PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JEMUEL TAN AND CHARLIE AMAR, APPELLANTS.

G.R. NO. 176526. August 08, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Mercedes Amar, Jemuel Tan and Charlie Amar were charged with murder in an Information that reads:

> That on or about the 3[rd] day of June, 1992, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a knife, conspiring, confederating together and mutually helping one another, with intent to kill, with the qualifying circumstances of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with said knife one Jessie Dionesio y Cumla, thereby inflicting on the latter fatal wound on the vital part of his body which caused his instantaneous death.
>
> Contrary to the provisions of Article 248 of the Revised Penal Code.[1]

The accused pleaded not guilty. Trial on the merits ensued thereafter.

The prosecution presented Rogelio Cumla, Dr. Emilia Monicimpo, and Celedonia Dionesio, as witnesses.

Rogelio Cumla testified that on June 3, 1992 at about 7:30 in the evening, he was in Brgy. Importante, Tibiao, Antique, selling fish when he chanced upon Mercedes Amar wrapping her arms around the neck of Jessie Dionesio, while Jemuel Tan was twisting and holding Jessie's arms at the back. When Jessie was rendered immobile, Charlie Amar stabbed him on the left side of the breast with a bladed weapon approximately 10 inches long. Rogelio was able to identify the protagonists as he was only six meters away and the place was illuminated by the moonlight. The incident happened a few meters from the house of Mercedes Amar.

Celedonia Dionesio is the mother of the victim. She testified that on June 3, 1992 at around 8:30 in the evening, Mercedes Amar informed her that her son Jessie was stabbed to death. Celedonia, together with Jessie's twin brother, Jaime, proceeded to the crime scene where they saw Jessie lying on the ground about four meters away from Mercedes' house. They recovered two rubber slippers from the scene.

The following day, Mercedes went to their house and took back the slippers. Later that day, Celedonia went to the Municipal Hall then to the health clinic. She alleged that she saw Mercedes Amar following her. When she went to the Rural Bank of Tibiao, Mercedes allegedly informed her that Jessie would have been dead earlier or on June 2, 1992, had she not fetched him from Mercedes' house.

Dr. Monicimpo, the Municipal Health Officer of Tibiao, Antique testified that on June 4, 1992, she conducted an autopsy on the body of the victim. Her findings indicated that Jessie suffered a fatal stab wound on the chest about two inches wide which penetrated the heart and lung.

The defense presented PO2 Victoriano Songcayawon, Mercedes Amar, Charlie Amar, Jemuel Tan, SPO3 Orlando

Julian, and Antonio Dalumpines.

PO2 Songcayawon testified that at about 8:50 in the evening of June 3, 1992, Ana Dionesio, together with Mercedes Amar and Carlitor Amar, reported to the police station the stabbing incident involving Jessie Dionesio. According to Ana, they were not able to identify the assailant.

Mercedes Amar testified that her co-accused, Charlie Amar and Jemuel Tan, are her son and nephew, respectively. She narrated that on the night of the incident, she was at the feeder road to bolt their fence when she saw the victim, Jessie Dionesio, talking with Eva Cumla and Pedro Cumla some 10 meters away from their fence. She told them to go home and eat their supper as there was a "red alert" in their community. She then turned back and walked towards her house. After a while, she heard somebody cry "aguy." She went back to investigate and saw Jessie who was wounded while another person whom she did not recognize was running towards the hill.

Mercedes shouted for help. After a while, Charlie and Jemuel arrived. Together, they carried the body of Jessie to the roadside to avoid being run over by passing vehicles. Charlie then borrowed a petromax from Pedro Cumla which Mercedes lighted and placed beside Jessie. She then went to Celedonia's house and informed her about the incident. Charlie and Jemuel went inside the house and boiled water in case Celedonia would need it.

Mercedes further testified that after informing Celedonia, she accompanied the victim's sister, Ana, to the house of the barangay captain to report the incident aboard a tricycle driven by Mercedes' husband. However, the barangay captain was not around so they proceeded to the police station and reported the incident.

