

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO YAP AND HERMINIO AMAR, DEFENDANTS-APPELLANTS.

G.R. No. L-50300. October 26, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The accused, Romeo Yap and Herminio Amar, having been meted the death penalty for the crime of Murder, the case was elevated to this Court for automatic review.

The People's version of the facts, as set forth in the Brief filed by the Solicitor General, reads as follows:

"After drinking 'tuba' in the evening of March 11, 1976, appellants, Romeo Yap and Herminio Amar, proceeded to the house of a certain Teofilo Fernandez located at Barrio Magsikap, Rizal, Occidental Mindoro (Exhibits 'G' & 'H'). Upon arriving there, the two woke up and challenged Teofilo to come out of his house. The latter peeped through the window, and upon seeing the appellants fully armed with a bolo and a gun, he did not go out of his house. He recognized appellant Romeo Yap as the one with a bolo while the other appellant Herminio Amar, whose name he only came to know later when Herminio was arrested by the authorities had a gun. (pp. 159-163, *tsn.*)

"From there, appellants left (pp. 163-164, *Ibid*) and proceeded to the house of Antonio Alonsabe, also located in the same barrio. Upon reaching the latter's house, Romeo called out for Antonio. Awakened the latter stood up to find out who the caller was and in effect saw appellant Romeo Yap. The latter asked him to go down, which he did. There he saw Romeo with his companion, Herminio Amar, armed with a bolo and gun, respectively (pp. 4-7, *Ibid*).

"After informing Antonio where they came from earlier that evening, Romeo asked the former to accompany them to Antonio's father-in-law, Felipe Santiago because his (Romeo's) father wanted to meet them (pp. 9-10, *Ibid*; Exh. 'A'). At first, Antonio refused; but he was forced to go with them when Romeo threatened to kill him. The trio arrived at Felipe Santiago's house at about midnight. Forthwith, Romeo instructed Antonio to call his father-in-law, which the latter did (pp. 26--30, *Ibid*). Waking up, Felipe proceeded to the balcony near the stairways. Thereupon, Romeo who meanwhile had climbed the stairs introduced himself by saying 'Ako si Miroy'. Then he continue, *Natatandaan mo ba ang ginawa mo sa aking kapatid?*' To which Felipe answered, *'Wala akong ginawa sa iyong kapatid.'* To this, Romeo said, *'Magtapat ka ng totoo, pag hindi ka nagtapat ikaw ay papatayin ko.'* Sensing trouble, Felipe turned towards the door and was about to enter the room when all of a sudden Romeo hacked him on the back with a bolo. Simultaneously, Herminio cocked his gun and pointed its muzzle towards Antonio. The latter immediately ran towards the woods nearby, even as Romeo continued hacking to death the helpless Felipe inside the room of his house (pp. 32-35, 58-62, *Ibid*).

"When appellants left, Felipe was already dead, lying frustrate (*sic*) on the floor. Immediately, Felipe's wife who witnessed the hacking of her husband, called for her brother, Bartolome Bandiola, residing about a hundred fifty meters away. The latter responded and came to her sister's succor. Another brother, Rosauro Bandiola, also arrived (pp. 62-64, 74-75, *Ibid*). Rosauro immediately reported the incident to the Police Headquarters of Rizal, and came back that same morning with Pat. Arnulfo Dimalaluan and a police

photo-grapher. Shortly thereafter, Sub-station Commander Prudencio Miranda with another policeman also arrived. Upon instruction of his chief, Pat. Dimalaluan moved the body of the deceased Felipe to verify the wounds he sustained. He then prepared a sketch of Felipe's cadaver (Exhibits 'C') showing the location of the wounds. (Exhibits 'C-1' to 'C-11'). Another sketch was also prepared showing the place where the cadaver of Felipe was found lying frustrate inside the house (Exhibit 'D'). There-after, the photographer took picture's of the body of the deceased (Exhibits 'E', 'E-1' to 'E-7'). Follow-up investigation was also conducted (pp. 79-89, 95, Ibid).

