

SECOND DIVISION

[G.R. No. 121902, March 26, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WALTER MELENCION ALIAS TETING, ACCUSED-APPELLANT.**

D E C I S I O N

BELLOSILLO, J.:

This is a petition for review on *certiorari* seeking to annul and set aside the 12 April 1995 Decision of the court *a quo*^[1] which declared Eulalio Autida y Bantilan also known as Eutiquio Autida alias *Yoly* and Walter Melencion y Orapa alias *Teting* guilty beyond reasonable doubt of the crime of murder by conspiracy aggravated by abuse of superior strength and treachery. The trial court sentenced both accused to suffer the penalty of *reclusion perpetua*, including its accessory penalties, and to pay the heirs of their victim the sum of P6,000.00 as actual damages and P50,000.00 as moral damages without subsidiary imprisonment in case of insolvency.

This petition is now being reviewed only insofar as the accused Walter Melencion is concerned as he alone has appealed to us. His co-accused Eulalio Autida did not file a notice of appeal.

The facts: On 2 July 1992 Lorenzo Bautista went to the *barangay* market of Sto. Nino, Danao, Bohol, to fetch his wife Juanita who was peddling goods in the market. Before Lorenzo left, he asked his brother-in-law and neighbor Tiburcio Cabil to watch over his house.

At around 8 o'clock in the evening Lorenzo returned home with Juanita. He got his scythe and left the house to gather *tuba* while Juanita went inside their store, which was attached to their front porch. In the meantime, Tiburcio went to the comfort room to relieve himself. It was located outside the house about five (5) meters away from the kitchen. Its walls were made of thatched coconut leaves. In lieu of a door shutter a sack covered its opening to protect its occupant from being seen outside.

When Lorenzo returned he headed towards the *bangera*^[2] at the kitchen sink to drink water. The kitchen sink was made of split bamboos with about 2-¹/₂-inch spacing in-between and light filtered through from the lamp hanging in the kitchen. At this moment, Tiburcio who was still inside the comfort room saw Eulalio Autida and Walter Melencion both carrying long arms enter the yard of Lorenzo. They were followed by two (2) other persons, not familiar to Tiburcio, who distanced themselves from Eulalio and Walter to crouch beneath a banana tree. Eulalio positioned himself by the *bangera* while Walter held his firearm in a forth-arm position, as if ready to shoot at a moment's notice.^[3] Then a shot rang out. Eulalio shot Lorenzo. Eulalio, Walter, and their two (2) other companions calmly walked towards the *poblacion* of Danao.

After assuring himself that the intruders had already left, Tiburcio went to the kitchen and found Lorenzo lying on the floor beside the *bangera* with blood oozing from his face and left ear. Tiburcio heard Juanita call out to her husband Lorenzo, "What was that shoot (sic) about?" not knowing that he was already dead. Tiburcio did not enlighten her; instead, he ran towards his home fearful and in shock.

Meanwhile, Felimon Bantilan, a neighbor of Lorenzo, was taking supper with his family when he heard a shot from the direction of Lorenzo's house. Felimon immediately took his flashlight, went down his house, and flashed its light to see what was going on. About seven (7) meters away from where he was, he saw four (4) people pass by, two (2) of them carrying long arms, heading towards the Poblacion of Danao. One of them he recognized as Walter Melencion.

The police was called as news traveled fast that Lorenzo had been shot. Tiburcio returned to the Bautista home to join the milling crowd. However he did not tell anyone about what he had seen even as Juanita Bautista volunteered to the police that Tiburcio might have witnessed the shooting incident.

The following morning, a post-mortem examination of the deceased was conducted by the Municipal Health Officer, Dr. Ma. Portia Mortejo Datahan. In her report dated 4 July 1992 she stated that the entire right side of the face of Lorenzo Bautista showed signs of gunpowder tattooing and declared the cause of death as mutilated gunshot wound, with cardio-respiratory arrest, hypovolenic shock, and intra-cranial injuries as secondary causes.^[4]

In August 1992, bothered by his conscience, Tiburcio emerged from his silence and revealed to his sister Juanita the identities of the assailants. On 13 November 1992 he went to the Danao Chief of Police Victorio Adlaon Dispo and executed an affidavit to this effect on 13 November 1992, followed by a supplemental affidavit dated 16 November 1992. Filemon Bantilan had earlier executed an affidavit narrating what he had witnessed on the night Lorenzo Bautista was shot, and corroborated Tiburcio's statements.^[5]

During the preliminary investigation, a subpoena was issued ordering Eulalio Autida, Walter Melencion, "John Doe" and "Peter Doe" to submit counter-affidavits and evidence.^[6] Repeated service of the subpoena on Eulalio Autida at his residence yielded no result.^[7] The subpoena was returned to the court with the information that Eulalio Autida could no longer be found within Danao, Chief of Police Dispo's area of responsibility.^[8]

On 16 December 1992 a warrant for the arrest of Eulalio Autida, Walter Melencion, and their two (2) other companions was issued.^[9] Thereafter Melencion was arrested while Autida was arrested only on 3 March 1993. He was found in Talibon, Bohol, staying in the house of his elder brother Rosendo Autida.^[10]

Eulalio Autida denied participation in the killing and interposed alibi as a defense. He claimed that in the evening of 2 July 1992 he was in the house of Mayor Otelio Doroy Mutuc helping with the household chores. With him were Gerardo Trazo and Walter Melencion who was butchering a goat and a few chickens for the visitors of the mayor scheduled to arrive that evening.^[11] Eulalio had been staying at Mayor

Mutuc's house since the middle of May 1992 until June 1992 asking the mayor for a recommendation to work at the Department of Environment and Natural Resources (DENR) as forest ranger/forest guard. In turn, Eulalio ran errands for the mayor and did household work. In August of 1992 he left the mayor's house to work in Concepcion, Danao, as a forest guard and planter of the DENR tree planting project. He was contracted to work for five (5) days a month from August to September. Thereafter, he joined his brother Rosendo Autida in Talibon, Bohol, where he was arrested.

