

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CIPRIANO MACABENTA AND FLORENCIO MACABENTA,
DEFENDANTS. CIPRIANO MACABENTA, DEFENDANT AND
APPELLANT.**

G.R. No. L-9732. August 27, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Cipriano Macabenta and Florencio Macabenta were charged in the Court of First Instance of Samar with the crime of murder (crim. case No. 3508). Upon arraignment they entered a plea of not guilty. On motion of the prosecution, the information as to Florencio Macabenta was dismissed for lack of sufficient evidence. After trial the Court found Cipriano Macabenta guilty as charged and, setting off an aggravating against a mitigating circumstance attending the commission of the crime, sentenced him to suffer reclusion perpetua, civil interdiction for life and perpetual absolute disqualification; to indemnify the heirs of the deceased in the sum of P5,000; and to pay one-half of the costs. He has appealed.

At about 7:00 o'clock in the evening of 27 August 1954, Herculano Pabroalinan who was on his way home coming from that of his brother in Casang-an, upon reaching the road leading to Villareal at barrio Bangon, municipality of Pinabacdao, province of Samar, heard the footsteps of people running towards him. He turned about and saw Antonio Cabrillas followed by Florencio Macabenta. He asked what was the matter and Antonio answered "Nothing." After they had passed, Herculano continued his way home. Then he heard Antonio say "tawo" (man). From a distance of less than three brazas he saw Cipriano Macabenta stab Antonio Cabrillas on the left face. Antonio fell down and Cipriano ran towards Bangon. Herculano went home deviating from the road for fear that he might be stabbed also. When he reached home he told his wife of the incident he had seen. The next day he went to the market to buy camotes (sweet potatoes). On the way he passed by the house of Benito Cabrillas, father of Antonio, whom he asked if he knew who had killed Antonio, who he thought was already dead. He saw Paciencia Cabrillas, a daughter of Benito, and learned that Antonio was also there.

A little while after the incident, as Teodoro Dizon was by the window of his house in Bangon, he saw Cipriano Macabenta pass by walking at a fast pace followed by Herculano Pabroalinan. Afterwards he heard people talking that a man had been wounded at the bridge in Bangon. Florencio Macabenta also passed by whom Teodoro asked what happened to which question Florencio answered that "Antonio Cabrillas was stabbed by Cipriano Macabenta." Shortly afterwards, Benito Cabrillas and his daughter passed by going towards the bridge. Benito Cabrillas came back and asked Teodoro to help him bring his son to his house. When Teodoro reached the scene, he asked Antonio who was his assailant but the latter could not talk. Antonio was brought to his father's house.

At about 7:00 o'clock in the evening of 27 August 1954, while Paciencia Cabrillas and her mother and father were taking their dinner, Florencio Macabenta arrived at their house and told them that her brother Antonio had been wounded by Cipriano Macabenta. She and her father hurried to succor and help Antonio whom they found at the

bridge in Bangon lying down sidewise with a wound on his left face. She sought the aid of Teodoro Dizon to carry her brother to their house. When she asked who had wounded him, Antonio could not talk. The next morning they brought Antonio to the Samar Provincial Hospital where he was given medical treatment. Notwithstanding the treatment, Antonio died on 11 October 1954.

Dr. Pedro G. Asinas, chief of the Samar Provincial Hospital, testified that the deceased was admitted in the hospital on 28 August 1954 and treated for a wound running from the left side or temporal region to the half upper lip about seven inches long caused by a sharp instrument; and that early in the morning of 11 October 1954 the victim died of acute meningitis, secondary to the infected wound that he had sustained (Exhibit B).

Attorney Vicente Macabidang, a notary public, testified that Antonio Cabrillas subscribed and swore before him an affidavit dated 12 September 1954 (Exhibit A), stating that it was Cipriano Macabenta who had wounded him with a bolo in the evening of 27 August 1954.

The appellant denies having inflicted the fatal wound upon Antonio Cabrillas that caused his death. He testifies that in the evening of 27 August 1954 he was at the house of Jose Macabenta drinking with Antonio, Florencio Macabenta, Manuel Cacutara, Vicente Cabrales and the owner of the house; that at about 7:00 o'clock in the evening, Antonio took leave from them to meet and box some people going to the market; that Vicente Cabrales tried to dissuade Antonio from doing what he intended to do but the latter tried to hit Vicente for dissuading him; that after a while Antonio returned to the house of Jose Macabenta wounded and called for the appellant saying "Cipre, I am wounded"; that he asked Antonio who wounded him, but the latter said that he did not know who was his assailant; that upon advice of Vicente Cabrales, the appellant, Manuel Cacutara and Florencio Macabenta brought Antonio to his house in Bañon; that on the way Antonio fainted at the bridge; that Florencio Macabenta went to the victim's house and informed his parents of the incident, while the appellant held Antonio in his arms; that later on Florencio Macabenta returned to the place with Paciencia Cabrillas, Antonio's sister; that Paciencia took the lamp of Paterno Raquel and requested the appellant to ask the aid of other people to carry Antonio; that Gregorio Nabong arrived and helped him carry Antonio; that on their way to the victim's house, Paciencia stopped at Hermogenes Gacuma's house and requested him to treat Antonio to stop the bleeding of his wound but Hermogenes' wife refused to allow them to go up their house; that Hermogenes Gacuma went with them to Antonio's house and there treated him by applying chewed beetle nuts to his wound; that as the bleeding did not completely stop Paciencia fetched Zosimo Ebal to treat the wound; that the following morning he and Paciencia brought Antonio to the Samar Provincial Hospital; that he returned home to Bangon the following morning; that one day after coming from the sea to fish, his mother informed him that Antonio had died and that he would be buried at Pinabacdao; that he tried to attend his funeral but upon reaching Cuinsang-an the chief of police arrested him and put him in the municipal jail of Pinabacdao.

