

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CASIMIRO TINIO, JR. Y SANTOS, DEFENDANT-APPELLANT.***G.R. No. L-33491. April 28, 1983*

Ponente: RELOVA, J.

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Appellant was found guilty of murder and sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Hermenigildo Remolacio the amount of P12,000.00, to pay the sum of P5,000.00 as moral damages, and to pay the costs.

About five o'clock in the afternoon of March 7, 1970, Hermenigildo Remolacio, better known as Hermie, and Daniel Franco were walking in front of a house under construction on Jasmin Street, Roxas District, Quezon City. At that time, a celebration and drinking spree was going on in said house. As they were passing by, one Iluminada Alivion called out to them and said: "Pare, daan muna kayo." Hermie answered: "Hindi na lang, tutuloy na kami, pauwi na kami." However, somebody in the house insisted that they pass by and participate in the drinking. Because of such insistence, the two obliged and stood near the gate. Iluminada then offered Hermie a glass of beer and the latter drank half of it. When Hermie was about to return the half-emptied glass of beer, the glass slipped from his hand and fell on the ground, spilling its contents on some of the visitors. Hermie then told Daniel Franco: "Tena, umalis na tayo rito, maraming matatapang dito," and the two left to the direction of Scout Reyes Street.

When Hermie and Daniel Franco were a few houses away, someone called out to them; "Pare, sandali lang." Hermie and Daniel turned around and they saw a man holding a gun. The man who was later identified as Casimiro Tinio, Jr. touched Hermie on the right shoulder and as Hermie turned, Tinio fired at him. Hermie said: "Pare, may tama ako," and then ran towards the direction of the house under construction entering through the front gate.

Daniel Franco ran towards Scout Reyes Street, to the direction of the house of Hermie to tell the relatives of the latter what had transpired. When Daniel and others returned to the place of incident, Hermie was already dead.

The accused pleads self-defense. He claims that on the date and time in question, he was in the house of his sister, Iluminada del Rosario at 89 Jasmin Street, Roxas District, Quezon City. It was under construction and there was a party following an old tradition, for the forthcoming construction of the stairs. There were many guests present, among whom were the people's witnesses, namely: Tirso Nartates and Villamar Navarro. Hermenigildo Remolacio and Daniel Franco passed by and Aling Luming, one of the guests, called them and offered Hermie a glass of beer. Hermie drank a little from the glass and then threw the rest of its contents on the floor and said: "Danny, wala namang kuwenta and handa dito." They then started to leave and were about to step out of the gate when Chito Pangilinan, one of the guests and a friend of Hermie, followed them. After a while, the persons in the party were attracted by a loud noise and as they went to the gate they saw Hermie seated behind the wheel of a jeep belonging to Chito Pangilinan and which was parked near the gate. Pangilinan persuaded Hermie to desist from making the noise and was prevailed upon to go down the jeep. Hermie and Daniel Franco then proceeded to

walk towards Rosal Street, passing by the gate of the house where some of the persons in the party were standing. Upon passing the gate, Hermie pulled out a knife (a kris) with a corrugated blade, stooped down, drew a line on the street and remarked: "Ako ang hari dito." Thereafter, Hermie placed the knife back in his waist. The accused made a move to follow Hermie but Daniel T. del Rosario tried to hold him back, saying: "Huwag mo ng sundan." Notwithstanding, Tinio explained that he just wanted to talk to Hermie so that there would be no misunderstanding with him and the family of his sister Iluminada. So he continued following and called out: "Pare, sandali lang" in a soft, normal tone of voice. Hermie simply turned his head a little towards the accused and whispered to his companion Daniel Franco: "Huwag mong intindihin yan, tena." The accused continued following them and said: "pare, sandali lang, puede ba kayong makausap?" At that juncture, Hermie, who is taller and bigger than Tinio suddenly delivered a blow with his fist at the accused hitting the latter on his forehead, causing him to fall on the ground. This was followed by a motion by Hermie to stab Tinio but as Hermie raised his hand holding the knife, Tinio kicked Hermie on his left knee, causing him to reel slightly to his left but with his right hand still holding the knife. Almost simultaneously, Tinio pulled out his gun, fired at Hermie who was hit on the right side of his body just below the right armpit. The knife fell from his hand but Hermie continued to walk until he fell in front of the house of one Mrs. Tababoyong.

The accused Casimiro Tinio, Jr. left hurriedly for his residence at Miguilen Street, Sampaloc, Manila for fear of reprisal from the relatives of Hermie.

Tinio assailed the decision of the lower court alleging that it erred: (1) in holding that Daniel Franco was the lone eye-witness to the actual shooting; (2) in totally disregarding the testimonies of the witnesses for the defense; (3) in relying completely and solely on the testimony of Daniel Franco for the prosecution and in ignoring entirely his testimony for the defense; and, (4) in convicting the accused.

