

## **THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ASET KINDO, BENITO YEO AND LUMIHAY SULO, DEFENDANTS-APPELLANTS.**

*G.R. No. L-35781. January 28, 1980*

Ponente: ABAD SANTOS, J.

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### **ABAD SANTOS, J.:**

In an information dated July 2, 1970, ASET KINDO, BENITO YEO and LUMIHAY SULO were accused of the crime of robbery with homicide and slight physical injuries said to have been committed as follows:

"That on June 13, 1969, at about 6:00 o'clock P.M. in sitio Lunac, barrio Mulom, municipality of Lapuyan, province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused all armed with hunting knives and a bolo conspiring, confederating and helping one another did, then and there wilfully and feloniously stone Fortusa Tanan and Ortillo Tanan (husband and wife) while they were on their way home from a certain market place, with intent of gain, by force, violence and intimidation pointed their knives at the couple, demanded for money, and with intent to kill, attack and stab Ortillo Tanan, so that out of fear from being killed Fortusa Tanan (wife) gave their money in the amount of P6.00 to the accused, who take, steal and carry said amount belonging to Mr. and Mrs. Tanan without their voluntary consent and against their will to the damage and prejudice of the latter in the amount of P6.00 only.

That as a result of the stabbing made by the accused to the victim Ortillo Tanan, the latter sustained a mortal stab wound at his abdomen which caused his death shortly thereafter and the wife Fortusa Tanan sustained slight physical injuries on the different parts of her body which requires medical attendance from 8-9 days as a consequence of the stoning made by the accused."

After due trial, the Circuit Criminal Court at Pagadian City rendered the following sentence:

"WHEREFORE, the Court finds the accused Aset Kindo, Benito Yeo and Lumihay Sulo guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries charged in the information, without any mitigating circumstance present, and each and every one of them is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties provided by law; to indemnify, jointly and severally, the heirs of the deceased Ortillo Tanan in the sum of P12,000.00, and also indemnify the complainant Fructuosa Tanan in the sum of P10.00 representing the cash amount taken from her and the value of the articles she lost, without subsidiary imprisonment in case of insolvency considering the nature of the principal penalty imposed; and, to pay the costs."

The above-quoted sentence was based on the trial court's finding that: "At about 6:00 o'clock in the afternoon of June 13, 1969, while Purificacion Tanan, Jovita Sigba, Julieta Balisado Tanan, Mario Tanan, Fructuosa Tanan and Ortillo Tanan were walking and following near each other in that order on a trail in sitio Lunac, barrio Molum, Lapuyan, Zamboanga del Sur, going home and coming from the public market of Molum, they were rained and pelted with stones thrown from one side of the trail among the coconut trees and bushes. Fructuosa Tanan was hit

three times, the first stone hitting the basket that she was carrying on her head, the second her back near the shoulder and the third her right waist, as a result of which she fell. As Fructuosa fell, her companions started to run away but simultaneously the three accused Aset Kindo, Benito Yeo and Lumihay Sulo sprang up from among the bushes with drawn hunting knives. Aset and Benito went towards Fructuosa, held her arms and pointed their knives at her and demanded for her money, while Lumihay pursued and ran after Ortillo Tanan, husband of Fructuosa. Meanwhile that Aset and Benito were demanding money from Fructuosa, Ortillo who was already ahead of her at a distance of about five meters was shouting for help, saying that he was stabbed and telling Fructuosa to run. Attracted by the shouts for help by Ortillo, Fructuosa and her other companions Jovita Sigba and Julieta Balisado Tanan saw the accused Lumihay Sulo holding a knife just in front of Ortillo who was then holding his wounded abdomen. After getting the money of Fructuosa in the amount of P6.00 and the stabbing of Ortillo, all the three accused fled and ran away towards the market at Molum. Some minutes later, Ortillo's brothers Celestino and Bernardo who were also with them that afternoon but quite much ahead than the rest of the group arrived, and upon seeing their brother wounded they carried him and brought him to Margosatubig Emergency Hospital where he died that same evening."

Dr. Viola Cabahug, Acting Chief of Margosatubig Emergency Hospital testified that she attended to Ortillo Tanan in the evening of June 13, 1969, and found a stab wound on the epigastric region; that she performed an operation on the wound and found that there was perforation of the stomach, liver and kidney, and that due to massive internal hemorrhage the patient died about two and a half hours after the operation. She identified the certificate of death of Ortillo Tanan which she issued and marked as Exhibit A. Leopoldo Lumapas, Provincial Sanitary Inspector assigned in Lapuyan, testified that he examined and treated the injuries of Fructuosa Tanan enumerated in the certificate he issued, marked as Exhibit B, on June 16, 1969.

