

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS FRANCISCO, ROBERTO FRANCISCO AND DOMINADOR FRANCISCO, ACCUSED-APPELLANTS.*G.R. No. 69580, February 15, 1990*

Ponente: CRUZ, J.

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Rodolfo Tongo was stabbed in the early morning of August 16, 1970, in San Roque, Milaor, Camarines Sur. He died from the stab wound eleven days later. The confessed assailant was Jesus Francisco, who claimed self-defense. After investigation, he was prosecuted for murder, along with Roberto Francisco and Dominador Francisco. The charge was made on the basis of another entirely different version of the stabbing.

Arraignment of Jesus Francisco was held only in 1977, and that of his co-accused in 1976, because the three disappeared after the commission of the crime.[1]

After trial, all of them were convicted as charged. In the decision penned by Judge Delfin Vir. Suñga of the Court of First Instance of Camarines Sur, they were each sentenced to life imprisonment and held solidarily liable to the heirs of the victim in the amounts of P12,000.00 as civil indemnity for his death, P5,000.00 actual and moral damages, and P5,000.00 exemplary damages. They were also required to pay the costs of the suit.[2]

All three appealed, but before his transfer to the national penitentiary, Roberto Francisco escaped and has not been apprehended to date.[3] As to him, the appeal is hereby dismissed pursuant to Rule 124, Section 8, of the Revised Rules of Court.[4] The other accused-appellants, Jesus and Dominador Francisco, later filed a motion to withdraw their appeal on the ground of lack of funds to pursue it. The Court merely noted this motion pending the filing of the appellants' brief.[5] Subsequently, Jesus Francisco manifested to the Court that he was no longer insisting on the withdrawal of his appeal and was recalling his motion.[6]

It is worth mentioning that Atty. Luis P. Bisana, Sr., the former counsel de parte of the accused-appellants, when required to show cause why he should not be disciplined for failure to submit their brief, complained that his clients had no means for its preparation and moved that they be allowed to prosecute their appeal as pauper litigants.[7] The Court informed him that "there (was) no such thing as a pauper litigant in criminal cases" and appointed him counsel de oficio on his own manifestation that he was willing to act as such.[8] Nevertheless, Atty. Bisana again delayed in the filing of the appellants' brief and finally asked to be relieved of his assignment, once more complaining inter alia of the expenses. He was admonished by the Court for lack of conscientiousness in the discharge of his duties, and replaced.[9] The appellants' brief was finally submitted by Atty. Lucenito N. Tagle, who displayed more devotion to his clients' cause although he was also acting as a counsel de oficio.

According to the prosecution, Rodolfo Tongo was killed as a result of a conspiracy among the three accused which they carried out during a public dance being held on the eve of the barrio fiesta. The incident happened in the barrio social hall. The people had started to disperse because of a drizzle and it was at this time that Rodolfo Tongo was accosted by the three Franciscos, who had earlier been conversing under a star apple tree nearby.

Roberto tapped Rodolfo on the shoulder and suddenly restrained him with a headlock. Jesus then drew a knife and stabbed Rodolfo in the stomach. Dominador, for his part, brandished a three-cornered ice pick and kept the onlookers at bay, warning them not to interfere. The three ran away after the stabbing, and Rodolfo was immediately taken to the hospital.[10]

The incident was narrated at the trial by Rafael Aragon and Rogelio Piquit.[11] The victim's father, Felix Tongo, testified that when he talked to him on August 17, 1970, his son identified the three accused-appellants as his assailants. He added that Rodolfo died in the hospital on August 27, 1970.[12] Cause of death, according to the medical report, was "septicemia due to multiple stab wounds penetrating abdomen, perforating intestines, colon, kidney, left." [13]

