

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AVELINO MANANSALA, JR., ET AL., DEFENDANTS, AVELINO
MANANSALA, JR. AND JOSE MANANSALA,
DEFENDANTS-APPELLANTS.**

G.R. No. L-23514. February 17, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal from the decision of the Court of First Instance of Albay in its Criminal Case No. 3285 convicting Avelino Manansala, Jr. and Jose Manansala of murder and sentencing the first to an indeterminate penalty of from 10 years and 1 day of prision mayor to 17 years 4 months and 1 day of reclusion temporal, and the second to reclusion perpetua; both of them to indemnify jointly and severally the heirs of Rodrigo Aringo in the sum of P6,000.00; and each to pay 1/3 of the costs.

The prosecution, relying mainly on the testimony of two eyewitnesses - Celestino Atun and Percival Amador - and of the policemen who went to the scene of the crime upon noticing the commotion it produced, sought to establish the following: Between 1:00 and 2:00 o'clock in the afternoon of March 27, 1962, some persons had a quarrel inside the New Bicol Carinderia, an eatery located near the Legaspi Port Market, Legaspi City. After a short while the protagonists came out through the backdoor of the carinderia. Jose Manansala had Rodrigo in a tight embrace from behind, with his arms under the latter's armpits. While Rodrigo was in that position of apparent helplessness, Avelino stabbed him with a balisong, or Batangas knife. The stabbing continued while Rodrigo was led, or dragged, by Jose to a bamboo bed (papag) nearby, and even after Rodrigo had been forced down on it in a prone position. When the policemen who responded to the commotion arrived, they found Avelino still holding the fatal weapon, and Rodrigo's limp body, bathed in his own blood, stretched on the papag. A taxicab was commandeered to take the wounded man to a hospital, but he expired even before the vehicle could start. The autopsy later conducted by Dr. Antolin Lotivio, a resident physician of the Albay Provincial Hospital, revealed that the victim died from massive hemorrhage and shock as a result of the multiple wounds (thirteen in all) sustained by him in the chest, abdomen, back and the extremities.

The accused did not take the witness stand. However, they presented two witnesses, Domingo Daria and Salvador Petilos, who said that they saw the whole incident. The substance of their testimony is as follows: Early in the afternoon of March 27, 1962 Avelino, a small-time peddler of textiles in the Legaspi Port Market, was eating his lunch inside one of the eateries dotting the market site, when Rodrigo Aringo alias Diego, a baggage boy in the same market, approached him and demanded his fee for having carried Avelino's baggage. Avelino said he was willing to pay for the services rendered at noon, but not for those rendered earlier in the morning. He then took some money from his pocket and proffered it to Rodrigo. Obviously peeved at having been thus publicly rebuffed, Rodrigo brusquely brushed Avelino's hand aside and instantly gave him a fist blow in the face. Avelino fell from his seat; he tried to get up, but was given another blow, and then a third. As he reeled from the force of the last blow a batangas knife he was carrying fell from his trousers pocket. Avelino picked up the knife, and Rodrigo,

seeing that he was armed, rushed to the carindaria's kitchen and returned almost immediately with a 10-inch knife in his hand. With it he swung at his antagonist, but the latter evaded the blow.

Meanwhile, appellant Jose Manansala, an uncle of Avelino, noticed the commotion from outside the carindaria, where he was loading baggage on a parked truck some six meters away. He shouted at Rodrigo to stop. Rodrigo paid no heed and instead delivered another thrust at Avelino, who again evaded it. At the third attempt, Jose embraced Rodrigo from behind, and it was at that moment that Avelino stabbed Rodrigo and inflicted the numerous wounds which proved fatal. Jose took the kitchen knife from Rodrigo and threw it away, and then released his limp body on the papag nearby. When the policemen arrived Avelino was still clutching the knife he had used. Both appellants were apprehended.

In its decision rendered on August 14, 1964 the trial court sustained the prosecution's version of the incident and found both accused guilty of murder. However, the court credited Avelino with the mitigating circumstance of sufficient provocation or threat on the part of the victim, and imposed upon him a lesser penalty than that imposed on his uncle.

