

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TOMAS GADIANA, ACCUSED-APPELLANT.*G.R. No. 92509. March 13, 1991*

Ponente: GRINO-AQUINO, J.

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The accused, Tomas Gadiana, has appealed the decision of the Regional Trial Court, Branch 34, Dumaguete City, convicting him of murder for having killed Constantino Paltinca. He was sentenced to suffer the penalty of reclusion perpetua and ordered to indemnify the heirs of the victim in the sum of P30,000, and to pay the costs.

On March 19, 1988, the barangay of Lutoban, municipality of Zamboanguita, Negros Oriental, celebrated its barangay fiesta. At about three o'clock in the afternoon, Constantino Paltinca, Juan Rafal, Temistocles Gajelloma and Ananias Rafal were conversing near the sari-sari store of Duarda Hapon on the roadside. Gadiana surreptitiously came up behind Paltinca who was leaning against a coconut tree, and suddenly stabbed him on the left side of his abdomen with a 6-inch hunting knife. With the knife still imbedded in his abdomen, Paltinca chased Gadiana, but after running for about ten (10) meters, he collapsed on the ground. Responding to his call for help, his mother, Enocia Alap-ap, came to the rescue and brought him to the Negros Oriental Provincial Hospital.

Dr. Zosimo Dy, Jr., who operated on the victim, certified that Paltinca sustained "one (1) stab wound, 5 cm. long, left hypochondriac area penetrating the abdominal cavity perforating liver, left lobe gall bladder, transecting jejunum, general peritonitis, hemoperitoneum and irreversible shock." (p. 12, Rollo.) The injuries were fatal. The victim expired at around 10:00 o'clock in the evening of the same day.

The accused, Gadiana, was the lone witness in his behalf. He admitted that on March 19, 1988 he was in Barangay Lutoban, Zamboanguita, Negros Oriental, to attend the barangay fiesta. While he was there, Constantino Paltinca (whom he knew as "Cristino") allegedly held him up, demanded his money, and threatened to kill him if he refused. He tried to escape, but Paltinca who allegedly was armed with a hunting knife, blocked his way. He allegedly kicked Paltinca in the groin, causing him to fall and lose his knife. Gadiana quickly picked up Paltinca's hunting knife, stabbed him in the stomach and fled. He surrendered to the police without delay.

After due trial, the Regional Trial Court, in a decision dated January 31, 1990, convicted the accused of murder.

In this appeal, Gadiana alleges that the trial court erred in not holding that the evidence of the prosecution failed to meet the test of moral certainty as to his guilt and to overcome the constitutional presumption of his innocence (p. 1, Appellant's Brief; p. 28, Rollo).

Appellant has capitalized the allegedly "grave and irreconcilable inconsistencies" of the prosecution witnesses Juan Rafal and Temistocles Gajelloma (p. 5, Appellant's Brief), and "certain material facts that were not appreciated by the trial court" (p. 8, *supra*).

Thus, while Juan Rafal testified that after the accused-appellant stabbed Paltinca from behind, the latter chased the former for a distance of about ten (10) meters (p. 6, TSN, June 1, 1989), before he fell to the ground, Temistocles

Gajelloma on the other hand, denied that Paltinca ran after his assailant. He declared that Paltinca did not do anything "because his intestines came out of his abdomen," so "he was brought to the hospital by his mother" (pp. 8-9, TSN, August 24, 1989).

While Rafal alleged that Gadiana did not say anything before he stabbed Paltinca (p. 5, TSN, July 1, 1989, Gajelloma on the other hand heard Gadiana say: "This is yours" when he stabbed Constantino Paltinca (p. 8, TSN, August 24, 1989). Evidently, Rafal did not hear what Gajelloma heard Gadiana utter before stabbing the victim.

Rafal claimed that Paltinca was stabbed on the left side below the ribs (p. 6, TSN, July 1, 1989), but Gajelloma swore that Paltinca was hit on the right side of his body (p. 8, TSN, August 24, 1989). While the autopsy showed that Rafal's testimony was correct, Gajelloma was not necessarily wrong because he probably meant his "right" side when he was facing Paltinca.

