

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANILYN TAMAYO, ACCUSED,

Ponente: PERALTA, JR., E. B., J.

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PERALTA, JR., E. B., J.:

Following the lower court's verdict of conviction,[1] co-accused Victoriano Tamayo interposed the present appeal[2] for Us to review the assessment of his guilt for Murder vis-à-vis the rejection below of co-accused Manilyn Tamayo's intention to appeal.[3]

On April 4, 2007,[4] an indictment was hurled against the two defendants for Murder in the following manner:[5]

"That on or about January 12, 2007 in Brgy. Jimenez, Mapandan, Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, VICTORIANO TAMAYO @ DENCIO TAMAYO @ "Terog", conspiring and confederating and mutually helping with his co-accused MANILYN TAMAYO, a minor who is 15 years, 8 months and 9 days old at the time of the commission of the offense and who acted with discernment, with the use of a bladed weapon, and abuse of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and hit DIANA VISPERAS, a 16 year old minor, inflicting upon her stab wounds in the vital parts of the body, causing her untimely death, to the damage and prejudice of her heirs.

CONTRARY to Art. 248 paragraph 1, of the Revised Penal Code as amended by RA 7659."

In the course of their arraignment, both defendants pled innocence[6] and upon conclusion of pre-trial conference, trial then ensued.[7]

As synthesized by the Office of The Solicitor General, these were the inculpatory facts:[8]

"On January 12, 2007 at around 1:30 o'clock in the afternoon in Brgy. Jimenez, Mapandan, Pangasinan, Marlon Aquino was walking along an earthen dike when he saw Manilyn, armed with a kitchen knife, stabbed Dianne (sic) Visperas seven times hitting the victim on her breasts, abdomen and back. As Manilyn was stabbing the victim, Victoriano was holding the victim's right arm.

Thereafter, the victim was brought to the Mapandan Community Hospital where she was declared dead on arrival.

The autopsy report prepared by Dr. Cristina Quintos showed the following wounds sustained by the victim:

- Wound no. 1 incised wound 1.5cm long x.5cm wide, in depth penetrating is located as mid clavicular line, left chest which is directed forward inwards hitting the left upper lung;
- Wound no. 2 incised wound 2cm long x 1cm wide, 8cm in depth penetrating is located at third rib left side of the sternum (midbreast) directed forward inwards hitting the left upper lung and left atrium of the heart;
- Wound no. 3 incised wound 1.5cm long x .5cm wide, 3.5cm in depth penetrating is located below the left side of the sterum (sic) (midchest) is directed forward and inward hitting the left upper lung;

- Wound no. 4 incised wound 1cm long x .5cm wide, 2cm in depth non-penetrating is located at the left side of the sternum (sic) (midchest);
- Wound no. 5 incised wound 1cm long x .5cm wide, 2cm in depth non-penetrating is located at the xiphoid process (lower middle chest);
- Wound no. 6 incised wound 1cm long x .5cm wide, 6cm in depth penetrating is located at the right lower quadrant of the abdomen (right lower part of the abdomen);
- Wound no. 7 incised wound 1cm long x .5cm wide, 6cm in depth non-penetrating is located at the right mid scapular line.”

To exculpate himself from liability, accused proffered denial and alibi. Aided by counsel, accused-appellant narrated that:[9]

“On January 12, 2007, at 7:00 o'clock in the morning, Victoriano, a mango sprayer, went with his employer, Edgardo Ugaban, to Meles, Dagupan City, to canvass for the market price of mangoes since it was already harvest season. They proceeded thereafter to the house of Edgardo's father, Atty. Brigido Ugaban, in Lasip, Grande, Dagupan City, where they had lunch. Then, they went to Barangay Ventinilla, Sta. Barbara, Pangasinan, to check the mangoes that they sprayed and stayed thereat until 8:00 o'clock in the evening. After a few drinks, they went home the following day.

When Victoriano returned home, he learned that his neighbors were accusing him of using an alias “Dencio”, who was involved in a stabbing incident. Hence, he went to the police station to clarify his name and inform the police that he never used the name “Dencio Tamayo” as an alias. Despite showing his driver's license, the police arrested and questioned him. He denied any involvement in the crime and claimed that he has not yet seen his niece Manilyn Tamayo except on January 10, 2007.”

On November 22, 2010, the trial court adjudged the guilt of both defendants for Murder in this manner:[10]

“WHEREFORE, premises considered, the Court finds both accused Manilyn Tamayo and Victoriano Tamayo “GUILTY” beyond reasonable doubt for the crime of MURDER appreciating against them the specific aggravating circumstance of abuse of superior strength and in conformity with the law, Manilyn Tamayo is hereby sentenced to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum in view of her minority being over fifteen but under eighteen years of age.

