

## SECOND DIVISION

[ G.R. No. 182310, December 09, 2009 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. JAN MICHAEL TAN AND ARCHIE TAN, RESPONDENTS.**

### DECISION

**ABAD, J.:**

#### The Facts and the Case

The facts are based on the affidavits of the witnesses adduced at the preliminary investigation of the case.

Francisco "Bobby" Tan (Bobby), a businessman, lived with his family and a big household in a compound on M.H. del Pilar St., Molo, Iloilo City. His immediate family consisted of his wife, Cynthia Marie (Cindy), and their six children, namely, Raffy, Kristine, Katrina, Karen, Katherine, and Kathleen. Bobby's two older but illegitimate sons by another woman, respondents Archie and Jan Michael (Jan-Jan), also lived with him. Cindy treated them as her stepsons.

There were others in Bobby's house: his aunt Conchita Tan, his cousin Shirley Young, Shirley's daughter Sheryl, eight servants, and Vini Gulmatico, a former family security guard who was transferred to another post on January 2, 2006 after being caught asleep on the job. The family had a frequent guest, Mike Zayco, Cindy's brother, and his sidekick Miguel Sola.<sup>[1]</sup>

At around 6:00 p.m. on January 8, 2006, Bobby and Raffy, Bobby's eldest son by Cindy, left the house for a cockfight. About that time, Bobby's other son, respondent Archie, drove out with the rest of the family to go to mass. They returned around 7:10 p.m. and had dinner. They were joined by Bobby's aunt Conchita, his cousin Shirley, and the latter's daughter Sheryl. At about 7:45 p.m., Bobby and Raffy returned from the cockfight but did not join the dinner, having already eaten elsewhere. Bobby went up directly to the master's bedroom on the second floor.

After dinner, all the members of the family went to their respective rooms. Cindy joined her husband in the master's bedroom with their second to the youngest, Katherine, and her nanny. Katrina, one of the daughters, went to the girls' bedroom to study. Shirley's daughter Sheryl went to the master's bedroom at around 8:10 p.m. to let Cindy try the new pair of jeans given to her by another cousin. Sheryl left afterwards to go to her bedroom.<sup>[2]</sup>

At around 8:35 p.m., Borj, a blind masseur, and an escort arrived at the house for Bobby's massage in his room. At around 8:55 p.m., Emelita Giray, the regular masseuse of Shirley and Sheryl, arrived with her husband.

About 9:30 p.m., Kristine, Bobby's second to the oldest, went to her parents' room to get a bottle of shampoo and say goodnight.<sup>[3]</sup> Borj and his escort left Bobby's residence at around 9:53 p.m., followed about an hour later by Emelita and her husband.

Around 10:30 p.m., Cindy's stepson, respondent Archie, went to the garage and took two pairs of gloves, still wrapped in plastic, from his car. Archie also picked up a pack of cigarettes that he left earlier with their security guard, Ramel Lobreza, before going back upstairs.<sup>[4]</sup>

At around 10:45 p.m., respondents Archie and Jan-Jan joined Raffy, Bobby's oldest child by Cindy, and their driver Julito Geronda in watching a DVD movie on Raffy's laptop at the carport. Jan-Jan went back to his room at around 11:00 p.m. but Archie remained to finish his cigarette. He, too, left afterwards for his room to change.<sup>[5]</sup> By 11:55 p.m. Raffy turned off the video.<sup>[6]</sup>

A few minutes later or at 12:17 a.m. of the next day (January 9, 2006), while security guard Lobreza was making his inspection rounds of the compound, he noticed that the lights were still on in the rooms of Cindy's stepsons, respondents Archie and Jan-Jan.

According to respondents Archie and Jan-Jan, they climbed down the high concrete fence of the compound at about 12:45 a.m to go out. They took a cab to *Calzada* Bar, Camp Jefferson Club, and Caltex Starmart.<sup>[7]</sup> They returned home at around 3:30 a.m.

