

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALEXANDER SALVA Y PATEÑA, FERDINAND SALVA Y PATEÑA AND
ROLITO SALVA Y PATEÑA, ACCUSED, ALEXANDER SALVA Y PATEÑA
AND FERDIN...**

G.R. No. 132351. January 10, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On appeal is the joint decision[1] dated February 24, 1997, of the Regional Trial Court of Tanay, Rizal, Branch 80, in Criminal Cases No. 1476-T and No. 1486-T against the brothers Alexander, Ferdinand, and Rolito Salva for murder and for frustrated homicide, respectively. In the first case, the court convicted appellant Alexander Salva of murder and appellant Ferdinand Salva of homicide, and ordered both appellants to pay jointly and severally the heirs of the victim, Palmero Milanes, P12,000 as actual damages, P100,000 as moral damages, and the costs of the suit. In the second case, it convicted only appellant Alexander Salva of frustrated homicide and ordered him to pay the victim, SPO1 Mariano Cura, P36,000 as actual damages, P50,000 as moral damages, and P10,000 as attorney's fees. Accused Rolito Salva was acquitted in both cases. Appellant Ferdinand Salva was acquitted in the second case.

The indictments against Ferdinand, Alexander and Rolito Salva in Criminal Cases No. 1476-T and No. 1486-T, respectively, read:

In Criminal Case No. 1476-T:

That on or about the 10th day of January 1995 in the Municipality of Tanay, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding with one another, armed with a fan knife and .38 caliber revolver (Squires Bingham) with serial number 179533, with intent to kill, evident premeditation and by means of treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab and shot one Palmero L. Milanes, thereby inflicting upon the latter multiple stab and shot wounds which directly cause[d] his death.

CONTRARY TO LAW. [2]

In Criminal Case No. 1486-T:

That on or about the 10th day of January 1995 in the Municipality of Tanay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, conspiring and confederating together and mutually helping and aiding one another, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and with the said bladed weapon one SPO1 Mariano Tejada Y Cura on his body, thereby inflicting upon the latter wounds which would ordinarily cause his death, thus performing all the acts of execution which should have produced the crime of murder, as a consequence but nevertheless did not produce it by reason of cause or causes independent of his will, that is,

due to the timely and able medical attendance rendered to said SPO1 Mariano Tejada Y. Cura.[3]

During arraignment Ferdinand, Alexander and Rolito Salva pleaded not guilty. Thereafter, the cases were jointly tried.

The prosecution presented the following witnesses: Pablito Tibay, the jeepney conductor; SPO1 Mariano Cura, assisting policeman and private complainant for the charge of frustrated murder; Rodney Tan, one of the jeepney passengers; Elmer Figueroa, tricycle driver; Sgt. Pablo Villegas, responding policeman; Dr. Bayani Viado, attending physician of SPO1 Cura; Jesusa Vergara, medico-legal officer of the PNP Crime Laboratory who autopsied the deceased; SPO1 Joseph Pueblo, investigating policeman; SPO1 Renato Ragadi, patrol mate of SPO1 Cura; and Wilma Milanes, wife of the deceased.[4]

The prosecution's version of the incident, as summed up by the Solicitor General, is as follows:

On January 10, 1995, around 10:00 a.m., Palmero Milanes was driving a passenger jeepney with Pablito Tibay as conductor going to Tanay, Rizal when Ferdinand Salva waved at them and tried to stop the jeep and then uttered "putang ina mo" (p. 5-7, TSN, August 8, 1995). Failing to stop the jeep, Ferdinand took a tricycle and followed the jeep but Milanes maneuvered the jeep and went to the police outpost in Pililla, Rizal where he sought police assistance (p. 8, id.). SPO1 Mariano Cura, clad in half-uniform (wearing khaki pants with civilian short) boarded the jeep with its driver and conductor (pp. 16, 21, 29-30, TSN, September 1, 1995). The three, all seated in the front seat, with Milanes driving, proceeded to Tanay to find Ferdinand to settle a small damage caused by Milanes' jeep to Ferdinand's tricycle (p. 23, id.).

