

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PROMENCIO TOME, ACCUSED-APPELLANT.

G.R. Nos. L-35247-48. June 28, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Criminal Case No. 5256 of the defunct Court of First Instance of Zamboanga del Norte, PROMENCIO TOME, BELARMINO TOME and RENERIO TOME were accused of murder said to have been committed as follows:

"That in the evening on or about the 16th day of April, 1969, in the municipality of Labason, Zamboanga del Norte within the jurisdiction of this honorable court the above-named accused conspiring, confederating and working together, one of whom was armed with a firearm, with intent to kill by means of treachery and evident pre-meditation did, then and there wilfully, unlawfully and feloniously shot one Antonio Tee thereby inflicting upon him a gunshot wound on the forehead which caused his death shortly thereafter.

"CONTRARY TO LAW with the aggravating circumstance of treachery and evident premeditation."
(Expediente, p. 39.)

In Criminal Case No. 5257 of the same court, the same persons were also accused of frustrated murder in an information which is quoted herewith, mistakes included, as follows:

"That in the evening on or about the 16th day of April, 1969, in the municipality of Labason, Zamboanga del Norte, within the jurisdiction of this honorable court the above-named accused conspiring, confederating and working together, one of whom was armed with a firearm and with the intent to kill by means of treachery and evident premeditation did then and there wilfully, unlawfully and feloniously shot one Eduardo Yap thereby inflicting upon him a gunshot wound on the vital part of his body; thus performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of his will, namely, the timely and able medical assistance rendered to the victim which saved his life.

"CONTRARY TO LAW without qualifying circumstance of alivrosia and the aggravating circumstance of known premeditation." (Expediente, p. 33.)

Except for the medical proof concerning the victims which necessarily had to be different, there was common evidence for the prosecution and the defense in both cases. The trial judge wrote separate decisions albeit they are similarly worded except for the names of the victims and the dispositive portions.

After the prosecution had closed its evidence, Belarmino Tome and Renerio Tome moved to dismiss insofar as they were concerned on the ground that there was no prima facie case against them. The motion was granted.

In Criminal Case No. 5256, the trial court rendered the following judgment:

"WHEREFORE, finding the accused guilty of the crime of Murder beyond reasonable doubt hereby sentence the accused to suffer the penalty of life imprisonment, to pay the heirs of the victim the sum of TWELVE

THOUSAND (P12,000.00) PESOS without subsidiary imprisonment in case of insolvency, to suffer the accessory penalties provided for by law, with cost." (Expediente, p. 205.)

And in Criminal Case No. 5257, the following judgment was rendered:

"WHEREFORE, finding the accused Promencio Tome guilty beyond reasonable doubt of the crime of Frustrated Murder, hereby sentence the accused to suffer imprisonment of an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of Prison Correccional Maximum as Minimum to TWELVE (12) YEARS, FIVE (5) MONTHS and ELEVEN (11) DAYS of Reclusion Temporal Minimum as Maximum, and to suffer the accessory penalties provided for by law, with cost." (Expediente, p. 44.)

Promencio Tome appealed both cases and they are now before this Court. In his appeal the following errors are assigned:

I. That the Lower Court erred in crediting the testimony of Venancio Labiano, Jr., and

II. That the Lower Court erred in convicting the Accused-appellant of the crimes of Murder and Frustrated Murder." (Brief, p. 5.)

The People's version of the facts is as follows:

"In the evening of April 16, 1969, Venancio Labiano, Jr., a 22 year old PC Soldier on furlough, was celebrating at a store of Mirabueno, at Labason, Zamboanga del Norte, because a friend of his had just graduated. It was about 8:00 o'clock in the evening and they were about 16 in all, some of whom were the injured Eduardo Yap and the deceased Antonio Tee, Mario Gatso, Tony Sanchez, Nonoy Mirabueno and Bambin Sanchez. They were then waiting for the fish to be roasted. On the table of the store, there were two (2) gas lamps, and there was a bonfire beyond, where they were roasting the fish, which added light to the place. Venancio Labiano was leaning on the wall of the store when he saw the appellant Promencio Tome aiming his pistol and immediately firing two times. The shots hit Antonio Tee and Eduardo Yap on their heads. The former died as a result thereof while the latter was seriously injured (pp. 8-16, t.s.n., Part I)." (Brief, pp. 2-3.)

