

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO FLORES AND BENJAMIN RINGOR,
DEFENDANTS-APPELLANTS.**

G.R. No. L-24526. February 29, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Convicted of the crime of murder by the Court of First Instance of Pangasinan (Branch VI, Urdaneta), Bonifacio Flores and Benjamin Ringor were both sentenced "to suffer the penalty of reclusion perpetua, to indemnify the heirs of the victim, Rosendo Lomanog, in the amount of P6,000.00; and to pay the costs of this case." [1] In this appeal Benjamin Ringor failed to file his brief, but the Solicitor General has made the following manifestation:

"The brief filed in this case by Atty. Juanito R. Morante is for the accused Bonifacio Flores only. However, the notice of appeal from the above-cited decision shows that said counsel appealed for both Benjamin Ringor and Bonifacio Flores. Although Benjamin Ringor filed a separate notice of appeal, considering that during the trial Atty. Juanito R. Morante appeared for both accused and the imputed errors affect both of them, it is appropriate, in the interest of justice, to regard counsel's brief as having been filed for both of them."

The suggestion of the Solicitor General is well-taken. This Court has accordingly deemed it proper to consider the brief filed by counsel de officio in behalf of Bonifacio Flores as having been filed in behalf of both appellants. We note that in a communication received from Bonifacio Flores after the said brief was filed he denied having interposed any appeal from the decision of the trial court. The records, however, as well as the explanation of his counsel, show otherwise; and this Court, after reviewing the record of this case, resolved to deny his prayer for dismissal of his appeal.

The following facts are either admitted or not controverted. On the morning of January 16, 1960 the brothers Remigio, Raymundo and Rosendo, surnamed Lomanog, together with Guillermo Jocson, all of barrio Mamatao, San Fabian, Pangasinan, went to the nearby barrio of Cabunan, Sison, of the same province, where cockfights were being held in the town cockpit. They stayed there almost the whole day, and left for home at about six in the afternoon. On the way, near the municipal boundary of Sison and San Fabian, Rosendo Lomanog was stabbed by Bonifacio Flores with a bolo, and as a result died two days later at the Pangasinan Provincial Hospital. It is as to how the stabbing took place and who were the active participants therein that the prosecution and the defense differ.

The case for the prosecution rests mainly on the testimony of Raymundo and Remigio Lomanog, brothers of the deceased Rosendo. Their respective testimonies are substantially as follows:

Remigio -Lomanog : When he left the Sison cockpit at about 6:00 p.m. to go home to barrio Mamatao, San Fabian, his companions were his brothers, Raymundo and the deceased Rosendo, the latter's wife Aniceta de la Cruz, and one Marina Jocson. They were walking near the boundary of Sison and San Fabian when Bonifacio Flores and Benjamin Ringor suddenly hove into view. Benjamin Ringor forthwith held Rosendo by the right

shoulder and right arm, and Bonifacio Flores grabbed Rosendo's shirt pocket and stabbed him in the right side of the abdomen. Remigio tried to come to the aid of his brother but Flores, bolo in hand, chased him away. What probably prompted Flores and Ringor to do what they did was Rosendo's refusal earlier that day, in the canteen near the Sison cockpit, to give Flores and Ringor money for alcoholic drinks.

Upon cross-examination, Remigio Lomanog mentioned several pertinent details which were at variance with what he said in his direct testimony. For instance, when asked anew to identify his companions during the stabbing incident, Remigio was positive that there were only three (3), namely, the deceased Rosendo, his brother Raymundo and one Guillermo Jocson. In his previous statement, however, he named Rosendo, Raymundo, Aniceta de la Cruz and Marina Jocson, with no reference at all to Guillermo Jocson. Remigio said that the two accused were not on friendly terms with the Lomanogs, and that in fact Raymundo Lomanog and Benjamin Ringor once had a case between them which the former refused to be amicably settled. Oddly enough, the particulars of that case were not extensively explained. On the stabbing itself, Remigio testified that it occurred simultaneously with Ringor's act of holding Rosendo by the shoulder and upper arm, and that neither Flores nor Ringor uttered a word at the time. Later recalled for additional cross-examination, Remigio admitted that the deceased Rosendo was the defendant in a pending criminal case before the same trial court (*People vs. Rosendo Lomanog*, Crim. Case No. 294); that Benjamin Ringor was slated to testify as one of the witnesses for the prosecution; and that Ringor and Bonifacio Flores were brothers-in-law.

Raymundo Lomanog : He, together with his brothers Rosendo and Remigio, and Guillermo Jocson, left the Sison cockpit at about 4:30 p.m. to go home to barrio Mamatao, San Fabian. While they were walking near the boundary of San Fabian and Sison the two accused suddenly appeared. Benjamin Ringor immediately took hold of Rosendo's shoulder and upper arm, rendering him practically immobile. As Rosendo cried, "Come and help me!", Bonifacio Flores approached and stabbed him with a sharp-pointed bolo, and then chased Remigio Lomanog who, being unarmed, ran away. After the stabbing Benjamin Ringor released Rosendo, and it was only when Flores and Ringor had left that Raymundo was able to summon help to take Rosendo to the provincial hospital in Dagupan City. The witness ascribed the attack to an old feud between Ringor and Raymundo, traceable to an incident when the former, aided by his father, allegedly tried to kill the latter, as a result of which a criminal case was filed against Ringor.

