

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. PAUL TAGANA, RUEL BIBOHAN, AND RODOLFO LINANGA, APPELLANTS,

G.R. No. 133027. March 04, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On appeal is the decision[1] of the Regional Trial Court (Branch 25) of Cagayan de Oro City finding Paul Tagana, Rodolfo Linanga alias Luis Linanga, and Ruel Bibohan guilty of murder and sentencing each of them to suffer reclusion perpetua, and ordering them to pay, jointly and severally, the heirs of Celestino Buoy the amounts of P50,000.00 as moral damages and P50,000.00 as civil indemnity.

Paul Tagana surrendered to the police in Talakag, Bukidnon a day after the incident.[2]

An Amended Information was filed against appellants on October 31, 1995, which reads as follows:

The undersigned Asst. City Prosecutor accuses PAUL TAGANA (Detained) RUEL BIBOHAN, CONRADO TAGANA and RODOLFO (LUIS) LINANGA, of the crime of MURDER committed as follows: That on or about September 30, 1995 at more or less 6:00 o'clock in the evening at Upper Brgy. Tignapoloan, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill conspiring, confederating together and mutually helping one another and with treachery, evident premeditation, abuse of superior strength, all being then armed with bladed weapons, which they were conveniently provided, did then and there willfully, unlawfully and feloniously attack, assault and harm Celestino Buoy, the offended party, who was unarmed, and drunk, by stabbing him several times hitting the latter in different parts of his body and/or inflicting on his person several mortal wounds which are the direct/immediate cause of his instantaneous death.

Contrary to and in violation of Article 248 in relation to Article 14, all of the Revised Penal Code.”[3]

Upon arraignment on November 14, 1995, Paul Tagana entered a plea of not guilty.[4]

Ruel Bibohan and Rodolfo Linanga were subsequently arrested and upon arraignment on December 11, 1995, they pleaded not guilty to the crime charged against them.[5]

Conrado Tagana remains at large.

The prosecution through the testimonies of victim Celestino Buoy’s wife, Helen Buoy; his mother, Marcita Buoy; and brother-in-law, Henry Valencia, sought to establish the following facts:

In the afternoon of September 30, 1995, at around 2:00 p.m., Celestino, together with his mother Marcita, went to the barangay hall of Tignapoloan to watch a basketball game that was part of the celebration of the town’s Agro Fair. Appellants Ruel Bibohan and Rodolfo Linanga approached Celestino and invited him to drink alcohol with them.[6] Appellant Paul Tagana and his co-accused uncle, Conrado Tagana, were already waiting at a table at the barangay hall. The five of them drank Tanduay until around 6:00 p.m.. Then they went to the store of Adonis Salas and ordered another bottle of liquor. Marcita followed them and watched her son drink with the four

accused.[7] At around this time, Helen arrived to fetch her husband who was already very drunk and could no longer walk by himself.[8] After they finished drinking, Ruel, Conrado and Paul walked towards the direction of the highway while Celestino, Rodolfo, Helen and Marcita were left at the store. Rodolfo put his left arm around the shoulder of Celestino and led him to the direction where the three were waiting at the road. Rodolfo then stabbed Celestino with his right hand hitting the latter at the right part of his chest just below his breast. The three others followed suit and stabbed Celestino with their knives then dumped the body of Celestino in the canal and ran away. Helen and Marcita were only two meters away from Celestino when the stabbing took place. They shouted for help and Henry Velencia responded. Helen, Marcita and Henry pulled Celestino from the canal.[9]

Dr. Amado Piit, who conducted the autopsy on the body of Celestino, certified that the cause of death of Celestino Buoy was “shock due to severe hemothorax and hemoperitoneum due to multiple stab wounds over the anterior and posterior chest wall”.[10] Dr. Piit testified that the victim had seven stab wounds and ten incised wounds; and that he is not sure if the wounds were caused by one or more instruments.[11] The most severe was the stab wound measuring 2.5 cms. located at the right side of the anterior chest a little bit above the right nipple which perforated the upper wall of the right lung, followed by the wound measuring 3 cms. located below the right nipple which penetrated the liver. The third most severe is the wound measuring 1.5 cms. located at the left side of the back near the spine which punctured the lung. Celestino also sustained incised wounds at the left side of his chest and at the left side of his back as well as stab wounds at the lower anterior right arm, at the top of the right shoulder, just below the nose and above the lips, and over the left cheek. In his opinion, the wounds could have been inflicted by more than one person.[12]

For the defense, appellants Paul Tagana and Rodolfo Linanga, as well as Dominga Tagana, wife of accused Conrado Tagana, testified to prove that the death of Celestino Buoy was the sole responsibility of Paul Tagana who acted in self-defense, thus:

Rodolfo Linanga, Ruel Bibohan, Conrado Tagana and Paul Tagana were in the store of Adonis Salas in the afternoon of September 30, 1995, when Celestino arrived and quickly drank all the beer.[13] Celestino then challenged the group and said, “Who is tough here!”[14] To avoid trouble, Rodolfo, Ruel and Conrado left the store together with Paul who followed behind because Paul had a limp and had difficulty walking. Celestino followed Paul and upon catching up with him, Celestino kicked Paul twice on the chest.[15] Upon seeing the incident, Rodolfo, Ruel and Conrado ran away.[16] Paul was able to take hold of Celestino’s leg and they rolled on the ground. Paul pulled out a knife and stabbed Celestino.[17] Celestino then ran towards the canal and Paul chased him. Upon catching up with Celestino, Paul stabbed him several times.[18]

