

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PROTACIO DANES ALIAS "TESING" AND AGAPITO ATUNDO ALIAS "PITO", ALIAS "PEPITO", DEFENDANTS-APPELLANTS.

G.R. No. L-30487. August 24, 1984

Ponente: GUERRERO, J.

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GUERRERO, J.:

Protacio Danes alias "Teting" and Agapito Atundo alias "Pito" alias "Pepito", were charged of the crime of murder by the Assistant Provincial Fiscal of Samar in an information which reads as follows:

"That on or about the 19th day of September, 1964, at about 10:00 o'clock in the evening in barrio Tangbo, municipality of Catubig, province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another with intent to kill, with evident premeditation and treachery and taking advantage of superior strength and the darkness of the night, did then and there wilfully, unlawfully and feloniously attack, assault, slash, hack and stab one Edencio Gorpido alias Eden with bolo which said accused conveniently provided themselves of the purpose, thereby inflicting upon the said Edencio Gorpido wounds on the different parts of his body which directly caused his death.

Contrary to law." (p. 4, Rollo).

The lower court found the two (2) accused guilty of the crime of murder in a decision dated April 10, 1969, the dispositive portion of which reads:

"In view of the foregoing considerations, the Court finds and so holds that the accused Protacio Danes alias Teting and Pepito Atundo alias Pito are guilty beyond reasonable doubt, of the crime of murder and there being neither aggravating nor mitigating circumstances attendant to the commission of the crime, the said accused are hereby sentenced each to life imprisonment, to indemnify jointly and severally the heirs of the deceased Edencio Gorpido in the amount of P6,000.00 and each to pay 1/2 of the cost of suit.

SO ORDERED." (p. 31, Rollo)

From the judgment of conviction by the lower court, the two (2) accused appealed before this Honorable Court.

The facts of the case as contained in the People's Brief are as follows:

"In the evening of September 10, 1964, at Barrio Tangbo, Catubig, Northern Samar, Canuto de los Santos overheard his brother-in-law, Edencio Gorpido, in a heated argument with Protacio Danes and Pepito Atundo. De los Santos approached Gorpido and advised the latter to come with him to his house to which Gorpido agreed. (p. 6, t.s.n., Delim, Nov. 27, 1967). Later, at about 9:00 o'clock that same evening after waking from a light nap, Gorpido decided to go home. De los Santos who was afraid that Danes and Atundo 'might do something bad against him', because of an earlier altercation, accompanied Gorpido towards the school

building. On the way, de los Santos met Antonio Isanan and they talked with each other for a while, after which Gorpido proceeded on his way to his farm. (p. 25, t.s.n., Delim, Nov. 27, 1967; p. 32, t.s.n., Delim, Dec. 1, 1967). The moon was bright at the time, and as Gorpido approached the school gate, de los Santos and Isanan saw Pepito Atundo emerge from the flower plant at the gate and thrust a bolo attached at the end of a bamboo pole against Gorpido, hitting the latter at the lower right side of the body. When Gorpido turned and attempted to run towards de los Santos and Isanan, Protacio Danes emerged from the other side of the street with a long bolo. Danes and Atundo pursued Gorpido who swerved straight for the river. When Danes caught up with him (Gorpido), the former slashed him at the back several times with his bolo. (p. 9, t.s.n., Delim, Nov. 27, 1967; p. 35, t.s.n., Delim, Dec. 1, 1967). After Danes and Atundo had left, de los Santos recovered Gorpido from the river. Before his death that same evening, Gorpido gave an ante-mortem declaration, fingering his attackers. (p. 11, t.s.n., Delim, Nov. 27, 1967; Exhibit "C", p. 5, Vol. 1, rec.). And autopsy performed the following day by Dr. Luz Desales, Municipal Health Officer of Laoang, Catubig, Northern Samar disclosed the following findings:

1. Incised wound extending from the left interscapular region directed transversely with the longitudinal axis of the body to 11 inches long towards the right arm, posterior portion, cutting completely the skin, muscles, small blood vessels but not the bone.
2. Incised wound located 2 inches below the left shoulder and directed longitudinally downward to a length of 8-1/2 inches cutting completely the skin, muscles and partially the left scapula.
3. Slash wound extending 1.5 inches above the level of the upper portion of the left ear and extending diagonally downward to a length of 7-1/2 inches towards the base of the neck clipping off a portion of the occipital bone and cutting completely the scalp and muscles of the nape.
4. Incised wound with the left extremity meeting the lower extremity of wound No. 3 and extending towards the right shoulders to a length of 9-1/2 inches cutting the skin, the muscles and upper portion of the right scapula completely.
5. Stab penetrating wound located 6 inches below the right armpit along the posterior axillary line, directed medially upwards cutting the 5th and 6th ribs and hitting the liver and lungs." (Exh. "A", p. 13, Vol. 1, rec.).

