

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS MADRID Y YAP, WILLIAM MADRID Y VICTORIANO, JILL MADRID Y VICTORIANO AND HILARION TINAO JR. Y MATEO, ACCUSED-APPELLANTS.

G.R. No. 129896. November 23, 2000

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

On 27 January 1986 the Provincial Fiscal of Romblon filed in the Regional Trial Court of Romblon, Romblon, an Information charging JESUS MADRID Y YAP, WILLIAM MADRID Y VICTORIANO, JILL MADRID Y VICTORIANO and HILARION TINAO JR. Y MATEO with the crime of Direct Assault with Murder aggravated by superior strength, treachery, evident premeditation and disregard of rank.

The factual backdrop: On 3 August 1985 the barangay tanods of Barangay Danao Sur, Santa Fe, Romblon, sponsored a fund-raising dance for the purpose of buying uniforms and for their other needs. The affair was held at the basketball court of the Danao Sur Community School and facilitated jointly by Camilo Malacad, chief barangay tanod, and Jesus Madrid, a barangay tanod. The dance began at around seven o'clock in the evening with Camilo acting as master of ceremonies. Jesus as business manager took charge of the food baskets containing chicken lechon, roasted meat or fish, and bottles of beer sold at public auction. The dance ended at around eleven-thirty in the evening.

Adolfo Magcalayo, a witness for the prosecution, testified that when his wife, who was selling goods at the dance hall, arrived home that evening she requested him to bring home their table which she had left behind at the basketball court, and he readily complied. On his way to get the table, he saw his uncle Camilo Malacad, younger brother of his mother, escorting home Yolanda Mortos Fellarca, the treasurer of their affair.

Adolfo was about to lift the table at the basketball court when he heard someone shouting for help. He ran towards the direction where the voice was coming from until he reached the peripheral fence of the school that was about waist-high. He crouched behind a star apple tree, its low branches and thick foliage covering him, and peeped through the gaps in the fence made partly of hollow blocks and partly bamboos to see what was going on. On the road directly beyond the fence he saw Jesus Madrid, William Madrid, Jill Madrid and Hilarion Tinao Jr., ganging up on Camilo. They were known to him as they were all residents of Danao. According to Adolfo, Jesus was holding the right arm of Camilo, Jill the left arm, Hilarion holding him from behind, while William was in front of him. Jesus had a piece of wood and a stick, Jill had a piece of wood, while William was armed with a bolo about one (1) and one-half (1/2) feet long. Adolfo claimed that he saw William stab Camilo, while Jill struck him on the chin with a piece of wood. Camilo fell but Hilarion lifted him up. Antonio Tasis then appeared from the side of Camilo. Before Antonio could even get near the group William hacked him with a bolo. Antonio parried the blow but was hit on the left arm. Jesus next attacked Antonio with a knife but the latter was able to take hold of Jesus' striking hand. Antonio twisted Jesus' hand towards his chest and lunged a knife at him,

afterwhich, Antonio ran away.

Adolfo claimed that after Antonio left, he heard Jesus urge his companions to kill Camilo since both he and Camilo were already wounded anyhow saying, "You kill Camilo Malacad so that we will be both dead because I am also wounded." William then hacked Camilo and continued to do so even as the latter was walking towards the house of Fortunato Gallos.

After the attackers left, Adolfo approached Camilo and asked him why he had been attacked, and the latter replied, "They ganged up on me when I have not done anything wrong." Camilo then collapsed and died instantly near the doorstep of the house of Fortunato.

An autopsy conducted on the body of Camilo showed that he sustained twelve (12) injuries: two (2) abrasions, four (4) incised wounds and six (6) stab wounds, four (4) of which were fatal. The medical examiner opined that from the nature of the wounds it was probable that two (2) kinds of weapons were used on the victim and that there were more than one (1) assailant.

