

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EFREN PEÑONES, OSCAR PEÑONES, FROILAN PEÑONES, AND ANDRES PEÑONES, ACCUSED-APPELLANTS.*G.R. No. 71153. August 16, 1991*

Ponente: NARVASA, J.

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Tomas Oronan died a violent death at the hands of four (4) persons who attacked him with bamboo spears (guhi), bows and arrows, and big stones. The post-mortem examination disclosed that he had sustained seventeen (17) assorted wounds, abrasions and fractures.

At the time of the assault, Tomas Oronan was with his wife, Felomina Peñones Oronan, and two sons, Ramon and Antonio Oronan. Felomina identified the assailants as her own brothers, Efren, Oscar, Froilan and Andres Peñones. A like identification was also made by her sons, Ramon and Antonio. After due preliminary proceedings, the four brothers were charged in the Court of First Instance at Ligao, Albay,[1] with the felony of murder, attended by evident premeditation and taking advantage of superior strength.

The circumstances of the killing were detailed before the Trial Court by said Felomina Oronan -- the defendants' sister and their victim's widow -- and Ramon Oronan, Felomina's son by the deceased. According to these eyewitnesses, at the time of the assault on Tomas Oronan, he, his wife, Felomina, and their two sons, Ramon and Antonio, were on their way to the home of the Barangay Captain at barrio Kinuartelan, Polangui, Albay. They had arrived in Polangui at mid-morning of that day,[2] having taken the bus from Iriga, and had forthwith proceeded to the Polangui Municipal Building to report an incident that had occurred the day before -- concerning Ramon, the son of the deceased Tomas Oronan, who was chased by the latter's brothers-in-law (his wife's brothers: Efren and Oscar Peñones) and his father-in-law (his wife's father: Leon Peñones). Having been advised, however, to make their report directly to the Barangay Captain of barrio Kinuartelan, which was the place where Leon Peñones and his children were residing, the Oronan family had then taken a tricycle to go to the Barangay Captain, intending to avoid passing by the houses of the Peñoneses. But as fate would have it, one of the tricycle's tires went flat before they could reach their destination, so they had to go the rest of the way on foot, and perforce pass by the houses of the Peñoneses.

As the Oronans neared the house of Oscar Peñones, Froilan and Andres Peñones suddenly emerged from a grove of palomaria trees and blocked their path. The two were armed with bamboo spears (guhi), large stones, and bolos sheathed in scabbards at their waists. The Oronans then heard a voice from behind them say, "Fight them!" They turned and saw that behind them were two other Peñones brothers, Efren and Oscar, armed with bows and arrows. These two suddenly loosed their arrows at Tomas Oronan. The arrows hit Tomas in the back. Tomas tried to run towards the house of Leon Peñones, his father-in-law, but Andres hurled a large stone at him, hitting the chest and causing him to stumble. Froilan thereupon stabbed Tomas with his bamboo spear. The four brothers then joined in the attack on Tomas, inflicting more injuries on him with their weapons until he expired. Felomina tried to go to

her husband's defense but was pushed away by her brother, Andres Peñones. Tomas' corpse was brought by his attackers to the home of Leon Peñones, and left in the yard.

Testifying in their defense, three (3) of the accused brothers -- Oscar, Froilan and Andres Peñones -- told the Trial Court they could not have committed the crime because on the day and at the time of its commission, they were in another place, San Antonio, Buhi, Camarines Sur, harvesting palay in a field of which Andres was a tenant. It was while they were thus engaged that Andres Peñones, Jr. came and told them of the slaying of Tomas Oronan. They immediately decided to go to Kinuartelan. They left San Antonio at about 10:00 o'clock that morning and walked all the way to Kinuartelan, a distance of four kilometers or so, arriving there at around 12 o'clock noon.

In corroboration of their alibi, they presented two witnesses: Eleno Bronzal (father-in-law of Oscar Peñones) and one Dominador Ramos.

