

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FABIO TACHADO AND CARPIO SANCHEZ, DEFENDANTS-APPELLANTS.

G.R. No. L-34807. February 27, 1989

Ponente: GRIÑO-AQUINO. J.

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GRIÑO-AQUINO. J.

This is an appeal of Fabio Tachado and Carpio Sanchez from the decision of the Circuit Criminal Court, 16th Judicial District, Pagadian City, sentencing them to suffer the penalty of reclusion perpetua for the murder of Eddie Motus. The information against them and Lucio Tachado, older brother of Fabio, alleged:

"That on July 9, 1967, at about 9:00 o'clock in the morning, at Barrio Naganay, Municipality of Baug, province of Zamboanga del Sur, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with a revolver (Colt), Caliber 45, Serial No. 208220 and a sharp-pointed bolo, with intent to kill, treachery and evident premeditation, and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously shoot and stab one Eddie Motus, a Barrio Captain, thereby inflicting upon the latter mortal gunshot and stabbed wounds on his body which caused his instantaneous death." (p. 9, Rollo.)

Upon arraignment, all the accused pleaded "Not Guilty." However, before the trial commenced, the accused Lucio Tachado died so the charge against him was dismissed leaving only Fabio Tachado and Carpio Sanchez to face trial.

Through the principal prosecution witnesses, Jesus Latumbo, half-brother of the deceased Eddie Motus, and Patrolman Nicolas Gaviola, a police sergeant in the police force of Baug, Zamboanga del Sur, on whose testimonies the trial court based its judgment, the following facts were established:

Lucio and Fabio Tachado (brothers) and Carpio Sanchez, were tenants of the municipal treasurer, Pantaleon Cabaron, whose land directly adjoins the land of Eddie Motus in barrio Maganay where he was the barangay captain.

Two weeks before July 9, 1970, Eddie Motus and his half-brother, Jesus Latumbo, came upon the three accused plowing a part of Eddie's land. Motus told them to stop because they were plowing his land, and advised them to tell their landlord to have his land relocated in order to determine its correct boundaries. Lucio told Eddie that he would be killed if the owner of the land should come to know that he stopped them from plowing the land (p. 89, t.s.n., July 9, 1972; p. 3, Appellee's Brief).

In the morning of July 9, 1972, while Motus and his family together with Jesus Latumbo, were eating their breakfast, Jose Yosores, arrived at the house and informed Motus that a surveyor was waiting for him on his land in order to relocate the boundaries between it and the land of Cabaron which the appellants were cultivating as tenants. Motus and Latumbo went with Yosores to the place where the surveyor was waiting. After a while the three accused arrived also. Motus pointed to the surveyor, in the presence of the appellants, a monument between his land and that of Cabaron. Lucio Tachado invited Motus to point the other boundaries. While the latter was

walking toward the next monument, he was followed by Lucio Tachado, Fabio Tachado, Jesus Latumbo, and Carpio Sanchez in that order. Suddenly, Lucio Tachado fired his gun at Motus' back causing him to fall on the ground. When Latumbo saw his brother fall, he tried to run after Lucio in order to prevent him from further injuring Motus but he was intercepted by Fabio Tachado who fired his gun at Latumbo. Luckily, Latumbo was not hit by the shot but he was wounded on the waist by the bolo of Carpio Sanchez, who was walking behind him. He rolled on the ground away from his attackers and toward the bushes where he hid.

At the precise time that the shooting occurred, Sergeant Nicolas Gaviola was nearby. He was on his way to his farm. He heard the shots so he went toward the source of the gunfire. When he came nearer he saw Lucio Tachado, Fabio Tachado, both holding guns, and Sanchez with a bolo, standing near the fallen victim. Fabio Tachado was still firing his gun so Gaviola drew his service pistol and fired a warning shot into the air. When the appellants saw him they fled leaving Lucio's gun at the scene.

When Gaviola reached the spot, he saw the fallen victim hovering between life and death. The victim told him "that he was stabbed by Carpio Sanchez and shot by Lucio Tachado and Fabio Tachado" (p. 5, Appellee's Brief). Furthermore, Motus said, "Nick I am dying." (p. 5, Appellee's Brief.)

Motus was brought to the hospital of Dr. Juan Vergara at Baug, Zamboanga del Sur, but he died upon arrival at the hospital. Dr. Vergara performed an autopsy and found the following injuries:

"1.