The appellant intimates that the victim was stabbed by an unknown assailant. But the clear, definite and positive testimony of Herculano Pabroalanan that he saw the appellant stab the victim in the evening of 27 August 1954 refutes the appellant's defense. The witness saw the appellant stab the victim from a distance of less than three brazas during a starry and bright night. This and the fact that he knew the appellant since childhood, they being from the same barrio, preclude the possibility that the witness could have been mistaken in identifying the appellant as the victim's assailant. The testimony of Victoriano Gacuma that Herculano Pabroalanan was with him out into the sea fishing in the evening of 27 August 1954, and thus could not have witnessed the incident, cannot be given credence. He himself testified that being ignorant and unlettered he does not know the months of the year; that he knows a certain date only by information furnished by another; and that he was told by his children that it was on 27 August 1954 that he and Herculano were together fishing. On the other hand, no motive has been shown why Herculano would testify falsely against the appellant. The fact that Herculano's testimony does not

jibe with the testimony of the other witnesses concerning small details does not detract weight and value from his testimony. On the contrary it strengthens its probative value because it shows that they were not coached or instructed on what to testify.

Florencio Macabenta's answer to Teodoro Dizon's question what the commotion was all about, after the incident, as he was passing in front of Teodoro's house on his way to notify Benito Cabrillas of it, to the effect that "Antonio Cabrillas was stabbed by Cipriano Macabenta," and the statement of the same witness informing the family of the victim that Antonio Cabrillas was wounded by Cipriano Macabenta, are admissible in evidence against the appellant for they are part of the *res gestae*.^[1] Counsel de oficio asks why Florencio Macabenta was not presented by the prosecution as its witness to prove the foregoing utterances imputed to him and makes capital out of it. The reason is obvious. The prosecution cannot be expected to present a witness hostile to its cause. Florencio Macabenta had been indicted for murder with the appellant and although the case against him was temporarily dismissed for lack of sufficient evidence upon motion of the prosecution, it was to be expected that he would make common cause with the appellant, his brother.

Counsel de oficio assails the probative value of the affidavit (Exhibit A) executed by the victim on 12 September 1954, where he points to the appellant: as *hid assailant*, because it "does not state that, what the affiants (affiant) declare (declares) is the truth and the whole truth," and that it "was executed several days after the *allege* (alleged) incident, thus giving the deceased sufficient time to contrive and/or misrepresent facts contrary to what really happens (happened)." Granting that the affidavit in question has no probative value, still the evidence on record proving the appellant's guilt beyond reasonable doubt remains undented.

The fact that the motive of the appellant in committing the crime imputed to him has not been established by the prosecution is not sufficient reason for acquitting the appellant. True, the appellant's testimony that he and the victim were friends remains un rebutted. But, as found by the trial court, he suddenly and treacherously struck the victim from behind without affording him an opportunity to defend himself. It is, therefore, possible that the appellant had intended another for his victim. Nevertheless, that does not absolve him from criminal liability for the natural and logical consequences of his act.

The prosecution failed to prove evident premeditation. Neither had it proved that the appellant sought purposely night time to commit the offense. However, treachery—in that the victim was suddenly struck from behind—being present, the crime committed by the appellant is murder. But considering that he and the victim were friends; that no motive could be imputed to him in committing the offense; and that the wound inflicted was not upon a vital part of the body, a mitigating circumstance that he had not intended to commit so grave a crime as the one he had committed may be considered in his favor. The appellant has committed the crime of murder, punishable by reclusion temporal in its maximum period to death. In view of the presence of one mitigating circumstance, the penalty should be imposed in its minimum period, which is from 17 years, 4 months and 1 day to 20 years., Applying the Indeterminate Sentence Law, the minimum penalty that should be imposed is that next lower to that prescribed by the Revised Penal Code for the offense, which is from 10 years and 1 day of prision mayor to 17 years and 4 months of reclusion temporal and the maximum is from 17 years, 4 months and 1 day to 20 years of reclusion temporal, the accessories of the law, to indemnify the heirs of the deceased in the sum of P6,000 and to pay one-half of the costs.

As thus modified, the judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Barrera, JJ., concur.

[1] Section 33, Rule 123.

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