"Subsequently, persons who had knowledge of the incident were invited to the police headquarters where their sworn statements were taken. Then on March 16 and 17, 1976, Romeo and Herminio were ar-rested, one after the other by the police (pp. 233-234, 292, Ibid). After waiving their constitutional rights to remain silent and be assisted by counsel (Exhibit 'F'), appellants voluntarily gave their extrajudicial confessions to the police (Exhibits 'G' and 'H'). (pp. 99-107, Ibid)."[1]

Dr. Rodolfo F. Jaravata, Municipal Health Officer San Jose, Occidental Mindoro, did not autopsy the cadaver of Felipe Santiago but he certified that the cause of death was "Hemorrhage, secondary to multiple hacked wounds.[2] The sketch of the front and back of the body of the deceased and the photo-graphs of his cadaver showed that he sustained two wounds at the back (Exhibits "C-10", "C-11" & "E-2"); two gaping wounds behind the left shoulder (Exhibits "C-8", "C-9" & "E-2"); one slashed wound across the face (Exhibits "C-1", "E-1" & "E-3") and a smaller one on the left cheek extending to below the ear (Exhibit "C-2"); one wound across the neck (Exhibit "C-3"); ano-ther in front of the left shoulder (Exhibit "C-4"); a wound on the left arm (Exhibit "C-5"); three wounded fingers on the left hand (Exhibit "C-6"); and a wounded toe on the left foot (Exhibit "C-1").

On April 12, 1976, an Information was filed against both accused, charging them with the crime of Murder before the former Court of First Instance of Occidental Mindoro, reading as fol-lows:

"That on or about the 11th day of March, 1976, in Sitio Curimas, Barangay Magsikap, Rizal, Occidental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mu-tually helping each other, did then and there willfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and use personal violence upon Felipe Santiago, in the following manner, to wit: accused Romeo Yap wounding said Felipe Santiago with a bolo on different parts of the body and accused Herminio Amar Acting as guard while holding a home made gun (pugakang) and preventing succor from other person, thereby inflicting upon said Felipe Santiago several wounds which had been the cause of his untimely death.

"That as a consequence of the unlawful acts of the accused, the heirs of said Felipe Santiago suffered actual damages in the amount of not less than P12,000.00, as well as compensatory and moral damages in such amount that this Honorable Court may deem just and proper."

Upon arraignment, both accused pleaded not guilty.

In his defense, ROMEO Yap, a fisherman, 30 years of age, married, residing at Barrio Rumbang, Rizal, Occidental Mindoro, insists that he did not hack Felipe Santiago in the evening of March 11, 1976, as he was at Barrio Rumbang, where he resides, at the time; that he did not know the latter personally during his lifetime; that he did not know where Antonio Alonsabe was residing on that date; that HERMINIO Amar was not with him that evening; that he was made to sign a document which was already prepared and which he did not understand because he does not know Pilipino; that he did not subscribe nor swear to a document purporting to be his extrajudicial confession before Mayor Bartolome H. Miranda; and that he was never informed of his constitutional rights but was merely made to sign a typewritten statement.

For his part, HERMINIO Amar, a laborer, 36 years old, married, residing at Barrio Rumbang, Rizal, Occidental

Mindoro, testified that he came to know ROMEO only in December of 1976 during the town fiesta; that he was not with ROMEO in the evening of March 11, 1976; that he was never in Barrio Magsikap, Rizal, Occidental Mindoro, where the fatal incident occurred nor was he carrying a gun that evening; that he knew nothing of the kill-ing of the victim nor did he know the latter personally; that he was arrested by the police without being informed of the rea-son for his arrest; that he was maltreated and forced into signing his extrajudicial confession, with his counsel mani-festing before the Court that he had contusion marks on several parts of his body; and that he was never informed and advised of his constitutional rights to remain silent and to have a lawyer if he desired.

After trial, the lower Court rendered a judgment of con-viction, the decretal portion of which is quoted hereunder:

"WHEREFORE, after due consi-deration of the evidence herein presented, the accused Romeo Yap and Herminio Amar are both guilty beyond reasonable doubt of the crime of murder punished under Article 248 of the Revised Penal Code attended by the aggravating circumstance of treachery, without any mitigating circumstance to offset them, each one of them to suffer the penalty of DEATH; to indemnify the heirs of the deceased, the sum of TWELVE THOUSAND (P12,000.00) PESOS, and to pay their proportionate shares of the costs."

Although the lower Court had mentioned only the aggravating circumstance of treachery in the aforesaid dispositive portion, it also found as present the aggravating circumstances of evident premeditation, abuse of superior strength, nocturnity, and dwelling.

In seeking acquittal, appellants claim that the lower Court erred:

"I

"In giving full credence and weight to the testimony of the alleged eye witnesses, Antonio Alonsabe and Eli-berda Santiago.

"II

"In outrightly ignoring the testimony of the accused denying their commission of the crime.

