

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR ABLETES AND JULIO PAMERO, ACCUSED-APPELLANTS.***G.R. No. L-33304. July 31, 1974*

Ponente: AQUINO, J.

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At twilight or past six o'clock in the evening of September 30, 1969, after the Angelus had been rung in the poblacion of Giporlos, Eastern Samar, Rufo M. Cote, a twenty-three-year old tailor, and Alice Depalco, his twenty-one-year old relative, were having a paseo. They were riding on a bicycle. Alice was seated behind Cote. Their destination was the beach.

After they had made a turn at the street corner and while they were near the lighted house of Filomeno Abayan, they were confronted by Victor Abletes and Julio Pamero, twenty-four and twenty-one years old, respectively, both farmers. Abletes was a bachelor. Pamero was already married. Alice had known them since childhood. They were residents of Giporlos.

Abletes and Pamero had been waiting for Cote for sometime near the house of Venan Castillo at the street corner. When Cote was approaching, Pamero said: "They are now here, Victor Abletes." Abletes was armed with a bolo (pisaw). Pamero had a bolo tucked to his waist.

Pamero seized with both hands the right handlebar of Cote's bicycle. It inclined to the left side. While in that position, Abletes stabbed Cote. He fell to the ground on the left side of the bicycle. Abletes and Pamero hastily fled to the west. Alice, who was frightened, also ran away to her house which was about seventy meters away.

The stabbing was witnessed by Zosimo Nabelgas and Victor Abadilla. Nabelgas approached the mortally wounded Cote who pleaded: "Zosing, bring me to the house." Nabelgas shouted for help. With the assistance of Abadilla, he brought Cote to his (Cote's) house about two hundred meters away from the scene of the stabbing. He died two hours later. Juan Cote, the father of Rufo, cried and asked Nabelgas who stabbed Rufo. Nabelgas answered that Abletes stabbed Rufo Cote while Pamero was holding the bicycle. Nabelgas gave the same information to the Chief of Police when the latter investigated the stabbing on that same night of September 30th in the house of Alice Depalco. The stabbing was intentional.

The motive for the killing was a personal grudge, a fact which Abletes admitted to the Chief of Police when he surrendered (8 tsn). Twelve days before the stabbing or on September 18th Cote and Abletes had an inconclusive duel. They hacked each other with their weapons. Abletes ran away. Presumably, he was vanquished in that encounter. The incident did not reach the court.

Doctor Flora Camenforte, the Municipal Health Officer, found that the victim suffered a stab wound located on the right side of his chest at the seventh intercostal space along the mid-axillary line (Exh. B). The direction of the wound was "upward and medially." It was fatal because it penetrated the right lung. Cote would not have survived even if there was medical attendance. Death was attributable to severe hemorrhage (Exh. C).

A complaint for murder was filed by the Chief of Police on the following day, October 1st, against Abletes and Pamero. At the preliminary examination Alice testified regarding the killing. Nabelgas executed an affidavit regarding the incident. A warrant for the arrest of Abletes and Pamero was issued. Abletes had voluntarily surrendered to Patrolman John Woods on the night of the killing (See back of warrant, p. 8, Record). Pamero (a third cousin of the Chief of Police) went into hiding. He was arrested on November 11, 1969 (Exh. A-1). On November 28, 1969 Abletes waived the preliminary investigation. On February 28, 1970 the Fiscal filed in the Court of First Instance an amended information for murder against Abletes and Pamero.

After trial they were convicted of murder and were each sentenced to "life imprisonment (cadena perpetua)" They were ordered to indemnify the heirs of Cote in the sum of P12,000 (Criminal Case No. 638). They appealed.

Pamero interposed an alibi. He claimed that, at the time the stabbing occurred, he was making copra in the place of Gerardo Badrina at Barrio Roxas which is six kilometers away from the poblacion and can be reached in about two and one-half hours. He denied any complicity in the stabbing of Cote. He said that he had no misunderstanding with Alice Depalco and Zosimo Nabelgas. He did not know of any reason why they would falsely implicate him in the killing of Cote. Pamero's alibi was corroborated by Badrina.

The fabricated character of Pamero's alibi is manifest. He was well-known to Alice Depalco and Nabelgas. They positively identified him as the companion of Abletes in the stabbing of Cote. His involvement in that felonious assault was established beyond reasonable doubt.

Abletes pleaded self-defense. His story was that at around six-thirty in the evening of September 30, 1969 he was selling copra in the store of Filemon Lacdao. After going out of Lacdao's store, he saw that Rufo Cote's bicycle had bumped a person. Cote, who was allegedly drunk, got down from the bicycle and chased the person he had bumped. Then Cote chased the persons in the yard of Lacdao's house. He chased also Abletes who fled across the street to Filomeno Abayan's house. Cote allegedly overtook Abletes when he was in close proximity to the fence and stabbed the latter but, miraculously, Abletes was not wounded at all.

Abletes, so his story goes, grabbed Cote's hands. They wrestled for the possession of Cote's weapon. They fell to the ground, Abletes, after wresting the weapon from Cote, stabbed him. Thereafter, Abletes, without pulling out the weapon from Cote's body, went to the municipal building and surrendered to Patrolman Woods.

The trial court characterized Ablete's theory of self-defense as highly incredible. It regarded the testimonies of the prosecution witnesses as reliable and believable. It viewed their narration of facts as coherent and "corroborative" and their demeanor on the witness stand as "normal."

