

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RIZALDO LOPEZ, RODOLFO LOPEZ AND RODRIGO LOPEZ,
DEFENDANTS-APPELLANTS.**

G.R. No. L-33642. September 28, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

The deceased, Juan Moises, 62 years old, met his death due to "hemorrhage secondary to multiple stab wounds," inflicted by the accused, namely appellants Rodrigo Lopez, Rizaldo Lopez and Rodolfo Lopez. They were found guilty beyond reasonable doubt of the crime of murder and sentenced as follows:

1. Rizaldo Lopez and Rodolfo Lopez - reclusion perpetua;
2. Rodrigo Lopez who surrendered voluntarily - the indeterminate penalty of from seventeen (17) years and four (4) months of reclusion temporal, as minimum, to twenty (20) years of reclusion temporal, as maximum; and
3. All the above accused are ordered "to pay the proportionate cost of the proceedings; to indemnify the heirs of the deceased, Juan Moises, jointly and severally, the sum of Twelve Thousand (P12,000.00) Pesos and the following additional awards: Ten Thousand Pesos (P10,000.00) as exemplary and moral damages, and One Thousand Three Hundred Pesos (P1,300.00) expenses incurred due to the death of Juan Moises." (p. 39, Rollo)

Prosecution evidence shows that in the evening of April 12, 1970 a benefit dance was held at the Multiple-Purpose Site in Bo. Balit, Mambusao, Capiz. At the gate of the hall was Ana Loja who acted as gatekeeper of the dance. Salvacion Laguda Vda. de Latosa was near the entrance of the hall selling beer, soft drinks and other articles.

About 10:30 that night, Juan Moises bought two bottles of beer from Salvacion Latosa. A little later, appellants arrived and Rodrigo Lopez asked Juan Moises to buy them a drink. Moises obliged and told Salvacion Latosa to open three bottles. Rodrigo handed one bottle to his brother Rizaldo, who got one for himself and gave the third bottle to Juan Moises. While they were holding their bottles of beer, Rodrigo said: "Pare, let us go a little farther and drink there." They went to a place some six meters away from where Salvacion Latosa had her store. Rodolfo, son of Rodrigo, followed the three who were drinking their beer near a banana plant. Few minutes later, Salvacion Latosa shouted at the group to return the empty bottles. There was no reply and looking at them she saw Rizaldo, Rodrigo and Rodolfo surrounding Juan Moises; Rodrigo hitting Moises with a bottle of beer on the head; and, Rizaldo stabbing Moises twice with a knife at the side. Rodolfo joined the assault by striking Moises with a bolo on the left arm. He (Rodolfo) was about to strike him again when the victim staggered and fell on the ground. At that juncture, Salvacion Latosa shouted: "Police, help. Police, help."

Policeman Conrado Delfin came out of the dance hall and ran towards Rodolfo Lopez who was on the act of delivering another blow at the victim. The peace officer succeeded in getting the bolo from Rodolfo, following which, the three appellants ran towards the field and disappeared.

Juan Moises was taken inside a car and rushed to the Mambusao General Hospital. However, he died shortly thereafter.

In his defense, accused Rodrigo Lopez claimed that he went to the dance hall to accompany his niece, Emelita Lopez. He had with him a bolo as was always his habit. Emelita gave him two pesos and told him to stay outside. He ordered a bottle of beer from Teresita Villaseñor and while drinking the beer Juan Moises arrived and said: "So you are here, you son of a bitch drinking beer. You are not even paying me your tuba indebtedness." He answered saying: "Juan, do not call me names because I can pay my debt but my shame you cannot pay with money." Notwithstanding, Juan Moises boxed him on the right side of his breast. He retaliated by boxing Moises who fell on his buttocks. Juan Moises immediately stood up and drew his knife. He ran and tried to hide behind a banana plant but Juan Moises kept on running after him, thrusting his knife at him several times. He then drew his bolo and went to one side of the banana plant. Juan Moises continued to follow him. It was at this juncture that he was forced to strike Juan Moises with his bolo, hitting the latter on his left arm. He then tried to run away but he was blocked by Juan Moises who kept on lunging at him. When he could no longer evade Moises he stabbed the latter three successive times - all of which hit the body of his victim. Thereafter, he went to the Municipal Building in the poblacion to surrender to the police.

For their defense, appellants Rizaldo and Rodolfo disclaimed any participation in the commission of the crime of the offense charged, and interposed separately their respective alibi - each one attempting to prove that they were somewhere else when the crime was committed.

According to Rodolfo, he was one kilometer away from the scene of the crime. At the time it happened, he was then guarding the harvested palay at the land of his landlord Rogelio Ara. Later in the evening as there were plenty of mosquitoes in their place he and his companions, Jose Arona and Raymundo Lajo, went to where the dance was being held to buy beer and cigarettes. Upon their arrival at the dance hall they heard that somebody was stabbed and to verify the information, they found Juan Moises lying on his back. Policeman Conrado Delfin seeing him (Rodolfo) with a bolo, ordered him to turn over the weapon to the former. Upon learning that his father Rodrigo was the one who stabbed Juan Moises, he went home.

