

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
APOLONIO ANDIA, ALIAS SOFRONIO, ET AL., DEFENDANTS,
APOLONIO ANDIA ALIAS SOFRONIO, DEFENDANT AND APPELLANT.**

G.R. No. L-14862. May 31, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Apolonio (alias Sofronio) Andia, with his brothers Ciriaco, Restituto and Iniego, were charged in the Court of First Instance of Samar with the killing of Jaime Lucana, a policeman of Borongan, Samar, where the crime took place. After trial, the court a quo rendered judgment on November 18, 1958, convicting accused Apolonio Andia of murder, and sentencing him to suffer the penalty of reclusion perpetua, with its accessory penalties, to indemnify the heirs of the deceased victim in the amount of P6,000 and to pay ¼ of the costs. The other accused were acquitted for insufficiency of evidence. Hence, this appeal by Apolonio Andia from the verdict of conviction.

The evidence is to the effect that at about 7:00 o'clock in the evening of August 25, 1957, Ciriaco Andia bought P0.20 worth of tuba from Felipa de Amoyo at the latter's store in the public market of Borongan, Samar. Refusing to pay for his drink, Ciriaco was reported to Jaime Lucana, a town policeman; but despite the latter's intercession, Ciriaco still would not settle his account with the storeowner. A heated discussion ensued between Jaime and Iniego Andia, a brother of Ciriaco, until finally, policeman Lucana, evidently irked by the belligerent attitude of Iniego, told the latter that he was under arrest. The two brothers then took hold and tried to overpower the policeman; and not long afterwards, Restituto Andia arrived and joined his brothers in manhandling Lucana. While the latter was struggling to free himself from the hold of the trio, Sgt. Crispin Afafe arrived and tried to rescue his comrade-at-arms. Iniego pushed back the sergeant, causing the latter to fall to his knees. Afafe took out his service pistol and with it hit Iniego on the forehead. Suddenly, a woman from among the crowd that had already gathered at the time shouted, "You watch out; there is a person who has a weapon" Hearing this, Afafe backed a short distance away from the struggling man and focusing his flashlight at the intruder, he saw Apolonio Andia holding a knife. Afafe ordered him to drop the weapon, but Apolonio instead ran away, whereupon the sergeant gave chase. Apolonio easily eluded his pursuer inside the crowded market, and seconds later, reappeared at the scene of the crime. Immediately, he stabbed Lucana while the latter was still being held by Iniego, Ciriaco and Restituto. Thereafter, the four brothers scurried off.

Brought to the Borongan Emergency Hospital, Lucana was administered first aid by Dr. Jorge Bocar. Before he was operated on, however, Leonardo Solidon, the local justice of the peace, took Lucana's statement (Exhibit "E"). After about two hours later, the patient died while still on the operating table.

According to the medical certificate issued by Dr. Bocar, death of Lucana was due to hemorrhage caused by multiple wounds that cut the small intestines (Exhibit "A").

The foregoing narration of the incident is the result of the unbiased account of the People's witnesses Alberto

Abenia and Julio Bocal, who both saw the actual slaying, corroborated by Crispin Afable, Felipa de Amoyo and Aida Amoyo. Leonardo Solidon, who took the ante mortem declaration of the victim, and Dr. Jorge Bocar, who performed an operation on Lucana, issued the medical certificate, Exhibit "A", attested to Lucana's dying declaration.

Counsel de oficio urges that the lower court should have given more credence to the testimony of accused's witnesses, in the main to the effect that it was Iniego who in self-defense delivered the fatal thrust to Lucana. This version must be rejected. The defense could not furnish any ulterior motive on the part of the State witnesses that would prompt them to perjure against the appellant or implicate him. Alberto Abenis, who knew appellant for a long time, testified that he was only about a meter away from the scene of the stabbing, and that he distinctly saw appellant chased by Sergeant Crispin Afable and witnessed how half a minute later he returned and stabbed Lucana while the latter was being held by his brothers Ciriaco, Restituto and Iniego. Julio Bocal attested to the same thing. The candor of the witness is shown by his admission that in retaliation for the brothers' unjustified attack on Lucana, he stabbed Iniego Andia with a small knife while the latter was trying to get hold of the fallen policeman's club.

There is also the dying declaration of Jaime Lucana himself in answer to questions propounded by Justice of the Peace Leonardo Solidon. Thus, Dr. Jorge Bocar testified in this regard:

"Q.

What was the question asked by Leonardo Solidon to the deceased Jaime Lucana?

A.

The first question he asked: "Who stabbed you? Leonardo Solidon asked that in the visayan.

* * * * *

Q.

What did the late Jaime Lucana answer?

A.

'It was Apolonio Andia.'

* * * * *

Q.

What more did you hear?

A.

'How do you feel of your body construction?' 'I am getting weak.'" (7, t.s.n.)

Judge Leonardo Solidon testified to having asked those questions and taken down the answers in writing; and while the writing itself is inadmissible in evidence, since it was not read by declarant or read to him by another and is not signed or in any way acknowledged by him after it was written, the testimony of Dr. Bocar, as corroborated by Solidon, suffices to establish the dying declaration. It is argued that no evidence was offered to show that Lucana was conscious of impending death when he made his ante mortem statement; but the character and seriousness of the wound and the fact that death supervened shortly afterwards may be considered as circumstantial evidence of such consciousness (*People vs. Chan*, 50 Phil., 182).

In the face of the evidence, particularly the positive declaration of eye-witnesses who saw appellant's participation in the crime, we can not accept Apolonio's defense of alibi, supported only by his wife Iluminada Andia, who asserted that this appellant arrived at their house (three kilometers away from the site of the crime) at 5:30 p.m. and that they went to sleep side by side between 6:30 to 7:00 p.m. Witness Obina merely stated that she did not see him at the site of the fray; and so did defense witnesses Badiola and Bengson.

Iniego's confession that he stabbed Jaime Lucana is not surprising, considering that he was in a better position to claim self-defense, at the same time saving his brother Apolonio from lawful punishment for his felonious deed. This afterthought cannot be seriously considered as raising reasonable doubt on appellant's guilt.

The defense contends that the offense could not be murder, as the qualifying circumstance of treachery did not exist, because it was not present at the inception of the assault, and the aggression was continuous until the consummation of the deed, citing, inter alia, *People vs. Cañete*, 44 Phil., 478; *U. S. vs. Cunanan*, 37 Phil., 777; *U. S. vs. Gray*, 4 Phil., 479. This position of the defense is untenable, because Apolonio Andia did not take part in the initial assault of his brothers on policeman Lucana. The evidence is clear that he arrived later, after the fight had begun; was at first intercepted by Sergeant Afable, ran away from the latter, and after evading pursuit returned to stab Lucana while the latter was helpless and held by the appellant's brothers. Plainly, Apolonio took advantage of the helplessness of his victim to stab him without risk to himself. It may not have been deliberately planned beforehand; but treachery can exist without premeditation.

The Solicitor General correctly observed that the ordinary aggravating circumstance of disregard of rank (Art. 14, par. 3, Revised Penal Code) also attended the commission of the offense, it appearing that Jaime Lucana was in the performance of his duty as a police officer at the time he was assaulted and killed. However, this aggravation is offset by the mitigating circumstance of lack of instruction, since appellant never received any form of education.

Wherefore, the judgment appealed from is affirmed. Costs against appellant in this instance.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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