

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VENERANDO, JUANITO, MAXIMINO, DESIDERIO, ALL SURNAMED
TINAMPAY, ACCUSED, MAXIMINO TINAMPAY AND DESIDERIO
TINAMPAY, ACCUSED...**

G.R. Nos. 80658-60. March 23, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Tagbilaran City, Branch 4. The dispositive portion reads:

"WHEREFORE, these cases are hereby dismissed insofar as accused Venerando and Juanito Tinampay are concerned as both died during the pendency of these cases. Accused Maximino and Desiderio Tinampay are hereby found GUILTY in these cases. In Criminal Case No. 3738 for murder, accused Maximino Tinampay and Desiderio Tinampay are each sentenced to undergo the penalty of reclusion perpetua and to solidarily indemnify the heirs of Maximo Hinacay the sum of P30,000.00. In Criminal Case No. 3739 for frustrated murder, accused Maximino and Desiderio Tinampay are each sentenced to undergo the indeterminate penalty of imprisonment of from EIGHT (8) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS, and to indemnify complainant Segundo Hinacay the sum of P1,200.00 as actual damages in form of hospitalization and medicine. In Criminal Case No. 3740 for attempted murder, they are sentenced to undergo the indeterminate penalty of from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY to EIGHT (8) YEARS, both accused Maximino and Desiderio Tinampay are to pay the costs in these cases." (Rollo, p. 51)

The respective informations filed against the accused in Criminal Cases No. 3738, 3739, and 3740 allege:

Criminal Case No. 3738:

"That, on or about the 18th day of December, 1983, in the municipality of Guindulman, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping each other, with intent to kill, evident premeditation, treachery, and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, beat with a piece of wood and stab one Maximo Hinacay, with the use of a sharp-pointed bolo, thereby inflicting upon the vital parts of the body of the latter serious physical injuries, which caused his immediate death; to the damage and prejudice of the heirs of the deceased.

"Acts committed contrary to the provisions of Article 248 of the Revised Penal Code." (Rollo, p. 9)

Criminal Case No. 3739:

"That on or about the 18th day of December, 1983, in the municipality of Guindulman, province of Bohol, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping each other, with intent to kill, evident premeditation, treachery, and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, beat

with a club and stab one Segundo Hinacay, with the use of a bolo, thereby inflicting upon the vital parts of the body of the latter serious physical injuries, which required medical treatment and attendance for a period of more than 70 days and incapacitated him from the performance of his customary labor for the same period of time; the accused having therefore performed all the acts of execution which would have produced the crime of murder, as a consequence, but which nevertheless, did not produce it by reason of a cause independent of his will, to wit: the timely and effective medical treatment and attendance which prevented the victim's death; to the damage and prejudice of the said Segundo Hinacay.

"Acts committed contrary to the provisions of Article 248, of the Revised Penal Code, in relation to Article 6 and 50 of the same Code." (Rollo, p. 10)

Criminal Case No. 3740:

"That on or about the 18th day of December, 1983, in the municipality of Guindulman, province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping each other, with intent to kill, evidence (sic) premeditation, treachery, and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault, and beat one Florencio Hinacay, with the use of a wooden club, thereby inflicting upon the body of the latter physical injuries which required medical treatment and attendance for a period of five (5) days and incapacitated him from the performance of his customary labor for the same period of time; the accused having therefore commenced the commission of murder directly by overt acts, but did not perform all the acts of execution which would have produced the felony by reason of some cause other than their own spontaneous desistance, to wit: the timely escape of the victim by running away from the accused; to the damage and prejudice of the said Florencio Hinacay.

"Acts committed contrary to the provisions of Article 248 of the Revised Penal Code, in relation to Articles 6 and 51 of the same Code." (Rollo, p. 12)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized as follows:

"After attending a weekly cockfight at the cockpit in Guindulman, Bohol, on December 18, 1983 (Sunday), Maximo Hinacay, his brother Segundo Hinacay, and son Florencio Hinacay went home on foot following the national highway. Some distance before turning right to a footpath that leads to Maximo Hinacay's house, they stopped by the house of Henrica Hinacay to inquire about the carabao of Maximo Hinacay then tended by her. Thereafter, they proceeded homeward. When they turned right to the footpath which leads to Maximo's house, the four accused Maximo Tinampay and his sons Venerando, Desiderio and Juanito Tinampay suddenly appeared from behind a big caimito tree armed with a bolo and pieces of wood (Exhs. "A", "B" to "B-6"). That was about 6:30 in the evening.

