

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO SASPA, RAFAEL SUMILING AND JUAN SAHA, ACCUSED.

G.R. No. 123069. March 01, 2001

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

On 11 June 1986, an information was filed with the Regional Trial Court of Zamboanga del Sur, charging Pedro Saspa, Juan Saha, and Rafael Sumiling, alias "Fredo Untal" with the crime of murder, as follows:

The undersigned 1[st] Assistant Provincial Fiscal of Zamboanga del Sur, accuses PEDRO SASPA, JUAN SAHA, RAFAEL SUMILING alias "FREDO UNTAL" of the crime of MURDER, committed as follows:

That on April 26, 1986 at about 7:00 o'clock in the morning more or less at Barangay Sto. Rosario, R.T. Lim, Zamboanga del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Pedro Saspa, Juan Saha, Rafael Sumiling alias "Fredo Untal" confederating and mutually helping one another with deliberate intent to take the life of one Isidro Hayo, did then and there, wilfully, unlawfully and feloniously attack the latter with the use of high powered guns, a garand and armalite, shoot one Isidro Hayo and as a result thereof, the latter suffered multiple gun wounds and subsequently thereafter all of the accused take [sic] turns in cutting off the neck of the victim which directly caused the death of Isidro Hayo.

That in the commission of the crime the following aggravating circumstances are present namely:

- Superior strength;
- With a band;
- That means employed or circumstances brought about which add ignominy to the natural effect of the acts.

Acts contrary to law.

The prosecution presented three witnesses - Thelma Hayo, Sulpicio Hayo, and Casiano Cuevas.

Thelma Hayo testified that on 26 April 1986, at about 7 a.m., she was with her husband Isidro at their home in Sto. Rosario, R.T. Lim, Zamboanga del Sur. They had just finished eating breakfast when someone called on her husband from outside. When Isidro opened the door, he said, "This is Juan Saha." Thelma, who followed her husband to the door, saw the man whom her husband referred to as Juan Saha, together with Pedro Saspa, Rafael Sumiling and Alfredo Untal,[1] standing outside their house. Juan, Pedro and Rafael were armed. Thelma knew that they belonged to the Civilian Home Defense Front (CHDF). The group of men called her husband to where they were standing and upon coming down from the house, Isidro was immediately hogtied by Rafael Sumiling, while Pedro Saspa and Juan Saha pointed their guns at him. The four men brought her husband to the cockpit,[2] which was forty meters away from their house, where they encircled him. Juan and Pedro shot at him. Thelma testified that she heard more than ten bursts of gunfire. After the shooting, the men left her husband in the cockpit. Thelma ran to the house of her parents-in-law, which was very near her own house, and the latter helped her retrieve the body of her husband. Thelma observed that her husband had sustained thirteen gun shot and hack

wounds - in the breast, stomach and legs.[3]

On the same morning, Sulpicio Hayo was at home with his family when a certain Lino Palahang arrived and reported that his son Isidro was arrested by the CHDF. Sulpicio immediately headed for the place where his son was being held, and on his way he heard several gunshots coming from the direction of the cockpit. He immediately crawled towards the hagonoy bushes. From where he was hiding, Sulpicio could see his son being hacked at the neck by several men wearing fatigue; however, his position at the time only allowed him a view of the lower portion of the assailants' bodies. After the men left, Sulpicio headed home, meeting his daughter-in-law Thelma on the way. Upon arriving home, he told his family that Isidro was already dead. He got the body of his son and brought it home.[4]

Casiano Cuevas, also a resident of Sto. Rosario, was working at his farm on the morning of 26 April 1986 when he heard gunfire coming from the bario. He climbed to the top of the hill and saw ten men in fatigue uniforms, about forty meters away, carrying firearms. He recognized Pedro Saspa, Rafael Sumiling and Alfredo Untal as being part of the group. The men were walking along the logging road which headed to the Double Hauling Elementary School. Casiano returned home to eat breakfast. Later in the afternoon, his neighbor came and requested him to help in making arrangements for the burial of Isidro Hayo.[5]

Meanwhile, appellants offered an alibi as their defense, which they sought to prove with their own testimonies and that of Aida Odothan and Edurado Sanz.

