

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. ILDEFONSO (BONGCOLO) GENOGUIN, SERGIO AGANG AND GORGONIO AGANG, DEFENDANTS AND APPELLANTS.*G.R. NO. L-23019. March 28, 1974*

Ponente: ANTONIO, J.

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Appeal from the judgment of the Court of First Instance of Leyte (Carigara) in Criminal Case No. 1954 finding appellants Ildefonso Genoguín, Sergio Agang and Gorgonio Agang guilty beyond reasonable doubt of the crime of robbery with homicide and physical injuries, and sentencing each of them to suffer the penalty of reclusion perpetua, for the killing of Filomena Tizon, and "twelve (12) years and one (1) day of reclusion temporal," for the serious physical injuries inflicted on Prudencio Tizon, both committed on the occasion of the robbery, with the accessories provided by law; to indemnify the heirs of the deceased Filomena Tizon in the amount of P6,000.00, and Prudencio Tizon in the amount of P1,400.00; to reimburse the total value of the stolen property, without subsidiary imprisonment in case of insolvency, and to pay the costs.

At about 8:00 o'clock in the evening of January 20, 1960, appellants Ildefonso Genoguín, Sergio Agang and Gorgonio Agang entered the yard of Prudencio Tizon situated in Sitio Malimbin, Barrio of Balaquid, Municipality of Cabucgayan, Province of Leyte. Sergio Agang and Ildefonso Genoguín went up the house of Prudencio Tizon by climbing through the window while Gorgonio Agang remained in the yard. Inside the house, which was at that time lighted by a Petromax lamp, Prudencio Tizon was resting while his wife and seven-year old daughter Norma were already asleep. Upon entering the interior of the house, Sergio Agang immediately attacked Prudencio Tizon with a long bolo wounding him on the left hand, left thigh and on the right hand, while the victim was shouting for help. Ildefonso Genoguín fired his gun at the victim, but failed to hit him. Domingo de la Peña, son-in-law of Prudencio Tizon, whose house was situated only a meter away from that of Prudencio, upon hearing the outcries of the latter, and the gun report, went down his house to go up to his father-in-law's house. He noticed that Gorgonio Agang was standing guard in the yard with a bolo in his hand. Eluding the attention of Gorgonio Agang, Domingo de la Peña succeeded in going up the house of Prudencio Tizon by passing through the kitchen. From the kitchen he saw Sergio Agang boling Prudencio Tizon, who was then leaning helplessly against some sacks of palay. Ildefonso Genoguín at that time was standing nearby with his gun aimed at Juanito Tizon who was kneeling on the floor with both hands tied behind his back, pleading with Ildefonso not to kill him. Numbed with fear, Domingo de la Peña did not make any move. Meanwhile, Cesar Dapiton, whose house was about 10 brazas away from that of Prudencio Tizon, also heard the sound of gunfire. Alarmed, he went inside the yard of Prudencio Tizon and hid himself behind a coconut tree, from which vantage point he was able to see through the window of the house of Tizon appellants Sergio Agang and Ildefonso Genoguín inside the house. After Prudencio Tizon fell as a result of the injuries inflicted upon him, Sergio Agang entered one of the rooms of the house and dragged therefrom a trunk towards the main door where he forced it open with a bolo. From the trunk he was able to take a bag containing money in the amount of P1,000.00 and several clothes. Ildefonso Genoguín took a

transistor radio which was inside a box attached to the wall of the sala and later handed it over to Gorgonio Agang.

In the midst of these startling events, Filomena Tizon, wife of Domingo de la Pena, and daughter of Prudencio Tizon, was standing at the door of their kitchen shouting "Bongcolo" (referring to Ildefonso Genoguín). It was at this juncture that Gorgonio Agang ordered Ildefonso Genoguín to shoot the person who was shouting "Bongcolo." Thereupon Ildefonso Genoguín fired his gun at Filomena Tizon, hitting her on the breast, while Sergio Agang thrust his bolo at her, also wounding her on the breast, and afterwards the three appellants left the premises. Domingo de la Pena immediately reported the matter to Gorgonio Lanante, the barrio lieutenant of Balaquid, while the wounded Prudencio Tizon and Filomena Tizon were brought that same evening to the house of Lolita Lanante in Barrio Balaquid. A municipal policeman of Cabucgayan, by the name of Mateo Letran, upon hearing of the incident, immediately went to the barrio to investigate. He was able to interview Filomena Tizon whose ante-mortem statement he was able to take down (Exhibit "C"). In said statement, Filomena Tizon declared: "That, last night at about 8:00 o'clock, January 20, 1960, I was at our house, and I hear noise of group of persons at my father's house, so that I immediately went to our door to verify, and when I arrived at the door, I was shot by Bongcolo at my nipple and I was also stab." [sic] (Translated from the Waraywaray dialect). Filomena Tizon died at 3:00 a. m. the following day. Five (5) days later, i.e., on January 25, 1960, the cadaver of Filomena Tizon was autopsied by Dr. Felipa Matongbacal, a rural health physician of Biliran, Leyte. Her post-mortem findings indicated that Filomena Tizon died as a result of "internal and external hemorrhage secondary to the gunshot wounds" found on her person. Prudencio Tizon was brought to the Leyte Provincial Hospital where he was hospitalized for two (2) months and treated for the following:

