

THIRD DIVISION

[G.R. No. 206292, October 11, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.
ESTRILLO ESCOBAL Y SALVACION AND MELVIN E. ABAÑO,
ACCUSED-APPELLANTS.**

DECISION

BERSAMIN, J.:

Mere passive presence at the scene of the crime does not implicate one who is not shown to have conspired with another in killing the victim.

The Case

Estrillo Escobal y Salvacion and Melvin E. Abaño were found and declared guilty of murder for the killing of the late SPO1 Fernando Gaabucayan, Jr. under the decision rendered on November 26, 2009 by the Regional Trial Court (RTC), Branch 21, in Cagayan de Oro City.^[1] The Court of Appeals (CA) affirmed their conviction on December 20, 2011.^[2] Hence, they appeal to the Court for exoneration.

Antecedents

The Office of the City Prosecutor of Cagayan de Oro City charged the accused-appellants with murder through the following information, viz.:

That on April 14, 2007, at about 11:30 o'clock in the evening, more or less, at Bolonsiri, Camaman-an, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill, armed with a 45 caliber pistol and fake (paltik) [h]omemade 38 caliber revolver magnum with M16 bullet, which they were then conveniently provided of (sic), with treachery and evident premeditation, conspiring, confederating together and mutually helping one another, did then and there attack, assault and shot (sic) one SPO1 Fernando Gaabucayan, Jr. hitting the latter (sic) different parts of his body, thereby inflicting a (sic) fatal wounds on the victim which were the direct and proximate cause of his death.

Contrary to and in violation of Article 248 of the Revised Penal Code.^[3]

Evidence of the Prosecution

The CA summarized the evidence of the Prosecution in its assailed decision as follows:

At the trial, the prosecution presented seven (7) witnesses as evidence in chief: PO2 Leodegario Sagun, Jr., PO3 Arnold Gaabucayan, Gloria Gaabucayan (wife of deceased-victim), Major Rolando Migano, NBI

Medico-Legal Officer Dr. Tammy Uy, Gerardo Tamayo, Severino Francisco and Cesar Auxtero, the eyewitness.

In the late evening of April 14, 2007, at around 11:30, eyewitness Cesario Auxtero, while tending his sari-sari store, noticed SPO1 Renato Gaabucayan (deceased-victim) went out from his house, passed by Auxtero's store and proceeded (sic) towards the direction of the city poblacion. About 10 to 20 meters away, he saw Gaabucayan meet and talk with accused-appellant Escobal. Auxtero presumed that the two were talking as he saw accused-appellant Escobal place his left hand on the right shoulder of Gaabucayan while accused-appellant Abaño was at the back of accused-appellant Escobal urinating. He can see them as the area where the three persons were at was well-lit by a street light situated about four (4) to five (5) meters away.

Seconds later, Auxtero heard three (3) gunshots which caused him to stay down. When he looked up towards the direction of the gunshots, he saw Gaabucayan lying flat on the ground face up, while accused-appellant Escobal was standing at the footside of Gaabucayan holding a nickel-plated gun pointed at the latter with accused-appellant Abaño standing beside accused-appellant Escobal facing the left shoulder of Gaabucayan in a position of pointing a gun. Auxtero saw Gaabucayan raise his hand and plead accused-appellant Escobal to stop, saying "stop it partner" (ayaw na partner). Then again, Auxtero heard at least two successive gunshots. For fear that accused-appellants Escobal and Abaño were still around, Auxtero stayed back and went only to the place of the incident when the two assailants have left and shouted for assistance. Upon coming to the aid of Gaabucayan, the latter pleaded for help and Auxtero told the latter to "hang-on" while noticing a gun on the right side of the waistline of the latter. Thereafter, Gaabucayan was carried and loaded into the motorela and brought to the Maria Reyna Hospital. In the hospital, Auxtero did not notice anymore the gun of Gaabucayan.

Later that evening, after deceased-victim was rushed to the hospital, PO2 Leodegario Sagun, Jr. went to the crime scene, along with other police officers, in order to investigate the death of SPO1 Gaabucayan. Upon arriving at the crime scene, they met eyewitness Auxtero, who voluntarily told them everything about the shooting incident he witnessed and the two (2) perpetrators involved. After getting such information, a manhunt was conducted by police operatives.

