

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILLIE AMAGUIN, GILDO AMAGUIN AND CELSO AMAGUIN, ACCUSED, WILLIE AMAGUIN AND GILDO AMAGUIN, ACCUSED-APPELLANTS.**

*G.R. Nos. 54344-45. January 10, 1994*

Ponente: BELLOSILLO, J.

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**BELLOSILLO, J.:**

The coup de main on the Oro brood sent two brothers to the mortuary and a third to medical care. The bloodbath resulted in the brothers Willie, Gildo and Celso, all surnamed Amaguin, being charged with the murder of the Oro brothers Pacifico and Diosdado. Willie and Gildo went through trial while Celso to this date remains a fugitive.

The culpability of the Amaguin brothers was recounted by Hernando Oro, a younger brother of Pacifico and Diosdado. Hernando narrated that in the afternoon of 24 May 1977, he and his brothers Diosdado and Danilo, brother-in-law Rafael Candelaria, and first cousin Sergio Argonzola were invited by their eldest brother Pacifico to the latter's house in the interior of Divinagracia Street, La Paz, Iloilo City, for a small gathering to celebrate the town fiesta.[1] At about five o'clock in the afternoon, after partaking of the meager preparations put together by Pacifico, he (Hernando) and his companions decided to leave. They were accompanied by their host to the plaza where they could get a ride.

On their way, while traversing Divinagracia Street, Pacifico was called by accused Celso Amaguin: "Pare, come here." But Pacifico answered: "Pare, not yet because I have to conduct my guests first." Immediately, Celso, with a butcher's knife in hand, rushed towards Pacifico. Gildo, Celso's younger brother, with a knife tucked to his waist, followed with a slingshot known as "Indian pana" or "Indian target". While Gildo aimed a dart from his slingshot at Danilo, which hit the latter on the chest, Celso hacked Pacifico. Gildo then stabbed Diosdado with a knife. Thereafter, Willie, the eldest of the Amaguin brothers, appeared with a handgun and successively shot the brothers Pacifico, Diosdado and the fleeing Danilo. Diosdado, own kneeling, gasping for breath and pleading for his life, was again shot by Willie who next fired anew at Pacifico. Meanwhile, Gildo and Celso repeatedly stabbed Pacifico who was already lying prostrate and defenseless.[2]

Danilo Oro, the youngest of the Oros, likewise testified. He said that at around five o'clock in the afternoon of 24 May 1977, while walking along Divinagracia Street on their way to the plaza for a ride home with his three brothers and two others, they were waylaid by Celso, Willie and Gildo, their cousin Danny, all surnamed Amaguin, and several others. Celso placed an arm on the shoulder of Pacifico and stabbed him with a knife.[3] Then there was a clash between the two groups. In a split second, he (Danilo) was hit on the left chest by a dart from the slingshot of Gildo whom he saw aiming at him. He (Danilo) pulled the dart from his chest and ran away but was hit on the lips by a bullet. Then he was pushed by Hernando to seek cover.[4]

Rafael Candelaria, a brother-in-law of the Oros, also took the witness stand. His version was that while he, his brothers-in-law and one Sergio Argonzola were walking along Divinagracia Street that afternoon, two men approached them. Without any provocation, one suddenly stabbed him. After being hit on the left arm, he

immediately fled to the plaza where he flagged down a passing cab to take him to the hospital. He did not see what happened next to his companions.[5]

The defense however maintains that it was the Oro brothers who started the fight. Accused Gildo Amaguin recounted that on 24 May 1977, at about five o'clock in the afternoon, Pacifico with five others went to their house in Divinagracia Street, La Paz, Iloilo City, and approached his brother Celso, who was waiting for his wife at the foot of the stairs. While Pacifico was talking to Celso, a companion of Pacifico came forward, held Celso by the shoulder and said: "This is the bravest man in Divinagracia Street, the Amaguin." Meanwhile, another companion of Pacifico gave Celso a flying kick that sent him reeling. Gildo then went down the house shouting: "Don't fight." However, the attackers drew their knives and slingshots. In return, Celso pulled out his knife. Since one of the companions of Pacifico lunged at him, Gildo retreated to the other side of the road and threw stones at his attackers.