"III

"In finding the commission of the crime to be attended with the qualifying circumstances of treachery, evident premeditation, superior strength and night time.

"IV

"In finding conspiracy between the accused.

"V

"In not acquitting the accused on reasonable doubt."

The defense avers that the testimony of Antonio Alonsabe, son-in-law of the victim and one of the eyewitnesses, is of doubt-ful veracity because (1) at the trial, when first asked to identify ROMEO, he pointed to HERMINIO. As pointed out by the Special Counsel, however, the witness had pointed to ROMEO but the interpreter did not notice.[3] Furthermore, when subsequently asked to point at the two accused one after the other, Antonio correctly pointed to them.[4]

(2) The defense also calls attention to a portion of Antonio's testimony where he answered:

"Q. Did you leave your house that night?

"A. No sir."[5]

This was satisfactorily explained by Antonio himself, however, when he declared on cross-examination that he did not quite understand and was "mixed up."

"Q Now, You said you left your house that evening of March 11, 1976, what time did you left (leave) your house?

A Around 11:00 o'clock, sir.

Q When you left your house at 11:00 o'clock was Romeo Yap still there?

A We left, sir.

Q When you said we left, to whom do you refer?

A Romeo Yap and Herminio Amar, and myself, sir.

Q Do you remember having answered the Fiscal in your direct examination that you did not leave your house that evening?

A I did not quite understand be-fore, sir.

Q Now, where did you go when you left your house together with Romeo Yap and Herminio Amar?

A In the house of my father-in-law, sir.

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Q Why did you go with Romeo Yap and Herminio Amar?

A Because they will kill me if I will not go with them, sir.

Q You did not say that before during the direct examination of the Fiscal is it not?

A That is true, sir.

Q And you only thought of that after the recess and you have talked with some people is it not?

A No, sir, I did not talk with anyone.

Q Did you not talk with other people during the recess?

A No, sir.

xxx xxx xxx

Q You remember your answer to the Fiscal that you did not go downstairs inspite of the fact that Romeo Yap asked you to come down the evening of March 11, 1976?

A Because I was mixed up, sir."[6]

Being mixed up was quite understandable because Antonio had refused to go with ROMEO and HERMINIO in the beginning and only agreed to do so when they threatened to kill him.

3) The defense further submits that Antonio could not have witnessed the hacking of his father-in-law because of his actuation immediately thereafter in merely running to the forest and spending the night there instead of calling for help or in-forming the authorities. As testified to by Antonio, however, simultaneously with the hacking of the

victim by ROMEO, HERMINIO had cocked his gun and was aiming it at Antonio. Fearful of his life, he ran towards the woods and stayed there till the next morning. In fact, when he met Orlando Pablo that early morning the latter greeted Antonio by saying: "Mabuti buhay ka pa. Diyan ka lang, pupunta ako sa kapatid mo. Kakaway ako mamaya". The reason was because Orlando Pablo "thought Miroy Yap killed me".[7] There was reason, therefore, for Antonio to be fearful of his own life. Besides, the next morning at the crime scene, Antonio revealed to the police what had happened and what he had witnessed the night before.[8]

The fact that Antonio gave his statement (Exhibit "A") to the police only 3 1/2 days after the incident, or on March 14, 1976, does not necessarily detract from his testimony because that was not the first time that he had revealed his knowledge of the crime to the authorities having done so already the morning after the incident.

Next, the defense asserts that the testimony of Eliberda Santiago, widow of the victim, is equally unworthy of credence because of the inconsistency of her version with that of Antonio. She testified that she saw ROMEO stab her husband to death inside the house whereas Antonio stated that ROMEO did so at the balcony. There is no real contradiction, however. The wounds sustained by the victim indicate that he was hacked several times. ROMEO hacked the deceased for the first time while the latter was still in the balcony about to enter the room and thereafter, successively, after the deceased was inside that room. It is likely that Eliberda did not see the stabbing at the balcony because she was inside the room. The photographs taken of the victim (Exhibits "E", "E-1" to "E-3") actually show him prostrate on the floor inside the house.

Thus, there lurks no doubt in our minds that the two eye-witnesses, Antonio Alonsabe and Eliberda Santiago, saw the actual stabbing and that their testimonies deserve credence. They identified appellants without hesitation. Their testimonies were also substantially corroborated by Teofilo Fernandez, who declared that the accused had passed his place first but because he refused to go down they left. Teofilo recognized ROMEO as the one with the bolo, and HERMINIO, whose name he did not know at the time, as the one carrying a gun. Thereafter, appellants went to the house of Antonio Alonsabe around 11:00 o'clock in the evening. Delia Alonsabe, Antonio's wife, also categorically declared that both appellants had gone to their place in the evening of March 11, 1976, and forced her husband to go with them to the house of the victim, her father.

