

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PACIFICO MATIONG AND CEZAR MATIONG, JR.,
DEFENDANTS-APPELLANTS.**

G.R. No. L-33488. March 29, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

At the public market within the poblacion of Makato, Aklan, on June 1, 1970, at about 9:00 a.m., incumbent councilor Eufrocino Taytayon of that municipality was stabbed once, hitting his heart and causing instantaneous death.

A complaint for murder against Pacifico Mationg and Cezar Mationg, Jr. was filed on June 4, 1970, in the Municipal Court of Makato, Aklan.[1] The preliminary investigation was conducted, after which the municipal court, on a finding of probable cause forwarded the case to the Court of First Instance of Aklan.[2]

An information dated July 18, 1970, was filed against both accused-appellants, for murder, in Criminal Case No. 10, CFI of Aklan, Branch III, as follows:

"The undersigned First Assistant Provincial Fiscal accuses PACIFICO MATIONG and CEZAR MATIONG, JR., of the crime of MURDER committed as follows:

"That on or about the 1st day of June, 1970, in the Public Market within the poblacion of Makato, Province of Aklan, Republic of the Philippines, and within the jurisdiction of this Court, the said accused PACIFICO MATIONG, armed with a knife locally known as "siyaw", conspiring and confederating together with his co-accused, CEZAR MATIONG, JR., with treachery and evident premeditation and abuse of superior strength, and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and stab to death with said weapon incumbent Councilor EUFROCINO TAYTAYON of Makato, Aklan, while the hands of the victims were held and pinned by his co-accused, Cezar Mationg, Jr. who was holding the victim from behind thereby inflicting upon the person of the said victim the following wound and injury, to wit:

"Clear cut wound (one on left chest)

2 inches long

1-1/2 inches wide

7-1/2 inches deep

2-1/2 inches from the nipple medially

as per attached autopsy findings signed by Dr. Realonda C. Tejada and the attached Certificate of Death signed by the same physician on the same date which are made integral parts hereof; which wound or injury caused the instantaneous death of the said victim.

"That in view of these criminal acts committed by the accused, they are civilly liable jointly and severally to

the heirs of the deceased in the following amounts:

1. As indemnity for the death of the deceased

P12,000.00

2. As indemnity for loss of earning capacity of the deceased

10,000.00

3. As moral and exemplary damages, etc

5,000.00

TOTAL

P27,000.00

"CONTRARY TO LAW."[3]

After arraignment, plea of not guilty,[4] and trial on the merits, the trial court in its judgment, dated January 28, 1971, convicted both of the accused, in the dispositive portion, as follows:

WHEREFORE, the Court finds the accused Pacifico Mationg and Cezar Mationg, Jr. guilty beyond reasonable doubt of the crime of murder charged in the information, and there being no aggravating nor mitigating circumstance that attended its commission, hereby sentences then to reclusion perpetua, together with the accessory penalties provided for by law, to indemnify jointly and severally the heirs of the deceased Eufrosino Taytayon in the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionately the cost.

"Being detained prisoners, in the service of their sentence, the accused Pacifico Mationg and Cezar Mationg, Jr. shall be credited with the full time of their preventive imprisonment provided they agree voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited only with four-fifths (4/5) of their preventive imprisonment, in accordance with Republic Act No. 6127.

"SO ORDERED."[5]

Both accused Pacifico Mationg and Cezar Mationg, Jr. appealed.[6]

While the case was pending review in this Court, appellee, on February 18, 1974, moved for the arrest of appellants and cancellation of bail bonds in their favor, based on letter complaints by the relatives of the victim alleging that appellants were harassing and threatening the relatives of the victim.[7] The appellants commented that the allegations of the relatives of the victim were not true and that it was the relatives of the victim who were harassing and threatening the relatives of appellants who were forced to flee their homes.[8] Notwithstanding the appellee's reply[9] to the appellants' comment, this Court in the resolution dated July 15, 1974,[10] denied for lack of merit, appellee's petition for arrest of appellants and cancellation of bail.

