

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN GUNDRAN Y GUIAB, ALIAS JOHNNY, BIENVENIDO GUNDRAN Y YADAO, ALIAS BENNY, AND DANILO GUNDRAN Y YADAO, ALIAS DANNY, ACCUSED-...

G.R. No. 105666. December 17, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

In an information filed on June 14, 1984 in Criminal Case No. 72 of the Regional Trial Court, Branch XXX, of Bambang, Nueva Vizcaya, herein accused-appellants Juan Gundran y Guiab, Bienvenido Gundran y Yadao and Danilo Gundran y Yadao were charged with the murder of one Narciso Curameng, allegedly committed as follows:

"That on or about the 29th of October 1983, in Barangay Sto. Domingo, Municipality of Bambang, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Hon. Court, the above-named accused Juan Gundran y Yadao @ Johnny, Bienvenido Gundran y Yadao @ Benny and Danilo Gundran y Yadao @ Danny, conspiring, confederating together and mutually helping each other, did then and there wilfully, unlawfully, and feloniously arm themselves with a sharp-bladed knife which is neither being used as a necessary tool or implement to earn a livelihood nor in pursuit of a lawful activity, and while in possession and control of said sharp-bladed knife, the above-named accused, did then and there wilfully, unlawfully and feloniously, by means of treachery, taking advantage of superior strength and with evident premeditation, with intent to kill, attack, assault and use personal violence upon the person of one Narciso Curameng y Tomas @ Siso, by then and there stabbing him on different parts of his body, thereby inflicting upon him fatal stab wounds which were the direct and immediate cause of his death thereafter."[1]

The prosecution evidence presented at the trial purported to show that at around 5:00 o'clock in the afternoon of October 29, 1983, herein appellant Juan Gundran was having a drinking spree with a group of friends in front of the house of one Francisco Espiritu in Barrio Sto. Domingo, Bambang, Nueva Vizcaya when Narciso Curameng, who was seated on a nearby bench, made a bantering remark directed at Juan Gundran. The latter considered the utterance insulting and the same so incensed him that a heated argument ensued between the parties. Thereafter, Narciso left the group and appeared to be heading for home when Juan Gundran suddenly shouted, "Tiliwin yo, patayen yo!", meaning, "Catch him, kill him!"[2]

Appellants Bienvenido and Danilo Gundran, both sons of Juan Gundran and who were then engaged in a drinking bout of their own with other townmates in the nearby house of Eufrocino Francisco, picked up some stones and hurled these at the victim while chasing him. Narciso Curameng was hit, as a result of which he became dizzy, thus enabling Bienvenido and Danilo to overtake him. The brothers thereupon positioned themselves each on one side of the victim, with Danilo tightly embracing the victim and strongly holding his left hand, while Bienvenido also held the victim around the shoulder while gripping Curameng's right hand.[3]

With the victim thus rendered immobile and defenseless, appellant Juan Gundran came forward and without

warning swiftly lunged at Curameng with an eight-inch knife, hitting the latter on the chest. The victim was then pushed away by the assailants and he wobbled to his house where he managed to get an air rifle. Carlos Curameng, the victim's father, recalled that he saw his son arrive at their house, weak and staggering, and the latter told him in the vernacular that "(i)n as much as I am going to die, I will also kill." [4]

Carlos Curameng followed his son when the latter thereafter left the house armed with the rifle, apparently to retaliate against his attackers. He saw his son fire at Juan Gundran once, but the shot missed the target presumably since the victim was already weak, thereby resulting in the inaccuracy of his aim. Carlos then grabbed the air rifle from his son and handed the same to somebody nearby. The Gundran brothers thereupon attempted to inflict injuries on Carlos but he was able to evade the attack. Later, he brought his son to the hospital in Bambang where the victim was declared dead. The cause of death, according to the autopsy report, was "cardiovascular arrest secondary to hypovolemic shock." [5]