On cross-examination Raymundo said that the two accused left ahead of the Lomanog brothers. Being some 50 meters behind, Raymundo did not actually see them until they suddenly emerged from a thicket by the road.

On their part, the accused gave a markedly different version of the incident. Bonifacio Flores admitted the stabbing, but claimed that it was done in lawful self-defense. On the other hand, Ringor categorically denied direct and active participation by him, and branded as utterly untrue the prosecution witnesses' testimony that he helped facilitate the stabbing by rendering the victim immobile. Flores himself confirmed at the trial that Ringor had no part in the stabbing. Their version is as follows:

While they were on their way home from the Sison cockpit at about 6:00 p.m. of January 16, 1960, they were chased by the three Lomanog brothers and by their companion, Guillermo Jocson. Rosendo and Remigio had their bolos unsheathed, while Raymundo and Guillermo were armed with fist-sized stones. During the relatively brief chase the Lomanog brothers were shouting, "We will kill these persons so that nobody can testify against us." Ringor was able to elude the pursuers, but Flores was overtaken. Remigio and Rosendo then proceeded to make stabbing thrusts with their bolos at him. In trying to ward off the attack Flores sustained two wounds: one at the base of the left thumb and another in the right forearm. A stone thrown by Raymundo and another thrown by Guillermo hit him on the right side and on the back of the head, respectively. Grappling with his bolo-wielding opponents, Flores succeeded in disarming Rosendo, and with the newly-acquired weapon caught Rosendo in the

right side of the abdomen. Seeing Rosendo wounded, his companions apparently lost their nerve and ran, specially after Flores faced them, evidently bent on fighting it out to the end. Having thus managed to put his other pursuers to flight, Flores headed for the house of the barrio lieutenant, who first treated his wounds and then accompanied him to the municipal building to surrender him to the authorities.

During the fight Benjamin Ringor was nowhere near the scene. Chased by the Lomanog brothers and their companion, he lost no time escaping and hurried to inform his father, who was then the barrio lieutenant, about the incident. That official hied to the scene to investigate what had really happened. A little later Ringor followed, but met his father and his companions already on the way home. Asked why the Lomanog brothers implicated him in the stabbing, Ringor explained that he had been cited as a witness for the prosecution in a murder case (Crim. Case No. D-294) pending in the trial court against Rosendo and Remigio Lomanog, for which reason they harbored a grudge against him.

The trial court considered the version given by Flores as "contrary to the ordinary course of event". Initially unarmed as he was, with four men arrayed against him, it does strain credulity that he emerged from the fight virtually unscathed, save for some superficial injuries which the trial court even doubted as having been sustained during the struggle at all, considering his unexplained failure to present as a witness the barrio lieutenant who, he said, treated said injuries.

With respect to Benjamin Ringor, the trial court rejected his testimony, corroborated by Flores himself, that he, Ringor, had no part in the stabbing, and accepted the statement of the Lomanog brothers to the contrary. Thus it was that both accused were found guilty of the crime of murder, qualified by abuse of superior strength - a circumstance which was not alleged in the criminal information as either qualifying or aggravating.

Four errors are assigned in this appeal by counsel de officio for the defendants. The first refers to the credibility and weight of the narrative given by Raymundo and Remigio Lomanog. Certain circumstances do cast a doubt on their complete veracity.

First, according to these two witnesses, the appellants purposely waited along the road for the three Lomanog brothers and their companion, Guillermo Jocson, and hid behind some bushes to ambush them. This story does not sit well with the admitted fact that Benjamin Ringor was unarmed, for a man who takes part in an ambush would see to it that he is provided with a weapon, especially when his group is outnumbered by the intended victims.

Secondly, there is substantial disparity between the version given by Raymundo Lomanog when he was investigated separately by the Chief of Police and by the Municipal Judge of Sison, Pangasinan, and the version he gave during the trial. The two initial statements were made by him on January 19, 1960, three days after the incident. Before the Chief of Police, he said:

"Q. On your way home, do you know if anything unusual happened?