Another urgent motion for the cancellation of the bond of appellant Pacifico Mationg was filed on February 3, 1981 on the ground that two bondsmen already died.[11] The appellee's comment on the same was considered noted by this Court.[12] Appellants contend that the death of two bonds-men did not dissolve the property bond filed by the appellant Pacifico Mationg and he is ready to file a substitute property bond if required to do so.[13]

The version of the prosecution is that at about 9:00 a.m. of June 1, 1970, the victim Councilor Eufrosino Taytayon was at Tasing's store, at the public market of Makato, Aklan. He was supposed to send rice and viand to his family in Barrio Tina, through tricycle driver Salvador Tuayon. Without much ado, accused Cezar Mationg, Jr. held the deceased from behind, pressing both arms locked at the back of the victim. Accused Pacifico Mationg, facing the deceased, held the deceased's neck with his left hand, and thrust a knife with his right hand, hitting the left nipple of the deceased. The deceased was heard saying "aray", a cry of pain, when he was stabbed. He suffered a single wound located on the left chest which ruptured the heart causing hemorrhage. The depth of the wound was 7-1/2 inches (Exh. "A"), and death was instantaneous.[14]

Appellant Pacifico Mationg claims self-defense. According to him, at about 9:00 a.m. of June 1, 1970, he alighted from a passenger tricycle in front of the public market of Makato, Aklan, that brought him from Barrio Cayangwan of that same municipality where he spent the night in the house of a friend, instead of his parent's house in Barrio Dunga. Appellant Pacifico is single and lives with his parents.

From the tricycle, appellant Pacifico went to the refreshment parlor called Tasing's store, located at the public market, facing the national road.

Pacifico claims that when he entered Tasing's store in the morning of June 1, 1970, the deceased (an incumbent municipal councilor) who was then drinking coffee and wearing eye glasses, upon seeing him stood up and said: "You are here," in a high tone and in an angry manner. He answered: "Why," in a nice way. The deceased then inquired where Pacifico's younger brother Leoncito was, again in a loud tone, and when he answered he did not know, the deceased advanced, grabbed his collar with his left hand, drew his gun with his right hand and exclaimed: "You, Mationgs are abusive, last night my son was boxed by your younger brother Leoncito at Dunga." Pacifico held the left hand of the deceased with his right hand trying to dislodge it. Pacifico replied he did not know about it because he was not at Dunga that night. The deceased enraged continued: "This is now your time. I will kill you all", at the same time pointing his gun at Pacifico. Whereupon, Pacifico, still holding the left hand of the deceased with his right hand, as aforementioned, grabbed with his left hand, the right hand of the deceased which held the gun, and in this position, the two struggled executing one turn. When Pacifico turned his face while still struggling with the deceased, he saw a knife on top of a table on his right, released his right hand, picked up the knife and stabbed the deceased.[15]

Appellants allege that the motive for the aggression made by the victim councilor is explained in the testimony of prosecution witness Arturo Taytayon, son of the victim. Witness Taytayon declared that the night previous to the incident, May 31, 1970, at a "Flores de Mayo" dance held at Barrio Dunga, he was boxed several times by Leoncito Mationg, younger brother of appellants, and a companion. Afterwards, the victim, father of the witness, who lived about 1-1/2 kilometers away, arrived and looked for the persons who attacked his son but whom the victim did not find. The victim's anger apparently did not subside even until the next morning, the day of the incident. In fact, the victim intended to file charges against the assailants of his son. So early the next morning, he accompanied his son to a doctor to obtain a medical certificate for the injuries suffered by the latter during the mauling.[16]

After the appellant Pacifico Mationg stabbed the victim, the latter lost consciousness. Pacifico left the store, still holding the knife to look for a policeman. He saw none, and instead he saw his older brother appellant Cezar

Mationg, Jr. on his tricycle for hire parked some 30 meters away from Tasing's store, in front of the house of Teban Tejada, opposite the gate of the public market nearby. Pacifico went to his brother and asked the latter to bring him to their grandmother's place at Barrio Liloan, Malinao, Aklan, as an incident happened, which Pacifico would later tell his brother upon their arrival at Malinao. They sped away. On the way, Pacifico threw the knife away. From Barrio Liloan, Pacifico alone proceeded to Barrio San Roque to hide in the meantime, as he feared retaliation from the Taytayon clan.[17]

Appellant Cezar Mationg, Jr., after bringing his brother appellant Pacifico to Barrio Liloan, drove his tricycle going back to the poblacion, but when he reached the town of Numancia, 4 kilometers distance from Makato, someone told him that the Taytayons were looking for them, the Mationgs. Instead of returning to Makato, Cezar went to the place of his parents-in-law at Barrio Albasan, Numancia, to hide from the Taytayons. Later, Cezar went back to his grand-mother's place in Barrio Liloan, Malinao, where he was later joined by his father who left his job as letter carrier of Makato, Aklan, his mother, other brothers and sisters. Cezar's wife and two children took refuge in Barrio Albasan, Numancia.[18]