Finally, Rafal stated that Paltinca was holding the trunk of a coconut tree (p. 5, TSN, July 1, 1989, when he was stabbed by Gadiana, but Gajelloma alleged that Paltinca was leaning against the coconut tree with his right hand behind his head (p. 6, TSN, August 24, 1989). This is an insignificant detail which has no material relevance to the defense of the accused for whether Paltinca's right hand was holding the trunk of the coconut tree or the back of his head is really inconsequential.

As this Court had remarked in *People vs. De Guzman*, G.R. No. 76742, August 7, 1990:

"The truth need not be narrated with perfect symmetry. Several persons remembering the same incident may vary in their recollections of some of the details but these differences do not necessarily make liars of them all. What is important is that they agree on the essential facts and that their respective versions, corroborate and substantially coincide with each other to make a consistent and coherent whole."

The failure of the prosecution to present the victim's mother who was at the crime scene was not a fatal defect in the prosecution's evidence for her testimony would have been merely corroborative and cumulative. It is the fiscal's prerogative to determine who among his witnesses he will present, and whom to withhold (*People vs. Andiza*, 164 SCRA 642; *People vs. Gupo*, G.R. No. 75814, September 24, 1990).

The appellant asks: "If Constantino Paltinca was leaning against the trunk of a coconut tree and if Tomas Gadiana came from behind holding the knife with his right hand, how come Constantino Paltinca suffered the stab wound on the left side of his body below the ribs, the direction of which was from left to right?" (p. 9, Appellant's Brief). The explanation would be that when Gadiana attacked Paltinca from the rear, he emerged on the right side of his victim who may have turned to face his assailant, whereupon the latter stabbed him (Paltinca) on the left side of the body with the knife in his (Gadiana's) right hand.

The prosecution's failure to establish a motive for the crime is not important. Motive becomes essential only when there is doubt as to the identity of the assailant (*People vs. Yeban*, G.R. Nos. 90279-81, October 11, 1990). It becomes immaterial when the accused has been positively identified (*People vs. Juanga*, G.R. No. 83903, August 30, 1990; *People vs. Kyamko*, G.R. No. 95263, December 18, 1990). In this case, Juan Rafal, Temistocles Gajelloma and Ananias Rafal identified Gadiana as the person who fatally stabbed Paltinca.

Moreover, Gadiana admitted stabbing Paltinca but invoked self-defense. Consequently, upon him lay the burden of proving the elements of that defense by clear and convincing evidence. To do that, he must rely on the strength of his evidence and not on the weakness of the prosecution. For, even if the evidence of the prosecution were weak, it may not be disbelieved after the accused admitted responsibility for the killing. (*Guevarra vs. CA*, G.R. No. L-41061, July 16, 1990; *People vs. Sazon*, G.R. No. 89684, September 18, 1990.)

Assuming there was unlawful aggression on the part of Paltinca, as the appellant would have this Court believe,

the element of reasonableness of the means to prevent or repel the aggression (People vs. Ricarte, G.R. No. 67803-04, July 30, 1990) was absent for, if Gadiana's story were to be believed, Paltinca fell and lost his knife when Gadiana kicked him. The unlawful aggression ceased from the moment Paltinca fell and lay unarmed and helpless on the ground. There was no more need for Gadiana to kill him, for after Gadiana had taken possession of the knife, he could have simply walked away.

The crime committed was murder as the attack by the appellant while the deceased's back was turned to him was treacherous. It was sudden and unexpected, and insured the killing of his defenseless victim without risk of harm to the accused. (People vs. Espiritu, G.R. No. 80406, November 20, 1990.)

WHEREFORE, the appealed decision of the Regional Trial Court convicting Tomas Gadiana of murder and sentencing him to suffer the penalty of reclusion perpetua, is affirmed. However, the civil indemnity to be paid by the accused-appellant to the heirs of the deceased Constantino Paltinca is increased to P50,000 pursuant to the latest decision of this Court on the matter (People vs. De Guzman, G.R. No. 82002, December 20, 1990; People vs. Bartulay, G.R. No. 83696, December 21, 1990). No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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