Expectedly, the defense presented a different version of the antecedent facts. Juan Gundran testified that at around 4:35 to 4:40 P.M. of October 29, 1983, he was in the house of Francisco Espiritu helping the latter dispose of the meat of a pig which they had earlier butchered when Narciso Curameng, apparently intoxicated, arrived and rudely ordered him to prepare "pulutan," that is, food usually taken with hard drinks. Juan told him to go upstairs and get his own food as they were already through eating. Irrked at the response, Narciso boxed Juan on the left shoulder, prompting the latter to retreat. [6]

Narciso threw stones at Juan but he was unable to hit him. Narciso then hurriedly left and, in a little while, came back with an air rifle and accompanied by his father Carlos, brother Remigio and a certain Oscar Monterubio. The victim fired once at Juan but missed, while the rest of the group threw stones at Juan. Oscar Monterubio grabbed the rifle from the victim and also fired a shot at Juan but he likewise failed to hit the latter. At this point, the victim got hold of a stone the size of a fist. He attempted to bash Juan on the head with it, but Juan deftly parried the attack and, at the same time, stabbed the victim on the chest, after which he retreated to safety. [7]

The brothers Bienvenido and Danilo Gundran recalled that they were on the way home in a motorcycle at around 5:00 P.M. of that day when they saw their father, who was then already in retreat, being attacked by the group of Carlos Curameng. Bienvenido got off the motorcycle and tried to pacify the participants in the melee. Later, he and Danilo escorted their father to their home and it was there that they learned from him about the stabbing incident. [8] Defense witnesses Hipolito Wilson, a farm hand in Bambang, Nueva Vizcaya, and Jovita de la, Cruz, a businesswoman who resides in Aliaga, Nueva Ecija, corroborated the account of the Gundrans. [9]

At their arraignment on July 31, 1984, with the assistance of counsel, herein appellants pleaded not guilty to the crime charged. [10] Trial thereafter commenced on September 4, 1984 with the presentation of the first witness for the prosecution and concluded with the testimony of appellant Juan Gundran on June 25, 1991. On February 4, 1992, the trial court rendered its judgment subject of this appeal, finding appellants guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim in the amount of P50,000.00. [11]

In the present recourse to us, appellants assert that the court a quo erred in (a) not giving exculpatory weight to the evidence adduced by the defense; (b) not finding that appellant Juan Gundran acted in lawful self-defense; (c) convicting appellants Bienvenido and Danilo Gundran of the crime charged despite the failure of the prosecution to prove their guilt beyond reasonable doubt; and (d) on the assumption that appellants are guilty, in convicting them of murder instead of homicide only. [12]

A thorough and judicious review of the evidence adduced by the prosecution positively point to a conspiracy in the commission of the crime of murder qualified by treachery with abuse of superior strength, in light of which

appellants must all be held accountable for the death of Narciso Curameng.

Appellants, in their submissions to the Court, are persistent in their view that the trial court erroneously gave weight to the testimonies of the principal witnesses for the prosecution while refusing to give credence to appellant Juan Gundran's version of self-defense. They lay stress, in particular, on the fact that the declarations of prosecution witnesses Jimmy Manuel and Maximo Pascual to the effect that the deceased was dealt the fatal stab wound on the left chest by appellant Juan Gundran is contradicted by the autopsy report which indicates that Narciso Curameng was stabbed on the right portion of his chest.[13]

Furthermore, appellants express disbelief that Jimmy Manuel, when called on the witness stand, could not even recall one or some of the other spectators despite his testimony that not a few persons had also witnessed the incident. In addition, they contend that the delay of prosecution witness Maximo Pascual in revealing to the family of the deceased what he had witnessed and in testifying for the prosecution casts serious doubts on the truthfulness of his testimony.

