

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE TAN, EDDIE TAN, AND FEDERICO FAJARDO,
ACCUSED-APPELLANTS.**

G.R. No. 75530, December 19, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is an appeal from the decision dated June 26, 1986 of the Regional Trial Court of Lanao del Norte, 12th Judicial Region, Branch IV, Iligan City, finding appellants Vicente Tan, Eddie Tan and Federico Fajardo guilty beyond reasonable doubt of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua and to jointly and severally indemnify the heirs of the deceased Rodulfo Hinuctan in the sum of P30,000.00.[1]

The judgment of conviction was based on the following facts:

On March 18, 1986, at about 11:30 in the evening, Rodulfo Hinuctan 28 years old, carpenter, with companions Ferdinand Pioscos, Eddie de la Cruz, Victor Balongag and Gabriel Barientos, were on their way home after a drink at Fermin Store in Palao, Iligan City. As they were passing the yard of Colonel Cuyo's house at Riverside, Palao, their way was blocked by the accused Vicente Tan, Eddie Tan, Federico Fajardo and Meliton Valencia. The latter were armed with bladed weapons, except for Meliton who was only carrying a flashlight.[2]

Brandishing a bolo, Federico Fajardo approached Hinuctan and pointed the bolo at him. Hinuctan raised his hands and placed them on Fajardo's shoulders and asked, "What is this, I have nothing to do with this." At that moment, Vicente Tan, coming from the right side, stabbed Hinuctan with a kitchen knife (flamingco), hitting him on the right side of the body below the armpit. Hinuctan fell and as he lay on the ground bleeding, Eddie Tan walked towards him and remarked, "He is already dead.[3]

Hinuctan was rushed to the Mindanao Sanitarium Hospital where he died shortly thereafter.[4] Dr. Livey Villarin who conducted the autopsy found that the victim suffered a single stab wound located at the mid-axillary area level of the rib below the right armpit. The wound was fatal because it penetrated the lungs but death was attributable to internal hemorrhage.[5]

On March 20, 1986, an information was filed against Vicente Tan, Eddie Tan, Federico Fajardo and Meliton Valencia for the crime of homicide under Article 249 of the Revised Penal Code.[6] But on April 15, 1986, said information was amended to read as follows:

"The undersigned Second Assistant City Fiscal of Iligan accuses VICENTE TAN, EDDIE TAN, FEDERICO FAJARDO, and MELITON VALENCIA for the crime of MURDER, committed as follows:

"That on or about March 18, 1986, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually helping each other, armed with a bladed weapon, by means of treachery and evident premeditation, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault, stab and wound the said Rodulfo Hinuctan, thereby inflicting

upon him the following physical injuries, to wit: x x x which caused his death.

"Contrary to and in violation of Article 248 of the Revised Penal Code with the aggravating circumstances of treachery and evident premeditation. x x x."[7]

On June 26, 1986, the trial court dismissed the case against Meliton Valencia but found Vicente Tan, Eddie Tan and Federico Fajardo guilty of the crime of murder, qualified by evident premeditation. The lower court held that there was no treachery.[8]

In this appeal, the appellants have raised the following errors:

“(1) The lower court erred in finding that there was conspiracy among the three accused namely Vicente Tan, Eddie Tan and Federico Fajardo in the stabbing of the deceased Rodolfo Hinuctan;

“(2) The lower court erred in finding that the killing of the deceased by Eddie Tan was attended with evident premeditation.”[9]

In their defense, appellants not only denied any complicity in the killing of Hinuctan but they also pointed co-accused Eddie Tan as the lone knifewielder, by the latter's own explicit admission in open court.

