

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SANTOS DONIEGO, DEFENDANT AND APPELLANT.

G.R. No. L-17321. November 29, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

Santos Doniego is charged with the crime of multiple murder for the death of Anselmo Garcia, Ciriaco Palor and Máximo Viernes.

Upon arraignment the defendant entered a plea of not guilty.

After trial, the court found the defendant guilty beyond reasonable doubt as charged and sentenced him for each murder to suffer the penalty of *reclusión perpetua* which shall not exceed FORTY (40) years pursuant to article 70 of the Revised Penal Code and to indemnify the heirs of each of the victims Anselmo Garcia, Ciriaco Palor and Maximo Viernes in the sum of P6,000.00 and to pay the costs. The defendant was credited with one-half of the time he had undergone preventive imprisonment.

From the verdict and sentence, the defendant has appealed.

On the night of 1 July 1957, a dance was held in the auditorium of Cabanbanan Norte, Gonzaga, Cagayan, in celebration of the barrio fiesta, but as rain fell, the dance was transferred to a 2-story house owned by Severino Patubo. At about 10:00 o'clock while the dance was going on, Severino Patubo, who was in his store on the ground floor, saw Domingo Doniego talking to Patrocinio Viernes. Camilo Ragual, a companion of Patrocinio Viernes, was also there. While thus conversing, Severino Patubo saw Domingo Doniego suddenly lunge at Patrocinio Viernes with a Batangas knife but the latter was not hit because Camilo Ragual wrested the knife from Domingo and with it stabbed the latter in his back. Severino Patubo called his brother Nemesio Patubo, the second barrio lieutenant, to come down because there was a fight. Nemesio sent rural policeman Ciriaco Palor to call Magno Taloza, the first barrio lieutenant. Magno Taloza arrived with Ciriaco Palor and after seeing the deceased, he sent for rural policemen to see the place. Later, rural policeman Anselmo Garcia arrived. Taloza asked for paper and pencil and when about to start the investigation, Santos Doniego, father of the deceased arrived, and asked Taloza who had killed his son Domingo. Taloza answered that he did not know because he had just arrived. He asked Severino Patubo and the latter answered that Camilo Ragual had killed his son Domingo. Santos Doniego followed by Severino Patubo went up the house and shouted "vulva of all your mothers". He unsheathed his small sharp-pointed bolo (Exh. D) and immediately began to assault the people there. He stabbed Vicente Pescador on his right thigh who immediately jumped from the back porch (*batalan*) of the house; then he hacked rural policeman Anselmo Garcia on the left side of his back. Turning around, he stabbed Avelino Paet, the operator of the amplifier, in the coccyx when he (Avelino) was about to leap from the house; and as the Patubo brothers and companions were many, Santos avoided the group and instead stabbed Ciriaco Palor in his abdomen while the latter was helping Taloza, the first barrio lieutenant, conduct the investigation. Ciriaco Palor jumped from the balcony of the house. Máximo Viernes, secretary of the barrio council, ran towards the kitchen and there

near the door Santos inflicted upon the former (Máximo Viernes) a thru and thru wound on the right side of his back piercing the abdomen which caused his intestines to come out. After his brother-in-law Ciriaco Palor had been stabbed, Magno Taloza jumped out of the house and returned to his house. As a result of the stab wounds inflicted upon Ciriaco Palor and Máximo Viernes the former died instantaneously and the latter a little over half an hour later. After he had been stabbed, Anselmo Garcia was able to return to his house where before he expired at 12:00 midnight, he told his wife, Francisca Patubo, that Santos Doniego had stabbed him. His wife asked him to write an ante-mortem statement (Exh. E), which he did, but he was not able to sign it. He wrote in Exhibit E that Santos Doniego had stabbed him without any motive (Exh. E-1). On 2 July 1957, Dr. Federico P. Umayam, the municipal health officer of Gonzaga, Cagayan, examined the cadavers of the three deceased and issued the following certificates:

POSTMORTEM EXAMINATION

Body of ANSELMO GARCIA (37 yrs.) :

(1) Wound, stabbed, penetrating, perforating, lumbar region, left back.

Length About 1 inch.

(2) Wound, stabbed, lower 3rd, arm, posteriorly, left.