All three appellants denied the robbery and the conspiracy to commit it. With respect to the death of Ortillo Tanan self defense was invoked by Lumihay Sulo while Aset Kindo and Benito Yeo disclaimed participation.

Lumihay Sulo testified that he was at the market earlier in the afternoon of June 13, 1969. He even saw the Tanan spouses and companions selling their wares at the market. At about 6:00 o'clock, he walked alone on the trail leading to Lunac and heard shouts from some persons walking ahead of him. Attracted by the shouts, he approached and met Ortillo, Fructuosa and Tinong (Celestino Tanan, brother of Ortillo). The three took him for the person who had thrown the stones and an altercation followed between him and Ortillo. Then, Fructuosa, armed with a hunting knife and Tinong with a bolo attacked him. To defend himself he drew his knife and stabbed Ortillo. Thereafter, he ran and was pursued by Tinong.

Benito Yeo testified that he also came from the market where he saw the Tanan group selling their produce, and met Lumihay Sulo and Aset Kindo. He walked alone on that trail, about one hundred meters behind the Tanan entourage. He heard shouts and out of curiosity, he investigated. He then saw Lumihay fighting with Ortillo and Fructuosa. Tinong (Celestino Tanan) arrived, with a long bolo and joined the fight. He (Benito) was unarmed, but he pulled Fructuosa away, when she was about to strike Lumihay with a hunting knife. Fructuosa fell down and he grabbed her knife. Tinong hacked Lumihay and Lumihay retaliated by stabbing Ortillo; Tinong then turned to him and Lumihay but they ran away.

Aset Kindo testified that he was also drawn to the scene of the incident by shouts for help while he was walking on the trail with Feliciano Mabini. He saw Lumihay, being then pursued by a "Visayan" armed with a long bolo, who turned out to be Tinong. He and his companions ran, as they sensed trouble. He denied having seen the spouses Ortillo and Fructuosa, and his co-accused Benito Yeo.

Feliciano Mabini who claimed to be a barrio special policeman corroborated Aset Kindo's testimony. He said that

he did not see Benito Yeo and Fructuosa. He saw only Lumihay being pursued by Tinong and Bernardo Tanan. However, on cross examination he said that he saw Benito Yeo, but the latter was merely looking at the protagonists.

Before us the appellants impugn the credibility of the prosecution witnesses, contending that the testimony of Fructuosa Tanan, among others, was pregnant with improbabilities. Stressing the fact that not one of the eyewitnesses had actually seen the person or persons who threw the stones, they contend that the pelting was merely a mischief played upon the Tanans, and that it was an incident unrelated to the stabbing of Ortillo. They maintain that Lumihay Sulo stabbed Ortillo in valid self-defense, during which time Benito Yeo and Aset Kindo happened to be present. They assail the trial court's finding of criminal conspiracy for the robbery, the killing of Ortillo, and the infliction of physical injuries on Fructuosa, on the ground that no agreement of a common design was proved to show conspiracy. They further contend that there was no evidence that Lumihay Sulo demanded money from Fructuosa or that he shared the P6.00 with Benito Yeo and Aset Kindo.

With regard to the credibility of the witnesses, a review of the records does not disclose any fact or circumstance of material weight or influence which if otherwise considered would justify interference with the trial court's determination. As appropriately observed in the People's brief, there is no evasion, extravagance, fabrication or pretense evident in the testimony of Fructuosa Tanan. The simple, short and direct answers of Fructuosa, as well as the other prosecution witnesses run the length of the transcript of their testimonies. Their simple answers reflect the straightforward and unvacillating manner in which they were given, as may be reasonably expected from poor and unlettered folks, victimized by the avarice of their fellowmen.

There is nothing inherently improbable in the account of the incident, notwithstanding the witnesses inability to see the accused in the act of throwing the stones. Such inability is understandable, for the stones were thrown from behind coconut trees and bushes lining the trail coupled with the fact that the Tanan entourage was immediately stricken with panic, causing everybody to run pell-mell. If under such conditions, the witnesses had declared that they saw the stonethrowers, their testimony would indeed be open to suspicion. The fact that they did not, reflects favorably on their candor and the truthfulness of their narration.

