

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TOMAS LLAMERA, GERARDO LLAMERA, COLETO LLAMERA, AND
RUBENCIO LLORCA, DEFENDANTS-APPELLANTS.**

G.R. Nos. L-21604-5-6. May 25, 1973

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ANTONIO, J.:

Appeal from the judgment of the Court of First Instance of Surigao convicting appellants Tomas Llamera, Gerardo Llamera, Coletto Llamera and Rubencio Llorca in Criminal Cases Nos. 3654, 3655 and 3656 after a joint trial, of the crime of murder, for the slaying of Celso Degamo, Manuel Degamo and Egenio Degamo and sentencing them, in spite of its finding that the crime was attended by the aggravating circumstance of cruelty (ensañamiento) as regards the appellants Tomas Llamera, Gerardo Llamera and Rubencio Llorca and recidivism with respect to the appellant Coletto Llamera, to suffer for each case, the penalty of reclusion perpetua and to indemnify jointly and severally the heirs of each of the victims in the sum of P3,000.00 each and to pay the costs.

During the pendency of this appeal, appellant Coletto Llamera died of "enteritis" on October 19, 1972 in the New Bilibid Prison Hospital, Muntinlupa, Rizal, and consequently on December 11, 1972 this Court dismissed the case against him, but only with respect to his criminal liability.

There appears to be no dispute that this tragic denouement was the culmination of a controversy between the victims and the appellants, over the possession of a piece of riceland situated near the house of Manuel Degamo at Sitio Dapia, of the town of Albor, Province of Surigao del Norte. According to the evidence of the prosecution, Tomas Llamera had previously wrested from the Degamos, the possession of the riceland. This led to the filing by the Degamos of an action of forcible entry against Tomas Llamera with the municipal court of Albor, and this suit resulted in a judgment for the Degamos. While Tomas Llamera admits of the filing of the case, he however claimed that he was not aware of its result. At any rate a few days prior to the incident in question, the Llameras had encroached upon another portion of the land of the Degamos by plowing it. The Degamos countered this encroachment by having the plowed land trampled by their carabaos on December 8, 1972 in preparation for their planting thereon the following day. It was therefore for the purpose of planting thereon that the Degamo brothers, Manuel, Celso and Egenio, proceeded to the disputed riceland in the early morning of December 9, 1972. And it was on their return from the ricefields, that the tragedy occurred.

Thus at about 6:00 o'clock on the morning of that day, Carmen Degamo Torillo was in the house of her brother Manuel, waiting for their return. She declared that at that hour when she looked out of the window of the house, she saw in the adjacent house of Gerardo Llamera, appellants Gerardo and Coletto Llamera at the steps of the ladder of the house. At this precise moment, Manuel Degamo, Celso Degamo and Egenio Degamo emerged from the landing place walking in single file, proceeding towards the house of Manuel. As they were walking in that manner she heard a gun report coming from the house of Gerardo Llamera, and saw Egenio fall to the ground. As she looked towards the direction where the gun report came from, she saw appellant Coletto Llamera, by the window of the house, holding a long gun, in a bending position, from which source two successive gun reports subsequently emanated. Celso and Manuel Degamo who had momentarily earlier turned their faces towards the

direction of appellant Coletto Llamera after the first gun report, fell one after the other, as an aftermath of the two successive shots - Celso staggering momentarily, then falling flat on his face near a carabao's wallowing place, while Manuel collapsed on the left side of the road.

After the collapse of Manuel, Carmen Degamo Torillo saw appellants Tomas Llamera and Gerardo Llamera both armed with bolos, descend from the stairs of Gerardo's house, followed by Romualda Llamera, holding a piece of wood in her hands. Appellants Tomas and Gerardo Llamera proceeded to the place where Celso and Egenio Degamo had fallen, and stabbed the two victims with their bolos. Romualda Llamera in turn hit the fallen Manuel Degamo with the piece of wood. A few minutes later Coletto Llamera, still holding the long gun together with appellant Rubencio Llorca with a revolver in his hands, came down the same house, and after looking briefly at the three fallen victims, left the scene of the crime, and proceeded towards the direction of the landing place at the creek in Tobongan.

