

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELESTINO LABITAG, ACCUSED, CELSO LABITAG, ACCUSED-APPELLANT.

Ponente: TIJAM, J.

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TIJAM, J.:

This is an Appeal from the Decision,[1] dated February 26, 2003, of the Regional Trial Court of Sorsogon City, Branch 51, in Criminal Case No. 94-3752, finding Accused- appellant guilty beyond reasonable doubt of the crime of frustrated homicide as penalized under Article 250[2] of the Revised Penal Code.

Accused-appellant CELSO LABITAG and accused Celestino Labitag were charged with frustrated homicide before the RTC in an Information, dated September 14, 1994,[3] which alleges as follows:

“That on or about June 23, 1993 in the Municipality of Sorsogon, Province of Sorsogon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, conspiring and confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously attack, assault and hack one ANGEL TULOP, hitting him on the different parts of his body, thus, the accused performing all the acts of execution which would have produced the crime of Homicide as a consequence but which nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, because of the timely and able medical assistance rendered to the victim, which prevented his death, to his damage and prejudice.

Contrary to law.”

During the arraignment,[4] the Accused-appellant pleaded not guilty. Accused Celestino Labitag died on June 24, 1993, as evidenced by the death certificate presented by the defense witness Petrona Palle during the hearing, which was admitted by the prosecution.

The relevant facts are as follows:

On June 23, 1993, Private Complainant Angel Tulop attended the pre-wedding celebration of Rafael Hije’s (Rafael) son at the latter’s residence located in Barangay Marinas, Sorsogon, Sorsogon. Private Complainant was one of the sponsors in the said wedding. At around 7:00 PM, Private Complainant was watching a dance in said venue. In the dance hall, Private Complainant saw the Accused- appellant and accused Celestino Labitag (Celestino), who are his brothers-in-law, having a drinking spree. Private Complainant was requested by Rafael to lead the “pantomina” dance.

At around 11:00 PM, while Private Complainant was watching the dance, he heard somebody shout “itak!” Private Complainant turned to his right and saw Celestino who suddenly hacked him with a bolo. Private Complainant parried the blow with his left hand causing the hand to be cut. Celestino hacked Private Complainant three more times in different parts of his body. Subsequently, Accused- appellant joined his brother Celestino and also hacked Private Complainant on his right arm, then on his left shoulder causing the same to sag and blood to ooze out. When Accused-appellant hacked Private Complainant on his neck, the latter fell to the ground and rolled to the fence, where he hit his head against a bamboo causing him to lose consciousness.

Private Complainant testified that Accused-appellant and Celestino wanted him and his wife Esperanza (sister to both accused) to leave their house because Esperanza had no more share in their father's land where the Private Complainant's house was located. Private Complainant claimed that from 1991 to 1993, Accused-appellant and Celestino threatened to kill him if they will not leave the place.

Private Complainant presented a compromise agreement[5] executed by Esperanza, Accused-appellant and Celestino before Judge Rica H. Lacson, Municipal Trial Judge of Sorsogon, Sorsogon resulting from a criminal complaint Esperanza filed against her brothers Accused- appellant and Celestino for qualified trespass to dwelling. Accused-appellant and Celestino were jailed for 15 days and were only discharged from jail when Esperanza forgave them and signed the compromise agreement, where the accused promised not to disturb and go near the Private Complainant's house to avoid trouble.[6]

Jose Llagas[7] (Jose) testified that he brought a wedding gift to the celebration at around 7:00 PM of June 23, 1993. He saw the Accused-appellant and Celestino hacking the Private Complainant. He ran to the Private Complainant's house to inform Esperanza about the incident. Jose testified that Private Complainant was unarmed at the time of the attack.

Dr. Andrew A. De Castro (Dr. De Castro),[8] a resident physician of the Sorsogon Provincial Hospital who attended to the Private Complainant at the hospital, testified that the Private Complainant sustained multiple hacking wounds. Dr. De Castro disclosed that if no medical attention was given to the Private Complainant within 30 minutes to one hour, the victim could have suffered blood loss secondary to the wound and he could have died of "hypovolemic" shock or blood loss. A medical certificate[9] was issued to that effect.