Antonio Tasis corroborated Adolfo Magcalayo's testimony that he became involved in the incident when he tried to give assistance to his uncle Camilo. Antonio recounted that he saw Camilo at the road after the latter escorted Yolanda home. Soon after, he heard Camilo shout for help. When he (Antonio) went to find out what happened, he saw William, Jesus, Jill and Hilarion ganging up on Camilo. However, when Antonio attempted to approach the group of Jesus to convince them to let go of Camilo, William hacked him with a bolo, hitting him on the left forearm and wrist. Jesus tried to stab him next but he was able to take hold of Jesus' striking hand, twisted it around and thrust a knife at Jesus' chest.

The defense gave a contrary account. Jesus Madrid claimed that during the dance, Lerie Madali, his niece by affinity, complained to him that Antonio danced with her with hands smeared with mud; thus, Jesus advised Antonio not to do it again.

When the dance ended and people left the school premises, Jesus Madrid and Samuel Visaga, another barangay tanod, stayed behind to clear up the place and to inventory the things they used during the dance, e.g., the alladin lamps, the sound system, the benches, etc. After they were through, Jesus and Samuel left for home. However, before they could leave the gate, Antonio appeared and immediately stabbed Jesus hitting him on his right lower middle chest. Jesus struggled with Antonio for the possession of his knife. Having succeeded, Jesus struck Antonio wounding him on the arm with the knife and sending him scampering away.

Now wounded, Jesus asked Samuel to notify his nephew William and tell him what happened, and to hire a jeep to take him to the hospital. Samuel immediately went to the house of the parents-in-law of William where the latter was then staying. William was already asleep so they had to wake him up. Samuel told him what happened and then left to hire a jeep.

Meanwhile, William set out for the school gate. From a distance he saw his uncle Jesus walking fast, followed by Antonio and Camilo about ten (10) meters away. William raced towards Jesus and once together, Jesus handed William the knife which Jesus had earlier wrestled from Antonio.

William faced Antonio and Camilo. Antonio ran away but Camilo stood his ground. Camilo grappled with William for the possession of his knife. As they struggled with each other William repeatedly stabbed Camilo and stopped only after Camilo gave up. William then returned to Jesus while Camilo staggered towards the house of Fortunato Gallos.

In the meantime, Samuel borrowed the jeep of Eliza Eusebio after informing her that Jesus had been stabbed and

must be taken to the Provincial Hospital in Odiongan, Romblon. Eliza acquiesced and woke up her driver Perfecto Fillarca and her helper Hilario Tinao Jr. to take Jesus to the hospital.

Samuel then went to the house of Jill, a nephew of Jesus, and asked him to accompany them to the hospital. Jill agreed and the four (4) of them boarded the jeep and proceeded to the gate of the Danao Sur Community School where Samuel previously left Jesus. There they saw Jesus leaning against a coconut tree with William nearby. Samuel and his companions together with William brought Jesus to the Romblon Provincial Hospital.

Jesus Madrid was treated by Dr. Rex Siarrez, resident physician of the Romblon Provincial Hospital. After three (3) days, Jesus regained consciousness and was declared out of danger.

Dr. Giovanni Fondevila, Chief of the Romblon Provincial Hospital, testifying as an expert witness, and relying on the medical certificate issued by Dr. Siarrez, told the court that Jesus Madrid sustained a wound over the right lower middle chest, penetrating up to the left liver, which if not immediately attended could have caused the patient to die of hemorrhage.