According to the Chief of Police of Albor, appellants Tomas and Gerardo Llamera arrived at the municipal building at about 7:30 a.m. that same day, and admitted to him that they killed the three Degamo brothers and delivering at the same time to said official, the bolo of Egenio Degamo (Exh. D-4) and two other bolos (Exhibits E and F) which they allegedly used in the commission of the crime. Carmen Degamo Torillo also arrived at the office of the Chief of Police, to inform him that his three brothers were killed by the four appellants.

After receiving the report, the Chief of Police arrested Coletto Llamera and Rubencio Llorca in their respective houses in the poblacion and later together with the Mayor of Albor, proceeded to sitio Dapia which they reached after 20 minutes by paddle boat. Near a group of three houses at Tobongan, adjacent to a trail, he saw the bodies of the three deceased. According to the sketch prepared by the Chief of Police at the scene of the incident (Exhibit H) the bodies of the three victims were lying in a triangular position, with the bodies of Egenio Degamo and Manuel Degamo about 17 meters apart forming the base of the triangle, and the body of Celso Degamo lying in the ricefields and which was 7 meters from the feet of Egenio and 18 meters from the side of Manuel, at the apex of the triangle. The bodies of Egenio and Manuel Degamo which were nearer the house of Gerardo Llamera were 13 meters and 16 meters respectively from Gerardo's house. A few meters to the east of the place where the three had fallen was the house of Manuel Degamo. Behind the houses of Gerardo Llamera and Felix Llamera was a wide creek.

On December 11, 1962, Dr. Jose R. Mandapat, Rural Health Officer of Loreto, arrived at the town of Albor to conduct a post-mortem examination of the cadavers of the three deceased. His post-mortem findings (Exhibit A) are as follows:

In Criminal Case No. 3654 (L-21604):

"This is to certify that I examined the dead body of Celso Degamo, 36 years of age, married and presently residing at Albor, Surigao del Norte.

"He was found to be suffering from the following wounds caused by:

a - Bolo wound lacerated on the right occipital region down to the nuchal region measuring about 8 inches in length and 6 inches in width.

b - Gunshot wound on the right hypochondriac region penetrating to the right scapular region measuring about 7 inches in length and 4 inches in width.

c - Abrasion on the hypochondriac and scapular region, right.

The cause of death of Celso Degamo is Hemorrhage, Internal." (Folder of Exhibits, p. 50.)

In Criminal Case No. 3655 (L-21605):

"This is to certify that I examined the dead body of Manuel Degamo, 31 years of age, married and presently residing at Albor, Surigao del Norte.

"He was found to be suffering from the following wounds caused by:

a - Gunshot wound with an entrance to the right mammary region measuring one inch in length and ½ inch in width penetrating from the right scapular region measuring about 5 and half inches in length and 5 inches in width.

b - Abrasion on the mammary and scapular region, right.

c - Swelling with hematoma caused by a piece of wood on the right superior labial region with a wound on the lower lip measuring about 1/2 inch in length and 1/2 inch in width.

The cause of death of Manuel Degamo is Hemorrhage, Internal." (Folder of Exhibits, p. 35.)

In Criminal Case No. 3656 (L-21605):

"This is to certify that I examined the dead body of Egenio Degamo, 34 years of age, married and presently residing at Albor, Surigao del Norte.

"He was found to be suffering from the following wounds caused by:

a - Gunshot wound with an entrance to the umbilical region penetrating to the left lumbar region causing the large intestines to protrude and the large intestine that is protruded was found to have holes. With this the small intestine is also protruded measuring about 8 inches in length, on the left lumbar region.

b - Abrasion on the lumbar region and umbilical region, right.

c - Wound lacerated caused by a bolo involving the skin, superficial fascia, muscles and causing the radial and ulnar nerve, vein, artery cut off measuring about 7 inches in length and 3 inches in width on the ulnar antibrachial region, right.

d - Bolo wound lacerated on the dorsal surface of the right hand measuring 2 inches in length and one inch in width involving the skin, superficial fascia and the muscle.

