

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRIQUITO TAPITAN, ET AL., DEFENDANTS, ENRIQUITO TAPITAN
AND ELENO TAPITAN, DEFENDANTS-APPELLANTS.**

G.R. No. L-21492. April 25, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

To the deeply-rooted instinct for a piece of land one can call one's own, so felicitously referred to by Ardrey as "the territorial imperative",^[1] even if one's right is not crystal clear, being subject to an adverse claim, a conflict having developed, could be traced the killing that gave rise to the conviction for murder, now before us on appeal. On the morning of April 9, 1958 in Goliptoc, Dumingag, Zamboanga del Sur, the de-ceased, Maximo Candia, met his death from gunshot wounds, one of them fatal, inflicted by the accused, now appel-lants, Eleno Tapitan and Enriquito Tapitan, father and son, who along with Precioso Tapitan, another son of Eleno, were prosecuted for murder. In a decision of February 18, 1963, the lower court found appellants guilty of such crime and sentenced them to death. The other accused, Precioso, who enjoyed in his favor the mitigating circumstance of voluntary surrender, received the lesser penalty of reclusion perpetua and did not appeal.

The scene of the gory occurrence, perhaps not surprisingly, was the property in dispute. The deceased, Maximo Candia, along with one Cleto Baranda, the lone eyewitness, were, in the early morning, around six o'clock, of April 9, 1958, at that piece of land in Goliptop, the two of them being the co-purchasers of rights therein from a certain Subano, bringing with them posts to be used in erect-ing a house thereon; appellants, on the other hand, were equally certain that it belonged to them, a house of accused Eleno Tapitan standing on such site. The conflict of rights was thus an accepted fact, the barrio lieutenant having tried in vain to settle the matter amicably and a rural policeman having heard Elena Tapitan openly threatening to put an end to the controversy by killing the deceased.

Unfortunately, the threat became an actuality. The antecedents of the occurrence with its tragic aftermath, was, in the language of Cleto Baranda, narrated thus: "After we brought the posts in the place where we intended to build a house in our land, I saw Eleno Tapitan with a revolver and a bolo. He was brandishing his bolo and asked us what we were doing there. I was afraid because he had the attitude that he might kill us, and I told him that I will not challenge him and Maximo Candia also told Elena to just talk about this matter first."^[2] Appellant Eleno Tapitan was unmoved by the plea that they discuss the matter first. Thus: "Then after we have stated that, Eleno said, 'this could not be' and with a harsh voice uttered, 'come on, you shoot' and we heard an explosion."^[3] Such a command apparently was the signal for the other appellant, his son, Enriquito Tapitan, to take action. Thus: "When Elena said, 'come on you shoot', he fired his revolver, but I saw Enriquito Tapitan behind a banana grove levelling his gun towards us and I took cover, so I was not hit."^[4]

Baranda next clarified that it was appellant Enriquito Tapitan who shot first, from behind a banana grove, using a paliuntod, a home-made shotgun.^[5] Before he could reload, the witness ran away.^[6]

The two shots apparently found their mark, for Maximo Candia, the deceased, fell to the ground.[7] Just immediately, prior to the shooting, he had his hands raised up, "about to turn his back in order to run." [8] He had nothing with him except a saw, the witness, Baranda, bringing with him the nails and the hammer.[9]

On cross-examination, it was brought out that the second shot came from appellant Eleno Tapitan, who fired his revolver aiming at the deceased, who fell down.[10] According to his exact words, "when his revolver burst Candia fell." [11] As was so emphatically put by him "I have not seen whether Maximo was hit by Elena, but the fact is that Maximo fell dead." [12]

His life was indeed forfeit, considering the nature of one of the injuries inflicted. According to the medico-legal examination report, one of the bullet wounds went through his body, the "entrance ½ inch in diameter located at the back on the left side [barely an inch away] from the spinal column and the next wound about the size of a ten-centavo coin with portion of the flesh coming out located on the right side of his abdomen." [13] The deceased also suffered from two bullet wounds "with an opening about a mongo size" very close to each other, being only 1½ inches apart, piercing his left thigh, the bullets coming out at "a distance of 2 inches from each other." [14] The death of Candia was attributed "to hemorrhage" because of the above wounds.[15]

Appellants Eleno Tapitan and his son Enriquito did not, as they could not, dispute the fact that the deceased met his death as a result of such a fatal encounter. They would seek to free themselves from any criminal liability, however, by putting up the defense of alibi, imputing to their other co-accused, Precioso, another son of Eleno, the act of firing the fatal shot but at the same time invoking self-defense on his behalf. The lower court could not go along with them on the self-defense theory and understandably so. At any rate, there is no need to inquire further into such a defense as Precioso Tapitan, who was given a life-sentence, did not appeal.

The question before us then is whether appellants Eleno and Enriquito Tapitan were properly convicted for murder, their claim of being away from the scene of the crime to the contrary notwithstanding. We consider thus the plea of alibi raised. For that purpose they relied on a witness, Maximo Leonardo, by name, who on direct testimony testified that on the morning of April 9, 1958, he was in Ozamis City, a considerable distance away from Dumingag, Zamboanga. At around seven o'clock while going to buy medicine for a sick child, he passed by the vulcanizing plant of a certain Mario Malagar, the son-in-law of appellant Eleno Tapitan.[16]

Asked whom he saw at such shop of Malagar, he answered: "Right that morning, I saw Enriquito Tapitan together with Mario Malagar fixing a blown-out tire right in the shop, which shop is under his house. When I looked up I saw Eleno Tapitan through the window, who invited me to come up the house but I refused because I was in a hurry to buy the medicine for my sick child." [17] After a leading question was directed at him as to whether that was on April 9, 1958 to which, as was not unexpected, he answered affirmatively, his direct testimony ended.

