

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME CLORES AND MARIO HOLIDAY, DEFENDANTS-APPELLANTS.

G.R. No. L-38398. September 30, 1980

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Automatic review of the decision of the Circuit Criminal Court in Rizal imposing the death penalty on Jaime Clores and Mario Holiday for the crime of murder and attempted murder as a complex crime under Article 48 of the Revised Penal Code, to indemnify the heirs of the victim, Bayani Salido, in the amount of P10,000.00, to pay moral damages in the sum of P5,000.00, and another P500.00 as exemplary damages and to pay proportionate costs.

When the appellants were arraigned on June 9, 1973, Jaime Clores pleaded guilty while Mario Holiday pleaded not guilty. However, the trial court, guided, as it so stated in its decision, by *People vs. Flores*, ordered the mandatory presentation of evidence.

From the evidence of the prosecution, it appears that, quoting from the People's brief:

"On December 20, 1971, about 12:55 o'clock in the afternoon, accused Jaime Clores and Mario Holiday, who were both patients in Ward VI of the New Bilibid Prisons Hospital, entered Ward V, the adjoining ward where the victim, Bayani Salido, was confined and where the complaining witness, Benito Satorre, was assigned as attendant-helper. (pp. 3-4, t.s.n., Dec. 5, 1973; p. 5, t.s.n., Nov. 28, 1973). The deceased, Bayani Salido, was then sitting down and varnishing his project, a barracuda (p. 8, t.s.n., Dec. 5, 1973). His back was towards Jaime Clores. With this relative position, Clores walked towards Salido and suddenly stabbed him at the shoulder (p. 9, id.).

"Almost simultaneously, accused Mario Holiday approached Benito Satorre who was then lying on his right side on his "tarima" (bed) and stabbed him twice (id.). Satorre struck the base of the weapon with a karate blow and moved to his left side, slid down the "tarima", and got hold of a piece of wood with which to defend himself (p. 10, id.). Seeing Satorre armed with a piece of wood, Holiday stepped backward.

"After the stabbing, Clores and Holiday ran towards Ward VI, leaving behind them Bayani Salido. Dr. Ricardo de Vera, a physician at the NBP heard the commotion and he went to investigate the same. He saw Bayani Salido sprawled on the hallway, his clothing full of blood. He immediately examined the victim and upon finding him pulseless, he ordered that he be brought to the emergency room for resuscitation. Told that the assailant ran to Ward VI, Dr. de Vera proceeded thereto and found Philippine Constabulary men already there inquiring about the stabbing incident. Clores surrendered himself and the weapon which he used in the stabbing to the PC men (pp. 3-4, t.s.n., Nov. 28, 1973; Exh. C).

"Immediately after the incident, Satorre gave his written statement to the prison authorities (p. 12, t.s.n., Dec. 5, 1973; Exh. F-5). In the course of the taking of his statement, Satorre pointed to Holiday and Clores, who were then both present, as the assailants (pp. 13-15, id.). Aside from Satorre, Melencio Canin, another eyewitness to the stabbing incident, also gave voluntarily his written statement to the investigators of the New

Bilibid Prisons (p. 3, t.s.n., Nov. 27, 1973; Exh. F). Clores also gave his statement voluntarily (pp. 3-5, id.; Exh. E). Holiday likewise gave a written statement to the investigators (Exh. G).

"The cause of death of the victim, Bayani Salido, was the fatal wound inflicted by Clores on the portion of the left chest, very near the shoulder (pp. 6-7, t.s.n., Aug. 4, 1973; Exhs. B-1 & B-1-a)."

According to Mario Holiday, who admitted that he belonged to the OXO gang, as did the deceased, Bayani Salido, his co-appellant, Jaime Clores belonged to OXO-BCG (Batang City Jail), but Benito Satorre did not belong to any gang. He did not talk to Jaime Clores in the morning of the incident, but after lunch time, he saw Clores gambling in Ward 5. He too was gambling. Then he heard a commotion somewhere in the toilet. He saw Clores spitting blood, and told him to go home. After he himself had won in gambling, he approached Benito Satorre who was sleeping in his "tarima", to buy cigarettes, as he sold coffee and cigarettes there. He woke up Satorre by moving his foot. He was half-awake when there was a commotion. Just then, Holiday saw a person with a "matalas", so he pulled out his own "matalas" with which to defend himself, and back-tracked towards the door. He then saw Satorre holding a "pamalo". He ran away not wishing to be involved. He denied having attempted or tried to kill Satorre. If he had such intention, he would have been able to do so easily.

