

**PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. FEDERICO TAGARO,
ALIAS FEDERICO LANUZA, DEFENDANT AND APPELLANT.**

G.R. No. L-18518. January 31, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Upon arraignment, the accused.(now appellant) pleaded not guilty to the following information:

"The undersigned Provincial Fiscal accuses Federico Tagaro, alias Federico Lanuza, of the crime of DOUBLE MURDER, committed as follows:

"That on or about the 26th day 'of September 1959, at 3:00 o'clock in the afternoon, more or less, in the barrio of Mulawin, Municipality of Naujan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Federico Tagaro alias Federico Lanuza, with treachery and evident premeditation and the decided purpose to kill, wilfully, unlawfully and feloniously attacked, assaulted and boloed Agapito Sarmiento and Bienvenido Sarmiento, one after the other, inflicting upon the former (Agapito Sarmiento) five (5) wounds in the different parts of his body, as a consequence of which both Agapito Sarmiento and Bienvenido Sarmiento died on the following day."

After trial, the Court of First Instance of Oriental Mindoro convicted him in a decision, the dispositive portion of which is quoted hereunder:

"Wherefore, this court hereby renders judgment finding the accused guilty beyond reasonable doubt of the offense charged in the information and hereby sentences him to suffer the penalty of reclusion perpetua in each instance, with the accessories of the law, and to pay the sum of P6,000.00 to the heirs of the deceased Bienvenido Sarmiento as indemnity for damages for the death-of the latter, and the same penalty is hereby imposed on the accused for the death of Agapito Sarmiento and he shall pay to the heirs of the said deceased the sum of P6,000.00 as indemnity for damages, with costs. The accused shall be credited with one-half of his preventive imprisonment."

Because of the nature of the penalty imposed, this case was automatically elevated to this Court.

The first witness presented by the government was Dr. Luis S. Infantado, Junior Resident Physician of the Mindoro Provincial Hospital at Calapan, Oriental Mindoro. After examining the cadavers of both the deceased, he issued the following medical certificates:

"Exhibit "A"

September 28, 1959

MEDICAL CERTIFICATE

To Whom It May Concern:

This is to certify that I have examined the dead body of AGAPITO SARMIENTO, 60 years old, male, married, from Pulang-Lupa, Malvar, Naujan, Oriental Mindoro and have found him to have multiple wound as described below:

1. Hacking (gaping wound), left shoulder, from the base of the neck to the sternum in front and to the right mid-scapular line and posteriorly, severing the cervical vertebrae and spinal cord, the trachea and esophagus;
2. Cut (hacking wound), left shoulder, deltoid region, 3 inches long, 2 inches deep;
3. Cut, hacking wound, chest, left, back, 12 inches long, 3 inches deep, cutting scapula;
4. Cut wound, left lateral, aspect of the forearm, 2 inches long and 1 inch deep;
5. Cut wound, right hand", palmar region, dividing the small finger up to the palm.

This is to certify further that death was due to shock and hemorrhage, which was instantaneous."

"Exhibit "B"

September 28, 1959

MEDICAL CERTIFICATE

To Whom It May Concern :

This is to certify that I have examined the dead body of BIENVENIDO SARMIENTO, 40 years old, from Pulang-Lupa, Malvar, Naujan, Oriental Mindoro and have found the following wounds described:

1. Slash wound, with avulsion, left infraorbital region 2 inches long skin deep;
2. Cut wound, posterior aspect of the neck, 7 inches long, 3 inches deep, cutting the vertebral column and

spinal cord;

3. Opened, hacked wound, back, lumbar region, 8 inches long and exposing the intestines;

4. Opened, hacked wound, back, lumbar region, left, 6 inches long exposing the intestines;

5. Stab wound, abdomen, epigastric region 2 inches long, 4 inches deep, penetrating the abdominal cavity;

6. Stab wound, chest left side, anterior aspect, below the left nipple, 7 1/2 inches long 4 inches deep, penetrating the heart;

7. Stab wound left hypochondria region, just below the lower ribs at the left side, 1 1/2 inches wide at the surface and 5 inches deep, penetrating the abdominal cavity;

8. Cut wound, left foot, near the lateral malleolus, 4 inches long, 2 inches deep.

I certify further that the cause of death was (1) hemorrhage and (2) shock due to severance 'of the spinal cord."

