

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO AUDITOR, ESTRELLO AUDITOR, ROY AUDITOR, ADRIANO APARECE AND REMEGIO ALVAREZ, ACCUSED-APPELLANTS.

G.R. No. 69542. July 31, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the then Court of First Instance of Misamis Oriental at Cagayan de Oro which found the accused-appellants guilty beyond reasonable doubt of the crime of murder and sentenced them accordingly.

The information against accused Alfonso Auditor, Estrello Auditor, Roy Auditor, Adriano Aparece and Remegio Alvarez charged them as follows:

"That on or about 7:00 o'clock in the morning, more or less, on the 24th day of April, 1978, in the Sitio of Tagunino, Barangay of Ane-i, Municipality of Claveria, Province of Misamis Oriental, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping one another with treachery and with the aid of armed men, did then and there wilfully, unlawfully and feloniously with intent to kill, attack, assault, struck and hack one JUANCHO TAKIANG with fist blows, pieces of wood, bolo and scythe, thereby inflicting multiple wounds on the part of the body of the offended party, to wit:

"1. Incised wound located from the upper posterior part of the neck passing one inch below the lower part of the lobe of the left ear in the direction of the lower jaw and middle part of the anterior portion of the chin horizontally where it terminated. The wound measured about eight inches in length. Parts damaged, skin, veins, muscle, bone and great vessels;

"2. Incised wound located over the left lateral scapular area of the posterior part of the body measuring about four inches in length damaging the skin, muscle, bones, nerves, and blood vessels;

"3. Incised wound vertically and medially located parallel from the other scapular wound measuring about four inches in length;

"4. Incised wound located over the middle left lateral portion of the left forearm passing above the elbow in the direction towards the middle lateral portion of the left arm. The wound measured about nine inches in length. Parts that were damaged, skin, nerves, muscles and blood vessels;

"5. Contusion over the right cheek and right eye."

which injuries resulted to the death of the offended party.

"CONTRARY TO and in violation to Art. 248 paragraph 1 of the Revised Penal Code." (pp. 26-27, Original Records)

The dispositive portion of the decision finding the above accused guilty beyond reasonable doubt reads:

"IN VIEW OF ALL THE FOREGOING, the Court finds all the accused guilty beyond reasonable doubt of the crime of murder, and therefore sentences: (1) Alfonso Auditor to suffer an indeterminate imprisonment of twelve (12) years of prision mayor as minimum to twenty years (20) of reclusion temporal as maximum; and Estrello Auditor, Adriano Aparece and Remegio Alvarez to suffer reclusion perpetua, accused Alfonso Auditor, Estrello Auditor, Adriano Aparece and Remegio Alvarez to jointly and severally indemnify the heirs of Juancho Takiang in the amount of Twelve Thousand Pesos (P12,000.00) without subsidiary imprisonment in case of insolvency, and to pay the cost. They shall be credited the full preventive imprisonment they have undergone.

"As regards Roy Auditor, he being a minor of 15 years at the time of the commission of the crime, the Court refrains from imposing a penalty on him, but instead suspends all proceedings and commits him to the custody and care of the Ministry of Social Services and Development until he shall have reached twenty-one years of age or, for a shorter period as the Court may deem proper considering the reports and recommendations of said Ministry. Accused minor shall be subject to visitation and supervision by a representative of Ministry of Social Services and Development which shall submit its report every four (4) months on the conduct of said minor as well as the intellectual, physical, moral, social and emotional progress made by him." (p. 25, Rollo)

The evidence upon which the trial court based its finding of guilt is summarized in the decision as follows:

"Dr. Uldarico Supremo, Municipal Health officer of Claveria testified that he examined the dead body of Juancho Takiang in Ane-i, Claveria. He identified the Medical Certificate which he issued (Exh. A). He said that wound Nos. 1, 2, 3 and 4 were caused by a sharp edged instrument, such as a bolo, whereas wound No. 5 was caused by a blunt instrument.

" "He declared that the neck of Juancho Takiang was almost severed due to wound No. 1.

"Rogelio Undag testified substantially that at 8:00 o'clock in the morning of April 24, 1978, he was in the house of his father-in-law Juancho Takiang at Tagonino, Ane-i, Claveria because on the previous day the latter told him they were going to plant corn on that Monday, April 24, Lucio Dumo, another son-in-law was with them. The farm of Juancho Takiang was about 100 meters from his house.