Walter likewise denied the charge. He recounted that on 2 July 1992, at around 5:45 in the evening, he went to the house of Doring Auxtero per instruction of Mayor Mutuc to invite Doring to the latter's house.^[12] He had been living in the mayor's house since the middle of June, helping out in the household chores.^[13] Eulalio Autida and Gerardo Trazo were his roommates. At around 6:00 o'clock p.m. Walter returned to the mayor's house to gather and chop wood as firewood. He was assisted by Eulalio.^[14] The wood was intended for the birthday party of the mayor's daughter at the end of the month.^[15]

On 12 April 1995 the trial court convicted the accused Eulalio Autida and Walter Melencion of murder attended by conspiracy and aggravated by abuse of superior strength and treachery. The trial court ruled that the defense of denial and alibi interposed by both accused could not hold water in the light of Tiburcio's as well as Filemon's positive identification of the accused as the assailants.

Walter Melencion as sole appellant, questions the credibility of Tiburcio noting that the amount of time he spent inside the comfort room was extraordinarily long since he entered it when Lorenzo left to gather *tuba* and was still inside even after Lorenzo had returned. Moreover, accused-appellant argues that the opening of the comfort room was covered by a sack which could not have allowed Tiburcio, in a squatting position, to see anyone outside.

Accused-appellant likewise assails the credibility of the testimony of Filemon Bantilan as his reaction when he supposedly heard the gunshot was unusual since a person who hears a gun fired near him usually has two (2) possible reactions: first, to seek cover; second, to turn off the lights as it was nighttime when he spotted the intruders near his house. Accused-appellant further deems it suspect that Filemon Bantilan did not exhibit fear when he saw the persons whom he presumed to be the source of the gunshot as it was against one's instinct of self-preservation and protection.

Accused-appellant also questions the veracity of the testimony of Dr. Portia Montejo Batahan arguing that gunpowder burns could not have been found on the face of Lorenzo Bautista. If the assailant was standing before the *bangera* while Lorenzo was drinking thereat, as claimed, the nozzle of the gun could not have been close to the face of Lorenzo Bautista as to produce gunpowder burns.

As for the testimony of Danao Chief of Police Victorio Adlaon Dispo, accused-appellant contends that it should not be given credit as it was unclear whether he went to investigate at the place of the victim on 2 July 1992 or on 3 July 1992. In fine, accused-appellant questions the credibility of all prosecution witnesses and prays that their testimonies be set aside.

The Court accords great respect to the factual findings of the trial court, which is in a better position than the appellate court to properly evaluate testimonial evidence, absent any palpable error or arbitrariness in their findings.^[16] Two (2) vital circumstances however exhort us to appraise the testimonies of the witnesses anew: (a) accused-appellant's continued stay in the barrio after the occurrence of the crime while his co-accused Eulalio Autida sought refuge at another province; and, (b) accused-appellant's act of pursuing the instant appeal when his co-accused Eulalio Autida did not. These circumstances, to our mind, befog the accuracy of accused-appellant's conviction and calls to order an examination of the records and the principles of law applied.

The trial court anchored its conviction of accused-appellant on its finding of conspiracy between him and his co-accused Eulalio Autida in the commission of murder. It found the testimonies of witnesses Tiburcio Cabil and Filemon Bantilan sufficient to demonstrate a previous agreement between the two (2) accused to commit the crime and a determined act to accomplish it, *i.e.*, they entered the yard of the victim with firearms on hand, Eulalio Autida delivering the shot that killed the victim, while Walter Melencion carried his long arm in a forth-arm position as if ready to shoot.

In legal parlance, conspiracy is attendant when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. It is not necessary that direct proof of previous agreement to commit the felony be submitted as the same may be inferred from the circumstances attending the commission of the crime. Proof of concerted action on the part of the accused demonstrating a common design and objective is sufficient. However, conspiracy must be established by the same quantum of evidence as any other ingredient of the offense, *i.e.*, by proof beyond reasonable doubt. Such evidence must show intentional participation in the transaction with a view to the furtherance of the common design or purpose.

The witnesses for the prosecution recounted the events presumably according to what they actually saw and heard that fateful night without reservation nor prevarication. The time that Tiburcio Cabil spent in the comfort room is irrelevant, if not inconsequential, when compared to his straightforward narration of the circumstances behind Lorenzo Bautista's death. Neither does the condition of the comfort room detract from the veracity of his statement as it was clarified that its walls were made of thatched coconut leaves which allowed him to see outside.^[17] The possibility of a close-range attack did not necessarily discredit Tiburcio's testimony since the municipal health officer who conducted the post-mortem examination did not discount the possibility that the assailant might have been in front of the *bangera* outside the kitchen. Dr. Ma. Portia Mortejo Datahan in fact noted that the kitchen was low enough for a tall attacker to have come close and shoot Lorenzo Bautista.^[18]

As for Filemon Bantilan's unnatural reaction to the gunshots, it may be said that people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response when one is confronted with a strange, startling or frightful experience.^[19]