When they reached Barangay Aldea, Tanay, the three got stuck in a traffic jam. While waiting for the traffic jam to ease up, Tibay sighted Ferdinand inside a tricycle (pp. 9-10, TSN, August 18, 1995). Ferdinand who also saw the jeep and its occupants, alighted from the tricycle, approached the jeep, grabbed Milanes out of the jeep and they grappled with each other (p. 11, id.).

While Milanes' head was under Ferdinand's armpit, appellant stabbed Milanes' back twice with a fan knife (pp. 11-12, TSN, September 1, 1995).

While the fight was going on, SPO1 Cura alighted from the jeep, took his gun and while he was about to make a warning shot, appellant stabbed him (p. 13, TSN, September 1, 1995). Thereafter, Ferdinand freed Milanes and helped Alexander in grappling for the possession of SPO1 Cura's gun. At this point, the gun suddenly fired hitting Rolito Salva's foot. Thereupon, Milanes went back to his jeep.

Later, Ferdinand got hold of SPO1 Cura's gun and shot Milanes who slumped behind the steering wheel of the jeep (pp. 15-16, id.). SPO1 Cura also went inside the jeep holding his wounded stomach (p. 18, id.).

Milanes and SPO1 Cura were brought to the Tanay Community Hospital by Rodney Tan. Milanes died while SPO1 Cura survived after receiving treatment at the Morong General Hospital (pp. 19-20, TSN, September 1, 1995).[5]

The version of the defense is slightly different, as revealed by the testimonies of appellant and his co-accused herein summarized as follows:

According to co-accused FERDINAND SALVA, on January 10, 1995, at about 7:00 A.M., he was driving his own tricycle with his brothers Rolito and Alexander on board. Upon reaching the San Ildefonso Lines terminal, they were caught in a traffic jam when Palmero Milanes alighted from a jeep and boxed Rolito. Ferdinand halted the tricycle and tried to stop Milanes from further boxing Rolito. Later, when he saw SPO1 Mariano Cura point a gun at Rolito, he parried the gun causing it to fire, and a bullet hit Rolito. Then, SPO1 Cura pointed the gun at him but he was able to hold Cura's wrist and the two of them grappled for the gun until both of them reached the driver's seat of the jeep. It was then that the gun fired, hitting somebody. The gun fell on the pavement. He

picked up the gun and ran towards Pililla where he was met by a soldier who fired warning shots. He voluntarily surrendered to the police.[6]

ROLITO SALVA essentially corroborated his brother's testimony. He added that during the struggle for the gun, it accidentally fired and a bullet hit Milanes. According to him, Ferdinand asked Alexander to bring him to the Tanay General Hospital where his right foot was treated. He recalled that he came to know that on January 9, 1995, the jeep of Milanes had suddenly stopped, causing damage to the front of Ferdinand's tricycle. He reported the incident to his brothers and they tried later to look for Milanes. Because of the injury Rolito suffered during the shooting incident on January 10, 1995, Rolito filed an attempted homicide case against SPO1 Cura, which is still pending before the MTC of Tanay, Rizal. [7]

According to appellant ALEXANDER SALVA, on January 10, 1995, at about 7:00 A.M., he was at Hulo, Pililla, Rizal on an errand to get money from his employer, Andy Poblete. He failed to get the money but while on his way to Tanay, his brother Ferdinand saw him and asked him to board the tricycle where his other brother Rolito and two passengers were riding. After the two passengers alighted, they continued on the way going to the tricycle terminal in Pililla, but they were caught in a traffic jam. At this juncture, he saw a man box Rolito. He also heard Ferdinand shout, "Hoy, hoy," while getting off the tricycle. He saw Ferdinand push away that man after Ferdinand had put his arm around the latter's neck. Another person (who turned out to be SPO1 Cura) arrived and hit his brother Rolito with a "yantok". Alexander, who had a limp, got off the tricycle, at the very moment Rolito was shot. Alexander said he had grabbed "something" (later identified as a fan knife) from the tricycle's tool kit and swung it against the boxer who turned out to be Palmero Milanes. According to Alexander, he did not know if he hit Milanes. He then saw someone [SPO1 Cura] poke a gun at Rolito, but his brother Ferdinand parried the gun. It fired and a bullet hit Rolito. He then heard Ferdinand shout, "May tama si Rolito, dalhin mo sa hospital." Thus, Alexander loaded Rolito in the tricycle and brought him to the Tanay General Hospital.[8]

