

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMILIANO PLANDEZ ALIAS EMEN, FERNANDO PLANDEZ ALIAS
DANDOY, AND PABLO PLANDEZ, DEFENDANTS-APPELLANTS.**

G.R. No. L-31282. September 17, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

This is an automatic review of the decision of the then Court of First Instance of Samar, convicting the accused-brothers Emiliano Plandez alias Emen, Fernando Plandez alias Dandoy and Pablo Plandez of the crime of murder and sentencing Fernando Plandez to reclusion perpetua and Emiliano Plandez and Pablo Plandez to the supreme penalty of death, and further ordering the three appellants to indemnify the heirs of the deceased Armin Golondrina in the amount of P12,000.00, to pay moral damages in the amount of P6,000.00, and to pay the costs.

Prosecution evidence shows that about 2:30 in the afternoon of May 26, 1968 spouses Armin Golondrina and Oliva Salanguste arrived at barrio Boksol, Catarman, Northern Samar to collect from persons indebted to them, among whom are appellants Emiliano Plandez and Fernando Plandez. The spouses were able to collect one-half (½) sack of rice which they left in the house of one Francisco, following which they proceeded to the residence of Congayao. They were going up the house of Congayao when Armin Golondrina was accosted and stabbed by Edrin Plandez (still at large and also a brother of herein appellants) on the right side of the chest above the nipple. Oliva Salanguste shouted for help but, notwithstanding, Edrin Plandez still pushed Armin who fell down to the ground where appellant Fernando Plandez stabbed him at the back. This was followed by appellant Pablo Plandez who choked Armin's neck and slashed his palm. Oliva Salanguste rushed to the assailants but she was pushed away. Armin was able to run a distance of about seven meters and, thereafter, fell down. Emiliano approached the deceased and gave him a blow at the back. Oliva Salanguste shouted: "That is enough. You have stabbed him and he is already dead." Emiliano shouted back: "You also?" Oliva continued to shout and the four brothers ran away.

Armin Golondrina died of profused hemorrhage as a consequence of the wounds inflicted upon him.

The defense version of the incident is that the fight was between the deceased Armin Golondrina and Fernando Plandez only and that the latter acted in self-defense. It is their submission that appellant Fernando Plandez was at the kitchen of the house of Marciano Congayao when Armin went up, passing by the kitchen door. When their eyes met, Fernando Plandez tried to hide himself but then Armin remarked: "Why are you waiting here when the people with big bodies have already scampered away. I will kill you."

Armin Golondrina tried to stab Fernando with a small bolo, saying that he (Fernando Plandez) will be next to Ben Pulgar whom he (Armin) had killed before. Fernando Plandez was able to parry the blow with his bolo hitting the right palm of Armin, causing the latter to drop his weapon. Armin held on to Fernando and tried to wrest the bolo of the latter. The two fell to the ground, some six feet, more or less, from the kitchen floor. At this juncture, Fernando stabbed Armin on the chest. This was followed by another stab blow on the left side of the abdomen. Armin still held on to Fernando trying to get the weapon but the latter stabbed him again at the back.

The following day, appellant Fernando Plandez surrendered to the police department of Catarman, Northern Samar and delivered to the authorities the bolo (Exhibit 2) which he had used in stabbing the deceased. Further, defense evidence shows that when Fernando Plandez and Armin Golondrina were fighting each other, appellants Emiliano Plandez and Pablo Plandez were in Bobon, Northern Samar, eleven (11) kilometers from the crime scene in Boksol, Catarman, Northern Samar.

After trial, the court a quo rendered the subject decision on September 15, 1969.

On April 26, 1976, Emiliano Plandez alias Emen died of PTB and diabetes melitus and this Court, in its resolution of August 24, 1976, dismissed the case insofar as the criminal liability of said appellant is concerned.

In this appeal, appellants claim that the court a quo erred (1) in sustaining the theory of the prosecution despite the flaws and inconsistencies in the testimonies of Oliva Salanguste and Concepcion Fernandez; (2) in unduly rejecting the theory of self-defense on the part of accused-appellant Fernando Plandez and of alibi on the part of accused-appellants Emiliano Plandez and Pablo Plandez; (3) in imposing the penalty of reclusion perpetua upon accused-appellant Fernando Plandez and of death upon accused-appellants Emiliano Plandez and Pablo Plandez; and (4) in not acquitting the accused appellants of the crime charged their guilt therefor not having been proved beyond reasonable doubt.

In its decision, the trial court ruled:

"As far as the testimony of Fernando Plandez is concerned, and after scanning it carefully, the testimony becomes unnatural and unbelievable and is repugnant to its reasonableness when he testified that he was attacked first by Armin Golondrina and he parried the blow with his own bolo and hitting the latter on his palm thereby dropping the victim's bolo. Thereafter, they grappled with each other for the possession of the bolo of Fernando and thereafter they fell down to the ground. After Fernando Plandez stabbed the victim several times hitting the latter in the different vital parts of the body, it is inconceivable that he could still stand and fought back. For the whole period that they wrestled with each other for the possession of the bolo and that he never sustained even a small scratch is something extraordinary. The story of self-defense as narrated is so exaggerated so much so that he obviously overshot his mark thereby crossing the boundaries of credibility. This statement is repugnant to the ordinary. It is a miracle in itself and thus becomes outside of judicial cognizance.

