

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BONIFACIO INDIC, ET AL., DEFENDANTS, BONIFACIO INDIC AND
ANTONIO CABIAS, DEFENDANTS AND APPELLANTS.**

G.R. No. L-18071-72. January 31, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

In Criminal Case No. 7899, CFI of Leyte, Bonifacio Indic, Antonio Cabias, and Tansing Estaco, were charged with direct assault upon one Felix Tampadong, in another criminal case No. 7761, same court, Indic and Cabias were also charged with murder, for having conspired together with Estaco (who is still at large), for the death of one Bernardo Camadoc. Both cases were jointly tried. On February 19, 1960, however, the Fiscal asked for the dismissal of the charge of direct assault against Cabias for insufficiency of evidence. Trial proceeded on the charge of direct assault against Indic and that of murder against Indic and Cabias after which the trial court on October 29, 1960, imposed the following penalties:

- (a) In criminal case No. 7899 (direct assault), Indic and Cabias to suffer each four (4) months of *arresto mayor* and to pay a fine of P3,000.00 with subsidiary imprisonment not exceeding one-third (1/3) of the principal penalty in case of insolvency and to pay one-half (1/2) of the costs;
- (b) In criminal case No. 7761 (murder), said Indic and Cabias to suffer each, *reclusion perpetua*, and to pay one-half (1/2) of the costs.

The trial court, however, in an amended decision, excluded accused Cabias from the case of direct assault. Both accused appealed from the decision. After the records had been received in this Court, Indic, upon his petition, was allowed to withdraw his appeal, thereby leaving only the appeal of Cabias in the case of murder for determination.

We glean from the evidence adduced by the State, the following facts:

At about 9:00 o'clock in the evening of September 28, 1958, in the barrio of San Jose, Dulag, Leyte, the three accused Bonifacio Indic, Antonio Cabias and Tansing Estaco, went to the house of Cosmiana Camadoc and challenged her brother Alberto Camadoc to a fight. Cosmiana slipped away thru the back door and fetched sub-barrio lieutenant Felix Tampadong to stop the three from creating trouble. Tampadong advised the three to go home and not to cause trouble. Instead of heeding the advise. Indic grabbed Tampadong's right hand, because Indic was holding a "pisao" (small bolo) in his other hand, Tampadong unloosened himself from Indic's grasp and ran towards his house 100 meters away, pursued by the three men. On reaching his house, Tampadong closed the door, while Indic and his two companions called him to go down so that they could kill him. As the challenged Tampadong refused to do so, the three challengers left. Later, Tampadong took a bus and reported the incident to the Chief of Police of the town.

On that same evening, accused Indic, Cabias and Estaco returned to Gosmiana's house and again challenged

Alberto to a fight, each brandishing a "pisao" (bolo). Barbara Camadoc (cousin of Alberto) cautioned him not to accept the challenge. Bernardo Camadoc (brother of Barbara) who was in the opposite house across the street, also shouted to Alberto from the window, not to go down. Irrked by Bernardo's interference, accused Indic went up the house and hacked Bernardo with his bolo, hitting Bernardo at the right lower hip. At that juncture, accused Cabias and Estaco were waiting in the yard of Bernardo's house. After being wounded, Bernardo jumped out of the window, but Indic ran after him, and his two companions joined him in the chase. As they overtook Bernardo, the three thrust their bolos at him, causing him to fall, face downward. The three then put wings to their feet, leaving Bernardo in that condition. Barbara Camadoc and Agaton Advincula, a neighbor who saw all that had transpired, approached the wounded Bernardo, while Edilberto Camadoc, another neighbor who also witnessed the assault on Bernardo went to call Tampadong; who had already gone to town to report an earlier incident. About an hour later, the Chief of Police of Dulag, Amado Barbasa, arrived with Tampadong and another policeman and found Bernardo, lying on the ground, still alive. They asked, Bernardo who attacked him. Bernardo named Indic, Cabias and Estaco, as his assailants. Bernardo was brought and confined in the clinic of Dr. Simplicio P. Lagunzad, Health Officer of Dulag. Accused Indic was arrested on September 30, 1958, in the mountains of sitio Buenavista, San Jose, Dulag, and surrendered his "pisao" to the police. Accused Cabias was arrested on the same day in barrio Tanghas, Tolosa, Leyte. As heretofore stated, accused Estaco is still at large.