The defense also presented Aurelio Española who testified that he is not a relative of any of the accused; and that while he was on his way home to San Isidro on September 30, 1995, he saw two persons in a stabbing incident. He identified Paul Tagana as one of the two and averred that there were no other persons in the vicinity at the time.[19]

On July 25, 1997, the trial court rendered a decision and upheld the evidence for the prosecution, as follows:

This Court finds the testimony of the prosecution witnesses Marcita Buoy, Helen Buoy, Henry Valencia credible, there being no motive to perjure or fabricate nor they have any evil intent to implicate all the accused in charging them with a heinous crime of Murder. Their testimonies were corroborated by the findings of the doctor, Dr. Amado Piit.

The prosecution was able to prove by direct, positive, clear and convincing evidence that the four accused Paul Tagana, Rodolfo Linanga, Ruel Bibuhan and Conrado Tagana who is still at large conspired with each other, committed the crime of murder on September 30, 1995, at 6:00 o’clock in the afternoon at Upper Barangay Tignapoloan, Cagayan de Oro City, with treachery and abuse of superior strength, all accused were armed with

knives, simultaneously and successively stabbed Celestino Bouy who was drunk and unarmed on the different parts of Celestino Bouy's body causing his death.

The evidence shows that the four accused except for Ruel Bibuhan who is a very close friend of the network relationship of all the accused; accused Conrado Tagana and Paul Tagana are brothers and Conrado Tagana is married to Dominga Linanga, sister of accused Rodolfo Linanga alias Luis Linanga.

The four accused all come from San Isidro, Talakag, Bukidnon, originally although Conrado Tagana and Paul Tagana transferred residence at Impakibil, Tignapoloan, Cagayan de Oro City.

...

The four accused Paul Tagana, Conrado Tagana, Rodolfo Linanga and Ruel Bibuhan were drinking liquor at the Agro-Fair on September 30, 1995 from two o'clock in the afternoon to four o'clock in the afternoon, together with Celestino Bouy whom they invited to drink liquor.

The same four accused transferred drinking at the store of Adonis Salac bringing along Celestino Bouy.

The three accused Paul Tagana, Conrado Tagana and Ruel Bibuhan left the store ahead and waited for accused Rodolfo Linanga who brought Celestino Bouy at the highway where the four accused simultaneously stabbed Celestino Bouy, using knives, on the different parts of his body, causing his death.

All the four accused headed for the direction of San Isidro, Talakag, Bukidnon, except for Conrado Tagana who remained at large until today.

These circumstances prior to, during and right after the stabbing of the victim indicate their common intention to commit the crime of murder on the person of Celestino Buoy who is a barrio pest or free loader who drinks their wine without spending any cent.

Conspiracy having been adequately shown, all the accused are answerable as co-principal regardless of the degree of their participation of each individual conspirator as the applicable rule is that act of one conspirator is the act of all of them

This Court finds that the killing of Celestino Bouy was qualified by treachery. Celestino Bouy was killed after the four accused made him drunk and unable to defend himself being unarmed from the well planned or pre-arranged mode of attack by Paul Tagana, Conrado Tagana, Ruel Bibuhan who waited for their victim at the highway or road, the victim Celestino Bouy being brought by Rodolfo Linanga with his arm placed on the shoulders of the victim Celestino Bouy who placed also his arm around the shoulder of Rodolfo Linanga on an arm-to-arm basis or position because the victim could hardly stand and kept on staggering and upon reaching the highway the four accused successively stabbed to death the victim Celestino Bouy.

This Court finds these circumstances are manifestly indicative of the presence of the condition under which the qualifying circumstance of treachery and abuse of superior strength may be appreciated that is the employment of means of execution or mode of attack deliberately and consciously adopted that gave the person attacked no opportunity to defend himself or to retaliate.

This Court rejects the theory of the defense that the killing was done only by accused Paul Tagana, a limp who acted in self-defense as this is belied by the prosecution witnesses' categorical, clear and positive testimonies who have no motive to fabricate the theory of the prosecution.

This Court does not find the testimonies of the defense witnesses credible. On the contrary, the testimonies of the defense witnesses are unreliable and not true from the contradictions supplied by them.

Accused Paul Tagana's testimony that he stabbed Celestino Bouy with the use of a stolen knife after the latter boxed and kicked him without any reason or provocation and after he parried the first blow and kick of a

bigger person by holding his leg up in the presence of the companions of the accused who were merely looking at the victim who could barely stand and assaulted him is rather not credible.

This Court finds that the victim being unarmed and stone drunk being unable to stand without support would be unable to deliver a fist or kick or even if he still has strength to launch an attack against the four accused.

