THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GIL TEMPLA ALIAS “GEORGE,” EMMANUEL ALAGON ALIAS “AWE,” AND FLORIANO JUNGAO ALIAS “ANOY”, DEFENDANT-APPELLANTS.

G.R. No. 121897. August 16, 2001

Ponente: BUENA, J.

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BUENA, J.:

At around 2:00 o'clock in the morning of October 28, 1988, 11 year-old prosecution witness Pompeo Malse Alo was awakened by a loud noise coming from outside their house in Guiwanon Baclayon, Bohol. Because of the noise, Pompeo Alo together with his 14 year-old sister Ferlina who was likewise awakened, looked through the window of their house and saw the three appellants Emmanuel Alagon alias "Awe", Floriano Jungao alias "Anoy", Gil Templa alias "Imok" also known as "George", with Rito Magtahas, Tasyo Jungao and his cousin Babalu Alo, sitting on the bench in their yard, which is about 5 fathoms away from the window where they were looking. Though it was dawn, Pompeo recognized them because of the brightness of the moon. He also saw appellants having an altercation with the victim Isaias Lagura, also known as Sonny Boy Lagura. Subsequently, appellant Templa, using a piece of wood about three (3) inches in diameter and about two (2) feet long, beat the victim Sony Boy and hit him below his right ear. Appellant Jungao was next to beat the victim, using a piece of wood about the same size and length used by Templa, hitting the victim on the right neck, near the area struck by Templa in the first blow. While Templa and Jungao took turns in beating the victim, Emmanuel Alagon threw a stone at Sonny Boy, hitting him at the back. Consequently, making him, Sonny Boy fall on the dirt road where he was left alone. Appellants then went back to the bench where they sat, about 10 meters away from where Sonny Boy fell. After about three (3) minutes, Sonny Boy stood up, and walked towards the coffee plants. While walking, appellants got stones by the road, threw them at Sonny Boy, but did not hit him. Thereafter, appellants, with the rest of the group, proceeded to the store of Pedring Jungao which is about 100 meters away from the scene of the incident. At this, Pompeo Alo and his sister beside him at the window, and who also saw the series of incidents, went back to sleep.

On the same day, around 6 o'clock in the morning, the victim's brother Wilson Malon Lagura, upon seeing blood oozing out of Sonny Boy's nose and the swelling on his lower left jaw asked the victim what had happened. Sonny Boy answered that nothing was wrong, there was no problem, then went to sleep. Sonny Boy woke up at around 11 o'clock in the morning, and did not take lunch, but stayed and reflected, on the place where he was staying, making his brother Wilson ask him what really happened. The victim answered that he was beaten up and ganged up by appellants Alagon, Jungao, and Templa.

Early in the afternoon of November 2, 1988, Sonny Boy collapsed and was brought to Gallares Memorial Hospital in Tagbilaran City. The victim never regained consciousness and ultimately died on November 3, 1988 at the age of thirty-six (36).

On January 6, 1989 an information for murder was filed against appellants Gil Templa, Emmanuel Alagon and

Floriano Jungao for the death of Isaias Lagura. The information reads:

> "That on or about the 28[th] day of October, 1988, at barangay Guiwanon, municipality of Baclayon, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping with each other, with intent to kill, abuse of superior strength, and without justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault, box and strike one Isaias Lagura y Malon with the use of a piece of wood and pieces of stones thereby inflicting upon the vital parts of the body of the victim mortal wounds or injuries which resulted directly to the immediate death of Isaias Lagura y Malon; to the damage and prejudice of the heirs of the said victim.
>
> "Acts committed contrary to the provisions of Article 248 of the Revised Penal Code."[1]

When arraigned, appellants pleaded not guilty.

At the trial, the prosecution presented Pompeo Malse Alo, Wilson Malon Lagura, Loreto Majikina Magtahas, Dr. Carlomagno Sepe Misa and Pacifico Mayoganti Lagura as its witnesses. For its part, the defense presented appellants who testified in their own behalf with Madeline Templa Borromeo, Anastacio Ugboc Jungao and Jose Batoy Alo.

