

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
HERBITO LACSON ALIAS “HERBIT”
DEFENDANT-APPELLANT.**

G.R. No. L-46338. January 27, 1981

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PER CURIAM:

Automatic review of the death sentence imposed on Herbito Lacson alias Herbit.

Herbito Lacson, Lorenzo Mantal and Anacito de la Costi were charged with the crime of murder in Criminal Case No. CCC-X-109 of the Circuit Criminal Court of Masbate in an information dated March 4, 1970, as follows:

"That on or about the 7th day of February, 1970, at Quezon Street, poblacion of the Municipality of Masbate, Province of Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill and with evident premeditation and treachery, accused Herbito Lacson alias Herbit taking advantage of nighttime and in consideration of a price and reward, did then and there wilfully, unlawfully and feloniously attack and stab with a dagger one Atty. Jose L. Almario thereby inflicting upon the latter serious stab wound, 2 inches thru and thru, interscapular region, right which injury directly caused his instantaneous death."

Herbito Lacson pleaded guilty and was sentenced to death. However, upon automatic review we remanded the case "to the court a quo for arraignment anew and for further proceedings in accordance with law, since an intelligent review of the death penalty and of whether the accused did fully understand the nature of the charge and the meaning and consequences of his plea is impossible, as there exists no record whatsoever of the arraignment and of his entering his guilty plea nor of the taking of any testimony after the plea." (People vs. Lacson, G. R. L-33060, Feb. 25, 1974; 55 SCRA 589, 590.)

Lacson's co-accused, Lorenzo Mantal and Anacito de la Costi who did not plead guilty and entered trial were subsequently convicted but sentenced to a lighter penalty. Mantal was sentenced to reclusion perpetua while de la Costi was sentenced to one year imprisonment as an accessory in the crime of murder.

When arraigned anew - this time before the Court of First Instance of Masbate, this is what transpired:

"The information was read to the accused and translated in the local dialect which he understood; he was apprised of the fact that if all the aggravating circumstances would be proved beyond doubt he could be sentenced to death. When asked to make his plea, he informed the Court that he is guilty of having killed the victim, Atty. Jose L. Almario, but that he did so not in consideration of a price or reward, contrary to what was alleged in the information. In view thereof, the Court ordered that a plea of 'not guilty' for the accused be entered into the record. The case was thereafter set for trial." (Decision, p. 3; Record p. 366.)

After trial, Judge Alfin S. Vicencio in a well-written decision rendered the following judgment:

"PREMISES CONSIDERED, the Court finds the accused Herbito Lacson, alias 'Herbit', guilty beyond reasonable doubt of the crime of Murder, with the aggravating circumstance of treachery and of having committed the crime for a price, reward or promise, without any mitigating circumstance to offset the same, and he is hereby sentenced to the supreme penalty of DEATH; to indemnify the heirs of the victim, Atty. Jose L. Almario, the sum of Twelve Thousand (P12,000.00) Pesos, and to pay the costs of the suit.

"In view of the nature of the penalty imposed by the Court, the record of this case is hereby ordered forwarded to the Supreme Court of the Philippines, Manila, for automatic review.

"IT IS SO ORDERED."

There is no dispute that at about 7:00 o'clock in the evening of February 7, 1970, Atty. Jose L. Almario was stabbed by the appellant as the former was walking along Quezon St. in Masbate, Masbate, and as a result of the stabbing incident Almario died. The autopsy report (Exh. H) of Dr. V. B. Butalid, Chief of the Masbate Provincial Hospital, reads:

"1. Stabbed Wound, thru and thru:

Point of Entrance: - incised wound, 2 inches in width, located at the right Inter-scapular region, 1-3/4 inches from the midline and 5 inches below the rt. shoulder upward and laterally in direction.

Point of Exit: - incised wound 3/4 inch in width, located at the rt. anterior chest wall 7 CM. below the rt. clavicle and 5 CM, from the rt. anterior axillary line.

2. Incised wound 1/2 inch long, perpendicular to the long axis of the left thumb.

On opening the anterior chest wall, and the rt. thoracic cavity, about 1 liter of fresh and clotted blood was recovered from the rt. thoracic cavity and on examining the rt. lung, it was found out that its upper lobe was incised thru and thru about 1-3/4 inches in width and the middle lobe of the rt. lung was incised at the lateral side. The subclavian vessels were cut.