The trial court found the narration of the defense unconvincing and ruled that pitted against the positive identification by the two (2) prosecution witnesses of the four (4) accused, the latter's denial could not prevail. It observed that the four (4) accused failed to explain how the various abrasions, incised wounds and stab wounds were sustained by the deceased in the different parts of his body, and contravened the findings of the medical examiner that by the nature of the wounds two (2) weapons were used and that there were more than one (1) assailant. Thus, the trial court declared Jesus Madrid, William Madrid, Jill Madrid and Hilarion Tinao Jr., guilty beyond reasonable doubt of the crime of murder and sentenced all of them, except Hilarion Tinao Jr., to suffer the penalty of reclusion perpetua including its accessory penalties. Hilarion Tinao Jr., on account of his minority as he was only fifteen (15) years old when he committed the crime, and applying the Indeterminate Sentence Law, was sentenced to an indeterminate sentence of seven (7) years of prision mayor as minimum to fifteen (15) years of reclusion temporal as maximum, with its accessory penalties. Moreover, the four (4) accused were ordered to pay, jointly and severally, Salvacion Malacad, widow of the victim, the sum of P15,000.00 for actual damages and P100,000.00 for moral damages; and his heirs the sum of P50,000 as civil indemnity, and to pay the costs.[1]

In this petition, accused-appellants assail the version of the prosecution and contend that certain events were fabricated to ensure the conviction of all four (4) of them. They assert that the admission of Adolfo Magcalayo that he was out in the sea fishing with the use of a "salap" on the night of the incident belies his assertion that he was able to witness the occurrence behind the school fence. But, assuming that Adolfo was not out fishing, accused-appellants further argue that it was highly improbable for one like him, forty-six (46) years old, mature, healthy and physically strong, to simply stand akimbo, remain silent and watch helplessly while only two (2) meters away his uncle was being repeatedly stabbed and mauled by four (4) ruthless assailants.

Accused-appellants also assail Adolfo's testimony as inconsistent since he initially claimed that Jesus Madrid was holding a stick and a piece of wood and then asserted later that Jesus was armed with a knife and attacked Antonio Tasis with it.

Accused-appellants would cast doubt on the veracity of the testimony of Antonio Tasis as the length of the scar on his left forearm was not likely to have been caused by a bolo which he claimed was used by William Madrid in hacking him. They contend that the nature and size of the weapon used should have resulted in a larger gaping wound and not one which was only two (2) inches long and one (1) centimeter wide. They find incredible Antonio's narration that he was able to parry the attack of Jesus and turn the knife against him considering that Jesus was stronger than Antonio, and not forgetting that he had just been wounded by William when the latter boloed him.

Accused-appellants insist on their version of the incident. Jesus Madrid claims that he was a victim of the attack initiated by Antonio and merely acted in self-defense when he assaulted him. Jesus denies having stabbed Camilo Malacad, much less ordered his execution.

William Madrid invokes defense of a relative and explains that he merely acted in aid of his uncle Jesus who was fleeing from Antonio and Camilo. Jill Madrid and Hilarion Tinao Jr. maintain that they were not present during the encounter between Camilo and William as they (Jill and Hilarion) only came in the jeep that was hired to take Jesus to the Romblon Provincial Hospital.

We are inclined to believe accused-appellants. While we have consistently stayed away from interfering with the trial court's conclusions of fact and assessment of the credibility of witnesses since, admittedly, it is in a better position to observe the deportment of the witnesses on the stand, the account of the prosecution is fraught with inconsistencies that refuse to make their story blend into a unified whole, thereby leading us to doubt the veracity of their claims.

The Court agrees with the observation of the defense that Adolfo Magcalayo could not have seen the attack on Camilo Malacad since he admitted that he was out fishing on the night of the incident. It also puzzles the Court how Adolfo could claim that Jesus tried to stab Antonio Tasis with a knife when he had described Jesus as armed only with a wooden stick or a piece of wood. The fact that Adolfo Magcalayo asserted that all the assailants were holding the deceased by the arm or at the back merely adds confusion to the picture he had conjured.

Assuming that Adolfo was not out fishing, it was also difficult to believe that he would remain crouched and hidden behind the star apple tree while his uncle Camilo Malacad was being held, beaten and stabbed by four (4) assailants. The Court is not unaware of instances when a witness has been paralyzed into inaction by fear. However, it is truly incredible for a forty-six (46)-year old man to have contented himself with being merely an onlooker when his uncle was being brutally murdered. Adolfo could have frantically shouted and run for help, as others are normally wont to do under the circumstances, but he did not; he simply waited until his uncle had been mercilessly killed!