Applying Republic Act No. 9344, Sec. 38 and 40 and considering that accused was a minor but acted with discernment in the commission of the offense charged, the service of her sentence is ordered suspended and he's [sic] ordered committed to the DSWD Rehabilitation Center in Bauang, La Union for his [sic] reformation.

The DSWD-Dagupan City is ordered to transfer the custody of the minor to DSWD Rehabilitation Center, Bauang, La Union.

On the other hand, accused Victoriano Tamayo is sentenced to suffer the penalty of reclusion perpetua, without eligibility of parole.

Accused Manilyn Tamayo and Victoriano Tamayo are further ordered jointly and severally to pay the heirs of Diana Visperas P75,000.00 as civil indemnity, P50,000.00 for moral damages and P30,000.00 for exemplary damages.

SO ORDERED.”

Hence, We will now evaluate the instant appeal[11] based on the sole ascription hurled below:[12]

... IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Apart from the constitutional presumption of innocence which was invoked by appellant, it was also postulated by the defense that the prosecution did not effectively discharge its onus with the requisite quantum of evidence.

After due consideration, We find no cogent reason to overrule the findings of the trial court.

As epitomized in jurisprudence, to be liable for Murder, the prosecution must prove that: (1) a person was killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248; and (4) the killing is neither parricide nor infanticide.[13]

Here, there was no legal squabble that Dianne was stabbed to death—she succumbed to seven (7) stab wounds, one of which perforated[14] her heart—and it is neither parricide nor infanticide. From Our perspective, which shall be tackled hereafter, it was beyond cavil that it was appellant and his co-accused who killed the victim with abuse of superior strength.[15]

There is abuse of superior strength when the aggressors purposely use excessive force rendering the victim unable to defend himself.[16] The notorious inequality of forces creates an unfair advantage for the aggressor.[17]

Per oral declarations[18] from the eyewitness, the attack was made with the use of a bladed weapon:

“Q:

With what weapon did Manilyn Tamayo use when she stabbed Dianne Visperas?

A:

A knife, sir.

Q:

Can you describe before this Court what kind of knife was the weapon of Manilyn Tamayo?

A:

Yes, sir.

Q:

Describe to the Honorable Court?

A:

A knife with a length of more or less 8 inches with a black handle around 4 inches, sir.

Q:

The measurement which you saw, that is including the handle of the knife?

A:

Yes, sir.

Q:

In other words, the knife is a kitchen knife which is used in slicing vegetables?

A:

Yes, sir.

xxx xxx

Q:

And what did Dencio Tamayo do while Manilyn Tamayo was stabbing Dianne Visperas seven (7) times?

A:

He was holding Dianne Visperas, sir.

Q:

What part of the body of Dianne was held by Dencio Tamayo?

A:

Witness is pointing to his right arm.”

From the foregoing depiction of the physical assault, it indubitably demonstrated that abuse of superior strength was present when Dianne was stabbed to death.

Accused-appellant tried to create doubt over his conviction and insisted that the court a quo erred in evidence evaluation considering that the prosecution miserably failed to prove his involvement in the killing of the victim. It was the asseveration, too, of appellant that the testimony[19] of Edgardo Ugaban, appellant’s defense witness, clearly supported appellant’s claim that he was not in the vicinity of the place where Dianne was killed.

We beg to differ from appellant's submissions.

Such alibi, while corroborated cannot prevail over the positive identification of the eyewitness. For alibi to prosper, it must be proved, not only that the assailant was in another place when the crime was committed, but that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission altogether.[20]

In this case, it was not physically impossible for appellant to be at the scene of the crime. As a matter of fact, and as testified to by Jerry Tamayo,[21] the father of co-accused Manilyn, it was appellant Victoriano who informed him of what happened to Diana and warned Manilyn to be cautious. Thus, appellant cannot feign ignorance of the killing incident on January 12, 2007. As aptly underscored by the trial court, thusly:[22]

“xxx Victoriano mentioned that he left Brgy. Jimenez on that fateful day. But considering the fast mode of transportation that we have now, Mapandan could be reached from Santa Barbara or Dagupan in a short period (sic) time. Physical impossibility refers not only to the geographical distance between the place where the accused was and the place where the crime was committed when the crime transpired; but more importantly, the facility of access between two places. How did it happen that Jerry Tamayo and Victoriano Tamayo had communication with each other on the night of the incident if the latter was not in Brgy. Jimenez? Besides, Victoriano testified that after their drinking spree in Santa Barbara, he went home to Brgy. Bangsal where his wife was at the time which is contrary to the testimony of Jerry Tamayo.”