We are in accord with the Trial Court's rejection of the testimonies of appellants denying the commission of the crime. Their denials do not ring with truth and cannot prevail over the positive identification made by the prosecution witnesses. HERMINIO denied having known ROMEO for some time and declared that he came to know ROMEO only in the Courtroom; but from his own testimony, he was even arrested in ROMEO's house. It may be that ROMEO may not have known the victim personally but in his (ROMEO's) mind it was the victim who was responsible for his (ROMEO's) brother's death. ROMEO attempts to repudiate his extrajudicial confession (Exhibit "G"). However, he admitted his signature at the bottom thereof and that he signed it before Municipal Mayor Miranda.[9] In his statement, ROMEO even narrated how he and HERMINIO first had a drink of "tuba" before the incident how the victim seemed to be looking for something when he turned to go inside the house for which reason he stabbed him first; how he and the victim had struggled for possession of the bolo thereby alleging the exculpatory circumstance of self-defense; how HERMINIO helped by firing into the air; and that the entire incident was witnessed by the victim's wife and a "dalagita". Indeed, the details recited therein, which could have been known by him alone, negate the defense theory that his confession was involuntary.

In HERMINIO's statement (Exhibit "H"), he, too, described in detail how he was at ROMEO's father's house because the latter had "nagtalok ng palay"; how he and ROMEO had a drinking spree afterwards, after which they went to Pilo Fernandez's place, thence to the house of another person to whom ROMEO spoke, and from there to a house outside the barrio; the stabbing that occurred thereat; and that he himself carried a gun which belonged to ROMEO. HERMINIO submits, however, that he was maltreated and forced into signing his own confession.

During the trial, his lawyer called attention to signs of contusion on different parts of his body. The trial Judge, however, made no comment and gave no credence to the claim of involuntariness in his Decision.

The fact is that whether or not the confessions were given voluntarily is of no moment. Appellants' confessions are un-necessary to prove their guilt and can even be entirely disre-garded. There is overwhelming evidence on record, through the testimonies of eyewitnesses Antonio Alonsabe and Eliberda Santiago, corroborated by Teofilo Fernandez and Delia Alonsabe, to prove appellants' culpability.

The defense of alibi put up by appellants was also correctly rejected by the Trial Court. Not only is it the weakest of defenses but more so because the defense has not satisfactorily shown that it was impossible for appellants to have been at the scene of the crime at the time of its commission. Appellants had met at Sitio Saligsig where they drank "tuba", which is near Sitio Curimas where the victim lived and where the killing took place, and is also near Barrio Magsikap where Antonio Alonsabe and Teofilo Fernandez resided. The fact also is that appellants went back home to Barrio Rumbang after the fatal incident. Besides, in addition to Antonio Alonsabe's and Eliberda Santiago's testimonies, Teofilo Fernandez and Delia Alonsabe categorically testified that both accused were together when they went to their respective homes that fateful evening of March 11, 1976. Alibi cannot prevail over the positive identification of the accused.[10]

In respect of the aggravating circumstances, treachery was properly appreciated by the Trial Court. The victim was attacked initially at the back as he was entering his room from the balcony. It was treacherous because appellants employed means and methods in the execution of the offense, which tended directly and specially to insure its execution without risk to themselves arising from the defense that the victim might have made. The latter was unarmed and was just awakened from his sleep, whereas ROMEO was armed with a bolo and HERMINIO with a local gun known as "pugakang". That ROMEO had previously warned the victim that he would kill the latter if he did not tell the truth, does not negate the treacherous manner in which the victim was attacked. At that moment, appellants, both armed, had already positioned themselves in such a way that it was impossible for the victim to have evaded the attack as he turned around to enter the room, specially considering that HERMINIO was also standing guard with a cocked gun in hand.

