

THIRD DIVISION

[G.R. No. 100718-19, January 20, 2000]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. FREDDIE JUAN
AND EFREN JUAN, ACCUSED-APPELLANTS.**

D E C I S I O N

GONZAGA-REYES, J.:

Before us is an appeal from the decision^[1] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 50, finding accused-appellants Freddie Juan and Efren Juan guilty beyond reasonable doubt of the crime of murder.

Freddie Juan (FREDDIE) and Efren Juan (EFREN) were charged with the crime of murder in an information that reads:

"That on or about the 6th day of September 1988, at Brgy. Bagong Silang, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery and evident premeditation and while armed with a gun, did then and there willfully, unlawfully and feloniously assault, attack and shoot therewith one CARLOS TORRES, thereby inflicting upon him gunshot wounds on the different parts of his body, which wounds were the direct and immediate cause of his death.

CONTRARY TO LAW."^[2]

On May 20, 1987, both accused were arraigned and pleaded not guilty to the crime charged.^[3]

The lower court summarized the facts as follows:

"Sometime in the evening of September 6, 1988 at around 9:00 o'clock while Elmer Tabang (hereinafter referred to as Elmer) was conversing with his brother Ely Tabang in front of their house at Reynoso St., Cuito, Puerto Princesa City, the herein accused Freddie Juan (hereinafter referred to as Freddie) confronted Elmer whom he suspected of having kicked his son. Elmer denied the accusation against him. Thereupon, Freddie boxed Elmer but the latter was able to evade it and run towards his (Elmer's) house. Once inside, his mother, Adelaida Tabang closed the door and both went upstairs. Thereafter, Freddie and his brother Efren Juan (hereinafter referred to as Efren) stoned Adelaida's house. They did these for several minutes before desisting and left the place. After quite sometime subsequent to the stoning incident, Elmer went downstairs to answer the call of nature. When he opened the front door of their house he saw Freddie running towards their (Tabang's) house. Elmer

immediately went back inside and locked the front door. But Freddie and Efren kicked it destroying the doorlock. Whereupon, the door swung open hitting the light switch on the wall turning the light off in the sala. Freddie and Efren then went inside the house. At this juncture, Elmer was already on the stairs going up to the second floor when he heard Efren uttered "pusila ren, pusila ren" (shoot him now, shoot him now). It was at this point when Elmer's uncle, Carlos Torres was coming out from the kitchen going towards the sala was shot twice by Freddie killing him instantly. Thereafter, Elmer heard Efren uttered "tinamaan mo ba?" to which Freddie answered, "Oo, patay." The two accused left thereafter and disappeared in the dark.

Although the light in the sala was off when the shooting incident occurred, the light in the kitchen was on and some light radiated from that place. (Testimony of Elmer Tabang, Tsn: pp. 1-12, November 21, 1988; Tsn: pp. 2-8, 21, November 22, 1988).

Earlier, when the stoning by Freddie and Efren stopped Adelaida Tabang, mother of Elmer left the house to report the stoning incident to the police. Adelaida never reached the police station as she was fetched by her nephew, Romeo Palao on her way to the police station. Romeo Palao told Adelaida that she has to return to their house immediately as somebody was already shot. Upon arrival, she saw her brother Carlos Torres already dead and sprawled on the ground between their sala and the kitchen."

On January 24, 1992, the RTC rendered its decision finding both accused guilty beyond reasonable doubt of the crime of murder, the dispositive portion of which reads:

"WHEREFORE and in view of the foregoing considerations, judgment is hereby rendered finding both the accused guilty beyond reasonable doubt of the crime of murder as principals as the same is defined and penalized under the Revised Penal Code, sentencing both the accused to suffer the penalty of reclusion perpetua as well as to pay the costs. They are furthermore ordered to indemnify the heirs of the deceased jointly and severally the sum of Fifty Thousand (P50,000.00) Pesos as and for the death of the deceased; the sum of Eight Thousand Four Hundred Fifty (P8,450.00) Pesos as and for actual damages, and the further sum of Thirty Thousand (P30,000.00) Pesos as and for moral damages.

SO ORDERED."^[4]

Hence, this appeal where the accused-appellants assign the following errors:

"I. THE LOWER COURT GRIEVOUSLY ERRED IN NOT GIVING CREDENCE TO THE FINDINGS OF NBI SENIOR FORENSIC CHEMIST ELVIRA AVINA DEL ROSARIO THAT ACCUSED FREDDIE JUAN COULD NOT HAVE FIRED A GUN AT THE TIME CARLOS TORRES DIED ON SEPTEMBER 7, 1988.

II. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT EITHER FREDDIE JUAN OR EFREN JUAN SHOT CARLOS TORRES.

III. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT FREDDIE JUAN AND EFREN JUAN CONSPIRED TO KILL CARLOS TORRES.