The heart, left lung, liver and other surrounding tissues were not injured.

CAUSE OF DEATH:

Hemorrhage, severe, sec. to stabbed wound T & T."

This appeal deals solely with the claim of Lacson that he did not kill Almario in consideration of a price or

reward; that the killing was unpremeditated; and that it was not treacherous. Thus Lacson maintains that it was all a case of mistaken identity; that he stabbed the victim because he mistook him for a man who molested him for cigarettes and tried to stab him while he was eating in the public market earlier in the day. He says that he saw the victim, walking on Quezon street and he thought the latter resembled the man who tried to stab him. To get even, he drew his knife and stabbed him. The next morning he fled to Alegria, Pio V. Corpuz, Masbate, intending to surrender to the barrio captain of Alegria, but that before he could do so he was apprehended by NBI agents to whom he surrendered instead.

Actually, Herbito Lacson was arrested on February 15, 1970, in Alegria, by a posse of NBI, PC, Cataingan and Masbate police elements, led by NBI Agent Ilustre Cruz, and accompanied by a son of the victim, Cesar Almario. PC Sgt. Temistocles Javines found in Lacson's bag P90.00 (Exhs. J to J-5) said to be part of P100.00, the amount received for the killing of Jose Almario.

Lacson was brought back to Cataingan, then to Masbate. Due to motor vehicle trouble, the group had to stop in Cataingan Municipal Hall, wherein Lacson was investigated. NBI Agent Ilustre Cruz said that the accused verbally admitted having killed the victim; and that he killed him because he was hired by Lorenzo Mantal and Anacito de la Costi.

The investigation continued at the Masbate PC Provincial Headquarters. Present were Mayor Benjamin Magallanes of Masbate, Mike Aguilar, a correspondent of PNS (Philippine News Service), Dr. Jose de Vera, Municipal Health Officer, and some on-lookers. The killing of Atty. Almario, a prominent practitioner and former governor of Masbate attracted widespread attention. Lacson executed Exhibit "E", a statement dated February 15, 1970, and affirmed its execution before Municipal Judge Jose Angustia. According to Agent Cruz, Lacson gave him P9.60 (Exhs. J-6 to J-20) which together with the P90.00 formed part of the P100.00 received by Lacson.

On February 17, 1970, Lacson executed Exhibit "G", a supplemental statement and swore to its execution again before Judge Jose Angustia.

The theory of the prosecution is that Herbito Lacson stabbed the victim upon the instigation of his uncle Lorenzo Mantal and upon a promise of an undetermined amount of money, P100.00 of which was actually received by Lacson from Mantal after the killing; that Mantal instigated the killing of Almario, because the latter as counsel for Venturanza Estate in Masbate, brought about the eviction of Mantal and others from the estate and the filing of a robbery charge against them when they tried to gather coconuts from the estate; that pursuant to Mantal's instruction and assistance, Lacson carried out his mission; that Lacson who at the time did not even know Atty. Almario, traced the whereabouts of the latter so as to execute the dastardly deed; and that the unsuspecting victim was stabbed without any opportunity on his part to mount a defense.

Appellant Herbito Lacson claims that Exhibit E wherein he stated that he was ordered by Lorenzo Mantal and Anacito de la Costi to kill Atty. Jose L. Almario for an undertermined sum of money and Exhibit G where he gave additional information surrounding the killing of Almario were both coerced statements and therefore inadmissible in evidence. To disprove the presence of circumstances that could qualify and aggravate his culpability he thus insists on his defense of mistaken identity.

The simple issue is on the credibility of contending witnesses - which we resolve for the prosecution.

The conclusions reached by the trial court on the credibility of the contending witnesses are not to be disturbed. This is not only because of the peculiar competence of the trial court to observe firsthand the witnesses' manner of testifying, their demeanor and deportment as they confronted each other during the trial, but also because its conclusions are justified upon a judicious review of the evidence. As the records stand, there appears nothing of

substantial importance that could justify a reversal.

