

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
JOHNNY BASADRE, DEFENDANT-APPELLANT.***G.R. No. L-36383. April 17, 1984*

Ponente: RELOVA, J.

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In Criminal Case No. CCC-II-15 (BB) of the then Circuit Criminal Court of Baguio, accused Johnny Basadre was found guilty of the crime of murder, qualified by treachery, and with the aggravating circumstance of recidivism and the special aggravating circumstance of quasi-recidivism, was sentenced to suffer the extreme penalty of death, to indemnify the heirs of the deceased Alfonso Rayray in the amount of P12,000.00 and to pay the costs. Thus, this case is before Us on automatic appeal.

Prosecution evidence shows that in the afternoon of August 8, 1971, Alfonso Rayray and his brother Domingo, together with one Edito Tacla, were at Maresciel Soda Fountain in Baguio City to partake of some refreshments. Domingo Rayray and Edito Tacla sat on the stools beside the counter and eventually proceeded to enjoy the refreshments they have ordered. Alfonso Rayray went towards the juke-box near the door which is about two meters where his brother Domingo and Edito Tacla were seated.

While Alfonso was scanning the list of musical selections available for play, a commotion suddenly broke out in front of the Maresciel Theater, sending people to scamper away from the place. Suddenly, a man who was later on identified as Johnny Basadre (herein appellant) approached Alfonso Rayray and stabbed him with a knife. Spontaneously, Alfonso exclaimed: "Binagsuldac metten", meaning (I am already wounded).

Alfonso Rayray was rushed to the Baguio General Hospital and was immediately operated on by Dr. Magdaleno Mucum who found the patient with a fatal stab wound at the hypogastric region where part of the intestine protruded. He was confined at the hospital up to September 24, 1971 when he was transferred at the Pines City Doctors' Hospital where he underwent another operation by Dr. Ernesto Bayuga.

On October 31, 1971, Alfonso was transferred at the Lahos Clinic and Hospital at Vigan where he underwent one more operation on November 4, 1971. However, on November 16, 1971, on account of internal hemorrhage, the patient finally succumbed and died of hemorrhage complication.

When Alfonso Rayray was still at the Baguio General Hospital, Pat. Tinasa was able to interview and question him in the course of which he was shown five (5) photographs of different police characters. Alfonso, who was then weak, pointed to a photograph (Exhibit G-2) which turned out to be the picture of appellant Johnny Basadre.

On September 9, 1971, Domingo Rayray confirmed Alfonso's identification of appellant Basadre as the assailant by pointing to the latter's picture (Exhibit G-2), among the five photographs shown him as the very person who stabbed his brother.

The defense is denial and alibi. Appellant declared that in 1970 he was in New Bilibid Prisons at Muntinlupa serving sentence until he escaped therefrom on December 13, 1970. He went to Manila where he stayed for about

six (6) months and, upon learning that the Muntinlupa prison guards were looking for him, he went into hiding in Dagupan for some four (4) months, following which he transferred to Lingayen, Pangasinan and stayed with his grandparents. In August 1971 he claimed that he was in Ba-ay and did not go up to Baguio until October 1971 because "I was afraid that this is the place I had cases" and "I was thinking that they might be looking for me here in Baguio." However, he admitted that in 1971 his parents were living in Baguio and that was the reason he finally went there to see his mother.

On December 16, 1971, appellant Basadre was apprehended by Pat. Talostos for possessing a concealed deadly weapon.

Convicting appellant Basadre of the crime of murder, the trial court said -

"The accused admitted that he was in Ba-ay, Lingayen, Pangasinan, sometime in August although he could not remember the exact date. He also admitted that before he returned to Baguio in October 1971 he had gone to Camp 6 five or six times the last of which was in the month of September 1971 when he stayed for a week with an uncle working in the mines.

"Under these circumstances it is not impossible that on August 8, 1971, he could have gone to Baguio and committed the crime. It must not be overlooked that at that time the accused was a fugitive from justice -- an escapee from Muntinlupa and as such he never stayed in one place long enough to be traced by authorities. It was therefore not impossible for him to penetrate Baguio in any of his trips to Camp 6. His reason that he purposely did not proceed to Baguio because he was afraid the authorities might catch up with him does not by itself render impossible his going there. As a matter of fact even with this fear he nevertheless went to Baguio in October 1971 to see his mother. His forays to Baguio previous to October 1971 without being caught by the police must have emboldened him even more to come to Baguio until the police finally caught up with him in December 16, 1971.