"The accused then attacked Maximo, Segundo, and Florencio Hinacay which resulted in the death of Maximo and the serious physical injuries to Segundo. Florencio Hinacay sustained only slight physical injuries as he was able to escape. Accused Desiderio Tinampay carried the bolo while each of the other accused Maximino, Venerando, and Juanito Tinampay carried pieces of wood. Maximino Tinampay struck Maximo Hinacay on his forehead with the piece of wood. Venerando Tinampay hit Maximo Hinacay at the back with the piece of wood while Juanito Tinampay hit Maximo Hinacay on the right side of his body with the piece of wood. Maximo Hinacay, unable to parry the blows due to the sudden assault fell down face down. The two also struck Segundo Hinacay with the pieces of wood who also fell. Then Desiderio Tinampay mounted on Maximo Hinacay and stabbed his back with the bolo (Exh. A). Desiderio then turned Maximo over and stabbed him on his nipple. Desiderio then next mounted on Segundo Hinacay who was lying on his side and with the bolo stabbed his back after pushing his face down. As a consequence of the beating of Maximo and Segundo Hinacay the three (3) pieces of wood wielded by accused Maximino, Venerando and Juanito

Tinampay broke into six (6) pieces now marked Exhs. "B", "B?1", "B-2", "B-3", "B-4", and "B-5". From behind the bushes where he hid, Florencio saw his father and uncle dragged by the accused and left across the highway.

"After a while, when he sensed there were no more persons around, Florencio Hinacay approached the fallen bodies of Maximo and Segundo to verify if they were still alive. Suddenly, he heard rustling sound behind and he got hit on his back with a piece of wood. As he fell he supported himself with his arms and as he struggled to get up he saw accused Venerando and Juanito Tinampay wielding pieces of wood rushing towards him. He managed to run away but not before accused Maximino Tinampay struck his left forearm with a piece of wood. He sought refuge in the house of Inting Galos and returned to the scene of the struggle after the police jeep of the Guindulman INP arrived thereat about 7:00 o'clock that evening and found Maximo already dead. Segundo was brought to the hospital.

"The police were summoned to the scene by Constancia Hinacay, wife of Maximo Hinacay, who went to the highway to buy kerosene and saw the initial phase of the assault by the accused. She ran away and met one Mely Anoling on his tricycle and upon her pleas Anoling fetched the police. As she returned to the scene to find out what happened to her husband, Maximo, she dropped at the house of Susing Duaso where she fainted as she was about to drink water.

"The post-mortem findings of Maximo Hinacay indicate that he sustained the following injuries (Exh. "D"):

'Stabwound, penetrating the lung, at the level of the right nipple, 1 inch medially.

Lacerated wound, forehead, 3 cm 1/2 cm, with comminuted fracture of the underlying bones.

Lacerated wound, bridge of nose, with comminuted fracture of the underlying bones.

Stabwound, 5 cm x 3 cm, 4 cm from the midline, with intestines externalized, sacral area, left.

Lacerated wound, (2) superficial, back, right.'

"Segundo Hinacay sustained the following injuries (Exh. "E"):

'Wound, lacerated, 4 cm x 1/2 cm, supero-medial aspect, orbit, right.

Fracture, comminuted, medial portion of right orbit and bridge nose.

Contusions, multiple, right parietal area; upper extremities; and back.

Stabwound, 5 cm x 1 cm, just below the right inferior angle of scapula, along the right posterior axillary line.'

"While Florencio Hinacay had the following injuries (Exh. "F"):

'Abrasion with contusion, scapular area, left.

Abrasions, posterior, proximal half, forearm, right.

Contusions, postero-lateral, arm, left.

Abrasions, knee, left.' (Rollo, pp. 46-48)

On the other hand, the defense version as summarized by the trial court is as follows:

"That early evening of December 18, 1983, accused Maximino Tinampay and his wife, who are neighbors of the victims, went to the store at the highway to buy some viand as they had visitors, namely, son Desiderio Tinampay and wife and Mariano Equipilag, who arrived from Alicia that afternoon."

"As they walked their way home from the store where they made the purchases, they had to drop in at his

brother Melodio's house as there were 3 drunk men. When the drunken men had gone, Maximino, then unarmed, and his wife resumed walking towards their house situated some 15 meters from the national road.