Evident premeditation has also been adequately shown. ROMEO suspected the victim of being responsible for the death of his (ROMEO's) brother. In the evening of March 11, 1976, they drank "tuba" in ROMEO's house presumably to embolden themselves. Then, with ROMEO armed with a bolo, and HERMINIO with a gun given by ROMEO, they proceeded to the house of Teofilo Fernandez, a friend of the victim, who foiled their evil intent by refusing to go down his house. The fact that appellants were singing noisily as they approached Fernandez's place does not negate their intent to avenge ROMEO's brother's death. From Fernandez's place, they walked all the way to the victim's house in the middle of the night right after threatening and forcing the vic-tim's son-in-law to accompany them. Once face to face with the victim, they acted in concert, with ROMEO hacking the victim several times while HERMINIO stood by holding his gun, cocking and thereafter pointing it at Antonio Alonsabe. From the time appellants left ROMEO's house, and even from the time they left Teofilo Fernandez's place, sufficient time had elapsed for them to reflect on their plan. But they clung to their determi-nation and executed their plan to avenge the death of ROMEO's brother.

The circumstances of abuse of superior strength, noctur-nity and dwelling, although not alleged in the Information, were also correctly appreciated by the Trial Court as they were proven at the trial and should, therefore, be taken into consideration in the imposition of the penalty.[11]

There was abuse of superior strength because although HERMINIO did not directly take part in attacking the victim, he acted as look-out and his presence with a gun prevented any-body from coming to succor the victim.

HERMINIO even cocked his gun while ROMEO was mercilessly hacking the victim and pointed the gun at Antonio Alonsabe to ensure non-interference.

Nocturnity was also present because had it not been for the darkness of night, the victim could have noticed the deadly weapons that appellants were carrying and could have become suspicious. And because of the darkness and lateness of the hour when everybody was fast asleep the victim's brother-in-law who was residing about a hundred and fifty meters away could not come to the rescue. It was only when the victim's wife shouted for help that he arrived. Nighttime facilitated the commission of the offense.

Abuse of superior strength and nocturnity are absorbed in treachery.

Dwelling was also properly appreciated. The hacking and killing of the victim was committed in the latter's house without the latter having given any provocation. The evidence shows clearly that appellants entered the house of the deceased to attack him.[12]

Craft or fraud, too, although neither alleged in the Information, attended the commission of the crime because had not ROMEO cunningly utilized the son-in-law, Antonio, to call the victim in the middle of the night, the probability is that the victim would have been more suspicious of a midnight caller and would not have been induced to respond.[13]

As to the element of conspiracy, there should be no room for doubt as to its existence. Appellants acted in concert to attain the same objective. After drinking "tuba" they were al-ways together from Teofilo Fernandez's place where they threatened the latter, to Antonio Alonsabe's house where they forced the latter to go with them, and up to the victim's house where the killing took place. HERMINIO stood watch while ROMEO continued stabbing the victim to his death. HERMINIO also cocked his gun and aimed it at Antonio Alonsabe to prevent the latter from giving succor. The facts and circumstances of the case indubitably indicate that appellants cooperated and labored towards the same end. The degree of actual participation of HERMINIO in committing the offense is of no consequence to prove conspi-racy.[14]

The crime committed is Murder qualified by evident preme-ditation and aggravated by treachery, which absorbed nocturnity and abuse of superior strength, and by dwelling and craft. The capital punishment is imposable but for lack of the necessary votes for its imposition, the penalty is commuted to reclusion perpetua.

WHEREFORE, the judgment under automatic review is modi-fied in that the accused Romeo Yap and Herminio Amar are each sentenced to suffer reclusion perpetua. The judgment is affirmed in all other respects. Cost against accused-appellants.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Plana, Escolin, Relova, and Gutierrez, Jr., JJ., concur.
De Castro, J., on sick leave.

[1] pp. 3-6, Brief for the Appellee.

[2] Exhibit "B", p. 2, Original Record.

[3] T.s.n., June 7, 1976, p. 8.

[4] *ibid.*

- [5] T.s.n., June 7, 1976, p. 11.
- [6] T.s.n., June 7, 1976, pp. 27-29.
- [7] T.s.n., June 7, 1976, p. 19.
- [8] Ibid., pp. 36-44.
- [9] T.s.n., December 10, 1976, p. 38.
- [10] People vs. Saliling, 69 SCRA 428 (1976).
- [11] People vs. Collado, 60 Phil. 610 (1934).
- [12] People vs. Lumasag, 56 Phil. 22 (1931).
- [13] People vs. Napili, et al., 85 Phil. 521, citing U.S. vs. Gampona, 30 Phil. 817 and People vs. Daos, 60 Phil. 143.
- [14] People vs. Reyes, et al., 17 SCRA 309 (1966).

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