Andreo Poblete, employer of Alexander; Florita Deligencia, a passenger of Rolito and Ferdinand; and Larry Anievas, a bystander, also testified to corroborate the story of the three accused.

On February 24, 1997, the trial court rendered a joint decision, thus:

WHEREFORE, in view of the foregoing, judgment is hereby rendered:

- In Criminal Case No. 1476-T:

- a) Convicting Alexander Salva of the crime of Murder and he is hereby sentenced to suffer the penalty of reclusion perpetua.
- b) Convicting Ferdinand Salva of the crime of homicide and he is hereby sentenced to suffer the indeterminate penalty of 8 years and 1 day of prision mayor as minimum to 15 years of reclusion temporal as maximum.
- c) Acquitting Rolito Salva of the crime charged.
- d) Both accused Alexander Salva and Ferdinand Salva are also ordered to pay jointly and severally to the heirs of Palmero Milanes the amount of P12,000.00 as actual damages, P100,000.00 as moral damages, and to pay the costs.

- In Criminal Case No. 1486-T:

- a) Convicting accused Alexander Salva of the crime of frustrated homicide and he is hereby sentenced to suffer the indeterminate penalty of 6 years of prision correccional as minimum to 10 years of prision mayor as maximum. The said accused is also ordered to pay SPO1 Mariano Cura the amount of P36,000.00 as actual damages, P50,000.00 as moral damages and P10,000.00 as attorney's fees.

b) Acquitting accused Ferdinand and Rolito Salva of the crime charged.

SO ORDERED.[9]

From this decision, Alexander and Ferdinand Salva filed a notice of appeal on March 3, 1997.[10] On December 4, 1998, Ferdinand Salva filed a motion to withdraw appeal,[11] which we granted in a resolution dated January 11, 1999.[12] We are now concerned only with Alexander Salva's appeal. [13]

In his brief, appellant Alexander Salva now contends that the lower court gravely erred in:

I

... CONVICTING ACCUSED ALEXANDER SALVA OF MURDER IN THE TOTAL ABSENCE OF PROOF THAT THE ACT OF THE LATTER CAUSED THE DEATH OF THE VICTIM OR THAT TREACHERY CHARACTERIZED THE STABBING OF THE VICTIM.

II

... CONVICTING FERDINAND SALVA OF HOMICIDE IN THE ABSENCE OF PROOF BEYOND REASONABLE DOUBT THAT SAID ACCUSED ACTUALLY FIRED THE GUN THAT HIT THE VICTIM.

III

... CONVICTING ACCUSED ALEXANDER SALVA OF FRUSTRATED HOMICIDE NOTWITHSTANDING UNREBUTTED PROOF THAT SAID ACCUSED RUSHED TO THE SCENE ONLY IN DEFENSE OF HIS YOUNGER BROTHER, ROLITO SALVA.