"The accused Fernando Plandez admitted that he is a gambler and as a matter of fact his main purpose of going to Boksol was to gamble.

"A common gambler is a common nuisance; insensible to honor, deaf to pity, and bent upon plunder, he is a human cormorant, more detestable than the bird of prey itself.'" (Smith vs. Wilson, 31 How. Pr. [N.Y.] 22 Fed case No. 13, 128) (pp. 11-12, Decision)

Prosecution witness Oliva Salanguste has positively identified appellants Emiliano, Fernando and Pablo Plandez, together with Edrin Plandez, as the assailants of her husband Armin Golondrina. Considering the unparalleled opportunity of the court a quo to observe the attitude and demeanor of the prosecution and the defense witnesses while testifying and thereby formed an opinion about their credibility, as well as the great weight uniformly accorded to its appreciation of the relative weight of the evidence submitted by the prosecution and the defense, and there being no satisfactory showing that any material error was committed therein, We cannot see our way clear to depart from the conclusions of fact in the appealed decision as to the culpability of accused-appellants. It is hard to believe the declaration of appellant Fernando Plandez that he had to attack Armin Golondrina in self-defense considering that if it were true that the latter was armed and he was able to parry Armin's blow causing him to drop his bolo why was said bolo not presented and produced in court? Neither does it appear that any bolo belonging to the deceased was found near the place where the fight took place. Self-defense, being an

affirmative allegation, it is incumbent upon the accused to prove clearly and sufficiently its elements, otherwise the conviction of the accused is imperative. In the case at bar, the evidence of appellant Fernando Plandez in support of the claim of self-defense is of doubtful veracity; hence, its rejection by the lower court was justified.

With respect to Pablo Plandez' defense of alibi, the lower court held:

"In the case at bar, the two accused, Emiliano and Pablo, alleged that on the day of the incident, they were in Bobon on May 26, 1968 as they received a letter, Exh. '1' and '1-A', the translation, from Venerando Plandez, their brother. Venerando was then indebted to them in the amount of P500.00 and the following morning of May 27, 1968, they went to the Philippine National Bank to get the loan of Venerando as released. To this effect, Exh. '3' was presented which is the letter of Mr. Conrado Cabawatan, Officer-in-charge. Exhibit '3', however, is not for release of loan in favor of Venerando Plandez. It is a letter of collection in the amount of P3,000.00 in favor of the bank which became due and payable on May 27, 1969. This negates the theory that they went to the bank to get the amount of loan as released." (pp. 12-13, Decision)

It is a well-settled rule that alibi - the much abused sanctuary of felons and which is considered as an argument with a bad reputation, cannot prevail over the positive testimonies of the prosecution witnesses. It is, to say the least, the weakest defense and must be taken with caution being easily fabricated.

Considering the circumstances and facts of the case, it is clear that there was conspiracy in the commission of the crime. The accused-appellants are brothers. Edrin Plandez stabbed Armin when the latter was going up the stairs following which he pushed Armin who fell to the ground where he was stabbed by Fernando Plandez. Pablo Plandez then held Armin by the neck while Fernando stabbed him again. When Armin was able to stand and ran away, Emiliano Plandez pursued and gave Armin another blow until the latter fell to the ground. Thereafter, appellants, together with Edrin, all ran away. Their conduct reveals coordination of effort and community of design to kill the victim Armin Golondrina. In a long line of decisions by this Court it has been held that "conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests, and such unity of purpose and concert of action serve to establish the existence of the conspiracy and the criminal liability as principals of the conspirators. People vs. Lunar, 45 SCRA 119; People vs. Tanjalali Gajali, 46 SCRA 130; People vs. Custodio, 47 SCRA 289; People vs. Mori, 55 SCRA 382; People vs. Mejia, 55 SCRA 453; People vs. Cariño, 55 SCRA 515; People vs. Cardenas, 56 SCRA 631."

Appellant Pablo Plandez was correctly sentenced to the supreme penalty of death. However, for lack of the necessary votes and considering that he has been detained since his arrest in 1969, We reduced the penalty to reclusion perpetua.

WHEREFORE, the appealed decision is hereby **AFFIRMED**, with the modification that the penalty imposed upon Pablo Plandez is reduced to reclusion perpetua and the indemnity to the heirs of the deceased Armin Golondrina is increased to P30,000.00. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Abad Santos, Melencio Herrera, Plana, Escolin, Gutierrez, Jr., De La Fuente, and Cuevas, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., on leave.

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