

SECOND DIVISION

[G.R. No. 123070, April 14, 2004]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CASIANO BUNTAG
ALIAS "CIANO" AND DIEGO BONGO, APPELLANTS.**

DECISION

CALLEJO, SR., J.:

This is an appeal from the Decision^[1] of the Regional Trial Court of Tagbilaran City, Branch 3, in Criminal Case No. 7729, convicting the appellants Casiano Buntag alias "Ciano" and Diego Bongo of murder, sentencing each of them to *reclusion perpetua*, and directing them to jointly indemnify the heirs of the victim Berno Georg Otte the sum of P50,000 as moral damages.

The Indictment

The appellants were charged with murder in an Information, the accusatory portion of which reads:

That on or about the 9th day of February, 1992, in the municipality of Panglao, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill and without any justifiable cause, conspiring, confederating and mutually helping each other, with treachery by the suddenness and unexpectedness of the acts, the victim who was unarmed being then unaware thereof, did then and there willfully, unlawfully and feloniously attack, assault and stab with the use of a bladed instrument one Berno Georg Otte (a German national), hitting and injuring the latter on his chest, thereby causing his immediate death; to the damage and prejudice of the heirs of the victim in the amount to be proved during the trial.

Acts committed contrary to the provisions of Art. 248 in relation to Art. 14 all of the Revised Penal Code as amended.^[2]

The Case for the Prosecution

Before February 8, 1992, Berno Georg Otte,^[3] a German national and a tourist, checked in at the Alona Ville Beach Resort located in Panglao, Bohol. The resort manager, Herma Clarabal Bonga,^[4] assigned Otte to Room No. 9^[5] and gave the latter his room key.

On February 8, 1992, Otte took his dinner at the resort's restaurant. Bonga talked to him regarding the disco which was about to unfold that night in lower Tawala near

the Catibo Chapel.^[6]

At about 10:00 p.m., Bonga went to the disco party where she saw Otte seated at one of the tables.^[7] She noticed that he had some companions whom she failed to recognize.^[8]

Isidro A. Mihangos, a 19-year-old student, and Benigno "Ninoy" Guigue were also at the disco. At around 2:00 a.m. of February 9, 1992, Mihangos and Guigue decided to call it a night and walked home, with their respective bicycles at their sides.^[9] At the crossing to the Alona Beach, they saw a man lying on the road but did not recognize him. They walked past the prostrate man. When they were about twenty-five meters^[10] away from the body by the road, they met Casiano Buntag and Diego Bongo, their barriomates.^[11] Suddenly, Buntag and Bongo jointly and simultaneously lunged at them. Afraid for their lives, Mihangos and Guigue fled and sought refuge in the house of Guigue's uncle, Aquilino Bongo.^[12] In the process, they left their bicycles behind. Aquilino Bongo then accompanied Mihangos and Guigue to where they left their bicycles. Mihangos and Guigue retrieved their bicycles, but Buntag and Bongo were no longer there.

At around 5:30 a.m. of February 9, 1992, the police station of Panglao, Bohol, received a report by radio call about a man, believed to be dead, lying at the side of the crossroad near the Alona Beach.^[13] PO1 Yolando E. Hormachuelos, together with PO1 Mauro Sumaylo and PO1 Dominie Ragusta,^[14] proceeded to the crime scene. They were accompanied by the Municipal Health Officer, Dr. Julita L. Cogo, who confirmed that the man died due to a stab wound.^[15] The policemen found a hunting knife about one meter away from the body.^[16] Constancio Geoivencal took pictures of the cadaver. Hormachuelos took custody of the knife.^[17]

In the course of their investigation, the policemen learned that Mihangos and Guigue had seen the dead body by the road. Hormachuelos fetched Mihangos and Guigue from their houses and brought them to the road where the body of Otte was found. Mihangos and Guigue narrated how they found the body at around 2:00 a.m. that day, as well as their encounter with Bongo and Buntag.

At about 1:00 p.m. that day, Hormachuelos took appellant Bongo to the police station and investigated him without the assistance of counsel. Bongo admitted that he took Otte's key to Room No. 9 and hid it near their house. He then drew a sketch showing the place where he hid the key, at the back of their house. Bongo also admitted that he was with appellant Casiano Buntag. The policemen went to Bongo's house and recovered the key to Otte's room as indicated by Bongo in his sketch.