Appellants likewise underscore the circumstance that Carlos Curameng, the victim's father, did not notice anything unusual about his son when he arrived to get the air rifle. They call attention to the seeming indifference of witnesses to the incident, which included some of the victim's relatives, in not informing Curameng's father that his son was seriously wounded by Juan Gundran. Appellants then argue that all the foregoing considerations conduce to the conclusion that the case for the People is fabricated. We do not agree.

The facts of the incident narrated by the prosecution witnesses, none of whom has been shown to have harbored any ill motive which would make them impute to the Gundrans such a serious crime, are clearly more logical and credible. Accordingly, we find no compelling reason to depart from the factual findings of the court below as to the participation of herein appellants in the killing of Narciso Curameng in the manner summarized in its decision, which findings are by established case law entitled to high respect on appeal.

On the contrary, we find that appellant Juan Gundran's version of the incident and his supposed act of self-defense do not inspire belief. Where an accused admits having killed his victim on the ground of self-defense, it becomes incumbent upon him to prove by means of strong, clear and convincing evidence the presence of this justifying circumstance.[14] It is hornbook doctrine that in claiming self-defense, the burden of proof shifts to the accused to show that the killing was justified and that he incurred no criminal liability therefor.[15]

Now, analyzing the version of Juan Gundran, it is obviously unnatural for the deceased to have unnecessarily advanced toward said appellant with the intention of bashing the latter's head with a stone and thus run the risk of himself being attacked by the knife-wielding Juan Gundran. It would have been more natural for the victim to simply hurl the stone at Juan as what his purported cohorts were then allegedly doing, obviously because Juan was armed with a knife which would have the effect of keeping the group of Narciso Curameng at bay.

Furthermore, it is difficult to believe that appellant Juan Gundran did not, at the initial stage of the alleged attack, resort to the more logical and practical matter of running for his life since he was clearly outnumbered, four to one, by his supposed attackers who were then raining rocks at him and who were even armed with an air rifle to boot.[16] Instead, in a foolhardy and unusual show of courage, he supposedly stood his ground notwithstanding the fact that his weapon was no match for the potential assaultive power of the Curamengs. In the face of such overwhelming opposition, one would have been sufficiently cowed by fear or at least compelled to act in a manner aimed at self-preservation, which is, to scamper for safety.

Significantly, Juan Gundran admitted on cross-examination that he and the victim were close friends and were on good terms prior to the incident. In fact, the deceased was his brother-in-law whom he even considered as

virtually a son, the latter being of the same age as his own children. As he conceded that the deceased had always been respectful toward him and had never bothered him before the killing,[17] we are not inclined to lend credence to his account of the supposedly rude and irresponsible behavior of Narciso Curameng which gave rise to all the trouble culminating in the latter's death.

On the errors assigned by appellants, it is to be admitted that the victim died due to a fatal stab wound inflicted on the right, and not on the left, portion of his chest. However, the indubitable fact is that Narciso Curameng was stabbed within the anatomical area of the chest, hence the seeming contradiction between the autopsy report and the testimonies of said prosecution witnesses as to the specific part of the chest where the victim was fatally wounded is merely a minor and inconsequential lapse which should not adversely affect the probative value of their declarations in court.[18]

What is of importance here is that the two principal witnesses were firm and categorical in their assertions, notwithstanding gruelling cross-examination, that Juan Gundran delivered the fatal blow using his left hand although what they perceived was that said blow landed just below the left nipple on the chest of the victim. In all probability, said witnesses may have been unduly misled by their observation that appellant Juan Gundran used his left hand in stabbing the victim as to make them conclude therefrom that the blow struck the deceased on his left chest. In any event, it is beyond cavil that witnesses to a stirring event, such as the occurrence of a crime, would see differently some details thereof due in large part to the excitement and confusion that it usually brings.[19]

In the same vein, neither may the admitted failure of prosecution witness Jimmy Manuel to remember and recognize other persons, who were likewise witnesses to the killing, be taken against him. In the natural course of things, this was because his attention was directed and riveted to the main participants in the fight and not to the people in the periphery of the scene thereof. Additionally, this witness was just passing by when he came upon the chilling scene showing the Gundran brothers already firmly gripping the victim and their father, Juan, delivering the fatal stab wound on the deceased, hence, his inability to recall any of the other witnesses as his attention was necessarily focused on the protagonists.