In the appeal by the accused, they assign as errors the following:

- I. The lower court erred in giving credence to the inherently incredible evidence of the prosecution.
- II. The lower court erred in refusing to give credence to the motion to dismiss for failure of the prosecution witnesses to identify the accused.
- III. The lower court erred in refusing to give credence to the evidence of the defense.
- IV. The lower court erred in not acquitting the defendants-appellants.

We affirm the conviction for the crime of murder. There are no reasons warranting a reversal of the trial court's finding of guilt.

The accused Protacio Danes does not deny that he inflicted bolo blows upon the deceased during the incident in the evening of September 19, 1964 which led to the eventual death of Edencio Gorpido. However, he disclaims any criminal liability by invoking self-defense. (p. 19, appellant's brief).

On the other hand, the other accused, Pepito Atundo, denies any participation in the commission of the crime alleging that, at the time of the incident, he was sick and did not leave the house. In other words, his defense is alibi.

The claim of Protacio Danes that he was only trying to defend himself from the alleged unlawful aggression of

Edencio Gorpido strongly militates against the evidence and testimonies presented before the lower court. As testified to by Dr. Luz Desales, the Health Officer of Laoang, Catubig, Northern Samar, who conducted the autopsy of the deceased, all the slashes and the stab wound of the latter were at the back. It would be improbable for the deceased to be the aggressor when all the wounds he sustained were at the back while accused-appellant Protacio Danes, a man smaller than the deceased, did not even suffer a scratch on his body. Supportive of a plea of self-defense and defense of honor is that the accused also suffered several incised wounds. (People vs. Banasen, 125 SCRA 306). There being no evidence to show that Danes suffered bruises or even minor scratches on his body, throws out the contention of self-defense. It is incumbent upon the accused to show that the requisites of self-defense were present. (People vs. Librado, 127 SCRA 541). Furthermore, the fact alone that the wounds sustained by the deceased were at back, clearly negates the claim of self-defense.

The testimonies of the witnesses for the prosecution belie the claim of self-defense. Their testimonies are to the effect that it was Protacio Danes who attacked from behind the victim and when the latter was about to run towards the direction of his companions, he was again slashed at the back, this time by Pepito Atundo, the other accused, who suddenly emerged from the bushes. We re-pro-duce here the pertinent portion of the testimony of Canuto de los Santos, a prosecution witness.

"Q - While you were proceeding to the place of the school building, what happened if there was anything that happened?

A - When Edencio Gorpido was nearing the fence of the school building, I saw this Pepito Atundo stood up and thrust with his bolo attached to a bamboo pole against Edencio Gorpido.

Q - At this precise time when Pepito Atundo thrust the bolo attached to a bamboo pole, how far were you from Pepito Atundo?

A - No less than 10 meters.

Q - And after the bolo attached to a bamboo pole was thrust to the body of Edencio Gorpido, what happened to Edencio Gorpido?

A - He ran back towards me.

Q - Did you know whether he was wounded or not?

A - I know that he was wounded because I really saw that he was hit.

Q - Where was he wounded, what part of his body was wounded?

A - At his back, witness indicating his right back side of the body.

Q - Now, after Edencio Gorpido ran to you wounded, what happened if there was anything that happened?

A - When Edencio Gorpido was running back towards me I saw that this Danes appeared and so Edencio Gorpido was not able to proceed towards me and instead, he ran towards the back of the river. Then, both of them chased Edencio and there he was slashed by Danes, in that place.

Q - Where was or how far was Danes when he slashed Edencio Gorpido from you?

A - I think no less than 7 meters.

Q - Was Edencio Gorpido wounded by the slash of Danes?

A - Yes, Sir.

Q - Where was he wounded, what part of his body was wounded?

A - All at the back of the head and back of his body.

Q - After Edencio Gurpido was slashed by Danes also pursued by Pepito Atundo, where did Edencio Gurpido go?

A - He was already in the water.

Q - And how about you where did you go?

A - I was just looking there and then I called the authorities of the barrio saying that there was a person being slashed.

Q - And after Edencio Gurpido went into the water what happened if there was anything that happened?

A - He was calling.

Q - What did you do if you did anything?

A - Because there was no authority that answered the call for help and being a brother, I went to him and saved him.

Q - And when you rescued Edencio Gurpido from the water where was Danes and Pepito Atundo?

