

THIRD DIVISION

[G.R. No. 139213-14, April 04, 2001]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JONAHS JABIAN Y TARROSA AND JIMMY MAGARO Y GILLANG,
ACCUSED-APPELLANTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Accused Jonahs Jabian y Tarrosa and his friend Jimmy Magaro y Gillang were charged with murder for the death of Jose Sammy Daza y Mangubat in a stabbing incident that occurred late in the evening of December 1, 1998. On the same occasion, Solomon Daza, Jr., brother of Jose Sammy, was stabbed by Jonahs as the latter was leaving the crime scene, Solomon sustaining an injury which would have been fatal had it not been seasonably attended to medically. Jonahs was charged also with frustrated murder.

The informations for murder against Jonahs Jabian and Jimmy Magaro, and for frustrated murder against Jonahs Jabian alone, respectively read as follows:

Crim. Case No. 19478

"That on or about the 1st day of December 1998, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, conspiring, confederating and mutually helping each other, without any justifiable cause or motive, being then armed with a fan knife (batangueño), with intent to kill and by means of treachery with evident premeditation, did then and there willfully, unlawfully and feloniously assault, attack and stab one Jose Sammy Daza y Mangubat, thereby inflicting upon the person of the latter (sic) stab wound which directly caused the death of said victim, to the damage and prejudice of the heirs of said Jose Sammy Daza y Mangubat.

That the crime was committed with the attendance of the aggravating circumstance of dwelling of the said victim Jose Sammy Daza y Mangubat.

Act contrary to law."^[1]

Crim. Case No. 19477:

"That on or about the 1st day of December 1998, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, without any justifiable cause or motive, being then armed with

a fan knife (batangueño), with intent to kill, by means of treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously assault, attack and stab with said bladed weapon one Solomon Daza, Jr. y Mangubat, thereby inflicting upon the person of the latter a stabbed (sic) wound, thus performing 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 some cause or accident independent of the will of said accused, that is, by the timely and able medical assistance rendered to said Solomon Daza, Jr. y Mangubat which prevented his death.

That the crime was committed with the attendance of the aggravating circumstance of dwelling of the said victim.

Act contrary to law."^[2]

When arraigned on January 13, 1999, both accused Jonahs Jabian and Jimmy Magaro pleaded not guilty to the charge of murder, while Jonahs Jabian entered a negative plea to the charge of frustrated murder. Since the two incidents happened on the same occasion, a joint pre-trial conference and joint trial were conducted.

The prosecution's version is drawn from the testimonies of Joel Daza, a 12-year old brother of the victims, Ruel Lipalam, and Sally Daza (as rebuttal witness) who were all present at the crime scene, the attending physicians, and the police investigator. Both accused testified in their behalf.

The prosecution's version of the incident is stated in the appellee's consolidated brief as follows:

"At around 11:00 o'clock in the evening of December 1, 1998, Joel Daza, his sister Sally Daza and her suitor Ruel Lipalam were sitting and conversing at the upper steps of the stairway leading to the second floor of the two-storey house of the Daza family situated in Molave Extension, Barangay Villamonte, Bacolod City (p. 5, TSN, March 2, 1999). They were at the same time watching just three arms length away victim Jose Sammy Daza, Joel and Sally's brother and his friend Okie seated together drinking Tanduay, a local rum and playing "tong-its", a card game at the ground floor which serves as the dining room and store of the house (p. 14, TSN, February 22, 1999).

The peace of the night was shattered when at the precise moment, Jimmy Magaro suddenly appeared and entered the door, which is beside the stairway. Magaro who is tall and with a big physique, quickly approached and held the hands of the diminutive and unsuspecting hunchbacked Jose Sammy from behind. Jose Sammy stood up and struggled to free himself from Magaro's hold, shouting "let me go; let go of me, Jimmy" but to no avail. Maintaining his hold, Magaro was able to force Jose Sammy face the door (p. 13, TSN, March 2, 1999; p. 7, TSN, March 8, 1999).

Right then and there, Jabian who entered the door trailing behind Magaro, immediately stabbed Jose Daza once with a knife at the lower left breast just below the nipple (p. 14, TSN, March 2, 1999). During the incident, Okie stepped aside in a corner and did not do anything (p. 5, TSN, March 8, 1999) while Lipalam was prevented by Sally Daza from going downstairs (Ibid, p. 8).

Immediately thereafter, Magaro ran out of the house followed by Jabian passing through the same door of the house they entered (ibid, p. 15). Jabian bumped his head on one for the posts of the house on his way out (p. 17, TSN, February 22, 1999).

Outside the house Jabian met Solomon Daza, Jr. who was walking and about to enter the door of the house (ibid, p. 19; p. 16, TSN, March 2, 1999). At that instant, Jabian stabbed Solomon Daza with a single blow of the same fan knife he used in hitting Jose Daza, at the left side of the abdomen (pp. 16-17, TSN, ibid). Both accused continued with the escape.

Jabian was arrested minutes later by the police (p. 36, TSN, March 8, 1999), while Magaro was arrested in the morning of the following day after visiting Jabian at the police station.