"They were on the way waylaid by Maximo, Segundo, and Florencio Hinacay. Six (6) meters from the trio, Maximino and his wife stopped. Then leaving his wife who could not run, Maximino ran towards the house of one Madera. Florencio Hinacay chased him holding a pestle who (sic) caught him up near the gate fence of Madera's house. Florencio struck Maximino with the pestle but missed as the latter ducked. The pestle hit the post of the fence and broke into two, the long and short one. Maximino picked up the long part while Florencio continued to hold the short portion. Maximino struck Florencio 3 times with the long portion of the pestle. The first blow hit Florencio's back; the second his side. As Florencio got up after the first blow, Maximino struck Florencio second and third time. Maximino then heard his wife nearby shouting at him to watch out as Florencio's two (2) companions, Maximo and Segundo Hinacay, were around with bolos.

"Presently, Maximo and Segundo confronted Maximino Tinampay, Maximo holding the long-bladed bolo, Exh. "A", while Segundo wielded a shorter-bladed (1 foot) bolo. Holding the long part of the pestle (Exh. 13), Maximino backtracked. Segundo hacked Maximino's right face. The latter countered by striking Segundo with the pestle (Exh. "B") between the eyes and Segundo fell backward and slumped on the ground face down. Maximo hacked Maximino Tinampay hitting the back of his arm and he fell near where Segundo had slumped. Releasing the longer part of the pestle (Exh. "B"), Maximino took hold of Segundo's bolo lying on the ground and stabbed Maximo in his mid-section and the latter fell down.

"Florencio, who was now at Maximino's back hacked the latter with a bolo on his right shoulder. As Maximino faced Florencio, the latter ran away. From a distance of about 6 meters, Florencio threw 4 fresh ipil-ipil branches (Exhs. "B-1", "B-4") at Maximino who was not hit but instead hit Segundo causing the other injuries on the latter.

"Maximo's bolo, Exh. "A", was left at the scene. Maximino Tinampay could not tell where Segundo's bolo is.

"Maximino sustained the following injuries (Exh. 1).

"INCISED (HACKING) WOUND

1) FACE, RIGHT

2) SUPRA SCAPULAR AREA, RIGHT

= 10 CM IN LENGTH

= 4 1/2 IN DEPTH

= 3 1/2 IN WIDTH

3) FOREARM, MID PORTION, ANTERIOR ASPECT LEFT

= 2 1/2 IN DEPTH

= 1 1/2 IN WIDTH

= 7 CM IN LENGTH" (Rollo, pp. 48-49)

The appellants raise the following assignment of errors in their appeal, to wit:

I

THE HONORABLE TRIAL COURT ERRED IN ONESIDEDLY GIVING FULL FAITH AND CREDIT TO THE TESTIMONIES OF THE PROSECUTION WITNESSES, PRACTICALLY DISREGARDING THOSE GIVEN BY THE WITNESSES FOR THE DEFENSE OR ACCUSED WHICH HAVE NOT BEEN SUCCESSFULLY REFUTED, HENCE CREDIBLE; AND

II

THE HONORABLE TRIAL COURT LIKEWISE ERRED IN CONVICTING ACCUSED EVEN IF THEIR GUILT HAS NOT BEEN ESTABLISHED BEYOND REASONABLE DOUBT." (Appellant's brief, p. 1)

As the two assignment of errors are inter-related, they shall be discussed together.

In the assigned errors, the appellants maintain that their guilt was not proven beyond reasonable doubt. They contend that the trial court should have given credence to their version instead of giving credence to that of the prosecution. They state that the version of the prosecution is tainted because of the following reasons: first, prosecution witnesses, Florencio, Segundo and Constanica are interested witnesses as they are relatives of the deceased. Their testimonies then, are self-serving. Second, there are marked inconsistencies in Florencio's testimony. These inconsistencies are: (1) the statement of Florencio that he was investigated by Dr. Piezas which was denied by Dr. Piezas, (2) the variances between Florencio's affidavit which according to him contained everything that had transpired and his testimony in open court, (3) the statement of Florencio that it was a moonlit night while the other witnesses testified that it was pitch dark. Because of these loopholes in the prosecution's version, the appellants put forth that their version is more credible. The appellant, Maximino, contends that the victims, not he, were the unlawful aggressors. Any struggle between him and the victims was just an act of self-defense on his part. Appellant Desiderio, on the other hand, claims the defense of alibi. His alibi is corroborated by a defense witness, Mariano Equipilag.

The appellants' contentions are without merit.