- Wound, stab, 3 inches long, 2 inches deep, lateral aspect thigh left cutting hamstring muscles and blood vessels.
- Wound, stab, 2 inches long, 2 inches deep, antero-medial aspect, thigh, left, cutting muscles and blood vessels.
- Wound, stab, 5 inches long extending from the dorsum of the base of the thumb, to the dorsum of the 1st phalanx, index finger, right with complete fracture of the 1st metacarpal and the 1st phalanx index finger.
- Wound, stab, 3 inches long, dorsum of the base of the small finger, right with complete fracture of the 1st phalanx of the small finger.
- Wound, incised, 1 inch long middle 3rd forearm, right, posterior aspect.
- Wound, stab, 2-1/2 inches forearm, left 1 inch deep, posterior aspect of the chip fracture of the radius, middle, 3rd.
- Wound, stab, 8 inches long extending from the dorsum of the lower 3rd of the left forearm to the suture line minor with complete fracture of the external malleolus, ulna.

Appellants' defense is alibi. Thus, Gorgonio Agang declared that on January 20, 1960, he was inside his house in Sitio Malimbin, Barrio Balaquid, Cabucgayan, Leyte, and that at 3:00 o'clock in the afternoon he went to the sea to catch shrimps until late in the afternoon. Upon his return to the house, he roasted a pig as his wife, who was in the family way, was craving for it. Cesar Dapiton visited them that day, dined with them, and it was already late in the evening when they finished eating. Cesar Dapiton later left, only to return to inform them that "Uncle Podo (Prudencio Tizon) was robbed." He suggested to Cesar Dapiton that they go and help Prudencio Tizon, but Cesar refused. Consequently, he went to sleep after the departure of Cesar Dapiton.

Before sunrise the following day, a policeman went to his house and told him to go to the poblacion because the Mayor wanted to see him, but upon arriving at the poblacion he was immediately locked up in jail. He did not,

however, make any protest, and in the afternoon of that day he was investigated by the Chief of Police of Cabucgayan. He was asked to testify against Sergio Agang and Bongcolo (Gorgonio Genoguin), but he refused to do so. Inside the jail he saw Felipe Dadizon who admitted to him that he (Dadizon) and his brothers-in-law robbed Prudencio Tizon. He claimed that Cesar Dapiton, who was supposed to testify in his favor, was maltreated by Barrio Lieutenant Goring Lanante, and that Prudencio Tizon was instructed by the Chief of Police not to pinpoint Felipe Dadizon, but to implicate others.

On cross-examination, he declared that one hour elapsed before Cesar Dapiton returned and informed him of the robbery. He admitted that the distance from his house to the house of Prudencio Tizon was around 400 meters and could be reached by only a 3-minute walk.

Sergio Agang, testifying in his defense, declared that on the date of the incident he was in his house in Barrio Magbangon, Cabucgayan, Leyte. According to him, it takes two hours by foot to go to Sitio Malimbin and that he does not know Prudencio Tizon. During the whole day of January 20, 1960 he spent his time weeding his farm and did not go out during the whole evening. During the evening of that day, Severino Sanico took shelter under his house, but he does not know how long Sanico stayed in the house. The following day he met Mateo Letran, Olimba and Paking Ocea, who told him that they wanted to buy chicken but later on informed him that the Mayor wanted to see him. Because of this information he went with them to the poblacion, but despite his protests he was immediately locked up in jail. He was later on investigated together with Dadizon by Idano and Costelo of the Philippine Constabulary. He learned that Cesar Dapiton was instructed by the Barrio Lieutenant to testify against him. He denied having been to the house of Prudencio Tizon, and further averred that Felipe Dadizon and the Chief of Police are relatives.