The police then proceeded to the crime scene. Thereafter, Mercedes, Guillermo Dionesio, Ninfa Dionesio, and PO3 Julian went to Sitio Mangkuyas to inform a certain Bernardo Cumla about the incident. While at the house of Bernardo, prosecution witness Rogelio Cumla allegedly informed them that the victim was a trouble maker.

Mercedes denied the allegations of prosecution witness Rogelio Cumla that she, together with her son Charlie and nephew Jemuel, were responsible for the death of Jessie. On the contrary, she claimed that they were the ones who rendered assistance to the wounded victim. She claimed that Rogelio did not witness the crime as he was not in the vicinity when the incident happened.

Charlie Amar alleged that on the night of the incident, he was inside their house together with his father, younger brothers, and cousin Jemuel, while his mother was locking the gate. When he heard his mother shout for help, he and Jemuel went out to investigate and saw the body of Jessie sprawled on the ground with a stab wound on his chest. The three of them moved the body of Jessie to the roadside. Thereafter, his mother lighted a petromax, then informed the relatives of Jessie. Charlie alleged that his father remained inside their house.

Charlie denied stabbing Jessie. He claimed that more than a month prior to the incident, Jessie had been staying in their house because he had a fight with his twin brother, Jaime. Charlie narrated that in the morning of June 3, 1992, Jessie and Jaime fought with each other. Jaime allegedly chased Jessie with a knife prompting the latter to stay in Amar's house.

On cross-examination, Charlie explained that they had only one petromax which they used inside their house, thus he had to borrow a petromax from their neighbor, Pedro Cumla, and placed the same near the body of the deceased.

Jemuel Tan testified that on the night of the incident, he went to the house of Mercedes to buy kerosene and was thereafter invited for dinner. While eating, he heard his aunt Mercedes shout for help. Together with Charlie, he ran towards the gate near the feeder road where he saw Mercedes focusing her flashlight on Jessie who was bloodied and lying on the ground. After carrying the body of Jessie to the roadside, they lighted a petromax which

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Charlie borrowed from their neighbor Pedro Cumla. He denied any participation in the stabbing incident.

On cross-examination, he admitted that Mercedes' husband, Carlito Amar, was inside the house when the incident happened. Carlito did not go out because he does not want to be implicated in the incident. Jemuel also alleged that nobody responded to Mercedes' plea for help except him and Charlie. Nobody went to the crime scene from the time they saw Jessie sprawled on the ground, up to time of Celedonia's arrival.

PO3 Julian testified that at about 8:50 in the evening of June 3, 1992, Mercedes Amar, Carlito Amar, and Ana Dionesio arrived at the police station and reported the stabbing incident. Ana Dionesio allegedly informed him that they did not know the identity of the assailant.

When PO3 Julian went to the crime scene, Celedonia requested that Bernardo Cumla be informed about the incident. Thus, PO3 Julian, Mercedes Amar, Guillermo Dionesio, and Ninfa Dionesio, proceeded to the house of Bernardo in Sitio Mangcuyas. When they arrived, Mercedes called out Bernardo but it was Rogelio Cumla who answered them. PO3 Julian claimed that he heard Rogelio dismiss the death of Jessie because he was allegedly a bad guy. Thereafter, Bernardo accompanied them to the crime scene while Rogelio stayed behind.

On cross-examination, PO3 Julian testified that the body of Jessie was sprawled about three arms length away from the gate of Mercedes and was positioned at the center of the road.

Another defense witness, Antonio Dalumpines, testified that he was on his way home on June 3, 1992 when he saw a person stab another. He claimed he was only four brazas away but was not able to recognize the assailant because it was dark. He claimed that one week after the incident, he told Mercedes about what he saw.