"The three went to the farm, Juancho Takiang walking ahead of them by 15 meters. He (Rogelio) saw Estrello Auditor standing on the farm of Juancho. Then Estrello approached Juancho and boxed him, hitting him on his right eye. Juancho was slightly staggered backward. Rogelio and Lucio attempted to go near Juancho, but then they saw two persons, Alfonso Auditor and Roy Auditor coming out of the bamboo grooves - Alfonso was holding a scythe and a bolo tucked on his waist, while Roy was bringing a piece of wood. At the same time, two other persons, whom he identified as Adriano Aparece and Remegio Alvarez, each also bringing a piece of wood as big as the arm of a 10-year old person, and 18 inches long, appeared.

"Alfonso Auditor hacked Juancho wounding him on his left arm, while Roy, Remegio and Adriano rushed at and bumped Juancho causing him to fall to the ground. After falling Juancho rolled. Estrello who was at the back of Juancho then got the scythe from his father Alfonso and slashed his neck, almost severing it. Then Alfonso unsheathed his bolo and hacked Juancho twice wounding the latter on his back. Then Alfonso went near Roy, Adriano, Remegio and Estrello and signalled Rogelio and Lucio to go near them, saying: 'Come here and we will also kill you like your father-in-law.' Rogelio and Lucio were standing 15 meters away at that time.

"Later, Alfonso, Estrello, and Roy went home, while Adriano and Remegio remained near the place where Juancho was lying wounded - they were two meters from Juancho. Afterwards, the two went to the house of Alfonso.

"After the two were gone, Rogelio and Lucio went near Juancho and when they saw that he was not moving

anymore and believe that he was already dead, Rogelio asked Lucio to call for a doctor and a policeman. So, later, Dr. Uldarico Supremo, patrolman Cosadio and other persons came and Dr. Supremo examined the body.

"Rogelio declared further, that Hilario Takiang, son of Juancho, was staying at Natobo, 20 kilometers away. The wife of Juancho, Rogelio's mother-in-law was at Natobo that is why he and his wife went to sleep in Juancho's house.

"Rogelio said that he and Lucio brought with them weeding bolos, while Juancho brought with him an ordinary bolo, one foot long.

"According to Rogelio, the first time he saw Estrello, the latter was five meters from Juancho. Estrello had a menacing attitude towards Juancho, Juancho just faced him and when Estrello was near Juancho, without any exchange of words, boxed the latter immediately.

"He and Lucio did not go near because they were afraid.

"The testimony of Rogelio Undag was corroborated by that of Lucio Dumo in almost all points.

"Because of the report of Lucio to the police at Claveria, Police Cpl. Eugenio Cosadio fetched Dr. Uldarico Supremo, the Municipal Health Officer of Claveria, and the two, together with the police photographer Cpl. Pagidopon, patrolman Wilfredo Casino, Sulpicio Abesamis, Jr., Foilan Orlando Anillaga and Rosauro Amor, went to the scene of the incident. At the scene, they saw the body of Juancho Takiang lying on the ground face downward. Dr. Supremo and the police examined the body.

"According to Cpl. Cosadio, when they approached the body, he saw a scythe on the ground one meter from the dead body of Juancho. He said that when he got the scythe Rogelio Undag told him that was the same scythe used by Estrello Auditor in killing Juancho Takiang. He said that the scythe was smeared with blood. The blood was not yet dry. He said that the scythe marked as Exh. C was the scythe he saw.

"He also saw the bolo of Juancho Takiang tucked on his waist unsheathed. He unsheathed it and he saw it was not bloodstained. He said Exh. E was the bolo." (pp. 13-15, Rollo)

Alfonso Auditor admitted having killed Juancho Takiang but claimed that he acted in self-defense. He assumed sole responsibility for the killing. The other co-accused deny any participation in the violent incident.

In their self-defense theory, the appellants admit that Alfonso Auditor and Juancho Takiang were mortal enemies and attribute the alleged unlawful aggression of Takiang to a land controversy involving the two families. (See Appellants' brief, p. 10)

The facts of the case from the viewpoint of the accused-appellants are:

"At about 6:30 A.M. on April 24, 1978 accused-appellant Alfonso Auditor was clearing his farm located at Tagonino, Ane-i, Claveria, Misamis Oriental. Some eighty meters behind him were accused-appellants Estrello Auditor, Roy Auditor, Adriano Aparece and Remegio Alvarez who were sowing corn together with Sabina Auditor - Alfonso's wife, their daughter Nida, Rodrigo Platan, Rogelio Platan, Juana Acob and Marcial Ibanez. Except for the Auditors, all the rest were hired laborers, including accused-appellants Alvarez and Aparece.

"At about 7:00 o'clock in the morning, Juancho Takiang arrived and confronted accused-appellant Alfonso Auditor for working on the farm and asked him to stop. Juancho alleged that he was the one who plowed the farm for corn planting. Alfonso countered that the farm belongs to him, and in fact, Juancho and his son Hilario Takiang agreed to leave the farm to him in the compromise agreement (Exh. "8") reached at Camp Alagar.

