

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF. APPELLEE, VS.
CLEMENTE QUINDIPAN, RUDY QUINDIPAN AND GEORGE FRIAL,
ACCUSED-APPELLANTS.**

G.R. Nos. 111277-78. February 09, 1996

Ponente: VITUG, J.

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VITUG, J.:

Accused-appellants assail their conviction under a decision, dated 05 April 1993, of the Regional Trial Court, First Judicial Region, Branch 25,[1] Vigan, Ilocos Sur, in Criminal Case No. 2036-V and Criminal Case No 2035-V. which has adjudged:

"Thus this Court finds the accused guilty of the crime of murder with the use of illegally possessed firearms and hereby sentences all of the accused, Clemente Quindipan, Rodolfo Quindipan and George Frial to suffer the penalty of Reclusion Perpetua.

"In addition, all the said accused are to pay the family of the deceased Florentino Queddeng the amount of fifty thousand pesos (P50,000.00) as the costs; twenty-five thousand pesos (P25,000.00) for the unearned income of deceased from his farm; fifty thousand pesos (P50,000) for coffin and funeral expenses; four thousand pesos (P4,000.00) for the cost of the cow; one thousand pesos (P 1,000.00) for the cost of the pig; five hundred pesos (P500.00) for the food; and one thousand two hundred pesos (P1,200.00) for the payment of the parish priest.

"They are also to pay fifty thousand pesos (P50,000.00) for the shock and fear of the wife of deceased due to the killing of her husband.

"Accused are to share and share alike on the expenses hereto found.

"Accused would not be held to blame for the firearms used in the commission of the offense because the same were not recovered.

"SO ORDERED."[2]

In Criminal Case No. 2036- V, Clemente Quindipan and Monico Quindipan were charged with murder with the use of an illegally possessed firearm.[3] Later, the information was amended in order to include two other accused, namely, Rudy Quindipan and George Frial, and to exclude Monico Quitidipan who had meanwhile died; hence--The undersigned Provincial Fiscal accuses Clemente Quindipan, Rudy Quindipan and George Frial of the crime of murder with the use of an illegally possessed firearm, committed as follows:

"That on or about the 28th day of November, 1983, in the municipality of Caoayan; province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and shoot with an illegally possessed gun (unrecovered) Florentino Queddeng, a Sangguniang Bayan member of Caoayan, Ilocos Sur, thereby inflicting upon the latter multiple mortal gunshot wounds on his head and different parts of his body, which wounds necessarily produced his Instantaneous death.

Contrary to law."[4]

In Criminal Case No. 2035- V, Clemente Quindipan and Monico Quindipan were also accused of theft.[5] Like the information in Criminal Case No. 2036-V. an amendment, following the death of Monico Quindipan, was subsequently made excluding therefrom the deceased and naming Rudy Quindipan and George Frial as additional accused; viz:

"The undersigned Provincial Fiscal accuses Clemente Quindipan, Rudy Quindipan and George Frial of the crime of theft, committed as follows:

"That on or about the 28th day of November, 1983, in the municipality of Caoayan, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually helping one another, with intent to gain, did then and there wilfully, unlawfully and feloniously take and carry away from the pocket of the victim Florentino Queddeng the amount of FOUR THOUSAND PESOS (P4,000.00), Philippine Currency, without the latter's consent and to his damage and prejudice in the said sum.

Contrary to law."[6]

The accused, when arraigned, entered a plea of "not guilty" to the charges; whereupon, the two cases were tried jointly.

The prosecution's case sought to establish, through mainly the testimony of Pio Queddeng, the following version of the incident that led to the accusation.

In the morning of 28 November 1983, Pio Queddeng was helping his brother Florentino Queddeng water the plants at the latter's yard when Clemente Quindipan suddenly showed up and fired his gun at Florentino. The attack was followed by a series of gunshots fired at Florentino by Monico Quindipan. As the incident was taking place, George Frial and Rodolfo Quindipan acted as "lookout." Clemente first delivered kick blows on the fallen victim before the malefactors finally fled.

Pio Queddeng took cover during the time of the shooting. When it was over, he crawled out from his hiding place and went to the house of his sister. The latter called the police. Arriving at the scene, police officers saw the deceased sprawled at the yard. Nearby were six or seven spent bullet shells. Pio Queddeng did not name the assailants to the responding policemen for fear of reprisal and because, he further claimed, he was not asked or investigated. It was only during the wake that he ultimately revealed the identity of the assailants to the wife (Maria) and son (Eduardo) of the deceased.