Length About ½ inch

Depth About 1/3 inch

Cause of death Internal hemorrhage (Exh. A)

Body of MAXIMO VIERNES (33 yrs.) :

(1) Wound, stabbed, thru and thru, perforating.

Pt. of Entrance Lumbar region, back, right.

Pt. of Exit Epigastric region

Length About 1 inch

Cause of death Internal hemorrhage (Exh. B)

Body of CIRIACO PALOR (62 yrs.) :

(1) Wound, stabbed, penetrating, 5th I.C.S.

Chest, left side of the Sternum

Length About 1-1/3 inch.

Cause of death Internal hemorrhage (Exh. C)

He testified that he had examined the corpses of the three deceased and that the cause of their death was internal hemorrhage as a result of penetrating stab wounds; and that the wounds resulting in their death could have been caused by the bolo (Exh. D). He further testified that the bolo may have been the only weapon used to inflict the

stab wounds upon the three victims.

The appellant denied he had killed the victims. He testified that while he, his wife, step-son and his brother-in-law, Vicente Villena, were taking their dinner at about 10:00 o'clock in the evening of 1 July 1957, Ernesto Palor, a minor, informed him that his son Domingo was quarrelling and fighting with someone in the house of Severino Patubo; that he went unarmed with his wife and brother-in-law to the house and did not pick up any arm in the house; that when he came near the place he saw people running away and noticed that there were no more people in the upper floor of the house and the store on the ground floor was closed; that he saw the lifeless body of his son Domingo near the stairway; that he embraced his dead son and asked his brother-in-law to help him carry his son to his house as they did; that Laureana Pastor came to his house to tell him that Camilo Ragual stabbed his son while Patrocinio Viernes held him; that because Patrocinio Viernes, one of the killers, was not arrested he was enraged and wanted to go out to avenge the death of his son but his wife Rufina Palor prevented him from doing so; that the following day patrolman Sofronio Domingo came to his house to bring him to jail because he threatened to kill Patrocinio Viernes who had not been jailed; that he did not run amuck, nor kill or wound any person; that Magno Taloza testified against him because in another murder case (Crim. Case No. 2612-A) he (appellant) and Sgt. Pastores implicated the former and Manuel Doniego who in his (appellant's) presence and of Basilio Abenoja shot to death the latter's father, Mariano Abenoja, in 1943 (Exhs. 4 & 5); and that he was not informed that he had killed Palor, Viernes and Garcia when he was arrested but only a week after.

Vicente Villena, a brother-in-law of the appellant, Eugenio Macalingay, appellant's son-in-law, and Avelino Paet corroborated the testimony of the appellant.

According to the defense it was Patrocinio Viernes who drew his bolo from its scabbard as he was going up the house and upon reaching the second floor challenged the relatives of the deceased saying: "Who among you relatives of Ingo (Domingo Doniego) would take his side;" that Patrocinio immediately ran toward Ciriaco Palor, uncle of Domingo, but when Palor drew his bolo and aimed at Patrocinio, the latter noticing that his adversary (Palor) had a larger bolo backed out and ran away; that to defend his cousin Patrocinio, Máximo Viernes drew his bolo but Ciriaco Palor struck Máximo's back when the latter tried to escape; and that Anselmo Garcia stabbed Ciriaco Palor who also stabbed the former.

The appellant claims that the trial court erred in giving more weight to the testimony of the prosecution witnesses and in convicting the accused of three murders.

The trial court correctly found that the appellant killed Anselmo Garcia, Ciriaco Palor and Máximo Viernes. It could not be expected of Patrocinio Viernes, after his companion Camilo Ragual had stabbed Domingo Doniego to death, to go up the house and challenge the relatives of Domingo who would take his side, for he who helped Ragual when he stabbed Domingo by holding him would not tarry in the place to be harmed by the relatives of the deceased or arrested. His companion Camilo Ragual disappeared from the place where Domingo was stabbed to death. Ciriaco Palor, a rural policeman, was immediately sent by Nemesio Patubo, the second barrio lieutenant, after the stabbing of Domingo, to call the first barrio lieutenant Magno Taloza, who together with Ciriaco Palor came to the house of Severino Patubo, so Ciriaco Palor was not in the upper floor of the house of Severino Patubo when, according to the appellant's evidence, Patrocinio Viernes went up the house and made the challenge already mentioned. The challenge and assault or stabbing after the arrival of the first barrio lieutenant Magno Taloza and Ciriaco Palor could not have been made because the investigation was started or about to start by the first barrio lieutenant Magno Taloza and the presence of other rural policemen would have certainly deferred Patrocinio Viernes from assaulting and stabbing people who were in the house at the time.