Such a defense of alibi was sought to be bolstered by appellants Enriquito and Eleno both testifying that they were indeed in Ozamis City that morning of April 9, 1958.[18] According to the former, he was at such a time working in the vulcanizing shop of his brother-in-law in such a place. Eleno in turn asserted that in the early morning of that day, he was in Ozamis City with his son Enriquito, the other appellant, at the vulcanizing shop of his son-in-law, Malagar.

It is easily understandable, therefore, why such a defense failed to impress the trial court as to its verity. Neither are we. The flat assertion of an accused that he was elsewhere is not easy to believe. The fact that such a defense readily comes to mind and if given credence suffices to exculpate one from a liability justly incurred, much more often than not, detracts from its persuasive character, of a low degree at that to start with.

Moreover, not only the eyewitness Cleto Baranda but two other witnesses, Subano and Sergio Asequia,[19] were

certain as to the presence of the appellants at the scene of the crime. It strains the limit of human credulity to believe that all three witnesses would deliberately falsify the truth to implicate innocent individuals.

In a 1908 opinion by Justice Torres, the first time the defense of alibi was paid considerable attention, this Court correctly ruled that such a plea could not prevail against the positive testimony of five witnesses to the effect that the accused far from being away from the place where the offense took place was indeed present.[20] So it is in the case before us. Such a defense is futile and unavailing. To the same effect is the following: "The appellants' weak defense of alibi is not sufficient to overcome the positive identification made of them as the perpetrators of the crime by the witnesses, against whom they could not impute sufficient reason for pointing to them." [21] As we had occasion to remark in one of our latest opinion, through Justice Capistrano: "Alibi is one of the weakest defenses, and is easily fabricated. We have examined the testimonies in support of this defense of alibi, and have found the same unworthy of credence." [22]

The decision of the lower court finding appellants guilty of the crime of murder must therefore be upheld. Even counsel de oficio stated with regret that "he cannot, in conscience, ask for the reversal of the judgment appealed from." [23] Nor could the lower court's conclusion that the "conspiracy of the accused is inferable from other joint acts in the perpetration of the crime" [24] be considered as erroneous.

It has been the settled law as far back as 1905 that conspiracy could be deduced when two or more persons act together in the commission of a crime, whether they act through the physical volition of one or all, proceeding severally or collectively. [25] In a per curiam opinion late last year, we restated the doctrine thus: "Once an express or implied conspiracy is proved, all of the conspirators are liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime or crimes perpetrated in furtherance of the conspiracy because in contemplation of law the act of one is the act of all. The foregoing rule is anchored on the sound principle that 'when two or more persons unite to accomplish a criminal object, whether through the physical volition of one, or all, proceeding severally or collectively, each individual whose evil will actively contributes to the wrong-doing is in law responsible for the whole, the same as though performed by himself alone.' Although it is axiomatic that no one is liable for acts other than his own, 'when two or more persons agree or conspire to commit a crime, each is responsible for all the acts of the others done in furtherance of the agreement or conspiracy.' [26] As tersely set forth in an even later opinion, all that is needed to show conspiracy is "previous concert of criminal design." [27]

Appellants were, therefore, properly convicted of the crime of murder, there being the qualifying circumstance of evident premeditation and the aggravating circumstance of treachery, it being correctly pointed out in the decision appealed from, "that the deceased was already raising his hands as sign that he will not fight and turned his back and was about to run away, but notwithstanding that, the accused Enriquito Tapitan and Eleno Tapitan fired almost simultaneously at the deceased as borne out by the wounds located at the back, without risk to the accused which might proceed from the defense of the victim who was then unarmed." [28]

Appellants were given the death penalty by the lower court, but for lack of necessary number of votes, such penalty cannot be imposed by us.

WHEREFORE, the judgment of the lower court is modified, appellants Eleno Tapitan and Enriquito Tapitan being sentenced respectively each to suffer reclusion perpetua and to indemnify jointly and severally the heirs of the deceased in the amount of P12,000, with costs proportionally chargeable to each of the above appellants.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Sanchez, Capistrano, Teehankee, and Barredo, JJ., concur.

Concepcion, C.J., and Castro, J., on official leave.

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- [1] Ardrey, The Territorial Imperative (1967).
- [2] T.s.n., Trial of March 13, 1961, p. 15.
- [3] Ibid, p. 16.
- [4] Ibid.
- [5] Ibid,. p. 17.
- [6] Ibid, p. 19.
- [7] Ibid, p. 20.
- [8] Ibid, p. 25.
- [9] Ibid.
- [10] Ibid, p. 27.
- [11] Ibid.
- [12] Ibid, p. 28.
- [13] Exhibit A.
- [14] Ibid.
- [15] Ibid.
- [16] T.s.n., Session of October 17, 1961, p. 109.
- [17] Ibid, pp. 109-110.
- [18] T.s.n., Session of March 26, 1962, pp. 40-41 and 45-46.
- [19] T.s.n., Session of March 13, 1961, pp. 80-82 and Session of July 12, 1961, pp. 36-37.
- [20] United States v. Roque, 11 Phil. 422.
- [21] People v. Caisip, 105 Phil. 1180, 1185 (1959)
- [22] People v. Acabado, L-26104, January 31, 1969.
- [23] Appellants' Brief, p. 6.
- [24] Decision, Annex A to Appellants' Brief, p. 14.
- [25] Cf. United States v. Maza, 5 Phil. 346.
- [26] People v. Peralta, L-19069, Oct. 29, 1968.
- [27] People v. Magcamit, L-25555, March 28, 1969.
- [28] Decision, Annex A to Appellants' Brief, p. 15.

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