The defense, in support of its cause, presented at the trial the accused and other witnesses.

George Frial testified that on the day of the incident, he was out weeding his farmland with Honorato Rabbon, Evaristo Pinto and Remedios Pinto. At around four o'clock in the afternoon, Rosie Peña came to tell him that his uncle, Florentine, was killed. The two then went together to inform Frial's mother. Repairing to the scene of the shooting, they found the cadaver still unattended. Thus, he and Rosie left for the municipal hall to report that matter to the authorities. Going back to the crime scene after informing their other relatives, George Frial saw Pio Queddeng in tears. Pio kept on mumbling and remarking that no one else other than Florentino's helper, Fernando (Nanding) Allagao, could have perpetrated the killing. When the policemen returned, accompanied by Monico Quindipan, they loaded the victim's body on a bulcart. Frial went to the wake four times and attended the funeral. He said that he was only implicated to the crime because he had refused to testify against Clemente and Monico Quindipan.

Accused Clemente Quindipan swore that, since the morning of 28 November 1983, he was at the house of Lucia

Raboy working. At around four o'clock in the afternoon, Rosie Peña came to report the killing of Florentino to Aurelio Quindipan, Barangay Captain of Nansuagao, who was also working at Raboy's place. Clemente's testimony was corroborated by the Barangay Captain and Lucia Raboy. Clemente believed that he was implicated by Pie because of the latter's suspicion that Clemente was hiding Allagao from the authorities.

Rodolfo Quindipan asserted that he was at the house of Antonio Quelnan since eight-thirty in the morning of 28 November 1983 for the birthday celebration of Quelnan's daughter. Rodolfo stayed at the place playing mahjong until about five o'clock in the afternoon when he was requested by Patrolman Alvarez to help find Allagao. Miguel Guiacusan, father-in-law of Quelnan, attested to the presence of the accused at the Quelnan residence.

After the trial had concluded, the court rendered its decision finding the three accused guilty beyond reasonable doubt of murder with the use of illegally possessed firearm. No pronouncement was made with regard to the charge of theft.

The appealed conviction would rest, by and large, on the testimony of Pio Queddeng. Pio, a brother of the deceased, claimed having witnessed the killing; yet, he did not promptly so implicate accused-appellants as the perpetrators. Pio Queddeng's supposed reluctance to disclose the killers for fear of possible reprisal would have been understandable, had he simply stuck to it. Instead, he went on to give various other reasons. He explained that he did not reveal the identities of the perpetrators because he was not investigated.[7] This particular assertion was rebutted by SPO4 Edilberto Rapanut who conducted an investigation of the incident.[8] Pio Queddeng himself later testified:

"Q

Now, is it not a fact, Mr. Witness, that when you were at the crime scene there were police officers who came?

"A

Yes, Sir.

"Q

As a matter of fact some of those policemen who came were also from your barrio. Isn't it?

"A

Yes, Sir.

"Q

And even the sub-station commander then at that time was also at the scene when the cadaver was still in the crime scene. Isn't it?

"A

Well, I am not sure whether he was there or not because there were many people who went there.

"Q

When you said 'there were many,' how many peace officers were there at the crime scene that you have seen at the place?

"A

Seven or more, if I am not mistaken.

"Q

Do you know the names of some of these peace officers who were there at that time?

"A

Patrolman Alvarez, Patrolman Cabello. These were the only two policemen whom I could tell their names, Sir.

"Q

This Patrolman Cabello and this Patrolman Alvarez were both from Tamurong, Caoayan, Ilocos Sur. Isn't it?

"A

Yes, Sir.

"xxx xxx xxx.

"Q

Now, there were again policemen who came to your house after bringing the cadaver coming from the funeral parlor. Isn't it?

"A

There were, Sir, through the Order of the Mayor.

"Q

When were these policemen ordered to stay there?

"A

Well, when the body of the deceased was lying in state in their house.

"Q

On that same night, the truth is there were policemen who were sent by the Mayor who acted as your security in the place.

"A

Yes, Sir.

"Q

And how many were they who were sent by the Mayor?

"A

Well, I only saw two policemen, Sir.

"Q

And these two policemen who were ordered by the Mayor to act as security were all from Tamurong, Caoayan, Ilocos Sur.