Thus, on the admissibility of Exhibits E and G, the trial court, held:

"Prosecution relied heavily on the sworn statements, Exhibits "E" and "G" to prove the aggravating circumstances alleged in the information, the same sworn statements repudiated by the accused. It therefore became the first and primary concern of the Court to determine whether or not the said exhibits were given voluntarily, as claimed by the prosecution, or involuntarily, as claimed by the accused.⁴

XXX XXX XXX

"Agent Ilustre V. Cruz, testifying for the prosecution, described in detail the surrounding circumstances relevant to the execution of the two sworn statements (Exhibits "E" and "G"), of accused Herbito Lacson. According to said witness, the statements were taken inside the office of the Provincial Commander of Masbate, and that among those present were the then Mayor Magallanes of Masbate, Masbate, Dr. Jose H. de Vera, Municipal Health Officer of Masbate, and one Mike Aguilar, newspaper correspondent; that there were several people who were watching the proceeding through the windows of the said office; that while the accused was not then assisted by counsel, he was informed fully of his rights and could remain silent if he chose to; that whatever statement he would give could be used against him, but that after said warning, said accused expressed his desire to give his statements; that before and after the two sworn statements were taken, the accused was examined by the Municipal Health Officer of Masbate, who found no evidence of violence on his person. Agent Cruz identified certain pictures taken during the proceedings to corroborate his testimony. In addition, the accused himself admitted that he was physically examined by Dr. Jose H. de Vera before and after the taking of his sworn statements. Further, Municipal Judge Jose Angustia, Sr. of the capital town of Masbate, in his testimony, explained the procedure he adopted when accused Herbito Lacson swore to his statements before him in his office at the Municipal Hall of Masbate, Masbate. He stated that when the accused was brought before him, he ordered the removal of his manacles. He then sent out all the peace officers escorting him. Thereafter, he read and translated to the accused the statements and then asked him if the same were true. When the accused answered affirmatively, he asked him if the signatures and thumbmarks appearing on the statements were his. Said accused admitted the same to be his.

"The above testimonies were not controverted by the accused except by stating that he was manhandled in the motorboat during the trip between Alegria and Pio V. Corpuz and in the PC barracks, and was thus forced to sign his name and affix his thumbmark thereon. He gave no detail whatsoever about the manner he was maltreated. He admitted that he informed nobody except his counsel de oficio about the alleged maltreatment.

"Under the above circumstances, the Court believed that the claims of maltreatment in the hands of the police authorities cannot be given serious consideration. The accused had the opportunity to denounce the act before Judge Jose Angustia, Sr. On two occasions he was alone with him in the latter's office in the Municipal Hall at Masbate, Masbate. The police officers whom he might have reason to fear were outside the room. The opportunity to ventilate his grievances, if there were any at all, was there. If it were really true that the sworn statements were improperly taken, he should have grasped that opportunity.

"When the accused was physically examined by the MHO of Masbate, Masbate, no findings of physical violence on his person were reported. He could have complained to the doctor about any pains he felt. Again, he did not do so.

"It was not disputed that a representative of the press was present during the taking of the statements. Certainly, if there was anything unusual or out of the ordinary that the press representative noticed, the same should have found its way into the local and national papers. The killing of Atty. Jose L. Almario, a prominent practitioner and a former governor of Masbate, undoubtedly attracted widespread attention. The press was there ready to report any detail about the case. Yet, there was no report of anything unusual in the handling of the investigation of the admitted killer.

"An examination of the two sworn statements disclosed details about the movements of the accused upon his arrival in Masbate, Masbate, and immediately before and after the killing. These were matters which could be disclosed and supplied by the accused alone. They could not have been furnished by the investigating authorities. The fact that they were incorporated in the sworn statements strongly indicate spontaneity and voluntariness on the part of the accused. (People vs. Opiniano, L-18546 and 18547, Jan. 29, 1968, 22 SCRA 177)

"Finally, the uncontroverted fact that the sworn statements were taken in surroundings that were practically public, could not but rule out the employment of force upon the accused.

"It will be noted that accused in open court admitted having stabbed to death Atty. Jose L. Almario. In such a situation, the Court simply could not find its way clear to giving serious thought to the alleged maltreatment. It was highly improbable that he would voluntarily admit the killing, but had to be forced to make the rest of the statements in question.

