

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAKALAHÍ REYES ALIAS LARRY, EPITACIO ALDOVINO ALIAS PEPE,
SIMEON MAGBOO, FELIMON MAGBOO AND GRACIANO MAGBOO,
DEFENDANTS AN...**

G.R. No. L-18892. May 30, 1966

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Epitacio Aldovino @ Pepe, Simeon Magboo, Feiimon Magboo, Graciano Magboo and Makalahi Reyes @ Larry, from the decision of the Court of First instance of Batangas in Criminal Case No. 1980 finding them guilty, beyond reasonable doubt, of the crime of murder, and sentencing each of them to suffer the penalty of reclusion perpetua, with the accessory penalties prescribed by law, to indemnify, jointly and severally, the heirs of the deceased Reynaldo de Torres in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency on account of the nature of the principal penalty imposed, and to pay the costs. The amended information filed against them reads as follows:

"That on or about the 7th day of May, 1960, in Pohlacion, Municipality of Alitagtag, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with knivos, conspiring and confederating together, acting in common accord and mutually aiding One another, with the deliberate intent to .kill one Reynaldo de Torres, by means of treachery, abuse of superior strength and with evident premeditation,, did then and there wilfully, unlawfully and feloniously attack, assault and stab with the said knives the said Reynaldo de Torres, suddenly and without warning, the accused thus employing means and methods in the execution of the crime which tended directly and especially to insure its execution without risk to themselves arising from the defense which the offended party might make; that as a result thereof, the accused succeeded in inflicting: multiple stabbed and incised wounds in the different pails of the body of the said Reynaldo de Torres, which directly caused his death."

After due trial upon a plea of not guilty entered by the defendants, the court found them all guilty as charged and rendered the appealed judgment. All of them appealed, but Makalahi Reyes subsequently withdrew his (Resolution of this court of June 25, 1963).

The prosecution evidence conclusively shows the following facts:

In the afternoon of May 7, 1960, Reynaldo de Torres, his brother, Gregorio and Celedonio Castillo were in Alitagtag, Batangas attending the town fiesta. While they were at the town plaza, Reynaldo took part in a pingpong ball game—also known as "cara y cruz" seated on a bench. While he was thus engrossed in the game, Makalahi Reyes came from behind and stabbed him with a sharp bladed knife at the back. When he stood up and turned around (to his right), Reyes struck again, hitting him on the right chest. As Reynaldo held the hand of his assailant, Kpitacio (also known as "Pepe") Aldovino came from behind and stabbed him. Thereafter, in rapid succession, Simeon, Felimon and Graciano, all surnamed Magboo, likewise coming from behind, struck the victim with bladed knives on the left side of the body and, afterwards, fled towards the west. Makalahi Reyes,

however, left only after stabbing their victim again in the abdomen.

Mortally wounded, Reynaldo attempted to pursue his assailants until he was approached and held by Cirilo Castillo, a special policeman of Alitagtag, whom he informed that he had been treacherously attacked by Makalahi Reyes and the members of his gang, namely, Pepe Aldovino, Felimon Magboo, Graciano Magboo and Simeon Magboo. He died while on the way to the Batangas Provincial Hospital. A post-mortem examination showed that he sustained the following wounds:

- Wound stabbed, 2½ inches at outer third infraclavicular region right, directed downward, backward and inward penetrating right thoracic cavity;
- Wound, stabbed, 4 inches at level of outer half spinous process of right scapula directed downward and forward cutting scapula;
- Wound, incised 2½ inches x subcutaneous at level of 10th rib, mid axillary line, right side;
- Wound, stabbed, 2½ inches, supra condylar region, lateral surface, left arm, directed upward and medially cutting brachia) vessels to almost the skin at the medial surface middle third of the arm;
- Wound, incised, 2 inches x subcutaneous C shape, thenar eminence palm, left;
- Wound, incised, 1/2 inch x subcutaneous dorsal surface base of middle finger, left;
- Wound, incised, 1/2 inch x bone, dorsal surface base of ring: finger, left;
- Wound, stabbed, 3/4 inch x 2 inches left lumbar region, directed upward and inward.

In connection with the possible motive that led to the commission of the crime, the prosecution evidence shows that about a month before May 7, 1960, while appellants, members of the "Seven Lucky Gang" were serenading a lady, they were stoned by someone whom they believed to be Reynaldo—the lady's neighbor; that, on another occasion, Reynaldo boxed Makalahi Reyes, the leader of said gang, without the latter having had a chance to retaliate.

During the trial, Makalahi Reyes not only admitted having stabbed the deceased,—albeit allegedly in self-defense—but attempted to assume full and exclusive responsibility for the crime. On the other hand, his co-defendants—the appellants herein—relied upon an alibi and the alleged insufficiency of the prosecution evidence to prove their guilt beyond reasonable doubt.

Reyes having withdrawn his appeal, We need no longer consider his case except to the extent necessary to show the lack of merit of appellants' claim that they had nothing to do with the commission of the crime.