From the evening of September 28, 1958 (when he was brought to Dr. Lagunzad's clinic) to September 30, 1958, Bernardo remained unconscious. On October 1, 1958, he regained consciousness and he gave a statement to policeman Teodulfo Tupa, again naming or pointing to the three accused, as the ones who attacked and wounded him on the night of September 28, 1958. The statement was reduced by policeman Tupa in writing (Exhibits A and A-1) and was thumbmarked and acknowledged by Bernardo before Mayor Vicente Yutangeo. Later that day (Oct. 1, 1958), Bernardo died. At the autopsy of the cadaver, Dr. Lagunzad found that Bernardo sustained multiple stab wounds inflicted at the pelvic region, lumbar regions and head and the cause of death to be stack due to internal hemorrhage (Exh. C).

The defense on the other hand, with respect to Appellant Cabias, claimed that between 9:00 to 10:00 p.m. of Septemebr 28, 1958, Cabias went to the store of one Catalino Rabino in San Jose, Dulag, to buy cigarettes, riding on a bicycle. On his way home, he saw Indic in a sitting position in front of the house of Cosmiana Camadoc, being beaten by Bernardo and Alberto Camadoc. At this moment, accused Estaco, a companion of Indic, was about to stab Bernardo, when Cabias pleaded him (Estaco), not to do so, as said Bernardo was his uncle; but Estaco stabbed Bernardo just the same and threatened him (Cabias) . Cabias and one Margarita Salas who also came to the scene, ran away and went home. At about 3:00 o'clock in the morning of September 29, 1958, Cabias went fishing in Bo. Tanghaa, Tolosa, a place near his barrio, using the local fish net called "bitana"; and he was arrested there.

In his brief, appellant Cabias alleged that the trial court erred in convicting him of murder, notwithstanding the fact that direct and conclusive evidence pointed to his co-accused Indic and Estaco, as the only persons responsible for the death of Bernardo; and the failure of the prosecution to prove conspiracy. The whole matter is reduced to a mere question of credibility.

We are fully convinced that the killing occurred in the manner as narrated by the witnesses for the prosecution. The claim of appellant Cabias that only Indic and Estaco perpetrated the crime, is untenable. Three eye-witnesses,—Barbara Camadoc, Agaton Advincula and Edilberto Camadoc, positively declared in a straight forward manner, that on the night In question, they had seen and witnessed Indic, Estaco and Cabias pursue, and in unison, attacked Bernardo, who was unarmed at the time, with their bolos. There are no improper motives shown why these witnesses would concoct evidence and impute to them so serious an offense as murder. The

claim of appellant Cabias that Barbara testified against him because more than a year before the incident, lie gathered nipa on a piece of land that Barbara had mortgaged to his aunt, is too trifle, if true, to impel Barbara who is also his (Cabias) aunt, to implicate her nephew in a very grave offense. Agaton and Edilberto categorically and spontaneously identified appellant Cabias, as one of those who chased and stabbed Bernardo and appellant made no effort to show that they entertained any ill will or grudge against him. The trial court was correct in giving these witnesses full credence in their testimony.

Of course, appellant stresses upon the declaration of the sub-barrio lieutenant Tampadong, to the effect that when the Chief of Police Barbasa, interrogated Bernardo on the very night of September 28, 1958, as to who assaulted him, Bernardo named only Indic and Estaco, without mentioning him (Cabias). As has been seen, Tampadong's testimony was belied by Agaton and Edilberto who identified Cabias as one of the aggressors and who clearly heard Bernardo tell the Chief of Police that he was assaulted by Indic, Cabias and Estaco. And that acting upon this identification, the Chief of Police, filed the next day, September 29, 1968, the criminal Complaint against Indic, Cabias and Estaco. Tampadong's testimony in this respect, could have been due to lack of attention on his part, to the details of the incident in question. It is also to be noted that Bernardo's affidavit of October 1, 1958, pointing to Cabias, as one of his assailants, was taken by policeman Teodulo Tupa who did not know Cabias then and had no motive to improperly induce Bernardo to include Cabias in said sworn statement.

