

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY TAMBA, ROBERTO DIONSON, GERONDIO DESTOR AND CARLOS DOLOR, ACCUSED-APPELLANTS.

G.R. No. 71272. January 29, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal brought by the accused Carlos Dolor and Gerondio Destor from the decision of the Regional Trial Court of Cotabato City, Branch XV, finding them and a Jimmy Tamba guilty beyond reasonable doubt of the crime of murder and sentencing each one of them to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim Celso Elevecionado the amount of P12,000.00 and to pay the costs.

The amended information filed against the accused alleged:

"That on or about April 22, 1973, in the afternoon, at Sitio Mao, Barrio Kauran, Municipality of Ampatuan, Province of Maguindanao, Philippines, and within the jurisdiction of this HONORABLE COURT, said accused armed with a deadly bladed weapon, a long knife, and with the intent to kill, conspiring, confederating and helping each other, did then and there, with treachery and evident premeditation, wilfully, unlawfully and feloniously attack, assault and stab one CELSO ELEVECCIONADO, hitting him fatally with mortal wounds in different parts of his body which directly caused his death on the spot.

"CONTRARY TO LAW."

The trial court's findings of the indisputable or admitted facts are as follows:

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"x x x [T]hat on or about April 22, 1973 at Lower Mao, a drinking tuba party was held at the house of Leoncio Dolor and those who were present were: Celso Elevecionado, Tony, Gaudincio Deemoy, Monoy, Mansueto, Carlos Dolor, Gerondio Destor, Ricarido Deemoy, Jimmy Tamba, Roberto Dionson and Enofrio Deemoy. That at about 4:00 o'clock in the afternoon, an incident took place which resulted in the death of the victim Celso Elevecionado who suffered wounds or injuries as follows: 'stab wounds at the level of 11th rib lateral to mid line going front and inward penetrating stomach with contents coming out from wound entrance about 3 inches long; stab wound 2/3 inches long and 3 inches deep towards wound 1 going upward; 4 small lacerated wounds on the forearm; small superficial lacerated wounds level of 10th rib mid auxillary line'. That accused Jimmy Tamba admitted sole responsibility in the killing of the victim Celso Elevecionado in self defense."

Thereafter, the trial court went on to establish the guilt beyond reasonable doubt of the accused based on the prosecution evidence as follows:

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"x x x [T]hat accused Gerondio Destor, Carlos Dolor and Roberto Dionson were already waiting for 2 1/2 to 3 hours at the mitan-ag tree just after the victim Celso Elevecionado left the place of the drinking spree for home to rest. At more or less 4:00 o'clock in the afternoon of the same day, when Celso Elevecionado was on his way to the place where his carabaos were being pastured by Nilo Elevecionado and his sister Darlyn Cabanlit, formerly Elevecionado, after waking up from his afternoon rest saw the three accused, namely: Carlos Dolor, Gerondio Destor and Roberto Dionson. Celso Elevecionado, after sensing the bad intention of the three accused immediately raised his hands and shirt in surrender saying: 'I will not fight you' and that he was unarmed. Despite Celso Elevecionado's sign of surrender, the three accused, namely: Carlos Dolor, Gerondio Destor and Roberto Dionson suddenly and without any provocation helped one another in boxing and mauling the victim Celso Elevecionado. The three accused, not satisfied with their superiority in number still called for Jimmy Tamba who was at that time still drinking tuba at Leoncio Dolor's place and who, because of ascendancy of Carlos Dolor over Jimmy Tamba, the latter having worked with him for five (5) years, without thinking, assaulted, attacked and by the aid of the three, namely: Carlos Dolor and Gerondio Destor who held both arms of Celso Elevecionado and Roberto Dionson who held Celso's feet which caused him to fall with face towards the earth, Jimmy Tamba stabbed Celso Elevecionado several times on the different parts of his body which caused his death. x x x."

The lower court rendered its decision against Jimmy Tamba and herein appellants, Carlos Dolor and Gerondio Destor, as Roberto Dionson remained at large.

The accused, Jimmy Tamba, withdrew his appeal.

Appellants Dolor and Destor raised the following assignments of errors in this appeal:

- The Lower Court erred in its findings that there was conspiracy between the accused resulting to the death of the deceased.
- The Lower Court erred in denying the defense of Alibi.
- The facts of the case do not warrant the conviction of the accused.
- The guilt of the accused was not proved beyond reasonable doubt.

The appellants contend that, contrary to the finding of the lower court, there was no conspiracy among the accused to kill Celso Elevecionado. They relied heavily on the testimony of their co-accused Jimmy Tamba who stated that the three persons: Roberto Dionson, Gerondio Destor and Carlos Dolor had no participation in the killing of Elevecionado (tns., February 11, 1985, p. 35). Such statement, they allege, gives credence to their defense of alibi. Furthermore, they put up the defense that they had no motive for killing the deceased.