The cause of death of Egenio Degamo is also Hemorrhage, Internal." (Folder of Exhibits, p. 31.)

The Chief of Police of Albor on the basis of his investigation filed a complaint for multiple murder against Tomas Llamera, Gerardo Llamera, Coletto Llamera, Rubencio Llorca and Romualda Llorca. The case was subsequently remanded to the Court of First Instance of Surigao del Norte where the Provincial Fiscal in accordance with his opinion that three different crimes were committed on the same occasion, filed three separate informations for murder against the five accused which were docketed as Criminal Cases Nos. 3654, 3655 and 3656. The Court of First Instance conducted a joint trial of the three cases and after the prosecution rested its case, on motion of the defense, dismissed the case with respect to the accused Romualda Llorca. The trial continued with respect to the remaining four accused. On June 5, 1963 the trial court promulgated the judgment in the three cases, which is now the subject of this appeal.

On June 20, 1963, Tomas Llamera, Gerardo Llamera, Coletto Llamera and Rubencio Llorca, appealed to this Court from said judgment.

The thrust of the brief of the counsel de oficio, for the appellants, is that Tomas Llamera and Gerardo Llamera should only be held liable for the crime of Homicide with the mitigating circumstance of voluntary surrender, but

not of Murder, and there being no convincing proof of conspiracy, Rubencio Llorca should be acquitted. Appellants' counsel thus places implicit reliance on the testimony of Tomas Llamera and Gerardo Llamera, that said appellants killed the three Degamo brothers, in the course of a fight, where the latter were the aggressors.

Thus according to Tomas Llamera, an old man of 72 years of age, on the early morning of December 9, 1962, he was under the house of his son Gerardo Llamera at Tobongan, sitio Dapia, removing the mud from his plow. It was on that occasion when Manuel, Celso and Egenio Degamo passed by walking abreast of each other. Upon nearing the house of Gerardo, Egenio Degamo shouted: "McArthur, come here", and simultaneously approached him and asked: "Why is it that you do not stop working in our land here?". To which he replied: "Why should I stop working here when this is my own land". Egenio however retorted: "Yes, you are that confident because you are a good fighter," and without much ado boloed him injuring as a result thereof his left forearm. When Egenio hacked him again he ducked and parried the blow with his left arm, at the same time shouting to his son for assistance. As Egenio continued to hack him, he proceeded to the interior of the lower story of the house and took a bamboo spear which was tucked below the second floor and with the spear, faced Egenio who by that time had followed him and as Egenio tried to bolo him, he parried the blow and pushed the pointed end of the spear thru the stomach of Egenio. At that moment Gerardo Llamera had already gone down the house and upon seeing Egenio, Gerardo went behind him and boloed the latter. When Egenio sustained the injury in his stomach, Manuel and Celso Degamo were 15 meters and 20 meters away from the Llameras. Manuel Degamo, upon seeing his brother injured went near Tomas Llamera and tried to bolo him. According to Tomas he successfully parried the bolo attack of Manuel with the spear and succeeded in spearing the lower jaw of Manuel. When Manuel Degamo attempted to bolo him again for the third time, he thrust the spear through Manuel's right mammary region. At this instant Gerardo Llamera hacked Manuel at the back several times, causing Manuel to fall to the ground. Celso Degamo then joined the fray by attacking Gerardo with his bolo but the latter was able to parry all the blows. After Gerardo's small finger was injured he allegedly "began to fight in earnest."

It was while Celso and Gerardo were fighting with each other that appellant Tomas Llamera allegedly thrust his spear thru the right armpit of Celso Degamo, causing the latter to stagger in a "twisting manner". It was at that moment when Gerardo succeeded in stabbing Manuel Degamo with his bolo. After disposing of their three victims, Tomas bandaged his left forearm, ordered his son to pick up the bolo of Egenio, then the two proceeded to the poblacion where they surrendered to the Chief of Police, delivering to him on the same occasion the bolo of Egenio Degamo, and two other bolos, one used by Gerardo Llamera and the other his own. The spear was allegedly thrown away by appellant Tomas, when they were passing by the creek on their way to the poblacion. This was also in substance, the testimony of appellant Gerardo Llamera.