The guilt of the appellants has been proven beyond reasonable doubt. The appellants were placed in the scene of the crime and positively identified as the assailants by three witnesses Florencio, Segundo, and Constanica, two of whom were victims of the assault themselves. The fact that these witnesses are the son, brother and wife of the deceased, respectively, standing alone, will not be sufficient to discredit their testimonies. Being related to the deceased by consanguinity does not ipso facto, make them biased witnesses. It must be clearly shown that, independent of the relationship, the testimony is inherently improbable in itself or that there are properly charged improper motives of the witnesses to incriminate the appellants. (People v. Reception, 198 SCRA 670, 679-680 [1991]) There is no showing that the testimony is improbable. In fact, physical evidence supports the prosecution's version. There is also no showing of improper motives. The appellants, in their brief, did not make mention of any motives the prosecution witnesses might have in testifying against them.

We find that the trial court did not err in giving credence to the prosecution's version notwithstanding the inconsistencies in Florencio's testimony and the variances between his affidavit and testimony. These are minor inconsistencies and variances which are usual among witnesses and do not affect their overall credibility. (People v. Briones, G.R. No. 90319, October 15, 1991)

Moreover, there is no reason to deviate from the well-settled doctrine that the findings of fact of the trial judge on the credibility of witnesses deserve respect by the appellate court in view of its privilege of examining the demeanor of the witnesses as they testify and in the absence of grave abuse of discretion. (People v. Caraig, G.R. No. 91162, October 3, 1991)

In view of the foregoing, the claims of self-defense and alibi put up by Maximino and Desiderio respectively, must therefore, fail.

For self-defense to be appreciated, it must be proved by clear and convincing evidence that the appellant acted in defense of himself. (People v. Maceda, 197 SCRA 499, 502 [1991]) In the instant case, no clear and convincing evidence was presented by the appellant. In fact, the following circumstances discount the claim of self-defense:

- 1) the appellant did not file any charges against his alleged aggressors;
- 2) the appellant first ventilated his story of self-defense only after almost one and half years after the incident;
- 3) the appellant was up against three armed men but despite this, one of the alleged three armed aggressors died and the other suffered serious physical injuries;
- 4) the injuries suffered by the appellant are not commensurate to the supposed attack of three men armed with boloes and wooden sticks.

Standing alone, the appellant's three incised wounds could have bolstered his claim of self-defense but taken with all the circumstances above-mentioned, these wounds could be attributed to the melee created by seven combatants.

With regards to the defense of alibi, it is a well-settled rule that alibi cannot prevail over the positive identification of the appellant by the prosecution witnesses. (People v. Gabatin, G.R. No. 84730, October 28, 1991) Alibi, as an inherently weak defense, will be accepted only upon the clearest proof that the appellant was not or could not have been at the scene of the crime when it was committed. (People v. Custodio, 197 SCRA 538, 545 [1991]) In the present case, by the appellant's own admission, at the time of the incident, he was at his brother's house less than a kilometer from the scene. (See RTC Decision, p. 6)

Treachery qualified the attack made on the victims. There is treachery when the offender commits any of the crimes against a person employing means, methods, or forms in the execution, without risk to himself arising from the defense which the offended party might make. (See People v. Lubreo, G.R. No. 74146, August 2, 1991; People v. Sabellano, 198 SCRA 196, 210 [1991]) Murder, frustrated murder, and attempted murder were indeed, committed by the appellants.

In a crime of murder, or an attempt or frustration thereof, the offender must have the intent or the actual design to kill which must be manifested by external acts. (People v. Ravelo, G.R. No. 78781-82, October 15, 1991)

In Criminal Case No. 3739, the appellants committed frustrated murder as they performed all the acts of execution that would produce the felony as a consequence but the felony is not thereby produced by reason of causes independent of the will of the perpetrator. In the present case, timely medical attention was the independent cause that prevented Segundo's death.

In Criminal Case No. 3740, the appellants committed attempted murder as there was already a commencement of the criminal act by overt acts but not all acts of execution were performed as to produce the felony by reason of some cause other than the appellants' own desistance. In the present case, the appellants already commenced their attack on Florencio but Florencio managed to get away from them.

Conspiracy is present in the case at bar. The combined acts of the appellants indicate a common design to commit the crime. (People v. Arenas, 198 SCRA 172, 185 [1991])

WHEREFORE, the decision appealed from is **AFFIRMED** with modification that in Criminal Case No. 3738, the indemnity to the offended party is increased to P50,000.00 and in Criminal Case No. 3739, the appellants are each

sentenced to undergo the indeterminate penalty of imprisonment from EIGHT (8) YEARS and ONE (1) DAY of prison mayor to FOURTEEN (14) YEARS AND EIGHT (8) MONTHS of reclusion temporal.

SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., on leave.

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