"Obviously angered, Juancho Takiang suddenly attacked Alfonso with the use of the piece of wood the former carried (Exh. "6") with a blow directed to Alfonso's head. Alfonso was hit on his left forearm while parrying

the blow to protect his head from being hit sustaining, in the process, injuries therein (Exh. "3") thereby causing the scythe he used in clearing to fall from his hand. Juancho continued to attack but failed to hit Alfonso who backtracked and weaved to avoid the assault and at the same time pleaded with Juancho to stop it. When Juancho refused, it dawned on the said accused-appellant that Juancho was out to get him. So he unsheathed his bolo and used it in defending himself and striking back later at his attacker in rapid succession. Juancho fell mortally wounded with four incised wounds on various parts of his body.

"The suddenness of the attack and subsequent fight petrified the other accused-appellants, the defense witnesses and even the prosecution witnesses to the incident. Thus, no one could shout for help and stop the fight." (PP. 2-3, Appellants' brief)

On September 23, 1986, appellant Estrello D. Auditor filed an "Urgent Motion to Withdraw Appeal". The motion was granted in our resolution dated October 13, 1986. The judgment, therefore, has become final as to him.

The remaining appellants state that the trial court committed the following errors:

I

THE COURT A QUO ERRED IN FINDING THAT THE ACCUSED-APPELLANTS COMMITTED MURDER QUALIFIED BY EVIDENT PREMEDITATION DESPITE THE FACT THAT THE INFORMATION DOES NOT ALLEGE SUCH QUALIFYING AGGRAVATING CIRCUMSTANCE, AND THEREFORE, THE CRIME BEING COMMITTED, IF ANY, IS HOMICIDE.

II

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANTS APARECE AND ALVAREZ DESPITE THE FACT THAT THEIR IDENTITIES WERE NOT PROVED BEYOND REASONABLE DOUBT.

III

THE COURT A QUO ERRED IN FINDING A CONSPIRACY AMONG THE ACCUSED-APPELLANTS NOTWITHSTANDING THE ABSENCE OF CONSPIRATORIAL EVIDENCE.

IV

THE COURT A QUO ERRED IN NOT FINDING THAT ACCUSED-APPELLANT ALFONSO AUDITOR ALONE KILLED JUANCHO TAKIANG IN SELF-DEFENSE; AND

V

THE COURT A QUO ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE FACT THAT THEIR GUILT WAS NOT PROVED BEYOND PERADVENTURE OF DOUBT. (PP. 1-2, Appellants' brief)

We agree with the appellants that the trial court erred in ruling that evident premeditation qualified the offense to murder.

Evident premeditation was not alleged in the information. For evident premeditation to be considered a qualifying circumstance, it should be positively and specifically averred in the information (U. S. v. Campo, 23 Phil. 369; and People v. Gadiano, 115 SCRA 559). Having been proved, it can only be appreciated as an aggravating circumstance. (People v. Regala, 113 SCRA 613, 658; and People v. Rodil, 109 SCRA 308, 326).

The appellants, however, are wrong in asserting that without the qualifying circumstance of evident premeditation, the offense proved would at most be homicide.

As shown by the records, discussed by the trial court, and stressed by the Solicitor General, the appellants lay in ambush for the victim who was on his way to his farm. The members of one group deployed themselves behind a bamboo grove while the other group hid in the cogonal grass. Estrella Auditor initially emerged alone and took Takiang off-guard. The others suddenly came out of hiding whereupon Estrella hit the victim in the eye making him stagger backward. Roy Auditor, Remegio Alvarez, and Adriano Aparece rushed the victim and forced him to the ground. At that moment, the hacking and stabbing by Estrella and Alfonso Auditor commenced. The attack was sudden and the appellants acted simultaneously in concert. Juancho Takiang was unaware of the impending attack. The appellants used methods which insured the execution of the crime with no risk to themselves. Police Corporal Eugenio Cosadio testified that when he arrived at the scene of the killing to investigate its circumstances, he saw the foot-long working bolo of Juancho Takiang still sheathed in its scabbard and tucked to the victim's waist. When the investigator unsheathed it, there was no bloodstain. The attack was, therefore, so sudden and the assailants so numerous that the victim had absolutely no opportunity to even attempt to defend himself. There was a conscious adoption of means and ways of insuring the execution of the crime without risk to the assailants from any defense the victim may make. Treachery having been alleged in the information and proved during the trial, the crime is murder, aggravated by evident premeditation, and not homicide. (See *People v. Labinia*, 115 SCRA 223; *People v. Mahusay*, 138 SCRA 452; *People v. Macariola*, 120 SCRA 92; *People v. Rhoda*, 122 SCRA 909; and *People v. Escoltero*, 139 SCRA 218).

