

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ATANACIO TAHUM, SR. AND ESDRAS TAHUM,
DEFENDANTS-APPELLANTS.**

G.R. No. 97258. November 24, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

That the ancient maxim of vindictive justice encapsulized in the adage, "an eye for an eye and a tooth for a tooth," still counts with adherents in our time is shown in the instant case of a family vendetta. Modern penology, however, has caught up with this outdated viewpoint, substituting the elaborate mechanism of "due process of law" for irrational, arbitrary meting out of a personal brand of justice, even if arriving at the same end result.

Sometime in 1988, Isaias Tatum was slain when a man strafed the Tatum residence in Barangay Sto. Nino Sur, Arevalo, Iloilo City. After that incident his father Atanacio and brothers Esdras, Atanacio, Jr., Noli, and Hemenias returned to their hometown in Barangay Morobuan, Guimaras. At this point, the townsfolk believed that they attributed the killing to a certain Balson Valencia.

A year later, the Tahums again figured in a similar incident, but this time, they were the suspects.

On the night of June 26, 1989, while Edrin Valencia, Balson's younger brother, was playing "pusoy" or Russian poker at a friend's house, he was told by one of the bettors, Candelario Sidro, to go home early because the Tahums were plotting something. Candelario was aware of the grudge held by the Tahums against Balson who has since disappeared. He also knew that they left Barangay Sto. Nino Sur after the death of Isaias, so he was surprised to see them in their old house that afternoon, conversing seriously while drinking.

Edrin heeded his friend's warning and went home at 9:00 o'clock with Antonio Aguilar. After walking past a store where tricycle driver Adelfredo Jomento was having a drink, Antonio accidentally looked behind, just in time to see Hemenias Tatum charging towards Edrin armed with a "pogakhang," a homemade shotgun. Warned by Antonio, Edrin tried to flee but was stopped short by a gunshot which hit him in the back. Noli Tatum then appeared from nowhere and stabbed Edrin on the chest with a 13-inch knife. Soon thereafter, Atanacio, Sr. and his other sons, Esdras, Hemenias, and Atanacio, Jr., joined in stabbing Edrin. Antonio, helpless as he was and fearful for his life, fled towards the direction of Edrin's house, shouting for help. The blast was heard by Adelfredo who immediately responded and went to the road for a closer look. With sufficient light from a lamp post, Adelfredo saw the five men, whom he knew to be the Tahums, take turns in stabbing someone. He discovered later, along with others, that the victim was Edrin Valencia.

Edrin died of "hemorrhage, secondary to stab wounds and pellet wounds."^[1] Medico-legal officer Tito Doromal found a total of twenty-three wounds in Edrin's chest, abdomen, back and upper extremities, including shotgun pellet wounds in the back. Three of the wounds were fatal.

The Tahums - father and four sons - were accordingly charged with murder before the Regional Trial Court of

Iloilo City on September 7, 1989. Trial, however, proceeded only against herein appellants as the other three, Noli, Hemenias, and Atanacio, Jr., remain at large.

Accused-appellants denied any participation in the killing. They insisted that they were in the house of Morobuan Barangay Captain Cesar Janolino on the night in question, assisting in butchering hogs and chickens for the next day's celebration of the death anniversary of Janolino's father. This alibi was corroborated by Janolino himself and a certain Raymundo Clarito. They also denied any knowledge of the identity of the man who killed Isaias Tahum less than a year earlier.

After trial, Judge Jose D. Azarraga of Branch 37 rendered a decision dated January 21, 1991, disposing as follows:

"WHEREFORE, IN VIEW OF THE FOREGOING, this Court finds both accused, ATANACIO TAHUM (Sr.) and ESDRAS TAHUM GUILTY beyond reasonable doubt of the crime of Murder. There being no mitigating circumstance to offset the generic aggravating circumstances of abuse of superior strength and evident premeditation, both accused are sentenced to the maximum penalty of LIFE IMPRISONMENT.

Both are likewise ordered to indemnify the heirs of the victim in the sum of P50,000.00.

SO ORDERED."

In this appeal, accused-appellants argue that they were wrongly convicted because their complicity in the commission of the crime has not been proven.

We do not agree.

