

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
VICENTE OMPAD, ET AL., DEFENDANTS, PASTOR LABUTIN,  
DOMINGO LABUTIN, AND SANTIAGO RAYNADA,  
DEFENDANTS-APPELLANTS.**

*G.R. No. L-23513. January 31, 1969*

Ponente: MAKALINTAL, J.

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**MAKALINTAL, J.:**

This is an appeal from the decision of the Court of First Instance of Samar (Branch I) in its Criminal Case No. 6404, finding appellants Pastor Labutin, Domingo Labutin and Santiago Raynada guilty of the crime of double murder. The dispositive portion of the decision reads:

"In view of the foregoing, the Court finds and declares the above named accused guilty beyond reasonable doubt of the crime of double murder as they stand charged in the information, and sentences PASTOR LABUTIN to suffer the penalty of DEATH, and DOMINGO LABUTIN and SANTIAGO RAYNADA both to RECLUSION PERPETUA, with the corresponding accessory penalties in both, to indemnify, jointly and severally, the heirs of Simplicio Tapulado six thousand pesos plus another six thousand pesos to the heirs of Dominga del Monte, and pay the corresponding costs.

"The shotgun Exhibit 'A' is confiscated and shall be delivered to the Constabulary for proper disposal."

In an information filed with the lower court, six (6) persons, namely, Vicente Ompad, Angel Libre, Lucio Samar, Pastor Labutin, Domingo Labutin and Santiago Raynada were originally charged with the double murder of the common-law spouses Simplicio Tapulado and Dominga del Monte. Because Vicente Ompad died (Exhibit "X") before trial and Angel Libre had not been successfully apprehended, only Lucio Samar, Pastor Labutin, Domingo Labutin and Santiago Raynada were thereafter indicted in an amended information which recites that on or about the 7th day of May 1962 in the municipality of Sta. Rita, province of Samar,

". . . the above-named accused, conspiring, confederating together and helping one another with Angel Libre and Vicente Ompad, the former being still at large and the latter already dead, with the decided purpose to kill, taking advantage of superior strength and of nighttime and with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and shoot Simplicio Tapulado and Dominga del Monte, by then and there with accused Vicente Ompad and Angel Libre shooting them with their unlicensed firearms that the said accused Lucio Samar, Pastor Labutin, Domingo Labutin and Santiago Raynada directly inducing the said triggermen to commit the act and being themselves present and in one group when said act was committed, thereby inflicting upon said Simplicio Tapulado and Dominga del Monte several wounds on the different parts of their bodies, which wounds caused their instantaneous deaths."

Of the four (4) accused, however, only Pastor Labutin, Domingo Labutin and Santiago Raynada stood trial; Lucio Samar was discharged from the information and utilized by the prosecution as state witness.

The prosecution, relying principally on the testimonies of two eye-witnesses, Pablo del Monte and Maxima

Tapulado, and of state witness Lucio Samar, established the following:

About 8:00 p.m. on May 7, 1962, in sitio Inalaran, barrio San Isidro, municipality of Sta. Rita, Samar, Simplicio Tapulado and his common-law wife Dominga del Monte, together with the other occupants[1] of their small farmhouse, were about to retire for the night when they heard a voice calling for Simplicio to open up. After ascertaining the identity of the caller, who said he was Vicente Ompad, Simplicio got up and pushed open the hinged shutter which served as the front door, and without another word he suddenly blasted away at Simplicio Tapulado with his gun. Tapulado fell lifeless on the spot. (Eight bullet wounds were found on his body upon exhumation). Meanwhile Dominga del Monte, who had risen almost simultaneously with Simplicio, was about to light the table lamp when another shot was fired, this time by Angel Libre, who was standing beside Vicente Ompad. Hit on the left chest, Dominga instinctively tried to run to the inner room for safety, but fell dead after taking a few steps.

Terrified and shocked, Pablo del Monte, Dominga's 17-year old son by her first husband, rushed to the kitchen and then slid to the ground by the kitchen post. From his position Pablo clearly saw, aside from Vicente Ompad and Angel Libre, Pastor Labutin and Santiago Raynada standing on opposite sides at the shed directly facing the stairs of the house, and Domingo Labutin stationed near the stairway. Lucio Samar was posted beneath the second window facing the trail by the right side of the house. The killings accomplished, Pastor Labutin was heard to remark: "You Simplicio, will not grab land anymore." Then Pastor ordered his son Domingo and Lucio Samar to untie Simplicio Tapulado's pig, and with the pig in tow the group left the scene.

