

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOMEDE ORONGAN AND AQUILINO LOPEZ, ACCUSED-APPELLANTS.

G.R. No. L-32751. December 21, 1988

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

This is another sad spectacle of a family feud which ended tragically.

For the killing of Marcelino Arnado, 53 years old, farmer and a resident of Canlim-ao, Tabuelan, Cebu on August 22, 1969, accused-appellants Diomedes (Diomedes) Orongan and Aquilino Lopez, with two other John Does, were charged with the crime of murder in an information filed with the Criminal Circuit Court, 14th Judicial District of Cebu (CCC-XIV-No. 251). Said information alleged:

"That on or about the 22nd day of August 1969, in the municipality of Tabuelan, province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with two other John Does who will be separately prosecuted later on as soon as their identities are known, with treachery and known premeditation, conspiring and confederating together and armed with sharp bladed weapons, taking advantage of their superior strength and the darkness of the night and waiting for the deceased Marcelino Arnado in ambush in a secluded place, did then and there wilfully, criminally, unlawfully and feloniously attack, assault and stab Marcelino Arnado, inflicting upon the latter several multiple wounds on the different parts of his body and as a result thereof the said Marcelino Arnado died instantly.

"All contrary to law, and with the qualifying circumstance of alevosia and the aggravating circumstances of known premeditation, superior strength and nighttime."[1]

Upon arraignment on February 2, 1970, both accused, assisted by their counsel de oficio, pleaded not guilty.[2] The lower court, however, after trial found them guilty as charged and accordingly rendered judgment on September 30, 1970, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused Aquilino Lopez and Diomedes Orongan guilty beyond reasonable doubt of the crime of murder charged in the information punishable under Article 248 of the Revised Penal Code and there being no aggravating nor mitigating circumstance present, both accused DIOMEDES ORONGAN and AQUILINO LOPEZ are hereby sentenced to suffer the penalty of RECLUSION PERPETUA, to pay the heirs of the deceased Marcelino Arnado jointly and severally the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. Let the accused be credited with their preventive imprisonment in the service of their sentence as provided by law."[3]

The case is now before us on appeal.

The evidence for the prosecution, as culled from the testimony of principal eyewitness Rosario Damos Arnado, shows that in the morning of August 22, 1969, the deceased Marcelino Arnado and his wife, Rosario Damos Arnado, 47 years old, went to the office of District State Prosecutor Benecio L. Arzadon at the Capitol Building in Cebu City to discuss the possibility of an amicable settlement of a robbery in band case which Marcelino had filed

against his brothers, sisters and nephews, and which included Aquilino Lopez, his parents, as well as the parents of Diomedes Orongan.[4]

That robbery case originated from a land dispute between Marcelino, on the one hand, and his mother, brothers, sisters and nephews, on the other. Although the trial court resolved the dispute in favor of his relatives, Marcelino refused to vacate and surrender the ownership and possession of the land. The strained relations further worsened when Marcelino filed the robbery case against his relatives, accusing them of harvesting the corn which he claimed he had planted on the land in question. All the accused, with the exception of Aquilino Lopez and his mother, Rosario Arnado Lopez, (who successfully evaded arrest) were apprehended and detained at the provincial jail.

Marcelino and his wife waited for the defendants relatives and the latter's lawyer, Atty. Gregorio Flores, from eight in the morning until noon at Fiscal Arzadon's office but none of them showed up. At twelve o'clock, the Arnado spouses were told by Fiscal Arzadon to go home.[5]

From the Capitol Building, the Arnados went to Lapulapu City to fetch Rosario's niece, Luzminda Balingcasag. From there they all proceeded to Mandaue City. At two in the afternoon, they boarded a JD truck (No. 222) bound for Bogo.[6]

There was a brief stopover in the town of Carmen where the passengers took their merienda. While they were in Carmen, they spotted Diomedes Orongan who was inside a Palma truck which had arrived ahead of them. Before they left Carmen at past three in the afternoon, the Palma truck had already driven off.[7]

Upon reaching Tinobdan (popularly known as Goyong's Place) at around five that afternoon, Marcelino, Rosario and Luzminda got off the truck. From there they had to walk to their place of residence in the mountains of Quimod, Canlim-ao, Tabuelan, which is about seven (7) kilometers following a narrow footpath.[8]

The trio stayed for sometime in Goyong's Place to buy some commodities. Rosario went to a dress shop to get the dress she ordered to be made. It was almost sunset when they resumed their long trek home.[9]

At Cabulihan, they stopped by a small store where Marcelino drank tuba and chatted briefly with a friend. They left Cabulihan just as the radio announced that it was seven in the evening. They walked single file, with Marcelino ahead, followed by his niece Luzminda and then Rosario at the rear.[10]

At about eight in the evening, they reached the land of Emiliano Ruiz in Quimod, with the familiar well where they usually drew water and the bamboo grove, with its poles bent over the footpath due to a recent typhoon. The surrounding cornfield had been cleared during the harvest. As the trio were about to pass under the bamboo branches, barely a kilometer away from their residence, Marcelino stopped dead on his tracks and shouted: "Hoy, there is a man!" Whereupon, he backstepped, poised to retreat, but he was suddenly struck on his left forearm and the basket he was carrying fell to the ground. Luzminda fled.[11]

After Marcelino was hit, one of his attackers, later identified by Rosario as Aquilino Lopez, turned to Rosario and hit her twice on her left forearm. The other accused, Diomedes Orongan, clubbed her twice on the head. She fell down on her knees. Wounded and reeling from her head blows, Rosario crouched under the bamboo bush. Fearful for her life and utterly defenseless, she remained there, despite the pained cries for help of her beleaguered husband.[12]

It was a moonlit night. From her vantage point, about five (5) meters away, Rosario saw in the open space four (4) men, naked from the waist up and armed with pieces of wood and hunting knives, repeatedly club and stab her husband. She could only recognize the two of them: accused Aquilino Lopez and Diomedes Orongan, as the other

two wore masks. It was Diomedes Orongan who had a hunting knife. As Marcelino pitched forward, Diomedes held him by the hair and then made a downward stabbing motion toward the base of the victim's neck.[13]

After Marcelino collapsed on the ground, almost lifeless, Rosario heard Aquilino say: "Come on Diomedes, let us find her and kill her" (referring to Rosario), to which Diomedes answered: "Come on, let us run away, because there are people who heard us." Soon thereafter, the four assailants left.[14]

Coming out of the bamboo thicket, Rosario immediately ran to her husband who was lying prostrate and bleeding on the cornfield. Held in her arms, Marcelino told Rosario that he was going to die and that he recognized two of his attackers: "I have clearly seen Aquilino Lopez and Diomedes Orongan and the others I do not know." Then he died.[15]

Early the next morning, Rosario reported the incident to the police authorities of Tabuelan. She informed the chief of police that she and her husband were able to recognize Aquilino Lopez and Diomedes Orongan as two of their attackers. She saw Diomedes Orongan who had earlier surrendered to a Tabuelan policeman.[16]

On August 24, 1969 at nine-thirty in the morning, an autopsy examination of the victim's bloated cadaver was conducted by Dr. Macario L. Cortes, the municipal health officer of Tabuelan. His necropsy report disclosed multiple lacerated and stab wounds at different parts of the body including the head and the extremities of the deceased. Death was due to "(i)rreversible shock cause(d) by severe hemorrhage secondary to multiple stab wounds hitting the carotid artery, (r)ight lung and other blood vessel." [17]

Rosario was also examined and then treated for the minor injuries she sustained during the assault. The medical certificate issued by Dr. Cortes dated August 23, 1969 showed a lacerated wound near the left ear and a superficial abrasion near the right elbow.[18]

The other principal prosecution witness, Luzminda Balingcasag, 19 years old, married, housekeeper, recounted that in the evening of August 22, 1969, she was with the victim, Marcelino, and his wife, Rosario. They were on their way home and were trudging along the narrow footpath leading to Canlim-ao. The moon was directly overhead.[19] As they were passing underneath the drooping branches of the bamboo trees, Marcelino suddenly shouted at her: "You run because somebody is here." Then she saw a man pursuing Marcelino. She did not recognize the man. Gripped with fear, she started to run away. She heard Marcelino crying for help.[20]

Luzminda was more than half a kilometer away from the bamboo grove when she was accosted by the accused Diomedes Orongan at the top of the hill ("tagaytay"). Orongan told her: "Me, just go home, you have nothing to do with this, I have killed Marcelino." [21]

In her testimony in court, Luzminda admitted that she did not witness the actual killing of Marcelino. If Orongan had not overtaken her, she would not have known that Marcelino had been slain and that Orongan was responsible therefor.[22]