At 2:00 p.m., Guigue arrived at the police station and gave his statement to Hormachuelos.^[18] At 3:00 p.m., Mihangos gave his statement to SPO1 Proculo Bonao.^[19] Hormachuelos then took custody of Casiano Buntag and brought him to the police station where he was asked about his involvement in the killing of Otte without the assistance of counsel. However, Buntag opted to keep silent. When apprised that Diego Bongo had implicated him, Buntag, this time with the assistance of his counsel, Atty. Nerio G. Zamora, gave a statement on February 13, 1992 to a police investigator. He stated that at 1:00 a.m. on February 9, 1992, he was walking

back home from the disco place where he caught up with Diego Bongo and Otte at the crossing of Alona Beach. He saw Bongo poke a knife at Otte. Bongo then ordered him to box Otte but he refused, and moved back about three meters. Bongo himself then boxed Otte three times on the face. When Otte fell to the ground, Bongo stabbed him on the chest. Buntag also stated that he then ran back home, but Bongo followed him and cautioned him not to reveal the incident to anybody or else he would be implicated.^[20] Buntag subscribed and swore to the truth of his statement on February 21, 1992 before Judge Antonio Sarce of the Municipal Circuit Trial Court.

In the meantime, Municipal Health Officer Dr. Julita Lood-Cogo performed an autopsy on the cadaver of Otte and submitted her Post-Mortem Report which contained the following findings:

Stab wound, anterior chest, right, at the level of the 4th rib, approx. 2 cms. x 1 cm. in size, with a depth of approx. 12 cms., directed upwards and medially, with a complete fracture of the 4th rib, right, involving a portion of the right lung and base of the heart.

Cause of death:

CARDIORESPIRATORY ARREST DUE TO HEMORRHAGE, SECONDARY TO STAB WOUND, ANTERIOR CHEST, RIGHT.^[21]

On March 7, 1992, a criminal complaint for murder was filed against appellants Bongo and Buntag with the Municipal Circuit Trial Court. Attached to the records was Buntag's sworn statement dated February 21, 1992. Only appellant Bongo submitted his counter-affidavit on February 27, 1992, subscribed and sworn to before Judge Antonio Sarce,^[22] where he confirmed (a) Buntag's account in his sworn statement before Judge Sarce that they were with Otte at 1:00 a.m. on February 9, 1992 at the crossing towards Alona Beach Resort, and (b) that he was armed with a hunting knife. He further stated therein that while at the crossing, Buntag and Otte, who were both drunk, had an altercation and that he tried to pacify them but in the process, Buntag pulled out his (Bongo's) hunting knife from his waist and stabbed Otte with it.^[23]

After the requisite preliminary investigation, the MCTC issued a resolution finding probable cause against the appellants for murder and issued warrants for their arrest. The court found Buntag's sworn statement and Bongo's counter-affidavit self-serving.

On June 4, 1992, the day of the appellant's arraignment in the Regional Trial Court, appellant Buntag, through counsel, Atty. Nerio G. Zamora, filed a "Motion to Discharge (him) to be a Witness for the Prosecution," alleging *inter alia*:

- 1) That there is absolute necessity for the testimony of said accused whose discharge is requested;
- 2) That there is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused, as can be shown by the affidavit of said accused in relation to the affidavits or sworn statements of Ponciano Horcerada, Isidro Mihangos, Benigno Guigue, Alfredo Guioquio, and PO1 Yolando [E.]

Hormachuelos;

- 3) That the testimony of herein accused can be substantially corroborated in its material points;
- 4) That the said accused does not appear to be the most guilty; and
- 5) That the said accused has not at any time been convicted of any offense involving moral turpitude;
- 6) That herein accused-movant hereby expresses his consent to be a witness for the government.^[24]

However, the prosecution opposed the motion on the ground that both accused were equally guilty. On June 8, 1992, the court issued an Order denying the motion, and the appellants, assisted by their respective counsels, entered pleas of not guilty.^[25]

During the trial, the prosecution presented Judge Antonio G. Sarce who testified that he conducted the preliminary examination of the case and identified both Buntag's sworn statement and Bongo's counter-affidavit as subscribed and sworn to before him (Judge Sarce) in his chambers.