Against the positive identification made by prosecution witness of accused-appellant Victoriano and co-accused Manilyn as the perpetrators of the crime, all that appellant Victoriano could offer was a shaky alibi. However, the bulk of jurisprudential jottings fortify the general proposition that alibi is a weak defense.[23] Besides, there was no showing that Marlon was harboring any ill-motive to falsely testify against appellant Victoriano.[24] Settled is the rule that the defense of alibi cannot prevail over the positive identification of the accused as the author of the crime by credible witnesses.[25]

In sum, we find no basis to doubt or dispute, much less overturn, the findings of the trial court that Manilyn repeatedly stabbed the victim, while appellant Victoriano held the victim's arm.[26] Certainly, appellant and co-accused Manilyn were criminally accountable for the unlawful death of the victim as principals by direct participation based on the version of the People, coupled with the medical evidence on the victim's death.[27] Indeed, they constitute sufficient proof of the guilt of the appellant and his co-accused beyond any morsel of doubt.

WHEREFORE, in the light of the foregoing premises, the instant APPEAL is hereby DENIED and the Decision dated November 22, 2010 in Criminal Case No. 2007-0183-D of RTC, Branch 43, Dagupan City is hereby AFFIRMED.

SO ORDERED.

Reyes, JR., J. C., Chairperson, and Acosta, F. P., JJ., concur.

[*] Per Office Order No. 15-15-ABR dated January 20, 2015, effective February 2, 2015.

[1] Decision dated November 22, 2010, Record, pp. 478-502, penned by RTC Judge Caridad V. Galvez.

[2] Notice of Appeal dated November 25, 2010, Record, page 507.

[3] Notice of Appeal dated November 22, 2010, Resolution dated December 7, 2010, Order dated December 16, 2010, Record, pp. 503, 513-515, 518.

[4] Amended Information after the correction of the name of accused-appellant per verification of the prosecution,

Record, page 157.

[5] Information, Record, page 157.

[6] Certificate of Arraignment dated May 18, 2007, Record, page 186; Order dated May 18, 2007, Record, page 185.

[7] Order dated June 5, 2007, 1 Record, pp. 190-191.

[8] Appellee's Brief, pp. 3-4, Rollo, pp. 168-169.

[9] Appellant's Brief, page 9, Rollo, pp. 95-96.

[10] Decision, pp. 501-502.

[11] Record, page 503.

[12] Appellant's Brief, page 3, Rollo, page 89.

[13] People v. Zapuiz, G.R. No. 199713, February 20, 2013 citing People v. Medice and Dolledo, G.R. No. 181701, January 18, 2012, 663 SCRA 334, 34; People v. Francisco, G.R. No. 192818, November 17, 2010, 635 SCRA 440, 454.

[14] Medico-Legal Report, Record, pp. 224-225.

[15] Decision, pp. 21-22, Record, pp. 498-499.

[16] People v. Nazareno, G.R. No.196434, October 24, 2012 citing People v. Beduya, G.R. No. 175315, August 9, 2010, 627 SCRA 275, 284

[17] Valenzuela v. People, G.R. No. 149988, August 14, 2009 citing People v. Daquipil, G.R. Nos. 86305-06, January 20, 1995, 240 SCRA 314, 332-333.

[18] TSN dated June 12, 2007, pp. 10-12.

[19] TSN dated December 5, 2007, pp. 5-10.

[20] People v. Asprec, G.R. No. 182457, January 30, 2013 citing People v. Salcedo, G.R. No. 178272, March 14, 2011, 645 SCRA 248, 262.

[21] TSN dated May 15, 2009, pp. 5-6.

[22] Decision, page 19, Record, page 496.

[23] People v. Zapuiz, G.R. No. 199713, February 20, 2013, citing People v. Bromo, 376 Phil. 877,897 (1999).

[24] People v. Zapuiz, G.R. No. 199713, February 20, 2013, citing Velasco v. People, 518 Phil. 780, 797 (2006).

[25] People v. Barangay Captain Tony Tomas, Sr., et al., G.R. No. 192251, February 16, 2011, citing People v. Candaza, G.R. No. 170474, June 16, 2006.

[26] TSN dated June 12, 2007, page 12.

[27] Medico-Legal Report, Record, pp. 224-225.

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