In his defense, Accused-appellant[10] testified that he was invited by Rafael to attend the pre-wedding celebration on June 23, 1993. He arrived at the venue around 1:00 PM. Rafael requested him to join the visitors from Manila. They had a drinking spree from 1:00 PM to 3:00 PM. During that time, neither Private Complainant nor Celestino was around. After drinking, he slept on the table near the kitchen and he only woke up at around 7:00 AM the following day. At around 8:00 AM of June 24, 1993, Accused-appellant learned that his brother Celestino died because the latter and the Private Complainant had a fight in the dance hall.

Accused-appellant testified that the kitchen table where he slept was situated just four arms'-length from the place of the incident. Despite the noise brought about by the incident, and the loud music, Accused-appellant remained asleep because he was then drunk. Nobody woke him up to inform him that Celestino was already dead. Accused-appellant denied that he and Celestino had a misunderstanding with the Private Complainant regarding a land left by their father. Accused-appellant claimed that he did not know if Celestino's wife filed a criminal complaint against the Private Complainant for allegedly stabbing Celestino to death.

Petrona Palle (Palle)[11], Barangay Captain of Casili, Gubat, Sorsogon, testified that she knew the Private Complainant and the Labitag brothers, as they are her barriomates. She attended the pre-wedding celebration on June 23, 1993. At about 10:00 PM, she danced pantomina with the Private Complainant. While she was dancing, she noticed that Private Complainant had a bladed weapon inserted in his waist. After the dance, Private Complainant chased and stabbed Celestino twice in his stomach and chest and then Private Complainant ran away. With the help of a barangay tanod, they brought Celestino to the hospital but Celestino died the following day. She later returned to the scene of the crime to bring Private Complainant to the hospital, as he had also stab wounds but she discovered that Private Complainant was already in the hospital. Palle claimed that Accused-appellant was not present during the incident. However, during the cross examination,[12] Palle testified that Celestino first chased the Private Complainant with a bolo. She also claimed that there was no bad blood between Private Complainant and the accused. During the hearing, Palle also presented a copy of the death

certificate[13] of the accused Celestino, which was admitted by the prosecution.

Rogelio Chavez (Chavez)[14] corroborated the testimony of the Accused-appellant and Petrona Palle that Accused- appellant was not present during the incident as the latter was sleeping, and was not awakened by the commotion. He testified that he saw Private Complainant and Celestino hacking and chasing each other in the dance hall. Then he saw the Private Complainant stab Celestino and the latter's intestines came out causing his death.

On February 26, 2003, the trial court rendered a decision finding the Accused-appellant guilty beyond reasonable doubt of the crime of frustrated homicide, and sentenced him to suffer an indeterminate penalty of 4 years, 1 month and 20 days of prision correccional, as minimum to 9 years, five months and 15 days of prision mayor, as maximum.

The trial court found that the bare and self-serving testimony of Accused-appellant even though corroborated by other witnesses, was weak and incredible. Accused- appellant's testimony that he was then asleep and had no participation in the incident was not given credence by the trial court because of the positive testimonies of Jose Llagas, the eyewitness, and the Private Complainant himself. The trial court affirmed the prosecution's version of the story that, on the date of the incident, Accused- appellant and Celestino were drinking and looking at the Private Complainant while he was dancing; that Celestino chased Private Complainant; and that, together with Accused-appellant, they hacked Private Complainant with a bolo. The testimony of defense witness Palle was not given weight because the witness kept on changing her answer thereby leading the trial court to believe that she was not present during the incident. Likewise, Palle's and Chavez' testimonies were not given credence, as their testimonies were beyond the realm of human experience.

The trial court concluded that the two accused were the unlawful aggressors and not the Private Complainant; and that prior to the incident, the two accused harbored ill feelings against the Private Complainant because of a complaint previously filed by the Private Respondent's wife against them. The trial court found the testimony of the Private Complainant credible, consistent, categorical and straightforward aside from the fact that it was corroborated by a competent witness. The defense of the Accused- appellant was purely alibi and was not given merit.

