

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GETULIO VERZO, REYNALDO VERZO AND ROBERTO VERZO, DEFENDANTS AND APPELLANTS.

G.R. No. L-24917. July 25, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Accused Getulio Verzo and his two (2) sons Reynaldo and Roberto were accused before the Court of First Instance of Camarines Norte of the crime of murder for the death of Benjamin Camino (Criminal Case No. 1905)[1] and of frustrated murder of Filemon Casis (Criminal Case No. 1909).[2]

After a joint trial of the two cases the lower court rendered judgment finding the three accused guilty beyond reasonable doubt of the two offenses charged and sentencing each of them to the extreme penalty of death, to indemnify the heirs of Benjamin Camino in the sum of P3,000.00 and to pay 1/3 of the costs in Criminal Case No. 1905; and to an indeterminate penalty from ten (10) years to seventeen (17) years and four (4) months, to indemnify Filemon Casis in the sum of P5,000.00 and to pay 1/3 of the costs in Criminal Case No. 1909.

On December 26, 1967, this Court affirmed the verdict of conviction in Criminal Case No. 1905 but modified the death penalty to life imprisonment of each of the three accused and increased the civil liability of each from P3,000.00 to P6,000.00.

From the judgment in Criminal Case No. 1909, accused Getulio Verzo, Reynaldo Verzo and Roberto Verzo took an appeal to the Honorable Court of Appeals. Upon motion of the Solicitor General, the Court of Appeals certified the appeal to this Court pursuant to Section 17 of the Judiciary Act of 1948 for the reason that the offense charged in Criminal Case No. 1909 was committed in same occasion the offense charged in Criminal Case No. 1905 took place and over which the Supreme Court has exclusive jurisdiction.

Faithfully reflected in the records are the following facts:

On July 6, 1962, at about 6:30 p.m. while Filemon Casis was heading for the town of Labo, Camarines Norte, to buy medicine, he noticed that someone was trying to follow him. He found out it was the accused. Feeling that the accused would do him wrong because of a standing feud between the family of the accused and his son, Carlito Casis, Filemon requested Lope Jariel, a municipal policeman, whom he saw at the municipal building to escort him home.[3] Jariel agreed and followed Filemon who was then ahead by about 15 meters riding on his bicycle. While Filemon was passing by the house of Getulio Verzo, Getulio stoned him. His bicycle was hit causing him to fall down. Filemon shouted at Getulio why the latter stoned him. Benjamin Camino, a former policeman who was inside the bar across the street, overheard the shout and stepped out of the bar and asked Filemon what had happened. After hearing Filemon's complaint, he advised him to report the matter to the authorities and even went with him. On their way to the municipal building, Camino and Filemon saw Jariel approach and inquire from Getulio why he stoned Filemon. Getulio replied that he did it because his son had been struck by Filemon's son, Carlito. Jariel advised Getulio to bring the matter to the authorities instead of taking revenge against Filemon. At

this juncture, Camino approached Getulio and told him: "What more do you want? You have already thrown a stone." Without minding Camino's remark, Getulio left and entered his house. Shortly afterwards, he returned with his two (2) sons Reynaldo and Roberto, all of them with bolos in their hands. Jariel fired his gun in the air to stop them, but the accused ignored Jariel's warning and assaulted Camino, who, before he could run away, suffered several wounds. After Camino had fled, the three accused directed their attack against Filemon. Jariel shouted at the accused to stop from attacking Filemon. Getulio Verzo was the first to attack and strike Filemon with his bolo, hitting him on the left side of his head. When Getulio was about to strike him again, Filemon was able to get hold of Getulio's hand holding the bolo. They both grappled for the possession of the bolo, and while in this act Reynaldo embraced Filemon from behind and said, "Now, father stab him", and Getulio did. Roberto then followed, attacking Filemon until the latter fell to the ground unconscious. The three accused then stopped assaulting him. As a result of the incident Benjamin Camino suffered several incised wounds. The most fatal was the one that affected his liver, from which he died one hour and a half later due to hemorrhage and shock. On the other hand, Filemon Casis, who was taken to the provincial hospital in Daet, Camarines Norte, sustained twelve (12) wounds including the loss of his three fingers on his right hand, as reported in the medical certificate (Exhibit A) to wit:

- Fracture, chip, parietal, (1" x 3/4"), left.
- Avulsion with incised edges, 2" x 1-1/4", scalp, parietal left.
- Wound, incised, 2" long, subcutaneous-deep, axilla, outer wall, left.
- Wound, incised, 1" long, subcutaneous-deep, middle third, posterior aspect, left.
- Wound, incised, 2" long, subcutaneous-deep, hypothenar, left.
- Wound, incised, 3" long, palm, involving, middle finger and inner aspect of hypothenar.
- Wound, incised, 1" long, subcutaneous-deep interdigital, 1st and 2nd left.
- Wound, incised, 1" long, bone-deep, base of index finger, left.
- Wound, incised, 1/4" long, subcutaneous-deep, thenar, outer aspect, left.
- Wound, incised, perforating, 1-1/2" long, 3" above the anterior superior iliac spine, lumbar, left.
- Wound, incised, with amputation of the 3rd, 4th and 5th fingers at the base, around the palm from the hypothenar to the base of the involved fingers.

Filemon was released from the hospital after 15 days of confinement; however, he had to return everyday for another 15 days for the treatment of his injuries as an out-patient. Notwithstanding the completion of his treatment, Filemon could no longer engage in his customary work as a carpenter from which he used to earn P4.00 a day to support his family.

In their defense the accused present the theory that about 8:00 o'clock in the evening of July 6, 1962 Benjamin Camino in company with Manuel Cambronero and Filemon, Carlito and David, all surnamed Casis came out of the bar drunk and proceeded towards their house shouting, "Walang hiya, yamang ako'y naalis sa trabaho ay gagawin ko ang magagawa ko." Camino allegedly entered the store of their house, while Filemon Casis and Manuel Cambronero entered the barber shop which was adjacent to the house. Carlito Casis and David Casis, however, walked and passed by the store. Once inside the store, Camino allegedly boxed Reynaldo Verzo who was then seated on the bench. As a result Reynaldo fell; upon getting up he went inside the barber shop. After hitting Reynaldo, Camino stabbed Roberto who was seated next to Reynaldo. Then Camino felt that he was

stabbed. Upon seeing Carlito he shouted: "Why did you stab me Carlito?" and Carlito allegedly answered: "I did not do it purposely, Kuya Ben." Meanwhile, as Getulio Verzo passed by the barber shop to call for a policeman, Filemon Casis and Manuel Cambronero allegedly hit him with pieces of wood on the head and shoulder, rendering him unconscious. Then, Filemon Casis attacked Getulio with a bolo. When Reynaldo saw this, he tried to grapple with Filemon for the possession of the bolo. He was able to hold the handle of the bolo but could not wrest it from Filemon's hand, so he pushed Filemon into a ditch where there were broken bottles.

In their appeal accused-appellants maintain that the lower court erred:

- "1. x x x in finding that the fatal wound which caused the death of Benjamin Camino was criminally inflicted by the accused.
2. x x x in convicting all the three accused in the absence of proof of conspiracy and of who among them inflicted the fatal wound.
3. x x x in appreciating the presence of treachery and abuse of superior strength.
4. x x x in failing to consider in favor of the accused the mitigating circumstances shown by the evidence.
5. x x x in finding the accused guilty and imposing on them the penalty for frustrated murder."

In discussing their first assignment of error, accused-appellants tried to expose the alleged incredible testimonies of Jariel and the other witnesses for the prosecution who were the persons who testified against them in Criminal Case No. 1905. The issue of credibility is one for the trial court to determine. To its discretion it is primarily addressed and whose determination on the matter is ordinarily entitled to great weight on appeal, what with the admittedly superior advantage it has in observing the demeanor of the witnesses that took the stand as compared to the cold words of the transcript of the stenographic notes before Us. In the absence of any overriding consideration, We cannot break away from the general rule and substitute Our own judgment for that of the court below on the matter of credibility. Witness Jariel testified regarding the stabbing of Filemon Casis in this wise:

"Q

After you saw the deceased[4] was able to flee, what else happened, if anything else happened?

