

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RICARDO YEBAN, RODOLFO YEBAN, JOSE YEBAN, PATERNO YEBAN
AND JOHN DOE, DEFENDANTS, RICARDO YEBAN, RODOLFO YEBAN
AND JOSE YE...**

G.R. Nos. 90279-81. October 11, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The senseless ambush of several persons leading to the death of one of them is the cause of this prosecution.

This is an appeal from a judgment of conviction by the Regional Trial Court of Kalibo, Aklan dated May 17, 1989, which was amended on May 23, 1989 convicting the accused of murder and frustrated murder charged in three (3) separate informations filed against them, the dispositive part of which reads as follows:

"WHEREFORE, after evaluating the evidence on record, this Court is of the opinion, and so holds, that the accused, Rodolfo Yeban, Ricardo Yeban and Jose Yeban are guilty beyond reasonable doubt, as principals, of the crime of Murder in Criminal Case No. 2474, of Attempted Murders in Criminal Cases Nos. 2475 and 2476 and hereby imposes upon each of them the penalties as follows:

"An indeterminate sentence of Ten (10) years and One (1) day of prision mayor, as minimum to Eighteen (18) years Eight (8) months and one day of Reclusion Temporal as maximum, for the murder of Jolito Ilarina, as this crime is defined and penalized under Article 248 of the Penal Code, with the modification of the penalty as a result of the abolition of the capital punishment by the 1987 Constitution; hence, the penalty now for Murder is Reclusion Temporal in its Maximum period to Reclusion Perpetua and in the absence of any modifying circumstance, the aggravating circumstance of taking advantage of superior strength being absorbed in the qualifying circumstance of treachery, the penalty should be imposed in its medium period or from Eighteen (18) years 8 months and 1 day to twenty (20) years. With the application of the Indeterminate Sentence Law, the penalty boils down to what is imposed above, and no longer Reclusion Perpetua; and to pay the heirs of Jolito Ilarina jointly and severally, the sum of P30,000.00 as death indemnity; In Criminal Cases Nos. 2475 and 2476, there being no modifying circumstance and with the application of the Indeterminate Sentence Law, each of the said accused is sentenced to a penalty of imprisonment ranging from Two (2) years Ten months and Twenty days of prision correccional as minimum to Six (6) years and 1 day of prision mayor as maximum, for each of the said two crimes of Attempted Murder."[1]

At around 10:00 or 11:00 o'clock in the evening of April 2, 1987, while Jolito Ilarina, Jupiter Deocampo and Alfredo Yabut were walking towards Barangay Daja Sur, Banga, Aklan from Barangay Navitas, Malinao, Aklan, Alfredo Yabut was hit on the left eyebrow by a stone. Immediately, Jose Yeban appeared and stabbed Alfredo Yabut hitting him on the right forearm, so Yabut fell to the ground facing upward.

Jolito Ilarina was then assaulted with a bolo by Rodolfo Yeban who hit the former on the head and face. Paterno also assaulted Jolito with a bolo that landed on the victim's stomach.

After Yabut fell to the ground, Jose Yeban turned to Jolito Ilarina and stabbed the latter on the knees while already lying on the ground. Meanwhile, Ricardo Yeban repeatedly hacked Jupiter Deocampo, hitting the latter on the left forearm, hand and left ear. He also joined the assault on the helpless Ilarina hitting him three times on the chest.

During the incident Ricardo Yeban shouted that he was injured. The Yebans chased Jupiter with one of them shouting "let us kill him because I was already wounded." Deocampo ran and jumped into the Aklan river to save himself.

Alfredo Yabut also fled towards Daja Sur, Banga, Aklan, while Jolito laid dead on the ground.

