

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRUCTUOSO MANCAO, BENEDICTO MANCAO @ AMAY, JOEL
MANCAO @ TIBOY, FAUSTO REPONTE, PEDRO OPSIMAR AND
JUANCHO DECATORIA, ACCUS...**

G.R. Nos. 66873-74. May 08, 1992

Ponente: NOCON, J.

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NOCON, J.:

Some good things never last ... as the song goes, a saying which truly applies to the instant case wherein a newly-wed couple was attacked just a few hours after their wedding ceremony causing the death of the husband, to the grief and loneliness of the wife.

This is an appeal taken by the six appellants from a joint Decision rendered by the Regional Trial Court of Dumaguete City, Branch XXXII, finding appellants Fructuoso Mancao and Benedicto "Amay" Mancao guilty of the crime of Frustrated Murder in Criminal Case No. 3786 and finding the six appellants, Fructuoso Mancao, Benedicto "Amay" Mancao, Joel "Tiboy" Mancao, Fausto Reponte, Pedro Opsimar and Juancho Decatoria, guilty of the crime of Murder in Criminal Case No. 3787. Inasmuch as the two cases arose from the same incident involving the same protagonists, the trial court rendered a joint decision, the dispositive portion of which reads:

"WHEREFORE, for all the foregoing considerations, judgment is hereby rendered:

1. In Criminal Case No. 3786, the Court finds accused Fructuoso Mancao and Benedicto Mancao, alias "Amay", guilty beyond reasonable doubt of the crime of Frustrated Murder, penalized under Art. 248 in relation to Arts. 250 and 50 of the Revised Penal Code, but appreciating in favor of Fructuoso Mancao the mitigating circumstance of voluntary surrender, without any aggravating circumstance to offset the same, hereby sentences him, after applying the Indeterminate Sentence Law, to suffer an indeterminate prison term ranging from four (4) years, two (2) months and one (1) day of prision correctional as minimum, to ten (10) years and one (1) day of prision mayor as maximum, and co-accused Benedicto Mancao is sentenced to suffer an Indeterminate prison term ranging from six (6) years, and One (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal, to indemnify jointly and solidarily offended party Marcelina Pat the sum of P6,000.00 as moral damages and to pay the costs. The weapons used in the commission of the felony are hereby confiscated in favor of the government. The jailer is directed to make the proper reduction of the period during which the defendants were under preventive custody by reason of this case in accordance with law.

2. In Crim. Case No. 3787, the Court finds accused Fructuoso Mancao, Benedicto Mancao, alias "Amay", Joel Mancao, alias "Tiboy", Fausto Reponte, Pedro Opsimar and Juancho Decatoria, guilty beyond reasonable doubt of the crime of Murder, penalized under Art. 248 of the Revised Penal Code, but appreciating in favor of Fructuoso Mancao the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset the same, hereby sentences Fructuoso Mancao to suffer a prison term ranging from seventeen (17) years, four (4) months and one (1) day to twenty (20) years of reclusion temporal; with respect to defendants Benedicto Mancao, alias "Amay"; Joel Mancao, alias "Tiboy"; Fausto Reponte, Pedro Opsimar, and Juancho

Decatoria, the Court hereby sentences each one of them to suffer the penalty of reclusion perpetua (life imprisonment), and for all the defendants in this case, to indemnify jointly and severally the heirs of deceased Artemio Pat the sum of P12,000.00 and to pay the costs. The weapons used in the commission of the felony are hereby confiscated in favor of the government." [1]

As borne out from the records, the facts of the case are as follows:

It was in the morning of October 20, 1979, when Artemio Pat and Lucy Lapira decided to exchange marriage vows. The wedding party was held at the bride's residence in Talosian, Sta. Catalina, Negros Oriental. At about 7:00 in the evening, on their way home to Artemio's home at sitio Malbog, Artemio's group was waylaid and attacked by the six herein appellants. At the time of the attack, Artemio's group was walking on single file along a foot path near the place of appellant Mancaos. Marcelina Pat was ahead, followed by Lucy Lapira, then Artemio Pat and behind him was Melchor Isong. Fructuoso Mancao suddenly attacked Marcelina Pat with a scythe hitting and wounding her on her right arm, while Benedicto Mancao hacked and wounded her forehead and the back of her head with the use of a bolo. [2] It is at this point when Fructuoso Mancao said, "We will kill you all." [3] Almost simultaneously, Artemio Pat was hacked by Joel "Tiboy" Mancao. The two (Artemio and Tiboy) wrestled and grappled with each other. The rest of the defendants ganged up on Artemio using bolos, scythe, "chaco", and bow and arrow. [4] One of the appellants later shouted, "Watch out because Artemio 'Alon' was able to grab a weapon." [5] Accused-appellant Fausto Reponte shot Artemio with an arrow which had a metallic point. (Exhibit "B") Juancho Decatoria wielded his "chaco" which produced a whizzing sound. [6] Lucy Lapira together with Melchor Isong pulled away the wounded Marcelina Pat. For fear of being attacked once more by Fructuoso's group, Marcelina, Lucy and Melchor left the lifeless body of Artemio behind and proceeded for home.

Marcelina was admitted and treated at the Bayawan Emergency Hospital, evidenced by a Medical Certificate (Exhibit "C"), sustaining the following injuries:

- "1. Hacked wound, 1 1/2 inches in length with linear fracture skull, frontal, left;
- "2. Incised wound, 1 1/2 inches in length, involving subcutaneous tissue occipital area, medial, left;
- "3. Incised wound, 2 1/2 inches in length, involving subcutaneous tissue arm, mid-area anterior surface, right."

A post mortem examination (Exhibit "E") was conducted on the cadaver of Artemio Pat at 3:10 P.M., the following day, October 21, 1979 at the place of the incident, the findings of which are the following:

- "1. Stab wound, 1/4 inch long, penetrating just above the xiphisternal notch at the midline and anterior aspect of the neck, exiting out as a 1/8 inch long wound at the left lateral aspect of the base of the neck.
- "2. Stab wound, 3 1/2 inches long, penetrating at the level of the 4th intercostal space at the midclavicular line and exiting out as a 1/2 inch long incised wound at the level of 3rd intercostal space, an inch to the midline of the right posterior chest wall.
- "3. Incised wound, 1 1/2 inches long, 1/8 inch deep at the dorsal or volar aspect of the left hand.
- "4. Stab wound, 1 1/2 inches long, 3/8 inch deep at the upper 3rd antero-lateral aspect of the right leg.
- "5. Stab wound, 2 inches long 3/8 inch deep at the antero-lateral aspect and middle 3rd of the left leg.
- "6. Stab wound, 2 inches long, 1/2 inch deep, over the left scapular area of the back.
- "7. Incised wound, 8 inches long, 3/8 inch deep at the middle 3rd of the left posterior chest wall."

CONCLUSION: Death can be attributed to Hypovolemic or circulatory shock secondary to massive loss of blood due to multiple stab wounds."

Appellants invoked self-defense in justification for the killing of the deceased and alibi.

Appellants Joel "Tiboy" Mancao, Juancho Decatoria, Fausto Reponte and Pedro Opsimar declared in their testimonies that at the time of the incident, they were in Hagopina, Sta. Catalina.[7] This defense of alibi is the weakest of all defenses in criminal law. Alibi cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime.[8] Jurisprudence on this point is so abundant that it is needless to cite any more. For the defense of alibi to prosper, it must not only be shown that the accused was at some other place at the time of the incident but it was physically impossible for the accused to have been at the scene of the crime at the time of its commission.[9]

At the time of the incident, all appellants were neighbors of eyewitnesses Marcelina Pat and Melchor Isong; that they were known to the said eyewitnesses and were likewise clearly identified as the assailants.

