

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GENARO TAMAYO, BASILIO TAMAYO, ROBERTO TAMAYO, LEON GOMERA, PABLO CA-BRERA, FELIPE TAMAYO AND ALFREDO CAÑADA, ACCUSED. ROBERTO...

G.R. NOs. 79418-21. March 20, 1990

Ponente: FELICIANO, J.

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FELICIANO, J.:

These are four (4) consolidated cases -- Criminal Cases Nos. 3203, 3204, 3205 and 3206 -- decided by the Regional Trial Court of Zamboanga del Sur, Branch 20 Pagadian City, where accused-appellant Roberto Tamayo was sentenced to life imprisonment in Criminal Case No. 3203 and to imprisonment for a period from ten (10) years and one (1) day as minimum to twenty (20) years as maximum in Criminal Case No. 3205.

Four (4) separate informations for murder were filed before the Municipal Trial Court of Molave, Zamboanga del Sur, against the seven (7) accused, namely, Genaro Tamayo, Felipe Tamayo, Basilio Tamayo, Roberto Tamayo, Alfredo Cañada, Leon Gomera and Pablo Cabrera. The four (4) informations, in each of which all seven (7) were accused, were summarized in the decision of the trial court in the following terms:

"Criminal Case No. 3203 - for the killing of Cristituto Librando, wherein all accused conspired, confederated and mutually helped one another, armed with bolos and hunting knives with intent to kill by means of treachery and evident pre-meditation and taking advantage of superior strength, attacked the victim hitting and inflicting several wounds on the victim causing his instantaneous death. Additional circumstance of cruelty had been charged against accused Alfredo Cañada.

Criminal Case No. 3204 - for the killing of Genaro Cañada wherein the same qualifying circumstances of conspiracy, treachery, evident pre-meditation, taking advantage of superior strength and of having confederated and helped one another in hacking and stabbing the victim were alleged.

Criminal Case No. 3205 - for the killing of Teodoro Cañada wherein the qualifying circumstances of conspiracy, treachery, evident pre-meditation, taking advantage of superior strength and acting as a band in attacking, hacking and stabbing the victim were alleged.

Criminal Case No. 3206 - for the killing of Bienvenido Cañada wherein the qualifying circumstances of conspiracy, treachery, evident pre-meditation, taking advantage of superior strength and acting as a band in attacking, hacking and stabbing the victim, were alleged."[1] (Underscoring supplied)

Upon arraignment, all the accused, except Leon Gomera who had evaded arrest and was never brought to trial, pleaded not guilty.

The four (4) cases were tried jointly since they involved much the same facts and circumstances. Pending trial, accused Genaro Tamayo died. Moreover, on 28 April 1987, Basilio Tamayo escaped from the Provincial Jail of Zamboanga del Sur where he had been confined on preventive detention: he has not been recaptured, so far the

records before us show. Felipe Tamayo similarly escaped from the Provincial Jail of Zamboanga del Sur and has not been re-arrested and confined.

On 23 June 1987, the trial court rendered a decision the dispositive portions of which relating to Criminal Cases Nos. 3203 and 3205 are quoted below:

Criminal Case No. 3203 -- for the killing of Cristituto Librando

"WHEREFORE, premises considered, the Court is convinced beyond reasonable doubt that accused Alfredo Cañada, Basilio Tamayo, Felipe Tamayo and Roberto Tamayo did confederate and help one another by the use of the combined superior strength and thru treachery did commit the crime of Murder as defined in Art. 249, paragraph 1 of the Revised Penal Code. The penalty imposed by law is Reclusion Perpetua in its maximum period, to Death. Without the presence of any aggravating circumstance not inherent in the crime of Murder nor any mitigating circumstance, the Court hereby imposes upon each of them, Alfredo Cañada, Basilio Tamayo, Roberto Tamayo and Felipe Tamayo, the penalty of LIFE IMPRISONMENT, and to pay in solidum the heirs of Cristituto Librando the sum of P12,000.00 as damages without, however, any subsidiary imprisonment in case of insolvency.

No pronouncement is made for or against accused Genaro Tamayo, said accused having died during the pendency of this case, and therefore his personal and pecuniary penalties and liabilities were totally extinguished upon his death.

