

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROTILLO JAMERO, MAX JAMERO AND BONIFACIO JAMERO,
ACCUSED-APPELLANTS.***G.R. No. L-32256. January 31, 1977*

Ponente: CONCEPCION, JR., J.

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Appeal interposed by Rotillo Jamero, Max Jamero, and Bonifacio Jamero from the judgment of the Court of First Instance of Surigao del Norte finding them guilty of the crime of Murder qualified by treachery, without any aggravating or mitigating circumstance, and sentencing each one of them to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law; and ordering them to indemnify, jointly and severally, the heirs of the late Gerardo Orquina in the amount of P12,000.00, as well as to pay their proportionate share in three fourth (3/4) of the costs.

The inculpatory facts show that at about 12:30 o'clock in the afternoon of July 14, 1968, while the deceased Gerardo Orquina, his brother Pompio Orquina, Claudio Mendez, Armingol Ugay, Arturo Ugay, and several others were drinking in the house of Asterio Eludo at barrio Campo, Bacuag, Surigao del Norte, Simeon Jamero arrived and belligerently demanded from those present whether "Bayo" and "Pato", the sons of "Kijaw",^[1] were present, at the same time unsheating a bolo tied to his waist.^[2] The deceased Gerardo Orquina stood up and mollified Simeon Jamero, saying that his brothers were not there and that only he and Pompio were present and that they had nothing to do with the "incident"^[3] concerning "Bayo" and "Pato". Arturo Ugay, a municipal policeman of Bacuag, also stood up and pacified Simeon Jamero, who then put away his bolo and joined the group in drinking. Not long thereafter, a commotion took place at the "tabo-an"^[4] nearby and the group broke up.^[5]

Gerardo Orquina went ahead of his brother Pompio who stayed behind. As Gerardo Orquina was on his way to their jeep parked near the market place, Max Jamero, a son of Simeon, approached him and asked for a cigarette. When Gerardo Orquina replied that he had none, Max Jamero pushed and kicked him in the buttocks.^[6] Gerardo Orquina did not retaliate as Max Jamero was armed with a piece of wood. Instead, he ran around the jeep to elude Max Jamero, who was trying to beat him with the piece of wood. But, when he saw Bonifacio Jamero, a brother of Max Jamero, drawing a bolo and coming towards him, Gerardo Orquina ran towards a hill, pursued by Max Jamero, who now and then tried to hit him with the piece of wood, and by Bonifacio Jamero, who was brandishing a bolo. Then Rotillo Jamero, also armed with a bolo, came from another direction and joined his brothers in the pursuit of Gerardo Orquina.^[7] Upon being overtaken, Gerardo Orquina was assaulted by Rotillo, Max, and Bonifacio Jamero. After Gerardo Orquina had fallen, he knelt before his assailants, raised his hands, and pleaded for his life saying, "You just stab me but don't kill me because I have many children."^[8] But, his plea went unheeded because Rotillo Jamero raised his bolo and stabbed Gerardo Orquina in the left chest. After delivering the deathblow, Rotillo Jamero went towards the highway, followed by his brothers Max and Bonifacio. Rotillo was met by policeman Arturo Ugay who demanded the surrender of the bolo. Rotillo refused, saying that there were still two others in town.^[9] Max and Bonifacio Jamero were also intercepted by their father, Simeon,

who disarmed them.[10] Rotillo Jamero was eventually persuaded to yield his bolo to Arturo Ugay, who then brought him to the municipal hall of Bacuag.

In the course of the attack, Pompio Orquina, upon learning that his brother Gerardo was being assaulted by the appellants, tried to go out of the house of Asterio Eludo in order to help Gerardo. But, when he saw Simeon Jamero standing ominously outside the doorway with a drawn bolo in hand, he went up the house of Asterio Eludo and remained thereat until he was fetched therefrom by the town chief of police.[11]

A post mortem examination of the cadaver of Gerardo Orquina[12] revealed that he sustained the following lesions:

- "1. Abrasions, forehead, right.
2. Incised wound, about 12 cms. long, 5 cms. gaping, bone-deep, middle third, lateral, right arm.
3. Incised wound, about 8 cms. long, 4 cms. gaping, bone-deep, lower third, anterior, left arm.
4. Incised wound, about 4 cms. long, superficial, anterior, upper third, left arm.
5. Stab wound, about 5 cms. long, chest, left side, slightly lateral and above the nipple of the left breast, penetrating into the thoracic cavity. The trajectory of the wound is medially and posteriorly.
6. Incised wound, about 7 cms. long, superficial, chest, right side, above nipple of the right breast.
7. Abrasions, multiple, linear, chest, right side, below nipple of right breast.
8. Incised wound, about 9 cms. long, 4 cms. gaping, bone-deep, lower third, lateral, right leg.
9. Abrasions, dorsum, both hands.
10. Abrasions, posterior, middle third, right forearm."

As a consequence, Rotillo Jamero, Max Jamero, Bonifacio Jamero, and Simeon Jamero were charged with the killing of Gerardo Orquina before the Court of First Instance of Surigao del Norte. After trial, Rotillo Jamero, Max Jamero and Bonifacio Jamero were found guilty as charged and sentenced accordingly, while Simeon Jamero was acquitted. Hence, the present appeal.

Appellants claim that Rotillo Jamero alone is accountable for the death of Gerardo Orquina and that Max and Bonifacio Jamero did not participate in the commission of the offense.