On May 19, 1998, the Regional Trial Court of San Jose, Antique, Branch 12, rendered judgment acquitting Mercedes, convicting Charlie as principal by direct participation, and Jemuel as accomplice, for the crime of murder. The dispositive portion of which states:

> WHEREFORE, for failure of the prosecution to establish beyond reasonable doubt the guilt of Mercedes Amar, she is hereby ACQUITTED for the offense charged. Further, finding the accused Jemuel Tan and Charlie Amar GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized in Article 248 of the Revised Penal Code, the Court imposes upon Charlie Amar who is a principal by direct participation the penalty of reclusion perpetua, and upon Jemuel Tan who is an accomplice, to an indeterminate penalty of seven (7) years of prision correccional as minimum to thirteen (13) years of prision mayor as maximum, applying Article 52 in relation to Article 248 of the Revised Penal Code, and to indemnify the heirs of Jessie Dionesio the sum of P50,000.00 for his death and P12,000.00 for funeral expenses, jointly and severally.
>
> No costs.[2]

The trial court found the testimony of prosecution witness Rogelio Cumla that he saw Charlie stab the victim on the chest while Jemuel pinned his hands and held him immobile, to be credible. However, it acquitted Mercedes based on the alleged contradictory statements of Rogelio Cumla. The court a quo noted that initially, Rogelio testified that he saw Mercedes tie a rope around Jessie's neck but later alleged that Mercedes was merely wrapping her hands around the victim's neck.

The trial court also found that the aggravating circumstances of treachery and abuse of superior strength attended the commission of the crime. There was treachery because Charlie and Jemuel committed the crime in such a manner as to deprive the victim any chance to defend himself. Abuse of superior strength was likewise present because there was notorious inequality of forces between the malefactors and the victim.

On appeal, the Court of Appeals affirmed with modification the trial court's Decision, thus:

> WHEREFORE, in the light of the foregoing, the Decision appealed from is AFFIRMED with MODIFICATION that accused-appellant Jemuel Tan is sentenced to suffer also the penalty of reclusion perpetua.
>
> SO ORDERED.[3]

The appellate court noted that although the trial court disbelieved in part the account of Rogelio Cumla, it correctly lent credence to his testimony that he witnessed the stabbing of the victim by Charlie Amar with the help of Jemuel Tan. It likewise noted that the trial court correctly appreciated the aggravating circumstances of treachery and abuse of superior strength.

However, the appellate court ruled that Jemuel Tan should likewise be convicted as a principal by direct participation and not merely as an accomplice. It observed that the trial court found unity of purpose between the two malefactors and even discussed in the body of its decision that the two should be found guilty of murder as principals by direct participation. However, in the dispositive portion of the trial court's decision, it inadvertently convicted Jemuel Tam merely as an accomplice. Accordingly, the appellate court modified the trial court's decision by finding Jemuel Tan guilty of murder as principal by direct participation and sentenced him to suffer the penalty of reclusion perpetua.

Hence, this petition.

We find Charlie Amar and Jemuel Tan guilty as principals by direct participation for the crime of murder.

Although the trial court disbelieved in part the testimony of Rogelio Cumla as regards the participation of Mercedes in the perpetration of the crime, it nevertheless did not err in giving credence to the rest of Rogelio's testimony. Settled is the rule that a witness' testimony may be believed in part and disbelieved in another part, depending upon the probabilities and improbabilities of the case.[4]

Appellants' contention that it is highly incredible for Rogelio not to shout and come to the aid of Jessie if he indeed saw the latter being stabbed lacks merit. People react differently when confronted by a startling experience. As admitted by Rogelio, he was gripped with fear when he witnessed the incident thus he decided to run away from the scene. Even his companion Edmundo Fillores did the same. We find this explanation plausible and normal under the circumstances. The crime was committed a few arms length from the house of the malefactors located at Brgy. Importante while Rogelio hails from Sitio Mangcuyas. There were two assailants and one of them was armed while there was only Rogelio and Edmundo Fillores who ran away upon witnessing the stabbing incident.

