

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIPE TENORIO @ “BINO”, ACCUSED-APPELLANT.

G.R. No. 122098. January 20, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

Before the Court is the appeal interposed by accused-appellant from the decision rendered on 26 September 1994 by the Hon. Niovydy M. Marin, Presiding Judge, Branch 13, Regional Trial Court of the Sixth Judicial Region, stationed in Culasi, Antique, which found him guilty of the crime of murder with frustrated murder. Accused-appellant was sentenced to suffer the penalty of reclusion perpetua and was required to pay the heirs of the victim, Minerva Gumboc, the sum of P 50,000.00 as indemnity and to pay the costs.

The case against his co-accused, Francisco Decenilla, was ordered sent to the archives of the trial court, to be revived upon his arrest.

Felipe Tenorio @ “Bino” and Francisco Decenilla @ “Elmer” were charged with the crime of murder with multiple frustrated murders through illegally possessed firearm in an Information reading as follows:

“That on or about the 6th day of January, 1993 in the Municipality of Pandan, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with illegally possessed firearms, conspiring, confederating and mutually helping one another, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said firearms Minerva Gumboc, thereby inflicting wounds on her body which caused her death shortly thereafter, and on the same occasion inflicting gunshot wounds to Jerson Candolita, Jovito Candolita and Milagros Candolita thus the accused performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance which prevented the death of said Jerson Candolita, Jovito Candolita and Milagros Candolita.

“With the qualifying circumstances of evident premeditation, treachery and superior strength.

“Contrary to the provisions of Article 248 in relation to Article 6 of the Revised Penal Code.”[1]

The factual background of the imputed felony, as formulated by the Office of the Solicitor General, is supported by the record, and is accordingly adopted, to wit:

“Culled from the testimonies of the Candolitas, it appears that at around 5:30 o’clock in the morning of January 6, 1993, Jovito Candolita, who was inside his house together with his niece, Minerva Gumboc at Talisay, Pandan, Antique heard some shouts which prompted him to open the door and go out. He went in the direction of the house of Jerson- his son, about ten (10) meters away. On his way, he was accosted by two (2) persons, one of whom he was able to recognize as the accused Felipe Tenorio. His right wrist was held by Tenorio who brought him near the house of Jerson. Minerva Gumboc, however, followed them. (TSN, April 14, 1994, pp. 5-8) Upon reaching Jerson’s house, the duo forcibly opened the door and pushed Jovito

Candolita and Minerva Gumboc inside the house. (TSN, April 13, 1994, p. 25; TSN, April 14, 1994, p. 8)

“However, before the door was forcibly opened, Jerson was able to peep through the window because he heard his father crying. He saw the latter being held by two NPAs. Forthwith, Jerson took his M-14 armalite rifle and went down to a foxhole inside his house. He followed his wife, Milagros Candolita to the foxhole. (TSN, April 13, 1994, p. 24)

“After Jovito Candolita and Minerva Gumboc were pushed inside, the companions of the two (2) malefactors numbering about 27 and were scattered outside, fired several gunshots directed at Jerson’s house. Jerson retaliated by firing his rifle to prevent the malefactors from entering his house.

“Meanwhile, Jovito Candolita was also able to enter the foxhole. The exchange of gunfire between Jerson and the malefactors continued, lasting about 40 minutes. Jerson was able to consume 7 magazines of M-14 bullets. After he ran out of bullets, he played dead. (TSN, April 13, 1994, pp. 27-28)

“During the exchange of gunfire, two (2) hand grenades were lobbed in the direction of Jerson’s house. As a result thereof, Jerson, Jovito and Milagros were hit by the metal fragments of the hand grenades. Milagros’ child was spared as the latter was cuddled by the former. Unfortunately, Minerva Gumboc who was the last to enter the foxhole suffered fatal wounds and eventually died. (TSN, April 13, 1994, p. 7 and p. 29; TSN, April 14, 1994, p. 12)

“After the exchange of the volley of fires, and while Jerson was playing dead inside his house, three of the malefactors entered Jerson’s house. One remained downstairs and two went upstairs. One of those who went upstairs was Felipe Tenorio. They took Jerson’s CAFGU uniforms, flashlight, army raincoat and P 800.00. (TSN, April 13, 1994, p. 28)[2]