Rafael Sumiling testified that on 26 April 1986, at 7 a.m., he was at Double Hauling, which is three kilometers away from barangay Sto. Rosario, together with ten other men, namely, Pedro Saspa, Fredo Untal, Juan Saha, Florencio Ferolino, Eddie Ferolino, Joseph Ferolino, a certain Junie, Fredo Molale, a certain Poloy and Mondoy Manglangit. They were escorting some civilians to Double Hauling. Pedro Saspa, Fredo Untal, Juan Saha and himself all belonged to the CHDF. On their way to Double Hauling, their group was ambushed by some members of the New People's Army (NPA). Alfredo Untal was killed and their garrand rifle was destroyed. The fighting ended at 8:30 a.m., after which they brought the body of Alfredo Untal to his house in Bocboc, which was two kilometers away from Double Hauling, and three kilometers away from Sto. Rosario. They arrived at Alfredo's house at a little past 9 a.m. and stayed there until Alfredo was buried the following day.[6]

Pedro Saspa's testimony was almost identical with that of Rafael's. He testified that he, together with Juan Saha, Rafael Sumiling and Alfredo Untal, [7] were members of the CHDF and that Alfredo was their superior officer. The other members of their unit were Floren Perolino, Angel Perolino and Fredo Molale. On 25 April 1986, the barangay captain of Silingan ordered Alfredo's unit to escort some civilians the following day to Double Hauling, in the municipality of R.T. Lim, in order to get rattan. Pedro and Juan slept at Alfredo's house in Bocboc on the evening of 25 April 1986. At 5:00 the following morning the members of their CHDF unit and the civilians they were to escort gathered together, and after half an hour headed out for Double Hauling, which was one kilometer from Bocboc. However, they never reached their destination because they were ambushed by a group of NPA guerillas who were interested in obtaining their firearms. The two groups exchanged gun fire for an hour and a half. Alfredo was killed in the crossfire. After the fighting had ceased, they brought Alfredo's body home. Upon reaching the house of Alfredo, they told their companions to report the attack to the military. Meanwhile, Joseph Perolino related the details of the assault to the barangay captain of Silingan. Pedro and his group did not leave the house of Alfredo in Bocboc until their companion was buried the following day, on 27 April 1986. They helped in the preparation for the burial by making a coffin, chopping wood, and preparing food for the visitors.[8]

In addition, Pedro testified that, about fifteen minutes before they were ambushed, he heard gunfire coming from the direction of Sto. Rosario, which was only three kilometers away from the site of the ambush. He heard

gunshots again coming from the same direction when they were bringing home the body of Alfredo.

Eduardo Sanz testified that at the time of the attack he was the barangay captain and the commanding officer of the CHDF in barangay Silingan. The members of his CHDF unit were Rafael Sumiling, Pedro Saspa, Fred Untal, Rolando Sumiling, Alfredo Molale, Enrico Sanz, Floren Perolino and Lito Molale. On 25 April 1986, Alfredo Untal, a contractor of rattan, asked permission from Eduardo to go to Double Hauling with some of his friends, namely Rafael, Pedro and Floren, in order to look for rattan. Eduardo testified that on 26 April 1986, at 7 a.m., he heard gunfire coming from Sto. Rosario, and a bit later he heard more gunfire coming from the direction of Double Hauling. At around 9 a.m., Eduardo was informed by a certain Perolino of the death of Alfredo Untal. He proceeded to Double Hauling, where he found the body of Alfredo. Eduardo observed that Alfredo had sustained gun shots at his side and that his left arm was broken. Pedro, whom he met at Double Hauling, told him that they had been ambushed. They brought the body of Alfredo to his house in Bocboc.[9]

The trial court found both Pedro Saspa and Rafael Sumiling principally liable for the murder of Isidro Hayo, and sentenced each of them to suffer the penalty of reclusion perpetua, together with its accessory penalties, and ordered them to indemnify the heirs of the victim in the amount of P50,000.00.[10]

As regards accused Juan Saha, the trial court noted that he was earlier acquitted by former Presiding Judge Dionisio Cadag, after he filed a demurrer to evidence.[11] Judge Cadag, who heard the testimonies of all the witnesses, doubted Saha's identification by Thelma Hayo since she failed to identify Saha in open court. Meanwhile, the trial court found that accused Alfredo Untal had in fact died on 26 April 1986 based on a certificate of death presented by the defense of a "Alfredo Alano Ontal," dated 26 April 1986, issued by the local civil registry of the municipality of R.T. Lim, Zamboanga del Sur.[12] Thus, only Pedro Saspa and Rafael Sumiling remain charged in the present action.