Meanwhile, he saw his cousin Danny hit Danilo Oro with a dart from a slingshot. But later Danny himself was stabbed from behind by one of Pacifico's companions. Then Ernie Ortigas, a guest of Celso, emerged from the Amaguin residence holding a revolver. Ernie initially fired three warning shots, after which he successively shot Pacifico and a person who tried to stab the former as well as an unidentified companion of Pacifico. Later, both Ernie Ortigas and Celso Amaguin escaped towards the railway tracks.[6] The following day, he was brought by his uncle to the PC authorities in Fort San Pedro for "safe-keeping" and turned over to the local police after a week.

The story of Gildo was confirmed by Vicente Belicano[7] and Nilda Tagnong,[8] long-time residents of Divinagracia Street, and Nenita Amaguin, mother of the accused brothers, who even affirmed that her son Celso was indeed troublesome,[9] but added that Willie "never had any brush with the law." [10]

On his part, Willie related that he was in the house of his uncle along Divinagracia Street that afternoon drinking with some friends. He left the group after hearing some explosions coming from the direction of his mother's house and then seeing his cousin Danny, with a stab wound at the back, being taken by two policemen, and his wounded brother Gildo running towards the plaza. Thus, he went to his mother's residence to find out what happened. But when he got there, the incident had already ended. As a consequence, he was told by his mother to look for his two brothers who were wounded in the fight and to take them to a hospital.[11] He turned himself in after five days, upon learning that law enforcers were looking for him.

Ulpiano Vencer, Rogelio de la Paz and Pat Jereos all confirmed that accused Willie only left their gathering after the explosions were heard, and only after seeing his wounded brother Gildo and his cousin Danny, who was in the company of two policemen, pass by.

Perla Belleza, a vegetable vendor in the La Paz Public Market, also testified that after hearing six explosions, she saw an unidentified man with a revolver running away from the scene of the crime, followed by accused Celso who was holding a knife. She was certain that the unidentified man was not accused Willie as the latter was very well known to her, she being a former neighbor of the Amaguins.[12]

Dr. Tito Doromal, Asst. Medico-Legal Officer, Iloilo Metropolitan District Command, INP, conducted an autopsy on Pacifico and Diosdado. He declared that out of the 15 stab wounds and one gunshot wound Pacifico sustained, five of the stab wounds were fatal. With regard to Diosdado, four (4) stab wounds, out of the ten (10), and the lone bullet wound he had sustained were considered fatal.[13]

After a joint trial, and finding the version of the prosecution to be more credible, the then Court of First Instance of Iloilo, Br. II,[14] found the accused Gildo Amaguin, also known as "Tigib," "guilty beyond reasonable doubt of

the crime of Murder, and x x x sentenced (him) to Reclusion Perpetua, both in Criminal Cases Nos. 8041 and 8042, together with all the accessory penalties, and to pay the costs."

As regards Willie Amaguin alias "Tikboy," the trial court found him guilty "as accomplice in both Criminal Cases Nos. 8041 and 8042, and x x x sentenced (him) to an indeterminate penalty of Seventeen (17) Years, Four (4) Months, and One (1) Day to Twenty (20) Years each in said cases together with all the accessory penalties, and to pay the costs."

Both accused were "further sentenced to indemnify the heirs of the late Pacifico Oro and Diosdado Oro, jointly and severally in the total sum of P24,000.00 as death compensation; P20,000.00 (as) moral damages; P10,000.00 (as) exemplary damages; and P5,000.00 for burial expenses, in both Criminal Cases Nos. 8041 and 8042."

In this appeal, accused Willie Amaguin and Gildo Amaguin claim that the court a quo erred: (a) in categorizing the offense/s as murder; (b) in finding Willie Amaguin to be the person involved in the incident; (c) in holding that there was conspiracy between the brothers Gildo and Celso Amaguin (the latter is at large); (d) in finding Gildo Amaguin to be armed with a knife and an Indian target when he was only armed with stones; and, (e) assuming the accused to be guilty, in not holding them responsible for their individual acts, and in not appreciating the mitigating circumstance of voluntary surrender.[15]