The Court finds highly incredible the story of Antonio Tasis that he was able to avoid the attack of Jesus Madrid by twisting his arm and pointing the knife instead against his adversary's body, in movie-like fashion, especially when cast against a backdrop of William Madrid, Jill Madrid and Hilarion Tinao Jr. hovering over the protagonists Antonio and Jesus and ready to assist the latter at any moment; indeed, truly a daring move, this, after William had just wounded Antonio on the left arm with a bolo. Likewise, it was illogical for William, who was wielding a powerful weapon, to have retreated after wounding Antonio to give way to Jesus to attack Antonio. One who is already at a vantage position is not likely to retreat but would pursue his attack to ensure victory.

Very telling is Antonio's admission that after he ran away he just went home and slept. According to him, it was only after he returned home from a medical treatment for three (3) days in another town that he learned that Camilo was already dead. If it were true that he was present during the incident and was intent on giving help to his uncle, it would be more logical for him to have sought help after he had run away from the incident and not to have simply slept and waited after having himself treated for three (3) days in another town before checking on his uncle's condition.

The medical opinion that from the nature of the wounds two (2) kinds of weapons could have been used and that there were more than one (1) attacker, is only probable, but not conclusive. It may be recalled that according to Adolfo Magcalayo he saw the assailants with the following weapons: William Madrid with a bolo, Jesus Madrid with a piece of wood, and Jill Madrid also with a piece of wood. Of the two (2) types of weapons identified, only

the bolo could have effectively caused four (4) incised wounds, and six (6) stab wounds. Thus, if Adolfo's account were to be believed, it was only William Madrid who was wielding a bolo who could have delivered the hacking blows on Camilo Malacad, and no one else.

On the other hand, the version of the defense is clear and convincing. The attack was a result of Camilo Malacad's coming to the aid of his nephew Antonio Tasis who had earlier stabbed Jesus Madrid for what he perceived to be an insult on his honor. The fate of Camilo sufficiently shows that an incident triggered the attack, contrary to the version of the prosecution that Camilo was attacked and killed without any reason. In providing a reason for the attack, the defense was able to fill in the missing pieces in the puzzle.

Jesus Madrid invokes self-defense. He contends that he only retaliated when Antonio wounded him. However, it should be noted that the theory of self-defense is available only against the aggressor himself, who in the case of Jesus was Antonio and not Camilo who came into the picture only after the scuffle between Jesus and Antonio with Camilo joining Antonio in chasing Jesus. However, Jesus did not participate in the attack on Camilo but was actually the cause for the aggression by William against Camilo. Jesus is therefore acquitted of the crime charged.

William Madrid likewise invokes self-defense as well as defense of a relative. However, for self-defense and defense of one's kin to prosper, the following elements should be proved by clear and convincing evidence: (a) there was unlawful aggression on the part of the victim; (b) there was reasonable necessity of the means employed to prevent or repel it; and, (c) there was lack of sufficient provocation on the part of the person defending himself. Accused-appellant William Madrid failed to discharge this burden. The defense maintains that Camilo committed unlawful aggression when he tried to wrest from William the possession of the knife handed to him by Jesus.

We do not agree. Unlawful aggression presupposes an actual, sudden and unexpected attack, or an imminent danger thereof, and not merely an intimidating attitude. There has to exist a real danger to the life or personal safety of the person claiming self-defense.[2]

Nothing of the sort could reasonably be said of the actions of Camilo. The sight of Camilo and Antonio following a wounded Jesus must have led William to believe that the two (2) were responsible for his uncle's injury and were intent on inflicting more harm on him, and probably on himself too, thus his combative stance. It must be noted however that Camilo was not armed during the confrontation and no convincing evidence was shown proving that he was intent on inflicting harm on Jesus and William as to put their lives in imminent danger.