Rizaldo Lopez testified that about nine o'clock in the evening of April 12, 1970, he was at Bo. Burias, Mambusao, Capiz, loading sugar cane plants in a truck. After the work was done, he and his companion went to Bo. Bayi, Mambusao, Capiz, which is about twelve kilometers from Bo. Burias. He arrived at Bo. Bayi at ten o'clock in the evening and stayed in the house of Uldarico Depetillo where he took his supper after which he went to sleep.

Coming to this Court, defendants-appellants claim that the trial court erred (1) in holding that the version of the prosecution regarding the incident in question was more credible than that of the accused-appellants; (2) in giving credit to the testimonies of Salvacion Laguda Latosa, Ana Laguda Loja and policeman Conrado Delfin, close relatives of the deceased Juan Moises and the only eyewitnesses for the prosecution; (3) in holding that the accused Rizaldo Lopez and Rodolfo Lopez were present during the incident and participated in the commission of the acts complained of; (4) in holding that the three accused conspired to commit the acts complained of; (5) in holding that treachery attended the commission of the acts complained of; (6) in holding that the accused Rodrigo Lopez did not act in legitimate self-defense in taking the life of Juan Moises; and (7) in finding the accused Rizaldo Lopez, Rodolfo Lopez and Rodrigo Lopez guilty of the crime of murder beyond reasonable doubt.

In *People vs. Olalia, Jr.*, 128 SCRA 139, We have reiterated the well-established rule on matters of credibility that the appellate court will generally not disturb the findings of the trial court, as the latter is in a better position to decide said question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial unless it has plainly overlooked certain facts of substance and value, which, if

considered might affect the result of the case. Consequently, the first assigned error is untenable.

The mere fact that prosecution witnesses are relatives and/or friends of the deceased does not suffice to discredit their testimonies, unless it has been shown that they were actuated by improper motive, and this has not been proved in the case at bar.

The alibi offered by Rizaldo Lopez and Rodolfo Lopez does not deserve even scant consideration. It cannot prevail over their positive identification by prosecution witnesses. As aptly observed by the trial court: "(t)he identification of Rodolfo Lopez and Rizaldo Lopez as the persons who cooperated with Rodrigo Lopez in the perpetration of the crime at bar was sufficiently and positively established by eyewitnesses to the crime. It was not also shown that it was impossible for Rizaldo Lopez to go to Bo. Balit from Bo. Bayi and then back to Bo. Bayi. In fact, Rizaldo said that in going to work at Bo. Bayi he only walks from Bo. Balit." (p. 35, Rollo)

The crime committed is murder qualified by treachery. The deceased was invited by Rodrigo Lopez to a farther place, near the banana plants, and away from the store of Salvacion Latosa, where there are no persons and there the three Lopezes, Rodrigo, Rizaldo and Rodolfo, took turns in attacking and wounding Juan Moises which caused his death. As held in *People vs. Surban*, 123 SCRA 218, treachery is present where several persons hacked and stabbed their victim.

In its decision finding appellants guilty beyond reasonable doubt of the crime of murder, the lower court characterized the version of the defense as untenable. It explains, thus: "A close scrutiny of the foregoing plea of self-defense will readily show flaws that are fatal to accused's claim that in killing Juan Moises his action was justified. In the first place it cannot be believed that Juan Moises would berate and then box Rodrigo Lopez for non-payment of a supposed tuba indebtedness. Rodrigo himself during the examination in chief categorically asserted that previous to the incident at bar he was in good terms with Juan Moises. In fact Rodrigo would even drink tuba in the house of the deceased, Juan Moises. They were good with each other. This being so and the Court has no reason to doubt it, it would be difficult to believe that Juan Moises would do the things the defense tried to show. Juan Moises would have no reason whatsoever to be antagonistic toward Rodrigo Lopez as their relations were very cordial. In fact there is no showing that Juan Moises ever collected a supposed debt and was never paid. If there were attempts to collect a debt made by Juan Moises and failed everytime he approached Rodrigo Lopez, then it would be easy to believe that Juan Moises would call Rodrigo Lopez names. But as their personal relations were harmonious it is unthinkable that Juan Moises would suddenly blurt out in anger and then call Rodrigo Lopez a son of a bitch, then box him and later attempt to kill him. But the most unbelievable aspect in the self-defense version of the accused is the fact that Rodrigo Lopez never sustained even a minor scratch in spite of the many thrusting knife blows allegedly delivered against him by Juan Moises. According to Rodrigo Lopez, the deceased, Juan Moises, was bigger, more robust, taller and more muscular than he is. Physically, therefore, Juan Moises was superior to Rodrigo Lopez, although the former was older. But as he was the supposed aggressor, he could have at least inflicted a minor injury to Rodrigo Lopez. The various thrusting blows delivered by Juan Moises as pictured by the defense, under any condition or situation, one blow would have at least found its mark." (pp. 30-31, Rollo)

Another circumstance that casts doubt on such an allegation of self-defense is the fact that, despite the incriminatory testimonies of prosecution witnesses, Salvacion Latosa, Ana Loja and Corporal Conrado Delfin, defendants-appellants failed to impeach the same by contradictory evidence.

WHEREFORE, the appealed decision is hereby **AFFIRMED**, with modification that the indemnity to be paid to the heirs of Juan Moises is increased from P12,000.00 to P30,000.00.

SO ORDERED.

Teehankee (Chairman), Melencio Herrera, Plana, Gutierrez, Jr., and De la Fuente, JJ., concur.

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