IV. THE LOWER COURT GRIEVOUSLY ERRED IN FINDING THAT ACCUSED-APPELLANTS GUILTY OF THE CRIME OF MURDER."^[5]

In support of this appeal, accused-appellants maintain that the RTC erred in disregarding the testimony of the witnesses for the defense. They claim that the defense witnesses were able to establish that FREDDIE and EFREN were not at the scene of the crime at the time it occurred. They further allege that there was an inconsistency in the testimonies of the prosecution witnesses since Elmer Tabang (TABANG) testified that it was FREDDIE who fired the gun while Nemia Palao and Imelda Tabang testified that it was EFREN who fired the gun. Moreover, they allege that the examination for nitrates conducted on FREDDIE proved that he did not fire any gun on the night the crime occurred. Considering that EFREN was in the hospital due to a head injury inflicted by the deceased, neither could he have fired the gun. In addition, the defense faults the trial court for finding the existence of a conspiracy between the accused-appellants in the absence of any concrete evidence to prove the existence of the same beyond reasonable doubt. The mere fact that one of the accused shouted "Shoot him, shoot him" is not in itself sufficient to prove a conspiracy. Neither does the fact that the accused-appellants are related or acted with some degree of simultaneity prove the existence of a conspiracy between them. Instead, accused-appellants posit the following version of events that transpired on the night the crime occurred:

"On the night of September 6, 1988, at around 5:00 p. m. Efren Juan was celebrating his birthday at Freddie Juan's home at Reynoso St., Quito, Puerto Princesa City, together with his brother Freddie Juan, their cousin and several guests.

At around 7:00 p.m., while the birthday celebration of Efren Juan was going on, the son of Freddie Juan came and told the latter that he was kicked by Elmer Tabang. Upon hearing the complaint of his son, Freddie Juan left the birthday celebration to confront Elmer Tabang, but he could not find the latter. Freddie Juan then returned to the birthday celebration.

Thereafter, at around 9:30 p.m., while Efren Juan was still celebrating his birthday, some bottles and stones coming from the direction of Adelaida Tabang's house were thrown at house of Freddie Juan. Efren Juan went out to confront the stone throwers. Freddie Juan and Jaime Carandang went out and followed Efren Juan. While Efren Juan was still on the road going to the house of Adelaida Tabang, Carlos Torres suddenly came out from behind a coconut tree and clubbed Efren Juan, injuring him on the left side of his forehead where blood flowed. After injuring Efren Juan, the assailant ran away.

Due to the suddenness of the attack, Freddie Juan did not even recognize who attacked his brother, Efren Juan.

Efren Juan was brought to the hospital where he was treated for a "Clear

Cut Wound (L) Temporal 3 cm. long".

In the meanwhile, that Efren Juan was at the hospital together with Freddie Juan and police officer Gil Manlavi, a certain Carlos Torres was reported shot and killed.

Due to the report, police officers including Gil Manlavi responded. At the crime scene, the police officers were informed by Elmer Tabang that Freddie Juan shot and killed Carlos Torres.

At the hospital, Freddie Juan who accompanied his brother, Efren Juan, was then arrested by the police and brought to the city jail. On the next day, September 7, 1998, paraffin casts were taken from the two hands of Freddie Juan to determine the presence of nitrate.

Upon the information given by Elmer Tabang, Efren Juan and Freddie Juan were accused of Murder for allegedly shooting to death Carlos Torres despite the fact that both hands of Freddie Juan are negative of nitrate, and that Efren Juan was being treated at the hospital at the time Carlos Torres was supposedly killed.^[6]

The basic contention of the accused-appellants is that the RTC erred in giving weight to the testimonies of the prosecution witnesses without considering the testimonies of the witnesses for the defense. After a thorough review of the records of the case, we find no substantial reason to disturb the trial court's appreciation of the evidence and find no basis therein to rule that the testimonies of the prosecution witnesses were not credible. The sole eyewitness, TABANG, whose testimony the trial court found acceptable despite an earlier misunderstanding with the accused, testified that:

"Q. You said Mr. Witness that these 2 accused are your neighbors, how far is their house from the place where you are residing?

A. More or less 50 meters away.

Q. Mr. Witness, sometime on September 6, 1988 in the evening thereof, could you recall where were you?

COURT:

What time, you specify the time.

ATTY. AUSTRIA :

Q. More or less about 9:00 in the evening?

A. Yes sir.

Q. Where were you?

A. In front of our house beside the road conversing with my brother.

Q Your house which you stated, where is this house of yours located?

A. It is within Barangay Bagong Silang, Puerto Princesa City

sir.

Q. You said that on that said date and time you were conversing with your brother, could you state the name of your brother?

A. Ely Tabang.

Q. Now, while you were conversing at the said date, time and place was there any unusual incident that transpired?

A. None yet sir.

Q. While you were conversing with your brother, what happened Mr. Witness?

ATTY. CRUZAT:

No basis, it pre-supposes that something has happened while this witness answered none.

COURT:

Q. But a little later, did anything happen?

A. Yes sir.

Q. What transpired Mr. Witness?

A. Freddie Juan approached us at that time with my brother.

Q. You said that he approach you, do you know the reason why he approach you Mr. Witness?

A. He was suspecting that I kick his son.

Q. Now, having informed of such fact, what was your reaction or what did you do?

A. I told him I did not, I did not touch his son.

Q. What happened next after that confrontation?

A. He box me sir.

Q. When he box you, was he able to hit you?

A. No sir, I was able to run towards inside the house.

Q. How many times did he box you by the way Mr. Witness?

A. Only once sir.

Q. Now, you said that you run to your house, what did this Freddie Juan do upon seeing you run towards your house?

A. He was uttering bad words sir.

Q. What happened next after that Mr. Witness?

COURT:

Wait.

Q. How about you, you said you run to your house, do you