Eddie Tan, 36 years old, single, mason, recounted that at around ten in the evening of March 18, 1986, he was in his mother's store near the gate of the City Hospital. Then in plain view of several onlookers, he was beaten at the back of his head by Hinuctan. Wounded, Eddie went to the hospital and secured a medical certificate, after which he went home and took a knife. Because of the pain he suffered, he wanted to look for Hinuctan and retaliate.[10]

Eddie was alone when he caught up with Hinuctan and his group near the Cuyos residence at Riverside, Palao. As Hinuctan was about to throw stones at him, Eddie lunged at the victim with his knife and hit him just below the right armpit. Hinuctan was already sprawled on the ground by the time Eddie's brother Vicente Tan arrived with cousin Federico Fajardo and Meliton Valencia. Eddie told his brother, "Ting, he is already dead." [11]

Eddie Tan belied the veracity of eyewitness Ferdinand Picos' claim that it was Eddie's brother, Vicente, who stabbed Hinuctan. Eddie accused Picos of lying in court because earlier Eddie had scolded him for going near their (Eddie) house when it was already dark.[12]

Vicente Tan, 40, years old, married, also a mason, testified that at approximately eleven o'clock on the night of March 18, 1986, he was out drinking with cousin Federico Fajardo at Virgie's Store. At 11:25 p.m., Meliton Valencia arrived and told them that he was looking for Eddie Tan and was heading for the "first river." The trio (Vicente, Federico and Meliton) proceeded to the river but before reaching their destination, they saw a commotion in front of Colonel Cuyo's house. At a distance of four meters, they saw a man lying on the ground. Then they saw Eddie who approached them and told them that the man was already dead. Fearful that they might be "pinpointed and be retaliated," they all ran away and it was only later that they found out that the corpse was "Kiko" or Rodolfo Hinuctan.[13]

Vicente (who had served sentence at the National Penitentiary for murder committed in 1968), vehemently denied that he was Hinuctan's assailant. Having experienced "the difficulty in the prison cell of Muntinglupa," he (Vicente) had already reformed. Vicente declared that it was Eddie who stabbed Hinuctan.[14]

When queried as to why the two prosecution witnesses would implicate him as the killer, Vicente said that he had a quarrel with Bariantos' father and Bariantos and Picos happened to be close friends.[15]

Appellants' contention that Hinuctan was already dead when they arrived at the crime scene cannot stand against the positive identification made by the prosecution eyewitnesses, especially in the absence of any evidence

indicating that said witnesses were prompted by improper motives to falsely testify against the accused. The alleged "motives" advanced by the Tan brothers are too shallow and flimsy to be taken seriously by the Court.

Ferdinand Piosos and Victor Balongag, both 19, saw the incident clearly. The front yard of the Cuyos residence was illumined by an electric lamp post. Piosos stood at a distance of about four meters while Balongag was about five meters away from the scene of the stabbing. Both witnesses unerringly recognized and identified the appellants whom they have known for a good many years since they were neighbors.[16]

Despite the protestations of the appellants, the existence of a conspiracy among them has been convincingly shown. Appellants blocked the path of Hinuctan and his friends. They were armed with deadly weapons. They coordinated their movements in assaulting Hinuctan. While Fajardo approached Hinuctan and conversed with him, Vicente Tan emerged from the right side of the victim and executed the fatal thrust which perforated his lungs. As the victim lay dying on the ground, Eddie Tan went near to make sure that he was dead. After having done so, he and the other appellants fled in the same direction.

It is evident that the appellants had a community of design. They synchronized their actions towards the same objective which was the liquidation of Hinuctan as a measure of vengeance.[17]

With the finding of a conspiracy, it is no longer material to determine who among the three appellants had inflicted the mortal stab wound which swiftly brought about Hinuctan's death. As co-conspirators, their criminal responsibility is equal and collective.

Relative to the second assigned error, the trial court correctly appreciated the aggravating circumstance of known premeditation which qualified the killing of Hinuctan into murder. On direct examination, Eddie Tan stated:

"Q. Where were you at 10:00 P.M. on March 18, 1986?

"A. At the store of my mother.

" xxx xxx xxx xxx.

"Q. At that time can you recall if there was any unusual incident happened?

"A: Yes, sir. I was beaten.

"Q: Who beat you?