This Court finds that the theory of self-defense of the accused is belied also by the nature number and location of the stab wounds of the victim as found by Dr. Amado Piit who conducted the autopsy. He found that some of the fatal wounds were launched at the back of the victim, on the arm, chest and nose, indicating that more than one assailant perpetrated the felonious act. The findings of the examining physician is likewise corroborated with the testimony of Marcita Bouy, Helen Bouy and Henry Valencia that the four accused ganged up the victim by stabbing him on the different parts of the body and dumped his body in the canal.[20]

the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, this Court finds all the three accused PAUL TAGANA, RODOLFO LINANGA alias Luis Linanga and RUEL BIBUHAN,[21] in conspiracy with one another, GUILTY beyond reasonable doubt of the crime of MURDER as principals by direct participation, qualified by treachery which absorbs abuse of superior strength, and applying Article 63 of the Revised Penal Code, as amended by Republic Act No. 7659, and hereby sentences the three accused PAUL TAGANA, RODOLFO LINANGA alias LUIS LINANGA and RUEL BIBOHAN to each suffer an imprisonment of RECLUSION PERPETUA, with the accessory penalty and for all the accused to jointly and severally indemnify the surviving spouse and children the sum of Fifty Thousand (P50,000.00) Pesos; and to pay Fifty Thousand (P50,000.00) Pesos as moral damages.

Promulgation is set on August 29, 1997, at 8:30 o'clock in the morning.

SO ORDERED.[22]

Hence, the present appeal.

In their Brief, appellants Paul Tagana and Ruel Bibohan raise the following assignment of error:

THE TRIAL COURT ERRED IN GIVING MORE WEIGHT TO THE TESTIMONIES OF THE PROSECUTION'S ALLEGED EYE WITNESSES, HELEN BUOY, HENRY VALENCIA AND MARCITA BUOY, THAN THE DEFENSE WITNESSES, AURELIO ESPAÑOLA AND PAUL TAGANA.[23]

They argue that: the prosecution's version of the case is unbelievable and its witnesses are biased since they are all close relatives of the victim; it is unlikely that Marcita Buoy watched her son drink liquor from 2:00 to 6:00 p.m. since the victim already had a family of his own and lived in a separate house; Henry Valencia could not have been at the scene of the crime because if he were, he would have defended his brother-in-law from his attackers; it is more probable that Helen and Marcita Buoy were not around during the stabbing incident and were informed only later that Celestino was in the road canal bleeding from stab wounds; after they found the victim severely wounded, they shouted for help and that is when Henry responded and helped the two women pull the victim from the canal.[24]

Appellant Paul Tagana insists that he could not have conspired with his co-appellants to kill Celestino because he watched the basketball game and the cockfights that afternoon by himself and only met the three when he was about to go home at around 4 o'clock in the afternoon; that he and his companions decided to stop at the store of Adonis Salas and ordered beer. At that point, Celestino Buoy, a known toughie in the barangay arrived and without being invited, drank all the beer and challenged the bravery of the four accused. Wanting to avoid trouble, the four left the store. [25]

Appellants Paul Tagana and Ruel Bibohan argue that Paul's admission should be given weight, being adverse to his interest and corroborated by the testimony of Aurelio Española, an unbiased and impartial witness, he not being a relative or friend of any of the accused.[26] Both further contend that the multiple stab wounds sustained by the victim do not negate the possibility of having only one bladed weapon used, as testified by the prosecution's expert witness, Dr. Amado Piit.[27]

In a separate Brief, Rodolfo Linanga assigns the following errors of the trial court:

I

THE LOWER COURT ERRED IN INCLUDING IN ITS FINDINGS THAT ACCUSED-APPELLANT RODOLFO (LUIS) LINANGA ALONG WITH HIS CO-ACCUSED IS LIKEWISE LIABLE FOR MURDER (SIC)

II

THE LOWER COURT ERRED IN FINDING THE EXISTENCE OF TREACHERY AND CONSPIRACY AND THAT ACCUSED-APPELLANT LINANGA WAS A PART OF THE SAID CONSPIRACY.[28]

Adding to the claims of his co-appellants, appellant Linanga argues that: the trial court committed grave error in rendering a uniform judgment of conviction for all the appellants; it erred in finding that conspiracy existed since mere presence of all the appellants at the scene of the crime does not manifest unity of purpose and action; and no conspiracy can be agreed upon since the wife and the mother of the victim were nearby, looking after him because he was already drunk hours before the stabbing incident.[29]

Appellant Linanga further claims that the testimonies of the defense witness were clear, straightforward and more in accord with ordinary human experience than the prosecution's theory; and that at the very least, the defense effectively showed reasonable doubt which should be appreciated in their favor.[30]

For the State, the Solicitor General counters: the testimony of the prosecution witnesses are worthy of full faith and belief; relationship per se does not give rise to a presumption of bias nor does it ipso facto impair the credibility of a witness; appellants have not shown any improper motive on the part of the prosecution witnesses to testify against them; the prosecution witnesses testified in categorical, spontaneous and frank manner; the prosecution witnesses positively identified appellants as the authors of the injuries sustained by the victim;[31] conspiracy has been established independently and beyond reasonable doubt; the conduct of the appellants before, during and after the commission of the crime may be considered to show conspiracy;[32] treachery is present in this case since Celestino was made drunk by the appellants and was unarmed and unprepared when the appellants stabbed him.[33]

The Solicitor General further contends that the theory of self-defense by appellant Paul Tagana cannot be appreciated since the victim was unarmed and very drunk to launch an attack against the appellants. The nature, number and the location of the stab wounds of the victim belie the theory of self-defense.[34]

In their Reply, the three appellants reiterate their version of what happened and stand firm in their claim that Paul Tagana merely defended himself from Celestino Buoy. They maintain that it is improbable that Helen and Marcito Buoy were present when the stabbing occurred since their testimonies were not corroborated by a single disinterested witness.[35]

The following issues need to be resolved: (1) whether or not Paul Tagana acted in self-defense and therefore free from criminal liability; and (2) whether or not the trial court correctly found that the appellants are guilty of murder beyond reasonable doubt and that they conspired to commit the same.