A medical examination was conducted in the morning of January 6, 1993, by Dr. Judy Maglantay, Medical Officer, Governor Leandro Locsin General Hospital, Pandan, Antique. Based on the results of the examination, Milagros Candolita suffered the following injuries:

‘Findings:

Avulsed soft and Bony Tissues, Left Shoulder

2 cm lacerated wound, below axillary area, non-penetrating, left

3 cm lacerated wound, below axillary area, non-penetrating, left

5 cm proximal third, lateral aspect, left leg

DX - Open fracture, left shoulder[3]

Minerva Gumboc who was dead on arrival sustained injuries indicated as follows:

‘Findings:

ABDOMEN: Gunshot wound

- Point of Entry - 1 cm Thoracic 12, mid-clavicular line, right; Point of Exit - 3 x 4 cm. Lumbar 1 and lumbar 2, paravertebral line, right

- 2. Point of Entry - 1 cm. Lumbar 2 parascapular line, left; Point of Exit - 2 x 3 cm. Iliac area with intestinal evisceration

Extremities: Gunshot Wound

- Point of Entry - (2) 1 cm. Proximal third, lateral thigh right

Point of Exit - Bony and Soft Tissue Avulsion, proximal third, posterior aspect, thigh, right

- Point of Entry - 1 cm. Proximal Third; Lateral thigh, right; Point of Exit - 2 x 3 cm. Middle third, inner aspect, thigh, right.’[4]

Jovito Candolita suffered a 0.5 cm. lacerated wound, proximal third, anterior aspect, right thigh (Exh. C) while Jerson Candolita sustained a penetrating wound, chin with 1 cm. point of entry and 2 cm. point of exit in the buccal area (Exh. B).

According to Dr. Maglantay, the wounds sustained by Milagros Candolita could have been caused by explosives like a grenade and said injuries could cause her death if left unattended.[5] As regards Minerva Gumboc, the cause of her death was massive hemorrhage due to multiple gunshot wounds.[6]

However, only the accused-appellant Felipe Tenorio alias “Bino” was arrested on January 24, 1994. Accused Francisco “Elmer” Decenilla has remained at large up to the present time, despite the issuance of a warrant for his arrest.

Arraigned on February 2, 1994, accused Felipe Tenorio, with the assistance of his counsel, Atty. Florencio Paredes, entered a plea of “not guilty”. Hence, a separate trial on the merits was conducted as regards the said accused-appellant.

When the time came for the defense to present its evidence, only the accused-appellant testified on his behalf. He denied that he was with the group of NPA’s who attacked the house of Jerson Candolita at Talisay, Pandan, Antique on January 6, 1993 at about 5:30 o’clock in the morning for he was in Manila at that date and time.[7] His story is that he was inducted into the New People’s Army in 1985 but defected in 1990 by escaping and surrendering to the military authorities. After his surrender, he neither rejoined the group nor went back to the mountains. Instead, he went to Manila on May 11, 1990 and stayed at Pandacan and at Sta. Ana, Manila,

with his grandfather. During the 1992 national elections he voted in Sta. Ana. He was a registered voter of the place (Exhibit 1). He went home to Fragante, Pandan, Antique only on December 11, 1993 when he accompanied the cadaver of his uncle.

In this appeal, appellant questions the trial court’s assessment and appreciation of the testimonial evidence presented before it, asserting it erred in finding him guilty of the crime charged since his guilt was not proven beyond reasonable doubt.

It is the contention of appellant that Jerson Candolita could not have possibly made any positive identification of their assailants since he was “playing dead” at the time. The same could be said of Milagros Candolita, who was lying face down on the foxhole.

With regard to Jovito Candolita, even though he claimed that he knew accused-appellant Tenorio, it puzzles appellant why he did not try to plead with the latter or otherwise talk his way out of the situation. This, claims appellant, is contrary to human experience, especially in the light of Jovito’s statement that he knew the accused-appellant.

In the case at bench, the sole and fundamental issue interposed by appellant boils down to the credibility of the testimonies of the prosecution witnesses.