Prosecution witness Marcelina Pat positively identified appellants Joel Mancao, Fausto Reponte, Pedro Opsimar and Juancho Decatoria as being at the scene of the crime and participated in attacking, wounding and eventually killing her son Artemio with the use of bolos, "chaco", scythe and bow and arrow along with appellants Fructuoso Mancao and Benedicto Mancao.[10] Her testimony was corroborated by Melchor Isong.[11]

The alibi of appellants Joel Mancao, Fausto Reponte, Pedro Opsimar and Juancho Decatoria that they were at the seashore in Alangilan near Salud Diorpe's house at 6:30 in the afternoon[12] did not discount entirely the possibility that after that time all the appellants went to the scene of the crime.

The denial and alibi of said defendants that they were not present is negative in character and cannot overcome the positive testimonies of witnesses who actually saw them at the scene of the crime. Mere denials constitute self-serving negative evidence, which cannot be accorded greater weight than the declarations of credible witnesses who testify on affirmative matters.[13]

Fructuoso Mancao alleges that the reason for the incident was that because Artemio Pat destroyed the fence that he put up, which obstructed the footpath which Artemio and his group were using, thereby bringing about an altercation between them.[14] Thereupon, Artemio hacked Fructuoso with a bolo hitting him on the forehead. So, in retaliation, Fructuoso pulled out his scythe and struck Artemio hitting him on the left side of his body. Thereafter, the two exchanged blows with the use of their respective weapons. Marcelina on the other hand, hit Fructuoso with a piece of bamboo to which he responded by hacking and wounding her on the forehead and left arm.

Benedicto Mancao's story was most revealing. He testified that while he was going to his sister's house nearby, he saw his father, Fructuoso being hacked by Artemio. Benedicto picked up stones to help his father but was stabbed by Melchor Isong in the abdomen.[15] Benedicto further testified that he ran home but forgot to bring Artemio's bolo.

By the foregoing testimonies, Fructuoso wants to impress upon Us that he alone and no one else inflicted the injuries sustained by both Marcelina Pat and Artemio Pat in defense of his person.

We are not convinced.

It was the wedding day of the deceased Artemio Pat. His bride and mother were with him during the time of the incident. It would be highly unnatural and improbable for a man who has just been married, preparing for that most awaited first night with his wife to engage himself into a homicidal fight. If he were to, he would not have brought his wife and mother with him. Hence, there could not have been any unlawful aggression coming from the deceased.

The defense claims that Artemio Pat was armed with a bolo but such bolo as never presented in court nor recovered at the scene of the crime.

Dr. Zoselun Zerrudo, the doctor who conducted a post mortem examination on the deceased, testified that the seven wounds sustained by Artemio were not inflicted by the same weapon and by only one person.[16] In fact, one of the wounds sustained by the deceased was a through and through wound measuring 1/4 inch long at its entrance and 1/8 inch long at its exit found at the base of his neck which could likely be caused by an arrow with a metallic point.[17] Definitely, such wound cannot be caused by a scythe, the only weapon appellant allegedly used, as testified to by him. And the evidence points to Fausto Reponte as the culprit who was armed with a bow and arrow during the attack. This led the trial court to believe --

"that the defendants plotted the ambush and killing of Artemio Pat and the near-killing of Marcelina Pat. For all of them belong to the same family. Accused Fructuoso Mancao is the father of defendants Benedicto Mancao and Joel Mancao and father-in-law of accused Fausto Reponte, Pedro Opsimar and Juancho Decatoria. All of them lived very close to each other in Fructuoso Mancao's farm. It was easy for them to band together, conferred with each other, and to present a united front against a common foe as what happened to the herein victims." [18]

The senseless attack was provoked by a series of incidents starting with a quarrel between Benedicto Mancao and Artemio Pat in a basketball game and culminating in the actuations of the latter in destroying the fence that blocked their usual footpath across the Mancao farm which was planted with peanuts.