Appellants' contention that Rogelio's testimony should be disbelieved because he is jobless lacks basis. The credibility of a person's testimony does not depend on whether he/she is jobless. Besides, Rogelio was not exactly jobless. In fact, he was selling fish when the stabbing occurred. The trial court which is in the best position to determine the credibility of a witness, found the eyewitness account of Rogelio that he saw Charlie stab Jessie while Jemuel pinned his hands at the back, credible and straightforward. We have also examined the records and found no reason to deviate from said findings.

Furthermore, we find the testimonies of the appellants and the defense witnesses incredible, rehearsed and inconsistent with each other.

Charlie Amar and Jemuel Tan testified that they carried the body of Jessie to the side of the road to avoid being run over by passing vehicles. However, this was contradicted by the testimony of defense witness, PO3 Julian, who testified that:

Q: And this house of Mercedes Amar, towards what direction was this in relation to the dead body of Jessie Dionesio?
A: Beside.

Q: And the dead body was about how far from the gate of the house of Mercedes Amar?
A: About 3 armslength away, more or less.

Q: Was it at the center of the road...the dead body?
A: Yes sir.

Q: So that the position of the body is that if ever a motor vehicle passes by it will be ran over because it was at the center of the road?
A: Can be reached when a vehicle passes by.[5]

Similarly, Jemuel testified that Jessie's body was "cold" when touched. This is impossible considering that they supposedly found the wounded body of Jessie mere seconds after he was stabbed. Thus:

Q: Why do you say that you lighted the cadaver of Jessie Dionesio, what do you mean by cadaver?
A: The dead body.

Q: How did you come to know that it is the cadaver of the dead body of said Jessie Dionesio?
A: Because we saw him full of blood and when we touched him his body was cold.[6]

Charlie testified that he rushed outside upon hearing his mother shout for help. However, Mercedes' husband, Carlito, remained inside the house and was unconcerned about what was happening outside. We find this strange considering that it was his wife, Mercedes, who was shouting for help and whose life may be in danger. Charlie testified thus:

A: I heard a voice shouting in the other house ... I heard a voice shouting for a fight in the other house and also I heard the voice of my mother asking for help that is why I and Jemuel ran outside of the house.

Q: How about your father, what did he do?
A: He remained inside the house observing?

Q: In what manner was he observing?
A: He was observing who killed Jessie, he might return.

Q: That was immediately after you and Jemuel went out of your house?

COURT:
Answer politely.

A: I do not know what my father was doing inside the house for we ran towards outside and when I returned I asked my father and he answered that he was just observing.

ATTY. SIRUELO:
Q: And your father told you that he was observing because the person who could have killed Jessie Dionesio might have returned?
A: Yes sir.

Q: That was what your father told you when you and Jemuel Tan entered the house?
A: Yes sir.[7]

Since Carlito remained inside the house, then he could not have known initially about the stabbing of Jessie. It is therefore illogical for Charlie to claim that his father remained inside the house "to observe" because the killer

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might return. Also, if Carlito was apprehensive about the killer returning to the crime scene, then he should not have allowed his wife Mercedes to go to Celedonia's house by herself.

Jemuel testified that they had several neighbors whose houses are close to each other. Yet, only Jemuel, Charlie and Mercedes were present and who allegedly attended to the victim from the time he was stabbed until the victim's mother arrived.

> Q: Now, near the house of Mercedes there are houses very near, is that correct?
> A: Yes, sir.
>
> Q: As a matter of fact at the back of the house there is a house which is adjacent to the fence?
> A: Yes, sir.
>
> Q: And on both sides of the house of Mercedes there were houses about two meters from the fence of the house of Mercedes Amar?
> A: Yes, sir.[8]

Finally, appellants insist that assuming they killed Jessie, they could not be held liable for murder because the aggravating circumstances of treachery and abuse of superior strength are not present. At the very least, they could only be found guilty of homicide.

We are not persuaded.