With respect to their defense of alibi, appellants attempted to prove that up to around 5:30 in the afternoon of May

7, 1960, they were in Barrio Mainaga, Mabini Batangas helping clean and repair the altar and benches of the barrio chapel, which was fourteen kilometers away from the poblacion of Alitagtag where the crime was committed.

It is well settled in this jurisdiction that because the defense of alibi can easily be fabricated, the same must be established by clear and positive evidence, free from doubt and bias, and that purely oral evidence presented to prove it can not prevail over positive evidence showing the presence of the defendant at the scene of the crime and his participation in the commission thereof.

In the present case We do not find appellants' evidence sufficient to overcome the testimony of the prosecution witnesses, particularly that of Gregorio de Torres and Celedonio Castillo who witnessed the commission of the offense and positively identified all the appellants, together with Reyes, as the ones who assaulted and killed Reynaldo de Torres. With respect to their credibility and the character of their testimony, the lower court said the following:

"From the self-explanatory facts unfurled above, which have been established by the testimony of eye-witnesses Gregorio de Torres and Celedonio Castillo, whose vivid and detailed account of the incident, not only vibrates with truth and sincerity, but also was fully corroborated by the number, nature and sizes of the deceased's wounds and by the letter's antemortem declination noted down by Marcial Mercado and Cirilo Castillo in Exhibits C and C—1 and E and E-1, respectively, the guilt of the defendants is clear and indubitable."

It is true that Gregorio de Torres being a brother of the deceased Reynaldo, can not but have an interest in the success of the prosecution, but We believe—after a careful consideration of his testimony—that whatever interest he has in avenging the death of his brother through the courts of justice, could not have induced him to falsely incriminate appellants, knowing, as he must have necessarily known, that his testimony could lead to their conviction for one of the most serious offenses punishable under our laws.

But even assuming that Gregorio de Torres' testimony is weakened by his blood relation with the victim, there is still in the record that of the other eye-witness, Celedonio Castillo, sufficient to establish the participation of each of the appellants in the commission of the crime. In his case, the trial judge was careful enough to remind him of the consequences of his testimony; to warn him that if he testified falsely, he could be prosecuted and punished for perjury, and that his testimony, if accepted as true by the court, could lead the accused to the electric chair. All these notwithstanding, he proceeded to testify in a natural manner, giving a clear and accurate account of the participation of Reyes and herein appellants in the commission of the crime.

In view of the fact that appellants have been fully identified by the witnesses for the prosecution as the ones who assaulted the deceased Reynaldo de Torres—witnesses against whom there is no showing of evil motive or bias against appellants—the lower court was right in not sustaining the alibi relied upon by the latter (People vs. Libria, 95 Phil., 398; People vs. Magsino, G.R. No. L-3649, January 29, 1954 and People vs. Cecionio, et al., G.R. No. L-6372, April 29, 1954).

To further support their claim that they had no participation at all in the murder of Reynaldo, appellants point to the testimony of Makalahi Reyes to the effect that he was the only one who, in self-defense, stabbed and killed said deceased. We find, however, that Reyes' testimony as to how he was allegedly assaulted by the deceased and had to defend himself to the extent of killing the latter, can not be believed. To arrive at this conclusion, We need but take into account Reyes' own claim that he fought the deceased face to face. This is conclusively belied by the fact that the deceased suffered at least two serious wounds on the back part of his body, namely, the ones numbered 2 and 8 in the post-mortem report of Dr. Montalbo. The first, according to the latter, was a wound on the right side of the back just below the right shoulder (transcript of September 14, 1960 p. 7), while the second

was on the left side of the body "near the back of the waist" (Idem, p. 11). Moreover, according to the testimony of Dr. Montalbo, the wounds numbered 1, 2 and 3 in the post-mortem report were caused by one and the same weapon and that the wound numbered 8 was caused by another. These mute but eloquent circumstances not only belie Reyes' contention but also corroborate the testimony of two prosecution witnesses to the effect that the victim was treacherously assaulted from behind; that Reyes was the first to stab him at the back; that when the victim stood up and turned around, Reyes struck him again on the right chest, and that as the victim was holding Reyes' hand, appellant Eпитacio Aldovino came from behind and stabbed him, and was followed in rapid succession by the other appellants.

The fact that not all the wounds inflicted upon the deceased Reynaldo are fatal is of no consequence, in view of the fact that the evidence of record clearly shows that Reyes and all the appellants had conspired to commit the offense; that they were actuated by one and same criminal design, namely, to kill their victim; that they all used bladed weapons and attacked the deceased unexpectedly, one after the other, and that they were not only relatives amongst themselves but members of a local group known under the name of Seven Lucky Gang. We have no doubt, therefore, that the trial court correctly found them all guilty as charged.

Wherefore, the appealed judgment being in accordance with law and the evidence, the same is hereby affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

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