We find no reason to depart from the lower court's appreciation of the evidence presented which established conspiracy. The appellants were positively identified by the victim's children namely: Nida, Nilo and Darlyn Elevecionado as among those who acted in concert against their father. Therefore, Tamba's testimony exculpating them from the misdeed, their defense of alibi and their alleged lack of motive cannot overcome the evidence on record clearly establishing the identities of the appellants as two of the assailants of Elevecionado. (See *People v. Ramilo*, G.R. No. 52230, Dec. 15, 1986; and *People v. Ibal*, G.R. Nos. 66010-12, July 31, 1986).

The appellants question the application of the rule that if the only defense of the accused is alibi then this defense

is weak if they are positively identified. They state that it should not be applied when, aside from alibi, the accused has also other defenses as in the case at bar (Appellants' brief, p. 8). This contention is not meritorious.

The accused Dolor claimed that while it is true that he attended the drinking spree at Leoncio Dolor's house, he left the place at about 2:00 to 2:30 o'clock in the afternoon and went directly home to Kauran. On the other hand, the accused Destor who incidentally did not take the witness stand, relied only on the claims of Roberto Barometro, accused Tamba, and Dolor to prove his non-participation and the allegation that he was in his farm planting corn (Lower Court Decision, p. 41).

As quoted in the case of *People v. Ramilo*, supra, from the case of *People v. Lumantas* (28 SCRA 765):

"Alibi is one of the weakest defenses that can be resorted to by an accused (*People v. De la Cruz*, 76 Phil. 701). To establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*U.S. v. Oxiles*, 20 Phil. 587; *People v. Palomos*, 49 Phil. 601; *People v. Resabal*, 50 Phil. 780). x x x."

The lower court in this case aptly pointed out:

xxx xxx xxx

"It will be noted from the testimony of Carlos Dolor that he is a resident of Kauran which is more or less 2 kilometers to Lower Mao which distance can be easily traversed by walking considering that in his defense he went home between 2:00 to 2:30 o'clock in the afternoon and the incident took place at about 4:00 o'clock on the same afternoon. On the part of Gerondio Destor, the place where he went to after asking permission from Celso Elevencionado was in his farm to plant corn and the distance of his farm is so near that it can even be seen from the place where the drinking spree was held, at the house of Leoncio Dolor. Considering the distance, the proximity of the places where the accused Carlos Dolor and Gerondio Destor were to the scene of the crime does not preclude the possibility that they were at the place of the crime at the time when it was committed. Therefore the defense cannot be acceptable because the accused can still be in the place at the time of the incident. That it is not so far located at a distance that it was well-nigh impossible for them to be at the scene of the crime. Alibi is too weak to prevail over the positive identification by the prosecution witnesses as authors of the crime. There is no ground to suspect that the three eye witnesses are actuated by sinister or ulterior motives in falsifying the truth knowing fully well that one of the accused in the person of Carlos Dolor was the compare of their father, the late Celso Elevencionado. We can only conclude that their intention is solely to bring all those who participated in the killing of their father before the bar of justice."

The appellants further contend that they had no motive for killing Elevencionado.

As held in the case of *People v. Cabanit* (139 SCRA 94):

"Proof to establish motive for the killing of the victims in this case is of little significance because as stated in *People v. Lumantas*, 28 SCRA 764, even lack of motive for committing the crime does not preclude conviction when the crime and the participation of the accused therein are definitely shown."

The testimony of the victim's son, Nilo Elevencionado shows there was bad blood between his father and Gerondio Destor, who felt insulted when Nilo's father abruptly rejected an offer to buy his plow as the price was too cheap.

At any rate, the viciousness of the attack and the fact that three of the accused waited for about three hours in some sort of ambush renders unnecessary the need to prove their motive.

Conspiracy is evident from the manner the accused committed the crime. The appellants held the victim's arms while Tamba stabbed the victim repeatedly. Each of the offenders performed with such closeness and

coordination as to indicate a common purpose or design (*People v. Mahusay*, 138 SCRA 452).

Where there is conspiracy, a showing as to who inflicted the fatal blow is not required. As conspirators, the appellants would still be equally responsible for the acts of their co-conspirators. In fact, the appellants were the ones who called on Tamba (the person who stabbed the victim) to join them while mauling Elevencionado.

WHEREFORE, the judgment appealed from is AFFIRMED with the MODIFICATION that the indemnity to be paid is increased to THIRTY THOUSAND PESOS (P30,000.00).

SO ORDERED.

Fernan, (Chairman), Alampay, Paras, Padilla, and Bidin, JJ., concur.

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