Bonifacio Jamero's defense is an alibi. Thus, he testified that on the day in question, July 14, 1968, he was in Surigao, driving the jeep of Mayor Odchimar of Bacuag which was on loan to the Jaycees who had a convention at Surigao, having been there since July 12, 1968, until about 12:30 o'clock in the afternoon of July 14, 1968, when he left for home after eating his lunch at the public market of Surigao. He arrived at Bacuag at about 2:00 o'clock that same afternoon. After returning the jeep to Mayor Odchimar, he left for barrio Campo, arriving thereat at about 2:30 o'clock. Upon getting off at a street intersection, he was informed that his brother, Rotillo Jamero, had met an "incident".[13] When he reached their house, he informed his father of what he heard and his father replied: "Yes, I do not know what happened".[14]

Although this claim is corroborated by Mayor Odchimar who testified that his jeep was driven by Bonifacio Jamero while it was on loan to the Jaycees since July 12, 1968, it cannot be conclusively said that the appellant Bonifacio Jamero was not at barrio Campo when the crime was committed because the offense in question was perpetrated at about 1:00 o'clock in the afternoon and the jeep could have been returned to Mayor Odchimar at 2:00 o'clock, after the crime was committed. Besides, this claim cannot stand in the face of the positive

identification made by Cresencio Ugay and Felicitas Orquina, as well as the testimony of Max Jamero that he saw his brother Bonifacio in their house in the morning of that day.[15]

Max Jamero, for his part, declared that he was also in the same "tabo-an" of barrio Campo on that day of July 14, 1968, selling dried octopus and smoked fish, from 6:30 o'clock in the morning until 1:00 o'clock in the afternoon, when a commotion took place in said "tabo-an". Upon seeing the people scampering, he hurriedly gathered his wares and went home across the river. After putting his merchandise in a safe place, he went back to the "tabo-an" in order to find out what caused the commotion. Upon returning, he was informed that his brother, Rotillo Jamero, was involved in an "incident". Not long thereafter, he saw Rotillo accompanied by a policeman, Arturo Ugay, who was carrying a bolo. Upon seeing them, he went back home. He also denied having participated in the killing of Gerardo Orquina.[16]

This claim, however, is negated by the testimony of the prosecution witnesses that he struck the deceased with a piece of wood and by the post mortem report showing that abrasions were found on the head, chest, hands, and forearm of the deceased Gerardo Orquina.[17]

Rotillo Jamero, upon the other hand, claims that he killed Gerardo Orquina in self-defense. His version of the incident is that while he was at the said market place of barrio Campo on that fateful day, talking with his friends, Panfilo Bentulan and Servano Roy alias "Nonoy", the deceased Gerardo Orquina approached them and punched his stomach when he refused the offer of Gerardo to have a drink with him, resulting in a fist fight between him and Gerardo Orquina. After exchanging several blows, Gerardo Orquina ran towards a jeep parked near the market place. Upon coming to the jeep, Gerardo Orquina reached for a bolo placed underneath the steering wheel of the vehicle. He also tried to take hold of the bolo and was successful, while Gerardo Orquina was left in possession of the scabbard. Finding himself at a disadvantage, Gerardo Orquina ran away. Accused ran after Gerardo Orquina. After a while, Gerardo stopped and waited for him. When he came to Gerardo Orquina, he slashed and stabbed the latter with the bolo, after which he left.[18]

In the plea of self-defense, the burden of proof is on the accused pleading it. Failing to do so, a conviction must necessarily lie. The very testimony of Rotillo Jamero establishes that he was committing unlawful aggression against the victim at the time the fatal blows were delivered. Hence, self-defense cannot prosper.

Appellants impugn the testimony of Cresencio Ugay and Felicitas Orquina as unworthy of credence, the former because of his previous convictions and brushes with the law, and the latter for being a coached and tutored witness.

This Court has repeatedly ruled that the matter of assigning values to the testimony of witnesses is best performed by the trial courts because, unlike appellate courts, they can weigh such testimony in the light of the demeanor, conduct, and attitude of the witnesses at the trial. The fact that Cresencio Ugay had been previously convicted of minor offenses and that he had several brushes with the law does not disqualify him from testifying; nor does it render his testimony devoid of belief in the absence of any motive to testify falsely against appellants. As to the testimony of Felicitas Orquina, it is not punctured with any serious inconsistencies as to lead one to believe that she was coached or tutored.

WHEREFORE, the judgment appealed from, being in accordance with the law and the evidence, is hereby affirmed in toto.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.
Antonio, J., did not take part.

[1] "Bayo" and "Pato" are the nicknames of Gervacio and Fortunato Orquina, respectively.

[2] p. 49, tsn, Vol. I

[3] Gervacio and Fortunato Orquina killed Rodrigo Jamero, a brother of Simeon Jamero, in 1965 and were consequently imprisoned. They were released a few days before July 14, 1968 (pp. 292-294, tsn, Vol. II) and were in Bacuag on that day to attend the wake of their father. (pp. 442-446, tsn, Vol. IV)

[4] market place

[5] p. 57, tsn, Vol. I

[6] p. 320, tsn, Vol. II

[7] p. 215, tsn, Vol. II

[8] p. 322, tsn, Vol. II; p. 251, tsn, Vol. III

[9] p. 219, tsn, Vol. II

[10] p. 222, tsn, Vol. II

[11] pp. 297-299, tsn, Vol. II

[12] Exhibit "B"

[13] pp. 166-169, tsn, Vol. III

[14] p. 178, tsn, Vol. III

[15] pp. 232-233, tsn, Vol. III

[16] pp. 194-200, tsn, Vol. III

[17] Wounds Nos. 1, 7, 9, and 10 in Exh. "B"

[18] pp. 245-251, tsn, Vol. III

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