Dr. Jaime Go, Junior Resident Physician of the Surigao Provincial Hospital, also testified that on the evening of December 15, 1962, he treated the injured left forearm of appellant Tomas Llamera, which injury consisted of an incised wound 5 inches in length, from the region of the left elbow to the region of the left wrist, with an incomplete compound fracture of the proximal third of the left ulna, and compound fracture of the left radius.

Coleto Llamera and Rubencio Llorca, both interposed the defense of alibi, claiming that at the time of the incident, they were both in their respective homes inside the poblacion of Albor. It is however conceded that Dapia is only 20 minutes by boat from the poblacion of Albor.

On rebuttal Carmen Degamo Torillo declared that after her three brothers were shot, and when the two appellants went near them to stab them with their bolos, Egenio Degamo was still able to rise in a kneeling position to bolo Tomas Llamera wounding the latter on the left forearm.

We agree with the trial court that the theory of the defense is not persuasive.

1. The absence of dents, cuts or any bolo marks on the smooth surface of the bamboo spear, or any signs of bloodstains or discoloration on the sharpened portion of said spear, negates and renders improbable the claim that said bamboo was hit by the blade of the bolos of the three victims, when they allegedly hacked said appellant or that said bamboo was used to inflict the deep and penetrating wounds in the bodies of said deceased. As a matter of fact even as early as the time when Cpl. Detilles found the bamboo spear lying on the ground a meter from the banks of the creek, it was devoid of dirt or any form of discoloration or stain.

2. It is contrary to the physical facts. It has been fully established that the three victims sustained gunshot wounds. Thus Dr. Jose B. Mandapat testified that the three victims sustained gunshot wounds: Manuel Degamo - "gunshot wound with an entrance to the right mammary region measuring one inch in length and $\frac{1}{2}$ inch in width, penetrating from the right scapular region measuring about 5- $\frac{1}{2}$ inches in length and 5 inches in width" (Exhibit A); Egenio Degamo - "gunshot wound with an entrance on the umbilical region penetrating to the left lumbar region causing the large intestines to protrude and the large intestines that protruded was found to have holes x x x the small intestines also protruded measuring about 8 inches in length on the left lumbar region" and Celso Degamo - "gunshot wound on the right hypochondriac region penetrating the right scapular region, measuring about 7 inches in length and 4 inches in width." According to Dr. Mandapat the gunshot wound on the breast of Manuel Degamo was at the point of entry circular in shape with burnt and rough edges, the direction of the wound traversing the body downwards thru and thru until its point of exit at the back of the victim between the region of the hips and shoulder. The direction of the wound indicated that the victim was shot by an assailant who fired from a position above the victim. He found also a gunshot wound on the umbilical region of Egenio Degamo with its point of entrance circular in form with rough and burnt edges, and with a point of exit on the left side of the back of the victim. The wound at the point of exit was bigger and the edges inverted. He also discovered a gunshot wound on the right hypochondriac region of Celso Degamo, with the point of entry circular in form with rough edges, traversing the body and had its point of exit on the back of the victim just a little to the right of the spinal column. According to the aforesaid medical officer the stab and incised wounds which he saw on the bodies of the three victims were apparently inflicted on them after they were successively shot.

3. Such theory is inconsistent with the sworn statement of appellant Gerardo Llamera before the Justice of the Peace of Albor (Exhibits J and J-1) on December 10, 1962, where he declared that he had no participation whatsoever in the aforesaid bloody affray. Thus according to him when Celso, Manuel and Egenio Degamo arrived with drawn bolos at the ricefields where he and his sister Romualda Llorca were working, he immediately ran away when Egenio Degamo tried to bolo him. Although pursued by Egenio and Manuel Degamo the two gave up the chase when they failed to overcome him. From his hiding place he allegedly saw several meters away, his father Tomas and Celso Degamo fighting with bolos and being scared he fled towards the coconut plantation of Sotero Omandam where he found her sister Romualda hiding inside the bushes. It was after a while that he returned to the place where he last saw his father, and not finding him there he proceeded to the house of Rubencio Llorca, where he found his father nursing an injury on the left forearm and the bodies of the three Degamo brothers lying already dead on the yard of the house.