A

Then I saw Filemon Cases whom they were hacking.

Q

When you said them to whom do you refer?

A

The three father and sons.

Q

At what distance were you when the accused Getulio Verzo, Reynaldo Verzo and Roberto Verzo were hacking or stabbing Filemon Cases?

A

They were quite far from me; at a distance of about 10 meters because they pursued Filemon Cases.

Q

When the three accused were stabbing or hacking Filemon Cases, did you take any steps to stop them?

A

Yes, sir.

Q What did you do?

A I fired again another shot.

Q That would be the third time you fired a shot?

A Yes, sir.

Q

What happened after you fired the third shot?

A

They did not stop until Filemon Cases fell down and they continued hacking and later. Filemon Cases lost consciousness.

Q

Did you see any bus come by at any time during the date of the autos?

A

I did not notice that any more because my attention was focused on them.

Q

From the distance where you were, could you see any stab made by the accused Getulio Verzo actually hit the person of Filemon Cases?

A Yes, sir.

Q

From the distance where you were did you see any stab made by the accused Reynaldo Verzo actually strike the person of Filemon Cases?

A

Yes, sir; Reynaldo even embraced Filemon Cases and then said, "Go ahead, father, stab him."

Q

When you said Reynaldo Verzo embraced Filemon Cases, could you demonstrate to the court more or less the situation with you as Reynaldo and me as Filemon Cases?

A

He was embracing Filemon near the fences (witness demonstrates by embracing Atty. Venida, who represents Filemon Cases, while standing on the right side of Atty. Venida and locking his two hands on the left side of Atty. Venida). And then he shouted, "Go ahead, father, stab him." He did not release his embrace on Filemon Cases until Filemon collapsed."^[5]

This Court in deciding the appeal of the same accused-appellants in Criminal Case No. 1905,^[6] gave weight and credit to the testimony of witness Jariel who described the killing of Benjamin Camino. We find no reason why We can give less credit now in so far as his testimony on the stabbing of Filemon Casis is concerned. Said the Court in its decision in Criminal Case No. 1905:

"The failure of Jariel to prevent the untoward events that happened in his presence should not affect the credibility of his testimony, for he is young and he had been in the police force barely 3-months prior to the occurrence. He fired warning shots during the same, and had tried to dissuade the Verzos, by word of mouth, from taking the law into their hands; but, to no avail. Apart from attesting to an obvious fact — that he is not a seasoned peace officer — his performance is the characteristic of the typical simple and unsophisticated policemen of rural area in the Philippines. Needless to say, the fact that Camino had been his colleague in the police force and that Filemon is the offended party in the case for frustrated murder does not suffice to discredit their respective testimonies, in the light of the surrounding circumstances."

Determined to impugn the credibility of the witness for the prosecution, the accused-appellants pointed out the alleged inconsistencies in their testimonies about the incident but again the Court in its decision in Criminal Case No. 1905^[7] ruled that if ever there were such inconsistencies, they refer to minor details on which persons witnessing the same occurrence are likely to disagree. Thus the Court said:

“ . . . the testimonies of Lope Jariel and Filemon Casis were substantially corroborated by those of Emmanuel Cambronero and Nestor Samson. Cambronero was admittedly in the bar in front of the house of the Verzos, and had stepped out of said bar, together with Camino, shortly before the occurrence. Jariel is a peace officer, who had not taken sides. Nestor Samson live near the scene of the occurrence and had witnessed part thereof. The testimony of these witnesses for the prosecution, which is plain, simple and straightforward, was, moreover, corroborated by the number, the nature and the location of the injuries sustained by Camino and Filemon. One of the wounds of Camino was on his back. The alleged Inconsistencies in said testimonies refer to minor details on which persons witnessing the same occurrence are likely to disagree, in the ordinary course of event.”