A. Yes, sir. When we were crossing the river, Bonifacio Flores went ahead of us. When he reached the concrete monument marking the boundary of Sison and San Fabian, Pangasinan, we saw him stop. When he proceeded to walk westward and we also proceeded crossing the river. When we were about to reach the concrete monument all of a sudden he appeared from the bushes nearby and accosted us. He uttered thus, 'Itatta ta uppatt cayon, awan ti maibagayon.' Meaning in English - 'Now that you are four, you could not say anything more. Upon uttering these words he simultaneously confronted Guillermo Jocson and thrust his knife towards him, but because Guillermo Jocson was alert enough to elude and run away from him, he (Bonifacio Flores) was not able to stab him (Guillermo Jocson). Guillermo Jocson ran away. Then Bonifacio Flores grabbed the front of the shirt of Rosendo Lomanog, who at the time was carrying his cock by one hand and his pair of

shoes by the other, when suddenly stabbed him on the abdomen. Just after stabbing Rosendo Lomanog, Bonifacio Flores ran away on a north westerly direction."

Raymundo Lomanog's statement before the Municipal Judge on the same day is practically a reiteration of the foregoing. It is noteworthy that in both statements this witness referred only to Flores as the active participant in the stabbing, without any mention even of Benjamin Ringor's presence. Equally noteworthy is the fact that the said statements, presumably unrehearsed since they were relatively close to the incident in point of time, find corroboration in the statement given by Guillermo Jocson before the Sison Chief of Police also on January 16, 1960. Jocson, by the way, was not presented by the prosecution at the trial to corroborate the Lomanog brothers' testimony, which was quite different from what they narrated at the preliminary investigation.

Without the Lomanog brothers' testimony at the trial there is no evidence to link Benjamin Ringor to the stabbing. In view thereof, and since he was not implicated by these witnesses in their initial statements, his own denial that he had any part in the stabbing by holding the victim immobile, corroborated by his co-accused and companion, is sufficient at least to engender a reasonable doubt in his favor.

Now as to Bonifacio Flores. This accused, while admitting that he did stab Rosendo Lomanog, invokes lawful self-defense. Both he and Ringor testified that the deceased and his three companions chased them, two with unsheathed bolos and the others with fist-sized stones in their hands. Failing to elude his pursuers, Bonifacio Flores was forced to fight back, sustaining several wounds in the process. In the course of the fight Flores was able to wrest Raymundo Lomanog's bolo from him, and with it indiscriminately swung back at his assailants, hitting Rosendo Lomanog fatally in the right abdomen and causing the others to lose nerve and scamper away.

The plea of self-defense cannot be justifiably entertained. It is not only uncorroborated by any separate competent evidence but in itself is extremely doubtful. For with two bolo-wielding opponents simultaneously attacking him, unarmed as he was in the beginning, as he testified, he sustained only a cut on the base of his left thumb and another on his right forearm - as to which injuries he presented no corroborative evidence. The odds against him were simply too overwhelming for his story to be accepted in its entirety.

Withal, We believe that the killing was not a premeditated one. Bonifacio Flores simply accosted the Lomanog brothers, obviously to have it out with them, there being evidence that this was not the first time that relations between them and their respective kinfolk had been strained, because Benjamin Ringor, Flores' brother-in-law, was slated to testify against the Lomanog brother, accused in a pending criminal case. One who conceives a killing, reflects upon it and plans its execution beforehand would not carry it out alone against numerically superior and equally armed victims. Two details should be noted in this connection: (a) the initial stabbing attempt was admittedly directed, not at the deceased, but at Guillermo Jocson, who managed to sidestep the blow in time; and (b) immediately before the actual stabbing Flores is quoted as having uttered, either as a challenge or a warning, that the Lomanog brothers had nothing more to say (or to complain about) since they outnumbered him four to one. These circumstances are inconsistent with the idea of evident premeditation.

By the same token the element of treachery must be ruled out. To justify the attendance or concurrence of treachery in the commission of a crime against persons, the offender must have availed himself of such means as would insure the execution of the crime without risk to himself that may come from the assaulted person. Flores made his presence known before the stabbing; indeed uttered some kind of a warning, and then direct his first blows not at the deceased but at Guillermo Jocson. The deceased was therefore neither caught by surprise nor totally unprepared when he received the wound in the right abdominal region.

Our conclusion, with respect to Bonifacio Flores, is that neither premeditation nor treachery attended the commission of the offense.

The trial court, however, appreciated another circumstance, namely, abuse of superior strength to qualify the killing as murder. This conclusion is erroneous. First, this circumstance is not alleged in the information; and second, it has not been established by the evidence: Flores was only one against several. Flores is therefore guilty only of homicide, punishable with reclusion temporal under Article 249 of the Revised Penal Code, to be imposed in its minimum period in view of the attendance of the mitigating circumstance of voluntary surrender without any aggravating circumstance to offset it.

IN VIEW OF THE FOREGOING , the judgment appealed from is (a) modified with respect to appellant Bonifacio Flores, who is hereby found guilty of homicide and sentenced to an indeterminate penalty ranging from 10 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum; and to indemnify the heirs of the deceased Rosendo Lomanog in the sum of P12,000.00, with 1/2 of the costs; and (b) reversed with respect to appellant Benjamin Ringor, who is acquitted of the charge against him, with costs (1/2) de oficio, and ordered immediately discharged from custody, unless he is held on some other valid charge.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Decision of March 15, 1965.

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