Also, prosecution witness Maximo Pascual's reluctance to testify at once for the prosecution should not be regarded as corrosive of his account of the killing since the initial reluctance of witnesses to volunteer information about a criminal case and their unwillingness to be involved in criminal investigations for such justified reasons is of common knowledge and has been judicially declared as insufficient to affect credibility.[20] The reluctance of said witness is understandable as he was obviously in a dilemma by reason of his close ties with Juan Gundran, the latter's son being his godson, and also his being at the same time a relative of the Curamengs.[21]

Further, it is not correct for appellants to claim that Carlos Curameng did not notice anything unusual about his son and that it is impossible that the other witnesses to the killing, which included some of the relatives of the Curamengs, did not even bother to inform the elder Curameng of the stabbing incident. As correctly observed by the Solicitor General, the events happened so rapidly, particularly the time when the deceased went home to arm himself with an air rifle, that no opportunity was afforded Carlos Curameng to even notice the stab wound of his son, especially since the latter was wearing a checkered shirt colored green and red, which could hide the color of blood. Nevertheless, the circumstance that the victim remarked to his father that, since he was dying, he might as well also kill, in fact put the father on notice that something was wrong, hence he followed his son. The silence of the spectators whereby not one of them told Carlos Curameng of the stabbing may be attributed likewise to the swiftness of the succession of events which transpired during the incident, not to speak of the shocking effect thereof on those who witnessed the same.

As for the defense of alibi and simple denials interposed by appellants Bienvenido and Danilo Gundran, the well-settled rule is that such defenses are to be considered unavailing in the face of their positive identification by prosecution witnesses as having had a direct hand in the slaying of Narciso Curameng.[22] Aside from the fact that alibi is inherently weak because of the facility with which it can be fabricated,[23] it becomes more unworthy of merit where it is established mainly by the accused himself and his relatives and not by credible persons.[24] It is too doctrinally entrenched as to need no citation of authorities, that for this defense to be considered favorably, the accused invoking the same must prove that he was somewhere else and that it was physically impossible for him to have been at the scene of the crime when it was committed.

We hold that appellants acted in confabulation and that murder, attended by the circumstances of treachery and abuse of superior strength, is the offense for which appellants must do penance, and not only for the crime of homicide as they insist.

As fundamental propositions, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it,[25] even if they did not agree on all the details. It need not be established by direct evidence.[26] No formal agreement is necessary to prove its existence and the same may be inferred from the acts of the accused tending to show community of criminal purpose.[27] In such a case, the act of one becomes the act of all and each of the accused would thereby be guilty of the crime committed in equal degree.[28]

In the case at bar, conspiracy was evident from the coordinated movements of the three assailants. The concerted act of appellants Bienvenido and Danilo Gundran in pursuing the victim pursuant to their father's exhortation and in finally entrapping their quarry and bringing him back to their father, after which their father then delivered the fatal stabbing thrust on the already defenseless Narciso Curameng, cannot but conclusively demonstrate that they were animated by a common criminal objective of that confederacy, that is, to snuff out the life of Narciso Curameng.

