

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CRESENCIO JIMENEZ, JR., RONALD JIMENEZ, CRESENCIO JIMENEZ, SR., JESSIE JIMENEZ AND ERLINDA PAGLINAWAN, ACCUSED-APPELLANTS.

G.R. No. 84276. February 13, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from the May 4, 1988 decision* of the Regional Trial Court, Masbate, Masbate (Branch XLIV) in Criminal Case No. 4951 finding herein appellants Cresencio Jimenez, Jr. and Ronald Jimenez guilty of the crime of Murder, the dispositive portion of which reads:

"WHEREFORE, the Court being convinced beyond reasonable doubt of the guilt of Cresencio Jimenez and Ronald Jimenez, Cresencio Jimenez is hereby sentenced to suffer the penalty of reclusion perpetua to be served at the National Penitentiary at Muntinlupa, Rizal. As for the other accused Ronald Jimenez, there being present mitigating circumstance of voluntary surrender and applying the indeterminate sentence law, he is hereby sentenced to suffer the penalty of 12 years and 1 day to 14 years of reclusion temporal to be served at Muntinlupa, Rizal. They are hereby ordered to pay the heirs of Pio Areglado in the form of damages, the sum of P30,000.00 to be paid pro-rata by the accused, and to pay the costs of the suit.

SO ORDERED."

(RTC Decision, Rollo, p. 20)

On December 3, 1985, the Acting Station Commander, INP, Cpl. Carlito P. Asilum, filed a criminal complaint for Murder against Cresencio Jimenez, Jr., Ronald Jimenez, Cresencio Jimenez, Sr., Jessie Jimenez and Erlinda Paglinawan (Original Records, p. 8). After examining under oath the prosecution witnesses and finding reasonable ground to believe that the defendants committed the crime and are probably guilty thereof, Municipal Circuit Trial Judge Jacinta B. Tambago ordered the issuance of a Warrant of Arrest with no bail recommended (Ibid., pp. 13-14). However, only herein appellants Cresencio Jimenez, Jr. and Ronald Jimenez were arrested while their parents, Cresencio Jimenez, Sr. and Erlinda Paglinawan, and their brother, Jessie Jimenez, remained at large (Ibid., p. 15). On March 6, 1986, Municipal Circuit Trial Judge Jacinta B. Tambago ordered that the records of the case be forwarded to the Provincial Fiscal of Masbate for the filing of the corresponding Information with the proper court (Ibid., p. 17).

On March 24, 1986, Second Assistant Provincial Fiscal Jesus C. Castillo filed an Information for Murder, and docketed as Criminal Case No. 4951, which reads:

"That on or about November 22, 1985, in the morning thereof, at barangay Balantay, Municipality of Dimasalang, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to kill, evident premeditation, treachery and superiority of strength, did then and there willfully unlawfully and feloniously attack, assault with a spear, shoot with a spear gun, stab with a scythe and hack with a bolo one Pio Areglado, hitting the latter on different

parts of the body, thereby inflicting wounds which directly caused his instantaneous death.

Contrary to law."

(Information, Original Records, p. 1)

Upon arraignment on July 23, 1986, Ronald Jimenez and Cresencio Jimenez, Jr. entered a plea of not guilty (*Ibid.*, p. 22). Thereafter, trial ensued.

The prosecution presented Dr. Ernesto Tamayo, Teofila Areglado and Rolando Palacay as witnesses while the defense presented Ronald Jimenez, Cresencio Jimenez, Jr. and Carlos Mitra as witnesses.

Dr. Ernesto Tamayo, Rural Health Officer and a resident of Dimasalang, Masbate, testified that he conducted a postmortem examination on the body of Pio Areglado on November 27, 1985 and issued a corresponding postmortem report (Exhibit "A", Original Records, p. 35). In said report, he noted that the victim, Pio Areglado, sustained five (5) wounds which were caused by different weapons and contusions on different parts of the body. Said wounds were fatal and were the cause of the instantaneous death of the victim. Although the cadaver was already embalmed when he examined it, he is certain that the wounds were not caused by the embalming process (TSN, August 14, 1986, pp. 2-10).