First issue. Whether or not Paul Tagana acted in self-defense.

It is settled that where an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence. Otherwise, conviction would follow from his admission that he killed the victim. Indeed, in invoking self-defense, the burden of evidence is shifted and the person claiming self-defense must rely on the strength of his own evidence and not on the weakness of the prosecution.[36]

To be free from liability, the person claiming self-defense must show by sufficient, satisfactory and convincing evidence that: (1) the victim committed unlawful aggression amounting to actual or imminent threat to the life and limb of the person claiming self-defense; (2) there was reasonable necessity in the means employed to prevent or repel the unlawful aggression; and (3) there was lack of sufficient provocation on the part of the person claiming self-defense or, at least, that any provocation executed by the person claiming self-defense was not the proximate and immediate cause of the victim's aggression.[37]

Appellant Paul Tagana claims that Celestino Buoy kicked him twice on the chest which prompted him to stab the latter. This contention is belied by the testimonies of the prosecution witnesses that Celestino at the time was already very drunk and could no longer walk by himself.

But even granting arguendo that Celestino did kick Paul Tagana on the chest, that by itself cannot be considered sufficient to exculpate him from criminal liability. For self-defense to prosper, it is most crucial that unlawful aggression was committed by the victim against the accused. Without it, self-defense will not have a leg to stand on and will not be appreciated even if the other elements are present.[38] Unlawful aggression refers to an attack amounting to actual or imminent threat to the life and limb of the person claiming self-defense and not just a threatening or intimidating attitude.[39] Mere kicking on the chest cannot be considered as an actual or imminent threat to the life and limb of Paul Tagana, specially considering the testimony of the latter that Celestino Buoy was not armed at the time.[40]

Moreover, appellant Paul Tagana testified that after inflicting one stab wound on Celestino, the latter ran away but he still chased Celestino and upon catching up with him, he stabbed him several times. At this point, Paul Tagana could no longer invoke self-defense in killing the victim because at that moment when Celestino ran away, unlawful aggression on the part of Celestino had already ceased. It is settled that when unlawful aggression ceases, the defender no longer has any right to kill or wound the former aggressor, otherwise retaliation and not self-defense is committed.[41]

Appellants posit that since Aurelio Española is not related to anyone, his testimony is credible and should be believed by the trial court. The Court is not persuaded. A review of his testimony shows that it is vague, evasive and highly questionable. He testified that he only saw two persons involved in the stabbing incident and there were no other persons in the vicinity at that time.[42] This is belied by the testimony of defense witness Dominga Tagana that she and Helen were at the road when the stabbing incident took place.[43] Española further testified that he saw Paul stab the victim only once[44] but the medical report showed that the victim died of multiple stab wounds.[45] On cross-examination, Española admitted that he does not know the value of an oath.[46]

Appellants also cite the testimony of Dr. Piit in which he admitted on cross-examination that it is possible that all the wounds sustained by the victim were inflicted by one weapon only.[47] However, in the same testimony, Dr. Piit likewise asserted that the number of wounds may be inflicted by more than one person. Granting that there is that possibility, that the wounds were inflicted by one weapon only, such is not sufficient to negate the version that is more consistent with the testimony of the prosecution eyewitnesses, i.e., that the appellants simultaneously stabbed the victim.

Moreover, in the absence of a cogent reason to disturb the findings of the trial court, the Court accords higher respect to the assessment of the trial court as to the credibility of witnesses for it is the trial court that observed the demeanor of the witnesses. As the Court held in *People vs. Balgos*:

... we note the well-established rule that the trial court's evaluation of the testimonies of witnesses is given great respect by the appellate court in the absence of proof that it was arrived at capriciously or that the trial court disregarded material facts which might affect the outcome of the case. The rationale behind this rule is that the credibility of a witness can best be determined by the trial court since it has the opportunity to observe the candor and demeanor of the witnesses.[48]

For the above reasons, we hold that the trial court correctly ruled that appellants failed to prove self-defense on the part of appellant Paul.

Second issue. Whether or not the trial court correctly found that appellants are guilty of murder beyond reasonable doubt and that they conspired to commit the same.

Appellants assail the reliance of the trial court on the testimonies of the prosecution witnesses as well as in ruling that treachery and conspiracy are present in the case at bar.

In a long line of cases, the Court has pronounced that the credibility of witnesses as assessed by the trial court will generally not be disturbed.[49] This is because the trial court enjoys the unique position of having observed the elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied appellate courts.[50] As the Court fully explained in *People vs. Lachica*: [51]

Only the trial judge can observe the furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath – all of which are useful aids for an accurate determination of a witness' honesty and sincerity.