Camilo's attempt to divest William of his knife did not qualify as unlawful aggression on the part of Camilo as no real danger was placed upon William. On the contrary, Camilo, unarmed, was in greater danger than William, the latter being armed with a knife. Any threat that William could have perceived had been greatly diminished with Antonio's flight before the encounter began.

Even assuming ex gratia that initially there was unlawful aggression, the same was borne out of the confrontation between Jesus and Antonio, with the latter as the aggressor. When Camilo, together with Antonio, was seen following Jesus, there was no longer any confrontation to speak of as it had already ceased and ended. Thus, when William received the knife from his uncle Jesus and stabbed Camilo, it was William who became the aggressor.

Granting that William discerned an attack from Camilo, his response went beyond the perceived threat. The nature and number of wounds inflicted by William upon Camilo - four (4) incised wounds, six (6) stab wounds - reveal an intent to deliver serious harm which renders his plea of self-defense and defense of a relative unavailing. Likewise, the third element is lacking. The sight of William armed with a knife is sufficient provocation on the part of Camilo to take on an aggressive posture and engage William in a fight.

In invoking self-defense, accused-appellant William in effect admitted killing the deceased Camilo Malacad and

the burden is upon him to prove that his actions were justified. However, having failed to prove the existence of the elements of self-defense, he must answer for the death of Camilo.

As for Jill Madrid and Hilarion Tinao Jr. the prosecution was not able to prove sufficiently the extent of their participation in the killing of Camilo Malacad; hence, they should be exonerated.

Conspiracy and the aggravating circumstance of abuse of superior strength were not sufficiently proved and thus shall not be considered in determining the penalty imposed upon accused-appellant William Madrid. Neither shall the aggravating circumstance of disregard of rank be considered against him. Disregard of the rank of Camilo Malacad who was a barangay tanod cannot be appreciated as an aggravating circumstance there being no proof of any specific fact or circumstance that William disregarded the respect due the deceased, nor does it appear that William deliberately intended to insult the rank of the victim as barangay tanod.[3]

Article 249 of the Revised Penal Code provides that when the killing is committed without the attendance of any qualifying circumstance the accused shall be held guilty of homicide and sentenced to reclusion temporal. Applying the Indeterminate Sentence Law, and in the absence of any qualifying circumstance, the maximum shall be taken from the medium period of reclusion temporal the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is prision mayor, in any of its periods, the range of which is six (6) years and one (1) day to twelve (12) years.

WHEREFORE, the Decision[4] appealed from finding all four (4) accused-appellants guilty of Murder is MODIFIED. WILLIAM MADRID Y VICTORIANO is held guilty of HOMICIDE and is sentenced to an indefinite prison term of eight (8) years four (4) months and ten (10) days of prision mayor medium as minimum, to sixteen (16) years two (2) months and twenty (20) days of reclusion temporal medium as maximum, plus the accessory penalties provided by law. He is ordered to pay the heirs of the deceased Camilo Malacad P15,000.00 as actual damages, P50,000.00 as moral damages, and another P50,000.00 as civil indemnity, and to pay the costs.

For failure to prove beyond reasonable doubt the guilt of accused-appellants JESUS MADRID Y YAP, JILL MADRID Y VICTORIANO and HILARION TINAO JR. Y MATEO, they are ACQUITTED of the crime charged. Consequently, the Director of Prisons is ordered to effect their immediate release from confinement unless they are being held for some other lawful cause, and to report to this Court within five (5) days from receipt hereof the action taken hereon.

SO ORDERED.

Mendoza, Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Decision penned by Judge Placido C. Marquez of RTC-Br. 81, Romblon, Romblon.

[2] People v. Aguilar, G. R. Nos. 120622-23, 10 July 1998, 292 SCRA 349; People v. Galapin, G.R. No. 124215, 31 July 1998, 293 SCRA 474.

[3] People v. Talay, No. L- 24852, 28 November 1980, 101 SCRA 332, 347.

[4] 9 December 1996 Decision of RTC-Br. 81, Romblon, Romblon.

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