A - They returned to their respective homes.

Antonio Isanan corroborated the testimony of Canuto de los Santos. The pertinent portion of his testimony is as follows:

"Q - While you were talking to Canuto and Edencio going home to his house what happened if there was anything that happened?

A - While I was conversing with Canuto and Edencio was walking towards the school building and when he reached near to the flowering plants called Rosal, I saw Pepito who stood up and then thrust against Edencio with a weapon with a handle.

Q - Do you know the family name of this Pepito?

A - I do not know his family name but I know his first name.

Q - If Pepito is here in the Court will you please point to him?

A - Yes, Sir.

Q - Point to him please?

A - He is there, witness indicating to a person who when asked his name answered Pepito Atundo.

Q - How far were you from the place where Pepito Atundo stood up and wounded Edencio?

A - Around 10 meters.

Q - Now, do you know if Edencio was hit with the thrust that was delivered by Pepito Atundo?

A - Yes, Sir, I saw he was hit here, witness indicating his right side of his right hip.

Q - When Edencio was hit at the right hip by Pepito Atundo what happened to Edencio Gurpido?

A - When Edencio was hit he immediately turned back and run towards us perhaps for the pur-pose of protection but Protacio was already there so instead of running towards us he ran to the river.

Q - Was Edencio able to reach the river?

A - Yes, Sir.

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Q - You said that when Edencio was hit by Pepito he tried to ran to the place where you and Canuto were but Danes was already there, and so Edencio went to the river. Do you know the reason why Edencio went to the river?

A - Yes, Sir.

Q - Why?

A - Because he was already afraid for there were already two attackers against him.

Q - After Edencio ran to the river how about Pepito and Danes where were they, do you know?

A - When Edencio was already on the river Pepito went home while Protacio went to the river following Edencio and made slashes on Edencio.

Q - After Edencio was slashed several times by Danes what happened?

A - When Protacio was slashing Edencio, Edencio escaped and moved towards the middle of the river in order that he would not be reached by the weapon of Danes and so Canuto got a banca and tried to save Edencio.

From the foregoing testimonies, there could only be one conclusion, and that is, there was no unlawful aggression on the part of the victim. In fact, the attack on the latter was characterized by treachery since the attack on the latter was from behind thereby rendering the victim unable to defend himself.

Pepito Atundo, the other appellant, invokes the defense of alibi. He contends that at the time when the incident occurred, he was in his house and was sick (TSN, p. 73, March 11, 1966). This defense is totally destroyed by the positive identification of the two (2) prosecution witnesses, pointing to Danes and Atundo as the aggressors. Alibi is worthless in the face of positive identification by prosecution witnesses pointing to the accused as particeps criminis. (People vs. Martinez, 127 SCRA 260). Besides, accused-appellant Atundo did not show an impossibility on his part to be at the scene of the crime. In fact his house was just near from where the killing occurred (p. 115, TSN, Aug. 22, 1968). It is a rule, so well established in Our jurisprudence, that to establish an alibi, it is not enough to prove that the defendant was at some other place when the crime was committed, but it must likewise be demonstrated that it was physically impossible for him to have been at the scene of the crime at such time. (People vs. Martinez, 127 SCRA 260; People vs. Regato, 127 SCRA 287).

Accused-appellants also criticize the lower court for giving credence to the inherently incredible evidence of the prosecution. We have reviewed the testimonies of the witnesses for the prosecution and We do not find any reason to disturb the lower court's lending of credibility to said witnesses. The Supreme Court respects the trial court's finding on credibility of witnesses. (People vs. Palon, 127 SCRA 529).

Finally, the last error to be disposed of is the allegation of the accused-appellants that they were never identified by the witnesses of the prosecution. They maintain that when one of the witnesses was asked if he knew the family name of Pepito Atundo and the answer was he did not, this was sufficient for a ground of a motion to dismiss on the theory that there was a failure to identify them during the trial. We disagree with the appellants. The fact that the family name of one of the accused was not known by the witness is not fatal to the evidence of the prosecution. The identification of Atundo as one of the perpetrators of the crime was fully supported by the testimonies of the witnesses. On the other hand, the identification of Protacio Danes need not be discussed as he

himself admitted judicially, the killing of Edencio Gorpido.

WHEREFORE, with the modification that an indemnity of P30,000.00 be ordered paid to the heirs of Edencio Gorpido by appellants Protacio Danes and Pepito Atundo solidarily, the judgment appealed from is **AFFIRMED** in all other respects, with costs.

SO ORDERED.

Aquino, (Acting Chairman), Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), on official leave.

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