

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARVIN MILLORA AND JUSTO MILLORA, ACCUSED-APPELLANTS.***G.R. No. L-38831. December 27, 1982*

Ponente: AQUINO, J.

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This is a murder case. According to the prosecution, between ten and eleven o'clock in the evening of April 27, 1972, while Arnulfo Benitez, 25, Isabelo Pagdanganan, Jessie Escaño, Roger Rosario and others were conversing in front of the Virgen Milagrosa Hospital, Bonifacio Street, San Carlos City, Pangasinan, a red jeep driven by Marvin Millora, 22, who was accompanied by his brother Justo (Tito), 14, and by Feliciano Muñoz (Tony), 24, stopped near the group. The three were members of the security squad of City Mayor Cayabyab. The headlights of the jeep were still on after it had stopped.

The Millora brothers, grandnephews of the city mayor (189 tsn) and Tony alighted from the jeep. Marvin was armed with a .45 caliber pistol, Tito with an armalite and Tony with a carbine. Benitez, an engineering student, who had a misunderstanding with Marvin, sensed immediately that the trio were going to liquidate him.

Impelled by the instinct of self-preservation, he ran and sought refuge inside the hospital. Tito and Tony pursued him. Marvin remained on the street. The companions of Benitez dispersed.

Benitez did not stay long in the hospital. Feeling trapped inside the hospital and having probably noted that Tito and Tony had followed him there, Benitez (whose residence was on the other side of the street across the hospital), emerged from his hiding place and returned to Bonifacio Street, where Marvin, as in an ambush, intercepted him by shooting him.

Benitez fell, then stood up and walked towards the gate of Pagdanganan's residence a few meters away but Tony and Tito, who were following him, shot him. He dropped to the ground. Tito got the balisong knife of Tony and stabbed Benitez (No. 18, Exh. A).

The three assailants loaded Benitez in the jeep which proceeded in the direction of Dagupan City. The next day the corpse of Benitez was found on a ricefield in Barrio Duyong, Calasiao, Pangasinan. (See Exh. E to G and 1 and 2.) The motive for the killing was revenge: Benitez on a prior occasion had struck Marvin on the head (Nos. 16 and 24, Exh. A).

The autopsy disclosed that Benitez had an entrance gunshot wound on his left forehead and an exit gunshot wound on the right part of his forehead. His brain was out. He had also an entrance gunshot wound near the sternum (parasternal region) and an exit gunshot wound in the thoracic region, a stab wound in the chest and multiple incised wounds on the cheek and neck (Exh. D).

Understandably, the city police did not file any charge against the three malefactors. The case was investigated by the Constabulary. About four months after the killing, Tony Muñoz was arrested. He executed a confession (Exh. A) wherein he implicated the Millora brothers, the sons of lawyer Manuel B. Millora and Encarnacion Cayabyab,

the city mayor's niece (189 tsn).

The city fiscal in an information dated February 26, 1973 charged Muñoz and the Millora brothers with murder aggravated by treachery, abuse of superiority and evident premeditation. At the trial, the Millora brothers pleaded the alibi that they were in their residence at Roxas Boulevard, San Carlos City at the time the shooting occurred. That place is about one and a half kilometers from the scene of the crime. Marvin was allegedly playing mahjong while Tito was collecting the tong and serving food to the players.

Tony Muñoz testified that at the time the killing was perpetrated he was in the residence of his cousin, Ricardo Muñoz, at Caloocan City.

The trial court rejected the alibis of the accused. It convicted Marvin and Tony of murder qualified by treachery and sentenced them to "life imprisonment" and to pay solidarily to the heirs of Benitez an indemnity of twelve thousand pesos (Criminal Case No. 0180, Circuit Criminal Court at Dagupan City).

Tito Millora (born on February 28, 1958) was only fourteen years, one month and twenty-nine days old when the crime was committed. The trial court found that he acted with discernment. It suspended his sentence and ordered his commitment to the Vicente Madrigal Rehabilitation Center at Tanay, Rizal until he reached the age of majority. (Actually, Tito was already in the custody of Brigadier General Tomas P. Diaz of Camp Olivas by reason of the decision dated November 26, 1973 in two other criminal cases. P. 197, Record. See *People vs. Muñoz*, 107 SCRA 313, 338).