On April 15, 2007, around 9:00 in the morning, police operatives received a report from their informant that accused-appellant Escobal was a close-in security of Mr. See Hong, a well-known businessman in Cagayan de Oro City. Upon hearing this, police operatives then conducted a follow-up operation. PO2 Sagun, PO2 Nacaya and PO2 Caberte went to the house of Mr. See Hong to invite accused-appellant Escobal for questioning. At the police station, accused-appellant Escobal was asked about the shooting incident and was positively identified by eyewitness Auxtero as the perpetrator. Consequently, accused-appellant Escobal was then brought to the Cogon Police Station for booking. Thereafter, he was subjected to paraffin testing at the PNP Crime Laboratory

PO3 Arnold Gaabucayan was on duty at the Cogon Police Station on April 14, 2007. At around 11:00 in the evening, their office received a call that SPO1 Renato Gaabucayan was shot at Bolonsiri. They immediately formed a team composed of four officers and then, proceeded to the area. Thereat, eyewitness Auxtero guided them towards the scene of the crime where they saw blood, 14 empty shells and 2 slugs which were imbedded on the ground. PO3 Gaabucayan and PO3 Pagador then gathered and recorded the evidence before handing over the same to PO2 Sagun for safekeeping. Subsequently, PO2 Sagun submitted the evidence to the National Bureau of Investigation and was received by Gerardo Tamayo.

Gerardo Tamayo of the National Bureau of Investigation averred that they were able to recover a .45 caliber pistol with serial number 2240908 used as the murder weapon and a revolver from the house of Severino Francisco, a neighbor of accused-appellant Abaño. He took custody of the said handguns and submitted them for ballistic examination at the NBI Office in Cebu City. The 14 empty shells and 2 slugs which were recovered by the police officer from the crime scene and turned over to him were likewise submitted to [the] NBI Office in Cebu City for ballistic examination.

Tamayo further testified that he knew accused-appellant Escobal was found positive with the presence of gunpowder nitrate when subjected to paraffin test while accused-appellant Abaño resulted negative in the said paraffin testing. Tamayo also admitted that the hands of the deceased-victim were no longer subjected to paraffin testing as there was an indication that the latter did not fire his firearm.

Severino Francisco, security guard of the City Hall residing at Karinungan, Balulang, Cagayan de Oro City and the neighbor of accused-appellant Abaño, to whom the latter entrusted the two (2) handguns for safekeeping, one of which was the murder weapon. He was used to this kind of arrangement with accused-appellant Abaño as there were times that the key to the latter's house and even the latter's children were also entrusted to him. Sometime on April 9, 2007 accused-appellant Abaño requested him to keep an attache case placed inside a plastic bag. Then on April 15, 2007, around 9:00 in the evening, accused-appellant Abaño then again entrusted another black bag to him. When the NBI came to his house, he gave them the two (2) bags left to him by accused-appellant Abaño. The bags were opened in his presence by NBI operatives and a .38 caliber (paltik) and M16 bullet were found inside the attache case and a .45 caliber pistol inside the black bag. Thereafter, the NBI took the firearms with them.

Gloria Gaabucayan, wife of deceased-victim, narrated that around 9:30 pm that night, she and her daughter were accompanied by her husband to the internet cafe situated at the junction of Camaman-an Elementary School. Her husband left them there and agreed to come back for them. At around midnight, before her husband could come back, she received a call from their neighbor, Inday Generelao, informing her that her husband, SPO1 Renata Gaabucayan, was shot at Bolonsiri and was brought to Maria Reyna Hospital. She immediately rushed to the hospital

and upon arriving thereat, the doctor informed her that her husband was pronounced dead on arrival (DOA), which made her collapse. After she was revived, she had to attend to some paper works and hospital bills before her husband was brought to the funeral home.

She only came to know of the name of accused appellant Abaño after the incident but was already familiar with the latter's face as they were neighbors and the latter would always pass their house. However, she was not familiar with the other accused-appellant Abaño. She was not aware of any quarrel between her husband and accused-appellant Escobal and her husband had no threats whatsoever on his life.

The result of the post-mortem examination of Gaabucayan, conducted by Dr. Tammy Yu, showed that he had nine (9) wounds and these wounds could have been possibly caused by nine bullets or less; that based on the damage, the wounds could have been caused by a low caliber gun; and, based on the sizes of the wounds, it was quite possibly caused by a .45 caliber gun, but he cannot conclusively establish the same. Dr. Yu likewise explained why the entry wound was lower than the exit wound. It could have been possible that the assailant fired at the victim in a horizontal manner or the victim was on the verge of falling down or the body of the victim was leaning forward. It was likewise possible that when the bullet entered the body, it hit some parts or some tissues and exited on the upper arm of the deceased-victim's body.