Before disposing of the other issues raised by appellants, we resolve the second and fourth assigned errors first to determine which of the two conflicting versions of the incident deserves credence. Their resolution rests upon the credibility of the witnesses who have come forward, a matter addressed to the sound judgment of the trial court which is in a better position to decide them, it having heard the witnesses and observed their deportment and manner of testifying during the trial. Consequently, the assessment of the trial judge is usually received with respect, if not conclusiveness, on appeal unless there is a showing of arbitrariness. Always, this has been the familiar rule.[16]

In the instant case, the trial court has accepted as credible the testimonies of Hernando and Danilo Oro who positively identified accused Celso and Gildo Amaguin as having started the assault on the Oro brothers with the use of a knife and an "Indian pana," and accused Willie Amaguin as the gunwielder who shot the brothers Pacifico, Diosdado and Danilo during the fray. We see no reason to disregard the assessment. We simply cannot set aside the factual findings of the trial court absent any showing of capriciousness on its part.

The defense belittles the testimony of Hernando Oro pointing to accused Willie Amaguin as the gunman as it stands "singly and alone," in contrast to the declaration of the defense witnesses exonerating Willie and Gildo. While the defense may have presented a number of witnesses who, as the trial court puts it, "virtually 'sang' in a chorus that the killers were (Celso and Danny Amaguin and a certain Ernie Ortigas) not the two accused herein (Willie and Gildo Amaguin),"[17] still the trial judge had the opportunity, as well as the right and responsibility, to assess their credibility - just like all other witnesses. After all, there is no law which requires that the testimony of a single witness needs corroboration except when the law so expressly requires. As it is often said, witnesses are to be weighed, not numbered. If credible and positive, the testimony of a single witness is sufficient to convict.[18] Indeed the determination of the credibility of witnesses is the trial court's domain, hence, we respect its factual findings.

For, even the respective defenses of the accused, i.e., accused Willie Amaguin's alibi that he did not participate in the fray and that he was in the nearby house of his uncle drinking with his friends, and accused Gildo Amaguin's denial that he was unarmed but later forced to hurl stones to defend himself, are without sound basis. Alibi is one of the weakest defenses that can be resorted to especially where there is direct testimony of an eyewitness, not only because it is inherently weak and unreliable but also because of the ease of its fabrication and the difficulty

of checking or rebutting it.[19] Besides, alibi to be believed must be supported by the physical impossibility of the accused to have been at the scene of the crime.[20] And as in an alibi, a denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which deserves no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[21] Thus, as between a mere denial of the accused and the positive identification and detailed declarations of the prosecution witnesses, the trial court committed no error in according heavier weight to the latter.[22]

Hence, this version of the prosecution prevails: Celso and Gildo, together with others, attacked the Oros. During the fray, Gildo was armed with a knife and an "Indian target." And just as they were about to finish off the Oro bothers, Willie, the eldest of the Amaguins, appeared with a revolver and delivered the coup de grace.

The factual setting having been settled, we now go to the first assigned error, i.e., that the lower court erred in categorizing the offense as murder there being no treachery since "the combatants were face to face" and "[c]onfronting each other frontally x x x that each will know each other's next move." [23] Except for appellants' premise, the argument has merit. The killing of Pacifico and Diosdado cannot be qualified by treachery.

While we have already ruled that even a frontal attack can be treacherous, as when it is sudden and unexpected and the victim is unarmed,[24] here, it appears that the aggressors did not employ means tending directly and specially to insure the execution of the crime without risk to themselves arising from the defense which the offended parties might make.

It must be noted that the assailants attacked a group of six (6) individuals who could have been armed. It is highly probable that at least one of those attacked could offer resistance and could put the lives of the aggressors in danger, as what indeed happened when accused-appellant Gildo Amaguin and his cousin Danny suffered injuries as a result of the fight which, from all indications, ended in a free-for-all. That Pacifico sustained 15 stab wounds and a gunshot wound, and Diosdado, ten stab wounds and a bullet wound, does not necessarily mean that treachery attended the killings. As already adverted to, for treachery to be appreciated, the offender must employ means, methods, or forms in the commission of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.[25] Here, there is serious doubt.