Likewise, no pronouncement is made for or against Leon Gomera as he was never brought to trial. However, let the case against him be archived, to be retrieved after he shall be apprehended and brought before the Court. Further, let an alias warrant of arrest be issued for his apprehension.

The Court does not find any sufficient credible evidence to convince itself beyond reasonable doubt of the participation of accused Pablo Cabrera. Therefore, has to acquit him on grounds that his guilt has not been proven beyond reasonable doubt.

WHEREFORE, the case against Pablo Cabrera is hereby dismissed.

Accused Alfredo Cañada is hereby credited [in] full for the period of his preventive detention.

The Branch Clerk of Court is hereby directed to cause the completion of the records of this case and prepare same for immediate elevation to the Supreme Court, Manila, for review in accordance with the mandate of the Constitution of the Philippines.

With costs against accused Alfredo Cañada, Basilio Tamayo, Felipe Tamayo and Roberto Tamayo.

SO ORDERED."[2]

Criminal Case No. 3205 - for the killing of Teodoro Cañada

"WHEREFORE, premises considered, the Court is convinced with moral certainty that accused Basilio Tamayo and Roberto Tamayo with having committed the crime of Homicide as defined in Art. 249 of the Revised Penal Code, the crime being embraced within the crime of Murder as charged, taking the circumstance of taking advantage of superior strength as a simple aggravating circumstance, the penalty imposed by law is the maximum period of Reclusion Temporal, and applying the Indeterminate Sentence Law, the Court hereby imposes the penalties upon each of the accused Basilio Tamayo and Roberto Tamayo of imprisonment for a period of TEN (10) YEARS and ONE (1) DAY as minimum, to TWENTY (20) YEARS as maximum. They are further ordered to pay in solidum damages to the heirs of Teodoro Cañada the sum of P12,000.00, without, however, any subsidiary imprisonment in case of insolvency. Basilio Tamayo having escaped from the provincial jail on April 28, 1987, shall not be credited for the period while he was under preventive detention.

No pronouncement is made for or against accused Genaro Tamayo as his personal pecuniary penalties and liabilities were totally extinguished at the time of his death on June 6, 1986.

Likewise, no pronouncement is made for or against accused Leon Gomera as he was never apprehended and was not confronted with the hearings of this case. However, let an alias warrant of arrest be issued for his capture.

There being no sufficient credible evidence to sustain the conviction of accused Felipe Tamayo, Pablo Cabrera and Alfredo Cañada beyond reasonable doubt, the Court is constrained to acquit the three accused on the ground that their guilt had not been proved beyond reasonable doubt.

WHEREFORE, let the case against them be DISMISSED.

With costs against accused Basilio Tamayo and Roberto Tamayo.

SO ORDERED."[3]

In Criminal Case No. 3204 -- for the killing of Genaro Cañada -- only Pablo Cabrera was convicted: the other accused, namely, Alfredo Cañada, Roberto Tamayo, Felipe Tamayo and Basilio Tamayo were acquitted for failure of the prosecution to prove conspiracy among the accused.

In Criminal Case No. 3206 -- for the killing of Bienvenido Cañada -- only Basilio Tamayo and Felipe Tamayo were convicted, again for failure of the prosecution to prove clearly and convincingly conspiracy among the accused: the other accused were accordingly acquitted.

Only Roberto Tamayo appealed, filing on 13 July 1987 a notice of appeal from his conviction in Criminal Cases Nos. 3203 and 3205. By an order of the trial court dated 15 July 1987, the notice of appeal was approved. No appeal was taken by Felipe Tamayo, Basilio Tamayo, Alfredo Cañada and Pablo Cabrera.

In his lone assignment of error, appellant Roberto Tamayo contends that the trial court erred in not acquitting him in Criminal Cases Nos. 3203 and 3205 upon the ground that his guilt therein had not been proven beyond reasonable doubt.