Jesus Francisco denied the testimony of the prosecution witnesses and had his own story to tell. He claimed that on the morning in question, shortly before the time of the stabbing, he was in the store of Rosalio Tongo to buy buyo leaves and tobacco. He had come from the house of Raymunda Cata, where he was helping in cooking for the party she was giving during the fiesta. While he was at the store, Rosalio and Roque Bato had an argument because the latter was demanding wine without paying for it. Jesus says he tried to pacify the two, whom he both knew, but Rosalio Tongo resented his interference as he was not from that place. Suddenly, Jesus was running away into the highway and being chased by seven men carrying wooden clubs, including Rodolfo Tongo. Rodolfo hit him in the buttock and it was then that Jesus remembered the bolo he was carrying, which he drew and swung to repel his pursuers. Rodolfo was stabbed in the stomach. The pursuit ended then, and Jesus immediately proceeded to the municipal building to report the matter to the police.[14]

Dominador Francisco's defense was alibi. He testified that he was at the time of the incident in the house of his uncle, Serafin Tongo. He had gone there directly from the dance, which he had left at about 11 o'clock in the evening of August 15, 1970. He said he slept at about midnight and awoke the following morning and learned about the stabbing later.[15]

After assessing the evidence, the trial judge held against the accused, finding their defense implausible. This Court will affirm, there being no showing that the conclusion of the court a quo is without sufficient basis or is tainted with arbitrariness.

The findings of the trial court on questions of fact are accorded the highest respect on appeal, if not indeed regarded as conclusive, absent the usual exceptions to this policy.[16] The reason, as we have repeatedly stressed, is the opportunity available to the trial court — but not to the appellate court — to observe the witnesses on the stand and to assess their credibility not only by the nature of their testimony but also by their demeanor under questioning.

The appellate court goes only by the sterile record. By contrast, the trial court can discern the nuances of tone or voice or flush or blanch of face or dart of eyes or forthright gaze, that will draw the line between fact and prevarication. Enjoying this advantage, the trial court is less likely than the reviewing court to commit an error in assaying the conflicting evidence.

We agree that Jesus Francisco's defense is unworthy of credence. Although it was corroborated by Santos Murillo, his story is not only unbelievable but indeed borders on the ridiculous. In his sworn narration, Jesus said he and his wife were running together under pursuit by Rodolfo Tongo and his companions.[17] How his wife came into the picture is not explained as he had said earlier that he had gone by himself to the store from Raymunda Cata's house, where he was cooking. And significantly, his wife did not testify to support him. At one point in his testimony, he also said he did not know why the men were chasing him.[18] He also declared that even as he was pursued, and in fear of his life, he did not remember until later that he had a bolo strapped to his waist.[19]

Murillo was no less believable. He swore that he saw three persons chasing Jesus and made no mention of the latter's wife. Asked who requested him to testify, he said it was Jesus and that he had kept silent all the while until then because he was "neutral" and was also busy.[20]

Dominador Francisco also had his corroborating witness, but he cannot explain away the fact that his uncle's house was only 2 kilometers away from the place where Rodolfo Tongo was stabbed. Alibi is an inherently weak defense especially if contradicted by eyewitness testimony. Against his averment, Dominador was pointed to by two eyewitnesses as the person who held an icepick and warned the people not to come near while Roberto Francisco restrained Rodolfo Tongo and Jesus Francisco stabbed him in the stomach.

We need not dwell on Roberto Francisco's defense as he has, by his escape, forfeited his right to appeal. But we may say nonetheless that his alibi is equally incredible and so must also be rejected. His claim that he was in the house of his prospective wife to attend her despedida party may be believed up to this point but not when he asks the Court to accept that the food was cooked shortly before midnight and was served thereafter, precisely (as it happened) at the time Rodolfo Tongo was being stabbed. The coincidence is too pat to be believable. Moreover, parties are not usually held after midnight, especially in the provinces where traditions die hard.

We agree with the trial court that there was a conspiracy among the three accused, who acted in concert in the execution of a common design. The evidence shows that each of the three played an individual role, with Roberto restraining the victim and Jesus stabbing him while Dominador warned the people not to interfere. As we held in *People v. Petenia*,[21] "when each of the accused performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design, conspiracy has been established beyond reasonable doubt."