On the third assigned error, i.e., that there was conspiracy between Gildo and Celso, who remains at large, the evidence shows how Celso and Gildo simultaneously assaulted the Oro brothers. While Celso lunged at Pacifico, Gildo aimed his slingshot at Danilo who was hit by its dart, and immediately attacked Pacifico with a knife. Under the circumstances, it is evident that Gildo and Celso acted in unison and cooperated with each other toward the accomplishment of a common felonious objective. Certainly, there was conspiracy between the brothers Gildo and Celso, and it was not necessary to prove a previous agreement to commit the crime since from their overt acts, it was clear that they acted in concert in the pursuit of their unlawful design.

However, it was error to rule that accused Willie was an accomplice to his brothers. There being no sufficient evidence to link him to the conspiracy, he should be liable for the natural and logical consequence of his own felonious acts. Hence, we take exception to the conclusion of the trial court that Pacifico and Diosdado did not die due to the gunshot wounds inflicted by Willie. Dr. Tito Doromal, the medico-legal officer who autopsied the bodies of Pacifico and Diosdado, testified that while the gunshot wound sustained by Pacifico was not fatal, that suffered by Diosdado was fatal.[26]

Consequently, in Crim. Case No. 8041, where Willie mortally shot Diosdado, he should be liable for homicide. And, since Diosdado was already on bended knees and pleading for his life when fatally shot, the aggravating circumstance of abuse of superior strength, although not alleged in the information but proven during the trial,

may be considered as a generic aggravating circumstance.[27]

In Crim. Case No. 8042, where Willie shot Pacifico while lying prostrate already with numerous fatal stab wounds, Willie should be liable for frustrated homicide it appearing that the gunshot wound was not fatal although his intent to kill was evident. Likewise, the aggravating circumstance of abuse of superior strength may be appreciated as a generic aggravating circumstance.

Finally, we agree with accused-appellants' view that voluntary surrender should be appreciated in their favor. While it may have taken both Willie and Gildo a week before turning themselves in, the fact is, they voluntarily surrendered to the police authorities before arrest could be effected. For voluntary surrender to be appreciated as a mitigating circumstance, the following elements must be present: (a) the offender has not been actually arrested; (b) the offender surrendered himself to a person in authority; and, (c) the surrender must be voluntary.[28] All these requisites appear to have attended their surrender.

Now, we turn to the penalties.

In Crim. Cases Nos. 8041 and 8042, Gildo Amaguin is guilty of two (2) separate crimes of homicide for the death of Diosdado and Pacifico, respectively. The penalty prescribed by law for homicide is reclusion temporal.[29] Applying the Indeterminate Sentence Law, and appreciating the mitigating circumstance of voluntary surrender with no aggravating circumstance, the maximum penalty to be imposed on accused Gildo Amaguin for each of the homicide he has committed, which he must serve successively, should be taken from the minimum of the imposable penalty, which is reclusion temporal the range of the minimum period of which is twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, while the minimum should be taken from the penalty next lower in degree, which is prision mayor the full range of which is six (6) years and one (1) day to twelve (12) years, in any of its periods.

In Crim. Case No. 8041, Willie Amaguin is guilty of homicide aggravated by abuse of superior strength but offset by the mitigating circumstance of voluntary surrender, and in Crim. Case No. 8042, he is guilty of frustrated homicide likewise aggravated by abuse of superior strength but offset by voluntary surrender. For the homicide, applying the Indeterminate Sentence Law and taking into account the mitigating circumstance of voluntary surrender which, as earlier mentioned, offsets the aggravating circumstance of abuse of superior strength, the maximum penalty should be taken from the medium of the imposable penalty, which is reclusion temporal the range of the medium period of which is fourteen (14) years eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum should be taken from the penalty next lower in degree which is prision mayor in any of its periods.

For the frustrated homicide, the imposable penalty is one degree lower than the penalty prescribed by law for the consummated offense, and one degree lower than reclusion temporal is prision mayor. Applying the Indeterminate Sentence Law and the attending circumstances which offset each other, the maximum penalty to be imposed should be taken from the medium of the imposable penalty, which is prision mayor the range of the medium period of which is eight (8) years and one (1) day to ten (10) years, while the minimum should be taken from the penalty next lower in degree, which is prision correccional the full range of which is six (6) months and one (1) day to six (6) years, in any of its periods.