"In view of all the foregoing, it was inevitable to uphold the integrity of the two sworn statements, Exhibits "E" and "G". It was, therefore, the finding of the Court that the same were voluntarily executed by the accused, Herbito Lacson."

The appellant denies that he killed Almario in consideration of a price or reward. He admits that a sum of money was taken from him but claims that he brought the same from Samar. But this denial is negated by his extra-judicial confession, Exhibit E whose integrity we have affirmed. Thus we find the following pertinent statements in Exhibit E:

"23. Q: You stated that you were ordered by LORENZO MANTAL to kill JOSE ALMARIO. What was the consideration if any offered to if you could accomplish your mission?

A: I was promised an undetermined sum of money which he said he would still collect from interested persons who were among those ejected together him (LORENZO) in the land they were occupying at barrio Madamba, Cataingan, Masbate.

"24. Q: After killing Atty. JOSE ALMARIO did you receive the promised money from LORENZO MANTAL?

A: Yes, sir.

"25. Q: How much and where and when was it given to you?

A: P100.00 in Alegria, Pio V. Corpuz, Masbate last Monday, 9 February 1970.

"26. Q: Where is now the money that LORENZO MANTAL gave you?

A: Here are six one (1) peso bills six 5 centavo coins and three 10 centavo coins, all amounting to P6.60. The rest P90.00 pesos in paper bills I gave to PC Sgt."

Moreover, NBI Agent Cruz also testified on the price or reward. His testimony on this subject is abundant but we give only one excerpt:

"BUTALID (Fiscal)

Q: Aside from those verbal interrogations what else did you do in your investigation? What more did you ask Herbito Lacson?

A: I asked him as to the participation of Lorenzo Mantal and Anacito de la Costi in the killing of Atty. Jose Almario.

Q: What was the answer of Herbito Lacson?

A: He told me that these people were the ones who hired him to kill Atty. Jose Almario.

Q: How much? Did you ask in your investigation of Herbito Lacson how much was he hired to kill Atty. Jose Almario?

"TAMBAGO (Defense Counsel)

That would be leading, we object, your honor.

"BUTALID (Fiscal)

That is a follow-up to the answer.

"COURT

May answer.

"WITNESS

A: He did not specify the amount but he told me that he was promised a big amount of money." (TSN, Sept. 13, 1974, p. 64.)

In the light of the foregoing, we have to conclude that the killing of Almario by the appellant was for a price or reward.

The appellant claims that the killing was not premeditated. But what are the facts?

Lacson stated in his sworn statement, Exhibit G, that he was ordered to kill Almario three days before he committed the offense; that on the same day he boarded Johnny Bus Liner No. 9, driven by Anacito de la Costi, for Masbate, Masbate. Thereafter:

"17. Q: Upon your arrival in Masbate, Masbate what did you do?

A: I stayed in the house of ONYANG LACSON. I roamed for a while around the main streets of Masbate, Masbate. At about 6:00 p.m. upon our arrival in Masbate, ANACITO fetched me from the house of ONYANG NODA and we proceeded to the residence of Atty. JOSE ALMARIO. I had not seen JOSE at that night so I went home to the house of ONYANG NODA. The next day, I roamed around again and I met APOLINARIO MACABE in front of OVILLA Tech. School and he invited me to his house, where I slept that night. At about 8:00 a.m. the following day, I left the house of APOLINARIO and returned to the house of ONYANG NODA, I stood by. In the afternoon of that day, LORENZO MANTAL fetched from the house of ONYANG NODA and took me along with him to the Provincial Jail. At about 3 pm on that day, from the jail LORENZO and I passed by the house of Atty. JOSE ALMARIO and again proceeded to the house of ONYANG NODA. At about 4:00 p.m, LORENZO and I left the house of ONYANG NODA we passed by again the house of Atty. JOSE ALMARIO and this time we were able to see him and LORENZO MANTAL told me 'MAO KANA ANG TAUHANA'.

"18. Q: After LORENZO MANTAL pointed to you Atty. JOSE ALMARIO as his opponent what did you do?