Conspiracy in the case at bar can be sufficiently inferred from the acts of the perpetrators before, during, and after the act complained of. Candelario Sidro testified that around 6:00 o'clock in the afternoon of June 29, 1989, he saw the Tahums in their old house drinking and talking seriously to the extent of ignoring him, which was not their accustomed practice. It was the first time he saw them since they transferred to nearby Barangay Morobuan.[2]

Antonio Aguilar who was walking with the victim Edrin Valencia at around 9:30 in the evening clearly witnessed the assault upon the latter. When Hemenias Tahum shot Edrin in the back, the latter fell face down to the ground but was turned over by Noli Tahum who stabbed him with a 13-inch knife. Thereupon, Esdras, Hemenias, Atanacio Sr. and Jr. took turns in alternately stabbing the victim.[3]

The stabbing was witnessed from a short distance by tricycle driver Adelfredo Jomento shortly after the explosion of the shotgun.[4] He also saw the five malefactors flee towards the shore.[5]

These facts point to no other conclusion than that the Tahums acted and thought in unison for the accomplishment of a single purpose, that is, to kill Edrin Valencia. It is a legal axiom that in conspiracy, the act of one is the act of all, and the role of each participant need not be specifically shown.

Nor can the Court ignore the confluence of the physical and testimonial evidence in this case. The post-mortem report[6] clearly shows that Edrin suffered twenty-three wounds, three of which were fatal, including the pellet wounds caused by the shotgun.

Accused-appellants further claim that the court a quo erred in imputing to them a motive to kill Edrin. They vehemently denied during the trial that they knew the identity of the man who killed Isaias Tahum.[7] On the other hand, the prosecution witnesses testified that there was really bad blood between the Valentias and the Tahums, and that the latter's primary suspect for the earlier death of Isaias was Balson Valencia.[8]

Accused-appellants further argue that if they had a suspect in mind and they wanted to wreak revenge, "they would have done it immediately after that incident" and they would have looked for the killer, not Edrin;^[9] but part of the reason why Edrin ended up as the "payment" for Isaias' life after a year or so from the latter's demise was provided by the accused-appellants themselves. They claimed that the man who strafed their house and killed Isaias also threatened to finish them off, thus, prompting them to move back to their hometown in Morobuan.^[10] The other reason can be gleaned from the fact that Balson Valencia is no longer living in Sto. Nino Sur even as a criminal case against him is pending before the trial court of Iloilo.^[11] Clearly, in the absence of the killer, his brother became the scapegoat.

The only defense offered by accused-appellants is alibi, admittedly the weakest of all defenses, especially in light of their positive identification by eyewitnesses who have not been proved to harbor any ill motives in testifying against them. This defense gains even less significance if we were to consider that it takes a mere hour to negotiate by motorized boat the channel that separates Sto. Nino Sur and Morobuan.^[12] It was, therefore, not physically impossible for accused-appellants to have been at the crime scene in Sto. Nino Sur on the night they claimed they were at the house of Morobuan Barangay Captain Cesar Janolino.

Worth noting is that the alibi offered by the defense only applies to Atanacio, Sr. and Esdras, the accused-appellants. None was offered for the other three men, Atanacio, Jr., Hemenias and Noli. Since we have already concluded that the crime was committed in conspiracy by the five assailants, then the crime of the latter three may also be attributed to the herein accused-appellants.

Finally, the Court notes that the penalty imposed by the court a quo is life imprisonment, when the proper imposable penalty under the circumstances obtaining in this case is reclusion perpetua.^[13] These two penalties, as we have ruled repeatedly, are not the same, for "life imprisonment," imposed only in special laws, such as Presidential Decree 1866, does not carry with it the accessory penalties attached to penalties imposed under the Revised Penal Code, and does not have any definite duration.^[14]

In retaliation for the death of Isaias, his father and brothers have exacted the life of the suspected assailant's brother. For Edrin Valencia's murder, Atanacio, Sr. and his son Esdras are sentenced to live the rest of their productive years behind bars.

WHEREFORE, the decision appealed from is hereby AFFIRMED, modified only with regard to the penalty imposed which should be changed from "life imprisonment" to reclusion perpetua.

SO ORDERED.

Feliciano, (Chairman), Melo, Vitug, and Panganiban, JJ., concur.

[1] Exhibit "D," Records, p. 55.

[2] T.S.N., December 5, 1990, pp. 25, 28-29.

[3] T.S.N., December 4, 1990, pp. 5-7.

[4] T.S.N., December 5, 1990, pp. 7-8.

[5] Ibid., p. 8.

[6] Exhibit "D," supra.

[7] T.S.N., December 12, 1990, pp. 13, 22-23.

[8] T.S.N., December 4, 1990, pp. 7-8, December 5, 1990, pp. 12-13.

[9] Appellant's Brief, Rollo, p. 70.

[10] T.S.N., December 12, 1990, pp. 16-17.

[11] Ibid., p. 16.

[12] Id., pp. 5-6.

[13] Article 248, Revised Penal Code.

[14] *People v. Baguio*, G.R. No. 76585, April 30, 1991, 196 SCRA 459; *People v. Pamintuan*, G.R. No. 100771, May 28, 1993, 222 SCRA 716.

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