

## SECOND DIVISION

[ G.R. No. 122098, January 20, 1998 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FELIPE TENORIO @ "BINO", ACCUSED-APPELLANT.**

### DECISION

**MARTINEZ, J.:**

Before the Court is the appeal interposed by accused-appellant from the decision rendered on 26 September 1994 by the Hon. Niovady M. Marin, Presiding Judge, Branch 13, Regional Trial Court of the Sixth Judicial Region, stationed in Culasi, Antique, which found him guilty of the crime of murder with frustrated murder. Accused-appellant was sentenced to suffer the penalty of *reclusion perpetua* and was required to pay the heirs of the victim, Minerva Gumboc, the sum of P 50,000.00 as indemnity and to pay the costs.

The case against his co-accused, Francisco Decenilla, was ordered sent to the archives of the trial court, to be revived upon his arrest.

Felipe Tenorio @ "Bino" and Francisco Decenilla @ "Elmer" were charged with the crime of murder with multiple frustrated murders through illegally possessed firearm in an Information reading as follows:

"That on or about the 6th day of January, 1993 in the Municipality of Pandan, Province of Antique, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused being then armed with illegally possessed firearms, conspiring, confederating and mutually helping one another, with intent to kill, did then and there, willfully, unlawfully and feloniously attack, assault and shoot with said firearms Minerva Gumboc, thereby inflicting wounds on her body which caused her death shortly thereafter, and on the same occasion inflicting gunshot wounds to Jerson Candolita, Jovito Candolita and Milagros Candolita thus the accused performing all the acts of execution which would have produced the crime of murder as a consequence but nevertheless did not produce it by reason of causes independent of the will of the said accused, that is by the timely medical attendance which prevented the death of said Jerson Candolita, Jovito Candolita and Milagros Candolita.

"With the qualifying circumstances of evident premeditation, treachery and superior strength.

"Contrary to the provisions of Article 248 in relation to Article 6 of the Revised Penal Code."<sup>[1]</sup>

The factual background of the imputed felony, as formulated by the Office of the Solicitor General, is supported by the record, and is accordingly adopted, to wit:

"Culled from the testimonies of the Candolitas, it appears that at around 5:30 o'clock in the morning of January 6, 1993, Jovito Candolita, who was inside his house together with his niece, Minerva Gumboc at Talisay, Pandan, Antique heard some shouts which prompted him to open the door and go out. He went in the direction of the house of Jerson- his son, about ten (10) meters away. On his way, he was accosted by two (2) persons, one of whom he was able to recognize as the accused Felipe Tenorio. His right wrist was held by Tenorio who brought him near the house of Jerson. Minerva Gumboc, however, followed them. (TSN, April 14, 1994, pp. 5-8) Upon reaching Jerson's house, the duo forcibly opened the door and pushed Jovito Candolita and Minerva Gumboc inside the house. (TSN, April 13, 1994, p. 25; TSN, April 14, 1994, p. 8)

"However, before the door was forcibly opened, Jerson was able to peep through the window because he heard his father crying. He saw the latter being held by two NPAs. Forthwith, Jerson took his M-14 armalite rifle and went down to a foxhole inside his house. He followed his wife, Milagros Candolita to the foxhole. (TSN, April 13, 1994, p. 24)

"After Jovito Candolita and Minerva Gumboc were pushed inside, the companions of the two (2) malefactors numbering about 27 and were scattered outside, fired several gunshots directed at Jerson's house. Jerson retaliated by firing his rifle to prevent the malefactors from entering his house.

"Meanwhile, Jovito Candolita was also able to enter the foxhole. The exchange of gunfires between Jerson and the malefactors continued, lasting about 40 minutes. Jerson was able to consume 7 magazines of M-14 bullets. After he ran out of bullets, he played dead. (TSN, April 13, 1994, pp. 27-28)

"During the exchange of gunfires, two (2) hand grenades were lobbed in the direction of Jerson's house. As a result thereof, Jerson, Jovito and Milagros were hit by the metal fragments of the hand grenades. Milagros' child was spared as the latter was cuddled by the former. Unfortunately, Minerva Gumboc who was the last to enter the foxhole suffered fatal wounds and eventually died. (TSN, April 13, 1994, p. 7 and p. 29; TSN, April 14, 1994, p. 12)

"After the exchange of the volley of fires, and while Jerson was playing dead inside his house, three of the malefactors entered Jerson's house. One remained downstairs and two went upstairs. One of those who went upstairs was Felipe Tenorio. They took Jerson's CAFGU uniforms, flashlight, army raincoat and P 800.00. (TSN, April 13, 1994, p. 28)<sup>[2]</sup>

A medical examination was conducted in the morning of January 6, 1993, by Dr. Judy Maglantay, Medical Officer, Governor Leandro Locsin General Hospital, Pandan, Antique. Based on the results of the examination, Milagros Candolita suffered the following injuries:

`Findings:

Avulsed soft and Bony Tissues, Left Shoulder

2 cm lacerated wound, below axillary area, non-penetrating, left

3 cm lacerated wound, below axillary area, non-penetrating, left

5 cm proximal third, lateral aspect, left leg

DX - Open fracture, left shoulder<sup>[3]</sup>

Minerva Gumboc who was dead on arrival sustained injuries indicated as follows:

`Findings:

ABDOMEN: Gunshot wound

1. Point of Entry - 1 cm Thoracic 12, mid-clavicular line, right; Point of Exit - 3 x 4 cm. Lumbar 1 and lumbar 2, paravertebral line, right
2. Point of Entry - 1 cm. Lumbar 2 parascapular line, left; Point of Exit - 2 x 3 cm. Iliac area with intestinal evisceration

Extremities: Gunshot Wound

1. Point of Entry - (2) 1 cm. Proximal third, lateral thigh right

Point of Exit - Bony and Soft Tissue Avulsion, proximal third, posterior aspect, thigh, right

2. Point of Entry - 1 cm. Proximal Third; Lateral thigh, right; Point of Exit - 2 x 3 cm. Middle third, inner aspect, thigh, right.<sup>[4]</sup>

Jovito Candolita suffered a 0.5 cm. lacerated wound, proximal third, anterior aspect, right thigh (Exh. C) while Jerson Candolita sustained a penetrating wound, chin with 1 cm. point of entry and 2 cm. point of exit in the buccal area (Exh. B).

According to Dr. Maglantay, the wounds sustained by Milagros Candolita could have been caused by explosives like a grenade and said injuries could cause her death if left unattended.<sup>[5]</sup> As regards Minerva Gumboc, the cause of her death was massive hemorrhage due to multiple gunshot wounds.<sup>[6]</sup>

However, only the accused-appellant Felipe Tenorio alias "Bino" was arrested on January 24, 1994. Accused Francisco "Elmer" Decenilla has remained at large up to the present time, despite the issuance of a warrant for his arrest.

Arraigned on February 2, 1994, accused Felipe Tenorio, with the assistance of his counsel, Atty. Florencio Paredes, entered a plea of "not guilty". Hence, a separate trial on the merits was conducted as regards the said accused-appellant.

When the time came for the defense to present its evidence, only the accused-appellant testified on his behalf. He denied that he was with the group of NPA's who attacked the house of Jerson Candolita at Talisay, Pandan, Antique on January 6, 1993 at about 5:30 o'clock in the morning for he was in Manila at that date and time.<sup>[7]</sup> His story is that he was inducted into the New People's Army in 1985 but defected in 1990 by escaping and surrendering to the military authorities. After his surrender, he neither rejoined the group nor went back to the mountains. Instead, he went to Manila on May 11, 1990 and stayed at Pandacan and at Sta. Ana, Manila,

with his grandfather. During the 1992 national elections he voted in Sta. Ana. He was a registered voter of the place (Exhibit 1). He went home to Fragante, Pandan, Antique only on December 11, 1993 when he accompanied the cadaver of his uncle.

In this appeal, appellant questions the trial court's assessment and appreciation of the testimonial evidence presented before it, asserting it erred in finding him guilty of the crime charged since his guilt was not proven beyond reasonable doubt.

It is the contention of appellant that Jerson Candolita could not have possibly made any positive identification of their assailants since he was "playing dead" at the time. The same could be said of Milagros Candolita, who was lying face down on the foxhole.

With regard to Jovito Candolita, even though he claimed that he knew accused-appellant Tenorio, it puzzles appellant why he did not try to plead with the latter or otherwise talk his way out of the situation. This, claims appellant, is contrary to human experience, especially in the light of Jovito's statement that he knew the accused-appellant.

In the case at bench, the sole and fundamental issue interposed by appellant boils down to the credibility of the testimonies of the prosecution witnesses.

The time-honored rule is that findings of facts of the trial court, especially with regard to its evaluation of the testimonial evidence presented before it, are entitled to full weight.<sup>[8]</sup> In the absence of any arbitrariness in its findings and any evidence which tends to show that it overlooked certain material facts and circumstances, such findings and evaluation of evidence should be respected on review.<sup>[9]</sup> This is because the presiding judge in the trial court had the opportunity to observe the demeanor of the witness while testifying, and could thus tell whether or not a witness was telling the truth.<sup>[10]</sup>

The record reveals that the prosecution witnesses namely, Jovito, Jerson and Milagros Candolita, positively identified and categorically pinpointed appellant as one of the members of the NPA group which attacked their house on January 6, 1993. As against the uncorroborated testimony of accused-appellant Tenorio, the testimonies of the Candolitas, particularly with regard to the identity of the former as one of their attackers, are straightforward and convincing and must be given credence.

Jovito Candolita positively identified Felipe Tenorio in this manner:

"Q - While you were there in your house, could you remember any incident which took place which was unusual?

"A - Yes, sir.

"Q - What was that incident?

"A - I heard shouting, sir.

"Q - Where in particular in relation to your house was that shouting?

"A - It was near, sir.

"Q - Hearing that shouting, what did you do then?

"A - I opened my door and went out.

"Q - Were you able to go out of your house?

"A - Yes, sir.

"Q - When you were already out of the house, what happened to you?

"A - When I proceeded to the house of Jerson, I was accosted by the two (2) persons.

"Q - Now of those two (2) persons who accosted you, could you recognize any of them?

"A - Yes, sir.

"Q - Who among the two (2) did you recognize?

"A - Felipe Tenorio, sir.

"Q - When you say, of the two (2) persons who accosted you, you recognize Felipe Tenorio as one of them, do you refer here to Felipe Tenorio, the accused herein?

"A - Yes, sir.

"Q - Now, Mr. witness, was Felipe Tenorio armed when he accosted you?