Francisca Patubo, the wife of Anselmo Garcia, testified that upon arriving at their house her husband told her that

the appellant had stabbed him. Ciriaco de la Cruz, the then chief of police of Gonzaga, Cagayan, testified that when he together with the Mayor, Dr. Umayam and two policemen, went to the appellant's house to arrest him because he had killed three persons (Garcia, Palor and Viernes) and wounded two others, the appellant seemed to cry and told him (the chief of police) that he (the appellant) did not know what had happened; and that without a warrant he arrested the appellant on the strength of his findings at the scene of the crime, bolstered up by the statements of the first barrio lieutenant and the owner of the house, that he had killed three persons and wounded two others.

It was most natural and logical for the appellant to have been enraged and obfuscated at the sight of his dead son Domingo who was stabbed to death and seized by that feeling of hatred and rancour, to have stabbed indiscriminately even his brother-in-law Ciriaco Palor, a cousin of his wife Máximo Viernes, and the husband of a niece of the appellant's wife Anselmo Garcia, and wounded Vicente Pescador on the right thigh and Avelino Paet, the amplifier operator, in the coccyx. The latter's testimony that he was not stabbed by the appellant but by Ciriaco Palor merits scant consideration because he was stabbed when he was about to leap from the house and there was panic and confusion at the time. This may be gleaned by his answer when he was asked whether it could be possible for him to determine or point to the person who stabbed him. His answer is "After I was stabbed, I immediately turned. The first one I saw was Ciriaco Palor with a bolo." (p. 80, t.s.n., 28 March 1960) Eyewitnesses swore that the appellant did the stabbing. The motives imputed to Severino and Nemesio Patubo and Magno Taloza that prompted them to testify against the appellant are not sufficient to discredit their testimony, because the release or non-inclusion of their nephew Patrocinio Viernes in the complaint or information asked by them (the Patubos) from the appellant, does not rest with them but depends upon the evidence found by the prosecuting officers; and because the appellant's conviction in this case would not disqualify, bar and prevent him from testifying against Magno Taloza in the criminal case for murder filed against him.

The information charges the appellant with two qualifying circumstances, to wit: treachery and evident premeditation. Although the evidence may justify or support the finding that the assault upon Vicente Pescador was sudden, yet the assault upon Anselmo Garcia, Avelino Paet, Ciriaco Palor and Máximo Viernes cannot be deemed to have been sudden, for the assault upon Vicente Pescador must have put them on guard and the assault upon them cannot be characterized as unexpected or sudden. 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. Such means was not availed of by the appellant. Obviously, evident premeditation was absent when the appellant with his bolo hacked his victims. On the other hand, the attenuating circumstance of immediate vindication of a grave offense—the stabbing of his son to death, or of having committed the crime upon an impulse so powerful as naturally to have produced passion or obfuscation, may be deemed to have attended the commission of the three crimes alternatively, because both mitigating circumstances cannot co-exist.

The crime committed by the appellant is homicide and the penalty provided for by Section 249 of the Revised Penal Code is *reclusión temporal* to its full extent. There being a mitigating circumstance the penalty should be imposed in its minimum period. And, pursuant to the Indeterminate Sentence Law, the appellant is sentenced to suffer a minimum of 10 years and one day of *prisión mayor* and a maximum of 14 years and 8 months of *reclusión temporal*, the accessories of the law, for each of the three homicides committed by him.

Modified as to the crime committed and the penalty to be suffered by the appellant, the rest of the judgment appealed from, in so far as it is applicable to the penalty hereby imposed, is affirmed, with costs against the appellant.

Bengzon, C. J., Bautista Angelo, Labrador, Concepción, Reyes, J.B.L., Barrera, Paredes, and Makalintal, JJ., concur.

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