The brothers Jose and Solomon Daza were brought to the Doctor's Hospital of Bacolod City (p. 3, TSN, February 24, 2000). Jose Daza died. The cause of his death was cardio-respiratory arrest, shock, hemorrhage, severe internal ruptured heart and lung due to stab wound (p. 6, TSN, March 2, 1999). Solomon Daza, on the other hand, suffered a fatal stab wound in the left upper portion of the umbilicus. However, due to timely medical attendance, his impending death was prevented (pp. 20-22, TSN, February 24, 1999)."[3]

The accused Jonahs Jabian claimed self-defense. His version of the stabbing incident is contained in his testimony as summarized in his appellant's brief as follows:

"As testified to by Jonahs Jabian, when he and Raymundo Baldava entered the carinderia of the Dazas, Jose Sammy Daza, Okie and Solomon Daza were already drinking long neck gin. He was invited by Okie to drink gin but he refused to do so because he had just eaten his supper. When he refused the invitation of Okie, the latter insulted him by saying, DAW SA TONTO KA (YOU ARE NAUGHTY). Okie then stood up and strangled him (Jabian) so he stepped backwards. Jose Sammy Daza held him. As he was being held by Jose Sammy Daza, Okie struck him with a bottle of gin (cuatro cantos) on the head. (ANNEX "B" EXCERPT FROM THE PS4 BLOTTER REPORT ENTRY NOS. 98-10011 PP. 0490 & ANNEX "C" MEDICAL CERTIFICATE OF JONAHS JABIAN DATED DECEMBER 3, 1998). Because of the pain, for a while, he lost his vision and he was able to embrace Jose Sammy Daza. As he was embracing Jose Sammy Daza, he was able to touch the fan knife on the back pocket of Jose

Sammy Daza. He got hold of the fan knife and pushed Jose Sammy Daza forward with his left hand and then stabbed him in front. Then he faced Okie stabbed him on the right arm and ran towards the door. And as he was about to escape, Solomon blocked his way so he also stabbed Solomon (TSN of March 8, 1999, pp. 29-38)."^[4]

For his part, Jimmy Magaro raised alibi as a defense. He claimed that he had been drinking in the evening of December 1, 1999 with his friends Jessie Ramos and Daniel Centeno, and when he was already drunk he was brought to the guardhouse in front of West Negros College and left there to sleep until 6:00 a.m. of the following day.

The court *a quo* found both accused guilty of murder in Criminal Case No. 19478, having acted in conspiracy with each other in the treacherous slaying of Jose Sammy Daza, and found Jonahs Jabian guilty of frustrated murder in Criminal Case No. 19477. The dispositive portion of the judgment reads as follows:

"WHEREFORE, finding both accused Jonahs Jabian y Tarrosa and Jimmy Magaro y Gillang GUILTY beyond reasonable doubt of Murder, as co-conspirators, in Criminal Case No. 19478, JUDGMENT is hereby rendered imposing upon each of them the penalty of RECLUSION PERPETUA, as well as the accessory penalty prescribed by law. They are also ordered to jointly pay the heirs of deceased Jose Sammy Daza; P50,000.00 as civil indemnity for his death; and P25,000.00 as moral damages. Costs against both of them.

Also, finding accused Jonahs Jabian y Tarrosa GUILTY beyond reasonable doubt of Frustrated Murder in Criminal Case No. 19477, he is hereby condemned to suffer imprisonment of EIGHT (8) YEARS and FIFTEEN (15) DAYS of prision mayor, as minimum of his sentence, to FOURTEEN (14) YEARS and FOUR (4) MONTHS, of reclusion temporal, as maximum, and the accessory penalty provided by law. Costs against him.

Both accused Jonahs Jabian and Jimmy Magaro being detained by reason of the present cases, the period of their preventive imprisonment shall be credited in their favor and shall be conducted from the service of their sentence, provided they have agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners pursuant to Article 29 of the Revised Penal Code."^[5]

Both parties have appealed to this Court and filed separate briefs.

Jonahs Jabian interposes the following assignments of error in his brief:

"I

THE TESTIMONY OF PROSECUTION WITNESS JOEL DAZA WERE ALL FABRICATED FROM THE FERTILE MINDS OF JOEL DAZA AS EVIDENCED

BY THE NUMEROUS INCONSISTENCIES.

II

TREACHERY HAS NOT ATTENDED THE COMMISSION OF THE CRIME OF MURDER AS FOUND BY THE HONORABLE JUDGE.

III

CONSPIRACY COULD NOT HAVE EXISTED BETWEEN JONAHS JABIAN AND JIMMY MAGARO IN THE CRIME OF MURDER.

IV

NO AGGRAVATING CIRCUMSTANCE OF TREACHERY EXISTS WHICH WOULD QUALIFY THE CRIME COMMITTED AGAINST SOLOMON DAZA, JR. AS FRUSTRATED MURDER.

V

SELF-DEFENSE AS MITIGATING CIRCUMSTANCE SHOULD HAVE BEEN APPRECIATED IN FAVOR OF JONAHS JABIAN."^[6]

On the other hand, Jimmy Magaro's brief submits the following arguments to establish his "non-guilt":

"A

There are two major, un rebutted crucial facts in this case which, with all due respect, have not been properly appraised by the Honorable RTC: the fact, first, that Accused Jimmy Magaro went to the police station immediately the following morning after the incident subject matter of this case. The second, the Accused was drunk at the time that the alleged crime was committed, having been received by a security guard of a very nearby school to sleep there at the night that the incident happened just a few meters away.

B

MOREOVER, the Honorable RTC erred in not giving due credence to co-Accused Jonahs Jabian's testimony that Accused Jimmy Magaro was not his companion in stabbing the victim to death.

TAKEN ALTOGETHER, these facts were more than sufficient to establish reasonable doubt, if not outright non-guilt.

C

Or, in the alternative, granting arguendo that Accused indeed participated in the commission of the crime, the fact that he went to the police station