"A: Rodulfo Hinuctan.

" xxx xxx xxx xxx.

"Q: When you said you were beaten, you were hit?

"A: Yes, sir. At the back of my head.

"Q: At the time you were beaten, were there any witnesses?

"A. They were many who saw.

"Q: After you were beaten by Rodulfo Hinuctan, what happened?

"A: I secure (sic) medical certificate at the City hospital.

"Q: Was there a medical certificate issued?

"A: Yes, sir.

"Q: Where is the medical certificate now?

"A: It is now with the court.

"Q: After you were treated at the hospital, what did you do?

"A: I went home and took a knife.

"Q: Why did you get a knife?

"A: Because of the pain I suffered, I went to look for the person who hit my head to retaliate.

"Q: Who was this person you were looking for?

"A: Rodulfo Hinuctan.

" xxx xxx xxx xxx.

"Q: Approximately, what time is that after you were treated at the hospital?

"A: 11:00 o'clock.

"Q: Approximately, what time was that when you stabbed Rodulfo Hinuctan?

"A: 11:30."[18]

Surely, from 10:00 p.m. of March 18, 1986, when the thought of revenge germinated in Eddie's mind after he was mauled by the victim, until the actual stabbing of Hinuctan more than one hour later, appellants had had the opportunity to reflect upon the consequences of their actions. Eddie, for his part, had sufficient time to recover his equanimity and to desist from committing the crime. We note that even in the heat of anger, he did not immediately run after Hinuctan. Instead, he brought himself to the nearby hospital to have his head wound treated and even asked to be issued a medical certificate. But there was no indication of desistance on Eddie's part. From the hospital, he dropped by his house to retrieve a knife and in so doing chose the physical means with which to vent his resentment and anger on Hinuctan. He then enlisted the help of his elder brother Vicente and cousin Federico Fajardo and Meliton Valencia. Together they went in search of Hinuctan whom they later spotted near the Cuyos residence. Such chain of events eventually culminated in the stabbing of Hinuctan at approximately 11:30 of that same evening.

In *People vs. Durante*,^[19] the Court described the essence of deliberate premeditation: the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time adequate enough to arrive at a cool judgment.

In *People vs. Cabrera*,^[20] the Court held that evident premeditation was present where sometime before the killing, the accused was angry at the victims and the killing was perpetrated as an act of revenge. Likewise in *People vs. Dumdum*,^[21] we held that evident premeditation attended the assault conceived at least one hour before its perpetration.

In the case at bar, in slaying Hinuctan, the appellants were actuated more by the spirit of lawlessness and revenge than by any sudden impulse of uncontrollable fury, as deduced from the interval of one hour and thirty minutes from the time that Eddie was impelled to take his revenge until the moment of reckoning at Colonel Cuyos' front yard.

WHEREFORE, finding the appealed judgment to be in accordance with law and jurisprudence, it is hereby **AFFIRMED**, with costs against the appellants. So ordered.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

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- [1] Criminal Case No. 1004.
[2] TSN, June 18, 1986, pp. 8-10.
[3] Ibid, pp. 3-5, 10-14.
[4] Ibid, p. 15.
[5] Exhibit A.
[6] Original Record, p. 1.
[7] Original Record, p. 18.
[8] Original Record, pp. 112-113.
[9] Appellant's Brief, p. 56, Rollo.
[10] TSN, June 19, 1986, pp. 23-24.
[11] Ibid, pp. 24, 27.
[12] Ibid, p. 25.
[13] TSN, June 19, 1986, pp. 29-30.
[14] Ibid, p. 30; Original Record, pp. 72-73.
[15] Ibid, p. 31.
[16] TSN, June 18, 1986, pp. 13-14, 18.
[17] People vs. Velez, No. L-30038, July 18, 1974, 58 SCRA 21.
[18] TSN, June 19, 1986, pp. 23-25.
[19] 53 Phil. 363.
[20] 43 Phil. 82, 101-102.

[21] 92 SCRA 198.

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