The facts as found by the trial court may be collated and summarized as follows:

On 21 May 1980 at about 2:30 o'clock p.m., accused Alfredo Cañada proceeded from his house located in Culo, Molave, Zamboanga del Sur, to the house of Cristituto Librando in the same barrio. Upon reaching the latter's house, Alfredo Cañada called out to Maria C. Librando, wife of Cristituto, and Maria thereupon went down the bamboo stairs of their house. There, Alfredo asked Maria where Cristituto Librando was. Maria readily replied that Cristituto was upstairs sleeping. She was then asked to wake up her husband. Maria obliged, woke up her husband and told him that Alfredo was looking for him. Cristituto dressed up, went down the stairs and asked Alfredo if the latter was going to have his field plowed. Alfredo did not answer, but instead forthwith stabbed Cristituto Librando as he reached the ground, hitting him on the left breast.[4] Alfredo continued stabbing Cristituto who tried to avoid the blows by backing away from Alfredo towards the road in front of their house. There he was attacked by the brothers Felipe, Roberto and Basilio as well as their father Genaro, all surnamed Tamayo,[5] who took turns in stabbing and hacking at Cristituto with knives and bolos even as he fell to the ground. Cristituto died on the spot.

Seeing her husband attacked and fall to the ground, Maria Librando screamed for help. Bienvenido Cañada, a brother of Maria Librando, came in response to her cry but was promptly met and stabbed by Basilio Tamayo and Felipe Tamayo. Wounded critically, Bienvenido Cañada ran towards the house of Cristituto Librando and fell down on the way and expired.

Genaro Cañada, another brother of Maria, arrived at the scene to find out what was happening. He was confronted and stabbed by Pablo Cabrera who was later joined by Genaro Tamayo and Leon Gomera and all three (3) took turns in slashing and hacking at and stabbing Genaro. Genaro Cañada fled, fatally wounded, towards the house of his brother Jose Cañada and there collapsed in the porch and died.[6]

A third brother of Maria, Teodoro Cañada, came upon the scene and was promptly set upon and stabbed by Roberto Tamayo and Basilio Tamayo. Teodoro Cañada staggered towards the home of one Benny Cabrilla and there he fell down dead.

Upon seeing his brother Teodoro Cañada stabbed by Basilio and Roberto Tamayo, Jose Cañada ran to the house of Patrolman Mechias Briones whom he brought to the scene of the slaughter. Patrolman Briones arrested Basilio Tamayo. Shortly before, Patrolman Alejo Saniel had arrived at the scene and, brandishing his gun, arrested Alfredo Cañada, Felipe Tamayo, Genaro Tamayo and Roberto Tamayo all of whom surrendered their bolos and knives to Patrolman Saniel.

Appellant Roberto Tamayo maintains that he was not present at all during the fearful hacking and stabbing that left four (4) people dead, and had not had a hand in the killing of any of the four (4) victims. He testified that on the date and time that the carnage had occurred, he was at his workplace near Molave Institute in Molave, Zamboanga del Sur, approximately 2 kilometers from the venue of the killings. He stated that he had left his workplace at past 12:00 o'clock noon and took a pedicab on his way home. As he approached his destination, he saw his wounded father accompanied by his brother Basilio Tamayo. Upon orders from Basilio, Roberto took his father to the hospital and when he returned to their house, he was arrested by a member of the Philippine Constabulary.

It is commonplace learning that alibi is a weak defense because it can be so easily manufactured. To sustain the defense, the accused must not only show that he was at some other place at the time that the crime occurred but also that it was physically impossible for him to have been the scene of the crime.[7] In the case at bar, no such showing was made by appellant and his defense of alibi was brushed away by the trial court. Said the trial court:

"It should be noted that the normal walking speed of a person is about six (6) kilometers an hour but a slow walker may make four kilometers an hour. In other words, the distance of one and one-half kilometers may be negotiated by walking from about fifteen minutes to twenty-five minutes, and taking into consideration that Roberto Tamayo was riding on a pedicab, which is definitely faster than the fastest person walking, Roberto Tamayo, even if credence were to be given to his claim that he was at his place of work prior to the incident and was on his way home, he definitely would reach his house, the vicinity of which was the scene of the crime, before 12:20 in the afternoon. x x x"[8]

It is also firmly settled that the defense of alibi cannot prevail against positive identification of the accused by prosecution witnesses.[9]