As correctly found by the trial court and the Court of Appeals, there was conspiracy between the malefactors in the commission of the crime. Their concerted efforts were performed with closeness and coordination indicating their common purpose to inflict injury on the victim. For conspiracy to exist, the evidence need not establish the actual agreement which shows the preconceived plan, motive, interest or purpose in the commission of the crime. Proof of publicly observable mutual agreement is not indispensable to establish conspiracy. Hence, there is conspiracy where two of the accused held the victim's hands and the third stabbed the victim from behind.[9] Conspiracy may be implied from the concerted action of the assailants in confronting the victim.[10] In the instant case, the prosecution satisfactorily established that Jemuel twisted and pinned Jessie's hands at the back, after which Charlie delivered the fatal blow.

Since there was conspiracy between the malefactors, the actual role played by each of them does not have to be differentiated or segregated from the acts performed by the other accused. As a conspirator, each would still be equally responsible for the acts of the other conspirators.[11] Thus, the Court of Appeals correctly found Jemuel Tan liable as a principal by direct participation and not merely as an accomplice.

The trial court and the Court of Appeals correctly appreciated the qualifying circumstance of treachery. The sudden and unexpected stabbing of Jessie while being held by Jemuel, insured the killing without risk to the assailants.[12]

However, we find no basis for the lower courts' finding that the aggravating circumstance of abuse of superior strength attended the commission of the crime. Abuse of superior strength requires deliberate intent on the part of the accused to take advantage of such superiority. It must be shown that the accused purposely used excessive force that was manifestly out of proportion to the means available to the victim's defense. In this light, it is necessary to evaluate not only the physical condition and weapon of the protagonists but also the various incidents of the event.[13] In the instant case, the prosecution failed to establish the physical condition of the protagonists, much less that appellants deliberately took advantage of their superior strength.

Anent the award of damages, we note that the lower court awarded P50,000.00 as civil indemnity and P12,000.00

as funeral expenses. However, no receipts were presented to substantiate the claim for funeral expenses hence it must be deleted. It is necessary for a party seeking the award of actual damages to produce competent proof or the best evidence obtainable to justify such award. Only substantiated and proven expenses, or those that appear to have been genuinely incurred in connection with the death, wake, or burial of the victim will be recognized in court.[14] Nonetheless, we shall award nominal damages in the amount of P10,000.00 since the heirs of the victim clearly incurred funeral expenses.[15] In addition, moral damages in the amount of P50,000.00 shall be awarded. Celedonia Dionesio testified on the mental anguish she suffered as a consequence of the death of Jessie.

WHEREFORE, the Decision of the Court of Appeals finding appellants Charlie Amar and Jemuel Tan guilty of murder and sentencing them to suffer the penalty of reclusion perpetua and to pay the heirs of Jessie Dionesio the amount of P50,000.00 as civil indemnity, is AFFIRMED with MODIFICATIONS that appellants are further ordered to pay the amount of P50,000.00 as moral damages; the amount of P12,000.00 as funeral expenses is DELETED and in lieu thereof, appellants are ordered to pay the amount of P10,000.00 as nominal damages.

SO ORDERED.

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] CA rollo, p. 10.

[2] Id. at 35. Penned by Judge Antonio M. Natino.

[3] Rollo, p. 8. Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[4]People v. Lucena, G.R. No. 137281, April 3, 2001, 356 SCRA 90, 99.

[5] TSN, February 10, 1994, pp. 18-19.

[6] TSN, December 16, 1993, p. 7. Emphasis supplied.

[7] TSN, December 15, 1993, pp. 25-26.

[8] TSN, March 23, 1994, p. 11.

[9] People v. Tala, 225 Phil. 198, 207-208 (1986).

[10] People v. Ebora, 225 Phil. 242, 245 (1986).

[11] People v. Tala, supra at 208.

[12] See People v. Ebora, supra.

[13] People v. Ortega, Jr., 342 Phil. 124, 138 (1997).

[14] People v. Caraig, 448 Phil. 78, 95 (2003).

[15] Id. at 95-96. See also People v. Annibong, 451 Phil. 117, 132 (2003).

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