Pablo del Monte's narration of what happened and his identification of the persons he saw in the vicinity of the house at the time are corroborated by Maxima Tapulado, who had arrived a week earlier to visit the family. According to her, she was nursing her baby that evening when she heard a voice calling her deceased father to open up. She saw the double killing right after the door was opened. Even after the victims lay mortally wounded, she did not have the courage to seek safety on the ground because she saw several persons in the immediate vicinity when she peeped through the split bamboo walls of the farmhouse. She identified the herein appellants, thus:

"Q. When you peeped through that crashed (sic) bamboo wall what did you see?

A.

Pastor Labutin, Domingo Labutin, Santiago Raynada, Lucio Samar, Vicente Ompad, Angel Libre.

Q.

Where was Pastor Labutin the first time you saw him when you peeped through that wall?

A. On the ground.

Q. What was he doing?

A. Pastor Labutin spoke, Lucio Samar you get the pig, we will bring it with us.

Q. When did you see this, before or after the shooting?

A. After the shooting.

Q. How about Domingo Labutin, where was he?

A. On the ground.

Q. What was he doing?

A. He and Lucio Samar untied the pig.

Q. How about Santiago Raynada, where was he?

A. In our yard.

Q. What was he doing?

A.

After they untied the pig they moved towards the place of Lucio Samar." (p. 23, t.s.n., hearing of September 10, 1963)

The discharged defendant, Lucio Samar, declared that while he was working on his farm at sitio Inalaran late in the afternoon of May 7, 1962, Pastor Labutin, Vicente Ompad, Angel Libre and one Dominador Bajay arrived and asked him to slaughter his dog, to be eaten as "pulutan" in a drinking spree; that he reluctantly agreed because he was afraid of Vicente Ompad and Angel Libre, who were both carrying firearms; that while the dog was being slaughtered, Vicente Ompad asked Pastor Labutin to buy several bottles of "mallorca," a locally brewed alcoholic drink; that Pastor Labutin and Lucio Samar went over to the store owned by Santiago Raynada, a compadre of Pastor Labutin, and bought the liquor; that they returned to Lucio Samar's farm, this time accompanied by Santiago Raynada and Domingo Labutin, whom they chanced upon at the store; and that it was while they were drinking that the plan to kill Simplicio began to take form, thus:

"Q. While you were drinking what happen(ed)?

A.

Pastor Labutin said: 'Vicente, you kill Pesiong.' (witness referring to Simplicio Tapulado)

Q.

What was the reaction of Vicente Ompad when he was commanded by Pastor Labutin to kill Simplicio Tapulado?

A.

Vicente Ompad, who was by my side, said: 'No, because we have no grudge.' Pastor said: 'if you have no grudge, we have grudge' and Vicente said: 'Even bullets there is no sufficient bullet in this gun.'";

Continuing his testimony, Lucio Samar said that when Pastor Labutin assured Vicente Ompad that he (Pastor) had enough bullets for the purpose the rest of the group said, "if that is the plan, let us go there;" that Lucio showed signs of reluctance, but Vicente Ompad ominously leveled his firearm at him. Lucio substantially affirmed Pablo del Monte's account as to the particular places where the members of the group respectively stationed themselves

at the farmhouse. He also explained why both Pablo del Monte and Maxima Tapulado failed to see the seventh man in the group, one Dominador Bajay. Bajay, according to Samar, preferred to remain unseen because he was related to Simplicio Tapulado, and so hid behind an abaca plant immediately upon his arrival.

The fatal incident could have passed unnoticed by the authorities were it not for the accidental appearance of a Sergeant Exequiel Loreno of the 64th P.C. Company, stationed at Catbalogan. On May 15, 1962 Sergeant Loreno, while passing through the barrio of Parasanon on the way to the town of Villareal, where he had been detailed on investigative patrol, was informed of the double killing in the mountains of Sta. Rita a week earlier. He reported the matter to his commanding officer in Catbalogan and, armed with authority to conduct the necessary investigation, returned to Parasanon, where Pablo del Monte and Maxima Tapulado had temporarily moved for purposes of personal security. Lorenzo questioned them, and they positively pointed to Vicente Ompad, Angel Libre, Pastor Labutin, Domingo Labutin, Lucio Samar and Santiago Raynada as the perpetrators of the double killing. Thereafter the case was filed with the provincial fiscal's office and the suspects, with the exception of Vicente Ompad and Angel Libre, were apprehended upon proper warrants.

The defense of all three appellants is alibi. Pastor Labutin denied complicity, and testified that on May 7, 1962 he, accompanied by his two daughters, left for sitio Dayang, barrio San Isidro, Pinabacadao, Samar, a good eleven (11) kilometers from his farm in sitio Inalaran; that they arrived at sitio Dayang about 8:00 o'clock in the morning; that he and some twenty other persons immediately proceeded to their work of planting palay in one Emeterio Mabingnay's farm, not stopping until sundown; that he learned of the death of Simplicio Tapulado and Dominga del Monte only the next morning when, while passing barrio Parasanon on his way home, heard the people there talking about the double killing.