WHEREFORE, the decision of the court a quo finding the accused-appellants WILLIE AMAGUIN and GILDO AMAGUIN guilty in Crim. Cases Nos. 8041 and 8042 is MODIFIED as follows:

(a) accused-appellant WILLIE AMAGUIN is found guilty of HOMICIDE in Crim. Case No. 8041 and is sentenced to six (6) years, two (2) months and one (1) day of prision mayor minimum as minimum, to fourteen

(14) years, eight (8) months and twenty (20) days of reclusion temporal medium as maximum, and of FRUSTRATED HOMICIDE in Crim. Case No. 8042 and is sentenced to six (6) months and twenty (20) days of prision correccional minimum as minimum, to eight (8) years, four (4) months and ten (10) days of prision mayor medium as maximum, to be served successively;

(b) accused-appellant GILDO AMAGUIN is found guilty of two (2) separate crimes of HOMICIDE in Crim. Cases Nos. 8041 and 8042 and is sentenced to six (6) years, two (2) months and one (1) day of prision mayor minimum as minimum, to twelve (12) years, six (6) months and ten (10) days of reclusion temporal minimum as maximum, for each homicide, to be served successively;

(c) in Crim. Case No. 8041, accused-appellants WILLIE AMAGUIN and GILDO AMAGUIN are declared jointly and severally liable to the heirs of Diosdado Oro for P50,000.00 as civil indemnity consistent with prevailing jurisprudence; and,

(d) in Crim. Case No. 8042, accused-appellant GILDO AMAGUIN is liable to the heirs of Pacifico Oro for P50,000.00 as civil indemnity.

Costs against accused-appellants WILLIE AMAGUIN and GILDO AMAGUIN in both cases.

**SO ORDERED.**

Cruz, (Chairman), Davide, Jr., and Quiason, JJ., concur.

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[1] TSN, 16 January 1978, pp. 36-37.

[2] Id., pp. 38-41.

[3] Id., 17 October 1977, pp. 4-6, 27.

[4] Id., pp. 8-11, 28-34.

[5] Id., 23 February 1978, pp. 59-60.

[6] Id., 14 September 1978, pp. 99-105.

[7] Id., 22 August 1978. pp. 23-27.

[8] Id., pp. 39-43.

[9] Id., 23 October 1978, p. 120.

[10] Id., p. 121.

[11] Id., 15 January 1979, pp. 5-7.

[12] Id., 22 August 1978, pp. 35-37.

[13] Id., 6 December 1977, pp. 2-6; Exhs. "A" and "B."

[14] Judge Midpantao L. Adil, presiding.

[15] Brief for Accused-Appellants, p. 1.

[16] People v. Deuna, G.R. No. 87555, 16 November 1993; People v. Clapano, G.R. No. 106525, 8 November 1993; People v. Ramilla, G.R. No. 101435, 8 November 1993; People v. Remollo, G.R. No. 104498, 22 October 1993.

1993; *People v. Sencil*, G.R. Nos. 105959-60, 12 October 1993; *People v. Salamat*, G.R. No. 103295, 20 August 1993.

[17] Decision of the trial court, p. 7.

[18] *People v. Nimo*, G.R. No. 92533, 5 October 1993, citing *People v. Villalobos*, G.R. No. 71526, 27 May 1992; 209 SCRA 304, 315.

[19] *People v. Amador*, G.R. Nos. 100456-59, 10 September 1993; *People v. Cortes*, G.R. No. 105010, 3 September 1993.

[20] *Id.*; *People v. Remollo*, G.R. No. 104498, 22 October 1993.

[21] *People v. Sencil*, G.R. Nos. 105959-60, 12 October 1993.

[22] *People v. Gerona*, G.R. No. 100230, 8 November 1993.

[23] Brief for Accused-Appellants, p. 42.

[24] *People v. Javar*, G.R. No. 82769, 6 September 1993, citing *People v. Cruz*, G.R. No. 94375, 4 September 1992; 213 SCRA 1992.

[25] Art. 14, par. 16, Revised Penal Code.

[26] See Note 13.

[27] See *People v. Amato*, No. L-28273, 18 January 1982; 111 SCRA 39.

[28] *People v. Canamo*, G.R. No. 62043, 13 August 1985; 138 SCRA 141.

[29] Art. 249, Revised Penal Code.

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