

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CIPRIANO CAMAY, DEFENDANT AND APPELLANT.***G. R. No. L-3400. July 24, 1951*

Ponente: JUGO, J.

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Cipriano Camay was accused before the Court of First Instance of Cebu of the crime of multiple murder, for the death of Rosario Suan, Dominador Sollano, and Zosimo Mina. After trial he was found guilty and sentenced, for each of the victims, to the indeterminate penalty of from seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as minimum, to reclusion perpetua, as maximum, to be served successively, to indemnify the families of each of the deceased Rosario Suan, Dominador Sollano, and Zosimo Mina in the sum of P5,000, and to pay the costs. He appealed.

The evidence of record discloses that sometime during the last week of July, 1948, Rosario Suan, a landowner of Tindog, Medellin, Cebu, together with her son Dominador Sollano, Natividad Noynay, and Zosimo Mina, left said town for San Isidro, Leyte, to purchase a sailboat, taking with her some personal belongings and money. Not long after arriving at San Isidro, Leyte, Rosario Suan bought a sail-boat, paying P450 for it. She and her companions made preparations for their intended voyage to Masbate.

While at San Isidro, Leyte, Rosario Suan engaged the services of two men from said municipality to be members of the crew of said sailboat. Coincidentally, Cipriano Camay, who was in said town and looking for transportation for Masbate, was met by Dominador Sollano who indicated to him their need for a skipper. Cipriano Camay was hired by Rosario Suan as a helmsman.

When the preparations were completed, on August 3, 1948, at about nine o'clock in the morning, the group sailed from San Isidro, Leyte, for Masbate, stopping sometime later at barrio Daha, San Isidro, Leyte, to purchase corn. After the corn had been brought to the sailboat, the group proceeded with the voyage. After a huddle between the accused and his two companions, at about three o'clock in the morning of August 4, 1948, while the sailboat was near Daanbantayan, Cebu, Natividad Noynay, who was aroused from her sleep by a commotion in the sailboat, saw Cipriano Camay stab Zosimo Mina in the abdomen with a dagger and one of his two companions stab the victim below the nipple, causing his death. The corpse was just left on deck. Then the appellant stabbed Dominador Sollano in the abdomen while his companions wounded him in the forehead, as a result of which the victim fell into the sea never to be seen again. The appellant then stabbed Rosario Suan in the thigh, while his companions stabbed her below the nipple, and she died from those wounds. The appellant then tied the bodies of Mina and Suan together, attached a sack of corn to them as a weight, and dumped them into the sea. The assailants then turned their attention to Natividad Noynay, but on her pleas that she was poor and that they could not get anything from her, her life was spared.

The malefactors then returned to San Isidro, Leyte. One of the members of the crew landed. The appellant left the boat, taking with him the personal belongings of the three victims, including the money of Rosario Suan. The

other member of the crew took Natividad Noynay to Palompon, where she was released. Noynay, immediately after her release, reported the matter to the municipal authorities of Palompon and the following day sent a telegram to Felicísimo Sollano, another son of Rosario Suan, informing him of the tragic event. Felicísimo Sollano immediately sought Noynay and brought her to Bogó, Cebu, where the matter was again reported to the authorities.

Three weeks after the killing, that is, on or about August 22, 1948, the appellant was arrested while on board a truck at Curva, Medellín, Cebu. The personal belongings of the victims were found in his possession, kept in a bag.

The appellant testified that he did not take part in the killing, attributing the crime to the two other members of the crew who, up to the time of the trial, had not been apprehended. He further stated that he could not protest nor aid the victims as he was afraid of the assailants. This uncorroborated testimony is belied by the positive evidence of Natividad Noynay and the fact that the belongings of the victims were found in his possession when he was arrested. If he did not have a guilty conscience, he would have reported the matter to the authorities when he landed at San Isidro or notified the relatives of Rosario Suan when he stayed for a week at the house of his cousin's master at Malingin, Bogó, Cebu.

With regard to the circumstances of the case, it appears that the crime was committed with treachery.

The sole eyewitness Natividad Noynay did not state the relative positions of the aggressors and the victims when the attacks were made. Her statement that the deceased were stabbed in the abdomen might show that the attacks were made in front. However, the fact that three armed persons by a concerted action killed the victims one by one, in a surprise attack at about three o'clock in the morning when said victims must have been unprepared for any aggression, constitutes treachery. The other circumstances such as abuse of superior strength, nighttime, etc., are absorbed in the qualifying circumstance of treachery. Premeditation has not been charged nor proven. The generic aggravating circumstance of uninhabited place may be considered; but for lack of sufficient number of votes, the death penalty is not imposed.

In view of the foregoing, the judgment appealed from is modified by imposing upon the defendant the penalty of reclusión perpetua, for each of the three deceased, with the accessory penalties of the law, to be served successively but not to exceed forty years, to indemnify the heirs of each of the deceased in the amount of P6,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. It is so ordered.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

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