It is a well-settled rule that one who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence. If such evidence is of doubtful veracity, and is not clear and convincing, the defense must necessarily fail, for "having admitted that he was the author of the death of the deceased, it was incumbent upon appellant, in order to avoid criminal liability, to prove the justifying circumstance claimed by him" without relying on the weakness of that of the prosecution but on the strength of his own evidence, for even if the evidence of the prosecution were weak "it could not be disbelieved after the accused himself had admitted the killing" (People vs. Ansoyon, 75 Phil. 772; People vs. Talaboc, 30 SCRA 87; People vs. Berio, 59 Phil. 533; People vs. Banden, 77 Phil. 105; People vs. Cruz, 53 Phil. 635; People

vs. Gutierrez, 53 Phil. 609; People vs. Alvior, 56 Phil. 98, People vs. Espanilla, 62 Phil. 264; People vs. Apolinario, 58 Phil. 586; People vs. Gimeno, 59 Phil. 509; People vs. Jorge, 71 Phil. 451; People vs. Jumauan, 98 Phil. 1).

We have heretofore adverted to the fact that the defense of Coletto Llamera, was alibi. It is the claim of said appellant that he was sick on December 8 and 9, 1962 and therefore had to stay in his house in the poblacion of Albor. Such alleged sickness of the appellant on those dates is neither supported by any medical certificate nor corroborated by any other witness. On the contrary such an alibi is contradicted by Eulogio Sepa who positively declared that on the morning of December 9, 1962, he saw Coletto Llamera at the landing of the ladder to the house of Gerardo Llamera in sitio Dapia. Eulogio Sepa is related by affinity to appellant Coletto Llamera, the latter being the son of the cousin of Eulogio Sepa's wife. No fact or circumstance had been shown which would in any manner impair the credibility of his testimony. Apart from this, We have held in several cases that the defense of alibi, to be successful, must be proved by positive, clear and satisfying evidence, reasonably satisfying the mind of the court of the truth of such defense. Moreover such defense being one that can easily be fabricated, can not be seriously considered if there is credible evidence of the presence of the accused at the time and place of the commission of the crime or of his participation therein. Since Coletto Llamera, Tomas Llamera and Gerardo Llamera had directly participated in the commission of the crime, the first by shooting with his gun the three Degamo brothers, the latter two by stabbing the same victims to ensure their death, there would be no doubt of their criminal liability as principals by direct participation in the commission of the crime.

The Solicitor General, however for the purpose of showing the criminal liability of appellant Rubencio Llorca contends that said appellants acted in criminal concert. Thus it is shown that appellant Tomas Llamera is the father of Gerardo Llamera, uncle of Coletto Llamera and father-in-law of Rubencio Llorca. Prior to the incident in question, the Llameras were engaged with the Degamo brothers in a dispute over the ownership of a parcel of land in sitio Dapia which led to the filing of an ejectment suit by the Degamos against Tomas Llamera, for the possession of the disputed parcel, before the Justice of the Peace of Albor. Immediately prior to the tragic date, a judgment was rendered by the Court in favor of the Degamos, ordering the ejection of Tomas Llamera from the land. But on December 7, 1962, appellant Tomas Llamera, his son Gerardo Llamera and his son-in-law Rubencio Llorca, plowed another rice paddy of the Degamos, in addition to the parcel involved in the ejectment case. The following day or on December 8, 1962, the three Degamo brothers, re-entered the parcel plowed by the Llameras, had such land trampled by their carabaos so as to enable them to plant thereon their rice seedlings the following day. Reliance was also placed in the statements of Gerardo Llamera contained in his affidavit (Exh. "J") before the Justice of the Peace, to the effect that on the night of December 8, 1962, a conference was held in the house of Coletto Llamera in the poblacion of Albor attended with his father Tomas Llamera, and Rubencio Llorca in attendance and that early the following day (December 9, 1962), Gerardo borrowed a boat from one Adriano Onandam, with which he ferried Coletto Llamera from the poblacion to sitio Dapia. It was also stressed that although appellant Tomas Llamera lives in the poblacion of Albor, he was in sitio Dapia allegedly to work in the land on December 9, 1962, which was on a Sunday and therefore not customarily a working day. Then we have the successive acts of each of the appellants on the morning of the incident which in the view of the Solicitor General are circumstances showing conspiracy viz: the sudden shooting by Coletto Llamera of the three victims from one of the windows of the house of Gerardo, and soon after the three had fallen the acts of appellant Tomas and Gerardo Llamera in stabbing the Degamo brothers apparently to ensure their death. Then the acts of appellant Rubencio Llorca in following Coletto Llamera down the house, holding a revolver in his hands, and, after looking at the bodies of the victims, of going away with Coletto Llamera.

