

THIRD DIVISION

[G.R. NO. 176526, August 08, 2007]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JEMUEL TAN AND CHARLIE AMAR, APPELLANTS.

DECISION

YNARES-SANTIAGO, J.:

Mercedes Amar, Jemuel Tan and Charlie Amar were charged with murder in an Information that reads:

That on or about the 3rd day of June, 1992, in the Municipality of Tibiao, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with a knife, conspiring, confederating together and mutually helping one another, with intent to kill, with the qualifying circumstances of treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with said knife one Jessie Dionesio y Cumla, thereby inflicting on the latter fatal wound on the vital part of his body which caused his instantaneous death.

Contrary to the provisions of Article 248 of the Revised Penal Code.^[1]

The accused pleaded not guilty. Trial on the merits ensued thereafter.

The prosecution presented Rogelio Cumla, Dr. Emilia Monicimpo, and Celedonia Dionesio, as witnesses.

Rogelio Cumla testified that on June 3, 1992 at about 7:30 in the evening, he was in Brgy. Importante, Tibiao, Antique, selling fish when he chanced upon Mercedes Amar wrapping her arms around the neck of Jessie Dionesio, while Jemuel Tan was twisting and holding Jessie's arms at the back. When Jessie was rendered immobile, Charlie Amar stabbed him on the left side of the breast with a bladed weapon approximately 10 inches long. Rogelio was able to identify the protagonists as he was only six meters away and the place was illuminated by the moonlight. The incident happened a few meters from the house of Mercedes Amar.

Celedonia Dionesio is the mother of the victim. She testified that on June 3, 1992 at around 8:30 in the evening, Mercedes Amar informed her that her son Jessie was stabbed to death. Celedonia, together with Jessie's twin brother, Jaime, proceeded to the crime scene where they saw Jessie lying on the ground about four meters away from Mercedes' house. They recovered two rubber slippers from the scene.

The following day, Mercedes went to their house and took back the slippers. Later that day, Celedonia went to the Municipal Hall then to the health clinic. She alleged

that she saw Mercedes Amar following her. When she went to the Rural Bank of Tibiao, Mercedes allegedly informed her that Jessie would have been dead earlier or on June 2, 1992, had she not fetched him from Mercedes' house.

Dr. Monicimpo, the Municipal Health Officer of Tibiao, Antique testified that on June 4, 1992, she conducted an autopsy on the body of the victim. Her findings indicated that Jessie suffered a fatal stab wound on the chest about two inches wide which penetrated the heart and lung.

The defense presented PO2 Victoriano Songcayawon, Mercedes Amar, Charlie Amar, Jemuel Tan, SPO3 Orlando Julian, and Antonio Dalumpines.

PO2 Songcayawon testified that at about 8:50 in the evening of June 3, 1992, Ana Dionesio, together with Mercedes Amar and Carlitor Amar, reported to the police station the stabbing incident involving Jessie Dionesio. According to Ana, they were not able to identify the assailant.

Mercedes Amar testified that her co-accused, Charlie Amar and Jemuel Tan, are her son and nephew, respectively. She narrated that on the night of the incident, she was at the feeder road to bolt their fence when she saw the victim, Jessie Dionesio, talking with Eva Cumla and Pedro Cumla some 10 meters away from their fence. She told them to go home and eat their supper as there was a "red alert" in their community. She then turned back and walked towards her house. After a while, she heard somebody cry "*aguy*." She went back to investigate and saw Jessie who was wounded while another person whom she did not recognize was running towards the hill.

Mercedes shouted for help. After a while, Charlie and Jemuel arrived. Together, they carried the body of Jessie to the roadside to avoid being run over by passing vehicles. Charlie then borrowed a *petromax* from Pedro Cumla which Mercedes lighted and placed beside Jessie. She then went to Celedonia's house and informed her about the incident. Charlie and Jemuel went inside the house and boiled water in case Celedonia would need it.

Mercedes further testified that after informing Celedonia, she accompanied the victim's sister, Ana, to the house of the *barangay* captain to report the incident aboard a tricycle driven by Mercedes' husband. However, the *barangay* captain was not around so they proceeded to the police station and reported the incident.

The police then proceeded to the crime scene. Thereafter, Mercedes, Guillermo Dionesio, Ninfa Dionesio, and PO3 Julian went to Sitio Mangkuyas to inform a certain Bernardo Cumla about the incident. While at the house of Bernardo, prosecution witness Rogelio Cumla allegedly informed them that the victim was a trouble maker.

Mercedes denied the allegations of prosecution witness Rogelio Cumla that she, together with her son Charlie and nephew Jemuel, were responsible for the death of Jessie. On the contrary, she claimed that they were the ones who rendered assistance to the wounded victim. She claimed that Rogelio did not witness the crime as he was not in the vicinity when the incident happened.

Charlie Amar alleged that on the night of the incident, he was inside their house together with his father, younger brothers, and cousin Jemuel, while his mother was

locking the gate. When he heard his mother shout for help, he and Jemuel went out to investigate and saw the body of Jessie sprawled on the ground with a stab wound on his chest. The three of them moved the body of Jessie to the roadside. Thereafter, his mother lighted a *petromax*, then informed the relatives of Jessie. Charlie alleged that his father remained inside their house.