After trial, the court a quo rendered a Decision on April 24, 1995 convicting appellants of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua. The dispositive portion of the decision reads:

> "WHEREFORE, the Court finds accused Gil Templa, a.k.a. George, alias `Imok,' Emmanuel Incog Alagon, alias `Awe,' and Floriano Ugboc Jungao, alias `Amoy,' guilty beyond reasonable doubt of the crime of murder, and imposes upon each of them the penalty of Reclusion Perpetua, to suffer the accessory penalties imposed by law, and to indemnify the heirs of the victim the sum of P15,000.00 representing actual damages, and the further sum of P50,000.00 as moral damages, but without subsidiary imprisonment in case of insolvency.
>
> "Without pronouncement as to costs.
>
> "SO ORDERED."[2]

Aggrieved, appellants interposed an appeal before this Court seeking their acquittal of the crime charged. Appellants submit that the court a quo committed the following errors:[3]

> "I
>
> "THE LOWER COURT ERRED IN CONVICTING ACCUSED EMMANUEL ALAGON, AND FLORIANO JUNGAO OF MURDER DESPITE EVIDENCE THAT ONLY GIL TEMPLA FOUGHT AGAINST ISAIAS LAGURA WITH A PIECE OF WOOD.
>
> "II
>
> "THE LOWER COURT ERRED IN CONVICTING THE ACCUSED GIL TEMPLA OF MURDER, DESPITE PROSECUTION'S FAILURE TO ESTABLISH EVIDENCE BEYOND REASONABLE DOUBT."

In fine, appellants' arguments revolve on the matter of credibility of witnesses. They assail the trial court's evaluation of the evidence, specifically the narration of Pompeo Alo on the incidents that transpired which resulted in the death of the victim Isaias Lagura. Appellants impugn the facts established by the prosecution that the victim was mauled by them. On the contrary, they invoked self-defense in that appellant Templa merely defend himself from the attack of the victim.

Pompeo Alo positively maintained that the appellants mauled and ganged up on the victim. We find the testimony of said witness as clear, credible and replete with the details of the commission of the crime. His testimony finds

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corroboration in the findings of the doctor who conducted the medical examination on the victim. The doctor testified that upon admission to the hospital, the victim was unconscious and, upon inquiry, it was known from the relatives that the victim was hit by a solid object on his head. These findings were confirmed and supported by the x-ray and the physical examination conducted on the victim where it was shown that he suffered four (4) fatal injuries. Postmortem examination revealed the following:

(1)

Cardiorespiratory arrest;

(2)

There was an epidural hematoma, measuring 9x 8 x 2.5 cm. left temporo parietal;

(3)

There was a cerebral edema with cingulate, uncal and cerebellar tonsillar herniation which was bilateral in both sides;

(4)

Contusion, hematoma 7 x 6 cm at the right temporo parietal, subgaleal area, which is the area above the skull or within the scalp layer of the head;

(5)

There was skull fracture, linear 5 cm length at the right temporo parietal and 4 cm length at the left temporo parietal;

(6)

Abrasion with scab formation at the right temporal area of the head.

Appellants Jungao and Alagon corroborated each other's testimony that neither one of them participated in the commission of the offense and imputes to Templa the injuries sustained by the victim. The trial court finds these declarations not plausible since they could not explain the reason why the victim suffered many injuries. It is doctrinally settled that the determination of the trial court on matters of credibility of witnesses are usually accorded great weight and respect on appeal.[4] The rationale for this is that the trial court has the advantage of observing the witnesses through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie, or the tremulous mutter of a reluctant answer, or the forthright tone of a ready reply, the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien.[5] Our conscientious review of the records reveal that the evidence has been objectively and fairly calibrated by the court a quo. The trial court's assessment of credibility of witnesses is binding on this court because of its unique opportunity of having observed that elusive and incommunicable evidence of the witness' deportment on the stand while testifying, which opportunity is denied to the appellate court.[6]

Appellants utterly failed to substantiate their claim of self-defense and that the victim was the unlawful aggressor. Well-entrenched is the rule that a finding of guilt must rest on the strength of the prosecution's evidence who has the burden of proving it by the required quantum of proof beyond reasonable doubt, not on the weakness or even absence of evidence for the defense.[7] In cases, however, where self-defense is invoked, the burden of proof is shifted to the accused.

