

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO “EDDIE” ROBEDILLO, ARTEMIO “ARTEM” YEPES, ARTEMIO “ARTEM” NOVIO, AND ANACLETO “YONTONG” NOVIO, ACCUSED, EDUARDO “EDDIE”...

G.R. No. 95355. February 24, 1998

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision of the Regional Trial Court, 8th Judicial Region in Palo, Leyte convicting accused-appellants Eduardo “Eddie” Robedillo and Anacleto “Yontong” Novio, together with Artemio “Artem” Yepes (now deceased), of murder and sentencing each one to suffer the penalty of reclusion perpetua and jointly and severally to indemnify the heirs of the victim Martiano Cinco the sum of P30,000.00.

The information in this case alleged -

That on or about the 30th day of May, 1988, in the Municipality of Tolosa, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with decided intent to kill, conspiring, confederating and mutually helping each other, with treachery and taking advantage of superior strength, did, then and there wilfully, and feloniously attack, assault, stab and hack one Martiano Cinco, with the use of bladed weapons which the accused had provided themselves for the purpose, thereby inflicting upon said Martiano Cinco wounds on the head, chest and back, which wounds directly caused his death shortly thereafter.[1]

Charged in the information were Eduardo “Eddie” Robedillo, Artemio “Artem” Yepes, Artemio “Artem” Novio, and Anacleto “Yontong” Novio. Trial proceeded as to all except Artemio “Artem” Novio who was and, to this date, remains at large.

The prosecution presented two eyewitnesses: Sammy Cinco, the then 16-year old son of the victim, and Eufrocina Cinco, the victim’s common-law wife.

Sammy Cinco testified[2] that at about 4 p.m. on May 30, 1988, he and his father, Martiano Cinco, went to the house of Felicisimo Novio upon invitation of Artemio Novio who said there was a party in that house. It turned out that among the other guests invited were the four accused.

Sammy said that, after eating, he decided to wait for his father outside the house and sat down under a jackfruit tree nearby. Shortly thereafter, he saw his father jump out of the house through the balcony and run past him. He was being pursued by the four accused who were all armed with bolos. Sammy noticed that his father had been wounded on the back and was profusely bleeding. The four caught up with his father in the nearby ricefield. From where he had hidden behind some ornamental plants, Sammy saw his father kneeling with both hands raised, pleading for mercy as he was surrounded by his captors.

That was to be his father’s last deliberate act. Artemio and Anacleto Novio started the assault directly from the

front, followed closely by Eduardo Robedillo with hacking blows to the victim's right. From behind, Artemio Yepes stabbed Martiano Cinco on the back. The four then took turns striking Martiano until he fell down to the ground face first.

After witnessing the gory scene, Sammy fled home to report the incident to his brother.

Eufrocina Cinco testified next.[3] She said that at the time of the incident, she was home doing household chores. Their house was only about 100 meters from the house to which her husband and Sammy had gone. Hearing people shout, she went out of the house and saw her husband Martiano Cinco in a kneeling position, 80 meters away, with his hands up as the four accused, all armed with bolos, surrounded him. Eufrocina could not stand the sight and so covered her eyes. But later she summoned enough courage and managed to look. She saw the four men hacking away at their victim. She saw Martiano hit the ground, as accused-appellant Robedillo continued attacking her husband even after the other three had left. Robedillo then walked towards Eufrocina's house and shouted, "Who else is aggrieved?" Eufrocina managed to say, "Eduardo, that is enough as you have already killed my husband." Eufrocina said she suspected Robedillo to have harbored some resentment against her husband because the latter had filed a complaint against Robedillo for theft of a pig.

Eventually, the wife of the said accused-appellant came and took him away. This allowed Eufrocina to report Martiano's killing to the police.

Dr. Alicia S. Songalia, Municipal Health Officer of Tolosa, Leyte, conducted the post-mortem examination. She found that the victim had suffered 11 wounds in various parts of the body.[4] Her report (Exh. A) contained the following findings:

POSTMORTEM FINDINGS

RIGOR MORTIS

1. HEAD INCISED WOUND, 8 cm right frontal lobe area exposing the skull
2. CHEST INCISED WOUND, 7.5 cm left susclaviacular area injuring underlying tissues and blood vessels
3. WOUND, stab, 3 cm along left anterior axillary line injuring underlying tissues and blood vessels.
4. WOUND, stab, 2 cm along left parastomal line injuring the right ventricular area
5. WOUND, stab, 10 cm left upper quadrant with prolapsed transverse colon
6. BACK INCISED WOUND, 5 cm right subscapular region stab, injuring the lung tissue and blood vessels
7. LACERATED WOUND, 15 cm length 5cm below #6 exposing subcutaneous tissues
8. INCISED WOUND, 4 cm length along left midscapular line exposing the left lower ribs
9. LACERATED WOUND, 7 cm- right delloid area exposing subcutaneous tissues
10. LACERATED WOUND, Left delloid area, 8 cm exposing the subcutaneous tissues
11. CUT right small finger-metacarpi-phalargeal joint

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CAUSE OF DEATH: HYPOVOLEMIC SHOCK, secondary multiple stab wounds.[5]

Artemio "Artem" Yepes testified on his behalf, basically claiming alibi in his defense.[6] On the other hand, Eduardo "Eddie" Robedillo did not testify or give evidence on his behalf, although he was represented by

counsel.[7]

Accused-appellant Anacleto “Yontong” Novio took the stand denying any part in the killing of Martiano Cinco on May 12, 1988.[8] He claimed that in the afternoon in question, while he was in the balcony of his mother’s house, about two meters away from the house of his brother Felicisimo, he saw Martiano coming out of the front door of his brother’s residence, followed by accused-appellant Robedillo and by Artemio Novio who came out of the kitchen door. Robedillo and Novio were pursuing the deceased. Accused-appellant said he ran after the two, who are his nephews, and shouted at them to stop their chase after he saw that they were armed with bolos, but the two did not heed him.