The post mortem examination report on the body of Jolito showed a total of 26 hacking and stab wounds which include:

- "1. Head hacking wounds six in number at the parietal portions and the face.
2. Stab wound at the base of the neck anterior portion.
3. Chest anterior portion 3 stab wounds non-penetrating.
4. Abdomen anterior portion. Hacking wound at the left lumbar portion.
5. Abdomen stab wounds non-penetrating at the right lumbar portion at the level of the umbilicus.
6. Hacking wound at the left knee joint, patilla cut off.
7. Left upper extremity multiple hacking wounds 3 in number.
8. Back-multiple hacking wounds at the supra scapular regions infra scapular regions, abdomen and buttocks ten (10) in number."[2]

The death of said victim was due to cardiac arrest secondary to massive hemorrhage due to multiple hacking and stab wounds.

Jupiter sustained the following injuries according to the Medico-Legal report of Dr. Rufo Refendor:

- "Hacking wound, 10 cm. dorsal aspect, hand, left.
- Hacking wound, 10 cm. mid. 3rd, antero-medical aspect forearm, left.
- Hacking wound, 5 cm. Hypothenar area, hand, left.
- Incised wound-avulsion, pinnae, left" (Exhibit A for Criminal Case No. 2475; tsn, December 5, 1987, p. 3).[3]

The wounds suffered by Alfredo Yabut as shown by the medical certificate issued by Dr. Querubin Iguban are:

- "1. Abrasion with Hematoma left eye.
2. Incised wound, skin deep 1 inch long at the lateral side of the arm" (Exhibit A for Criminal Case No. 2476).[4]

After arraignment of all the accused, except Paterno Yeban who was at large, they entered a plea of not guilty and after a joint trial on the merits of the three cases, the aforesaid decision of the trial court was promulgated convicting them of the offenses charged.

Hence, this appeal which is predicated on the following grounds:

- (1) that the Honorable Court erred in finding that the accused were the ones who committed the crimes subject

of these cases; and that

(2) the Honorable Court erred in holding the accused guilty of the crime of murder.[5]

After careful examination of the records, the Court finds the appeal to be devoid of merit.

The main thrust of the defense of the appellants is alibi. Rodolfo Yeban claimed that he was with his brother Paterno at the dance hall at around 11:00 o'clock in the evening of April 2, 1987. Jose Yeban and Ricardo Yeban, however, alleged that they were then in their house about four kilometers away from the dance hall. Hence, they assert they could not have been at the scene of the crime when the same took place.

The house of Jose Yeban at Rosario, Malinao, Aklan where Jose and Ricardo Yeban claimed to be on the night of April 2, 1987 is only about 4-1/2 kilometers away from the scene of the crime.

The dance hall at Malinao where Rodolfo and Paterno Yeban alleged they were is only half a kilometer away from the place of the hacking incident.

The rule is too well-known that the defense of alibi can prosper only if it is so convincing as to preclude any doubt that the accused could not have been physically present at the scene of the crime or its vicinity at the time of its commission.

Moreover, the appellants were positively and uniformly identified by no less than two eyewitnesses/victims (Alfredo Yabut and Jupiter Deocampo) as the perpetrators thereof, describing in sordid detail the diabolic assault of the appellants. In the face of such positive identification of the appellants, the defense of alibi must necessarily fall.

The appellants then alleged inconsistencies in the testimonies of prosecution witnesses Yabut and Deocampo. As the alleged inconsistencies were on minor matters, rather than affecting the credibility of said witnesses, they fortify the said testimonies as voluntary and unrehearsed.

The finding of the trial court as to the credibility of the witnesses may not be disturbed on appeal because of its superior advantage in observing the conduct and demeanor of the witnesses while testifying unless some facts and circumstances may have been overlooked that may otherwise affect the result of the case.

It is of no moment whether the three victims were walking side by side or one after the other; that Yabut saw the appellants two or three meters away while Jupiter Deocampo did not; that Yabut was boloed once or several times by Jose Yeban; and that his hands were on his body and raised in a defensive stance when he was being boloed, as alleged by appellants. What is clear is that the prosecution has satisfactorily proved that on the evening of April 2, 1987, Yabut, Deocampo and Ilarina were criminally assaulted with boloes by the appellants which caused the death of Ilarina and the injuries of the other two.

