

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS.
PABLING TUSCANO, ZOSIMO TUSCANO & VICTORINO DAZO (AT
LARGE) DIODATO PARILLA, DIOSDADO TUSCANO ALIAS DIOSING
& GAUDENCIO MO...**

G.R. Nos. 66570-71. June 24, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from a decision, dated December 10, 1983, of the Regional Trial Court, Branch XVI, Palo, Leyte in Criminal Case No. BN-1849 and Criminal Case No. BN-1850 finding accused-appellants Diodato Parilla, Gaudencio Morabe and Diosdado Tuscano guilty of the crimes of frustrated murder and double murder charged in two informations. The dispositive portion of the decision reads:

"WHEREFORE, judgment is hereby rendered finding the accused, Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe, GUILTY beyond reasonable doubt of Frustrated Murder (Crim. Case No. Bn-1849) as charged in the information, with the qualifying aggravating circumstance of superior strength and the generic aggravating circumstances of treachery and dwelling, and disregard to the age of the offended party, Joel Superales, who was only four (4) months old, and hereby sentences said accused, Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe to an indeterminate penalty of not less than SIX (6) YEARS, ONE (1) MONTH AND ELEVEN (11) DAYS of Prision Mayor as Minimum to not more than FOURTEEN (14) YEARS TEN (10) MONTHS and TWENTY-ONE (21) DAYS of Reclusion Temporal as Maximum, and to pay the costs.

WHEREFORE, judgment is also rendered finding the three (3) accused, Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe, GUILTY beyond reasonable doubt of the crime of Double Murder (Crim. Case No. Bn-1850) as charged in the Information with the qualifying aggravating circumstance of superior strength and the generic aggravating circumstances of treachery and dwelling in the killing of Restituto Superales and with the qualifying aggravating circumstance of superior strength and the generic circumstances of treachery, dwelling and disregard to the sex in the killing of Josefina Eslaban Superales and hereby sentences all the three (3) accused, Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe, to the maximum penalty of DEATH in the murder of Restituto Superales and another maximum penalty of DEATH in the murder of Josefina Eslaban Superales, to indemnify the heirs of Restituto Superales the sum of P12,000.00 and the heirs of Josefina Eslaban Superales the sum of P12,000.00 without subsidiary imprisonment in both cases of insolvency and to pay the costs." (pages 120-121, rollo)

Evidence shows that about four o'clock in the afternoon of March 7, 1981 appellants Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe, together with Pabling Tuscano, Zosimo Tuscano and Victorino Dazo, armed with long boloes and without warning, entered the house of spouses Restituto and Josefina Superales in barangay Maca-alang, Dagami, Leyte and, thereafter, assaulted, hacked and stabbed the surprised spouses Restituto and Josefina Superales and their four-month old son, Joel, then held by Josefina. At the time, Fe Caidic and her mother, Emerenciana Lagahit, were in the house and upon seeing what had just happened, jumped out through the

kitchen door and hid in a cliff ten meters away from the house. From the cliff, Fe Caidic saw appellants and their co-accused Zosimo Tuscano, Pabling Tuscano, and Victorino Dazo still hacking the Superales and Joel. Thereafter, Pabling Tuscano remarked: "they are dead" and left.

Rosita Tragia, a neighbor of the Superales, heard cries of help from Josefina. She rushed to the victims' house where she saw Restituto and Josefina lying prostrate on the floor, and Joel, covered with blood and held by the mother, crying.

Rosita brought Joel to the house of Sofronio Superales for treatment. The next day, Joel was transferred to the Burauen General Hospital for treatment by Dr. Amparo Villanueva who issued a medical certificate certifying that the child sustained two (2) incised wounds, two (2) linear abrasions and contusions on the left arm. She testified that considering the age of the child, 4-months old, he would have died if medical assistance were not given him.

The remains of spouses Restituto and Josefina Superales were brought by the police to the municipal health center of Burauen, Leyte and examined by Municipal Health Officer, Dr. Dionisio Conde. Dr. Conde certified that Josefina sustained four (4) wounds, while Restituto suffered thirteen (13) wounds, which caused their instant death.

Two informations were filed against accused Diodato Parilla, Diosdado Tuscano, Gaudencio Morabe, Pabling Tuscano, Zosimo Tuscano and Victorino Dazo for the crimes of frustrated murder and double murder. Appellants Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe were arrested, tried and convicted by the trial court. The other accused: Pabling Tuscano, Zosimo Tuscano and Victorino Dazo have not yet been apprehended.

The defense of appellants Diosdado Tuscano and Gaudencio Morabe is denial. Both claimed that about four o'clock in the afternoon of March 7, 1981 they were within the vicinity of the house of the deceased and, upon hearing cries of help coming from said house, they ran to the place led by barangay captain Pedro Tragia. Upon reaching the yard of the victims, they saw Pabling Tuscano coming out from said house, holding a bolo with blood stains. They also saw Diodato Parilla somewhere in the yard, also holding a drawn bolo. Frightened upon seeing Pabling Tuscano who proceeded to hack banana plants in the yard, they all ran away and went back to the house of the barangay captain.

Appellant Diodato Parilla, on the other hand, averred that he had come from Tacloban, carrying some rice when he heard a commotion in the house of Enrique Superales, near the house of Restituto and Josefina Superales. Someone remarked that he would be killed also. Scared, he left the rice he was carrying and ran away.