Tony Muñoz did not appeal. The Millora brothers appealed. Their father, as counsel, contends that the trial court erred in holding that his sons were positively identified by prosecution eyewitnesses, Isabelo Pagdanganan, Felipe Canilang and Manuel Magali, a councilor, notwithstanding their contradictory testimonies, and in not acquitting the accused on the ground that their guilt was not proven beyond reasonable doubt.

The Solicitor General in his brief meticulously refuted the arguments of the appellants in support of their contentions.

Appellants assail the credibility of the said prosecution eyewitnesses because they did not report immediately to the authorities what they allegedly knew about the killing. Canilang and Pagdanganan executed their affidavits on October 27 and December 13, 1972 before Constabulary Sergeants M. Galsim and Romeo B. Colet, respectively (Exh. 1 and 2). They testified that their statements were delayed because they were afraid of Marvin Millora and his gang.

We find that the delay was satisfactorily explained and that it did not destroy the probative value of their testimonies. The fact is that the policemen did not bother to make any thorough investigation of the case most probably because they were also afraid of the accused. The Constabulary officers stationed at Lingayen had to undertake the investigation.

Appellants' counsel mentions certain contradictions in Canilang's testimony and some discrepancies in the testimony of Pagdanganan when correlated with the testimony of the chief of police. Although there may be inconsistencies in the testimonies of Canilang and Pagdanganan on some details, it is, nevertheless, undeniable that their testimonies consistently identify the appellants and Muñoz as the killers of Benitez. That is the main point and on that point their testimonies jibe and are compatible and harmonious. Their affidavits are clear, convincing and credible.

Appellants impugn the testimony of Councilor Magali, who had allegedly been convicted of estafa and who, as a neighbor of Benitez, had taken an unusual interest in the case. Magali testified that shortly before the killing he

met the Millora brothers and Muñoz at the police out-post about fifty meters away from the scene of the crime. That testimony is not a prevarication.

Appellants' last contention is that their alibis generate reasonable doubt as to their guilt. Considering that the two prosecution eyewitnesses indubitably identified the Millora brothers and Muñoz as the killers of Benitez, the unavoidable conclusion is that their alibis appear to be brazen concoctions.

The trial court did not err in holding that the crime committed is murder. It is qualified by abuse of superiority and not by treachery. Abuse of superior strength absorbs nocturnity. The use of a motor vehicle is not aggravating in this case even if a jeep was used in concealing the victim's corpse. The jeep was not used as a means for the commission of the assassination. Evident premeditation is not aggravating.

The penalty imposable on Marvin Millora is reclusion perpetua, or the medium period of the penalty for murder.* As to Tito Millora, inasmuch as he is now more than twenty-four years old or no longer below sixteen years of age, he is not entitled to a suspended sentence (People vs. Celes-para, 82 Phil. 399; People vs. Lingcuan and Mauti, 93 Phil. 9; People vs. Doria, L-26188, January 31, 1974, 55 SCRA 435).

Tito is entitled to the privileged mitigating circumstance of minority or to a two-degree reduction of the penalty. The maximum term of his penalty should be taken from prision correccional maximum to prision mayor medium.

WHEREFORE, the trial court's judgment is affirmed as to Marvin Millora with the slight modification that instead of "life imprisonment", the penalty imposed on him should be designated as reclusion perpetua. That is the penalty which carries with it the corresponding accessory penalties.

The commitment of Tito Millora to a correctional institution is set aside. He is sentenced to an indeterminate penalty of six months of arresto mayor as minimum to four years, two months and one day of prision correccional as maximum. He is solidarily liable for the payment to the heirs of Arnulfo Benitez of the indemnity of P12,000. Costs de oficio.

SO ORDERED.

Makasiar, De Castro, and Escolin, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., no part.

Abad Santos, J., concur with the recommendation as therein and Tito Millora chanced be given executive clemency.

* Note that Marvin Millora and Muñoz are accused of three murders in L-38968-70 now pending appeal in this Court. The Millora brothers and Muñoz are accused of murder in Criminal Case No. 0172 (D-575), transferred to Pasay City CFI, and also of illegal possession of firearms in Criminal Case No. D-3849. The Millora brothers were convicted of homicide in Criminal Case No. SCC-191, a case appealed to the Court of Appeals. Tito and Tony were convicted of murder in People vs. Muñoz, 107 SCRA 313.

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