

THIRD DIVISION

[G.R. No. 113708, October 26, 1999]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ARQUILLOS TABUSO Y SISTER @ BULAG, ACCUSED-APPELLANT.**

DECISION

PURISIMA, J.:

Appeal interposed by accused Arquillos Tabuso from the Decision of Branch 14 of the Regional Trial Court of Manila, finding him guilty of murder in Criminal Case No. 92-108854.

Filed on August 5, 1992 by Assistant City Prosecutor Orlando Ana-Siapno, the Information indicting accused Arquillos Tabuso y Sister @ Bulag, alleges:

"That on or about July 29, 1992, in the City of Manila, Philippines, the said accused, conspiring and confederating with three others whose true names, identities and present whereabouts are still unknown, and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ROBERTO BUGARIN Y PIGAR by shooting the latter with a gun hitting him on the right armpit and right shoulder, thereby inflicting upon the latter mortal gunshot wounds which were the direct and immediate cause of his death thereafter."^[1]

With the accused entering a negative plea on October 22, 1992, upon arraignment with the assistance of Atty. Bonifacio Macabaya, trial ensued with the prosecution presenting Arturo Cortes, Renato Datingginoo, Rosalinda Datingginoo, Cesar Bugarin, Marcial Cenido and Dr. Rowena Asuncion, as its witnesses.

For the defense, the accused took the witness stand as the lone witness on his behalf.

Testified on by its witnesses, the version of the prosecution runs as follows:

On July 29, 1992, at 8:40 o'clock in the evening, Renato Datingginoo passed by the group of Arnold Mendoza, accused Arquillos Tabuso and some other companions in an alley, on his way to Sevilla Street, Tondo, Manila, to buy food. He (Renato) heard Tabuso utter "*nandiyang na si Dagul*" (TSN, December 10, 1992, p. 6). Referred to as Dagul was the deceased Roberto Bugarin.

When he (Renato Datingginoo) was near the store, he heard two (2) gunshots coming from the direction of the said alley. He went back to the alley and met one Banong who uttered, "*Utol, wala iyon, binanatan lang si Dagul*" (TSN, December 9, 1992, p. 10). Banong is Arnold Mendoza's brother. He heard another gunshot.

Thereafter, he saw Arnold Mendoza, Banong, Arquillos Tabuso and another person hurriedly coming out from the alley, and proceeding to their house.

Then, Renato went to the place where the incident happened, near his house, and he saw Roberto Bugarin lying prostrate on the ground, stiffening (*naninigas, nakatumba, nangingisay*) (TSN, December 9, 1992, p. 12). Thereafter, he brought him to the Mary Johnston Hospital. At around 10:00 o'clock in the evening, he learned that Bugarin died.

Rosalina Datingginoo testified that she and her uncle Amado Bugarin, heard two gunshots, on July 29, 1992, at 8:40 o'clock in the evening, while they were in the house of Rebecca Ty, her sister. Her uncle closed the door so as not to get involved in the case. Somebody knocked at the door and when her uncle opened it, it turned out that the person knocking was Rolando Bugarin. She saw Arnold Mendoza shoot Bugarin twice and the latter lay on the floor of her aunt's house. Mendoza, Tabuso and their two companions hurriedly escaped from the scene of the crime.

Dr. Rowena Asuncion of Mary Jonhston Hospital examined the victim and found him with two gunshot wounds in the lungs, one on the right posterior axillary line with no point of exit, and the other at the right midcalf of the thoracic line. Before declaring Bugarin dead, at 8:55 o'clock in the evening of the same day, doctors inserted a tube in his throat to force air into his lungs and to supply oxygen to the patient. They also inserted an intravenous line to his extremities.