Respondent Jan-Jan entered the house ahead of his brother. On reaching the door of his room at the end of the hallway, he noticed his stepsister Katherine, the second to the youngest, lying on the floor near the master's bedroom. As Jan-Jan switched on the light in his room, he beheld her lying on a pool of blood. He quickly stepped into the master's bedroom and there saw his father, Bobby, lying on the bed with his chest drenched in blood.<sup>[8]</sup>

Almost simultaneously, respondent Archie who had come into the house after his brother Jan-Jan noticed that the door of his room, which he locked earlier, was partly open. As he went in and switched on the light, he saw his stepmother Cindy, lying in her blood near the wall below the air conditioner. He then heard Jan-Jan shouting to him that their father was dead. Archie immediately ran downstairs to call security guard Lobreza while his brother Jan-Jan went around and awakened the rest of the family. Because Lobreza did not respond to shouts, Archie ran to his room to rouse him up. He told him what he discovered then awakened the other house-helps.<sup>[9]</sup>

Respondent Archie then phoned police officer Nelson Alacre, told him what had happened, and requested him to come immediately. Officer Alacre arrived after a few minutes with some other officers. They questioned Archie and Jan-Jan and took urine samples from them. The tests showed them negative for illegal drug use.<sup>[10]</sup>

Around 4:20 a.m., Officer Alacre rode with respondent Archie on the latter's Toyota Rav4 and they drove to the house of Col. John Tarrosa, a family friend. They then

went to the house of Manolo Natal, Bobby's cockfight *llamador*, to pick him up before driving back to Bobby's residence.<sup>[11]</sup> Meanwhile, on hearing about the crime, the Criminal Investigation and Detection Group (CIDG) Regional Chief directed his own men to investigate the crime scene.<sup>[12]</sup>

On the afternoon of January 11, 2006, two days after the remains of the victims were brought home for the wake, Atty. Leonardo E. Jiz supposedly asked respondents Archie and Jan-Jan, Cindy's stepsons, to sign a statement that the police prepared. The lawyer did not, however, let them read the document or explain to them its contents. They signed it on Atty. Jiz's assurance that they would have the chance to read the statement later at the public prosecutor's office and correct any mistakes before swearing to the same. The complainants did not, however, present this statement during the preliminary investigation nor did Archie and Jan-Jan swear to it before a public prosecutor.<sup>[13]</sup>

Another two days later or on January 13, 2006, police officers from the Regional CIDG submitted their investigation report to the City Prosecutor's Office of Iloilo City. This pointed to respondents Archie and Jan-Jan as principal suspects in the brutal killing of their parents and a young stepsister.<sup>[14]</sup> On January 18, 2006 police officer Eldy Bebit of the CIDG filed a complaint-affidavit with the City Prosecutor's Office, accusing the two brothers of parricide and double murder.<sup>[15]</sup> The parties submitted their affidavits and pieces of evidence at the preliminary investigation.<sup>[16]</sup>

On September 29, 2006 the City Prosecutor's Office filed separate informations for two murders and parricide against respondents Archie and Jan-Jan before the Regional Trial Court (RTC) of Iloilo City in Criminal Cases 06-63030 to 06-63032.<sup>[17]</sup>

On October 3, 2006 respondents Archie and Jan-Jan filed a motion for judicial determination of probable cause with a prayer to suspend the issuance of warrants of arrest against them in the meantime.<sup>[18]</sup> Further, on October 5, 2006 they asked the RTC to defer further proceedings in order to give them the opportunity to question the public prosecutor's resolution in the case before the Secretary of Justice.<sup>[19]</sup>

On October 6, 2006 the acting presiding judge of the RTC issued an order, directing the prosecution to correct certain deficiencies in its evidence against respondents.<sup>[20]</sup> On October 20, 2006, the City Prosecutor of Iloilo City filed a manifestation, informing the RTC of his partial compliance with its order. He also filed an urgent *ex parte* motion for clarificatory exception.<sup>[21]</sup>