He claimed that his supposed confession (Exh. E) was extracted by means of force. He was given karate blows by dela Cuesta, delas Alas and by another in civilian clothes. He signed his statement not knowing the contents thereof and only on the day following December 21, 1971. He was treated by Dra. Achazo Ocampo for a cut on the head inflicted with a "balila," a piece of square wood. He also saw Jaime Clores beaten up by delas Alas which made him unconscious, with blood oozing from his nose and mouth. Delas Alas was forcing Clores to point to Jaime Jose as the mastermind of the killing. He denied having conspired with Jaime Clores, nor did he see Melencio Canin at the time of the stabbing affray. He did not see the actual stabbing of Salido by Jaime Clores, but he saw Clores surrender to the PC in Ward 6.

Jaime Clores, taking the stand, testified that he went to Ward 5 to gamble and he won. Bayani Salido took his money and gave him fist blows which made him spit blood. He went back to his ward to take his "matalas" under his "tarima." He re-turned to Ward 6, and while Salido was within the gambling circle, not making a barrakuda as the prosecution claims, he approached Salido from the front and attacked him, the latter trying to parry the blow with his right hand, and then he stabbed the victim. He went back to his ward, and when the PC came, he admitted having stabbed the deceased and then sur-rendered himself and his weapon. Some employees also came suddenly and beat him. While his statement was being taken during the investigation with dela Cuesta conducting the same, and delas Alas taking down the statement, the latter beat him into unconsciousness. He was beaten up repeatedly in an effort to force him to say that someone ordered him to kill Salido. When he recovered consciousness he was already in the hospital where he stayed for three days. He was not with Holiday when he stabbed Salido. He denied having told delas Alas that Holiday was with him as a companion when he stabbed Salido, or that Jaime Jose ordered him to kill the victim.

Dra. Zoraida Achazo Ocampo testified that Jaime Clores was brought to the hospital for physical injuries, suffering a swelling on his elbow which would last for 10 to 15 days, and caused by a blow with a blunt instrument. This testimony of Dra. Ocampo is a very strong proof of violence having been employed to extract the confessions of both appellants, plainly belying the testimony of state witness dela Cuesta who investi-gated Jaime Clores that the statement of the latter was volun-tarily given to him. Significantly, he gave no testimony on whether the statement of Holiday was also voluntary. But Holiday's testimony, on questioning by the trial court, leaves no reason for doubt that he too was maltreated with "karate" blows and was treated for a cut on the head inflicted with a "balila" or a "pamalo." This must be the reason why he was made to sign his statement in the afternoon of the following day. Even more significant, is the non-presentation of delas Alas to rebut the testimony

of both appellants that it was he who beat Jaime Clores into unconsciousness, with blood coming out from his mouth and nose. The beating came most severely when Clores refused to state that Jaime Jose was the one who ordered the killing. The statement that Jaime Jose was the mastermind was not true. It is, therefore not strange that Jaime Jose was not charged with appellants, further showing that the investigators knew that the statements implicating him were merely forced.

Appellants had an easily believable explanation for not denouncing the investigators who maltreated them. They had no visitors through whom they could make proper complaint, and that while it was the plan of Holiday at least to file a complaint in the Fiscal's office, they were not investigated any-more by Fiscal Guerrero (t.s.n., pp. 52-53, 63 December 5, 1973). Jaime Clores, for his part, said that nothing will happen even if he had complained. In any case, the evidence as to Clores maltreatment is overwhelming, if only from the fact of his hospitalization for three days, and his signing his statement as many days or more, after it was taken down.

Appellants' assignment of error regarding the admission in evidence of their statements despite their proven involuntariness must therefore, be sustained. So also the assignment of error with respect to the admission of the statement of one Melencio Canin (Exhibit F) who was not presented as a witness to be cross-examined on his supposed statement, which the trial court, nevertheless, considered, along with the other testimonial evidence of the prosecution in sentencing the appellants to the extreme penalty of death.