The Court finds no cogent reason to overturn the trial court's appreciation of the evidence presented in this case. After a review of the records of this case, we find the prosecution witnesses to be credible and their testimonies to be clear and straightforward, coinciding on all material points, and thus, worthy of belief. Thelma Hayo was able to positively identify appellants Rafael Sumiling and Pedro Saspa as the assailants of her husband and to describe the extent of their participation in the killing. She declared that it was Rafael who tied up Isidro and that Pedro shot at him.[13] During the duration of the attack, Thelma was standing outside their house, too scared to follow, but from that position she had a clear view of the cockpit since it was only forty meters away from their house and there were no other structures in between that might have obstructed her vision.[14]

Thelma's testimony was corroborated by Sulpicio Hayo, the victim's father. At the time of the assault, Sulpicio was crouched behind some tall grasses near the cockpit, also about forty meters away, and it was from that position that he witnessed the brutal killing of his son. He saw several men in fatigue hacking at Isidro's neck with a bolo. However, Sulpicio was not able to identify these men as he could only see their lower bodies from where he was hiding.

Another prosecution witness, Casiano Cuevas, also corroborated Thelma's testimony. On the same morning that Isidro was killed, Casiano heard gunfire coming from the direction of Sto. Rosario. He walked to the top of the hill and saw Pedro Saspa, Rafael Sumiling and Alfredo Untal, together with several other men, walking on the road which led to the Double Hauling Elementary School. The men were wearing fatigue uniforms.

The Court noted some inconsistencies in the testimonies of Thelma and Sulpicio. According to Thelma, she saw only four men attacking her husband by shooting at him. Meanwhile, Sulpicio observed some ten men hacking at his son's neck. However, Sulpicio also testified that while he was on his way to the cockpit, he heard gunfire coming from the direction of the cockpit at the same time that Thelma declared her husband was shot.[15]

Meanwhile, Thelma testified that Isidro sustained both gunshot and hack wounds.[16] Thus, Thelma and Sulpicio apparently observed different stages of the attack. Thelma witnessed the first part, which was the shooting of Isidro, after which, thinking that her husband was already dead, she rushed off to the house of her in-laws. This explains why Sulpicio testified that he saw Thelma pass him by when he was still on his way to the cockpit[17] and why she did not witness the hacking of her husband, which was observed by Sulpicio, who arrived at the scene of the crime just as Thelma was leaving it. The Court has held that inconsistencies in testimony should not be determined by resort to individual words or phrases alone but by the whole impression or effect of what has been said or done.[18] The fact remains that Thelma and Sulpicio's testimonies coincide on material points, which is that Isidro Hayo was attacked and killed by a group of men belonging to the CHDF in the morning of 26 April 1986 in the cockpit of Sto. Rosario and that appellants were part of this group and actively participated in the killing.

Appellants tried to convince the trial court that Thelma Hayo testified against them because she and Isidro were NPA sympathizers and they did not want appellants to join the CHDF.[19] Aside from their own allegations, appellants failed to support their imputations with any solid evidence. When the defense has not successfully shown that the prosecution witnesses were moved by improper motives, it must be presumed that they were not so moved.[20] Neither does it matter that the witnesses to the crime in this case were related to the victim for, in the absence of any showing that they harbored ill intentions against the accused, it must be presumed that they were motivated to come forward by an earnest desire to seek justice for their dead kin.[21]

To exculpate them from their wrongdoings, appellants sought to present an alibi. Pedro and Rafael claimed that on the day Isidro Hayo was killed they, together with other members of their CHDF unit, were escorting some civilians to Double Hauling in order to collect rattan, when they were ambushed by NPA guerillas. A firefight ensued, in the course of which Alfredo Untal was killed. After the fighting ended, they brought the body of Alfredo to his house in Bocboc, where they stayed until the burial the following day. Like the trial court, we have serious misgivings regarding the veracity of appellants' version of the events. Aside from their own self-serving statements, appellants failed to present any credible witnesses to support their alibis, such as those persons allegedly present during the ambush. It is curious that appellants did not present as witnesses any of the civilians whom they had allegedly escorted to Double Hauling, or the other members of their CHDF unit who were with them, in order to corroborate their story. In addition, appellants could have presented a military officer to testify on the alleged ambush by NPA guerillas, whose testimony would have substantially strengthened and given more weight to their own testimonies, but they did not. Between appellants' unsubstantiated alibi and the positive identification of appellants as the perpetrators of the crime by the prosecution witnesses, the former must give way.[22]