In Criminal Case No. 3205 for the killing of Teodoro Cañada, three (3) eye-witnesses testified that Roberto Tamayo had administered to victim Teodoro Cañada stabbing and slashing blows. Prosecution eye-witness Samuel Alvarico stated that Roberto Tamayo and Basilio Tamayo had both stabbed and thrust at Teodoro Cañada. Teodoro had sustained five (5) wounds, the fatal one being a stab wound below the right abdomen penetrating his large intestine. The trial court noted that the nature and location of these wounds showed they must have been inflicted by more than one assailant. The testimony of Samuel Alvarico was corroborated by Maria C. Librando and by Jose Cañada, both of whom positively identified Roberto Tamayo as having stabbed Teodoro Cañada.

We turn to Criminal Case No. 3203 which had for its subject matter the killing of Cristituto Librando. Prosecution witness Samuel Alvarico declared that he saw Alfredo Cañada, Roberto Tamayo, Felipe Tamayo, Genaro Tamayo

and Basilio Tamayo take turns in stabbing and slashing at Cristituto Librando.[10] This identification by Samuel Alvarico obviously weighed heavily in the mind of the trial court in convicting Roberto Tamayo of murder for the death of Cristituto Librando. We must, however, note that two (2) other eye-witnesses -- Maria C. Librando and Jose Cañada -- both of whom had testified as to the identity of the persons who participated in the slaying of Cristituto, had at the same time failed to include appellant Roberto Tamayo among such persons. Maria Librando testified in the following manner concerning the immediate circumstances of the death of Cristituto:

"ATTY. ESTOPIA: (cont'n)

Q:

You made mention of the fact that when he [referring to Cristituto Librando] reached the road, there were persons who took turns in stabbing him, do you know these persons?

A:

Yes, sir.

Q:

Who are they?

A:

Felipe Tamayo, Basilio Tamayo, Leon Gomera, Genaro Tamayo and Alfred Cañada. I only saw clearly those five persons I enumerated who took turns in stabbing and hacking my husband while others were holding my husband while my husband was already lying on the ground.

Q:

What happened to your husband after these people took turns in stabbing your husband?

A:

Maybe he is dead already because he was no longer moving.[11] (Underscoring supplied)

Maria Librando reiterated and confirmed on cross-examination the above testimony:

"ATTY. FERNANDEZ: (to the witness)

x x x x x x x x

Q:

Now, what was the weapon of Alfredo Cañada when he allegedly attacked your husband, Cristituto Librando?

A:

Hunting knife.

Q:

Who were the persons who allegedly joined Alfredo Cañada attacking your husband?

A:

Felipe, Genaro, Basilio, all surnamed Tamayo, Pablo Cabrera and Leon Gomera.

Q:

After your husband was first stabbed by Genaro Tamayo, did anyone of the accused immediately appear and help in stabbing your husband? I withdraw that question, Your Honor.

Q:

You testified during the direct examination that your husband was stabbed on the right chest by Alfredo Cañada and this Alfredo Cañada continued stabbing; and your husband even back peddled [sic] towards the street while Alfredo Cañada was stabbing him, is that correct?

A:

Yes, sir.

Q:

While Alfredo Cañada was stabbing your husband and your husband was moving backward towards the road, there was no one among the accused yet who came and helped attacked your husband?

A:

Felipe, Genaro, Basilio and Leon Gomera came to help attacked my husband.

x x x x x x x x"[12]

(Underscoring supplied)

Maria's testimony on direct examination that she "only saw clearly those five persons [Alfredo Cañada, Genaro Tamayo, Leon Gomera, Basilio Tamayo and Felipe Tamayo] [she] enumerated who took turns in stabbing and hacking [her] husband while others were holding [her] husband ---" could be read as suggesting that persons other than the five (5) named ones, had participated in thrusting and slashing away at Cristituto Librando. This apparent suggestion disappeared in her statement on cross-examination when she named those who came and helped in attacking her husband. The important point that must here be made is that Roberto Tamayo was never named by Maria as among those who had attacked her husband as he backed off from Alfredo Cañada desperately trying to parry or avoid further knife stabs and thrusts.