IV

... AWARDING MORAL DAMAGES BOTH TO THE FAMILY OF THE DECEASED AND SPO1 MARIANO CURA IN THE ABSENCE OF PROVEN CIRCUMSTANCES JUSTIFYING IMPOSITION OF THE SAME.[14]

Appellant Alexander Salva claims that he cannot be held liable for murder in Criminal Case No. 1476-T, because the stab wounds of Milanes were not the cause of his death.[15] Further, he protests the trial court's finding that his stabbing Milanes was attended by treachery. He insists that he stabbed Milanes in defense of his two (2) brothers. He further assails the trial court's ruling that his brother Ferdinand was liable for homicide because Milanes was accidentally hit by the gun while Ferdinand and SPO1 Cura were grappling for it. He also claims that the identity of the person who fired the shot that killed Milanes was not positively established.

In Criminal Case No. 1486-T, appellant assails his conviction for frustrated homicide for the stabbing of SPO1 Cura. Again, he claims he was merely acting in defense of his brothers. He adds, that his offense was only for physical injuries. He had no intention of killing Cura and it was Milanes who provoked them while it was SPO1 Cura who hit his brother Rolito with a "yantok".

In its brief for the appellee, the Office of the Solicitor General contends that the trial court did not err in its assessment of the credibility of the witnesses, and in giving full faith and credence to those of the prosecution. The OSG adds that the trial court did not overlook facts, which if considered, would alter the result of the case. The OSG prayed for the affirmance of the conviction of appellant and the penalties imposed.

In a criminal case, an appeal throws the whole case wide open for review. Issues whether raised or not by the parties may be resolved by the appellate court.[16] However, considering the assigned errors, we find that the issues for resolution here pertain to (1) the assessment of credibility of the witnesses; (2) the presence of treachery

as a qualifying circumstance, and of defense of relatives as a justifying circumstance; and (3) the propriety of conviction of the appellant for murder and for frustrated homicide, and of the corresponding sentences imposed.

Anent the first issue, the assessment of the credibility of witnesses by the trial court is generally accorded great respect.[17] In this case, the trial court found that appellant and his co-accused were positively and categorically identified as the offenders by the surviving victim, SPO1 Cura, and corroborated by eyewitnesses Figueroa and Tan. These witnesses testified that appellant and his brother Ferdinand grabbed the victim, Palmero Milanes, out of the jeepney by pulling his left hand.[18] Thereafter, appellant Alexander stabbed Milanes at the back using a “29” or a fan knife, while Ferdinand had his arms around Milanes’ neck.[19] The knife lacerated the victim’s lungs.[20] Thereupon, SPO1 Cura alighted from the jeep to pacify them, but appellant Alexander turned to Cura and also stabbed him in the stomach as the police officer was about to fire a warning shot.[21] Alexander and Ferdinand let go of Milanes and then assaulted Cura. But when the wounded Milanes had forced himself onto the driver’s seat of the jeepney and started its engine to escape, Ferdinand shot and hit him at the back.[22]

The trial court found that both appellant Alexander and his brother Ferdinand inflicted the wounds that caused the death of the deceased. The testimonial evidence and the physical evidence support said finding. The official report stated that the cause of death of Milanes was hemorrhage resulting from gunshot and stab wounds in the trunk of his body. [23]

Appellant’s claim that he acted in defense of relatives (brothers), in our view, cannot be sustained. To invoke this justifying circumstance successfully, there should be reasonable necessity for the action taken as well as the means used.[24] Here, the weapon used and the grave wounds inflicted on the victims negate the reasonableness of appellant’s action taken allegedly in defense of his brothers. Moreover, on this point, we find appellant’s testimony on record to be unconvincing, confused, and evasive. Hence there is no sufficient proof of defense of relatives which, like self-defense, must be proved positively and convincingly.