The fourth brother charged with the crime, Efren Peñones, also took the witness stand. He claimed self-defense and defense of relative. According to him, he was then in the house of his father (Leon Peñones), starting a fire in the kitchen stove to cook lunch; and while he was thus occupied he heard the voice of Tomas Oronan, his brother-in-law; Tomas was shouting that he would kill Leon Peñones (Efren's father) and was calling for him to come out of the house. Efren looked out and saw that his sister, Felomina, was with Tomas, her husband, together with four of their children, Julieta, Ramon, Poldo and Antonio. Efren says he also saw that his father, Leon, was at the porch, and that he heard Felomina tell Tomas to go into the house and attack Leon. Tomas did so and struck out at Leon with a bolo but failed to hit him. Leon ran to the kitchen and placed himself behind his son, Efren. Tomas Oronan followed and again struck out with his bolo, this time at Efren. Efren however shifted away from the blow and thus avoided being hit. Efren picked up a piece of firewood and hit Tomas with it, causing the latter to stagger and drop the bolo. As Tomas was staggering from the force of the blow, Efren saw that Ramon Oronan had a dart which he hurled at Efren. But Efren grabbed Tomas and used him as a shield, so the dart hit Tomas instead. Efren released Tomas and picked up another piece of firewood which he cast at Ramon, who ran away. Efren saw that Tomas was trying to pick up the bolo he had dropped; so with his firewood club, Efren struck Tomas again and again, and yet again until Tomas ceased to move. Efren then went to the residence of Barangay Councilman Roberto Novales and surrendered to him.

In an attempt to bolster Efren's story, the defense also presented Leon Peñones, Efren's father, and a certain Roberto Madrilejos as witnesses.

The Trial Court rendered judgment on January 24, 1985. It rejected as unworthy of credence the evidence tending to establish the alibi of Oscar, Froilan and Andres Peñones, and the claim of self-defense of Efren Peñones, and ruled that the proofs of the prosecution established their guilt beyond reasonable doubt of the crime of murder, qualified by abuse of superior strength. Accordingly, there being no mitigating nor aggravating circumstances -- the Trial Court also having found that there was no sufficient evidence of the modifying circumstance of evident premeditation set out in the indictment -- the Court sentenced all said accused to suffer the penalty of reclusion perpetua together with all its accessory penalties, and to indemnify the heirs of the deceased, jointly and severally, in the amount of P20,000.00 as compensatory damages for death, P20,000.00 as moral damages, and P10,000.00 as exemplary damages, as well as to pay the costs.[3]

This judgment the accused now assail in this Court as being grievously in error. They ascribe the following specific errors to the Trial Court:

- 1) rejection of the defense of alibi asserted by Froilan, Andres and Oscar Peñones;
- 2) rejection of Efren Peñones' claim of complete defense of self and of his father;

- 3) basing the conviction solely on the evidence of biased witnesses: the decedent's widow, Felomina Oronan, and son, Ramon;
- 4) admission of photographs of the victim and a police officer, over the defense objection that the same are incompetent without accompanying testimony of the photographer and the policeman depicted, and opportunity to cross-examine them; and
- 5) denial of a motion for new trial to present newly discovered evidence consisting of the testimony of Bgy. Councilman Roberto Novales, to whom Efren Peñones had voluntarily surrendered.

As regards the defense of alibi, well established and of unvarying application is the rule that it is unavailing against positive identification of the accused by credible witnesses,[4] or absent a satisfactory showing of the physical impossibility of the accused's being present at the scene of the crime at the time of its commission.[5]

Tested by these jurisprudential standards, the defense of alibi must fail. A leisurely walk of two hours, according to the three brothers invoking that defense, is all that it takes to travel from barrio San Antonio, where they claimed they were, to barrio Kinuartelan, where the killing of Tomas Oronan was perpetrated. In fact, one of their own witnesses, Eleno Bronzal, estimated the time at only an hour. It cannot therefore be concluded that under the circumstances it was physically impossible for the brothers to go from San Antonio to Kinuartelan, kill their brother-in-law, and then immediately return to San Antonio before their absence could be noticed, specially considering that they were the only people in the field or farm in San Antonio where they were supposedly engaged in harvesting palay.

There is, moreover, the positive identification made of them by their own sister of the full-blood, and her son, their nephew, in addition to the detailed narration of the manner by which they and their other brother, Efren, had attacked and slain Tomas Oronan. That positive identification -- not to mention the telling circumstance that it was made by relatives who, because of the closeness of their consanguineous relationship would not, in the very nature of things, be expected to implicate them for so horrible a crime as murder and expose them to the grave penalty thereto attached by law, if said relatives were not otherwise certain of the veracity and accuracy of their perceptions or were plagued by even the smallest doubt respecting them -- precludes sustaining the three brothers' defense of alibi.

As to Efren Peñones' contention that he acted in legitimate defense of his person and of his father, Leon, this Court feels that the same was correctly rejected by the Trial Court. Having admitted that he had clubbed Tomas Oronan to death, it behooved Efren to demonstrate, by preponderance of evidence, the presence of the familiar elements of self-defense and defense of stranger, to wit: unlawful aggression on the part of the victim, Tomas Oronan; lack of sufficient provocation on Efren's part, as the person making the defense; and reasonable necessity of the means adopted by him to repel the aggression.