In contrast, upon being asked who had killed her brother Teodoro Cañada, Maria Librando unerringly pointed to appellant Roberto Tamayo as one of the doers of that crime:

"Q:

What happened to Genaro Cañada?

A:

He was able to reach the house of Jose Cañada because he was chased; and upon arriving at the porch, he expired there.

Q:

What happened after that?

A:

He died, and our youngest arrived.

Q:

What is the name of your youngest?

A:

Teodoro Cañada.

Q:

What happened when this Teodoro Cañada arrived?

A:

He asked, 'what happened to you?'

Q:

What happened, after that?

A:

Basilio Tamayo and Roberto Tamayo turned and they took turn in stabbing him."^[13]

(Underscoring supplied)

Obviously Maria Librando knew and recognized Roberto Tamayo; nonetheless she named Roberto Tamayo only in connection with the killing of her brother Teodoro Cañada and not in connection with the slaying of her husband Cristituto Librando. The record is completely bare of any suggestion of any reason why she should absolve appellant Roberto Tamayo for the death of her own husband if indeed Roberto Tamayo had participated in his slaying. This negative testimony, as it were, of Maria Librando was corroborated by that given by one of her brothers, Jose Cañada. Jose Cañada testified that he saw five (5) persons arrive at their house. These were: Alfredo Cañada, Felipe Tamayo, Genaro Tamayo, Leon Gomera and Pablo Cabrera:

"ATTY. ESTOPIA: (Con't)

Q:

What were you doing there that time?

A:

I was playing 15 balls.

Q:

With whom?

A:

Bobot Cabucos.

Q:

While you were playing 15 balls with Bobot Cabucos, do you remember of anything unusual which took place?

WITNESS: (Answering)

A:

Yes, sir.

ATTY. ESTOPIA: (Con't)

Q:

What was that about?

A:

5 persons arrived and when they reached the place where we were playing the 15 balls they immediately got the 'taco.'

Q:

What happened after that?

A:

I went away and went to the place where my carabao was pastured.

Q:

By the way, do you know the names of the persons whom you said arrived?

A:

Yes, sir.

Q:

Name them?

A:

Genaro Tamayo, Felipe Tamayo, Alfredo Cañada, Leoncio Gomera.

Q:

You mentioned only 4. Who was the last?

A:

The man with a beard but I do not know the name.

x x x x x x x x

Q:

While you were getting your carabao what happened next?

A:

I heard a shout.

Q:

After you heard a shout, what did you do?

A:

I run home immediately.

Q:

What happened after that?

A:

I saw Genaro Tamayo riding over the body of Cris.

Q:

What else happened next?

A:

They were stabbing.

Q:

Who made stabbings?

A:

Genaro, Pablo and Alfredo. The 5 of them.

Q:

You mentioned about Pablo, who is this Pablo?

A:

I do not know him he is the man with a beard. I only knew him in the jail.

x x x x x x x x

ATTY. ESTOPIA: (Con't)

Q:

What did you do upon seeing the 5 persons stabbing and hacking Cris Librando?

A:

I run to my younger brother to help him.

Q:

Who is your younger brother?

A:

Teodoro Cañada.

Q:

Why, what happened also to Teodoro Cañada?

A:

He was also stabbed by Roberto Tamayo because they were struggling for the possession of the bolo."[14]
(Underscoring supplied)

Thus, like his sister Maria Librando, Jose Cañada did not identify appellant Roberto Tamayo as being present when five (5) of the accused were attacking and slashing away at Cristituto Librando. Again, in contrast, like his sister Maria Librando, Jose Cañada explicitly pointed to appellant Roberto Tamayo as having stabbed and slashed at Teodoro Cañada. Once more, the record yields no reason why Jose Cañada should have failed to name or should deliberately exculpate appellant Roberto Tamayo of the killing of Cristituto, if Roberto Tamayo had in fact participated therein.

The testimony of Samuel Alvarico was obviously inconsistent with the testimonies of Maria Librando and Jose Cañada. Under these circumstances, the testimony of Maria Librando and Jose Cañada must be regarded as having very substantially weakened or negated that of Samuel Alvarico so that the testimony of the latter became insufficient to support the conviction of appellant Roberto Tamayo of the murder of Cristituto Librando.