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... [T]he trial judge is able to detect that sometimes thin line between fact and prevarication that will determine the guilt and innocence of the accused. That line may not be discernible from a mere reading of the impersonal record by the reviewing court. The record will not reveal those tell-tale signs that will affirm the truth or expose the contrivance, like the angry flush of an insistent 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 record will not show if the eyes have darted in evasion, or looked down in confession, or gazed steadily with a serenity that has nothing to distort or conceal. The record will not show if tears were shed in anger, or in shame, or in remembered pain, or in feigned innocence. Only the judge trying the case can see all these and on the basis of his observations arrive at an informed and reasoned verdict.[52]

An exception to the general rule is when the trial court ignored, misconstrued or misinterpreted facts and circumstances of substance which, if considered, would alter the outcome of the case.[53]

After reviewing the records of this case, we find no reason to depart from the general rule. The prosecution witnesses, who were straightforward and consistent in their narration, positively identified Rodolfo Linanga, Conrado Tagana, Paul Tagana and Ruel Bibohan as the persons who inflicted multiple stab wounds on Celestino Buoy.[54]

Appellants' claim that Marcita and Helen Buoy were not at the scene of the crime cannot be given credence. Defense witness Dominga Tagana herself admitted that Marcita was at the store and Helen was on the road where the stabbing incident took place, thus:

Q:

By the way, was Marcita Buoy present when you were at the store?

A:

Yes, sir.

Q:

When she went to the store of Adonis Salas, you were also at the store of Adonis Salas?

A:

Yes, sir.

.....

Q:

When did Helen Buoy arrive at the store of Adonis Salas?

A:

When Helen Buoy arrived, we were already at the road.[55]

The store was only fifteen meters away from the road where the incident took place.[56]

The fact that Marcita and Helen are related to the victim also does not lessen their credibility. The weight of the testimony of witnesses is not impaired nor in anyway affected by their relationship to the victim when there is no showing of improper motives on their part.[57] The relationship of a witness to the victim, far from rendering his testimony biased, would even render it more credible as it would be unnatural for a relative who is interested in vindicating the crime to accuse somebody other than the real culprit.[58] Moreover, as relatives of the victim, they would naturally have a knack for remembering the face of the assailants for they, more than anybody else would be concerned with seeking justice for the victim and bringing the malefactors to face the law.[59]

Appellants failed to impute or establish any ill motive on the part of the witnesses of the prosecution. They merely relied on the relationship of said witnesses to the victim as basis for alleging that they are biased. It is settled however that where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[60]

The Court is not persuaded by appellants' specious argument that prosecution witness Henry Valencia could not have been at the scene of the crime for if he were, he would have tried to defend the victim; that his not having done so means that he was not at the scene when the stabbing took place.[61] The Court is not persuaded to adopt this view. This Court has consistently noted in earlier cases that no standard form of behavioral response could be expected from anyone, when confronted with a strange, startling or frightful occurrence. Fear has been known to render people immobile and helpless particularly in life and death situations. It is also a natural occurrence that a person faced with such an overwhelming opposition would sufficiently be cowed by fear or at least compelled to act in a manner aimed at self-preservation.[62]

Henry Valencia adequately explained his behavior at the time.

Q:

Why is it that you did not go to the exact place where Helen Buoy was shouting?

A:

I did not go to the exact place where Helen Buoy was shouting because I was afraid because I saw that the husband of Helen Buoy was stabbed by the accused.

Q:

When you say that you were afraid, did you go near Celestino Buoy because the accused stabbed him, then to whom are you referring to the accused?

A:

I am referring to Luis Linanga, Conrado Tagana, Paul Tagana and Ruel Bibuhan.

Q:

You mean to say also that these four accused stabbed Celestino Buoy during that time?

A:

Yes.

Q:

Can you describe to this court the instruments that were used by these four accused in stabbing Celestino Buoy?

A:

Yes, sir.

Q:

Please describe them.

A:

They used knives.[63]

Appellants vehemently deny having committed the crime. Jurisprudence however holds that denial, like alibi, is inherently weak and crumbles in the light of positive declarations of truthful witnesses who testified on affirmative matters that appellants were at the scene of the crime and were the victim's assailants.[64] To merit credibility, it must be buttressed by strong evidence of non-culpability.[65] Also, being a negative defense, denial must be substantiated by clear and convincing evidence, otherwise, it would merit no weight in law and cannot be given greater evidentiary value of the testimony of credible witnesses who testified on affirmative matters.[66]

As between categorical testimonies that ring of truth on one hand and a bare denial on the other, this Court has strongly ruled that the former must prevail.[67] Indeed, positive identification of the appellants when categorical and consistent and without any ill-motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[68]

Furthermore, appellant Paul Tagana testified that when he was kicked by Celestino Buoy, his companions ran away.[69] Not only is this testimony highly incredible, it is also inconsistent with the testimony of his co-appellant Rodolfo Linanga who testified that he did not notice anything unusual happen after he and Ruel Bibohan left the store to avoid trouble with Celestino who at the time was already challenging the group.[70]

The Court finds appellant Linanga's claim that the trial court erroneously held that conspiracy existed in this case to be without merit. Conspiracy exists among perpetrators of a crime when there is unity in purpose and intention in the commission of a crime. To establish conspiracy, direct evidence of a previous plan or agreement to commit assault is not required, as it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack.[71] Indeed, conspiracy may be inferred when by their acts, two or more persons proceed towards the accomplishment of the same felonious objective, with each doing his act, so that their acts though seemingly independent were in fact connected, showing a closeness of former association and concurrence of sentiment.[72]

In this case, it has been established that Rodolfo Linanga led Celestino, who was already drunk, to the direction of the road where the three others were waiting. He waited until he was near the other accused before delivering the first blow, after which, the rest immediately followed and they simultaneously stabbed the victim on different parts of his body.[73] Plainly, there was unity of purpose and intent in committing the felonious deed.