Fructuosa Tanan made a positive and clear recognition of Benito Yeo and Aset Kindo when they demanded money from her, and of Lumihay Sulo, as he stood in front of her wounded husband. Even, Jovita Sigba, Julieta Tanan and Purificacion Caballero, the companions of the Tanan spouses, who started to run when the first stones came upon them, did not fail to look back and to recognize and identify the accused while holding the Tanan spouses at bay. Jovita, Julieta and Purificacion executed sworn statements, and with the exception of Purificacion, corroborated the testimony of Fructuosa. These witnesses could not have been mistaken, considering that visibility was still good at six o'clock in that bright summer afternoon, and it appearing that they had known the accused previously. Moreover, no possible motive was shown why these witnesses would prevaricate against the appellants who each admitted that said witnesses had no reason to testify falsely.

Upon the other hand, the appellants failed to explain satisfactorily their presence at the scene of the crime immediately after the barrage of stones was lifted, despite their dubious claim that they were separately attracted by shouts for help while walking individually on the same trail.

Lumihay Sulo claimed that he defended himself from the armed attack of Fructuosa and Tinong. Thus, he drew his knife and stabbed Ortillo - not Fructuosa nor Tinong, because according to him, Ortillo was the one nearest to him. This explanation is preposterous and makes evident the concoction. Similarly the attempt of Benito Yeo and Aset Kindo to fortify the story of Lumihay, deserves no serious consideration. But, just to demonstrate the inherent improbability of the account of Yeo, it will be recalled that he claimed he approached the armed

combatants and pulled the knife-wielding Fructuosa away from Lumihay. However, according to him, he was unarmed; that, Lumihay whom he tried to save from the knife of Fructuosa, was not even his friend. Moreover, it does not appear that he suffered even a bruise or scratch when he pulled away the knife-wielding Fructuosa. This kind of a story does not deserve credence. And it explains why the accused did not bother to relate the self-defense angle to the police investigators when they were arrested for in fact there was no self-defense.

The facts were as found by the trial court. The circumstances do not simply speak of self-defense on the part of Lumihay Sulo. Having admitted that he was the author of the death of the deceased, it was incumbent upon the appellant, in order to avoid criminal liability, to prove the justifying circumstance claimed by him - self-defense - to the satisfaction of the court. To do so he must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after the accused himself had admitted the killing (*People vs. Ansoyon*, 75 Phil. 772, 777 [1946]).

The evidence showing that Lumihay stabbed Ortillo on the occasion of the robbery, while Aset Kindo and Benito Yeo were holding Fructuosa at bay for the sum of P6.00 is strong. There can be no doubt that the accused had conspired to commit the crime. The form and manner in which the robbery and the accompanying homicide and physical injuries were committed clearly indicate unity of action and purpose. As correctly pointed out in the People's brief, the stonethrowing proves the deliberate conspiracy to rob a group of people, mostly women who had just sold their produce in the market and were carrying not only the proceeds but also some items that they had purchased. The stoning indicates not an isolated act of mischief, but a deliberate and planned course of action, apparently intended to scare away the companions of the Tanan spouses.

It should be remembered that each of the accused was at the market earlier that afternoon. Each one admitted having seen the Tanan spouses selling their ware in the market place. The subsequent appearance of the accused at the scene of the crime was not accidental as they otherwise claimed. They immediately appeared after the stones rained on the Tanan group. It is not shown that there were persons in the area, other than the appellants and the Tanan group. The conclusion is inescapable: they threw the stones as a prelude to their swooping down upon the victims. The stones were big enough to bring down Fructuosa and cause her physical injuries which took eight to nine days to heal. Then, two of them divested Fructuosa of her money while one went after Ortillo, apparently to forestall any resistance that may arise from him. After Benito Yeo and Aset Kindo had taken Fructuosa's earnings and after Lumihay Sulo had stabbed Ortillo, they all ran and fled to the same direction.

There need not be direct evidence of an agreement among the accused, or that Lumihay Sulo demanded money from Fructuosa, or that he shared the P6.00 with the other accused, as otherwise contended by the appellants. If it is proved that two or more persons aimed, by their acts, at the accomplishment of some unlawful purpose, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of criminal purpose, conspiracy may be inferred, although no actual meeting between them to commit the crime in question is proved. The appellants as conspirators are therefore responsible for the consequences of the acts of each of them. (*People vs. Moro Ambang, et al.*, 108 Phil. 325 [1960]).

WHEREFORE, the decision of the trial court is affirmed in toto. Costs de officio.

### **SO ORDERED.**

Barredo, (Chairman), Antonio, Aquino, and Concepcion, Jr., JJ., concur.

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