Cesar Bugarin, bereaved father of the deceased, claimed that he gave P5,000.00 to his lawyer as downpayment for the P10,000.00 attorney's fees agreed upon. He also spent P3,000.00 for the cemetery arrangements, P9,000.00 for the services of Don Bosco Funeral Parlor, P2,562.00 for transportation expenses, P26.00 for coffee, P36.00 for sugar, P104.00 for orange juice, P100.00 for biscuits and P100.00 for peanuts and green peas. He experienced anxiety by reason of his son's death and suffered moral damages, as a result.

Accused put up the defense of alibi.

Accused theorized that he was taking care of his child in his house at No. 50 Sampaloc Street, Camarin, Caloocan, when the killing complained of happened. On July 31, 1992, WPD Officers invited him to the UN Detachment Office and asked him about Mendoza's whereabouts. To his surprise, one Renato Reyes and another woman identified him, after which, they incarcerated him for being a relative of Arnold Mendoza.

On August 9, 1993, Judge Inocencio D. Maliaman of the Regional Trial Court *a quo* found the evidence for the prosecution sufficient to support a judgment of conviction and disposed, thus:

"WHEREFORE, finding the accused Arquillos Tabuso Y Sister guilty of the crime of murder as charged in the information, defined and penalized under Article 248 of the Revised Penal Code, he is hereby sentenced to suffer RECLUSION PERPETUA with all the accessory penalties provided by law. He is further sentenced to indemnify the heirs of the deceased in the amount of P50,000.00 for the death of the victim and P14,928.00 as consequential damages and to pay the costs.

In the service of the sentence, the accused is entitled to the provision of Article 29^[2] of the Revised Penal Code, as amended.”^[3]

Undaunted, the accused found his way to this Court via the ordinary appeal at bar. To buttress his protestation of innocence and plea for acquittal, appellant theorized:

I

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT ACCUSED-APPELLANT CONSPIRED WITH ARNOLD MENDOZA IN THE MURDER OF ROBERTO BUGARIN.

II

THE TRIAL COURT GRAVELY ERRED IN TOTALLY REJECTING THE DEFENSE INTERPOSED BY THE ACCUSED-APPELLANT.

III

THE TRIAL COURT GRAVELY ERRED IN HOLDING ACCUSED-APPELLANT (sic) GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF MURDER DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE NECESSARY QUANTUM OF EVIDENCE.^[4]

The pivot of inquiry being factual and evidentiary, credibility of the witnesses assumes extreme importance. Records on hand indicate that the sole basis of appellant’s conviction is his alleged conspiracy with Arnold Mendoza and some others.

“Conspiracy exists when two or more persons come to an agreement on the commission of a felony and decide to commit it.” (*People v. Manuzon*, 277 SCRA 550) In a number of cases, this Court ruled that “similar to the physical act constituting the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.” (*People v. Andal*, 279 SCRA 474, 476)

“The mere presence of a person at the scene of the crime does not make him a co-conspirator.” (*People v. Ortiz*, 266 SCRA 641, 643) “Assumed intimacy between two persons of itself does not give that much significance to the existence of criminal conspiracy.” (*People v. Gomez*, 270 SCRA 432)

“Conspiracy certainly transcends companionship.” (*supra*) “Settled is the rule that to establish conspiracy, evidence of actual cooperation rather than mere cognizance or approval of an illegal act is required.” (*People v. Alas*, 274 SCRA 310, 311)

A careful examination and appreciation of the attendant facts and circumstances show that the witnesses were categorical in their narration that it was Arnold Mendoza who killed Rolando Bugarin. The People placed heavy reliance on Renato Datingginoo’s testimony that Tabuso acted as a lookout, which conclusion must have been arrived at when Tabuso uttered “*Nandiyan na si Dagul*” and from the fact that the assailants (including Tabuso) fled.

The Court thoroughly examined the transcript of stenographic notes and nothing can be deduced from the testimony of Renato Datingginoo that accused Arquillos Tabuso conspired with Mendoza and some others in killing Bugarin. He (witness) testified:

“FISCAL PINEDA: