

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CARLOS MELENDRES, ANTONIO GERODIAS AND SOFRONIO
GONZALES, DEFENDANTS-APPELLANTS.**

G.R. No. L-38095. August 10, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Automatic review of the decision of the Circuit Criminal Court, Pasig, Rizal, in CCC-VII-1226 RIZAL, convicting CARLOS MELENDRES, ANTONIO GERODIAS and SOFRONIO GONZALES of murder and frustrated murder, for the death of Angel Montero and the serious wounding of Aniano Catipay, and imposing on them the death penalty for the murder.

At about 4:00 o'clock in the afternoon of September 28, 1971, a stabbing took place at Brigade 2-A of the New Bilibid Prison in Muntinlupa, Rizal. Aniano Catipay and Angel Montero were assaulted inside Cell No. 1 by their fellow inmates who belonged to the OXO-KKK gang. Angel Montero died near the door. The necropsy report shows that he sustained 9 stab wounds, 4 of which were fatal. Dr. Ernesto Brion, NBI medico-legal expert, testified that the stab wounds could have been inflicted with any one of the improvised bladed weapons on exhibit (Exhibits "B", "F", and "G") or all of them used simultaneously. Aniano Catipay survived despite 11 stab wounds, the wound on his abdomen being almost fatal as it caused multiple perforations in the small intestine. Were it not for the immediate exploratory surgery performed on him by Dr. Ricardo de Vera (of the NBP Hospital), he would have died of peritonitis and hemorrhage.

In the investigation conducted by NBP guard-investigator, Primitivo Arias, immediately after the incident, Nimrod Egonia, another inmate, disclosed that he witnessed the stabbing of Catipay and Montero. He pointed at Carlos Melendres alias "Jr. Blackie", Rodolfo Molina alias "Bilat," Antonio Gerodias alias "Demonyo," and Sofronio Gonzales alias "Ponyong", as the assailants. Later, he executed an affidavit (Exhibit "K") affirming what he had said to Primitivo Arias. The four were then in the prison hospital, having been injured when they resisted the prison guards who sub-dued them after the incident. However, according to Arias he was able to interview Sofronio Gonzales who admitted verbally his participation in the stabbing. On November 22, 1971, Primitivo Arias investigated these four suspects who executed their respective affidavits (Exhibit "G" for Rodolfo Molina, Exhibit "F" for Carlos Melendres, Exhibit "H" for Antonio Gerodias, and Exhibit "I" for Sofronio Gonzales).

Whereupon, the following information was filed:

"The undersigned Special Prosecutor, by authority of Administrative Order No. 22, series of 1971, of the Secretary of Justice, hereby accuses CARLOS MELENDRES, No. 52492-P; RODOLFO MOLINA, No. 49198-P; ANTONIO GERODIAS, No. 56618-P; and SOFRONIO GONZALES, No. 40631-P, all prisoners confined at the New Bilibid Prison, Muntinlupa, Rizal, of having committed the crime of MURDER, in violation of Article 248 of the Revised Penal Code, committed as follows:

"That on or about September 28, 1971, in the New Bilibid Prison, Muntinlupa, Rizal, Philippines, and within

the jurisdiction of this Honorable Court, the said accused, while then serving sentences in the said institution, conspiring, confederating, acting together and mutually helping each other, with intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and stab Angel Montero, No. 54319-P and Aniano Catipay, No. 61469-P, all convicted prisoners confined in the said institution, thereby inflicting upon Angel Montero, multiple stab wounds in the different parts of his body, which wounds directly produced his death, and simul-taneously inflicting upon Aniano Catipay, stab wounds, thus performing all the acts of execution which would have produced the crime of Murder as a consequence thereof but nevertheless, did not produce it by reason of causes independent of their will, that is by the timely medical assistance extended by the New Bilibid Prison Hospital."

Arraigned on October 21, 1972, the accused pleaded not guilty. Rodolfo Molina alias "Bilat" died on March 12, 1973, in the course of the trial.

After trial, the Circuit Criminal Court rendered the decision of January 18, 1974, with the following dispositive portion:

"WHEREFORE, finding the accused, Carlos Melendres, Antonio Gerodias and Sofronio Gonzales, GUILTY, beyond reasonable doubt, of the crime of Murder, as defined under Article 248 of the Revised Penal Code, as charged in the information, the Court hereby sentences them to suffer the penalty of DEATH; to indemnify the heirs of the victim the amount of P10,000.00, jointly and severally; to pay moral damages in the amount of P5,000.00 and another P5,000.00, as exemplary damages, jointly and severally; and to pay their proportionate shares of the costs.

"Likewise, finding the accused, Sofronio Gonzales, Carlos Melendres, and Antonio Gerodias, GUILTY, beyond reasonable doubt, of the crime of Frustrated Murder, as defined under Article 250 of the Revised Penal Code, in relation to Article 248 thereto, as charged in the information, the Court hereby sentences each one of them to suffer the penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor, as minimum to SEVENTEEN (17) YEARS and FOUR MONTHS of prision mayor, as maximum; to indemnify the heirs of the offended party the amount of P5,000.00; to pay moral damages in the amount of P3,000.00, and another P3,000.00 as exemplary damages, jointly and severally, and to pay their proportionate shares of the costs."

For this review, Melendres, Gerodias and Gonzales through counsel de oficio, point as errors, the trial court's finding that they killed Montero and seriously wounded Catipay, or what amounts to the same thing, that the guilt of the accused had been proved beyond reasonable doubt. And, arguing on the assumption that the crime charged had been committed, it is asserted that the death penalty should not have been imposed. However, a scrupulous scrutiny of the records discloses no circumstance or fact of substance which could justify a reversal of the trial court's finding. On the contrary, such finding is amply supported by clear, convincing and conclusive evidence which allows no reasonable doubt as to the participation of the accused-appellants in the crimes imputed to them.

During the trial, Carlos Melendres admitted having stabbed Aniano Catipay, but denied having stabbed Angel Montero. He affirmed the execution of his affidavit dated November 22, 1971, Exhibit "F", where-in he admitted the stabbing of Catipay and Montero, but claimed that he admitted the stabbing of Montero because he was afraid that if he did not he would be harmed by the prison guards. Antonio Gerodias and Sofronio Gonzales, also affirmed the execution of their respective affidavits both dated November 22, 1971, (Exhibits "H" and "I") wherein they disowned any part in the stabbing incident.

Aniano Catipay positively recognized and identified those who attacked him and Montero. He named them as "Rodias" (Antonio Gerodias), "Ponyong" (Sofronio Gonzales), "Bilat" (the deceased Rodolfo Molina) and "Blackie" (Carlos Melendres). Referring to "Rodias" and "Ponyong" he pointed at two persons who answered by the names of Antonio Gerodias and Sofronio Gonzales. Though he did not know Carlos Melendres by his real name, it turned out that "Blackie" was no other than Carlos Melendres.

Aniano Catipay could not have failed to recognize the accused, because he was himself a victim of the assault. A truism founded on the ordinary course of things is that victims of criminal violence often strive hard to recognize and identify their assailants. And, so it was with Aniano Catipay.

Thus, he testified:

"DIRECT EXAMINATION BY FISCAL SANTOS

Q Where were you on September 28, 1971, at about 4:00 p.m.?

A I was in our brigade, 2-a, sir.

Q You are a prisoner in the NBP?

A Yes sir.

Q When you were there on that date and time, was there anything unusual that happened?

A I was stabbed.

Q By whom?

A By Rodias, Ponyong, Bilat and Blackie.

Q If these persons you mentioned are here, will you point to them?

A Only two are here. One is already dead and the other one is not here. (Witness going down and tapping the shoulders of two persons who when asked answered by the names of Antonio Gerodias and Sofronio Gonzales.)

Q The accused who was already dead, who is that?

A He is known by the name Bilat but I do not know the real name.

Q How many stabs did you receive?

A 11.

Q From these two?

A No, they were four. One is already dead.

Q You are referring to Carlos Melendres and Antonio Gerodias?

A Yes sir.

Q And Sofronio Gonzales?

A No, the other one called Blackie, the bigger one.

Q What happened there in the brigade?

A I was stabbed and also Montero.

Q What happened to Montero when he was stabbed?

A He ran to the pasilio.

Q Do you know if he is already dead because of that stabbing?

A I know that he is already dead.

Q When you were stabbed, where were you brought?

A To the hospital. I was treated.

Q Were you operated on?

A Yes, I was operated on for a big scar reaching about 4 inches (surgical). It was explorotomy surgery. I was also treated of a scar at the right side of my body and at the back. (Witness showing his scars.) I received three stab wounds at the back, two at the right side and two in front; one at the upper right chest; one at the stomach and two at the upper right arm; one at the forearm and one at the knee.

Q What was your position at the time you received these stabs at the back?

A I was leaning by the window.

Q With what were you stabbed?

A A sharp instrument.

Q How many persons stabbed you?

A At first I was stabbed by one and when I ran towards the wide pasilio, 3 persons blocked my way.

Q Who was that first person who stabbed you?

A Bilat, the one who died already, or Rodolfo Molina.

Q And the persons who blocked your way?

A Rodias, Blackie and Ponyong.

Q Is this Blackie you mentioned in Court now?

A No sir.

Q Who were the others who blocked your way?

A Remito and Villamor who were already released.

Q What did Antonio Gerodias do to you?

A He stabbed me, on my right side.

Q Where was Gerodias in relation to you at the time he stabbed you on your right side?

A He was in front of me.

Q How many times did Gerodias stab you?

A Two times when he was able to enter the brigade. I was lying face downward.

Q How about Sofronio Gonzales, how many times did he stab you?

A Three of them stabbed me at the same time and Sofronio was one of them.

Q With what did Sofronio Gonzales stab you?

A Buriki or lead pipe, sharpened at the tip.

Q I am showing you several weapons, will you show to the Court this buriki which according to you was used by Gonzales in stabbing you?

A That big one. (Witness pointing to a splitted lead pipe with sharp tip covered with an orange colored cloth which serves as a handle.)

Q We would like to request that this weapon identified by the witness be marked as Exhibit "A" for the prosecution.

COURT:

Mark it."

(TSN, December 11, 1973, pp. 2-4).

That the accused stabbed to death Angel Montero is established by the testimony of Aniano Catipay. And he should have known be-cause Angel Montero was with him in cell No. 1, and they were stabbed together.

"FISCAL SANTOS

Q When you were stabbed, do you know where Angel Montero was at that time?

A He was with me, inside Dormitory 2-a.

Q Who stabbed Montero?

A The group of Gerodias, but I only know their nick names, as Blackie, Saging, Ponyong, Bilat and Roger.

Q Is Blackie in court now?

A No, only two are here, Rodias and Ponyong.

Q Is Carlos Melendres here?

A I do not know Carlos Melendres.

Q When Montero was stabbed, what was he doing?

A None, he just came from his work and he had just entered.

Q Do you know what cell these accused belong?

A Cell 1.

Q Where did this stabbing occur?

A In their cell because they talked to me.

Q Do you know whether Montero was armed when he was stabbed? And did you hear him say anything when he was stabbed?

A No, because he suddenly looked up.

Q Where was he facing?

A We were talking with Blackie.

COURT

Q When you were stabbed, what did you say?

A I was not able to say anything. I was just trying to evade them.

Q Why, was the attack sudden?

A Yes, sir, we were attacked suddenly at the same time. Myself and Montero."

(TSN, December 11, 1973, pp. 5-6).

On cross-examination, Aniano Catipay declared that he and Rodolfo Montero were called and brought by the accused to cell No. 1. He stood beside Montero, and rested his hand on a post. Montero was then looking upward. "Blackie" told him that "something happened" to them (the accused) at cell No. 7, to which he answered that he had nothing to do with it. Just then, "Rodias" stabbed Montero. He saw Blackie blink his eyes; and "Bilat" stabbed him. Montero ran to the door but collapsed. "Ponyong" stabbed Montero again. He ran past Montero, intending to reach the corridor, but "Rodias," "Blackie," and Ponyong blocked his way. And they ganged up on him. He received 11 stab wounds.

He stated that he was stabbed because he refused to have his "BCJ" (Batang City Jail) tatoo, erased. But, he did not know why Montero was stabbed.

He said that he went to cell No. 1 confidently and unsuspectingly, since the accused were also from the Visayas, and they all belonged to OXO gang. The accused, however, had "OXO-KKK" tatoo, while he was marked "OXO-BCJ-32". It was this "BCJ" that the accused wanted to erase.

Nimrod Egonia was another eyewitness. Corroborating Aniano Catipay, he stated that he saw Rodolfo Molina ("Bilat") and Carlos Melendres ("Blackie") stab Catipay, and Antonio Gerodias ("Rodias" or "Demonyo") and Sofronio Gonzales ("Ponyong") stab Angel Montero.

As aforesaid, Egonia disclosed the identity of the assailants to Primitivo Arias, the prison guard-investigator, immediately after the incident. His statement may well be deemed part of *res gestae*. It was given spontaneously and immediately subsequent to the stabbing incident when there was yet no opportunity for fabrication.

Some two hours later, Egonia executed a sworn statement (Exhibit "K") before Primitivo Arias, reciting what he had previously told Arias. He affirmed the voluntary execution of Exhibit "K" in court.

That Angel Montero was stabbed by several assailants, finds support in the testimony of Dr. Ernesto Brion (NBI medico legal expert). Testifying that Montero died of multiple stab wounds, Dr. Brion stated that such wounds were simultaneously inflicted in rapid succession by several assailants. And, describing the relative position of the victim and the assailants, he said that "one assailant must have been in front at the right of the victim, while the other must be at the back to the left of the victim."

On the other hand, the accused Antonio Gerodias ("Rodias" or "Demonyo") and Sofronio Gonzales ("Ponyong") denied any participation in the incident. According to Gerodias, he was near the door of Brigade 2-A when the incident occurred, and he went at once to his cell in Brigade 2-A. According to Gonzales, he was between cell Nos. 1 and 2, and he also ran to his cell, cell No. 1.

Such denial cannot, however, prevail over the positive and conclusive identification made by Aniano Catipay and Nimrod Egonia. It should also be recalled that immediately after the stabbing incident, Sofronio Gonzales confessed, though, orally, his guilt to Primitivo Arias. Besides, Gonzales and Gerodias only betrayed themselves when they said that they repaired to their cells. It should be noted that Catipay and Montero were assaulted inside cell No. 1 at Brigade 2-A. The uncontradicted testimony of Aniano Catipay is that the accused were cellmates in cell No. 1. It was the same cell to which Gonzales and Gerodias allegedly ran. Gonzales, himself, said, he ran to cell No. 1. And, Gerodias said he ran to his "cell in [Brigade] 2-A." In other words, while they were saying that they had nothing to do with the criminal assault on Catipay and Montero, they were also saying that at the time of the assault, they ran to the very place of the assault.

For his part, Carlos Melendres "Blackie", admitted having attacked Aniano Catipay. He, however, denied having assaulted Angel Montero, pointing to Rodolfo Molina ("Bilat") as the assailant. He said, he attacked Catipay, because the latter was blocking Molina who was about to stab Montero. And, he wanted Montero to die because he was a "squealer" (inmates' term for a gang turncoat). Thus, he repudiated his affidavit (Exhibit "F", dated November 22, 1971), wherein he stated that he stabbed Aniano Catipay and Angel Montero several times. He stated that he was only forced to admit the stabbing of Montero because he was "afraid to get hurt." He, however, admitted that he voluntarily executed the sworn statement before Primitivo Arias who did not intimidate nor coerce him into signing his statement. Suffice it to say that the sworn statement taken together with the other evidence of the prosecution clearly establish the culpability of Carlos Melendres.

We, therefore, see no compelling reason to reverse the finding of the court a quo that Angel Montero died and Aniano Catipay was seriously wounded in the concerted assault made by the accused-appellants, (including the deceased Rodolfo Molina). It also correctly found that the concerted assault was qualified by treachery. The attack was so sudden, and at a time when it was least expected, as the victims were talking face to face with the accused. Catipay and Montero were caught off-guard, a situation which, for the accused, insured the consummation of the assault without risk to themselves. It did not appear that anyone of the accused was wounded.

The accused-appellants are quasi-recidivists. Jus strictum, death penalty as the maximum penalty for the murder of Angel Montero should be imposed on them.

But, justice is not blind to compassion. The wretched conditions in the National Bilibid Prison, i.e., congested cells, meager allowance for meals, and sheer boredom of routinary activities, are matters of judicial notice. Such miserable conditions far from rehabilitating the inmates, only drive the bestial in them.

As in *People vs. Garcia, et al.*, (G.R. L-40106, March 13, 1980, 96 SCRA 497) citing *People vs. de los Santos*, (L-19067-8, July 30, 1965, 45 SCRA 702), the death penalty should be commuted to reclusion perpetua.

WHEREFORE, the judgment of the court a quo is modified in that instead of the death penalty each of the appellants is hereby sentenced to suffer reclusion perpetua for the murder but affirmed in all other respects. No special pronouncement as to costs.

SO ORDERED.

Teehankee, Acting C.J., Barredo, Aquino, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Fernando, C.J., on leave.

Makasiar, J., votes for total affirmance of the judgment of the trial court.

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