Although the killing was preceded by an altercation which under normal circumstances would have placed the deceased on guard as to negate the presence of treachery,[29] nonetheless the manner in which he was killed positively points to the fact that herein appellants consciously and deliberately employed a form of attack to ensure the consummation of their objective with impunity. Also, the victim had left the group of Juan Gundran so that there was no more need for the latter to press any further for a continuation of the confrontation. For this reason, even assuming *ex gratia argumenti* the circumstance of sufficient provocation which appellant Juan Gundran could possibly have claimed, the same may no longer be entertained since, by leaving the tense atmosphere, the deceased did not give any provocation for Juan Gundran or his sons to further pursue and assault him.[30]

It is beyond dispute that the unarmed Narciso Curameng had no opportunity to defend himself for he was then under the firm clutches of Bienvenido and Danilo Gundran and the stabbing was sudden and unleashed at a time when he was immobilized and set up for the kill by the Gundran brothers. It is likewise beyond debate that appellants purposely and cooperatively took advantage of their superior strength in overpowering their unarmed victim. Since, however, their superiority in number and consequent collective strength constituted the means by which they perpetrated their treacherous and fatal attack on the deceased, this modifying circumstance must be deemed absorbed in the other qualifying circumstance of treachery.[31]

On the other hand, appellants are correct in their contention that the slaying was not attended by evident premeditation, the elements of which must be proven as clearly as the commission of the crime itself. Even the principal element of this circumstance, that is, the lapse of a sufficient interval of time between the determination

to commit the crime and its execution to allow the felon to reflect on the consequence of his act, is palpably absent.[32] Here, the fatal attack on Narciso Curameng was all over within a period too brief to allow appellants sufficient time to hearken to the call of their conscience.[33]

ACCORDINGLY, the assailed judgment of the court a quo in Criminal Case No. 72 is hereby **AFFIRMED** in toto, with costs against accused-appellants.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

[1] Original Record, 66-67.

[2] TSN, July 12, 1985, 4-5, 8-10.

[3] Ibid., id., 10-12; September 4, 1984, 6-8.

[4] Ibid., id., 12-15; January 29, 1986, 3.

[5] Ibid., January 29, 1986, 4-8, 11-15, 18; Original Record, 8; Exhibit "D".

[6] TSN, July 12, 1989, 2-3.

[7] Ibid., id., 3-7.

[8] Ibid., September 15, 1987, 6-7; May 12, 1988, 5-6.

[9] Ibid., January 29, 1987, 4-9; August 5, 1987, 3-7.

[10] Original Record, 90.

[11] Ibid., 423; per Executive Judge Vincent Eden C. Panay.

[12] Brief for the Accused-Appellants, 1; Rollo, 69.

[13] TSN, September 4, 1984, 13; July 12, 1985, 12; Original Record, 8; Exhibit "D".

[14] *People vs. Boniao*, 217 SCRA 653 (1993).

[15] *People vs. Maceda*, 197 SCRA 499 (1991).

[16] TSN, July 12, 1989, 4.

[17] TSN, July 12, 1989, 10-11.

[18] *People vs. Castor*, 216 SCRA 410 (1992).

[19] *People vs. Flores, et al.*, 217 SCRA 613 (1993).

[20] *People vs. Dominguez, et al.*, 217 SCRA 170 (1993).

[21] TSN, October 7, 1985, 11-13.

[22] *People vs. Cabuang, et al.*, 217 SCRA 675 (1993).

[23] *People vs. Dabon*, 216 SCRA 656 (1992).

[24] *People vs. Yadao, et al.*, 216 SCRA 1 (1992).

- [25] People vs. Maranion, et al., 199 SCRA 421 (1991).
- [26] People vs. Umbrero, et al., 196 SCRA 821 (1991).
- [27] People vs. Arroyo, et al., 201 SCRA 616 (1991).
- [28] People vs. Sadia, Jr., et al., 203 SCRA 62 (1991).
- [29] People vs. Macalino, et al., 177 SCRA 185 (1989).
- [30] People vs. Alconga, et al., 78 Phil. 366 (1947).
- [31] People vs. Bañez, 214 SCRA 109 (1992).
- [32] People vs. Clamor, 198 SCRA 642 (1991).
- [33] People vs. Carmina, et al., 193 SCRA 429 (1991).

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