Providing the motive for the fatal attack, the prosecution stressed the unrefuted fact that there was deep enmity between Marcelino (with his wife) and his close relatives which included the accused-appellants. As earlier mentioned, the dispute was rooted in a piece of farmland being claimed by both sides. Although the court had declared Marcelino's mother to be the rightful owner thereof, Marcelino adamantly refused to relinquish possession and insisted on staying on the land and living off its produce to the total exclusion of his relatives. Contempt charges were filed against Marcelino but to no avail. Recriminations after recriminations were hurled back and forth until things came to a head when Marcelino filed the criminal case for robbery in band against his brothers, sisters and nephews. Before the case could be tried however, Marcelino was killed in the evening of August 22, 1969 by four persons. Only two had been identified. They were believed to be accused-appellants

Diomedes Orongan and Aquilino Lopez.[23]

Accused Aquilino Lopez, farmer, married, 24 years of age, denied any involvement in the killing of Marcelino and alleged that he was being accused as one of the killers because the widow Rosario "hated" him. Aquilino interposed the defense of alibi. He claimed that since August 21, 1969, he and his mother, Rosario Arnado Lopez (Marcelino's sister), were in Cebu City trying to raise money for their bailbond. A warrant had been issued for their arrest in connection with the aforementioned robbery case.[24]

In the afternoon of August 22, 1969, he and his mother, accompanied by their lawyer, Atty. Gregorio Flores, went to the residence of Congressman Sybico to seek his assistance in securing bail. His mother was able to talk with the solon only at nine in the evening since there were many visitors. From there they proceeded to the house of Henry Espina and spent the night there. Aquilino could not remember the name of the street where the Espina house was located. The next morning, they went to the house of Mrs. Urbana Maglasang, also at the same street, where they remained until they returned to Canlim-ao on August 26, 1969.[25]

Diomedes Orongan, also a farmer, married, 20 years old, admitted having killed Marcelino but claimed having done it alone and in self-defense. On August 22, 1969, he went to Cebu City to visit his parents who were in prison. He left the city at two in the afternoon and took a Palma truck for Canlim-ao, Tabuelan. He disembarked at Goyong's Place. Taking the same footpath used by Marcelino, his wife Rosario and Luzminda, Diomedes overtook the trio at Quimod. It was about seven in the evening.[26]

He said "Good evening" to Marcelino who was walking ahead of the other two. Instead of returning his greeting, Marcelino retorted: "What now, your father and mother is (sic) in jail, do you want to be included in this incident?" As Marcelino uttered those words in a raised voice, he lunged at Diomedes and made a motion as if he were pulling something from his waist. Diomedes saw what appeared to be an "arm". Afraid that he was going to be hurt by Marcelino who was bigger and taller and whom he knew was good in karate and arnis, Diomedes instantaneously retaliated, pulled out his hunting knife and stabbed Marcelino on the breast. Believing that his uncle wanted to kill him, Diomedes stabbed him three more times until the deceased fell to the ground. Thereafter Diomedes walked towards Tabuelan to give himself up to the barrio captain. The following morning, accompanied by the official, Diomedes surrendered himself to the police chief. He also turned over his hunting knife. On August 25, 1969 he executed an affidavit claiming full responsibility for the death of Marcelino.[27]

In their brief, the accused-appellants contend inter alia that the trial court erred in relying on the sole testimony of the widow Rosario; in not giving credence to Aquilino's alibi in spite of the fact that the identification of Aquilino is weak and unreliable; in not considering the mitigating circumstances of voluntary surrender and incomplete self-defense in favor of Diomedes Orongan; and, in holding that the killing of Marcelino was accompanied by treachery.

The alibi of Aquilino is not worthy of belief. Although it is corroborated by the testimonies of his mother, Rosario Arnado Lopez, and Henry Espina, stating that Aquilino and his mother passed the night of August 22, 1969 in Espina's house at J.M. Cuenco Avenue in Cebu City, such declarations are inherently weak. Rosario Lopez is naturally biased in favor of her son while Espina, a senior law student, is equally prejudiced because both mother and son are his clients. Furthermore, the young Espina is the son of Bernardo Espina, the chief of police of Tabuelan, who also happened to be a defense witness in the robbery case between Marcelino and his kin.[28] Alibi is at best "a weak defense and easy of fabrication especially between parents and children, relatives and even those not so related." [29]

More importantly, the alibi of Aquilino Lopez cannot overcome the dying declaration of the victim and the damaging testimony of his widow.

Appellants have sought to impeach the testimony of the widow Rosario, the lone prosecution eyewitness to the merciless killing of Marcelino, by alleging conflicting facts and inconsistencies in her statements. They contend that having admitted that she hid herself beneath the bending bamboo branches, she could not have possibly seen the entire incident and discerned the faces of the killers.

The trial court had closely observed the manner and demeanor of Rosario Damos Arnado in the course of her testimony. While inconsistencies and flaws had been noted during the long period she was on the witness stand, the same did not detract from her categorical assertions that she was a helpless spectator to the brutal execution of her husband from its inception until the malefactors left, and that two of her husband's killers were the appellants.

The widow Rosario could not have been mistaken in her identification of the appellants. As correctly observed by the court *a quo*:

"Both accused are the nephews of her husband, known to her and are neighbors in the barrio. The widow, therefore, is not only familiar with their physical built, size and features, but also with their voices. Besides, the fact that the accused were addressed by their names during the conversation, Aquilino Lopez was recognized by the widow when the former hit her forearm. He was again seen and recognized by the widow when he, together with Diomedes Orongan and the two other persons ganged up, attacked and stabbed her husband five meters away from her in an open space under the light of the moon. Aside from this, when she held the deceased in her arms, he told her that he clearly recognized Aquilino Lopez and Diomedes Orongan as two of the four persons that attacked him after which he died." [30]

Moreover, after attacking Marcelino, the assailants tarried for a while, thus giving Rosario ample opportunity to recognize them. It was only when they heard voices of people approaching that they left the scene of the crime.

The claim of Orongan that he alone killed Marcelino is belied not only by the contrary declarations of the widow but also by the physical condition of the victim's body. According to the autopsy report, the victim sustained a total of nine wounds, some caused by sharp-bladed instruments, and the others by blunt instruments. Surely, Orongan could not have inflicted all those wounds by himself when he claimed that he was armed only with a hunting knife and that he stabbed Marcelino only thrice on the breast. Since he denied having stabbed Marcelino on the chin, face, shoulder, parietal region, forearm and near the spinal column at the back, the inescapable conclusion is that Orongan was not the lone assassin. As the Court noted in one case: "Numerous wounds in the body of the victim indicate plurality of assailants." [31]

That he killed Marcelino in self-defense, or even in incomplete defense of self, is equally of doubtful veracity. Standing alone and without corroboration, his version is unconvincing, especially when coupled with the fact that Orongan, who was admittedly smaller than the victim, sustained no injury at all on his body while his opponent suffered nine wounds. The onus of proving self-defense is placed upon the accused and in this regard he failed miserably.

We hold that the guilt of the accused-appellants has been established to a degree of moral certainty. The trial court did not err in relying on the eyewitness account of the widow Rosario to show beyond any doubt appellants' direct participation and complicity in the death of Marcelino.

The crime is murder qualified by treachery. The sudden and unexpected stabbing and clubbing of Marcelino, who was unarmed, insured the killing without any risk to the assailants. It rendered the victim completely unable to defend himself. [32]

Abuse of superior strength, nighttime and band, although present, are deemed absorbed by *alevosia*.

Conspiracy has been demonstrated by the concerted action of the attackers who lay in wait at a secluded place for

the unsuspecting victim to pass by. The presence of multiple stab wounds on the victim's body, both in front and at the back, indicates that there were several killers. They took turns in inflicting mortal injuries upon Marcelino. They also left together after accomplishing their homicidal mission. Such sequence of overt acts individually performed by the appellants and their unidentified companions shows their unity of purpose at the time of the offense and unity in its execution. We held in *People v. Bravante*[33] that such circumstance is indicative of a conspiracy. As co-conspirators, the act of one is the act of all.

The lower court correctly found that there was no evident premeditation despite the known feud between the protagonists. No clear proof was adduced by the prosecution as to the time the appellants had resolved to liquidate Marcelino to show without question that their action was the result of deliberate thought, reflection and persistence.[34]

The lower court however erred in not considering the extenuating circumstance of voluntary surrender in favor of appellant Diomede Orongan. The evidence discloses that immediately after the fatal stabbing of Marcelino, Orongan surrendered himself to the barrio captain and subsequently to the Tabuelan police authorities.[35]

In sum, the judgment of conviction is affirmed but the penalty must be modified in view of the abolition of capital punishment under the 1987 Constitution.