Accused-appellant said he had no reason to kill Martiano Cinco, who was his neighbor and friend, and claimed that he was falsely accused by Eufrocina Cinco because he had stabbed her first husband as a result of an altercation in 1982. He said that the incident was settled amicably.

The trial court found the three (Eduardo Robedillo, Artemio Yepes and Anacleto Novio) guilty as charged and accordingly sentenced them as above indicated. Hence this appeal.

A death certificate issued by the local civil registrar of Tolosa, Leyte submitted by accused-appellants’ former counsel states accused-appellant Artemio Yepes died in September 1989, the same month the decision of the trial court was promulgated.[9] On the other hand, it would seem that although accused-appellant Eduardo Robedillo is in custody, he has not been ordered committed to the Bureau of Corrections in Muntinlupa, Metro Manila as required by Circular No. 4-92-A of this Court. It also appears from the record that Anacleto Novio jumped bail and, although warrants for his arrest were issued by the trial court on November 21, 1989 and January 22, 1990, he has not been apprehended.[10] There is no mention in the records whether his bail bond has been ordered forfeited. Pursuant to Rule 125, §1 in relation to Rule 124, §8, his appeal should be dismissed. The appeal of accused-appellant Artemio Yepes should likewise be dismissed as a consequence of his death. This leaves the appeal of accused-appellant Eduardo Robedillo alone.

Accused-appellant raises one issue in his assignment of error, namely:

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF MURDER INSTEAD OF THE LESSER OFFENSE OF HOMICIDE.

Accused-appellant invokes the ruling in *People v. Narciso*,[11] in which it was held that the qualifying circumstance of use of superior strength can not be considered if the accused delivered blows upon their victim “alternately and one after the other.”

This argument has no merit. The facts of the *Narciso* case are completely different from those of the case at bar. As the Solicitor General well points out, in *Narciso*, there was neither allegation nor proof of conspiracy among the accused. Neither was there proof that they took advantage of their number to kill the accused.[12] In contrast, the evidence in the case at bar clearly shows that the accused acted in concert to kill the victim. It is unnecessary for the prosecution to show the existence of previous agreement on the part of the accused to take advantage of their numerical superiority to kill the victim. Conspiracy does not require a previous plan or agreement to commit assault. It is sufficient if, at the time of such aggression, all the accused manifested by their acts a common intent or desire to attack.[13]

Even though the accused in this case may have alternated in striking their victim, the proximity in time of the individual blows they dealt on their victim as they surrounded him so as to effectively block his escape and prevent him from defending himself demonstrates the collective force they employed in order to commit the crime. The conspiracy to use their superior strength resulting from their greater number is clearly shown not only

by the testimonies of the two prosecution eyewitnesses, but by the number and nature of the stab wounds suffered by the victim as well.

Although we have resolved to dismiss the appeal of Anacleto Novio, we have nonetheless reviewed the evidence as to him. As already stated, Anacleto Novio claimed lack of motive to kill Martiano Cinco. But his denial cannot prevail against the positive identification of the accused-appellants by the two eyewitnesses.[14] Moreover, his escape after his conviction is an indication of his guilt. As the proverb says, the guilty fleeth even when no man pursueth, but the innocent are as bold as the lion.[15]

The decision of the trial court should be affirmed. Given the time caused by this appeal, however, it is just and equitable to raise the civil indemnity as awarded by the trial court in 1989 to that currently prevailing as established by recent jurisprudence, which is P50,000.00.[16]

WHEREFORE, the decision of the trial court is AFFIRMED, with the MODIFICATION that the award of the civil indemnity to the heirs of the victim is increased from P30,000.00 pesos to P50,000.00.

The trial court is DIRECTED forthwith to order (1) the arrest of accused-appellant Anacleto “Yontong” Novio and the forfeiture of his bail bond and (2) the commitment of accused-appellant Eduardo Robedillo to the Bureau of Corrections in Muntinlupa, Metro Manila.

SO ORDERED.

Regalado, (Chairman), Melo, Puno, and Martinez, JJ., concur.

[1] Rollo, p. 11.

[2] TSN, pp. 8-15, Feb. 22, 1989.

[3] TSN, pp. 3-17, Feb. 24, 1989.

[4] TSN, pp. 2-6, Oct. 18, 1988.

[5] Record, p. 6.

[6] TSN, pp. 35-45, Feb. 24, 1989.

[7] Rollo, p. 18.

[8] TSN, pp. 2-7, May 12, 1989.

[9] Although dated August 10, 1989, the decision was promulgated only on September 4, 1989.

[10] Record, pp. 182-183.

[11] 23 SCRA 844, 865-866 (1968).

[12] Ibid.

[13] *People v. Landicho*, 258 SCRA 1 (1996); *People v. Bernal*, 254 SCRA 659 (1996).

[14] *People v. Cabodoc*, 263 SCRA 187 (1996); *People v. Nemeria*, 242 SCRA 448 (1995); *People v. Cascalla* 240 SCRA 482 (1995); *People v. Tapic*, 220 SCRA 190 (1993); *People v. Molas*, 218 SCRA 473 (1993).

[15] *People v. Doro*, G.R. No. 104145, November 17, 1997; *People v. Villaruel*, 261 SCRA 386 (1996); *People v.*

Landicho, 258 SCRA 1 (1996).

[16] People v. Trilles, 254 SCRA 633 (1996).

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