Treachery was clearly established by the evidence on record. The attack on Artemio's group was so sudden and unexpected. Under cover of darkness, the appellants waylaid, ambushed and suddenly attacked Marcelina Pat and Artemio Pat with deadly weapons. The method of assault and the weapons used was deliberately chosen by the aggressors with the end in view of accomplishing the commission of the crime without risk to themselves and free from the defense of the deceased. Six able-bodied men who were armed with deadly weapons acted in unison and overwhelmed the defenses put up by the deceased in a futile and hopeless fight to save his life against an overpowering force.

Conspiracy need not be proved by direct evidence but may be proven through a series of acts done by each of the accused in pursuance of the common unlawful purpose.[19] In the instant case, all of the appellants acted in concert in attacking the deceased and his companions. They encircled Artemio Pat and with the use of their weapons inflicted upon him multiple stab wounds.

It is hard to ignore the overwhelming evidence against the appellants. We find the testimony of prosecution's witnesses more convincing, thereby giving their testimonies full weight and credence.

At any rate, the rule is that appellate courts will not disturb the factual findings of the trial court since the trial judge is in a better position to ascertain who should be believed and whose testimony should be rejected considering that he saw and heard the testimony of the witnesses in the course of the trial.[20] It is only when the trial court overlooked matters of substance or value which if considered might affect the results that its appraisal on the relative credibility of witnesses should not be sustained,[21] which We do not find in the case at bar.

The trial court, however, incorrectly applied the Indeterminate Sentence Law to accused-appellant Fructuoso Mancao in Criminal Case No. 3787.

Since the mitigating circumstance of voluntary surrender is appreciated in favor of the accused appellant, the penalty to be imposed upon him must be one degree lower, which is reclusion temporal. Applying the Indeterminate Sentence Law, the minimum penalty shall at least be within the maximum period of prision mayor,

and the maximum penalty shall be anywhere within the maximum period of reclusion temporal.

WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby **AFFIRMED** with the modification that the penalty to be imposed on Fructuoso Mancao shall be ten (10) years and one (1) day of prision mayor as the minimum penalty to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal as the maximum penalty. The indemnity to be paid to the heirs of the deceased is hereby increased to P50,000.00.[22] Appellant's guilt has been proved with the degree of proof which produces conviction in an unprejudiced mind. With costs against appellants.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, p. 13.

[2] T.S.N., July 17, 1980, pp. 17-19.

[3] Id., p. 25.

[4] T.S.N., August 13, 1980, pp. 8-10; T.S.N., June 23, 1981, p. 6.

[5] T.S.N., July 17, 1980, p. 26.

[6] Id., at p. 21.

[7] T.S.N., December 9, 1982, p. 4.

[8] *People vs. Loveria*, G.R. NO. 79138, 187 SCRA 47, (1990).

[9] *People vs. Nabor*, G.R. Nos. 77822-23, 185 SCRA 615, (1990).

[10] T.S.N., July 17, 1980, pp. 14-26.

[11] T.S.N., June 23, 1981, pp. 4-7.

[12] T.S.N., May 26, 1983, p. 9.

[13] *People vs. Alcantara*, No. L-74737, 163 SCRA 783, (1988).

[14] T.S.N., September 7, 1982, p. 12.

[15] T.S.N., October 15, 1981, p. 8.

[16] T.S.N., March 23, 1981, p. 26.

[17] Id., at pp. 20-27.

[18] Appellee's Brief, p. 17.

[19] *People vs. Quiñones*, G.R. No. 80042, 183 SCRA 747, (1990).

[20] *People vs. Garofil*, No. L-74485-86, 152 SCRA 468 (1987).

[21] Ibid.

[22] *People vs. Sison*, G.R. No. 86455, 189 SCRA 643, (1990).

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