The penalty for murder is now reclusion temporal in its maximum period [i.e. seventeen (17) years, four (4) months and one (1) day to twenty (20) years] to reclusion perpetua. As to appellant Aquilino Lopez, in the absence of any modifying circumstances, the penalty is imposable in its medium period, or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years.[36]

Applying the Indeterminate Sentence Law, the penalty next lower to that prescribed by the Penal Code for murder ranges from prision mayor maximum as minimum to reclusion temporal medium as maximum, or from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum.[37]

As to Diomede Orongan, the penalty is reduced further to the minimum, period by reason of the mitigating circumstance of voluntary surrender.[38]

WHEREFORE, the judgment appealed from is affirmed with modification in the respective penalties for the two accused-appellants. Aquilino Lopez is hereby sentenced to an indeterminate penalty of from twelve (12) years and one (1) day of prision mayor as minimum to eighteen (18) years, eight (8) months and one (1) day of reclusion temporal as maximum. Diomede Orongan is sentenced to an indeterminate penalty of from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. Both accused-appellants are ordered to pay solidarily the increased indemnity of P30,000 to the victim's heirs. They should be given full credit for their preventive imprisonment. Costs de oficio.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., on leave.

[1] Original Record, pp. 15-16

[2] Original Record, p. 61

[3] Original Record, pp. 129-130

- [4] 79-80 tsn, February 20, 1970
- [5] 80-81 tsn, February 20, 1970
- [6] 81 tsn, February 20, 1970
- [7] 82-83 tsn, February 20, 1970
- [8] 84-85 tsn, February 20, 1970
- [9] 85 tsn, February 20, 1970
- [10] 86-88 tsn, February 20, 1970
- [11] 88-91, 98 tsn, February 20, 1970
- [12] 90-93 tsn, February 20, 1970
- [13] 94-98, 151 tsn, February 20, 1970
- [14] 96, 100 tsn, February 20, 1970
- [15] 102-103, 105-106 tsn, February 20, 1970
- [16] 110-111 tsn, February 20, 1970
- [17] Exh. A, pp. 1-2, Folder of Exhibits
- [18] Exh. B, p. 3, Folder of Exhibits
- [19] 46-47 tsn, February 7, 1970
- [20] 47-49, 55 tsn, February 7, 1970
- [21] 49-50 tsn, February 7, 1970
- [22] 59 tsn, February 7, 1970
- [23] Original Record, pp. 114-115
- [24] 2-3, 6-8, 14 tsn, August 3, 1970
- [25] 3-7 tsn, August 3, 1970
- [26] 15-18 tsn, August 3, 1970
- [27] 19-21 tsn, August 3, 1970; Original Record, pp. 6-7.
- [28] 203-204 tsn, April 7, 1970
- [29] *People v. Romero*, G.R. No. L-38786, December 15, 1972, 119 SCRA 234
- [30] Original Record, pp. 122-123
- [31] *People v. Manzano*, G.R. Nos. L-33643-44, July 31, 1974, 58 SCRA 250
- [32] *People v. Delavin*, G.R. No. 73762-63; February 27, 1987, 148 SCRA 257; *People v. Fernandez*, G.R. No. 69619, September 15, 1987, 154 SCRA 30; *People v. Maralit*, G.R. No. 71142, September 19, 1988
- [33] G.R. No. 73804, May 29, 1984, 150 SCRA 569

[34] *People v. Mawallil*, G.R. No. 63154, June 19, 1984, 129 SCRA 594; *People v. Tiongson*, G.R. Nos. 35123-24, July 25, 1984, 130 SCRA 614

[35] 21 tsn, August 3, 1970; see also *People v. Saham*, 61 Phil. 27

[36] *People v. Abagon*, G.R. No. 68940, May 9, 1988, citing *People v. Masangkay*, G.R. No. 73461, January 25, 1988; *People v. Lopez*, G.R. Nos. 71875-76, January 25, 1988 and *People v. Gavarra*, G.R. No. L-37673, October 30, 1987, 155 SCRA 327

[37] *People v. Maralit*, G.R. No. 71142, September 19, 1988; *People v. Abagon*, *supra*

[38] *People v. Bardon*, G.R. No. 60764, September 19, 1988; *People v. Reyes*, G.R. No. 74675, October 19, 1988; *People v. Abagon*, *supra*

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