Appellant Cezar Mationg, Jr. explained his presence in front of the public market at the time of the stabbing incident on June 1, 1970. Early that morning he and his wife drove on their tricycle to Barrio Albasan, Numancia, where they saw a person with whom they were sending something to Manila. From that place they drove back to Makato, and Cezar brought his wife home to Barrio Dunga, where they have a house separate from his parents. After that, he plied his trade of transporting passengers. He had just brought some passengers in front of the public market when he saw his brother Pacifico about half-way from Tasing's store. The latter approached him and asked to be transported to Malinao, as something had happened of which he would be told later in Malinao. They then drove fast and in silence.[19]

Appellant Cezar denies any participation or conspiracy in the stabbing incident. He had not met nor talked with his brother Pacifico at anytime that morning before or during the incident, nor since the night previous. The first time he saw Pacifico was when the latter was coming from Tasing's store.[20]

On June 14, 1970, appellants Pacifico and Cezar surrendered voluntarily to the Municipal Mayor of Mali-nao, Aklan, who in turn brought them to the P.C. Head-quarters in Kalibo, Aklan, turned them over to the P.C. authorities with a written request that they be taken into custody. Appellants voluntarily surrendered because on June 13, 1970, they were informed by their mother that she heard a criminal case had been filed against them.

The trial court principally based its judgment of conviction on the credibility of prosecution witnesses Salvador Tuayon, Angela Tersol and Patrolman Benjamin Tambong. The first two are eyewitnesses to the incident and the patrolman an eyewitness to what happened immediately after the incident.

Both eyewitnesses Salvador Tuayon and Angela Ter-sol clearly narrated that on that occasion they saw the two appellants attack the victim, appellant Cezar holding the victim, while appellant Pacifico delivered the fatal knife thrust at the breast of the victim.[21]

Patrolman Benjamin Tambong stated categorically that on the same occasion he saw both appellants rushing out from Tasing's store.[22]

We cannot disregard the trial court's belief in the credibility of prosecution witnesses Salvador Tuayon, Angela Tersol, and Patrolman Benjamin Tambong, for that Court had full opportunity to observe the demeanor of these witnesses while they were testifying. The trial court concluded as proven by facts the version narrated by these three witnesses.[23]

Under the proven facts, neither self-defense nor alibi can prosper in this case. It is fundamental, that for

self-defense to prosper, appellant must rely on the strength of his own evidence and not on the weakness of that of the prosecution, for even if that were weak it could not be disbelieved after the accused himself had admitted the killing.[24] Appellant's plea must be established by a clear and convincing evidence.[25] Self-defense is an affirmative allegation which must be established by convincing evidence and not of doubtful veracity, otherwise the conviction of the accused becomes imperative.[26]

The trial court was not impressed by the version narrated by appellant Pacifico Mationg. It considered Pacifico's story that he saw the knife at the top of the table when he was threatened by the victim with a gun as incredible on the reasoning that if Pacifico was really threatened with a gun at that time he would have no time to turn his face and see the knife as his full attention would be focused on the gun.[27]

Pacifico's assertion that he had to stab the deceased because the latter was holding a gun and threatening to shoot him is not supported by the proven physical facts. As shown in Exhibit "C-1", the deceased who died instantaneously as a result of massive hemorrhage and heart failure by the rupture of the heart,[28] is shown holding a ball pen and not a gun. His fingers are shown clutching the pen, which should be otherwise if he died while holding a gun.

The trial court did not believe appellant Pacifico's assertion of a struggle before the stabbing, because the victim was found with his glasses on, and the glass of coffee and jar of sugar, including the table, near the struggle significantly remained intact and not upturned.[29]

The proven physical facts contradict the version of self-defense narrated by appellant Pacifico Mationg and the logical conclusion is that his theory of self-defense must fail.

As to appellant Cezar Mationg's alibi that he was never at the scene of the stabbing, suffice it to say that the alibi cannot stand against the positive identification made by the eyewitnesses to the crime. Also, the defense of alibi is an issue of fact that must depend on the credibility of witnesses. The trial judge is in a better position to determine credibility and unless his conclusions are directly and patently inconsistent with the evidence on record, his findings should be sustained. Two witnesses, Salvador Tuayon and Angela Tersol positively testified that Cezar participated directly in the commission of the crime by holding the deceased from behind as the appellant Pacifico plunged his knife on the chest of the victim. Patrol-man Tambong testified that he saw both appellants Pacifico and Cezar running from Tasing's store at that time. The alibi cannot be sustained under such circumstances.