Gun shot wound with entry at the middle left buttock, the bullet travelled inside the abdomen towards the right of the navel and lodged just beneath the skin where it was extracted (p. 222, t.s.n., Aug. 11, 1970).

"2.

Hacked wound on the left big toe and the anterior portion of his thigh (p. 227, t. s. n.).

"3.

A long clean cut but superficial wound on his breast." (p. 228, Id.) (pp. 4-6, Appellee's Brief.)

The defense endeavored to pin responsibility for Motus' death on the now deceased accused Lucio Tachado. Their theory is that Motus was killed with his own gun after Lucio was able to wrest it from him when he (Motus) aimed it at Sanchez who was planting sticks to mark the boundary between Motus' and Cabaron's lands; that as Sanchez merely inflicted a non-fatal wound on Eddie's left foot, thigh, and chest with his bolo, and Fabio Tachado did not inflict any injury on him because Fabio was in the house of Irinea Sabello, some 50 meters away, Sanchez and Fabio are not criminally liable for Motus' death, hence, they should be acquitted.

After a three-year trial, the Circuit Criminal Court of Pagadian City, rendered judgment on September 4, 1970, convicting Fabio Tachado and Carpio Sanchez of murder with treachery and evident premeditation, as co-conspirators in the killing of Eddie Motus, and sentenced them to suffer the penalty of reclusion perpetua. The dispositive part of the decision reads thus:

"IN VIEW OF ALL THE FOREGOING, the Court finds the accused Fabio Tachado and Carpio Sanchez guilty beyond reasonable doubt of the crime of Murder charged in the information, without any mitigating circumstances present, and each 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 Eddie Motus in the sum of P12,000.00 and the further sum of P20,000.00 by way of exemplary damages, without subsidiary imprisonment in case of insolvency considering the nature of the principal penalty imposed; and, to pay the corresponding costs.

"The firearm, .45 cal. Revolver with Serial No. 208220 together with the bullets, shells and slugs, and the bolo used in the commission of the crime are declared confiscated in favor of the government." (p. 82, Appellant's Brief.)

The accused, have appealed, alleging that the trial court erred:

1. in finding that the crime was committed with evident premeditation;
2. in finding that the three (3) accused had conspired to kill Motus; and
3. in giving credit to the testimony of Jesus Latumbo instead of the defense witnesses.

The trial court found that the killing was committed with evident premeditation because the threat to kill Motus preceded the actual killing by two weeks. There was "a substantial interval of time (between the threat and the killing) clearly sufficient in a judicial sense to afford a full opportunity for meditation and reflection and sufficient to allow the conscience of the actors to overcome the resolution of their will if they desired to hearken to its warnings" (People vs. Villamora, 86 Phil. 287; People vs. Vente, 100 Phil. 1099; People vs. Dado, 94 Phil. 1037; People vs. Mawallil, 129 SCRA 594).

There is no merit in the appellants' argument that as only Lucio Tachado had a heated verbal exchange with Motus which resulted in the threat to kill the latter, the qualifying/aggravating circumstance of evident premeditation in the commission of the crime is imputable to Lucio alone, but not to Fabio and Carpio.

As correctly pointed out in the People's Brief, even if the appellants did not participate in the altercation between Lucio and Motus, being Joint tenants of Cabaron on a portion of Motus' land, they were co-usurpers of the said land, and the victim's efforts to stop them from cultivating it constituted a threat to their shared livelihood. They had a common interest to defend against Motus. Their conduct during the attack on the victim clearly revealed their premeditated design to liquidate him (p. 6, Appellee's Brief).

Treachery was also present in the commission of the crime because the brothers Lucio and Fabio came to the scene of the killing with concealed firearms while Carpio was armed with a bolo. The victim was attacked by Lucio without warning when his back was turned to his assailant and he was bending to indicate the second monument, as suggested by Lucio himself. His position at the time he was shot from behind was confirmed by the trajectory of the bullet which entered his buttock, passed through his abdomen, and lodged near his navel. Lucio's deliberate, sudden, and unexpected attack against Motus from the rear, without giving the latter an opportunity to defend himself or repel the assault, was treacherous (U.S. vs. Marcoleta, 17 Phil. 317 and other cases in footnote No. 29, Revised Penal Code by Aquino, Vol. I, 1987 Ed., p.392). Where the victim was attacked in similar fashion while he was stooping and cleaning his pants, treachery was properly appreciated (People vs. Mariñas, 108 Phil. 117). Firing upon a victim who had turned and was walking away from the killer was also held to be treacherous as it involved no risk to the latter (U.S. vs. Pendleton, 7 Phil. 457).