A perusal of the foregoing assignment of errors shows that a common error is assigned, that is, that the trial court erred in according credence to the testimony of Daniel Franco. Indeed, the trial court gave assent to the testimonies of prosecution witnesses and disregarding appellant's claim of self-defense. Pertinent observation of the trial court on the evidence presented by both parties are as follows:

"There is only one person who saw the actual shooting incident. He is Daniel Franco. This man is the star figure in this murder case. His role is extraordinary, having testified for both the prosecution and the defense. Upon him hinges the conviction or acquittal of the accused. By his act, the Court is let to choose which testimony is more consistent with truth and reason, and which one is perjured. To arrive at a correct conclusion, a meticulous study of material events that transpired from the time of the killing incident up to the time when Franco agreed to testify in behalf of the defense is necessary.

"The slaying of the victim happened on March 7, 1970. After 160 days or specifically on September 7, 1970, this witness testified that he was with the victim in that fateful afternoon of March 7, 1970. That the victim was unarmed when the latter was shot treacherously by accused Casimiro Tinio. Subsequently, after 99 days or specifically on December 15, 1970, this witness has made a sudden and unexpected turnabout. This time as a witness for the defense, he now claimed that his friend, Hermenigildo Remolacio was armed with a 'kris' and that the victim was about to stab the accused when the former was shot by the latter, contrary to his previous testimony to the effect that the deceased was unarmed at the time of the shooting incident. However, from the records of this case, it is evident that from the time Franco testified for the prosecution up to the time when he finally agreed to testify for the defense, unforeseen events have transpired that has direct connection with the personal freedom and future of said witness. On the stand, as a defense witness, Franco admitted that he was recently arrested by a CIS agent and detained at the CIS headquarters, for a period of four (4) days as a suspect in a frustrated murder case. While confined at the aforesaid investigating agency, he was visited by CIS agent Numeriano Tinio, the brother of the accused. Upon cross-examination, he revealed that he was earnestly requested by Numeriano Tinio to testify for the defense. That he finally relented to testify for the defense at the

prodding of his cousin Manolo Malana, who is also a CIS agent. On December 9, 1970, together with Malana, they went to the law office of defense counsel, Atty. Exequiel S. Consulta. From these series of event after Franco has testified for the prosecution, one can readily see a glaring or rather amusing coincidence. After Franco has testified for the prosecution, he was arrested by a CIS agent. When Franco was detained at the CIS, he was visited by Numeriano Tinio, a CIS agent. His cousin Manolo Malana is also a CIS agent. That Malana has talked with Numeriano Tinio, while Franco was confined in the CIS.

"Against this background, the task of choosing what part of Franco's testimony is true or false, is not a difficult one. The Court is more inclined to believe the substance of the testimony of witness Franco when he testified for the prosecution rather than his recantation while testifying for the defense. This finds strong support on the following reasons: First, as prosecution witness, the defense failed to impute any evil motive on the part of Franco, for him to perjure himself to falsely testify against the accused. Secondly, when he testified for the prosecution, on the stand his demeanor was natural, he talked freely. This was understandable because then he was a free man with no problem to think and to be afraid of, which is not the case when he testified for the defense. As a defense witness, he was tense. On the stand, the Court noticed that he was then profusely perspiring and that his voice is a little bit quivery. This behavior of Franco can be interpreted as the logical result of the sword of Damocles hanging over his head, because of his being linked by the CIS to a frustrated murder case, further aggravated by being pressured by his own cousin to testify for the defense. The Court is convinced that it was this unbearable pressure that led this witness to repudiate his earlier testimony. Franco, no doubt agreed to testify for the defense as an act of self-preservation which is but the natural recourse of any individual exposed to the same experience and for which he should not be condemned but he must be pitied."

We find appellant's version incredible. We cannot bring ourselves to believe that the deceased who was invited to join a celebration and drinking spree and was given by Iluminada Alivion a glass of beer to drink would, when the rest of the contents in the glass of beer spilled on the floor, say: "Walang kuwenta ang handa dito." It is unusual, unnatural and illogical for an invited guest to say those things after he had been graciously offered to drink beer by a lady. The deceased and his companion Daniel Franco were just passing by when they were asked to join the party. There was, therefore, no reason for them to despise whatever food there was at the time. And, he was not even drunk, or at least there was no evidence that he was. What most likely did happen was, the appellant was irritated when the contents of the glass spilled on some of the visitors and was displeased with the remark of the deceased, "tena umalis na tayo, maraming matatapang dito." Appellant followed the deceased and his companion when the two left.

And, if it were true that the assault on the victim by the appellant was made in self-defense why did he not report the matter to the police, at least to invite the attention of the authorities that he had to shoot because the victim was armed with a knife and had thrust the same at him. The actuations of the appellant after the incident strongly indicate that he did not act on self-defense but shot the deceased after the latter had spilled the contents of the glass of beer on some of the visitors.

Furthermore, why was the knife or kris, with which the deceased was allegedly armed at the time, not presented by anyone to the authorities or in court. All the people in the party were either the relatives, friends or guests of the sister of the appellant and if really there was such a weapon used in the alleged unlawful assault upon the latter, that weapon should have been presented to the police.

At any rate, appellant, having admitted that he shot the victim to death "it was incumbent upon him, 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). Inasmuch as the testimonies of appellant and his witnesses are incredible, it results that appellant has not discharged the burden of proof on the question of self-defense. Hence,

he cannot escape the penalty for the crime of murder under Article 248 of the Revised Penal Code.

WHEREFORE, the judgment appealed from is AFFIRMED, with costs.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

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