Appellant Ildefonso Genoguin did not take the witness stand. However, Bruno Javines testified that on January 20, 1960, he saw Ildefonso Genoguin together with his wife breaking coconuts in Sitio Batwan and that he saw them working in the coconut plantation which was adjacent to his land, until late in the afternoon. In the evening Ildefonso Genoguin and his wife went to his house where they deposited their copra, and the following day they brought the copra to the poblacion of Cabucgayan. Three days later he learned that Ildefonso Genoguin was arrested by the Philippine Constabulary.

I

The infirmity of Javines' testimony lies in the fact that while he could remember January 20, 1960 as the date when appellant Genoguin allegedly gathered copra and slept in his house, he could not remember any of the various dates when he attended the trial of this case at Carigara, much less the date when said witness married his wife. Moreover, while said witness claims that no one asked him to testify in the case, but he volunteered because he pitied appellant as he slept in his house on the night when the crime in the case at bar was committed, no explanation has been given by him why, upon learning of the arrest and detention of Genoguin for the crime three days later, he never even bothered to inform the police authorities at any time about it, much less visit said appellant. As to the alibi of the other appellant, Sergio Agang, it must be recalled that same was only supported by the testimony of Severino Sanico, which the court a quo found to be incredible. Sanico declared that he knew that Sergio Agang was in his house from 6:00 p.m. to 10:00 p.m. on the evening of January 20, 1960, because on that occasion he took shelter from the rain in Agang's house. But he did not explain why he had to seek shelter in the house of appellant Agang, which was about 200 meters away, when it would have been more convenient for him, as he was already wet, to run to his own house, which was only 50 meters from the place where he was working.

It is evident, therefore, that as against this defense of alibi, there is the positive identification of the appellants, as the perpetrators of the offense, as shown by (a) the testimony of Prudencio Tizon, identifying appellant Sergio

Agang as the person who boloed him several times, while appellant Ildefonso Genoguín alias "Bongcolo" fired a gun at him but missed, and describing in detail the manner in which the aforesaid two appellants robbed his house of valuables until he lost consciousness as a result of his wounds; (b) the testimony of Domingo de la Peña to the effect that when he went out of his house, as a result of the outcries of his father-in-law, he saw appellant Gorgonio Agang, armed with a bolo, standing inside the yard of the house of his father-in-law, Prudencio Tizon, and, after entering the kitchen of the house, he saw appellant Sergio Agang hacking at Prudencio Tizon with a bolo, while appellant Ildefonso Genoguín was pointing a gun at Juanito Tizon who was kneeling on the floor, with his hands tied behind his back; that thereafter, he saw his wife, Filomena Tizon, who was standing at the door of the kitchen of their house, shot by appellant Ildefonso Genoguín upon the order of appellant Gorgonio Agang, while appellant Sergio Agang stabbed her with a bolo, and immediately afterwards the three appellants, carrying with them the loot taken from the house of the victim, fled from the scene; and (c) the testimony Of Cesar Dapiton, who saw the two appellants ,Ildefonso Genoguín and Sergio Agang, inside the house during the commission of the robbery.

Appellants attempt, however, to impugn the credibility of the testimony of Domingo de la Peña because of the fact that said Prudencio Tizon did not mention in his testimony the presence of his son, Juanito Tizon, inside the house at the time of the commission of the offense. It must be noted, however, that at the time Juanito Tizon entered the house of Prudencio, the latter was already being attacked and boloed by appellant Sergio Agang. It is, therefore, not improbable that, concerned as he was in defending his life, Prudencio Tizon might not have noticed the entry of his son. In any event, no question was propounded by the defense to Prudencio Tizon on this matter. As to the contention of appellants that the non-presentation of Juanito Tizon as a witness creates the presumption that his testimony would be adverse, if produced, it is sufficient to state that it is well settled that the presentation of a witness for the prosecution depends upon the discretion of the Fiscal who has control of the prosecution of a criminal case. And the failure of the prosecuting officer to present all the eyewitnesses to an act does not necessarily give rise to an unfavorable presumption, especially when the testimony of the witness sought to be presented is merely corroborative.[1] Appellants also claim that Domingo de la Peña's testimony that he heard a gun fired, then the shouts of his father-in-law, is inconsistent with Prudencio Tizon's statement that he shouted for help and immediately Ildefonso Genoguín fired a shot. But this refers to a minor detail in the occurrence and it is settled that any inconsistency in minor details in the testimonies of prosecution witnesses reinforces rather than weakens their credibility, for it is usual that witnesses to an alarming or shocking event should see or observe some details of a startling occurrence differently.[2] What is important is that the aforesaid witnesses were unwavering in their identification of the appellants as the perpetrators of the aforementioned offense. Finally, appellants claim that Domingo de la Peña's testimony that Sergio Agang stabbed Filomena Tizon after she was shot by "Bongcolo" is inconsistent with the ante-mortem declaration of Filomena Tizon (Exhibit "C", "C-1") is not borne out by the records. In her ante-mortem statement, Filomena Tizon clearly stated that ". . . when I arrived at the door, I was shot by "Bongcolo" at my nipple and I was also stabbed." The circumstance that said declarant failed to mention that it was Sergio Agang who stabbed her is of no moment, considering that at the time the aforesaid statement was taken, the declarant was already dying and, therefore, the police could not ask her anymore on the other details of said incident.