Having established conspiracy, the trial court correctly convicted the appellants for the crime of murder as it is no longer necessary to determine who among the malefactors rendered the fatal blow.[74] As further elucidated by the Court in *People vs. Natividad*[75], to wit:

To hold one as a co-principal by reason of conspiracy, it must be shown that he performed an overt act in pursuance of or furtherance of the conspiracy, although the acts performed might have been distinct and separate. This overt act may consist of active participation in the actual commission of the crime itself, or it may consist of moral assistance to his co-conspirators by being present at the time of the commission of the crime, or by exerting a moral ascendancy over the other co-conspirators by moving them to execute or implement the criminal plan. Once conspiracy is established, all the conspirators are answerable as co-principals regardless of their degree of participation, for in the contemplation of the law, the act of one becomes the act of all. It matters not who among the accused inflicted the fatal blow to the victim.[76] (Emphasis supplied).

The trial court did not err in appreciating the presence of treachery in the fatal stabbing of Celestino.

Treachery is present when these conditions concur: (1) the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and (2) such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[77] Like other circumstances which qualify criminal responsibility, it cannot rest on mere conjecture but must be proved as indubitably as the crime itself. It is not sufficient that the attack was sudden and unexpected. It must also be shown that the aggressor consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.[78]

In this case, it was established that Ruel, Conrado and Paul went ahead and waited for Rodolfo and Celestino by the road. Conrado at this point was already very drunk and needed assistance in walking. Upon reaching the place

where the three were waiting, Rodolfo stabbed Celestino and the others followed suit. Clearly, the manner by which the killing was executed and the viciousness of the assault show that it was deliberately adopted to ensure the accomplishment of the crime without risk to themselves.

Since treachery attended the killing of Celestino Buoy, the trial court correctly considered abuse of superior strength, which is also alleged in the Information, as already absorbed by said circumstance.[79]

The facts also show that the crime was committed by a band since more than three armed persons took part in its commission.[80] However, we cannot appreciate such circumstance against the appellants for failure of the prosecution to state the same in the Information as required by Sec. 8, Rule 110 of the 2000 Rules on Criminal Procedure. Since the present rule is favorable to the appellants, it shall be given retroactive effect.[81]

Evident premeditation also cannot be appreciated in this case. The elements of evident premeditation are as follows: (1) the time when the accused decided to commit the crime; (2) an overt act manifestly indicating that he has clung to his determination; and (3) sufficient lapse of time between decision and execution to allow the accused to reflect upon the consequences of his act. The essence of this circumstance is that the execution of the criminal act was preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. To be appreciated, it is indispensable to show how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[82] It must be based on external facts which are evident and not merely suspected which indicate deliberate planning.[83] Considering the paucity of evidence to this effect, evident premeditation cannot be appreciated in the present case.

Appellant Ruel Bibohan had sent a handwritten letter to the Presidential Action Center seeking help to reopen his case which was duly indorsed to the Court. He claims that he was never asked to give his statement and was never given a chance to testify in court. He insists that he is innocent of the crime.[84] Suffice it to be stated that indeed our Constitution provides that an accused has a right to be heard by himself and counsel.[85] Due process of law in judicial proceedings requires that he must be given a chance to be heard and must be afforded a qualified and competent representation.[86] Where it appears that a counsel de oficio resorted to procedural shortcuts that amounted to inadequate counseling, the Court will strike down the proceedings in order to promote a judicious dispensation of justice.[87] Without hesitation, a decision would be rendered void for lack of due process if a party is deprived of the opportunity to be heard.[88]

However, this right, like many others, may be waived.[89] Waiver, is the voluntary and intentional relinquishment or abandonment of a known existing legal right which a party would have enjoyed. It is the voluntary surrender of a person of a right known by him to exist with the intent that such right shall be surrendered and such person forever deprived of its benefit.[90]

In *People vs. Martinez*,[91] the Court upheld the decision of the trial court finding the accused guilty of murder and sentencing him to reclusion perpetua, despite the failure of appellant to be a witness for his defense, thus:

(While) [a]ppellant... decries his alleged frustrated desire to testify in Court. .. [T]his is now water under the bridge. Appellant had all the right ... and opportunity to do so. He was properly represented by his counsel of choice and there was no hindrance to his testifying except his own volition. While appellant's silence will not in any manner prejudice him, he cannot now be heard to complain for his failure to avail of his right to be a witness in his own behalf. If appellant felt that he was deprived of his rights, he could have easily moved for new trial or reconsideration. He did not.[92]

In *People vs. Mendez*,[93] the Court also held that the right to be heard and to reopen the case could not be allowed if doing so would sanction a plainly dilatory tactic and a reprehensible trifling with the orderly administration of justice.[94]

In *People vs. Serzo, Jr.*[95] the Court also upheld the decision of the trial court finding the accused guilty of murder notwithstanding the failure of the accused to testify in his behalf finding that by his neglect or mischief he effectively waived said right. After a thorough review of the records and finding no error in the findings of the trial court, the Court held in said case that in a case of murder or homicide, it is enough that the death of the victim and the culpability of the person who caused such death are proven beyond reasonable doubt.[96]

In this case, Ruel Bibohan was assisted by counsel de oficio Atty. Nunila Garcia of the Public Attorney's Office when he was arraigned on December 11, 1995.[97] On July 16, 1996, Atty. Felix Lacubtan entered his appearance as counsel for Ruel Bibohan.[98] On November 22, 1996, the defense through Atty. Lacubtan manifested that it is resting its case and that Ruel Bibohan is invoking the defense of alibi and denial and was adopting the arguments of his co-accused Rodolfo Linanga.[99] Thus, it cannot be said that appellant Bibohan was deprived of his right to be heard. He had a counsel of his choice and had every opportunity to testify in his behalf. But he wilfully chose not to do so.