For his part, Domingo Labutin testified that after taking lunch on May 7, 1962, he loaded several bunches of bananas on his cart and started for barrio Parasanon to deliver them to one Antonio Nablo; that he arrived in Parasanon in the early evening of that day; that because it was already dark he decided to spend the night in the barrio at the house of Antonio Nablo; that he also learned of the incident only the next morning at Nablo's store when Pablo del Monte and Maxima Tapulado came to buy matches and candles and informed Nablo that their parents had been killed the night before; and that after sometime he, Domingo Labutin, started on his way back home and arrived there at about noon of the same day.

Appellant Santiago Raynada's alibi is that he never left his house in sitio Inalaran the whole day of May 7, 1962.

The weakness of alibi as a defense lies in the fact that it is relatively easy of fabrication. It crumbles in the face of positive identification by unimpeached eye-witnesses to the crime. The eye-witnesses in this case passed the test of credibility before the trial court, and our review of the record gives us no reason to rule otherwise. To the said Court they appeared to be ". . . natural and truthful in their behavior, giving quick, frank and straightforward answers to all material questions and an easy and fluent narration of the facts." Indeed, they could hardly have been mistaken as to the identity of the culprits, considering (1) that the latter made no effort to hide their identities and (2) that they were well known to both Pablo del Monte and Maxima Tapulado. In this respect the trial court observed:

"And the defendants are well known to both deceased and their children because they were living around the same vicinity for enough length of time as to be familiar not only of their appearances but also of their voices. Pastor Labutin farmed a land of the deceased; Domingo Labutin is the son of Pastor; Vicente Ompad was from Leyte, living in the house of Pastor Labutin where he was hiding for several months because he was wanted by the law; Angel Libre, another one wanted by the law who was kept under the roof of Pastor Labutin, for no other plausible reason than, like Vicente Ompad, he (Pastor Labutin) could not refuse him for fear of his life; and Santiago Raynada as well as Lucio Samar are distant neighbors in the same locality."

Besides, the alibis given by appellants are intrinsically unworthy of credence. With respect to that Pastor Labutin, the trial court posed the following queries of skepticism:

"It is not strange why Pastor Labutin and his two daughters had to sleep in the house of Emeterio (should be Eleuterio) in sitio Dayang only that evening when the incident happened in Inalaran? Were they really? If so, was it that evening of May 7, 1962? Why (is it that) only (Eleuterio) Mabingnay was called to corroborate his (Pastor Labutin's) alibi? How about his daughters Felicing and Lucing? The wife (Eleuterio)? The others of the many in the rice planting? Could it be that if any of them testified he would say that Pastor Labutin was not at any time in sitio Dayang? Or if he were there that it was not on May 7 or 8, 1962? . . ."

It would indeed have been quite easy for Pastor Labutin to obtain additional corroborative witnesses if it were true that there were about twenty other persons with him that whole day of May 7, 1962. The fact that he presented only one can only show the weakness of his position.

The situation of Domingo Labutin is no better. Antonio Nablo's corroborative testimony is open to serious doubt. On the witness stand Nablo recalled vividly the presence of Domingo Labutin in barrio Parasanon on the night of the killing, and was able to relate in detail the events that transpired at that place and time. Yet he faltered consistently on matters which, by their nature, should be within his intimate knowledge and recollection, such as the birthdays of his two children especially that of his youngest who was, at the time of the trial, a baby of not more than three (3) months.

As for appellant Santiago Raynada, his alibi is the weakest of all because it is absolutely uncorroborated. Besides, being a resident of the same sitio whose house was near that of the victims, Santiago Raynada could have easily participated in the commission of the crime, then returned home and stayed there until the next morning.

We find that the guilt of the appellants has been established beyond doubt. However, the trial court erred in holding them guilty of double murder and imposing a single penalty for both killings upon each of them. Each killing constituted a separate offense, but only the death of Simplicio Tapulado should be attributed to the appellants.

In the first place the two victims were not killed by the same shot or shots, but by separate shots fired by two different persons using two different firearms. (People vs. Ordonio, 82 Phil. 324; People vs. Pardo, 79 Phil. 568; People vs. Burgos, 80 Phil. 58; People vs. Basarain, G.R. L-6690, May 24, 1955.) In the second place, by the prosecution's own evidence the conspiracy among the accused was against Simplicio Tapulado alone. This is evident from Lucio Samar's testimony. Pastor Labutin, who masterminded the killing, told his companions that Simplicio was to be the victim. Nothing was said about Dominga del Monte. Pastor's ire was directed solely against Simplicio, as shown by his parting remark after the shooting: "You Simplicio will not grab land anymore."