Direct evidence proving a prior agreement among the accused to kill Motus is not essential to establish a conspiracy among them (People vs. Saavedra, 149 SCRA 610). It may be inferred, as in this case, from their acts which point to a joint purpose and design on their part (People vs. Estrada, 130 Phil. 108). Those acts were: (1) they arrived together at the scene of the killing; (2) they were all armed. Lucio and Fabio each had a gun while Carpio had a long bolo; (3) Lucio Tachado lured Eddie Motus to the spot where he was killed, by asking him to point to the second monument marking the boundary between his land and their landlord's land; (4) Lucio followed behind Motus so he would not miss him; Fabio walked behind Lucio ready to assist him in the pre-planned attack; and Carpio stayed close to Jesus Latumbo (who was following Fabio) to foil any attempt on his part to come to the aid of Motus; and (5) after Lucio had shot Motus in the back, Fabio fired his own gun at

Latumbo to stop him from grabbing Lucio's gun, and Carpio hacked Latumbo on the waist to disable him. Carpio also slashed at the feet, thigh, and chest of Motus with his bolo.

The concerted actions of the three accused, all aimed to assist each other in killing Motus, prove their common criminal design. Under the circumstances, it is unnecessary that they should have been heard plotting to kill Motus. As Justice E. Finley Johnson said: "The action of men must be judged by what they do and not altogether by what they say. What men do is the best index of their intention. Actions speak louder than words." (People vs. Bautista, 49 Phil. 389, 395-396.)

Appellants' attempt to discredit Jesus Latumbo by suggesting that he was not present at the crime scene is futile in the face of Sanchez' admission that Latumbo was present (p. 319, t.s.n., August 12, 1970; p. 7, Appellee's Brief). The fact that Latumbo did not complain to the authorities although he was also boloed by Carpio and shot at by Fabio, cannot overcome his categorical and positive declaration that he was there. Significantly, the accused made no attempt to dispute his testimony that he bears the scar of the bolo wound inflicted on his waist by Sanchez.

The version of the accused that Motus was shot with his (Motus) own gun by Lucio Tachado after wresting it from Motus, was properly rejected as improbable by the trial court. The Solicitor General, in his brief, aptly observed that: "No man with a gun on hand ready to fire will ever wait for an attacker from ten (10) meters away to hit him without firing his gun. And no one, except as a suicidal act, would ever dare attack anybody with a gun on hand especially when he is ten meters away from him." (p. 11, Appellants' Brief.)

Sanchez' uncorroborated story on how Motus was killed, may not overcome the positive testimonies of the prosecution witnesses Jesus Latumbo and Patrolman Nicolas Gaviola, an impartial witness. Gaviola declared that he saw Lucio and Favio each holding a gun, and Sanchez holding a bolo, standing over the prostrate body of Motus. He also testified that Motus, in his dying declaration, revealed that he (Motus) "was stabbed by Carpio Sanchez and shot by Lucio Tachado and Fabio Tachada."

Fabio's alibi does not merit any consideration in the light of the positive testimonies of Latumbo and Gaviola that he was present at the scene of the killing.

"No Jurisprudence in criminal cases is more settled than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused had been sufficiently and positively established by eyewitnesses to the crime. Alibi is easy to concoct and difficult to prove. For alibi to prosper, it is not enough that defendant was somewhere else when the crime was committed. He must demonstrate that It was physically impossible for him to have been at the scene of the crime at that time." (People vs. Estrada, 22 SCRA 112.)

Accordingly, the decision of the trial court finding Fabio Tachado and Carpio Sanchez guilty beyond reasonable doubt of the crime of Murder under Article 248 of the Revised Penal Code, and sentencing them to suffer the penalty of reclusion perpetua, is hereby affirmed in all respects, except the P12,000-indemnity, for the death of the victim Eddie Motus, which is hereby increased to P30,000 in accordance with existing jurisprudence.

SO ORDERED.

Narvasa, Cruz, Gancayco, and Medialdea, JJ ., concur.

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