We agree with the trial court that Abletes' plea of self-defense is not sufficient to overthrow the clear testimony of the prosecution eyewitnesses that Abletes inflicted a mortal chest wound on Cote while his bicycle was held by Pamero. Abletes, in wounding Cote, was induced by revenge and resentment. Having been worsted in a prior fight with Cote, Abletes had to enlist the help of Pamero.

It is difficult to believe Abletes' version that Cote, while intoxicated, was driving a bicycle and that he chased the victim whom he had bumped instead of the victim chasing him. That version taxes one's credulity because an inebriated person would not be able to balance himself on the bicycle. His story, which depicted Cote as chasing several persons, defies common sense.

Alice Depalco and Nabelgas recounted to the Chief of Police a few hours after the incident what they had just witnessed. The next day they executed their affidavits before the Municipal Judge. The appellants admit that there was no reason why Alice and Nabelgas would frame them up. The failure of the Chief of Police to produce the statement given to him by Alice is of no moment. Her declaration at the preliminary examination appears in the

record. It has always been available for perusal by the appellants.

The appellants note that the testimonies of Alice Depalco, Nabelgas and the Chief of Police "are replete with details even on minor matters." They contend that that feature of the evidence "does not in anyway strengthen the prosecution's case." Appellants' contention is untenable. The graphic details contained in the vivid narrations made by the prosecution witnesses are indicia of the verisimilitude of their testimonies.

The appellants point out that the act of Abletes in surrendering to the police immediately after the stabbing "is a sufficient proof of his lack of evil intent. The appellants would be correct if Abletes, in giving himself up, had explained that he had acted in self-defense. But he did not offer any such explanation. His surrender shows his contrite realization that what he had done was wrong and, because of remorse, he was placing himself at the disposal of the authorities.

Conspiracy may be inferred from appellants' conduct. They waited for Cote. They must have obtained prior knowledge that he was going to pass the street corner, riding on a bicycle. Both were armed. They coordinated their movements in assaulting Cote. Pamero held the handlebar of the bicycle to enable Abletes to inflict on Cote the fatal thrust into a vital organ. They fled in the same direction after the stabbing. It is evident that they had community of design. They collaborated and synchronized their efforts for the attainment of the same objective which was the assassination of Cote.

The instant case has a similarity to a situation where one defendant was holding the victim by the neck when the other inflicted the fatal wound. The defendants were convicted of murder qualified by treachery although the assault was made face-to-face {People vs. Gonzales, 92 Phil. 1078; U.S. vs. Valdez and Gamit, 40 Phil. 870; U.S. vs. Oration and Lambino, 18 Phil. 530}.

It is alleged in the amended information that the killing was attended with treachery, abuse of superiority and premeditation. There was treachery because Abletes and Pamero suddenly intercepted Cote while he was riding on a bicycle, an occasion when he least expected that any harm would befall him since he was engaged in a peaceful pursuit. The appellants resorted to a mode of execution which insured the consummation of the killing without any risk to themselves. The victim had no time to defend himself in view of the suddenness of the assault (Art. 14[16], Revised Penal Code). Alevosia qualifies the killing as murder. It is not necessary to resolve whether there was abuse of superior strength because that circumstance, if present, would be merged with treachery.

While at first blush it would seem that there was evident premeditation, since the killing was motivated by vindictiveness, nevertheless, that circumstance cannot be regarded as aggravating. As noted by the Solicitor General, there is no clear proof in the record as to the time when the offenders determined to commit the crime, the act which would manifestly indicate that the culprits had clung to their determination, and the sufficient interval of time between the conception and the execution that would have been sufficient to allow them to reflect upon the grave consequences of their act and to overcome the resolution of their wills had they desired to hearken to the admonitions of their aroused consciences (People vs. Corpus and Serquina, 107 Phil. 44; People vs. Fuentesuela, 73 Phil. 553; U.S. vs. Gil, 13 Phil. 530, 547).

The trial court correctly appreciated in favor of Abletes the mitigating circumstance of voluntary surrender to the authorities. But, as rightly pointed out by his counsel, the lower court erred in holding that treachery was offset by voluntary surrender to the authorities. A qualifying circumstance cannot be offset by a generic mitigating circumstance.

The trial court appreciated in favor of Pamero the mitigating circumstance of lack of instruction because he was an "uneducated" farmer (he knows how to sign his name). The appreciation of that mitigating circumstance rests

largely in the trial court's discretion (*People vs. Ripas*, 95 Phil. 63; *People vs. Sari*, 99 Phil. 1040). We find that it did not abuse its discretion.

We find that the murder charge against the appellants was proven beyond reasonable doubt. As recommended by the Solicitor General, the penalty for murder should be imposed on the appellants in its minimum period, which is reclusion temporal maximum (Arts. 64[2] and 248, Revised Penal Code). Consequently, the appellants are entitled to an indeterminate sentence (*People vs. Ordonio*, 82 Phil. 324, 334).

The penalty of life imprisonment or cadena perpetua imposed by the trial court is an erroneous designation. The correct term is reclusion perpetua. The penalty or cadena perpetua was abolished by the Revised Penal Code (*People vs. Mobe*, 81 Phil. 58; *People vs. Rodriguez*, 108 Phil. 118, 126).

The trial court's judgment should be modified. Appellants Abletes and Pamero are each sentenced to an indeterminate penalty of sixteen (16) years to twenty (20) years of reclusion temporal as maximum (See *People vs. Turalba*, L-29118, February 28, 1974, 55 SCRA 697, 705). In other respects, the trial court's judgment is affirmed. Costs against the appellants.

SO ORDERED.

Zaldivar (Chairman), Fernando, Barredo, Antonio, and Fernandez, JJ., concur.

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