Neither does appellant’s contention, that it was uncertain whether it was SPO1 Cura or Ferdinand Salva who pulled the trigger, have any merit. SPO1 Cura and Elmer Figueroa categorically testified that it was Ferdinand who shot Milanes while the latter was trying to start the engine of his jeep in order to escape.[25]

We now come to the nature of the offense committed by appellant and the propriety of his conviction for murder. After a careful consideration of the evidence on record, we are convinced that the crime committed by Alexander Salva is homicide only, not murder qualified by treachery.[26]

Treachery (alevosia) is committed when two conditions concur, namely: (1) that the means, methods, and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[27] In this case, attendant circumstances including the sequence of events, as found by trial court and as shown by the records, rule out the presence of the first element of alevosia. True, appellant stabbed Milanes at the back while Ferdinand encircled his arm in a tight grip around the victim’s neck. But recall, however, that Milanes was together with an armed policeman (SPO1 Cura), Rodney Tan, and other passengers.[28] There were also on-lookers. Note likewise that the incident happened at past 7 o’clock A.M.[29] during a traffic jam.[30] The presence of Cura (albeit in civilian attire) and his companions who came to Milanes’ rescue shows that the victim was not completely helpless. [31]

Neither is there sufficient evidence to establish that appellant consciously adopted the mode of attack. The records reveal that (1) a day earlier there was a mishap involving Milanes’ jeepney and Ferdinand Salva’s tricycle; and (2) a verbal confrontation with curses had ensued between appellant’s brother Ferdinand and Milanes. This was before the adversaries found themselves in a traffic jam and the Salvass yanked Milanes out of the jeepney.[33]

Treachery is not present where the victim, before being attacked, had a heated argument with one of the malefactors which must have placed him on guard, aside from standing face to face with them, so that the initial assault was not sudden or unforeseen.[34] Even if the aggression was from behind, it is not treacherous if preceded by a heated argument.[35]

Finally, as SPO1 Cura himself admitted on cross-examination, the meeting between the two groups was accidental, while the two vehicles where they were on board were not moving due to the heavy traffic. It was only upon sighting Milanes, after 10 to 15 minutes while on a traffic standstill, did appellant and co-accused assault Milanes.[36] Treachery cannot be considered when the meeting between the victim and the accused was only accidental.[37]

In sum, we agree with appellant that the killing of Milanes was not characterized by treachery, hence it was only homicide and not murder. Appellant's conviction for frustrated homicide for the stabbing of SPO1 Cura, however, must be sustained. Appellant's intent to kill as earlier discussed is reflected by the weapon he used; and the nature and position of the wounds inflicted.[38] Dr. Viado testified that SPO1 Cura suffered "thru and thru laceration of the gall bladder, stomach and the jejunum" as a result of the stabbing by appellant.[39] Were it not for timely medical attention, SPO1 Cura would have died from said wounds.

Coming now to the propriety of the sentences imposed on appellant. Without any mitigating or aggravating circumstance, the penalty for homicide is reclusion temporal, imposed in its medium period. Applying the Indeterminate Sentence Law, appellant's sentence should be prision mayor to reclusion temporal in its medium period, for the death of Palmero Milanes. The penalty for frustrated homicide, which is one degree lower, is prision mayor,[40] imposed in its medium period. Again applying the Indeterminate Sentence Law, appellant should be sentenced to prision correccional to prision mayor in its medium period,[41] for the frustrated homicide in the stabbing of SPO1 Cura.

On the award of damages. The award of P100,000 as moral damages in Criminal Case No. 1476-T does not appear to be amply supported by the evidence on record. Moral damages are not awarded to punish the defendant but to compensate the heirs of the victim. Pursuant to current jurisprudence, the award of moral damages should only be P50,000. But civil indemnity in the amount of P50,000 for the death of Palmero Milanes should likewise be awarded to his heirs. The award of P12,000 for actual damages[42] is supported by the evidence and should be affirmed. In Criminal Case No. 1486-T, for frustrated homicide, the award of P50,000 as moral damages to SPO1 MARIANO CURA is properly reduced to P20,000.[43] But the award of P36,000 as actual damages should be increased to P46,770.65 in accordance with the evidence presented.[44] Finally, the award of P10,000 for attorney's fees is proper and ought to be affirmed.