The denial of appellants can not prevail over their positive identification by prosecution witnesses as the perpetrators of the crimes charged. Hereunder is the testimony of Fe Caidic —

"Q - Do you know Diodato Parilla?

A - Yes, sir.

Q - If he is in Court now will you please point to him?

A - Yes, sir, that one (witness pointed to a man in Court who, when asked of his name, answered that he is Diodato Parilla).

Q - How about Diosdado Tuscano, do you know him?

A - Yes, sir.

Q - If he is in Court now will you please point to him?

A - That one. (Witness pointed to a man in Court who when asked of his name answered that he is Diosdado Tuscano)

Q -

How about Gaudencio Morabe do you know him?

A - Yes, sir.

Q - If he is in Court now will you please point to him?

A - That one. (Witness pointed to a man in Court who when asked of his name answered that he is Gaudencio Morabe)

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Q - You said that in the afternoon of around 4:00 o'clock on March 7, 1981 you were in the house of Restituto Superales. My question is, when you were in the house of Restituto Superales was there any unusual incident that happened?

A - There was.

Q -

Will you please inform this Court that incident?

A - The spouses were killed.

Q - Did you see the person who killed the person of Superales?

A - Yes, sir.

Q - Who were the persons responsible for the killing of these persons Superales?

A - Pabling Tuscano, Zosimo Tuscano, Victorino Dazo, Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe.

Q -

How did you know that these persons named by you were the persons who killed the spouses?

A - Because I saw them.

Q - Where were you. In what particular place were you in the house of Restituto Superales when these persons named by you as Diodato Parilla, Pabling Tusciano, Zosimo Tusciano, Diosdado Tusciano and Gaudencio Morabe killed the spouses?

A - I was at a cliff near the house of Restituto. "

(TSN. Hearing of June 20, 1983, pages 3-4, 8-9).

And, there is also the testimony of Rosita Tragia:

"Q - Will you inform the court that incident that happened in your place on March 7, 1981 in the afternoon?

A - Regarding the killing of Restituto Superales.

Q - How many persons were killed that time?

A - Two.

Q - Who is one of the two aside from Restituto Superales?

A - His wife, Josefina Superales.

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Q - Do you know the son of the spouses Josefina and Restituto Superales?

A -

Yes, sir.

Q - What is the name of their son?

A - Joel Superales.

Q - If Joel is in the courtroom now, will you please point to him?

A - That one (witness pointing to a small child inside the courtroom).

Q - What happened to Joel that after-noon of March 7, 1981?

A - He was wounded.

Q -

How do you know that Joel was also wounded?

A - I was the one who got him from their house..

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Q - When they arrived in the house of Superales, what did they do?

A - I heard Superales shouting for help. On My part, I went up my house.

Q - Whose voice did you hear calling for help?

A - Restituto Superales.

Q -

Will you please state to this court the voice that you heard from the house of Superales asking for help? How did he say?

A - He said, help! help!

Q - Did anybody in your neighbors help Superales?

A - Nobody.

Q - After that what did you do after you heard the voice asking for help?

A - I stayed in the house.

Q - How about these persons you mentioned where did they go?

A - They ran towards the west.

Q -

Who went towards the west?

A - Diosdado Tuscano and Diodato Parilla.

Q - Who else?

A - Gaudencio Morabe including the wife.

Q - Who else went towards the west?

A - Anita, the wife of Diosdado.

Q -

How about Pabling Tuscano, where did he go?

A - He returned to the house of Zosimo Tuscano.

Q - How about Zosimo Tuscano, where did he go?

A - He was with the group of Diosdado towards the west."

(TSN. April 6, 1983 hearing pages 7, 9-11).

No improper motive was adduced by the defense to discredit the testimonies of Caidic and Tragia. It can be relied upon that these witnesses testified on what had really happened as they saw it. Well settled is the rule that where clear and positive testimony was made by state witnesses regarding the participation of the accused, their denial and explanation cannot prevail over such evidence.

The factual findings of the trial court which had better opportunity to observe the demeanor and truthfulness of the witnesses, are entitled to great weight in assessing matters of credibility. In the case at bar, it concluded:

"After a closer perusal and thorough appreciation of the evidence, this Court has reached its considered opinion that the accused Diosdado Tuscano, Diodato Parilla and Gaudencio Morabe are guilty beyond reasonable doubt of the crimes of Frustrated Murder (Crim. Case No. Bn-1849) and Double Murder (Crim. Case No. Bn-1850) with the qualifying circumstances of superior strength and the generic aggravating circumstances of dwelling and treachery, and (in Crim. Case No. Bn-1849) the aggravating circumstances of disregard to the age of the offended party, Joel Superales, who was only four (4) months old. In Crim. Case No. Bn-1850, the killing of Josefina Eslaban Superales is also with the aggravating circumstances of disregard to the sex of the offended party. (p. 120, rollo).

WHEREFORE, in Criminal Case No. BN-1949 where the victim is Joel Superales, the judgment against appellants Diodato Parilla, Diosdado Tuscano and Gaudencio Morabe is hereby affirmed in toto.

In Criminal Case No. BN-1850, for lack of the necessary votes, said appellants are hereby sentenced each to suffer reclusion perpetua for the death of Restituto Superales; and, another reclusion perpetua for the death of Josefina Superales. Further, they are to indemnify jointly and severally, the heirs of Restituto Superales in the sum of P30,000.00 and the heirs of Josefina Superales, another sum of P30,000.00. With costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Abad Santos, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., De la Fuente, Cuevas, and Alampay, JJ., concur.

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