With the supposed confessions of appellants excluded for having been extorted by means of violence,[1] there would be an utter insufficiency of evidence of conspiracy which the trial court found to exist with the observation that the two accused "have agreed to kill anybody or somebody who belonged to their rival gang", based on no other evidence than their supposed confession. The manner the killing was done hardly suggests gang rivalry as the motive thereof. Such a motive would manifest itself usually in a more massive encounter or riot with a greater number of combatants in each rival group as is the true fashion of a gang war. Moreover, one of the two victims, as alleged in the information, Benito Satorre, does not belong to any gang. If there had been a previous agreement between the two appellants to kill anyone belonging to the rival gang, they should have picked out with definiteness their intended victims of whom they were certain belonged to the rival gang. State witness Satorre's story in which Holiday is supposed to have wakened him up first before striking him with a knife, but failed to inflict even a scratch, appears fantastically untrue. If Holiday had any homicidal intent as is pictured of him, and if he was in conspiracy with Jaime Clores who confessedly stabbed the deceased Salido, he could not have so miserably failed in his intent of killing the victim assigned to him in the devilish conspiracy, in contrast to how his co-conspirator Clores was so successful, despite that the latter was sickly and perhaps physically weaker than Holiday, and the victim of the latter was asleep lying in bed, while the deceased was wide-awake sitting in a squatting position.

Excluding the supposed confessions of appellants, the testimony of the only eye-witness to the incident, Benito Satorre, does not make out a picture that would prove conspiracy. He could not even give any reason why Holiday would want to stab him, not being a gang member, or why Clores stabbed Salido. Satorre claims to have seen Clores stab Salido while, at the same instance, Holiday was allegedly stabbing him twice. He did not testify to seeing appellants enter the ward where he was, or how they entered. It is only in the statement of Melencio Canin (Exh. F) where the appellants are alleged to have entered the ward, but they took different directions from the doorway -- Clores towards Salido, Holiday towards Satorre. Aside from the fact that this statement of Canin should also be excluded because, the declarant was not presented as a witness and was therefore not confronted by appellants nor cross-examined on his statement, the acts attributed therein to appellants would be insufficient to prove conspiracy, even if given the assumption of truth. If there had been conspiracy, both appellants would have concertedly attacked Salido first, before turning to another victim of the same gang, also concertedly. But

this other victim was neither a gang member nor was he even scathed.

Moreover, the testimony of Holiday that he did not attack Satorre is more believable than Satorre's claim to the contrary. In the first place, there was no reason, as Satorre himself admitted ignorance of any, why he should be attacked since he was not a gang member. If Holiday wanted to attack him, and since Satorre was sleeping, how could he fail as he did to inflict even a scratch on the unsuspecting victim? What seems evident is that from the stabbing of Salido by Clores, and with Holiday also with him approaching Satorre, a gang war was imagined by the prison investigators to have taken place, and so this is what the supposed confessions of the appellants was made to reveal, with a supposed mastermind in the person of Jaime Jose being falsely involved. Hence, some prison employees even laid hands on appellants in their anger that they (appellants) had waged a gang war, in defiance of the strict discipline which it is the responsibility of the prison authorities to enforce.

The fact is that the stabbing was motivated by a strictly personal reason, particularly on the part of Jaime Clores, as his testimony would reveal, thus excluding the possibility of conspiracy with Holiday who had no motive to attack Salido, much less Satorre. According to Clores, after winning in gambling, Salido boxed him on the chest to get his money, causing him to spit blood. He went to his ward, got his "matalas" under his bed, then went back to stab Salido while the latter was squatting and gambling. Clores went back to his ward where the PC arrived, and to whom he surrendered himself with his weapon.

The Solicitor General quoted from the testimony of Clores which are mostly one-word answers to very leading questions of the trial court (pp. 8-10, Appellee's brief) apparently to prove treachery and evident premeditation. With Clores already tired and weary on the witness stand when the trial judge took over with long and leading questions, We are not persuaded nor convinced that Clores' responses to the court's questions were the unvarnished truth, more than the earlier portion of his testimony which appears to Us more truthful.