On December 23, 2008 Rosalinda Garcia-Zayco, Cindy's mother and court-appointed guardian *ad litem* of her minor grandchildren, opposed respondents Archie and Jan-Jan's petition for review before the Department of Justice (DOJ).<sup>[22]</sup> She pointed out that the two had sufficient motive to commit the crimes of which they were charged. They openly showed disrespect towards their father, Bobby, and constantly had heated arguments with him. They also nurtured ill feelings and resentment towards Cindy, their stepmother, they being illegitimate children. They never accepted the fact that Bobby married Cindy rather than their mother. The National Bureau of Investigation report classified the crimes as motivated by hatred.<sup>[23]</sup>

Cindy's mother made capital of the absence of respondents Archie's and Jan-Jan's fingerprints in any part of their own rooms, particularly the light switches and the doorknobs. She cited the Investigating Prosecutor's theory that either of the accused used the wet red shirt hanging in Jan-Jan's bathroom to erase all fingerprints at the crime scene, something that forensic science can justify.<sup>[24]</sup>

Moreover, while investigators were still examining the crime scene, Bobby's aunt Conchita called a locksmith to force open Bobby's safes in the master's bedroom as well as in his office on De Leon Street. This fact came to the surface during the preliminary investigation of a complaint for robbery that Conchita filed against Cindy's brother, Mike Zayco, his sidekick Miguel Sola, Natividad Zayco, and police superintendent Gumban of the CIDG. The police surmised that Conchita brought this criminal action to divert attention from the murder case and from respondents Archie and Jan-Jan.<sup>[25]</sup>

Lastly, nine days after the victims' burial, respondent Archie filed a petition for the settlement of Bobby and Cindy's estate, nominating Conchita as administratrix of the estate. He filed an *ex parte* motion for her appointment as special administrator for the meantime without consulting his half-siblings. The estate court granted the motion. Archie reportedly continued with his nightly bar hopping even during the wake of his father.

Respondents Archie and Jan-Jan's defense is alibi. They claimed that they were away when the crimes took place at the house. Based on Dr. Lebaquin's forensic computation, however, the victims probably died at about midnight, more or less. The two were still at home when the killings happened.

On October 27, 2006 the RTC, then temporarily presided over by Judge Narciso Aguilar, found no probable cause against respondents Archie and Jan-Jan. Judge Aguilar thus granted their motion to suspend the issuance of warrants for their arrest and to defer the proceedings.<sup>[26]</sup> The two respondents then filed a motion to dismiss the case.<sup>[27]</sup> On January 12, 2007 the RTC issued an order, directing the City Prosecutor's Office to submit additional evidence in the case but the latter office asked for more time to comply.<sup>[28]</sup> Meanwhile, the DOJ issued a resolution dismissing respondents Archie and Jan-Jan's petition for review.<sup>[29]</sup>

After a new presiding judge, Judge Globert Justalero, took over the RTC, he issued an order on March 30, 2007 granting the prosecution's request for additional time within which to comply with the court's order of January 12, 2007.<sup>[30]</sup> On April 2, 2007 the prosecutor's office filed its compliance and submitted its amended resolution in the case.<sup>[31]</sup> The petitioners assailed this amended resolution and pointed out that the public prosecutor did not submit any additional evidence.<sup>[32]</sup>

On April 23, 2007 Judge Justalero reversed the order of the previous presiding judge. He found probable cause against respondents Archie and Jan-Jan this time and ordered the issuance of warrants for their arrest.<sup>[33]</sup> Without seeking reconsideration of Judge Justalero's order, Archie and Jan-Jan filed the present petition for *certiorari* with the Court of Appeals (CA) of Cebu City in CA-G.R. CEB-SP 02659.<sup>[34]</sup> After hearing, the CA granted the petition, set aside the RTC order of