Judge Suñga accepted the allegation in the information that the offense of murder was committed with treachery and evident premeditation and sentenced the accused to life imprisonment. However, he did not bother to explain why these circumstances should be considered and what their effect was upon the penalty.

There was treachery because the accused employed measures intended to ensure the commission of the offense without risk to them arising from the defense their victim might make. Deliberately, Tongo was suddenly restrained by Roberto Francisco and as suddenly stabbed by Jesus Francisco even as Dominador Francisco prevented assistance to the victim. This circumstance qualified the killing to murder under Article 248 of the Revised Penal Code.

But there was no evident premeditation. The only suggestion of this circumstance was the testimony of Aragon and Piquit that they saw the three accused huddled and conversing under the star apple tree minutes before the attack of Tongo. Neither of the witnesses heard what the accused were talking about.[22] Moreover, the offense was committed shortly afterwards, indeed about only ten minutes later, according to Aragon.

As the Court has held, "The period of time necessary to justify the inference of deliberate premeditation is a period sufficient in a judicial sense to afford full opportunity for meditation and reflection, and sufficient to allow the conscience of the actor to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) if he desires to hearken to its warnings." [23] In fact, the prosecution failed to prove the elements of this aggravating circumstance, to wit, (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit had clung to his determination; and (3) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his acts.[24]

In sum, the offense committed was murder, qualified with treachery, but with no generic aggravating or mitigating circumstance. The applicable penalty is therefore *reclusion perpetua*. This was the same penalty

imposed by the trial court, but erroneously, as it considered evident premeditation as an aggravating circumstance, which would have increased the penalty to the maximum degree, viz., death. This penalty was still allowed when the decision was rendered on September 1, 1980, as it was only under the present Constitution that it was automatically reduced to life imprisonment.

WHEREFORE, subject to the qualifications made above, the appealed sentence is AFFIRMED, except for the civil indemnity which is increased to P30,000.00. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Records, p. 223; Decision, p. 1.

[2] Ibid., p. 229; p. 7.

[3] Rollo, pp. 76 and 87.

[4] The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or jumps bail or flees to a foreign country during the pendency of the appeal.

[5] Rollo, pp. 92-94.

[6] Ibid., p. 168.

[7] Id., pp. 40-42.

[8] Id., pp. 45-46.

[9] Id., p. 78.

[10] Decision, p. 2.

[11] TSN, January 3, 1977, pp. 2-9; TSN, April 15, 1977, pp. 15-18; TSN, July 25, 1977, pp. 24-28.

[12] TSN, July 26, 1977, pp. 32 and 34.

[13] Exhibit "D."

[14] TSN, October 2, 1979, pp. 1-10; TSN, December 4, 1978, pp. 3-12.

[15] Ibid., pp. 36-37, 44-45.

[16] *Fermin Ong vs. Court of Appeals and Mariano Ong*, G.R. No. 75819, September 8, 1989; *People vs. Canamo*, 138 SCRA 141; *People vs. Cruz*, 142 SCRA 576; *People vs. Monteverde*, 142 SCRA 668; *Vallarta vs. Intermediate Appellate Court*, 151 SCRA 679; *People vs. Laureta, Jr.*, 159 SCRA 256.

[17] TSN, December 4, 1978, pp. 13-14.

[18] TSN, October 2, 1979, p. 4.

[19] Ibid., pp. 6-7.

[20] TSN, August 23, 1978, pp. 17-19, 23-24, 27.

[21] 143 SCRA 361.

[22] TSN, January 3, 1977, p. 8; TSN, July 25, 1977, pp. 27-29.

[23] *People vs. Gil*, 13 Phil. 530; *People vs. Gamao*, 23 Phil. 81.

[24] *People vs. Corpuz and Serquiña*, 107 Phil. 44; *People vs. Diva*, 25 SCRA 468; *People vs. Cardenas*, 56 SCRA 631; *People vs. Lorenzo*, 132 SCRA 17; *People vs. Camilet*, 142 SCRA 402.

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