All the elements of murder have been proven beyond reasonable doubt by the prosecution evidence.

Dr. Piit testified to the fact of death while Helen Buoy, Marcita Buoy and Henry Valencia identified the appellants as the assailants. The testimony of the prosecution witnesses also proved treachery.

Thus, the Court affirms the findings of the trial court that the appellants are guilty of murder under Article 248 of the Revised Penal Code as amended by Republic Act No. 7659 qualified by treachery as alleged in the Information.

Under Article 248 of the Revised Penal Code, as amended, murder is punishable by reclusion perpetua to death. The rule on application of two indivisible penalties is found in Article 63 of the same Code, which provides:

....

- When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
- When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

Consequently, the presence of one generic mitigating circumstance of voluntary surrender in favor of appellant Paul Tagana and no aggravating circumstance, the penalty imposable on him in accordance with Art. 63(3) is reclusion perpetua, being the lesser penalty. For appellants Rodolfo Linanga and Ruel Bibohan, the lesser penalty of reclusion perpetua is also imposable there being no mitigating nor aggravating circumstance, pursuant to Art. 63(2).

Consistent with recent jurisprudence, we sustain the amount of P50,000.00 as civil indemnity to be awarded to the heirs of the deceased.[100] Moral damages in the amount of P50,000.00 is also proper in this case as the wife had testified on the mental and emotional suffering inflicted on the part of the heirs of the victim.[101]

No actual damages, may be awarded because no competent evidence was presented to prove this claim. However, temperate damages may be recovered under Art. 2224 of the Civil Code when the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case be proved with certainty. In this case, the amount of P25,000.00 would be sufficient considering that it is undisputed that the family incurred expenses for the wake and burial of the victim.[102] In addition, exemplary damages in the amount of P25,000.00 should be awarded due to the presence of the qualifying circumstance of treachery in this case.[103]

Under Art. 2206 of the Civil Code the heirs of the victim are also entitled to indemnity for loss of earning

capacity. To be entitled to such an award, documentary evidence is necessary. By way of exception, testimonial evidence would suffice: (1) if the victim was self-employed, earning less than the minimum wage under current labor laws and judicial notice may be taken of the fact that in the victim's line of work, no documentary evidence is available; or (2) if the victim was employed as a daily-wage worker earning less than the minimum wage under current labor laws.[104]

In this case, Helen Buoy testified that at the time of the incident, her husband was working as a farmer, tilling their one-hectare land.[105] However, she did not specify how much her husband earned on the average or how much he earned every market day or what and how much he harvested every year. Since indemnification for loss of earning capacity partakes of the nature of actual damages which must be duly proven by competent proof, the Court is unable to order the payment of loss of earning capacity in this case for want of sufficient evidence to support the award thereof.[106]

WHEREFORE, the assailed decision convicting appellants of the crime of Murder beyond reasonable doubt and ordering appellants to suffer reclusion perpetua and to pay, jointly and severally, the heirs of Celestino Buoy, the amounts of P50,000.00 as civil indemnity and P50,000.00 as moral damages is **AFFIRMED** with the **MODIFICATION** that in addition, appellants are **ORDERED TO PAY**, jointly and severally, said heirs, in the amounts of P25,000.00 as temperate damages and P25,000.00, as exemplary damages.

SO ORDERED.

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), on leave.

[1] Penned by Judge Noli T. Catli.

[2] Records, p. 151.

[3] Rollo, p. 8.

[4] Records, p. 49.

[5] Id., p. 62.

[6] TSN, Marcita Buoy, September 13, 1996, pp. 32-33.

[7] Id., pp. 36-37.

[8] TSN, Helen Buoy, September 11, 1996, pp. 7-8.

[9] Id., pp. 10-17.

[10] Records, Exhibits "A" and "A-1", p. 150.

[11] TSN, September 17, 1996, p. 17.

[12] TSN, September 17, 1996, pp. 7-14.

[13] TSN, Paul Tagana, November 6, 1996, pp. 23-24, 34.

[14] TSN, Dominga Tagana, November 21, 1996, p. 8.

[15] TSN, Paul Tagana, November 6, 1996, p. 38.