In this appeal, the Accused-appellant claimed that the trial court gravely erred in giving full credence to the testimonies of the prosecution witnesses and in disregarding the Accused-appellant's defense of alibi and denial. The trial court likewise gravely erred in finding the Accused-appellant guilty beyond reasonable doubt. Accused-appellant argued that it was Private Complainant who was the guilty party as his brother Celestino died during the fight. Accused-Appellant pointed out that Private Complainant intentionally omitted in his testimony that he stabbed Celestino to make him appear as the aggrieved party.

Accused-appellant asserted that he was asleep when the incident happened as evidenced by the fact that he sustained no wounds from the affray and it was only Private Complainant and Celestino who suffered injuries. Accused- appellant claimed that Private Complainant falsely testified in court because the latter would have a hard time proving that he acted in self-defense when he killed Celestino. This would also reveal that Private Complainant went to the venue with a weapon. Thus, Private Complainant implicated Accused-appellant to the crime in order not to be held liable for the death of Celestino.

The Office of the Solicitor General (OSG) commented that the testimony of the prosecution witnesses were worthy of credence, and there was no showing that they were motivated by ill motive to impute to the Accused-appellant and Celestino the crime charged. The OSG contended that both the Accused harbored ill feelings against the Private Complainant prompting them to attack the Private Complainant after having a

drinking bout. The defense of alibi and denial offered by the Accused-appellant was weak and could not prevail over the positive identification made by the prosecution witnesses regarding their culpability of the crime charged.

We deny the appeal.

The oft-repeated principle is that the assessment of the credibility of witnesses and their testimonies is best undertaken by a trial court because of its unique opportunity to observe the witnesses at firsthand and to note their demeanor, conduct and attitude under examination. Its findings on such matters are binding and conclusive on appellate courts unless some facts or circumstances of weight and substance have been overlooked, misapplied or misinterpreted.[15] We find that none of these exceptions are present in the case at bar.

Accused-appellant argued that he had no participation in the incident because he was sleeping when the Private Complainant and Celestino quarreled. His argument that he did not even sustain wounds, unfortunately, cannot be given weight. Experience tells us that persons can still participate in a vicious fight even without sustaining a wound. Well-settled is the rule that positive identification of the accused where categorical and consistent, and without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the Accused-appellant whose testimony was unsubstantiated by clear and convincing evidence.[16]

Accused-appellant and his brother Celestino were positively identified by the Private Complainant as his attackers, which was corroborated by the prosecution witness Jose Llagas, who saw the incident and who did not harbor any ill feelings against the Accused-appellant and Celestino. Accused-appellant's claim that he was sleeping from 3:00 P.M. on the said date up to 7:00 P.M. the following day has no basis. The prosecution witnesses positively identified the Accused-appellant and Celestino as having aided each other in hacking Private Complainant. Such positive testimony has demolished Accused-appellant negative defense of alibi. We have good reasons to believe the testimony of the Private Complainant. It is a natural reaction of victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often, the face of the assailant and the body movements create lasting impression that cannot be easily erased from their memory.[17]

Granting without admitting that Accused-appellant was then sleeping in the kitchen, it is unbelievable that nobody dared to wake him up, considering that he was just 4 arms'- length from the scene of the crime. The testimony of the defense witness Chavez that he just let Accused- appellant sleep while Celestino was having a vicious fight with the Private Complainant which resulted in Celestino being mortally wounded was so unrealistic, incredible, and contrary to human behavior. It is an automatic reaction of a barriomate like Chavez to immediately inform the family or the Accused-appellant upon knowing that Celestino was in danger. We also take note of a fact that the incident happened during the pre-wedding celebration where many guest attended. Thus, the noise brought about by the commotion would have naturally awakened Accused- appellant. The claim of the Accused-Appellant that he slept during the entire episode is simply incredulous.

Accused-appellant's defenses of denial and alibi are inherently weak. Alibi is easy to fabricate but difficult to prove. It is not enough to prove that the accused was somewhere else when the crime was committed. He must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission.[18] Indubitably, Accused- appellant was in the proximate vicinity where the crime was committed and he was not able to prove by convincing evidence that it was physically impossible for him to participate with his brother Celestino in attacking the Private Complainant.