The prosecution presented only one witness who testified directly concerning the shooting of Antonio Tee and Eduardo Yap. He was Venancio Labiano, Jr. Accordingly, the first assignment of error deals with his testimony.

Venancio Labiano, Jr. was 22 years old when he testified on December 21, 1971. He was an enlisted man in the Philippine Constabulary assigned in Camp Crame. He was on furlough in April, 1969, and he spent his furlough in Labason, Zamboanga del Norte, where he resided before his enlistment in 1967.

On April 16, 1969, he was invited to a party by a friend who had just graduated. The party was held in the store of one Mirabueno. There were 16 persons in the party which included Eduardo Yap, Antonio Tee, Mario Gatso, Tony Sanchez, Nonoy Mirabueno and Bambin Sanchez.

While they were waiting for the fish to be roasted, Eduardo Yap and Antonio Tee were shot at about 8:00 p.m. He had a good look at the man who fired two shots. He was about 5'8" or 5'9" in height, with an athletic build and who wore long sleeves and black pants. He was able to see the man because of the bonfire where the fish was roasting and two gas lamps.

He started to chase the man who fired the shots which hit Antonio Tee and Eduardo Yap but his way was blocked by a rope. After the injured had been taken to the hospital, he went back to the scene of the crime to investigate. He found out from Tony Sanchez that the enemy of the group were the Tome brothers because one of them was boxed by Mario Gatso. When he later saw Promencio Tome he "identified him immediately to be the gunman."

Since Labiano was the only witness who identified Promencio Tome as the assailant, it is Labiano's credibility which is assailed in this appeal. The appellant claims that "a close scrutiny of the testimony of Venancio Labiano, Jr. reveals some material inconsistencies which renders his entire testimony unworthy of credence."

It is argued that at one point Labiano testified the gunman pointed his pistol but subsequently he said that the same gunman held a metal plated revolver. It is claimed that there is a difference between a pistol and a revolver which a military man should have known. The Solicitor General says that "this contention is without merit, because that minor mistake, far from affecting Labiano's credibility, shows he was not rehearsed." It is thus impliedly admitted that there is indeed a difference between a pistol and a revolver. Wrong. A revolver is a type of pistol. Pistol is the generic name for a handgun which can be a revolver (de bola), automatic (actually only semi-automatic), a derringer, etc. Hence no mistake was committed by Labiano; not even a minor one.

The appellant disputes the identification made by Labiano that Promencio Tome was the assailant because he could not name him immediately. This contention is without merit. He could not name Promencio immediately because he had not known the latter before the shooting. It was only when he later met Promencio who fitted the description of the gunman that he was able to name him.

Finally, the appellant asks: Why was Mario Gatso not shot since he was the one who boxed one of the Tome brothers? Why were Antonio Tee and Eduardo Yap shot instead? The answer could be that Promencio was a poor shooter. It could be he intended to shoot Gatso but his aim was so bad that he could not hit his target even after he had fired two shots.

The appellant interposed the defense of alibi. He claimed that at the time of the shooting he was at the Virginia Ranch situated 16 kilometers from Labason. The alibi must fail for the following reasons:

- The appellant has been sufficiently identified by Labiano as the gunman.
- The scene of the crime is not so far from the ranch that it was not impossible for the appellant to be in the former place.
- Cosme Paunan a guard at Gate No. 1 of Virginia Ranch testified that according to his logbook Promencio Tome entered at 1:40 p.m. on April 16, 1969, and exited at 4:30 p.m. on the same day with a .22 caliber revolver tucked by his waist.

The crimes committed by the appellant are murder and frustrated murder qualified by treachery or alevosia. We agree with the trial court that evident premeditation has not been proved.

WHEREFORE, the judgments of the trial court being in accord with both the evidence and the law, the same are hereby affirmed in all respects. Costs against the appellant.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, De Castro and Escolin, JJ., concur.

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