Loreto Majikina Magtahas, the third witness for the prosecution, narrated the incident which negates the claim that the victim was an unlawful aggressor. In fact he testified that he knows the appellants and relates that, on October 27, 1988, at around 8:00 in the evening, he was in the house of Aniano Alagon, the father of appellant Emmanuel Alagon, to help in butchering 4 dead cows which ended around 11:00 in the evening. Aside from the family members of Aniano Alagon, who were present in butchering the cow, Fernando Alagon, younger brother of appellant Emmanuel Alagon, Floriano Jungao and Alejandro Alo were present. After butchering the cow, they ate and proceeded to the house of Emmanuel Alagon. Later, they were joined by Ricardo Borromeo, appellants Gil Templa and Emmanuel Alagon at around 11:00 in the evening and consumed two (2) gallons of tuba. At 12:00 midnight, the three appellants, together with Ricardo Borromeo, Fernando Alagon, Anastacio Jungao, Euologio Alagon, Rodrigo Gonzaga, Joselito Gonzaga and Jose Alo, proceeded to the store of Proserfida Jungao which is more or less 100 meters from the house of Aniano Alagon to drink more wine upon the invitation of Ricardo Borromeo. Magtahas further testified on the succeeding incidents as follows:

"ATTY. CLARIN:

"Q -

While the group was drinking at the store of Proserfida Jungao, was there anyone who joined the group?

"A -

Yes, sir, there was.

"Q -

Who?

"A -

Isaias Lagura.

"COURT:

"Q -

This Isaias Lagura was there already when the group arrived, or he arrived later?

"A -

Arrived later.

"ATTY. CLARIN:

"Q -

More or less, what time did Isaias Lagura arrive?

"A -

More or less, 1:45 o'clock dawn. (sic)

"Q -

That was already at the dawn of October 28, 1988?

"A -

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Yes, sir.

"Q -

Did Isaias Lagura have a companion when he arrived?

"A -

No, sir.

"Q -

Then, when Isaias Lagura arrived what happened?

"A -

He was approached by Ricardo Borromeo and they have (sic) a conversation.

"Q -

While Ricardo Borromeo and Isaias Lagura were talking what transpired next?

"A -

A while later, while they were engrossed of their conversation, I noticed a commotion ensued.

"ATTY.CLARIN:

"Q -

Please tell the Court, who were involved in that commotion?

"A -

What I mean, your Honor, is after the conversation between Isaias Lagura and Ricardo Borromeo, a commotion ensued took place. (sic)

"Q -

Please answer the question, who were involved in that commotion?

"A -

The group, involved in the commotion, but I did not notice Isaias Lagura.

"Q -

Then, what happened later?

"A -

While in the course of the commotion, the group proceeded to the store of Emereto Borromeo.

"x x x x x x x x x

"Q -

Now, while you were already in the store of Emereto Borromeo, what happened?

"A -

We did not ultimately arrive at the store of Emereto Borromeo.

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"Q -

Why?

"A -

Because George Templa and Isaias Lagura..... the group did not actually reach the store of Emereto Borromeo because as we were approaching the store of Emereto Borromeo, we already noticed Gil Templa and Isaias Lagura seated on a bench facing each other, very near to the store of Emereto Borromeo.

"Q -

How far, more or less, from the store of Emereto Borromeo Gil Templa and Isaias Lagura sitting?

"A -

Around seven meters.

"Q -

Now, when the group saw that Gil Templa and Isaias Lagura were seated on a bench, what happened next?

"A -

Isaias Lagura was again approached by Ricardo Borromeo and they have a conversation with each other.

"Q -

Then, while Ricardo Borromeo and Isaias Lagura were conversing, what happened next?

"A -

Emmanuel Alagon approached the two, namely: Isaias Lagura and Gil Templa.

"Q -

Then, what transpired next?

"A -

Emmanuel Alagon approached them in an aggressive manner and Isaias Lagura stepped backward, and as Isaias Lagura stepped backward, this Floriano Junagao followed him, including Gil Templa.

"Q -

Then what happened?

"A -

As Isaias Lagura was stepping backward, Emmanuel Alagon was on the left side of Isaias Laura while Floriano Junago was on the right side of Isaias Lagura and at the center was Gil Templa.

"COURT:

"Q -

All facing Isaias Lagura?

"A -

Yes, your Honor, all facing towards Isaias Lagura.

"Q -

How far these three towards (sic) Isiaas Lagura?

"A -

About two meters from Isaias Lagura.

"COURT:

"Proceed.

"ATTY. CLARIN:

"Q -

Then, what transpired next?