The trouble is that an objective appraisal of his own proofs as to the manner of the killing of Tomas Oronan, immediately provokes and impels repudiation; for said proofs disclose an irreconcilable inconsistency between his story and evidence of so high an order as to be well nigh conclusive, i.e., evidence of the wounds and injuries inflicted on Tomas Oronan disclosed by the post-mortem examination. Efren Peñones' story that he had clubbed Tomas Oronan to death in the process of defending himself and his father against the former's wild assault with a bolo, is obviously untrue. It is contradicted by the nature and number of the deceased's injuries: no less than seventeen (17) different wounds, abrasions and fractures. These wounds and injuries indubitably prove that Tomas Oronan was not only struck four or five times with a wooden club by just one person, but was subjected to heavy blows and stabbing with pointed objects by more than one person, a proposition entirely consistent with the prosecution's version of the tragic occurrence.[6]

Furthermore, the claim of self-defense would appear to be a mere afterthought on the part of Efren Peñones. He did not make the claim of self-defense or defense of relative when he allegedly surrendered to a barangay official, or when he was taken into custody by the police, which would have been the natural and logical reaction of a person in his predicament. This omission makes his subsequent assertion of the defense in court suspect, as this Court has had occasion to observe.[7]

In an effort to undermine the Trial Court's fundamental conclusions, the charge is made that Ramon and Felomina Oronan are biased. Their disqualification as witnesses, or a refusal to give credence to their testimony cannot, to be sure, result merely from their being the surviving son and widow of the victim and therefore, interested in the outcome of the case. For under the rules of evidence, neither parties "nor other persons interested in the outcome of a case" are excluded as witnesses.[8] More than once has this Court held that mere relationship to a party cannot militate against the credibility of a witness or be taken as destructive of the witness' credibility, for it is not to be lightly supposed that relatives of the victim would callously violate their conscience by blaming the crime on persons whom they know to be innocent.[9]

The defense sought to prove that the Felomina had a motive to testify falsely against the Peñoneses because her father and a brother had earlier tried to manhandle her son, and she herself and her son had been haled to court for grave threats by Leon Peñones. Subsumed in this submittal is the theory that Tomas Oronan had gone to the place of residence of Leon Peñones and his four (4) sons, bringing with him his wife and four (4) children, to launch an attack against Leon. A more foolhardy "bearding of lions" can scarcely be imagined. The proffered scenario is also quite improbable: that the mere chasing of Tomas' son by Leon Peñones would be considered so grievous an affront as to provoke Tomas to make a rash attempt against Leon's very life; and, as stressed by the Solicitor General, that after grappling with and bludgeoning Tomas Oronan to death, Efren "was unscathed while the alleged aggressor (Tomas) sustained fourteen (14) injuries." Moreover, the hypothesis is in contradiction with the clear indication in the record of Tomas Oronan's peaceful bent at the time, for the undisputed fact is that he had traveled to Kinuartelan to report, as he did report, to the police authorities there the incident involving his son and the latter's grandfather.

The appellants next make a half-hearted attempt in their brief to persuade this Court to reject Felomina's testimony because tainted by inconsistencies. They do not however bother to particularize the inconsistencies or explain in what way they detract from Felomina's credibility. The Court is satisfied of the correctness of the Trial Court's observation that any inconsistencies "between what was stated in the affidavit of Felomina Peñones Oronan, taken at the police headquarters of Polangui, Albay, and her oral declarations on the witness stand * * are not substantial," and do not affect her credibility.[10] Besides, her narrative is fully corroborated on all substantial points by that of her son, Ramon.

Photographs depicting the lifeless victim and a police investigator at the scene of the crime, (Exhs. B and B-1) were shown to Felomina and her son, Ramon, in the course of their testimony and as part thereof. They identified the corpse, and the place where he was lying, as they were eminently qualified to do. It is claimed by the appellants however that it was error for the Trial Court to have admitted the photographs in evidence, because the photographer had not been presented for cross-examination. The pictures were not presented as independent evidence, but merely as part of the testimonies of Felomina and Ramon. And since the photographer obviously was not more competent than either Felomina or Ramon to identify and describe the persons (living or dead) and things appearing in the pictures, there was therefore no need to present the photographer himself; questions regarding the identity and description of the persons and things in the photographs, and even as regards any seeming inconsistency between the photographs and the persons and things actually photographed could very well be asked of Felomina or Ramon as of the photographer.