"A

Yes, Sir."[9]

His other asseveration that he did not reveal the identities of the killers just because nobody asked him about the circumstances of his brother's death - not even his sister Eugenia[10] or their close relatives[11] - is beyond typical behavior. It would appear, in fact, that Pio Queddeng initially pointed to one Fernando Allagao to be the killer. SPO4 Edilberto Rapanut declared:

"Q

When policeman Cabello testified before this Honorable Court declared that you were the investigator and you were present then at the scene of the incident, at the place where the cadaver was then at that time. Did you actually conduct an investigation?

"A

Yes, sir.

"Q

And what was your findings, then?

"A

As assigned investigator, I gathered information regarding the incident and one of the close relative of the victim, Sangguniang Bayan Florentino Queddeng told me that their suspect is one Fernando Allagao. So our Station Commander ordered Alvarez and one of our companion to arrest this Fernando Allagao who was then at barangay Villamar according to our information, sir.

"Q

And who was that close relative of the victim who told you that the suspect is Fernando Allagao?

"A

The name is Pio Queddeng, the brother of the victim, sir."[12]

Pio Queddeng confirmed at the witness stand Allagao's possible complicity in the crime, thus:

" ATTY. PAZ:

Witnesses for the defense particularly Enrique Alvares and George Real testified before this Honorable Court that shortly after the incident, or after the slaying of your brother, you manifested before the Police Authorities that you suspected the farm mate of your brother as the one who killed your brother, what can you say to that?

"A

No, Sir.

"Q

What then did you tell to the police authorities regarding the killing of your brother shortly after the slaying of your brother?

"A

Pat. Cabello approached me and he asked me, Sir, if who were the killers of my brother. What I told him, Sir, is this: 'Will you look for Fernando Allagao and ask whether he knows the killer of my brother.'

"COURT:

Whether he has anything to do with the killing of my brother.

"ATTY. PAZ:

Witnesses also for the defense particularly Enrique Alvares and George Real and Aurelio Queddeng testified before this Honorable Court that you manifested shortly after the killing of your brother, you manifested that Fernando Allagao killed your brother?

"A

No, Sir.

"Q

You mean to say that nobody among the policemen came to the crime scene to ask any question regarding the killing of your brother?

"A

Only Cabello or Pat. Cabello asked me who killed my brother, Sir.

"Q

What did you tell him?

"A

What I told him, Sir, is this: Will you look for Francisco Allagao and ask him of any participation in the killing of my brother, Sir." [13]

The defense of alibi undeniably, is inherently weak but when the prosecution's case is just as equally tenuous, an accused's alibi assumes importance [14] particularly when it is corroborated by credible witnesses. [15] In any event, the weakness of the defense cannot serve to fortify the cause of the prosecution which should, instead, only rely on its own strength.

Given the scanty evidence proffered by the prosecution and heretofore considered, the Court is constrained to rule for acquittal. Conviction, as so often said, must rest on nothing less than a moral certainty of guilt [16] that we here find to be wanting.

WHEREFORE, the decision of the trial court is REVERSED and SET ASIDE. Accused-appellants Clemente Quindipan, Rudy Quindipan and George Frial are ACQUITTED on reasonable doubt and their immediate release from detention is ordered unless, of course, they are held for some other legal cause or reason to warrant their continued incarceration. Costs de officio.

SO ORDERED.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., if., concur.

[1] Penned by Judge Herminia M. Pascua.

[2] Record of Criminal Case No. 2036-V, p. 325.

[3] Records of Criminal Case No. 2036-V, p. 56.

[4] Records of Criminal Case No. 2036-V, p. 80.

[5] Records of Criminal Case No. 2035-V, p. 38.

- [6] Records of Criminal Case No. 2035-V, p. 64.
- [7] TSN, Pio Queddeing, 08 November 1985, p.11.
- [8] TSN, SPO4 Edilberto Rapanut, 15 January 1993, p.4.
- [9] TSN, Pio Queddeng, 06 March 1986, pp. 7, 9-10.
- [10] TSN, Pio Queddeng, 08 November 1985, p. 15.
- [11] Ibid., pp. 18-19.
- [12] TSN, SPO4 Edilberto Rapanut, 15 January 1993, pp. 4-5.
- [13] TSN, Pio Queddeng, 18 October 1991, pp. 4-5.
- [14] People vs. Adofina, 239 SCRA 67.
- [15] People vs. Aniscal, 228 SCRA 101.
- [16] People vs. Argawanon, 231 SCRA 614.

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