The appellants call attention to the trivial matter that as Yabut said he was hit with a stone on his forehead, yet upon examination the Court found no scar on the same. Yabut testified on November 20, 1987, one year and seven months after the incident so that certainly the scar or trace of hematoma on his left eyebrow could no longer be visible. Nevertheless, said injury is attested by the medical certificate and testimony of the physician.[6]

Appellants also find it surprising that Yabut did not know the names of the appellants' father and sons when he could recognize them having met them at the cockpit, specially in a small locality in their barrio. This is not surprising. Many people who frequent cockpits or similar public places would not know each other by name but recognize each other at least by face. This is what turned out in the case at bar.

Appellants then argue that because of the unstable peace and order condition in Malinao, it is not believable that

the appellants carried no arms with them that evening. The fact that they had no arms with them does not really matter.

Appellants maintain that Yabut and Deocampo did not immediately report the incident to the police either that same night or the following morning and that the wife of Jolito Ilarina was informed by Jupiter about the death of her husband only two days after and one week later in the case of Yabut. The records, however, clearly show that Yabut, immediately after the incident, informed Lindo Ilarina, Jolito's brother, about the incident upon the latter's arrival at Daja Sur, Banga, Aklan. Thus, they proceeded to the house of Barrio Captain Manuel Nagtalon and reported the matter to him. The following day, after his wounds were treated by the physician, Yabut dropped by the scene of the crime where he presented himself to the policemen who were then conducting their on-the-spot investigation.[7]

On the other hand, Jupiter Deocampo, after successfully evading his pursuing aggressors and upon reaching Daja Sur, Banga, Aklan, went to Barangay Captain Manuel Nagtalon to report the matter. The next day, he reported the incident to a certain Jimmy Dadivas at the police station of Banga, Aklan.[8]

Amelia Ilarina also learned of her husband's death from the latter's elder brother at 8:00 o'clock in the morning of April 3, 1987.

The appellants then insisted that the identification conducted at the police headquarters of Malinao, Aklan was faulty because no line-up was made for the purpose of identifying the perpetrators and only the appellants were made to face Yabut and Deocampo. Thus, appellants contend that there was a frame-up on the part of the policemen who investigated the case.

The Court sees nothing irregular in an investigation by the law enforcement agencies where the suspects are presented to the witnesses/victims for possible identification. If none of them were present then they would not be identified by said witnesses/victims. However, since the night of the incident was clear with the stars about and Yabut was familiar with the faces of the appellants they were positively identified by said witnesses/victims at the confrontation.[9] Besides, the identity of said appellants was confirmed by the said witnesses on the witness stand.

The appellants decry the fact that the autopsy of the cadaver of the victim Jolito Ilarina was made only a week after the cadaver had been already embalmed. While it is true that such autopsy should be made soon after the incident, its delay is of no material consequence. In fact, the autopsy shows that Jolito Ilarina was stabbed and hacked 26 times in different parts of his body. Moreover, appellants were positively identified.

The appellants then state that the alleged motive in the commission of the crime by the appellants, i.e., to avenge the assault against Robert Inaudito (the grandson of Jose Yeban and nephew of Ricardo, Rodolfo and Paterno Yeban) by Erwin Mirano (a co-resident of Jolito Ilarina and Jupiter Deocampo at Daja Sur, Aklan) is a very remote possibility.

Suffice it to say that motive is essential only where there is doubt as to the identity of the culprit and not where the accused are positively identified as the assailants.