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"It is therefore the considered opinion of this court that as against the positive identification of the accused, the defense failed to prove his alibi to the satisfaction of the court. x x x" (pp. 36, 38, Rollo)

In this appeal, defendant-appellant claims that the trial court erred (1) in not dismissing the information on the ground of double jeopardy; (2) in not acquitting the accused, the evidence being insufficient for conviction; (3) in disregarding the evidence for the defense; and (4) in finding that treachery and quasi-recidivism were present.

Appellant's first assigned error is devoid of merit. Criminal Case No. 522 of the then Court of First Instance of Baguio and Benguet for murder against herein appellant Johnny Basadre was only transferred by raffle to the Circuit Criminal Court of the Second Judicial District which docketed it as Criminal Case No. CCC-II-15 (BB), pursuant to Administrative Order No. 274, dated September 11, 1968, as amended by Administrative Order No. 274, dated September 30, 1968, of the then Department of Justice. Thus, it cannot be said that Criminal Case No. 522 of the Court of First Instance was terminated, much less was appellant convicted or acquitted therein. After his arraignment in said Criminal Case No. 522, the case was transferred for actual trial to the Circuit Criminal Court where it was given the corresponding docket number.

With respect to the identity of appellant as the assailant of Alfonso Rayray, prosecution witness Domingo Rayray testified as follows:

"Q You said your name is Domingo Rayray. Do you know somebody by the name of Alfonso Rayray?

A Yes, sir.

Q Why do you happen to know him?

A He was my brother sir.

Q You said "was my brother." What happened to him?

A He was stabbed.

Q When was he stabbed?

A August 8, 1971.

Q Where was your brother stabbed?

A At the Maresciel Soda Fountain, Zanduenta Street, Baguio City.

Q Do you know who stabbed your brother?

A Yes, sir.

Q Would you look around the courtroom and see if the one who stabbed your brother is present?

A (witness pointing to accused Johnny Basadre).

Q How do you know that the accused Johnny Basadre is the same person who stabbed your brother?

A It was he whom I saw who stabbed my brother.

Q Were you alone at the time Johnny Basadre stabbed your brother?

A No, sir.

Q Who was your companion, if any?

A Edito Tacla.

Q By the way, where is your brother now, if you know?

A He is already dead.

Q Would you please tell the court how Johnny Basadre stabbed your brother?

A When we came from our boarding house at Kayang, we proceeded to Maresciel Soda Fountain to take refreshment.

Q You said "we". Who are your companions?

A Edito Tacla and my brother sir.

Q Then what happened?

A While Edito Tacla and I were having our refreshments, my late brother went to play music at the jukebox. That was the time when he stabbed him.

Q You said "he", to whom are you referring?

A (Witness pointing to the accused Johnny Basadre.)

Q How far were you and Edito Tacla away from the jukebox where your brother was playing music?

A Maybe two meters sir.

Q Will you please step down from the witness stand and demonstrate the position of your brother just before

he was stabbed by the accused? Assuming that the table over here which was used by the Court Interpreter is the jukebox. Assuming that you are your late brother, how was his position?

A (Witness placing his right hand on the table which is presumed to be the jukebox, facing the jukebox).

Q Assuming that the Interpreter was your brother and you are the accused, how did the accused stab your brother?

A He stabbed him like this sir. (witness standing on the left side of the deceased and with his right hand, made a position sideways and then backwards to the direction of the deceased).

Q How many times did the accused stab your brother?

A Only once sir.

Q Did you see what weapon the accused used in stabbing your brother?

A I cannot recognize sir.

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COURT:

Q Just a minute, what did the accused use in stabbing your brother?

A I cannot recognize sir.

Q Did you see it?

A Yes sir.

Q Was it a piece of wood? Was it a dagger? What was it he used in stabbing your brother? Did you see or did you not see?

A I saw It sir.

Q What was it? A piece of stone, a stick?

A A knife sir.

Q Are you sure of that?

A Yes, sir.

ATTY. TABANGIN:

Q Before the accused stabbed your brother, from what direction did the accused come from in relation to your brother?

A I don't know where he came from sir.

ATTY. BUCAYCAY:

May I make of record that his original answer was he doesn't know?

COURT:

Make it also of record that the question was not yet asked in Ilocano by the Interpreter.

Q Do you understand English?

A A little sir.

Q Do not answer if you can not understand English very well. Wait until it is interpreted. What grade did you reach?

A First year college sir.

ATTY. TABANGIN:

Q Before the accused stabbed your brother, from what direction did the accused come from in relation to your brother?

A I do not know where he came from sir.

Q Was the jukebox playing music at the time your brother was stabbed?