Appellant Cabias' defense cannot be believed, at all. He claims that he was present when Bernardo was attacked and assaulted by Estaco," that he even pleaded to him not to harm Bernardo because he was not armed while Estaco was armed and had wounded Bernardo, and then after the incident he went to sleep. Cabias' behaviour is unusual and inconsistent with human experience. It is strange that he would not have rushed to his uncle's side after Estaco had left, to see how he was wounded or give him medical succor or report the crime to the authorities; instead, he was unconcerned, he slept peacefully that night and very early the next morning (8:00 o'clock), he went to the remote barrio of Tanghas to fish, as if nothing had happened the previous night. There is really something fishy in connection with the fish story, for the truth of the matter, is that on the very evening of September 28, 1958, police officers went to the house of Cabias and did not find him there, for he had already taken flight to barrio Tanghas where he was arrested two days after. Like his co-accused Indic, appellant Cabias wanted to evade arrest.

Contrary to the pretensions of the defense, conspiracy has been shown. The appellant's direct and active participation in the assault against Bernardo, in that he also chased and thrust his "pisao" (bolo) at Bernardo and stabbed him, simultaneously with Indic and Estaco; and the presence of multiple stab wounds in the different parts of Bernardo's body, reveal a concerted attack made by the three accused; unity of action and a joint purpose and design. Conspiracy arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and decide to pursue it (People vs. Monroy, 104 Phil. 759), In the instant case, conspiracy arose from the moment the three accused challenged Alberto to a fight and continued until Indic attacked Bernardo inside a house, and later joined by appellant and Estaco, who were in the yard, in the pursuit of Bernardo who ran away until he was overtaken and wounded simultaneously by them.

Admittedly, no motive was shown, why appellant Cabias should want to harm his uncle/ While it may be noted that bad company must have induced him to participate in the commission of the offense, proof of motive is not indispensable to convict, the guilt of the accused having been sufficiently established by the testimony of several witnesses who directly and categorically identified the appellant Cabias to be one of the culprits. It is, indeed, disgraceful to see that now-a-days, people kill even in broad daylight, just for the mere sake of killing, or for the fun of it, shooting their fellow mortals, as if they are jungle ducks.

In view, however, of circumstances which will readily be discussed, We are of the opinion that the appellant

Cabias is merely guilty of simple homicide. Evident premeditation is not present. It was Alfredo and not Bernardo whom the accused were challenging to a fight and they turned on Bernardo only when the latter cautioned Alfredo not to accept their challenge. This being the case, it does not appear that the accused reflected on an intention and clung to such intention to kill Bernardo, between the time when they jointly acted to consummate the crime and the time it was actually committed. The generic aggravating circumstance of abuse of superior strength is present. The accused who were all armed and decidedly superior in number, made a concerted attack upon the lone Bernardo, who was unarmed. This circumstance could have qualified the crime to murder, but it is not alleged in the information, although proven. The qualifying circumstance alleged in the information is evident premeditation, but not proved. Treachery (alevosia) is not present. The joint attack on deceased Bernardo by the three accused does not appear to have been directly and specially or consciously adopted to insure its execution without risk arising from any defense the deceased might make (par. 16, Art. 14, Rev. Pen. Code; *People vs. Tumaob*, 83 Phil. 742.); it was rather unplanned, sudden and impulsive, prompted or provoked only by the latter's flight. The mitigating circumstance of intoxication appreciated by the lower court, was not at all proven. The lower court considered nevertheless, the mitigating circumstance of lack of instruction in appellants' favor, declaring that they "are ignorant, if not entirely illiterate persons". As it is for the trial court, rather than the appellate court, to find the existence of this circumstance, for it is not illiteracy alone, but the lack of sufficient intelligence and knowledge of the full significance of one's acts which only the trial court can appreciate, that determines such mitigating circumstance (*People vs. Sari*, L-7169, May 30, 1956 and cases cited therein), We hold that appellant is entitled to the same.

We declare that appellant Antonio Cabias is guilty beyond peradventure of doubt, of the crime of simple homicide, aggravated by abuse of superior strength, but compensated by the mitigating circumstance of lack of instruction; and hereby sentence him to suffer an indeterminate penalty ranging from eight (8) years and one (1) day, of prison mayor to seventeen (17) years, and four (4) months, of reclusion temporal. With this modification, the decision appealed, from is AFFIRMED in all other respects, with costs on the appellant.

Bengzon, C. J., Padilla, Reyes, J., B. L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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