Appellants' plea is self-defense. This is predicated on the theory that the deceased was himself armed with a knife with which he tried to stab Avelino, as declared by the two witnesses for the defense. Several circumstances, however, belie this claim. First, Avelino sustained no knife wound at all. Second, although several policemen arrived at the scene of the incident almost immediately after it happened, not one of them saw the knife allegedly used by Rodrigo. Nor was it shown to them, or at least brought to their attention, by either of the appellants. Indeed, when Avelino surrendered to the policemen he declined to give any statement, which in the natural course of things he would have done if he had acted merely to defend himself. A protestation of innocence or justification is the logical and spontaneous reaction of a man who finds himself in such an inculpatory predicament as that in which the policemen came upon the appellants, with Avelino still clutching the death weapon and his victim dying before him.

But while it is clear that Avelino did not act in legitimate self-defense, the trial court correctly held that there was sufficient provocation on the part of the victim. The evidence given by the witnesses for the defense as to how and why the fight started, and as to the fact that the deceased hit Avelino with his fist, is not controverted by the witnesses for the prosecution, who did not see the incident from the very beginning. And one fist blow at least is confirmed by the doctor who treated Avelino for a contusion around one eye.

On the other hand, the fact that when Avelino stabbed the victim the latter was practically helpless and unable to put up any defense, being in the tight embrace of Jose Manansala, was correctly appreciated by the trial court as treachery, and qualifies the offense as murder.

Jose Manansala was found guilty as co-principal on the ground that there was concert of action between him and his nephew. The evidence does not justify this finding beyond reasonable doubt. There is no showing that the killing was agreed upon between them beforehand. No motive for it has been shown other than the provocation given by the deceased; and such motive was true only insofar as Avelino was concerned. The circumstances indicate that if Jose embraced Rodrigo and rendered him helpless, it was to stop him from further hitting Avelino with his fists. However, Jose is not entirely free from liability, for it has been established that even after the first knife thrust had been delivered he did not try to stop Avelino, either by word or overt act. Instead Jose continued to hold Rodrigo, even forced him down on the bamboo bed with Avelino still pressing the attack. Withal it cannot be said that Jose's cooperation was such that without it the offense would not have been accomplished. But although not indispensable, it was a contributing factor. If Jose's initial intent was free from guilt, it became tainted after he saw the first knife thrust delivered. The thirteen wounds must have taken an appreciable interval

of time to inflict, and Jose's cooperation facilitated their infliction. He must therefore be held liable as an accomplice.

The slaying of the deceased having been qualified by treachery, Avelino Manansala is liable for murder, the penalty of which is reclusion temporal maximum to death (Art. 248, Revised Penal Code). Appreciating in favor of Avelino the mitigating circumstance of sufficient provocation by the deceased without any generic aggravating circumstance to offset the same, the penalty imposable upon him is the minimum period of the penalty for murder (see par. 3, Art. 63, Revised Penal Code), which is reclusion temporal maximum (17 years, 4 months and 1 day to 20 years).

Since the resulting penalty is neither death nor life imprisonment, the Indeterminate Sentence Law applies (Sec. 2, Act No. 4103 as amended). Avelino Manansala is therefore entitled to an indeterminate sentence, the upper range of which is reclusion temporal maximum and the lower range - which is one degree lower than the penalty prescribed by the Revised Penal Code for murder - is anywhere within prision mayor maximum (10 years and 1 day) to reclusion temporal medium (17 years and 4 months). The penalty meted out by the trial court on Avelino Manansala, Jr. - "from 10 years and 1 day of prision mayor to 17 years 4 months and 1 day of reclusion temporal" - is within the range allowed by law and is therefore correctly imposed.

As regards appellant Jose Manansala, the penalty prescribed by law, he being an accomplice, is one degree lower than that prescribed for the principal, or prision mayor maximum to reclusion temporal medium (10 years and 1 day to 17 years and 4 months). Applying the Indeterminate Sentence Law, and considering that under paragraph 1, Article 64 of the Revised Penal Code, "(W)hen there are neither aggravating nor mitigating circumstances, (the court) shall impose the penalty prescribed by law in its medium period," the decision appealed from should be, as it is hereby, modified as follows:

Appellant Jose Manansala, as accomplice to the offense of murder, is sentenced to an indeterminate penalty of from 4 years, 2 months and 1 day of prision correccional to 12 years and 1 day of reclusion temporal; the amount of the indemnity is raised from P6,000.00 to P12,000.00 to be paid the heirs of the deceased by Avelino Manansala, Jr. as principal; in case of the insolvency of the principal, Jose Manansala, as accomplice, is subsidiarily liable for the indemnity due from said principal; and in all other respects the judgment appealed from is affirmed. No costs in this instance.

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

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