The time-honored rule is that findings of facts of the trial court, especially with regard to its evaluation of the testimonial evidence presented before it, are entitled to full weight.[8] In the absence of any arbitrariness in its findings and any evidence which tends to show that it overlooked certain material facts and circumstances, such findings and evaluation of evidence should be respected on review.[9] This is because the presiding judge in the

trial court had the opportunity to observe the demeanor of the witness while testifying, and could thus tell whether or not a witness was telling the truth.[10]

The record reveals that the prosecution witnesses namely, Jovito, Jerson and Milagros Candelita, positively identified and categorically pinpointed appellant as one of the members of the NPA group which attacked their house on January 6, 1993. As against the uncorroborated testimony of accused-appellant Tenorio, the testimonies of the Candelitas, particularly with regard to the identity of the former as one of their attackers, are straightforward and convincing and must be given credence.

Jovito Candelita positively identified Felipe Tenorio in this manner:

“Q -

While you were there in your house, could you remember any incident which took place which was unusual?

“A -

Yes, sir.

“Q -

What was that incident?

“A -

I heard shouting, sir.

“Q -

Where in particular in relation to your house was that shouting?

“A -

It was near, sir.

“Q -

Hearing that shouting, what did you do then?

“A -

I opened my door and went out.

“Q -

Were you able to go out of your house?

“A -

Yes, sir.

“Q -

When you were already out of the house, what happened to you?

“A -

When I proceeded to the house of Jerson, I was accosted by the two (2) persons.

“Q -

Now of those two (2) persons who accosted you, could you recognize any of them?

“A -

Yes, sir.

“Q -

Who among the two (2) did you recognize?

“A -

Felipe Tenorio, sir.

“Q -

When you say, of the two (2) persons who accosted you, you recognize Felipe Tenorio as one of them, do you refer here to Felipe Tenorio, the accused herein?

“A -

Yes, sir.

“Q -

Now, Mr. witness, was Felipe Tenorio armed when he accosted you?

“A -

Yes, sir.

“Q -

What specifically did Felipe Tenorio do to you?

“A -

He held me by my right wrist and brought me near Jerson and shouting at Jerson, ‘surrender now.’

“Q -

Now, Mr. witness, do you know a lady by the name of Minerva Gumboc?

“A -

Yes, sir.

“Q -

What relation have you to her, if any?

“A -

She is my niece, sir.

“Q -

Could you tell where this Minerva Gumboc is living with or with whom is she living that date, January 6, 1993?

“A -

In my house, sir.

“Q -

When you said, you were accosted by two (2) persons, one among of (sic) whom was the accused Felipe Tenorio, do . . . know what Minerva Gumboc did?

“A -

She followed me and we were both pushed into the house of Jerson.[11]

We fully agree with the observation of the People’s counsel, that:

“From the foregoing, it can be readily gleaned that Jovito Candolita saw the face of his accosters one of whom he recognized as the appellant, the very same person introduced to him by his son long before the incident and which fact was never denied but even admitted by appellant. Being in close proximity with his accosters, it is thus unlikely that Jovito Candolita could have made any error as to appellant’s identity as one of those who waylaid him on that fateful morning of January 6, 1993. Since the defense failed to show any ill-motive on the part of Jovito Candolita to falsely testify against appellant, his testimony is entitled to full faith. The fact that Jovito Candolita failed to talk to appellant, whom he readily recognized then, with an end in view of preventing any harm against him and the rest of his family, is not hard to believe, as appellant would like to impress upon this Honorable Court. Common experience tells us that people undergoing emotional stress react differently and are unpredictable (People v. Murallon, 189 SCRA 488, p. 493). Hence, it is not an unnatural reaction on the part of Jovito Candolita not to talk to appellant because he was frightened (TSN dated April 14, 1994, p. 15).[12]

The testimony of Jerson Candolita established the basis for his familiarity with appellant Felipe Tenorio in this wise:

“Q -

Now, Mr. witness, do you know a fellow by the name of Felipe Tenorio?

“A -

Yes, sir, I know him.

“Q -

Why do you know him?

“A -

Because before, he surrendered and then he again returned to the mountains.

“Q -

With whom did he surrender?

“A -

To the PC before, sir.

“Q -

When this Felipe Tenorio surrendered, were you then a member of the CAFGU?

“A -

Yes, sir.

“Q -

Please clarify to this Honorable Court when you say, surrendered, why did he surrender, was he a member of any organization before he surrendered?

“A -

He is a member of the NPA, sir.

“Q -

Could you remember when did he surrender?

“A -

Yes, sir.

“Q -

What year?

“A -

I cannot remember, sir, the year.

“Q -

But nevertheless, when he surrendered, it was before January 6, 1993?