Evidence of the Defense

The version of the Defense was narrated by the CA, to wit:

The defense offered the testimonies of accused-appellants Escobal and Carlito Abaño.

Accused-appellant Estrillo Escobal had been a personal bodyguard for seven (7) years of Mr. See Hong while accused-appellant Melvin Abaño is a security guard of Ororama Superstore since 1993.

On April 14, 2007, at around 8:00 in the evening, a friend named Arnel Calonia invited them both to his house at nearby Agora Market to a drinking session. Hours later or around 10:00 in the evening, both accused-appellants left and took a motorela heading for Cogon Market where they ate because they felt hungry. While eating, accused-appellant Escobal asked accused-appellant Abaño to accompany him to his house in Bolonsiri in order to give his salary to his wife and thereafter, they can leave together, with accused-appellant Abaño proceeding to Balulang and accused-appellant Escobal to Pueblo de Oro where his employer's house is situated. Accused-appellant Abaño acceded and both of them rode a motorela from Cogon Market to Bolonsiri. Upon reaching Bolonsiri, accused-appellant Abaño felt the need to urinate. While Abaño was urinating, they suddenly heard a voice shouting "Kinsa mo?" (Who are you?) followed by three (3) gunshots aimed towards them. Instinctively, accused-appellant Escobal grabbed Abaño to avoid being shot and while doing so, he felt Abaño's service pistol and then grabbed the pistol and fired back in defense of themselves at the direction where the shots were coming from. They did not know who the man was because it was a bit

dark. When there were no more shots being fired at them, they then flagged down a passing taxi cab and proceeded towards Barangay Carmen. Upon reaching the crossing of Macanhan, accused-appellant Escobal alighted to take another taxi cab to Pueblo de Oro, while accused appellant Abaño remained in the same taxi going to his house in Balulang.

The gun used by accused-appellant Escobal in shooting the deceased-victim in defense of themselves was a licensed .45 caliber pistol with SN 2249908 which belonged to accused-appellant Abaño as his service firearm at the time of the incident. On April 15, 2007, at 5:00 in the afternoon, he was taken by police operatives to the Maharlika Police Station. During questioning, he claimed to have been threatened by PO2 Sagun if he will not agree to undergo a paraffin test. The police operatives then brought him for paraffin testing at the crime laboratory at Camp Elisa. Thereafter, accused-appellant Escobal was fetched and brought to the NBI Office.

During the investigation, accused-appellant Escobal insisted on their claim that the shooting was in self-defense. Worse, he had been tortured and electrocuted in order to admit the crime imputed against him. He was detained inside a mini cell in the NBI Office for six (6) days with no visitors allowed to visit him.

Accused-appellant Abaño corroborated the testimony of accused-appellant Escobal in all its material points when presented in court. He testified that prior to his arrest, he was a plainclothes security guard at Ororama Megacenter since 1993 and admitted that a .45 caliber service pistol was issued to him and was licensed under his name. He also explained that he was carrying a firearm on April 14, 2007 despite COMELEC gun ban because of threats to his life and safety.

Carlito Abaño, brother of accused-appellant Abaño, testified that on April 17, 2007, while at the NBI office, he accidentally bumped into Auxtero and the latter told him that his brother was not involved in the Shooting.

[4]

Judgment of the RTC

On November 26, 2009,^[5] the RTC convicted Escobal and Abaño of murder, holding that they had conspired in killing the late Fernando Gaabucayan, Jr. with treachery; that Escobal had shot the victim to death despite the victim having been already rendered helpless, lying on the ground and pleading for his life; that Abaño had done nothing to prevent the shooting of the victim; and that even assuming that the victim had initially committed unlawful aggression against them, the peril he had thereby posed had already ceased by the time he had fallen to the ground from the shots fired at him.

The RTC disposed thusly:

WHEREFORE, in the light of the foregoing, this Court hereby finds accused Estrillo Escobal y Salvacion and Melvin E. Abaño guilty beyond reasonable doubt of the crime of Murder qualified by treachery, as defined and penalized under Article 248 of the Revised Penal Code of the