WHEREFORE, the decision appealed from is AFFIRMED with MODIFICATIONS. In Criminal Case No. 1476-T, appellant ALEXANDER SALVA is found guilty of homicide. He is sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum. He is further ordered to pay jointly and severally with his co-accused Ferdinand Salva, the heirs of PALMERO L. MILANES, the amount of P50,000 as civil indemnity and P12,000 as actual damages but only P50,000 as moral damages.

In Criminal Case No. 1486-T, appellant ALEXANDER SALVA is found guilty of frustrated homicide, and he is sentenced to an indeterminate prison term of one (1) year and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor medium, as maximum.[45] He is also ordered to pay SPO1 MARIANO CURA the amount of P46,770.65 as actual damages, P20,000 as moral damages and P10,000 as attorney's fees.

SO ORDERED.

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

Buena, J., on official leave.

[1] Rollo, pp. 26-32.

[2] Records, Crim. Case No. 1476-T, p. 1.

[3] Records, Crim. Case No. 1486-T, p. 1.

[4] Rollo, p. 27.

[5] Rollo, pp. 124-127.

[6]] Id. at 28.

[7] Id. at 28-29.

[8] Id. at 29-30.

[9] Rollo, p. 32.

[10] Id. at 33.

[11] Id. at 47.

[12] Id. at 49-50.

[13] Except as Section 11, Rule 122 of the Rules of Criminal Procedure may be applicable, in favor of one who did not appeal.

[14] Id. at 62.

[15] Rollo, p. 63.

[16] People v. CA, G.R. No. 128986, 308 SCRA 687, 703 (1999).

[17] People v. Taguba, G.R. Nos. 112792-93, 342 SCRA 199, 208 (2000).

[18] TSN, September 1, 1995, p. 8.

[19] Id. at 10-11.

[20] TSN, February 2, 1996, p. 10.

[21] Id. at 13.

[22] Id. at 14.

[23] Records, Crim. Case No. 1476-T, p. 15.

[24] People vs. Angeles, G.R. No. 109660, 275 SCRA 19, 32 (1997).

[25] TSN, September 1, 1995, p. 14.

[26] Article 248 of the Revised Penal Code provides:

Any person who not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and

shall be punished by reclusion perpetua in its maximum period to death, if committed with any of the following circumstances:

- With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or means or persons to insure or afford impunity.

x x x

[27] People vs. Sabalones, G.R. No. 123485, 294 SCRA 751, 799 (1998); People vs. Linamin, et al, G.R. No. 128629, February 22, 2001, p.18.

[28] TSN, November 22, 1995, p. 22; TSN, December 1, 1995, p.16.

[29] TSN, November 22, 1995, p. 3.

[30] TSN, September 1, 1995, p. 6.

[31] People v. Velaga, Jr., G.R. No. 87202, 199 SCRA 518, 523 (1991).

[32] TSN, November 22, 1995, p. 8.

[33] TSN, September 1, 1995, p. 8.

[34] People vs. Macalino, G.R. No. 79387, 177 SCRA 185, 194 (1989).

[35] People vs. Balderama, G.R. Nos. 89597-98, 226 SCRA 537, 551 (1993).

[36] TSN, September 1, 1995, p. 40.

[37] People v. Velaga, Jr., G.R. No. 87202, 199 SCRA 518, 523 (1991).

[38] People vs. Honra, Jr., G.R. No. 136012-16, 341 SCRA 110, 132 (2000).

[39] TSN, October 23, 1995, pp. 5, 8-9.

[40] Under Article 50 of the Revised Penal Code, the penalty for a frustrated crime is one degree lower than that prescribed by law.

[41] People v. Teodoro, G.R. No. 111194, 280 SCRA 384, 399 (1997).

[42] Computed as P600 (hospital expense) and P11,000 (funeral expenses), both with receipts. TSN, March 18, 1996, p. 5.

[43] People v. Teodoro, supra note 44.

[44] Records, p. 206; Exhibits “J” to “J-30”, pp. 98-128.

[45] Rabor vs. People, G.R. No. 140344, 338 SCRA 381, 391 (2000).

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