With the positive identification of the accused-appellants as the persons who inflicted several injuries on Filemon Casis, the proof of motive or lack of motive on the part of the accused in assaulting the latter is not indispensable to sustain their conviction there being no more doubt as to their identity as the real culprits.[8] At any rate, the records show that feud existed between the Verzos and the Casis which led to several happenings, one of which was the stabbing incident between the children of Getulio Verzo and those of Filemon Casis on July 5, 1962. In fact just a day before the fatal event, Filemon's son, Carlito, was chased by the accused with bole at the bridge of Labo.

In their second assigned error accused-appellants claimed that the lower court erred in convicting all the three accused in the absence of proof of conspiracy, instead of pinpointing who among them inflicted the fatal wounds. Witness Jariel, whose testimony the Court has already ruled in Criminal Case No. 1905[9] to be credible declared:

"Q After this, what else happened?

A Then I just noticed that Benjamin Camino was beside me and Benjamin Camino said: What more do you want? You already threw a stone, what more do you want? Then Getulio Verzo, Reynaldo Verzo and Roberto Verzo suddenly entered their house and then came out again each with a bolo. I stopped them and I even fired a shot but they ran away from me and then ran after Benjamin Camino and they hacked him.

Q Whom did you see among the accused actually able to strike the deceased Benjamin Camino?

A Getulio Verzo hacked, while Reynaldo Verzo and Roberto Verzo stabbed Benjamin Camino.[10]

From the foregoing it is evident that each of the three accused participated in wounding the deceased Benjamin Camino.

With respect to Filemon Casis the following testimony of witness Jariel is worth considering:

"Q

After you saw the deceased (referring to Camino) was able to flee, what else happened?

A

Then I saw Filemon Casis when they were hacking.

Q

When you saw them to whom do you refer?

A

The three, father and sons.

xxx xxx xxx

Q

When the three accused were stabbing or hacking Filemon Casis, did you take any steps to stop them?

A

Yes, sir.

Q

What did you do?

A

I fired again another shot.

Q What happened after you fired the third shot?

A

They did not stop until Filemon Casis fell.[11]

The number of wounds, about twelve (12) of them, that Filemon Casis suffered from the three accused adds credence to Jariel's testimony that the three did not stop hacking or stabbing him until he fell. It is also evident from their behavior that all the three accused were united in their purpose and design to kill their victim. It is by now a well-established doctrine that conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concert of action and community of interests, and such unity of purpose and concert of action serve to establish the existence of the conspiracy . . .[12] and the degree of actual participation by each of them is immaterial.[13]

With respect to the third assignment of error while there is no sufficient showing that there was evident premeditation in the commission of the crime, however, it has been fully established that the accused had acted with abuse of superior strength in attacking Filemon Casis for despite the fact that the latter was unarmed, the three accused-appellants ganged up on him with Reynaldo Verzo embracing him from behind and telling his father, Getulio: "Now, father stab him", thereby affording opportunity to Getulio to deliver his thrust to the victim.

Accused-appellants invoked in their favor the presence of mitigating circumstances of provocation on the part of the victim, incomplete self-defense, and voluntary surrender. It is alleged that the deceased Benjamin Camino had provoked the accused by uttering challenging statements immediately before he was assaulted. But the records only show that what the deceased Camino said was: "What more do you want? You already threw stones." [14] We do not believe that these words would constitute sufficient provocation. The same is true with respect to the claim of the accused that they acted in self-defense. To constitute self-defense, there must be unlawful aggression on the part of the victim; reasonable necessity of the means employed to repel the aggression and lack of sufficient provocation on the part of the accused. [15] A close examination of the records fails to yield any proof of unlawful aggression either on the part of the deceased Benjamin Camino or Filemon Casis. The absence of this element alone negates the claim of self-defense. With respect to the injuries claimed by the accused to have been sustained by them during the incident in question to support their plea of self-defense, this Court had but to reiterate its observation in the murder case against the same accused in Criminal Case No. 1905. [16] We discredited there the defendant's version of the occurrence as too artificial to merit credence for:

"Although they claimed to have been wounded during the occurrence, their alleged injuries were not shown to any physician until several days after the filing of the complaint against them, on July 7, 1963. The medical examination of Getulio Verzo took place on July 11, and that of Roberto and Reynaldo Verzo on July 17. Again, the injuries of Roberto Verzo consisted of three (3) abrasions and one superficial wound. Those of Reynaldo Verzo were two (2) abrasions, one (1) lacerated wound on the left forearm and an incised wound in the index finger of the right hand. Getulio Verzo had an abrasion, two (2) contusions, one (1) lacerated wound and a small incised wound on the left parietal region, and an incised "avulsion" on the left forefinger. These were superficial injuries. Some of them might have been caused by a fall. Others could have been self-inflicted. In any event, considering that his Honor, the trial Judge had the decided advantage of observing the behavior of the witnesses while giving their testimony, and taking into account the other circumstances obtaining in the case, it is clear to us that the findings of fact made in the decision appealed from should not be disturbed."

As to the claim of the accused that they have voluntarily surrendered, the records show that Lope Jariel had to ask for the arrest of the accused. [17]

In sum, there being no modifying circumstances present in the commission of the offense of frustrated murder, the accused-appellants should be sentenced to suffer the penalty of reclusion temporal in its minimum period of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months (Art. 64, par. 1 in relation to Arts. 50 and 248 of the Revised Penal Code). Applying the Indeterminate Sentence Law, each of the accused is decreed to suffer a minimum penalty of eight (8) years of prision mayor and a maximum of twelve (12) years and one (1) day of reclusion temporal.

The award of indemnity by the trial court in favor of Filemon Casis appears quite reasonable and We deemed it unnecessary to disturb the same.

WHEREFORE, modified as to the penalty imposed, the decision appealed from should be, as it is hereby affirmed in all other respects, with costs against the defendants.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Antonio, Esguerra, Muñoz Palma, Aquino, and Concepcion Jr., JJ., concur.

[1] People vs. Verzo, et al., G.R. No. L-22517, Dec. 26, 1967.

[2] G.R. No. 24917.

[3] Tsn., p. 19.

[4] Referring to Benjamin Camino.

[5] Tsn., Pante, January 8, 1963, pp. 22-24.

[6] G.R. No. L-22517, Dec. 26, 1967.

[7] G.R. No. L-22517, Dec. 26, 1967.

[8] People vs. Verzo, G.R. No. 22517, Dec. 26, 1967; People vs. Villalba, L-17243, Aug. 23, 1966, 17 SCRA 948, citing People vs. Solana, L-13967, Sept. 29, 1962, 6 SCRA 60; People vs. Tagarao, L-18515, Jan. 31, 1963, 7 SCRA; People vs. Raquel, L--17401, Nov. 28, 1964, 17 SCRA.

[9] G.R. No. L-22517, Dec. 26, 1967.

[10] Tsn., Pante, January 8, 1963, p. 20, Testimony of Jariel.

[11] Tsn., p. 23.

[12] People vs. Monadi, 97 Phil. 575, 584; People vs. Pedro, 16 SCRA 57; People vs. Verzo, 21 SCRA 1403; People vs. Paredes, 24 SCRA 635; People vs. Pagaduan, 29 SCRA 54.

[13] People vs. Bantil, L-18997, Jan. 31, 1961, 16 SCRA 57; People vs. Reyes, L-18892, May 30, 1966, 17 SCRA 309; People vs. Macul, 86 Phil. 423; People vs. Akiram, L--18760, Sept. 29, 1966, 18 SCRA 239.

[14] Tsn., p. 20, Pante, Jan. 8, 1963.

[15] People vs. Ordiales, L-30956, Nov. 23, 1971, 42 SCRA 238.

[16] G. R. No. L-22517, Dec. 26, 1967.

[17] Tsn., p. 45, dela Cruz, Jan. 22, 1963.

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