With respect to Holiday, as already intimated, he had no reason to attack Satorre as the latter himself declared he knew of no reason for his being assaulted. If Holiday had wanted to stab Satorre, he could have easily done so since Satorre was lying down asleep, instead of waking up first his intended victim, as the latter so declared. But not even a scratch was inflicted on Satorre. We find Holiday's testimony of having merely approached Satorre to buy cigarettes as more credible than Satorre's story of having been attacked by Holiday with a "matalas" but was totally unhurt. The finding of the trial court that the testimony of the prosecution witnesses are "more logical and unbiased" is tainted with error and misapprehension. A similar error is revealed by the trial court's evaluation of Clores' version as one of self-defense which it is not. Clores merely gave the reason why he stabbed Salido who had given a blow on his chest. He went back to his ward and took his "matalas" and then went again to where Salido was squatting and gambling and stabbed the latter. With these facts, Clores could not be said to have intended to plead self-defense as the trial court said he did. When he returned from the ward to stab Salido, he was the aggressor. Clores never sought acquittal, as he pleaded guilty from the start, but when the prosecution presented its evidence, specially his supposed extra-judicial confession, he had to give his own testimony as to how the crime was committed, one which vividly and materially differed from his supposed confession which had already been shown to be plain extortion.

Quite convinced that it is the testimony of the appellants that is more credible, with Our finding of truth in their allegation of violence in the extraction of their supposed extra-judicial confessions, We have to rule out treachery in the stabbing which, according to Clores, was made frontally and not from behind as Satorre so declared. Satorre was sleeping and he was awakened by Holiday. He declared that at the very time that he was attacked, he saw Clores stab Salido, clearly an unreliable testimony, for how could he see how Salido was stabbed while he was busy defending himself from the assault of Holiday? The location of the wound on the chest, and wounds on the left forearm and left wrist of the deceased also attest more to an attack from the front of the victim,

such that treachery can not be said to have been established beyond doubt, as it must have to be, to qualify the killing as murder.[2]

Likewise, from the testimony of Clores, evident pre-meditation must be ruled out. There was no lapse of time during which he meditated on the consequences of his act, and hanged on to his determination to commit the crime.[3] The trial court made no finding with respect to this qualifying circumstance as alleged in the information. What it did find, and palpably in error, is that the crimes charged were a complex crime and so, under Act. 48 of the Revised Penal Code, the maximum penalty of murder as the more serious crime, should be imposed. The Solicitor General agrees that the crimes charged do not constitute a single complex crime.

Without any qualifying circumstance, the killing of Salido by appellant Clores would be simple homicide. Without conspiracy, he alone is liable therefor, Holiday not having shown beyond doubt, to have joined in attacking the deceased. His alleged assault against Satorre with two strokes to stab him for which the crime of attempted murder was charged, has neither been proved beyond reasonable doubt. Accordingly, Holiday, is entitled to an acquittal.

WHEREFORE, the judgment of the trial court should be modified so as to find Jaime Clores guilty of homicide only, not murder as charged, for the killing of Bayani Salido, with the aggravating circumstance of serving sentence when the crime was committed (People vs. Layson, 30 SCRA 92) calling for the imposition of the maximum of the penalty prescribed for the new offense (People vs. Bautista, 65 SCRA 460). Accordingly, he shall be, as he is hereby sentenced, to an indeterminate sentence of from 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum. The indemnity for the heirs of the deceased is hereby also raised from P10,000.00 to P12,000.00 (People vs. Pantoja, 25 SCRA 468). He is hereby acquitted of the charge of attempted murder of Benito Satorre.

Appellant Mario Holiday is, likewise, hereby acquitted of the crime of murder and attempted murder with which he is charged, with costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and Melencio-Herrera, JJ., concur.

Barredo, J., concurs in the result.

Aquino, J., took no part.

[1] People vs. Buscato, 74 SCRA 30; People vs. Francisco, 74 SCRA 158; People vs. Urro, 44 SCRA 473.

[2] People vs. Balmaceda, 87 SCRA 94; People vs. Santos, 85 SCRA 630; People vs. Marcina, 77 SCRA 238.

[3] People v. Santos, 85 SCRA 630; People v. Tan, 73 SCRA 288; People v. Lim, 71 SCRA 249.

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