A: At that time Atty. JOSE ALMARIO was walking and we followed him until he reached the Billard Hall along Quezon Street. When we reached the billard hall, Atty. ALMARIO played billard, so LORENZO MANTAL left for the jail and I proceeded to the house of APOLINARIO MACABE to fetch my jacket. At about 6:00 p. m. I left the house of APOLINARIO MACABE with my jacket this time.

"19. Q: From the house of APOLINARIO MACABE, where did you go?

A: I took a walk and look at the pictures at the RIZAL theater. Then I proceeded to the barber shop next to the Billard Hall and stood by. I transferred to the other barber shop opposite the billard hall combed my hair and stood by waiting for Atty. JOSE ALMARIO to come.

"20. Q: Did Atty. ALMARIO come out immediately or while you were waiting for him in the barber shop adjacent to the billard hall?

A: No.

"21. Q: What did you do next?

A: I bought "COOL DROPS" from the store adjacent to the George barber shop. Then I proceeded to a Halo-Halo store, and again there stood by. While I was standing near the Halo-Halo store, I saw Atty. JOSE ALMARIO with two companions coming out of the billard hall. They entered the store across the street, so I walked ahead and stopped near a parked truck to wait for him to pass by. It did not take long, and I saw Atty. ALMARIO coming my direction. So I met him, held his upper right arm with my right hand and stabbed him with my left hand at the back."

Corroborating the above statement, Alfredo Cos, a policeman of Masbate detailed to guard the RCA office near the house of Almario at Rosero street, identified Lacson as one of two persons who stood in front of the victim's house at about 7:30 p.m. on February 4, 1970.

The plot to kill Almario as revealed in Lacson's sworn statement is corroborated by Benilda Bragasa who testified that on February 5, 1976, at about 11:00 p.m., she saw and heard Lorenzo Mantal inside the house of Conrado Lacson in Madamba, Cataingan, Masbate, assuring those present that Almario would be killed. She testified that she reported the plot to Almario who took it lightly and dismissed it as improbable. But when she saw de la Costi and Lacson at the Cataingan pier at 8:00 a. m. on February 9, 1970, de la Costi told her, "Your No. 1 was already killed."

In the light of the foregoing, the trial court justifiably said:

"All these established the fact that three days before February 7, 1970, or on February 4, 1970, accused Herbito Lacson agreed to kill Atty. Jose L. Almario; that in the evening of February 4, 1970, he went in front of the house of his intended victim at Rosero Street, Masbate, Masbate, to identify him; that having failed to see the victim then, he went back in the afternoon of February 7, 1970, when he finally saw Atty. Almario; that having finally seen Atty. Almario, he then followed and watched him and waited for the opportunity to carry out his mission of death.

All the above enumerated facts indubitably prove the existence of the aggravating circumstance of evident premeditation. On February 4, 1970, the intention to kill the victim was hatched in the mind of the accused, acting in conspiracy with others. Thereafter, he tried first of all to be certain of the identity of his intended victim. After having done so, he stalked him, followed him as he moved around, until he finally stabbed him to death. All these took place within a span of three days.

The determination of the accused to kill on February 4, 1970, was followed by acts which cannot but be interpreted as a tenacious will to commit the crime. The three days that intervened certainly afforded the accused ample time to reflect on the inevitable consequences to the victim and to himself of his planned act. He had ample opportunity to desist from committing the foul deed. Certainly, the still small voice of his conscience must have whispered to him to turn away from his deadly course of action; certainly, even a small spark of humanity, of charity, of mercy, must have burned in his heart during those three days. But he chose to ignore all these."

The presence of evident premeditation thus qualifies the killing to murder.

That the killing was attended by treachery cannot be disputed for the attack was sudden and without any warning at all as described by the appellant himself in Exhibit G, supra. The victim was completely unaware of the death that awaited him. He was not armed. He was so completely taken by surprise that he could not mount a defense, or even flee to evade his assailant. And he was stabbed at the back. Surely, these circumstances spell treachery.

WHEREFORE, the judgment of the court a quo being in accordance with law and the evidence, it is hereby affirmed in toto. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro and Melencio-Herrera, JJ., concur.

Fernando, C.J., did not take part.

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