While there can not be any question, that when the separate acts of Coletto Llamera, Tomas Llamera and Gerardo Llamera are linked together they show that the apparently isolated acts spring from a common purpose - the death

of the Degamo brothers, upon the other hand We cannot deduce the same conclusion with respect to appellant Rubencio Llorca. There is no iota of proof that said appellant knew of the criminal design of his co-appellants. There is no showing that he performed any act in pursuance of said criminal purpose. As a matter of fact the trial court conceded that said appellant never performed any act in pursuance of the criminal purpose of his co-appellants. The only reason why he was implicated according to the court a quo is that he was present on that occasion "with a revolver or a gun with a sawed off barrel" and "never did anything to prevent the commission of the crime by his companions". We are not persuaded however that on that occasion said appellant carried a revolver in his hands. On the basis of the evidence on record, there are indications that Carmen Torillo could not have possibly recognized with accuracy the article held in Rubencio Llorca's hands as she was more than 50 meters away, and said appellant was walking rapidly farther away from her. Certainly under those circumstances We cannot hold that he is a co-conspirator, with the grave and far-reaching consequences that such an involvement implies. It has been Our constant doctrine, that conspiracy must be shown to exist, by direct and circumstantial evidence, as clearly and convincingly as the commission of the offense itself. We are persuaded that the evidence of the prosecution in so far as appellant Rubencio Llorca is concerned fails to measure adequately to such an exacting test.

In resume therefore We find that the crime was committed with the qualifying circumstance of treachery. The evidence disclose that the three Degamo brothers were suddenly and without warning shot one after another by appellant Coleto Llamera, and when they were already lying prostrate and helpless on the ground, they were stabbed by appellants Tomas and Gerardo Llamera. We find however that the stabbing of the three brothers by appellants Tomas and Gerardo Llamera was not characterized by the aggravating circumstance of cruelty. For cruelty to be considered an aggravating circumstance, it is essential that the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain. No such showing has been made for as aptly stated by the trial court, the purpose of said appellants was to ensure the death of the three victims and to tamper with the bullet wounds to make them appear as bolo wounds, in order to conceal the fact that a gun was used in killing them.

The penalty that should be imposed upon appellants Tomas Llamera and Gerardo Llamera, should take into account the mitigating circumstance of voluntary surrender, which is not offset by any aggravating circumstance.

WHEREFORE, the judgment under review is hereby modified as follows: Tomas Llamera and Gerardo Llamera are pronounced guilty beyond reasonable doubt of three (3) crimes of murder for the deaths of Celso Degamo, Manuel Degamo and Egenio Degamo, and as a consequence each of them is hereby sentenced, for each of the three (3) deaths, to an indeterminate penalty from ten (10) years and one (1) day of prision mayor as the minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as the maximum, both of them to jointly and severally indemnify the heirs of each of the deceased in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and each to pay one-fourth (¼) of the costs. Rubencio Llorca is acquitted on the ground of reasonable doubt, with his proportionate part of the costs de oficio.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Esguerra, JJ., concur.
Makasiar, J., took no part.

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