Mrs. Teofila Areglado, widow of the victim Pio Areglado, and an eyewitness of the prosecution recounted that in the morning of November 22, 1985, she was in their coconut plantation in Balantay, Dimasalang, Masbate with her late husband and their hired help Rolando Palacay and Reynaldo Arcenal. Her husband was fixing the rope to be used on the pushcart in loading the copra when they heard the sound of coconut being gathered. She was asked by her husband to check who was still gathering the coconuts. Upon reaching the place where the sound came from, she saw herein appellant Ronald Jimenez up in one of the coconut trees. She asked the latter to stop gathering the coconuts since they owned the same. He asked her to wait for him and upon reaching the ground chased her. She ran and shouted for help. Ronald Jimenez was able to overtake her and tried to hit her with his scythe which fortunately did not find its mark. Thereafter, she saw Ronald Jimenez, together with Cresencio Jimenez, Jr., Cresencio Jimenez, Sr., and Jessie Jimenez, chasing her husband. About thirty (30) meters from where she was standing, the four (4) Jimenezes encircled her husband who raised his arms as sign of surrender. She saw Jessie Jimenez pierce a wooden spear on her husband's left breast. Cresencio Jimenez, Jr. shot her husband with a spear gun hitting him in the right forearm. Ronald Jimenez, using a scythe, slashed her husband's neck while Cresencio Jimenez, Sr. hacked her husband with a bolo and thrust the same on his back. She identified in court pictures of her husband (Exhibit "C" - "C-16", Original Records, p. 34) showing the wounds he sustained during the attack (TSN, October 16, 1986, pp. 14-23). While this was taking place, Erlinda Paglinawan, wife of Cresencio Jimenez, Sr. and mother of the three (3) other accused, was about ten (10) meters away, carrying a child and shouting "Kill him!". She did not see where the other accused came from as she started to run when Ronald Jimenez gave her a chase (*Ibid.*, p. 26).

Rolando Palacay, a farmer and resident of Piyaong, Dimasalang, Masbate, corroborated the testimony of Teofila Areglado including the manner of the attack and the wounds inflicted by each of the accused (TSN, November 26, 1986, pp. 30-33). He likewise declared that he and Reynaldo Arcenal, another hired help of the Areglados, did not do anything during the incident due to fear (*Ibid.*, pp. 34-35).

Appellant Ronald Jimenez, denied the declarations of Teofila Areglado and Reynaldo Palacay. He testified that he alone is responsible for the death of Pio Areglado. He narrated that in the morning of November 22, 1985, he was on his way to the river carrying a scythe and a spear gun when he met Pio Areglado who had a bolo and a piece of wood. Upon seeing him, the latter declared "It's better that you are here, I kill you first!" With these words, he tried to hit Ronald Jimenez with the piece of wood but he was able to parry the blow with the use of his spear gun.

He then fired his spear gun hitting Pio Areglado in the right forearm. With his right arm wounded, the latter tried to pull out his bolo with his left hand. Ronald picked up the piece of wood and pierced the same on the right breast of Pio Areglado. When the latter fell to the ground, he pulled out his scythe and slashed Pio's neck. He then got hold of Pio's bolo and thrust the same at his side. He then left and surrendered to the police. He further testified that Teofila Areglado was present during the encounter but ran away when her husband struck him (TSN, July 22, 1987, pp. 43-47). He did not have the time to run away nor did he think of running to their house because his mother had just given birth and he was afraid that she might have a relapse. He declared that his brother Cresencio Jimenez, Jr. was then sick and was resting in their house while his father, Cresencio Jimenez, Sr., and his other brother, Jessie Jimenez, went to Dimasalang to buy some provisions (Ibid., p. 49).

On cross examination, he testified that after the incident, he went directly to the police station after washing the blood stains on his body in the river. His family learned about the incident the following day when his brother Cresencio Jimenez, Jr. was arrested (Ibid., pp. 58-59).

Appellant Cresencio Jimenez, Jr. testified that he learned about the incident when he was apprehended at about 8:30 in the morning of November 22, 1985. He was then at home, sick with fever, with his mother, younger brother Bernaldo and sister. His father Cresencio Jimenez, Sr. and brother Jessie Jimenez were not in the house as they had left together early that morning. He was brought to the detachment where he stayed for three (3) days. He was then brought to the Municipal Jail of Dimasalang, Masbate where he saw his younger brother Ronald (TSN, October 19, 1987, pp. 63--71). He further testified that his parents and brother Jessie escaped after the incident because they were included in the charge. The probable cause of the killing is the complaint of his mother against Teofila Areglado regarding the boundary of their adjoining parcels of land over which about twenty (20) coconut trees were planted and from which Pio Areglado has been harvesting coconuts for some three (3) months (Ibid., pp. 77-78). He learned the details of the incident from his brother Ronald during their stay in the Municipal Jail (Ibid., p. 82).

Carlos Mitra, member of the INP Station of Dimasalang, Masbate, testified on the fact that Ronald Jimenez voluntarily surrendered to the Police Station as shown in Entry No. 1026 page 557 of the police blotter (Exhibit "1", Original Records, p. 65) which reads:

"At about 10:35 in the morning, one Ronald Jimenez y Paglinawan voluntarily surrendered to this station for having scythed one Pio Areglado on his neck at Barangay Balantay, Dimasalang, Masbate.