II

Well-settled is the juridical principle that the defense of alibi is generally a weak defense since it is easy to concoct and courts accept it only if supported by positive, clear and satisfactory evidence. It has equally been held that alibi cannot prevail over the clear, explicit, and positive identification of the accused as the very person who perpetrated the crime.[3] In the case at bar, not only is the defense of alibi unsupported by positive, clear and

satisfactory evidence, but what is more, such defense cannot prevail over the positive identification of appellants as the persons who committed the offense.

As to the criminal responsibility of appellants, there can be no doubt that the three had conspired to commit the crime. The form and manner in which the robbery and the resultant homicide and physical injuries were committed, clearly indicate unity of action and purpose. Thus, appellants Ildefonso Genoguín and Sergio Agang entered the house through the window to perpetrate the robbery while appellant Gorgonio Agang stood guard in the yard. After the commission of the robbery, it was Gorgonio who ordered Ildefonso Genoguín to shoot Filomena Tizon when the latter was shouting "Bongcolo", and after Genoguín and Sergio Agang had inflicted mortal wounds on Filomena, the three appellants fled from the scene, with Gorgonio carrying part of the loot. Direct proof of conspiracy is not required. If it is proved that two or more persons aimed, by their acts, at the accomplishment of some unlawful object, 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.[4] The appellants as conspirators are, therefore, responsible for the consequences of the acts of each one of them.

We find, therefore, appellants Ildefonso Genoguín, Sergio Agang and Gorgonio Agang, guilty as principals of the special complex crime of robbery with homicide and physical injuries, defined and penalized under Article 294 of the Revised Penal Code. Robbery with homicide is penalized by reclusion perpetua to death. The physical injuries inflicted upon Prudencio Tizon, as well as the killing of Filomena Tizon, should be merged in the composite, integrated whole, that is, robbery with homicide, it being evident that the killing and the physical injuries were perpetrated with the sole end in view of removing opposition to the robbery or suppressing evidence thereof, or both.[5] The said appellants should be sentenced to suffer the penalty of reclusion perpetua, and to indemnify the heirs of the deceased Filomena Tizon in the amount of P12,000.00, instead of P6,000.00, in line with the precedent established in similar cases.

WHEREFORE, with the modifications that the penalty imposable upon the appellants is reclusion perpetua and the amount of indemnity is increased to P12,000.00 in favor of the heirs of the deceased Filomena Tizon, the appealed decision is hereby affirmed in all other respects, with costs against the appellants.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ.. concur.

[1] People vs. Marasigan, 51 Phil. 701; People vs. Otero, 51 Phil. 201.

[2] People vs. de Gracia, G.R. No. L-24149, September 29, 1966; People vs. Valera, G.R. No. L-15662, August 30, 1962; People vs. Racca, G.R. No. L-15812, December 30, 1961.

[3] People vs. Berdiva, G.R. No. L-20183, June 30, 1966; People vs. Sina-on, G.R. No. L-15631, May 27, 1966; People vs. Orzame, G.R. No. L-17773, May 19, 1966; People vs. Paz, G.R. No. L-17320, May 31, 1965; People vs. Asmawil, G.R. No. L-18761, March 31, 1965, 13 SCRA 497; People vs. Lumayag, G.R. No. L-19142, March 31, 1965, 13 SCRA 502.

[4] People vs. Moro Ambahang, et al., 108 Phil., 325, 334.

[5] People vs. Madrid, 88 Phil., 1, 14-15; People vs. Cabuena, 98 Phil., 919, 923.

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