In the instant case, the means and method employed by the Accused-appellant and Celestino clearly showed intent to kill. Intent to kill is shown by the kind of weapon used by the offenders and the parts of the victim's body at which the weapon was aimed.[19] Also, the location and the number of wounds sustained by the victim indicate

the accused deliberate intent to kill and belie the plea of self- defense.[20] The prosecution was able to prove that Accused- appellant and Celestino with the use of bolo hacked Private Complainant several times causing the latter to sustain multiple hack wounds. Prosecution witness Dr. de Castro explained that the multiple hack wounds sustained by the Private Complainant would have caused the latter's death if he were not given medical attention within 30 minutes to 1 hour. Considering that the Private Complainant did not die, a crime of frustrated homicide was indeed committed as there was intent to kill on the part of the accused as shown by their concerted action in hacking the Private Complainant, the weapon used, and the multiple wounds inflicted.

A crime is at its frustrated stage "when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator." [21] When Accused-appellant and Celestino inflicted multiple hack wounds against Private Complainant they could have caused the crime of homicide but due to timely medical intervention the felony was not produced.

Accused-appellant's argument that Private Complainant was the guilty party has no basis and We find such argument an afterthought of the Accused-appellant in order to exonerate himself. The prosecution was able to establish that it was Celestino and Accused-appellant who attacked Private Complainant while the latter was watching the pre-wedding celebration. This was affirmed by no less than the defense witness Palle during the cross examination. Palle testified that Celestino first chased the Private Complainant with a bolo contrary to her previous testimony that it was the Private Complainant who first chased Celestino.

Private Complainant claimed that he incurred P75,000.00 for the medical and hospitalization expenses. However, Private Complainant failed to substantiate the same. In lieu of actual damages, We award the amount of P25,000.00 as temperate damages since it cannot be denied that Private Complainant has suffered some pecuniary loss because of the incident.[22]

WHEREFORE, the Decision of the RTC of Sorsogon City, Branch 51, in Criminal Case No. 94-3752, finding Accused-appellant guilty beyond reasonable doubt of the crime of frustrated homicide, is hereby **AFFIRMED** with **MODIFICATION**, in that the Private Complainant is awarded the amount of P25,000.00 as temperate damages.

SO ORDERED.

Salazar-Fernando, (Chairperson), and [*]Dimaampao, JJ., concur.

[*] Vice J. Mariflor P. Punzalan Castillo, who is on leave, per Office Order No. 198-06-RTR.

[1] Rollo, pp. 14-20.

[2] Penalty for frustrated parricide, murder or homicide.- the courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder, or homicide, defined and penalized in the preceding articles, a penalty lower by one degree that that which should be imposed under the provisions of Article 50.

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[3] Records, pp. 12-13.

[4] Records, p.41.

[5] Records, Annex D, p. 64.

[6] TSN, December 8, 2000 and January 17, 2001.

[7] TSN, October 16, 2000.

[8] TSN, December 8, 2000.

[9] Records, Exhibit A, p. 7.

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Findings: 1) multiple hacked wounds left hand;
2) multiple hacking wounds forearm left dorsal;
3) incised wound left shoulder;
4) healing time barring complications – six weeks.

[10] TSN, May 17, 2002.

[11] TSN, February 13, 2002, pp. 1-7.

[12] TSN, February 13, 2002, pp. 8-17.

[13] Records, p. 4.

[14] TSN, April 15, 2002.

[15] People vs. Dimacuha, 422 SCRA 688,(2004).

[16] People vs. Abes, 420 SCRA 259 (2005).

[17] People vs. Lozano, 412 SCRA 190 (2003).

[18] People vs. De Guzman, 416 SCRA 341 (2003).

[19] Gorospe vs. People, 421 SCRA 446 (2004).

[20] Garcia vs. People, 425 SCRA 221 (2004).

[21] People vs. Oco, 412 SCRA 190, (2003).

[22] People vs. Oco, 412 SCRA 190 (2003).

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