- [16] *Id.*, p. 20.
- [17] TSN, Dominga Tagana, November 21, 1996, pp. 20-22; Paul Tagana, November 6, 1996, pp. 25, 40.
- [18] TSN, Paul Tagana, November 6, 1996, pp. 27-28.
- [19] TSN, November 6, 1996, pp. 9-10.
- [20] Rollo, pp. 30-34.
- [21] Spelled as “Bibohan” in the other parts of the records.
- [22] Rollo, pp. 35-36.
- [23] *Id.*, p. 65.
- [24] Rollo, pp. 65-68.
- [25] *Id.*, pp. 68-69.
- [26] *Id.*, p. 71.
- [27] *Id.*, pp. 71-72.
- [28] Rollo, pp. 130.
- [29] *Id.*, pp. 130-132, 136-137.
- [30] *Id.*, p. 135.
- [31] Rollo, pp. 98-100.
- [32] *Id.*, pp. 100, 103.
- [33] *Id.*, pp. 103-104.
- [34] *Id.*, pp. 105-107.
- [35] *Id.*, p. 179.
- [36] *People vs. Caratao*, G.R. No. 126281, June 10, 2003.
- [37] *Ibid.*
- [38] *Ibid.*
- [39] *People vs. Caabay*, G.R. Nos. 129961-62, August 25, 2003.
- [40] TSN, Paul Tagana, November 6, 1996, pp. 27-28.
- [41] *People vs. Bates*, G.R. No. 139907, March 28, 2003.
- [42] TSN, November 6, 1995, p. 10.
- [43] TSN, November 21, 1996, pp. 16-19.
- [44] TSN, November 6, 1995, p. 19.
- [45] Records, p. 14.
- [46] TSN, November 6, 1995, p. 22.

- [47] TSN, September 17, 1996, p. 17.
- [48] G.R. No. 126115, 323 SCRA 372, 380 (2001).
- [49] People vs. Peralta, G.R. No. 133267, August 8, 2002.
- [50] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [51] Ibid.
- [52] Ibid.
- [53] People vs. Caabay, G.R. No. 129961-62, August 25, 2003.
- [54] TSN, Henry Valencia, September 13, 1996, pp. 21-22; Marcita Buoy, September 13, 1996, p. 39; Helen Buoy, September 11, 1996, p. 14.
- [55] TSN, November 21, 1996, pp. 16-19.
- [56] TSN, Marcita Buoy, September 13, 1996, p.39.
- [57] People vs. Galapin, 293 SCRA 474, July 31, 1998.
- [58] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [59] People vs. Rivera, G.R. No. 139185, September 29, 2003.
- [60] Ibid.
- [61] Rollo, p. 68.
- [62] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [63] TSN, September 13, 1996, pp. 21-22.
- [64] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [65] People vs. Alfon, G.R. No. 126028, March 14, 2003.
- [66] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [67] People vs. Alfon, G.R. No. 126028, March 14, 2003.
- [68] People vs. Berdin, G.R. No. 137598, November 28, 2003.
- [69] TSN, November 6, 1996, p. 25.
- [70] TSN, November 22, 1996, pp. 7-15.
- [71] People vs. Rivera, G.R. No. 139185, September 29, 2003.
- [72] People vs. Natividad, G.R. No. 151072, September 23, 2003.
- [73] TSN, Helen Buoy, September 11, 1996, pp. 12-15; Henry Valencia, September 13, 1996, pp. 21-22; Marcita Buoy, September 13, 1996, p. 39.
- [74] People vs. Berdin, G.R. No. 137598, November 28, 2003.
- [75] G.R. No. 151072, September 23, 2003.

- [76] Ibid.
- [77] People vs. Caratao, G.R. No.126281, June 10, 2003.
- [78] People vs. Bates, G.R. No. 139907, March 28, 2003.
- [79] People vs. Carriaga, G.R. No. 135029, September 12, 2003; People vs. Aquinde, G.R. No. 133733, August 29, 2003.
- [80] People vs. Lozano, G.R. Nos. 137370-71, September 29, 2003.
- [81] People vs. Otayde, G.R. No. 140227, November 28, 2003.
- [82] People vs. Rivera, G.R. No. 139185, September 29, 2003.
- [83] People vs. Lozano, G.R. Nos. 1371370-71, September 29, 2003.
- [84] Rollo, pp. 187-188.
- [85] Art. III, Sec. 14 (2), 1987 Const.
- [86] People vs. Hapa, G.R. No. 125698, 361 SCRA 361, 375 (2001).
- [87] People vs. Bascuguin, G.R. No. 144404, 365 SCRA 729, 737 (2001).
- [88] People vs. Hapa, *ibid.*
- [89] People vs. Donato, G.R No 79269, 198 SCRA 130, 155 (1991).
- [90] *Id.*, p. 153.
- [91] People vs. Martinez, G.R. No. 100813, 205 SCRA 666, 675 (1992).
- [92] *Ibid.*
- [93] 28 SCRA 880, No. L-27348 (1969).
- [94] *Id.*, p, 889.
- [95] G.R. No. 118435, 274 SCRA 553, 569 (1997).
- [96] People vs. Serzo, Jr., G.R. No. 118435, 274 SCRA 553, 568-569 (1997).
- [97] Records, p. 62.
- [98] Records, p. 87.
- [99] TSN, November 22, 1996, pp. 36, 52-53.
- [100] People vs. Lachica, G.R. No. 131915, September 3, 2003.
- [101] People vs. Aliben, G.R. 140404, February 27, 2003; TSN, September 11, 1996, pp. 20-21.
- [102] People vs. Delos Santos, G.R. No. 142773, January 28, 2003.
- [103] People vs. Lachica, G.R No. 131915, September 3, 2003.
- [104] People vs. Lozano, G.R. Nos. 137370-71, September 29, 2003.
- [105] TSN, September 11, 1996, p. 20.

[106] People vs. Sara, G.R. No. 140618, December 10, 2003.

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