Said perpetrator was detained for further investigation."

As aforementioned, the court a quo convicted herein appellants of the crime of Murder. Hence, this appeal.

Appellants faulted the trial court for giving too much probative value to the evidence of the prosecution and in not acquitting appellant Cresencio Jimenez, Jr. on the ground of reasonable doubt.

Appellants allege that the lower court relied on the testimony of prosecution witness Teofila Areglado in convicting them; that testimony should not be believed for it can be inferred that Ronald Jimenez got mad and chased Teofila Areglado after being told to stop gathering the coconuts. (However, she was merely pushed aside when she was overtaken, without any injury inflicted upon her), that the other accused were not seen in the place where Ronald was gathering the coconuts and neither was it established where they came from; that finally, the rest of the family were implicated by reason of the number of wounds sustained by the deceased (Brief for the Appellants, Rollo, pp. 41-43).

As to the second assigned error, appellants contend that since the testimony of Teofila Areglado is not credible, there is insufficient evidence to convict appellant Cresencio Jimenez, Jr. If her testimony is to be believed, she

would have been killed first. The implication of the other accused to the crime is to make it appear that there was conspiracy in the crime committed (Ibid., pp. 42-44).

Appellant's contentions are devoid of merit.

It is well settled that the findings of the trial court which had the best opportunity to hear and observe the witnesses testify and to weigh their testimonies, are given the highest respect and recognition by the appellate court (People vs. Martinada, 194 SCRA 36 [February 13, 1991]).

Appellant Ronald Jimenez admits that he killed Pio Areglado but claims that he did it in self defense. Having invoked self defense, it was incumbent upon him to prove by clear and convincing evidence the main ingredient of the defense. He must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if it were weak, it could not be disbelieved after the accused had admitted the killing (Guevarra vs. Court of Appeals, 187 SCRA 484 [July 13, 1990]). His claim that he alone killed Pio Areglado is negated by the autopsy report of Dr. Ernesto Tamayo that the victim sustained five (5) wounds inflicted by different weapons (People vs. Bocatcat, Sr., 188 SCRA 175 [July 31, 1990]). The nature and the number of wounds inflicted by an assailant are constantly and unremittingly considered important indicia which disprove a plea of self-defense (Guevarra vs. Court of Appeals, supra.).

As regards appellant Cresencio Jimenez, Jr., his main defense is alibi. He maintains that he was at home sleeping and sick with fever when the incident happened. It has been consistently held that for the defense of alibi to succeed, it must be shown that the accused was at some other place at the time of the alleged crime and that it was physically impossible for him to have been at the site of the crime at the time of its commission either before or after the time he was at such other place. If the required physical impossibility of being present at the scene of the crime is not proved, the defense becomes unavailing to the accused (People vs. Sorio, 190 SCRA 548 [October 17, 1990] reiterating People vs. Maloloy-on, 189 SCRA 250 [August 30, 1990]). In the case at bar, appellants' house is about forty (40) meters from the scene of the crime (TSN, July 22, 1987, p. 48). Hence, it is not physically impossible for appellant Cresencio Jimenez, Jr. to be at the scene of the crime at the time it was committed. Moreover, assuming that he indeed had fever, he has not shown that the sickness prevented him from leaving the house.

Furthermore, the defense of alibi, a defense inherently weak and difficult, cannot stand against the positive identification by the prosecution witnesses of the appellants as the author of the crime (People vs. Mision, 194 SCRA 432 [February 26, 1991]). Prosecution witnesses Teofila Areglado and Rolando Papacay were one in pointing to herein appellants, together with their father and their brother, as the persons responsible for the death of Pio Areglado.

As charged in the Information, the crime was attended by abuse of superior strength. The circumstance of abuse of superior strength depends on the age, size and strength of the parties. It is considered whenever there is a notorious inequality of forces between the victim and the aggressor, assessing a superiority of strength notoriously advantageous for the aggressor which is selected or taken advantage of him in the commission of the crime. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of the defense available to the person attacked (People vs. Carpio, 191 SCRA 108 [October 31, 1990]). In the case at bar, the victim was merely scantily armed when he was attacked while the accused were all armed with various weapons, thus Ronald Jimenez was armed with a scythe, Cresencio Jimenez, Jr. had a spear gun, Cresencio Jimenez, Sr. used a bolo while Jessie Jimenez had a spear. This shows that the accused purposely used excessive force out of proportion to the means of defense available to the victim.

WHEREFORE, the appealed decision is hereby MODIFIED in that, both appellants are sentenced to reclusion

perpetua (Ronald's voluntary surrender not being enough to offset the other circumstances, with the civil indemnity increased to P50,000.00 payable solidarity with costs.)

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

* Penned by Judge Manuel C. Genova

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