"A -

When Isaias Lagura stepped backward, Gil Templa beat him with a piece of wood hitting the left side of his head. (witness pointing to his left side on his head) I could not be sure if it was the right portion hit by the blow, what I saw it landed on the back of the head near the left ear.

"Q -

Then, what happened to Isaias Lagura?

"A -

Isaias Lagura fell down.

"COURT:

"Q -

What about Floriano Jungao, what was he doing as Gil Templa hit with a piece of wood the head near the left ear of Isaias Lagura?

"A -

After Isaias Lagura was hit and he fell down, I did not anymore notice what happened next because at that time I was frightened and shocked.

"Q -

What did you do?

"A -

I stayed away from them."[8]

Self-defense must be proved with certainty by sufficient, satisfactory and convincing evidence that excludes any vestige of criminal aggression on the part of the person invoking it, and it cannot be justifiably entertained where it is not only uncorroborated by any separate competent evidence but, in itself, is extremely doubtful.[9] If the accused fails to discharge the burden of proof, his conviction shall of necessity follow, on the basis of his admission to the killing.[10] After all, the question of whether the accused acted in self-defense is essentially a question of fact[11] properly evaluated by the trial court. Absent any glaring errors bordering on gross misapprehension of the facts, or speculative or unsupported conclusions, the findings of the trial court must stand.

The contention that the victim boxed Templa is inconsistent with Templa's testimony in open court where he declared that the victim struck him with a piece of wood. Appellant Templa failed to reconcile his assertions that the victim delivered karate blows or struck him with a piece of wood. Such manifest falsehood and discrepancy in appellant's testimony seriously impair its probative value and cast serious doubts on his credibility.[12] To be emphatic, we quote:

"ATTY. CLARIN:

"Q -

From the narration of facts that you told the Court, you are picturing to us that the aggressor was the deceased, Sony Boy Lagura. Is that correct?

"A -

Yes, Sir.

"Q -

And the first physical aggression he made on you is the first act of striking you with a piece of wood, is that correct?

"A -

Yes, Sir.

"Q -

Only luckily for you that you looked back and you saw the piece of wood about to hit your back and then you were able to evade?

"A -

Yes, Sir.

"Q -

The second aggression was another blow with the use of a piece of wood?

"A -

Yes, sir.

"Q -

The third aggression was another attack with a piece of wood?

"A -

Yes, sir.

"Q -

These physical attacks were made in succession?

"A -

Yes, sir.

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"Q -

And after the third attack you were able to get a piece of wood?

"A -

Yes, sir.

"Q -

And with that piece of wood you struck him?

"A -

Yes, sir.

"Q -

So that in the actual combat with the deceased, the deceased was not able to use of his expertise in karate?

"A -

No, sir.

"Q -

You will not change that answer?

"A -

No, sir.

"x x x x x x x x x

"Q -

Under paragraph `e' No. 2 of your affidavit you said: "As we have walked some distance from where our group was originally seated, Sony Boy still belligerent and aggressive attack, (sic) suddenly attacked, assaulted and delivered karate blows on Gil Templa but luckily Gil Templa was not hit because he docked (sic) as he maintained a distance from Sonny Boy." Do you confirm that to be true or not?

"A -

That is correct, sir.

"Q -

If that is true, how will you reconcile your former answer that Sony Boy did not use his karate expertise except to beat you with a piece of wood?

"A -

When Sony Boy was striking me, he was on a karate stand. (sic)

"Q -

His karate stand (sic) is the same as karate blows?

"A -

I cannot answer that question.

"x x x x x x x x x

"Q -

The piece of wood that you used in striking back Sonny Boy Lagura, how long was it?

"A -

About one meter.

"Q -

Was it a round wood or not?

"A -

Round wood.

"Q -

What was its diameter, more or less?

"A -

About 1 ½ inches in diameter.

"Q -

The round piece of wood had no protruding branch?

"A -

None.

"Q -

In other words, it was more or less a clean piece of round wood?

"A -

Yes, sir.

"Q -

And you struck Sony Lagura only once?

"A -

Yes, sir.

"Q -

Can you tell us or can you give us an explanation why Sony Lagura suffered several or multiple injuries?

"A -

It was the impact of the blow that he sustained on his right lower jaw because he stumbled because, according to his brother, this Sony Boy in his house fell down. (sic)

"Q -

So you want to tell the Court that the other injuries sustained by Sony Lagura was self-inflicted?