Alibi is the weakest of all defenses for it is easy to contrive and difficult to disprove.[23] For alibi to prosper, it must be shown that it was impossible for the accused to have been present at the place where the crime was perpetrated at the time of its commission.[24] According to appellants themselves, the distance between Sto. Rosario, where Isidro was killed, and Double Hauling, where they were allegedly ambushed, is only three kilometers.[25] Similarly, the distance between Bocboc - where, according to appellants, they brought the body of Alfredo Untal and remained for the rest of the day - and Sto. Rosario is also three kilometers. Definitely, given such short distances and considering that all these places are situated in the same municipality, it was not impossible for appellants to have been physically present at the scene of the crime or its immediate vicinity at the time of its commission. Appellants defense of alibi must therefore fail.

We affirm the trial court's holding that superior strength was employed by appellants in the execution of the crime, thus qualifying the killing to murder. When appellants attacked the victim, they had the advantage of

numerical superiority and were carrying high-powered firearms; whereas the victim was unarmed and utterly defenseless, not to mention that he was taken by surprise by the swiftness of the assault. Clearly, there was a notorious inequality between the strength of the victim and his assailants. We cannot sustain, however, the trial court's appreciation of the aggravating circumstances of band and ignominy. A band consists of at least four armed malefactors acting together in the commission of an offense.[26] The prosecution failed to prove that there were at least four armed men - Thelma testified that three of Isidro's assailants were armed, while Sulpicio did make any declaration as to how many of his son's attackers were actually armed. Neither did the prosecution prove the existence of ignominy, which is a circumstance that adds disgrace and obloquy to the material injury caused by the crime.[27] There was no showing that appellants deliberately employed means which would cause more suffering or humiliation to the victim.

At the time the crime was committed the penalty for death was reclusion temporal in the maximum period to death. In the absence of any aggravating and mitigating circumstances, the penalty should be imposed in its medium period, or reclusion perpetua.

WHEREFORE, the 15 September 1995 decision of the Regional Trial Court of Pagadian City (Branch 20) in Criminal Case No. 5062, finding accused-appellants guilty beyond a reasonable doubt of the crime of Murder, and sentencing them to suffer the penalty of reclusion perpetua, and to pay the heirs of the victim P50,000.00 as indemnity, is hereby **AFFIRMED**.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Sandoval-Gutierrez, JJ., concur.

[1] Also referred to as Fredo Untal.

[2] Alternately referred to as the "taboan" or marketplace.

[3] TSN, 7 September 1987, 1-28.

[4] Ibid., 29-42.

[5] TSN, 16 November 1987, 1-24.

[6] TSN, 6 February 1989, 1-13.

[7] Contrary to what was contained in the information, Pedro Saspas testified that Alfredo Untal was not an alias of Rafael Sumiling, but referred to another person. TSN, 3 July 1989, 3-5.

[8] TSN, 3 July 1989, 1-29.

[9] TSN, 11 September 1989, 1-14.

[10] Promulgated on 15 September 1995. The decision was penned by Judge Briccio A. Almeda.

[11] Trial court resolution dated 28 November 1988, penned by former presiding Judge Dionisio Cadag.

[12] Exhibit 2.

[13] TSN, 7 September 1987, 5-8.

[14] Ibid., 7-8, 16-17.

[15] Ibid., 30-31.

[16] Ibid., 20.

[17] TSN, 7 September 1987, 38-39.

[18] People v. Gailo, 316 SCRA 733 (1999).

[19] TSN, 6 February 1989, 11-13; TSN, 3 July 1989, 17-18.

[20] People v. Mendoza, 284 SCRA 705 (1998).

[21] People v. Antonio, 303 SCRA 414 (1999); People v. Batidor, 303 SCRA 335 (1999); People v. Guillermo, 302 SCRA 257 (1999); People v. Realin, supra.

[22] People v. Bation, 305 SCRA 253 (1999); People v. Tabarangao, 303 SCRA 623 (1999); People v. Reduca, 301 SCRA 516 (1999).

[23] People v. Almacan, 303 SCRA 399 (1999); People v. Batidor, supra; People v. Oliver, 303 SCRA 72 (1999).

[24] People v. Botonia, 304 SCRA 718 (1999); People v. Plantilla, 304 SCRA 345 (1999); People v. Padilla, 301 SCRA 265 (1999).

[25] TSN, 6 February 1989, 3; TSN, 3 July 1989, 12.

[26] Revised Penal Code, article 14, par. 6.

[27] U.S. v. Abaigar, 2 Phil 417 (1903).

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