“A -

Not yet, sir.[13]

Coupled with the testimony of Milagros Candolita, who likewise positively identified appellant as one of their assailants, the testimonies given by Jovito and Jerson more than meet the quantum of proof required to establish the guilt of accused-appellant beyond reasonable doubt.

Appellant, however, argues that it was improbable for Jerson and Milagros Candolita to have made any identification of the men who went inside the house and ransacked it since both were supposedly “playing dead.”

This argument, unfortunately for appellant, was solidly refuted by the Solicitor General who said that:

“Appellant’s argument that both Jerson and Milagros Candolita could not have been able to see the person who went inside the house because they were prostrated on the ground while playing dead, is belied by the prosecution witness who categorically state that they were able to observe what transpired within the vicinity despite the fact that they were playing dead. Indeed, such observation could be made without the NPA rebels knowing the same as they were in a hurry and their minds were focused in plundering the place.”[14]

Appellant argues that his defense of alibi should not be disregarded. He stresses that the burden rests on the prosecution to establish beyond reasonable doubt every circumstance which is an essential element of the offense charged.

Appellant reminds this Court of its ruling in the case of *People vs. Baquiran* that:

“The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal

cases, otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence was vague and weak than where it is strong.”[15]

The case of *People vs. Baquiran* [16] cannot be a source of refuge for appellant. Although the issue in that case also centered on the identification of the assailant, the facts and circumstances which made this Court rule in favor of the defendant-appellant in that instance are totally absent here.

In *Baquiran*, the testimony of the main prosecution witness, aside from being inconsistent on material facts, also was in conflict on major points with those of the medico-legal officer and the investigating officer, the other prosecution witness. Such is not the situation in the case at bench, where the testimonies of the prosecution witnesses were consistent and corroborated each other on major points. Moreover, their testimonies were supported by the findings of the medico-legal officer which autopsied the cadaver of Minerva Gumboc.

The defense of alibi is worthless in the face of positive identification by the prosecution witnesses.[17] For it to prosper, Tenorio should be able to prove that he was at some other place during the commission of the crime and that it was impossible for him to have been at the scene of the crime at the time of its commission.[18] While it may be true that he was a registered voter in Sta. Ana, Manila and voted there during the 1992 national elections, he failed to give any explanation as to his whereabouts on that fateful day of January 6, 1993. It was not impossible for him to be in Barangay Talisay, Pandan, Antique during that date given the conveniences of modern transportation.

In finding accused-appellant Felipe Tenorio guilty of the crime of murder with frustrated murder and in imposing upon him the penalty of reclusion perpetua, the trial court considered the presence of the aggravating circumstances of treachery and taking advantage of superior strength.

While this Court would agree that there indeed was an abuse of superior strength, it is not ready to concede that treachery was present.

The circumstances prevailing in the case at bench would readily show that there was a notorious inequality of forces between the 27 members of the New People's Army, who were all armed, and the lone CAFGU defender. The NPA's act of herding Minerva Gumboc and the Candolitas inside one house and strafing it, all of them shooting at the same time, showed that they selected such course of action to take advantage of their superior strength. [19]

As far as the presence of treachery is concerned, however, this Court disagrees with the trial court. In the case of *People vs. Lopez*,[20] this Court ruled that:

“There is no treachery where the victim was aware of the danger on his life, when he chose to be courageous, instead of being cautious, courting obvious danger which, when it came, cannot be defined as sudden, unexpected and unforeseen.”

In the case at bench, the victims were forewarned of the attack as the NPA's first announced their presence and urged Jerson Candolita and Ernesto de Juan to surrender. As such, the two were already placed on guard and could foresee the initial assault.

Nevertheless, since the aggravating circumstance of taking advantage of superior strength was alleged as a qualifying circumstance and was proven during the trial, then the accused-appellant was properly found guilty of the crime of murder with frustrated murder.[[21]

The Office of the Solicitor General raises the issue of whether or not the crimes committed comprise one complex crime. It is argued that since there was no proof that the killing of Minerva Gumboc and the wounding of

Milagros, Jerson and Jovito Candolita were produced by a single discharge of firearm, there is no complex crime. The People's counsel cite Article 48 of the Revised Penal Code, which states that a complex crime exists "when a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other." Hence, it is argued that appellant should have been convicted of as many offenses as charged in the Information.