The appellants allege in their second assignment of error that the identities of Aparece and Alvarez were not proved beyond reasonable doubt. They base this assigned error on the fact that Lucio Dumo when asked to point at Aparece, pointed to Alvarez, and when asked to point at Alvarez, pointed at Aparece. They also stress Rogelio Undag's testimony which shows that Aparece and Alvarez were standing about a meter from Takiang, holding the pieces of wood without using them during the incident.

The error of the witness was in the names of the two accused and not in regard to their having been among the perpetrators of the crime. Admittedly, the eyewitnesses were not familiar with Aparece and Alvarez who were employed by the Auditor family to work on their farm. However, it is not the ability of an eyewitness to give the true and correct names of the accused which is important. What matters is their identification as persons who were seen actually committing the offense. The perpetrator of a crime may refuse to give his true name or he may use a fictitious name. He can still be identified. Dumo pointed to Alvarez and Aparece as having ganged up with the Auditors on Juancho Takiang although he made a mistake as regards their respective names. The two were not passive bystanders during the killing. The records show that they were active participants.

As explained by the Solicitor General:

"It is not true that Undag failed to identify Alvarez and Aparece. Rogelio Undag when examined, testified:

"FISCAL PARRADO: (continuing)

Q: About Remegio Alvarez?

A: (Witness pointing to a person who upon being asked answered that he is Remegio Alvarez).

"COURT: (to the witness)

Q: About the other one coming out from the grasses?

A: (Witness pointing to Adriano Aparece, who upon being asked, identified himself as Adriano Aparece).

(tsn., No. 14, 1978, pp. 32-33).

"Undag positively identified Alvarez and Aparece as the persons who came from the cogon grasses and who attacked his father-in-law. Although he may not have been familiar with their names, he nevertheless recognized their faces. He may have interchanged their names but he explicitly declared that the persons he pointed to, Alvarez and Aparece, were with Alfonso Auditor, Estrello Auditor and Roy Auditor in the commission of the crime. The important thing is that he was emphatic in stating that he recognized their faces, which he actually did from the witness stand (People v. Mendoza, 105 SCRA 459). The fact that he confused the names of Alvarez and Aparece does not detract from his positive identification of the malefactors (People v. Canizares, 107 SCRA 296). The identification of the person of the accused is more important than his name (People v. Catipon, 139 SCRA 192):

"Q: Now, when for the first time did you know the names of Alvarez and Aparece?

"A: When our affidavits were already taken, because they were called.

"Q: So, they were already called, to be the very persons whom you are identifying now, rather, you named now to be Aparece and Alvarez?

"A: We were present when they were investigated by the Chief of Police.

"Q: So, without the Chief of Police having investigated them, you have not known their names, is that right?

"A: We did not know their names but we recognized their faces.

"Q: When for the first time did you see this Alvarez?

"A: On the 24th, that was the first time I saw him because he was with those who killed my father-in-law.

COURT: (TO WITNESS)

"Q: About Adriano Aparece, was that also the first time?

"A: Yes.

"Q: When you said you saw Adriano Aparece and Remegio Alvarez and Roy Auditor standing just one (1) meter away from Juancho Takiang, you were also standing fifteen (15) meters away looking at the three (3)?

"A: About four (4) minutes.

"Q: And during that four (4) minutes you had been looking at them?

"A: Yes, I was looking at them. (tsn., November 15, 1978, pp. 79- 81).

"Lucio Dumo likewise declared that he saw Adriano Aparece and Remegio Alvarez during the incident in question. Thus,

"Q: All right, do you know the case and month when the incident took place?

"A: Yes, I know.

"Q: When?

"A: April 24, 1978.

"Q: June 1978, is subsequent to April 24, 1978, do you know that?

"A: I was just mistaken.

"Q: What was your mistake?

"A: The month of June.

"Q: All right. When did you first see this person who answered the name Adriano Aparece when you touched him?

"A: I saw him on April 24.

"Q: That was when the incident in question took place?

"A: Yes, your Honor.

"COURT:

All right, proceed.

"FISCAL CAIN: (continuing)

"Q: Please tell frankly the Honorable Court, did you see or did you not see this person who answered the name of Adriano Aparece before April 24, 1978?

"ATTY. VALMORIDA:

Already answered.

"COURT:

Objection overruled. All right find out.