A Yes, sir.

x x x x x x x x

Q When you entered this establishment, Maresciel Soda Fountain, did you see the accused immediately before the stabbing?

A Not yet sir. I did not see him.

Q He was not then inside that Soda Fountain establishment when you arrived?

A He was not there yet sir.

Q So he came later after you?

A May be sir.

Q You did not see him come in?

A No, sir.

ATTY. TABANGIN:

Q Where was Edito Tacla also the moment your brother was stabbed?

A We were side by side sir.

COURT:

Q What were you doing?

A We were taking refreshments, sir.

Q Why did your brother go to the jukebox?

A He wanted to play some music sir.

Q But it was yet playing at the time he approached the jukebox?

A Yes, sir.

Q What did he do? Did he still play it upon approaching the jukebox?

A He was looking at the list of tunes to be played sir.

Q Was he able to play his desired music?

A No more sir.

Q Why?

A That was the time when he was stabbed.

Q So what was he doing when he was stabbed? He was just leaning on the jukebox or aside from that, he was reading the tunes available to be played?

A He was leaning on the jukebox while looking at the list sir." (pp. 74-76, 77-79, tsn., December 12, 1973 hearing)

Appellant's alibi cannot overcome the positive identification by the victim when appellant's picture, among others, was shown to him; and, by Domingo Rayray who pointed to him (Johnny Basadre) when he took the witness stand. The absence of motive does not preclude the commission of the crime considering that nowadays it is of judicial knowledge that others have been killed or assaulted for lesser or no reason at all. Nowadays, the impulsiveness of youth has given way to mature thinking (People vs. Reyno 13 SCRA 647).

Anent the fourth assigned error, the Solicitor General agrees with the defense that the qualifying circumstance of treachery has not been satisfactorily established and, as a consequence, the crime committed was only homicide. We quote from the brief of the Solicitor General -

"It is to be recalled that while the deceased was standing before the jukebox at the side of the door of the Maresciel Soda Fountain, a commotion occurred in the alley in front of said door, which was also in front of the Maresciel Theater (See Sketch, Exh. X), so that the people there ran in all directions. The deceased must have been attracted and gone to the door to find out what the commotion was all about. At this juncture, appellant armed with a knife, approached the deceased and frontally attacked the latter by stabbing him in the abdomen. Under the circumstances, the deceased could not have failed to see the impending assault and could have put up a defense, so that it cannot safely be said that there was absolutely no risk to appellant arising from the defense the deceased might make.

"Moreover, while the attack upon the victim has been sudden and unexpected, it does not of itself show treachery unless there is evidence that such form of attack was purposely adopted by the accused (People vs. Tumaob, 83 Phil. 742). No such evidence exist to prove this purpose, not only because the accused and the victim were undisputably unknown to each other, but further because the accused herein was merely running away from the site of the commotion and the deceased happened to be blocking or was along his path. Verily, therefore, it could not be said that the accused had the opportunity to reflect on the means, method and forms of attacking the victim.

"Domingo Rayray's pretension, that the deceased was attacked by the appellant while the former was leaning on the juke-box scanning the lists of the records and trying to select which to play, is difficult to believe. If this were true, appellant, who must have entered the door of the Maresciel Soda Fountain from the alley, could have easily stabbed him in the back. But the fact is that deceased was stabbed in the stomach, indicating that it was a frontal assault.

"Settled is the rule that a qualifying circumstance must be established as conclusively as the crime itself and that in case of doubt, the same must be resolved in favor of an accused (U.S. vs. Adriano Perdon, 4 Phil. 141). The application of the foregoing doctrine to the case at bar becomes the more imperative, because an estimation of the alleged qualifying circumstance of treachery, which, as already adverted to above has not been clearly proved, would require the imposition of the extreme penalty of death, in view of the aggravating circumstances of recidivism and quasi-recidivism." (pp. 15-17, Appellee's Brief)

We are not in accord with this finding. The sudden and unexpected attack on the victim Alfonso Rayray which ensured the commission of the killing without any risk to the assailant constitutes treachery. It maybe true that the attack was made by assailant face to face with the victim, but We should consider the fact that the latter was unarmed, was totally unaware of the coming attack from someone he did not even know and was not in a position to defend himself against him. Treachery may be appreciated in a sudden frontal attack (People vs. Reyno, 77 Phil. 93).

WHEREFORE, the appealed judgment is AFFIRMED with the modifications that for lack of necessary votes, appellant Johnny Basadre is hereby sentenced to suffer the penalty of reclusion perpetua, to idemnify the heirs of Alfonso Rayray in the amount of P30,000.00 and to pay the costs.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De la Fuente, JJ., concur.

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