As regards the appellants' motion for new trial, its denial by the Trial Court was correct. The motion was grounded on newly discovered evidence. But it is obvious that the evidence -- the testimony of the barangay official to whom Efren Peñones had supposedly surrendered -- cannot in any sense be considered newly discovered. It was known to the appellants during the trial. Much less may it be considered of so substantial a character as would "change the judgment."^[11] For even if it be conceded that Efren Peñones had indeed given himself up to that barangay official, this circumstance would not alter the outcome one bit.

The manner of the commission of the crime by the four (4) appellants establishes the existence of a conspiracy among them. But, as the Trial Court states, the aggravating circumstance of evident premeditation may not be appreciated against them absent any proof "as to how and when the plan to kill was hatched or what time elapsed before it was carried out **."

On the other hand, the qualifying circumstance of abuse of superior strength, alleged in the information, was correctly found to be attendant on the perpetration of the slaying. Said the Court:

"** There are four accused in this case, who relatively are of regular, medium built (build) and size. Two were armed with 'guhi' (piece of bamboo, sharpened or pointed at one end) and stone and the other two with Indian arrows. The four were carrying bolos inside a scabbard and tied to the waist. The person attacked, Tomas Oronan, was unarmed. Although he had companions, the latter did not do anything to help the victim. Under the circumstances **, it is doubtful whether these companions could do anything even if they attempted to help the victim considering that the attackers were four and fully armed. The violence and force used by the four accused were excessive and out of proportion to the means of defense available to the victim. As earlier observed **, the purpose of the Oronans in going to Kinuartelan was not to seek trouble. They were there to settle things. To find out why Ramon Oronan was chased by his uncle and his grandfather the day before. If otherwise, they should not have requested for a police as a companion."

The Trial Court required the appellants to indemnify the heirs of Tomas Oronan in the amount of only P30,000.00. This should be increased to P50,000.00 in line with current doctrine.

WHEREFORE, the judgment of the Regional Trial Court subject of the appeal at bar, being in accord with the facts and the applicable law, is AFFIRMED in toto, with the sole modification above indicated, that the indemnity to the heirs is increased to FIFTY THOUSAND PESOS (P50,000.00).

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] The action was docketed as Criminal Case No. 974

[2] Sept. 20, 1977

[3] It also directed that the "filing fees corresponding to the civil liability awarded ** shall constitute a first lien on the judgment awarded and no payment by execution or otherwise shall be made to the offended party without first paying the amount of such filing fees to the clerk of court."

[4] Peo. v. Molato, G.R. No. 66634, Feb. 27, 1989; Peo. v. Almario, G.R. No. 69374, March 16, 1989; Peo. v. Talla, G.R. No. 44414, Jan. 18, 1990; Peo. v. Pasco, G.R. No. 68520, Jan. 22, 1990; Peo. v. Dinola, G.R. No. 54567 March 22, 1990

[5] Peo. v. Gaddi, G.R. No. 74065, Feb. 27, 1989; Peo. v. Alvarez, G.R. No. 70446, Jan. 31, 1989; Peo. v. Pigon, G.R. No. 76048, May 29, 1989; Peo. v. Lucas, G.R. No. 80102, Jan. 22, 1990; Peo. v. Rafanan, G.R. No. 48362, Feb. 28, 1990; Peo. v. Nabor, G.R. Nos. 77822-23, May 21, 1990

[6] SEE *Peo. v. Remollo*, 123 SCRA 209 (1983), cited in the Solicitor General's brief (p. 25) involving closely analogous facts, where it was ruled that the infliction of as many as 19 wounds on the deceased attests (a) not only to his being the victim of aggression, but (b) also to the number of assailants as not limited to only one but to the five appellants who were all identified

[7] *Peo. v. Rodil*, 109 SCRA 308 (1981); *Peo. v. Manansala, et al.*, 66 O.G. 6988 (1970) 31 SCRA 401; *Peo. v. Alfaro*, 119 SCRA 204 (1982)

[8] Sec. 18, Rule 130, Rules of Court

[9] *Pritchard v. C.A.*, G.R. No. 48468-69, Nov. 22, 1989; *Peo. v. Mitra*, G.R. No. 80405, Nov. 24, 1989; *Peo. v. Manzanares*, G.R. No. 82696, Sept. 8, 1989; *Peo. v. Demetrio*, 124 SCRA 914 (1983)

[10] Citing a number of cases, to wit: *Peo. v. Oquino*, 122 SCRA 797; *Peo. v. Galicia*, 123 SCRA 550; and *Peo. v. Demetrio*, 124 SCRA 914

[11] Sec. 1, Rule 121 of the Rules of Court requires that for a new trial to be granted on the invoked ground that "new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment." The amendments to the Rules on Criminal Procedure, eff. Nov. 13, 1988 (RES., Feb. 2, 1989) have not made any alteration in the text of the rule.

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