The argument of appellants that the trial court erred in giving significance to the ball pen, eyeglasses, coffee glass, undisturbed stools and table in the picture submitted as exhibits when circumstances indicate tampering with the evidence,[30] cannot be given much weight as the alleged circumstances of tampering are mere conjectures in the absence of evidence showing alterations before the pictures were taken.

As to the question of treachery in the commission of the crime, there is no doubt that appellant Cezar held the deceased from behind thus immobilizing the victim at the time appellant Pacifico stabbed him, thus both employing means to insure the execution of the crime without risk to themselves arising from the offense which the offended party might make.

The mitigating circumstance of voluntary surrender cannot be considered in favor of both appellants as they went into hiding, and surrendered only when they realized that the forces of the law were closing in on them.

WHEREFORE, and in accordance with the recommendation by the Solicitor General, the Judgment dated January 28, 1971, in Criminal Case No. 10, Court of First Instance of Aklan, Branch III, finding both appellants guilty beyond reasonable doubt, being in conformity with law and the evidence, is hereby AFFIRMED in toto, with costs.

SO ORDERED.

Barredo, (Chairman), De Castro, Ericeta, and Escolin, JJ., concur. Aquino, J., see attached concurrence. Abad Santos, J., on official leave.

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- [1] p. 2, Original Record, Crim. Case No. 10, CFI Aklan, Branch III.
- [2] p. 49, Id.
- [3] pp. 1-2, Original Record, Crim. Case No. 10, CFI Aklan, Branch III.
- [4] pp. 2-3, Judgment in Criminal Case No. 10.
- [5] pp. 43-44, Judgment.
- [6] p. 50, Original Record.
- [7] pp. 120-128, rollo.
- [8] pp. 137-142, Id.
- [9] p. 150, Id.
- [10] p. 156, Id.
- [11] p. 161, Id.
- [12] p. 181, Id.
- [13] p. 183, Id.
- [14] pp. 30, 37, t.s.n., Aug. 24, 1970; pp. 34-36, t.s.n., Aug. 19, 1970; pp. 2-3, Appellee's Brief.
- [15] p. 36, Judgment, Criminal Case No. 10.
- [16] pp. 3-10, t.s.n., Sept. 7, 1970; pp. 10-11, t.s.n., Sept. 7, 1970; Exhibit "F".
- [17] pp. 5-6, 10-11, t.s.n., Sept. 22, 1970; pp. 5-7, t.s.n., Sept. 22, 1970.
- [18] pp. 7-8, t.s.n., October 22, 1970.
- [19] pp. 3-6, t.s.n., October 22, 1970.
- [20] pp. 10-11, t.s.n., October 22, 1970.
- [21] pp. 12-13, 35, t.s.n., Aug. 24, 1970; pp. 34-35, t.s.n., Aug. 25, 1970.
- [22] p. 22, t.s.n., August 24, 1970.
- [23] pp. 38, 39-40, rollo.
- [24] People vs. Ansoyon, 75 Phil. 772, 777.
- [25] People vs. Berio, 59 Phil. 533, 536.
- [26] People vs. Bauder, 77 Phil. 105. 108.
- [27] pp. 41-42, rollo.

[28] p. 10, t.s.n., August 19, 1970.

[29] pp. 97-99, Appellants' Brief.

[30] pp. 25-29 Appellants' Brief.

CONCURRING OPINION

AQUINO, J.:

I concur. The municipal judge on June 4, 1970 issued a warrant for the arrest of the two accused. A Constabulary captain made the following return of the warrant on June 15, 1970:

"Warrant of arrest in Criminal Case No. 2146 was duly served and subject accused surrendered at Headquarters 312th PC Company on or about 1145H 14 June 1970.

"Said accused was (were) now confined in the PC Stockade at Camp Pastor Partelino, Kalibo, Aldan." (Back of p. 9, Record).

The crime was committed on June 1, 1970. After its commission, the two accused went into hiding. It was only fourteen days after the commission of the crime and ten days after the warrant of arrest was issued and "duly served" that they "surrendered" to the Constabulary.

Evidently, the surrender was not spontaneous. The accused surrendered to avoid the scandal of actual arrest and with the knowledge that it was useless to continue being fugitives from justice. Under those circumstances, they are not entitled to the mitigating circumstances of voluntary surrender to the authorities. (People vs. Sakam, 61 Phil. 27, 34.)

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