As noted earlier, in the dispositive part of its decision with reference to Criminal Case No. 3203 (for the killing of Cristituto Librando), the trial court found that Alfredo Cañada, Basilio Tamayo, Felipe Tamayo and Roberto Tamayo "did confederate and help one another by the use of the combined superior strength ---". In other words, the trial court apparently held that conspiracy had been proved so that the act of one became the act of all insofar as the slaying of Cristituto was concerned. Strangely enough, however, the trial court two (2) paragraphs before the dispositive portion of its decision relating to Criminal Case No. 3203 and in the process of summarizing its findings in Criminal Case No. 3203, said:

"x x x Upon being hit, the victim, instead of retracing his step to run upstairs his house, had ran towards the

road where Genaro Tamayo, Basilio Tamayo, Felipe Tamayo and Roberto Tamayo were waiting. When the victim Librando reached the place where the four Tamayos were standing, instead of giving aid to the victim, the four Tamayos pounced upon the victim with slashes and stabs which resulted in the ultimate death of victim Librando.

The prosecution tried to establish the motive for killing the four victims and the conspiracy among the seven accused to carry out the killing by introducing Pediona Villaganas to testify on these circumstances. However, the testimony is vague for what witness heard was just the ranting of an aggrieved person, i.e., Genaro Tamayo. At most, if conspiracy were to be considered, it would involve only Genaro Tamayo, Felipe Tamayo and Alfredo Cañada.

Pablo Cabrera and Leon Gomera were not at the scene of the killing of Cristituto Librando."[15]

It would therefore appear that the trial court court had either inadvertently omitted the name of Roberto Tamayo in naming the persons among whom conspiracy had been shown by the prosecution (Genaro Tamayo, Felipe Tamayo and Alfredo Cañada); or that it had contradicted itself two (2) paragraphs later in its dispositive portion when it named Roberto Tamayo along with Alfredo Cañada, Basilio Tamayo and Felipe Tamayo as having confederated and conspired with each other in the murder of Cristituto Librando. Once more, under these circumstances, we feel compelled to acquit appellant Roberto Tamayo of the murder of Cristituto Librando.

WHEREFORE, the Decision dated 23 June 1987 of the trial court in Criminal Case No. 3203 is hereby MODIFIED by ACQUITTING appellant Roberto Tamayo of the crime of murder for failure of the prosecution to prove his guilt thereof beyond reasonable doubt.

The same decision of the trial court is hereby MODIFIED insofar as Criminal Case No. 3205 is concerned by increasing the amount of civil liability payable, jointly and severally, by Basilio Tamayo and appellant Roberto Tamayo from P12,000.00 to P30,000.00 conformably with current jurisprudence. As so modified, the trial court's decision in Criminal Case No. 3205 is hereby AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] Decision of the Regional Trial Court, Rollo, pp. 30-31.

[2] Id., pp. 57-58.

[3] Id., pp. 62-63.

[4] TSN, 25 November 1981, pp. 16-19.

[5] Testimony of Samuel Alvarico, TSN, 10 February 1981, pp. 4-5.

[6] TSN, 25 November 1981, p. 20.

[7] E.g., *People v. Alcantara*, 163 SCRA 783 (1988); *People v. Mendoza*, 163 SCRA 568 (1988); *People v. Sato*, 163 SCRA 602 (1988); *People v. Ramillo*, 147 SCRA 102 (1987); *People v. Quinlob*, 119 SCRA 130 (1982).

[8] Rollo, p. 152.

[9] E.g., *People v. Bautista*, 147 SCRA 500 (1987); *People v. Cervantes*, 125 SCRA 187 (1983); *People v. Elefano, Jr.*, 125 SCRA 702 (1983); *People v. Imbo*, 116 SCRA 355 (1982).

[10] TSN, 10 February 1981, pp. 4-5.

[11] TSN, 25 November 1981, p. 20.

[12] Ibid., pp. 35-36.

[13] Ibid., p. 22.

[14] TSN, 21 July 1981, pp. 24-27.

[15] Rollo, pp. 153-154.

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