While it has been previously ruled by this Court[22] that what the law contemplated was singularity of criminal act and that singularity of similar impulse was not written into the law, it should be noted that there were twenty-seven (27) in their group who fired at the house at the same time. Appellant was merely one of them and there was no direct evidence pointing to him as the one who fired the fatal shots.

Appellant's liability is premised on the fact that he was part of a group which conspired and cooperated in the commission of the crime. While it may be true that the trial court did not directly state that a conspiracy existed, such conspiracy may be inferred from the concerted acts of the co-conspirator.[23] It may be deduced from the mode and manner in which the offense was perpetrated and the spontaneous coordination of the attack.[24]

The effect of this conspiracy is that the various acts committed by each member of the group for the attainment of a single purpose - to make Jerson Candolita and Ernesto de Juan surrender - are considered as only one offense, a complex one.[25] When a conspiracy animates several persons with a single purpose, their individual acts in pursuance of that purpose are treated as a single act, the act of execution, which gives rise to a complex offense. The felonious agreement produces a sole and solidary liability.[26] Thus, the trial court properly found that a complex crime exists and was correct in imposing the penalty questioned by the Solicitor General.

Anent the charge of illegal possession of firearms, a perusal of the records of this case reveals that, indeed, no evidence was presented by the prosecution that appellant had no permit or license to possess any firearm. Thus, appellant could not be convicted of murder with frustrated murder through the use of an illegally possessed firearm when there was no proof on the aspect of such illegal possession.[27]

WHEREFORE, the appealed decision is hereby AFFIRMED in toto.

SO ORDERED.

Regalado, (Chairman), Mendoza, and Puno, JJ., concur.

[1] P. 42, Rollo.

[2] Decision, pp. 2-3; Rollo, pp. 13-14; Appellee's Brief, pp. 4-6, Rollo, pp. 73-75.

[3] Exhibit "A"

[4] Exhibit "B"

[5] TSN, April 12, 1994, pp. 9-10

[6] TSN, p. 17, Id.

[7] TSN, June 8, 1994, pp. 3-7

[8] People v. Virgilio Alay-ay, alias "COT", G.R. No. 94310

[9] People v. Ernesto Dio y Botabara, G.R. No. 106493, Sept. 8, 1993, 226 SCRA 176

[10] People v. Sabal (247 SCRA 263).

[11] TSN, April 14, 1994; pp. 79-81, Rollo.

[12] Appellee's Brief, pp. 12-13.

[13] TSN, April 13, 1994, pp. 22-23.

[14] Appellee's brief p. 14

[15] People v. Fulgencio Baquiran, L-20153 , June 29, 1967, 20 SCRA 451.

[16] Supra.

[17] People v. Prudencio Dominguez and Rodolfo Macalisang, G.R. No. 100199, January 18, 1993 217 SCRA 170.

[18] People v. Modesto Cabuang y Flores, Nardo Matabang y Salvador; John Doe and Richard Doe, G.R. No. 103292, January 27, 1993 , 217 SCRA 675.

[19] People v. Jose Daquipil, et al G.R 86305-06, January 20, 1995, 240 SCRA 314.

[20] 249 SCRA 610.

[21] People v. Ruben Cobarrubias @ Amben, et al., G.R. Nos. 94709-10, June 15, 1993, 223 SCRA 363; People vs. Armin Besana, G.R. No. 102722, March 17, 1993, 220 SCRA 93.

[22] People vs. Hon. Judge Hernando Pineda, et al, L-26222, July 21, 1967, 20 SCRA 748.

[23] People vs. Vicente Jain and Beltran Garais , G.R. Nos. 104088-89, March 13, 1996, 254 SCRA 686.

[24] People vs. Ricardo De Guzman, et al, 98321-24, June 30, 1993, 224 SCRA 93; People vs. Maximo Ogapay , et al, L-28566, August 21, 1975, 66 SCRA 209; People vs. Antonio Alonzo, et al, L-32163, October 19, 1976, 73 SCRA 484.

[25] People vs. Emerito Abella, et al, L-32205, August 31, 1979, 93 SCRA 25.

[26] People vs. Ernesto Garcia, et al, L-40106, March 13, 1980, 96 SCRA 499.

[27] People vs. Guillermo Panganiban, et al , G.R. No. 97969, February 6, 1995, 241 SCRA 91.

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