After presenting all its witnesses, the prosecution offered in evidence the hunting knife,^[26] the key to room no. 9 of the beach resort,^[27] the sworn statement of Buntag,^[28] and Bongo's counter-affidavit^[29] to prove that both appellants conspired to kill the victim and that they in fact killed the victim, and as part of the testimony of Judge Sarce. Both appellants objected to the admission of the said sworn statements and counter-affidavit solely on the ground that the statements executed by one accused was hearsay as to the other accused.^[30] By way of rejoinder, the prosecution alleged as follows:

1. That exhibits A, B, C, D, E and all its submarkings are all relevant, pertinent and material evidence against the accused in the above-entitled case, therefore, admissible in evidence;
2. That exhibits F and all its submarkings are not hearsay and do not violate the *res inter alios acta* rule because they are principally offered against accused Casiano Buntag, the affiant. The sworn statement of Casiano Buntag is offered mainly as admission of said accused Casiano Buntag;
3. That exhibits G and all its submarkings are not hearsay and do not violate the *res inter alios acta* rule because they are principally offered against accused Diego Bongo, the affiant. The counter-affidavit of Diego Bongo is offered mainly as admission of said accused Diego Bongo.

WHEREFORE, it is most respectfully prayed of this Honorable Court to admit in evidence all the prosecution's exhibits formally offered, for the purpose for which they are being offered.^[31]

The court admitted the documentary and object evidence of the prosecution. The appellants opted not to adduce any evidence on their behalf. Instead, they filed, without leave of court, a "Motion to Acquit." On June 7, 1993, the court issued an Order denying the motion.

On August 14, 1995, the trial court rendered judgment finding both the appellants guilty of the crime charged. The decretal portion of the decision of the trial court reads:

FROM THE FOREGOING PREMISES, this Court renders judgment finding the two (2) accused Casiano Buntag, alias Ciano, and Diego Bongo guilty beyond reasonable doubt of the crime of MURDER, an act committed contrary to the provisions of Article 248, in relation to Article 14 of the Revised Penal Code, as amended, and does hereby sentences each one of them to the penalty of Reclusion Perpetua, with all the accusatory penalties imposed by law.

There being no evidence disclosed as to the civil liability, this Court, therefore, limits in providing that the accused shall pay jointly the heirs of the deceased Berno Georg Otte the amount of Fifty Thousand Pesos (P50,000.00), by way of moral damages, but without subsidiary imprisonment in case of insolvency.

Without pronouncement as to costs.

SO ORDERED.^[32]

The trial court relied, *inter alia*, on the sworn statement of Buntag dated February 21, 1992^[33] and the counter-affidavit of Bongo^[34] in convicting them of the crime charged. Both the appellants appealed the decision.

Although the appellants enumerated separate issues in their briefs, the same may be synthesized into three issues, namely: (a) whether or not the prosecution proved beyond reasonable doubt that they conspired to kill the victim Otte and that they, in fact, killed him; (b) whether or not the appellants are guilty of murder; and, (c) whether or not the appellants are liable for moral damages to the heirs of the victim. Appellant Bongo's contention that he was deprived of his right to due process on his claim that the transcripts of the respective testimonies of Dr. Julita Cogo, SPO1 Bonao and resort manager Bonga were not transmitted to this Court is belied by the records. In a Resolution dated September 11, 2000, the Court declared that, based on the records, the transcripts of stenographic notes in this case were already complete.^[35]

The appellants contend that the prosecution failed to adduce direct or circumstantial evidence to prove that they conspired to kill the victim, and that they, in fact, killed him. They argue that although the prosecution adduced circumstantial evidence consisting of the extrajudicial sworn statement of appellant Buntag and the counter-affidavit of appellant Bongo, such evidence is utterly insufficient to prove their guilt beyond reasonable doubt.

Furthermore, according to the appellants, the admissions made by appellant Buntag