The rule is that co-conspirators are liable only for acts done pursuant to the conspiracy. For other acts done outside the scope of their plan and not constituting the necessary and logical consequences of the crime agreed upon, only the actual perpetrator is liable (People vs. de la Cerna, L-20911, October 30, 1967). Here, only Angel Libre should be held responsible for the death of Dominga del Monte.

Simplicio Tapulado's killing was characterized by treachery. It was too sudden and unexpected for him to be able to hide or put up any kind of defense. The crime is therefore properly qualified as murder. The trial court considered nocturnity and abuse of superior strength as aggravating circumstances. We do not agree. There is no evidence that appellants purposely sought nighttime to facilitate the commission of the offense. The fact that Vicente Ompad identified himself and his companions in answer to Simplicio's question and asked the latter to open the door to them negates the idea of the furtiveness and secrecy which otherwise would be afforded by the darkness if they had wanted to take advantage of it. Neither may abuse of superior strength be appreciated against

appellants. There were several of them, it is true, but the consequent superiority in strength was not availed of, nor did it enhance the commission of the crime or contribute any special advantage to the criminals.

Upon the other hand, the trial court correctly considered the circumstance of evident premeditation against appellant Pastor Labutin:

"Evident premeditation was present in the commission. Pascual (should be Pastor) Labutin had planned to liquidate Simplicio Tapulado. The plan could be deduced from the outward circumstances shown from the time he walked with Vicente Ompad and Angel Libre (the triggermen) to the house of Lucio Samar where they caused his co-accused to be drunk, the reason why he caused them to be drunk, the breaking out of his plan to kill the victim to his co-accused at the time when he knew that they were already drunk, his remark that he had grudge against the victim in reply to the comment of Vicente Ompad that he had no ill-feeling against him (victim), his immediate action to supply the ammunition when Vicente Ompad remarked about the lack of it, and his being always near the triggermen at the critical moments when the crime was actually to take place. These circumstances lead to the conclusion that Pastor Labutin carefully planned the means which he considered adequate and effective to carry out the intended commission. He had sufficient time to reflect and allow his conscience to overcome his resolution to kill. That Pastor Labutin acted with known premeditation, is evident indeed."

The same circumstance of evident premeditation cannot be appreciated as to the other appellants, Domingo Labutin and Santiago Raynada. Scarcely two hours separated the initial proposal of Pastor Labutin to kill Simplicio Tapulado from the actual shooting. The time elapsed was too short for cool reflection, especially considering that the proposal was made when these two (2) appellants were more or less in a state of intoxication.

The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from outside the house, his victim was inside. For this circumstance to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetuate the assault from without (People vs. Albar, 86 Phil. 36).

The penalty for murder is reclusion temporal in its maximum period to death. Because of the presence of the two (2) aggravating circumstances of evident premeditation and dwelling with respect to Pastor Labutin without any mitigating circumstance, the maximum penalty of death imposed by the trial court is correct. However, for lack of sufficient votes among the members of this Court to affirm the imposition of said penalty, the same is reduced to reclusion perpetua. With respect to Domingo Labutin and Santiago Raynada, only the aggravating circumstance of dwelling maybe appreciated against them. This circumstance, even if offset by the circumstance of intoxication, which in their case does not appear to be habitual or subsequent to the plan to commit the crime, still justifies the penalty meted out to them in the judgment appealed from.

Regarding appellants' claim that it was error on the part of the trial court to order the discharge of Lucio Samar from the information in order to make him state witness, suffice it to say that "(I)n the discharge of a co-defendant, the court may reasonably be expected to err; but such error in discharging an accused has been held not to be a reversible one. This is upon the principle that such error of the court does not affect the competency and the quality of the testimony of the discharged defendant." (People vs. Jamero, L-19852, July 29, 1968)

WHEREFORE, the judgment appealed from is hereby affirmed with respect to the penalty imposed upon appellants Domingo Labutin and Santiago Raynada, and modified with respect to the penalty imposed upon appellant Pastor Labutin, which is reduced to reclusion perpetua, and further modified by increasing the indemnity adjudged by the lower court to P12,000.00, the same to be paid to the heirs of Simplicio Tapulado. Costs against appellants.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.

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[1] There is no serious controversy that at the time this incident happened, there were six (6) other persons in the farmhouse aside from the victims, namely: Pablo del Monte (a son of Dominga del Monte by her former husband); an old woman named Petronila (mother of Dominga del Monte); Gabriel and Irene; Maxima Tapulado (a daughter of Simplicio Tapulado by his former wife); and the latter's baby, these two having arrived a week earlier for a visit.

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