The Court reproduces with approval the summation of the case by the Solicitor General, as follows:

"The sum of the evidence at hand rests the mind to the conviction that, indeed, accused-appellants Jose Yeban, Ricardo Yeban, Rodolfo Yeban, including Paterno Yeban who remains at large, committed the felonies of Murder for the death of Jolito Ilarina, Frustrated Murder on the person of Alfredo Yabut, and Frustrated Murder upon Jupiter Deocampo. The evidence is all too convincing, thus: they were all positively identified by both Alfredo Yabut and Jupiter Deocampo, themselves victims of the criminal assault (tsn, November 9, 1987,

pp. 5-6, 8; November 20, 1987, pp. 3-7, 21, 30, 35; December 4, 1987, pp. 4-7, 12, 13); Yabut and Deocampo described blow by candid blow the manner, sequence and intensity of the attack (tsn, November 9, 1987, pp. 4-7, 8-10, 11; November 20, 1987, pp. 3-4, 5-11, 21, 27, 28, 29, 30, 35; December 4, 1987, pp. 3-5, 6, 8-9, 10-11, 12-13, 16; December 7, 1987, pp. 22, 23, 24, 25, 26); the description of the mortal and multiple wounds inflicted upon Jolito Ilarina and the injuries upon themselves (Yabut and Deocampo) were corroborated by the Post Mortem Examination Report on Ilarina (Exhibit A) and the Medical Certificate (Exhibit A for Criminal Case No. 2476) and Medico-Legal Report (Exhibit A for Criminal Case No. 2475) on Alfredo Yabut and Jupiter Deocampo respectively; the testimonies of both Alfredo Yabut and Jupiter Deocampo that one of the attackers exclaimed during the incident that he was wounded (tsn, November 20, 1987, p. 8; December 4, 1987, pp. 13, 16) was unwittingly corroborated by Ricardo Yabut himself who testified to the fact that he sustained a cut on his right hand that evening of April 2, 1987 (tsn, May 10, 1988, pp. 5-6) when the crimes were committed; Eliseo Gumban testified that in the early morning of April 3, 1987, Ricardo Yeban with seven other companions came over to his house to hire his tricycle to conduct him (Ricardo) to the hospital, even as six boloes wrapped in a hammock were handed to Eliseo Gumban, one of which contained stains of blood (tsn, October 9, 1987, pp. 9-11, 14, 17), and which fact (that they left the boloes with Eliseo Gumban) Jose Yeban himself confirmed (tsn, May 20, 1988, pp. 11-12); Dr. Iguban who conducted an autopsy on Jolito Ilarina and who attended to the wounds of Alfredo Yabut, as well as Dr. Refendor who treated Jupiter Deocampo both expressed their belief that the injuries suffered by the three victims could have been caused by a sharp bladed instrument (tsn, September 15, 1987, pp. 2, 6, 8-9; December 7, 1987, pp. 3-4).

Appreciation of the above evidence leads to the inexorable conclusion that accused-appellants committed the crimes of Murder and two Attempted Murders for which they must now answer."^[10]

For the crime of murder of Jolito Ilarina, the trial court imposed on the appellants the penalty of ten (10) years and one (1) day of prision mayor as minimum, to eighteen (18) years, eight (8) months and one (1) day as maximum. The correct penalty to be imposed on appellants should be reclusion perpetua.^[11] The indemnity to the heirs of the victim Jolito Ilarina is raised to P50,000.00 in accordance with the resolution of the Court en banc dated August 30, 1990.

WHEREFORE, with the above modification as to the penalty and indemnity, the judgment is affirmed in all other respects, with costs against appellants.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Pages 93 to 94, Rollo.

[2] Pages 30 to 31, Rollo.

[3] Page 31, Rollo.

[4] Page 32, Rollo.

[5] Pages 11 and 23, Brief for the Appellants, pages 62 and 74, Rollo.

[6] Exhibit A; TSN, September 15, 1987, pp. 12-13.

[7] TSN, November 20, 1987, page 47; September 16, 1987, page 9.

[8] Ibid, page 32.

[9] TSN, November 20, 1987, pp. 12 and 13; December 7, 1987, page 27.

[10] Pages 28 to 30, Brief for the Plaintiff-Appellee.

[11] People vs. Muñoz, 170 SCRA 107 (1989).

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