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"A -

Yes, sir. I have no participation on the other injuries."[13]

The death of the victim was correctly characterized as murder considering that the qualifying circumstance of abuse of superior strength, as alleged in the information, was duly proven. While it is true that superiority in number does not per se mean superiority in strength,[14] as borne by the records, appellants took advantage of their combined strength in order to consummate the offense. Appellants even want to exculpate themselves from any liability for the death of the victim by claiming that the latter did not die immediately after the incident but only after the lapse of six (6) days from the incident. Such contention is likewise unmeritorious. It has been proven that the injuries inflicted by appellants on the victim was the proximate cause of his death.

There is likewise no doubt that appellants acted in conspiracy because of their concerted actions in attacking, hitting and throwing stones at the victim. Direct proof is not essential to establish conspiracy as this may be inferred from the acts of the assailants before, during, and after the commission of the crime.[15] In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim; what is important is that all participants performed specific acts with such closeness and coordination as unmistakably to indicate a common purpose or design in bringing about the death of the victim.[16] Thus the act of one becomes the act of all.

In sum, after a meticulous examination of the records of the case, appellants miserably failed to overturn the conclusion reached by the trial court. We are fully satisfied that Pompeo Alo was telling the truth. His testimony finds corroboration in the findings of the doctor who performed the autopsy on the body of the victim which testimony was further corroborated by witness Loreto Magtahas. Applicable herein is the court's declaration in People vs. Pio Templonuevo[17] that "where a witness who has no improper motive to wrongfully incriminate the accused, related without any material inconsistencies that he saw said accused strike the deceased on the forehead with a piece of wood, thus corroborating the medical report about the contusions found thereon, his testimony should be given credence." Accordingly, the findings of the trial court must stand.

With respect to the penalty, at the time of the commission of the crime, murder was punishable by reclusion perpetua to death. However, there being neither aggravating nor mitigating circumstance, the lower penalty which is reclusion perpetua shall be imposed in accordance with Article 63 of the Revised Penal Code. Besides, even if the crime at bar is attended by an aggravating circumstance, the death penalty cannot be imposed on appellants since the 1987 Constitution proscribes the imposition thereof to crimes committed prior to its reimposition under R. A. No. 7659 on December 31, 1993. The case at bar occurred in 1988. Moreover, based on the principle of prospective application of penal laws (unless the contrary clearly appears from the statute)[18] as well as on the rule that a subsequent statute cannot be so applied retroactively as to impair a right that accrued under the old law,[19] reclusion perpetua is the proper penalty. On the civil liability, appellants having acted in conspiracy, their liability in favor of the heirs of the victim is accordingly joint and solidary. Record shows that the sum of P15,000.00 was incurred as actual damages. The award of P50,000.00 as moral damages should be properly designated as civil indemnity.

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court is hereby AFFIRMED with the modification that the P50,000.00 awarded as moral damages should be properly designated as civil indemnity.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

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[1] Rollo pp. 8, 22, 121.

[2] Ibid, pp. 50-51; 149-150.

[3] Ibid, p. 94.

[4] People vs. Mamalayan, 280 SCRA 748 [1997]; People vs. Jagolingay, 280 SCRA 768 [1997]; Rabaja vs. CA, 280 SCRA 290 [1997].

[5] People vs. Alitagtag, 309 SCRA 325 [1999] citing People vs. Quijada, 259 SCRA 191, 212-213 [1996].

[6] People vs. Mahinay, 302 SCRA 455 [1999].

[7] People vs. Jose Lomboy @ "JOSE", 309 SCRA 440 [1999].

[8] TSN dated May 29, 1989, pp. 5-7.

[9] Reyes, Criminal Law Book I, [1993] p. 143 citing People vs. Mercado, 159 SCRA 453 [1988]

[10] People vs. Ganzagan, Jr., 247 SCRA 220 [1995].

[11] Jacobo vs. CA, 270 SCRA 270 [1997].

[12] People vs. Cahindo, 266 SCRA 554 [1997].

[13] TSN dated August 14, 1990, pp. 1-3.

[14] People vs. Gelera, 277 SCRA 450 [1997].

[15] People vs. Magallano, 266 SCRA 305 [1997].

[16] People vs. Azugue, 268 SCRA 711 [1997].

[17] 106 Phil. 1003 [1960]

[18] People vs. Zeta, 98 Phil. 143 [1955] cited in People

[19] People vs. Patalin, 311 SCRA 186 [1999].

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