Charlie denied stabbing Jessie. He claimed that more than a month prior to the incident, Jessie had been staying in their house because he had a fight with his twin brother, Jaime. Charlie narrated that in the morning of June 3, 1992, Jessie and Jaime fought with each other. Jaime allegedly chased Jessie with a knife prompting the latter to stay in Amar's house.

On cross-examination, Charlie explained that they had only one *petromax* which they used inside their house, thus he had to borrow a *petromax* from their neighbor, Pedro Cumla, and placed the same near the body of the deceased.

Jemuel Tan testified that on the night of the incident, he went to the house of Mercedes to buy kerosene and was thereafter invited for dinner. While eating, he heard his aunt Mercedes shout for help. Together with Charlie, he ran towards the gate near the feeder road where he saw Mercedes focusing her flashlight on Jessie who was bloodied and lying on the ground. After carrying the body of Jessie to the roadside, they lighted a *petromax* which Charlie borrowed from their neighbor Pedro Cumla. He denied any participation in the stabbing incident.

On cross-examination, he admitted that Mercedes' husband, Carlito Amar, was inside the house when the incident happened. Carlito did not go out because he does not want to be implicated in the incident. Jemuel also alleged that nobody responded to Mercedes' plea for help except him and Charlie. Nobody went to the crime scene from the time they saw Jessie sprawled on the ground, up to time of Celedonia's arrival.

PO3 Julian testified that at about 8:50 in the evening of June 3, 1992, Mercedes Amar, Carlito Amar, and Ana Dionesio arrived at the police station and reported the stabbing incident. Ana Dionesio allegedly informed him that they did not know the identity of the assailant.

When PO3 Julian went to the crime scene, Celedonia requested that Bernardo Cumla be informed about the incident. Thus, PO3 Julian, Mercedes Amar, Guillermo Dionesio, and Ninfa Dionesio, proceeded to the house of Bernardo in Sitio Mangcuyas. When they arrived, Mercedes called out Bernardo but it was Rogelio Cumla who answered them. PO3 Julian claimed that he heard Rogelio dismiss the death of Jessie because he was allegedly a bad guy. Thereafter, Bernardo accompanied them to the crime scene while Rogelio stayed behind.

On cross-examination, PO3 Julian testified that the body of Jessie was sprawled about three arms length away from the gate of Mercedes and was positioned at the center of the road.

Another defense witness, Antonio Dalumpines, testified that he was on his way home on June 3, 1992 when he saw a person stab another. He claimed he was only four *brazas* away but was not able to recognize the assailant because it was dark. He claimed that one week after the incident, he told Mercedes about what he saw.

On May 19, 1998, the Regional Trial Court of San Jose, Antique, Branch 12, rendered judgment acquitting Mercedes, convicting Charlie as principal by direct participation, and Jemuel as accomplice, for the crime of murder. The dispositive portion of which states:

WHEREFORE, for failure of the prosecution to establish beyond reasonable doubt the guilt of Mercedes Amar, she is hereby ACQUITTED for the offense charged. Further, finding the accused Jemuel Tan and Charlie Amar GUILTY beyond reasonable doubt of the crime of Murder as defined and penalized in Article 248 of the Revised Penal Code, the Court imposes upon Charlie Amar who is a principal by direct participation the penalty of reclusion perpetua, and upon Jemuel Tan who is an accomplice, to an indeterminate penalty of seven (7) years of prision correccional as minimum to thirteen (13) years of prision mayor as maximum, applying Article 52 in relation to Article 248 of the Revised Penal Code, and to indemnify the heirs of Jessie Dionesio the sum of P50,000.00 for his death and P12,000.00 for funeral expenses, jointly and severally.

No costs.^[2]

The trial court found the testimony of prosecution witness Rogelio Cumla that he saw Charlie stab the victim on the chest while Jemuel pinned his hands and held him immobile, to be credible. However, it acquitted Mercedes based on the alleged contradictory statements of Rogelio Cumla. The court *a quo* noted that initially, Rogelio testified that he saw Mercedes tie a rope around Jessie's neck but later alleged that Mercedes was merely wrapping her hands around the victim's neck.

The trial court also found that the aggravating circumstances of treachery and abuse of superior strength attended the commission of the crime. There was treachery because Charlie and Jemuel committed the crime in such a manner as to deprive the victim any chance to defend himself. Abuse of superior strength was likewise present because there was notorious inequality of forces between the malefactors and the victim.

On appeal, the Court of Appeals affirmed with modification the trial court's Decision, thus:

WHEREFORE, in the light of the foregoing, the Decision appealed from is AFFIRMED with MODIFICATION that accused-appellant Jemuel Tan is sentenced to suffer also the penalty of reclusion perpetua.

SO ORDERED.^[3]

The appellate court noted that although the trial court disbelieved in part the account of Rogelio Cumla, it correctly lent credence to his testimony that he witnessed the stabbing of the victim by Charlie Amar with the help of Jemuel Tan. It likewise noted that the trial court correctly appreciated the aggravating circumstances of treachery and abuse of superior strength.

However, the appellate court ruled that Jemuel Tan should likewise be convicted as a principal by direct participation and not merely as an accomplice. It observed that