"FISCAL CAIN: (continuing)

"Q: How about the other person who answered the name Remegio Alvarez, when did you see him for the first time?

"A: On the same occasion at the time of the incident.

"Q: Will you please tell the Honorable Court, what unusual incident that took place on April 24, 1978 at 7:00 o'clock in the morning at Tagonino, Ane-i, Claveria, Misamis Oriental?

"A: That was the time when my father-in-law died. (tsn., December 5, 1978, pp. 12-14).

"While Pedro Abacahin did not recognize the two persons hiding and coming out from the cogonal area, he unequivocally asserted that those two persons together with Estrello Auditor, Alfonso Auditor, and Roy Auditor rushed towards Juancho Takiang (tsn., February 13, 1979, pp. 141 and 144). The two persons coming from the cogonal area were identified by Rogelio Undag and Lucio Dumo (tsn., December 6, 1978, pp. 40 and 72, November 14, 1978, p. 31) who vividly narrated the rest of the incident as Remegio Alvarez and Adriano Aparece." (pp. 10-16, Appellee's brief).

The third assignment of error which questions the finding of conspiracy is without merit.

The five accused persons waited in hiding according to a clearly pre-conceived plan. Alfonso Auditor, Estrello Auditor, and Roy Auditor concealed themselves behind a bamboo grove while Aparece and Alvarez hid in the cogonal area. The attack on Takiang was simultaneous with the five co-accused acting in concert. Alfonso slashed Takiang on the left arm while Estrello hacked him on the neck, almost severing the head from the body. Alfonso was armed with a long bolo, not the usual bolo routinely used while working on a farm. Aparece and Alvarez were each armed with a piece of wood as big as the arm of a ten-year old child and one and a half feet long,

according to the eyewitnesses. Each of the accused performed specific acts in the commission of the crime with such closeness and coordination as to indicate a common purpose or design (*People v. Petenia*, 143 SCRA 361; *People v. Palon*, 127 SCRA 529; *People v. Bernales*, 94 SCRA 604; *People v. Aguel*, 97 SCRA 795; *People v. Patog*, 144 SCRA 429; and *People v. Arhis*, 144 SCRA 687).

There was reason for the conspiracy and the premeditated plan. The trial court stated:

"The land where Juancho Takiang was killed has been the subject of a long controversy between Alfonso Auditor and Juancho Takiang and his son Hilario. It has caused deep seated enmities between the Auditors and the Takiangs despite the fact that the PC authorities at Camp Alagar, this City had tried to settle them (Exh. B). The Auditors and the Takiangs are mortal enemies because of this land. In fact, Alfonso Auditor testified that he would defend his rights over this land at whatever cost." (p. 24, Rollo).

The allegation of self-defense in the fourth assigned error is self-serving and not sustained by the records. Apart from the positive testimonies of the eyewitnesses, the number and nature of the wounds alone rule out self-defense by one single person who had been attacked with a wooden club.

The neck wound was eight inches long and almost separated the head from the body of the victim. The incised wound on the left lateral scapular area was four inches long and cut through skin, muscle, bones, nerves, and blood vessels. The fourth wound starts with a cut in the left forearm and continues towards the middle lateral portion of the left arm for a distance of nine inches. There is also a contusion on the right eye resulting from the first fist blow by Estrello Auditor and another contusion over the right cheek. The accused-appellants were the aggressors and they all acted together. The police investigators saw a bloodied scythe near the body of the victim. The scythe was identified by Rogelio Undag as the weapon used by Estrello Auditor in hacking the victim's neck. The two and one-half feet long bolo surrendered by Alfonso Auditor to the police was bloodstained. So was its scabbard.

The fifth assignment of error is likewise without merit. Our review of the records and consideration of the appellants' arguments fail to show any reason why we should not accord the usual weight and respect given to factual findings of a trial court. The court, painstakingly analyzed the evidence and found the version of the accused incredible and contrary to nature. It believed the testimonies of Rogelio Undag, Lucio Dumo, and Pedro Abacahin.

The crime committed was murder qualified by treachery. The aggravating circumstance of evident premeditation is evened out by the mitigating circumstance of voluntary surrender insofar as Alfonso Auditor is concerned.

WHEREFORE the appeals of Alfonso Auditor, Roy Auditor, Adriano Aparece, and Remegio Alvarez are DENIED. The judgment of the lower court is AFFIRMED with a MODIFICATION as to the INDEMNITY which is INCREASED from P12,000.00 to THIRTY THOUSAND PESOS (P30,000.00) and with the further MODIFICATION in the PENALTY of imprisonment imposed on Alfonso Auditor, whose sentence is hereby increased to reclusion perpetua.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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