the shadow of doubt, they are hereby sentenced to suffer the invisible (*sic*) penalty of *Reclusion Perpetua*, plus the accessory penalties as provided under Article 41 of the Revised Penal Code, and moreover, they are ordered to indemnify the family of the victim the amount of P50,000.00 to reimburse the family the amount of P10,000.00 for the coffin and another P10,000.00 as expenses for the funeral and wake, and to pay the attorney's fee of P9,000.00 and the cost. At the time the crime was committed the death penalty was not yet restored, hence it cannot be imposed in this case.

SO ORDERED.[65]

From this *Decision*, the accused have appealed.

The Court entertains no doubt that appellants Juan Factao and Albert Francis Labroda are guilty of the slaying of Fernando Sardoma. Prosecution witness Vicente Manolos unerringly pointed to the two as the perpetrators of the crime:

Q: At around that time while you were defecating beside the boat can you tell the Court if there was any unusual incident that happened?

A: Yes, sir.

Q; Will you please tell the Court what was the incident about?

A: I saw two men approaching the hut of Fernando Sardoma.

Q: Now, can you identify these two persons which you said were approaching the hut of Fernando Sardoma?

A: Yes, sir.

Q: Please tell the court the names.

A: Juan Factao alias Boyet and Albert Francis Labroda.

....

Q: At that time that you saw Juan Factao was he carrying something?

A: Yes, sir.

Q: Can you please tell the court was he was carrying?

A: A long firearm.

Q: Can you identify that firearm?

A: Yes, it was agaran (*sic*).

Q: Now, thereafter, what did Juan Factao and Albert Labroda do?

A: They went nearer the hut of Fernando Sardoma. When they were near already I saw Albert Francis Labroda looking around seemingly trying to find out if there are people around.

Q: What about Juan Factao, what did he do?

A: Looking stiltelly (*sic*), towards the hut of Fernando Sardoma.

....

Q: Was Juan Factao able to reach the hut of Fernando Sardoma?

A: Yes, sir.

Q: When he arrived to the hut of Fernando Sardoma do you know what he did?

A: Yes, sir.

Q: Please tell the court.

A: He first peep (*sic*) or took a look inside and afterwards aimed the firearm at a hole because the hut is filled with holes, and then fired the shot.

Q: After firing the shot, what did Jun Factao do, if any?

A: They ran away.

....

Q: What about Albert Francis Labroda did (*sic*) know where he went?

A: They escaped together.^[66]

Vicente's foregoing testimony was corroborated by Jose Manuel Sermona.

Conspiracy between appellants Factao and Labrado was adequately established. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.^[67] It is not necessary, however, that conspiracy be proved by direct evidence of a prior agreement to commit the crime. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused which show a joint or common purpose and design, a concerted action and a community of interest among the accused.^[68]

While there is no direct evidence to show that Factao and Labroda agreed to commit the crime, the acts of Factao and Labroda immediately before and after the shooting evince a commonality in design sufficient to make them co-principals to the killing. Vicente Manolos testified that as Factao prepared to shoot Fernando, Labrado was looking around to see if anyone else was about.^[69] Thereafter, the two fled together, running in the same direction, a fact to which Jose Manuel Sermona^[70] and Eduardo Sardoma^[71] also testified.