With respect to the medical certificate of Agapito Sarmiento, Exhibit 'A", according to Dr. Infantado, wounds Nos. 1, 2, and 3 were mortal, and the assailant could have been behind the victim when the injuries were being inflicted.

In connection with the medical certificate of Bienvenido Sarmiento, Exhibit 'A", according to Dr. Infantado, wounds Nos. 2, 3, 4, 5, 6, and 7 were all mortal, and that in all of them it was possible that the victim was hacked from behind, or that he was lying flat on the ground face down.

The principal eye-witness for the prosecution was Antonio Aguado, second barrio lieutenant of Mulawin, Nau-jan, Oriental Mindoro. In substance, he declared that in the afternoon of 26 September 1959, he was one of those invited to the baptismal party of the child of Sergia Sarmiento at barrio Mulawin. Among the other guests were the Tagaro brothers, Pablo and Federico (the accused herein) ; Agapito Sarmiento, who was the father of the host (Sergia) ; the Sarmiento brothers, Bienvenido and Fulgencio, who are the sons of Agapito and at the same time the brothers of Sergia.

The party started in the morning and was being held on the ground, just beneath the window of the house of Sergia. At about 3:00 o'clock in the afternoon, without any warning, and because of a previous misunderstanding between them, Pablo Tagaro hacked from behind with a bolo the left shoulder of his father-in-law, Agapito Sarmiento, who was then sitting on the ground getting meat from a kerosene can to be served to the guests. Agapito was wounded superficially (lesion No. 2, Medical Certificate, Exhibit "A", supra). Bleeding from this wound, Agapito was assisted by his wife in walking to and (going up the house of Sergia. Meanwhile, accused herein Federico Tagaro, in turn, grappled with his brother (Pablo), and succeeded in taking possession of the bolo.

Thereafter, armed with his brother's bolo, appellant proceeded immediately to the stairs of the house of Sergia

where without any warning or provocation he hacked Bienvenido Sarmiento from behind, hitting the latter at the nape. Bienvenido, who was caught unawares and scared out of his wits, ran away as fast as his feet could carry him. But the culprit caught up with him after * short chase of about five arm-lengths, and then and there boloed him repeatedly from behind, and even after the victim had fallen defenseless, face to the ground— until Bienvenido died on the spot.

After slaughtering Bienvenido, assailant shouted that he would kill the entire Sarmiento family. Upon hearing this, Agapito Sarmiento, in spite of his wound, scampered down the stairs, apparently to hide or run away. But, upon reaching the ground he was spotted, pursued, and overtaken by the appellant. Agapito thereupon knelt down, raised up both his hands in abject surrender, and pleaded for his life. Unmoved by the entreaties of the kneeling old man, according to barrio lieutenant Aguado, "the accused held the hand of Agapito Sarmiento and dragged him to the house of Sergia Sarmiento", near a pit. At this instant, Aguado left the scene to look for a policeman, and thus did not see actually how Agapito was slain. Unable to find one peace officer, Aguado later on returned to the place of the incident, together with Dr. Infantado. Agapito Sarmiento was already dead. After the doctor finished an on the spot examination of the corpses, barrio lieutenant Aguado was brought to the local headquarters of the Philippine Constabulary, where his affidavit was taken down and later on sworn to before the Justice of the Peace, Judge Basa.

The third witness, Sergia Sarmiento, corroborated in all material respects the testimony of the barrio lieutenant. Moreover, she saw everything from her window. As related by Sergia, after her father knelt down begging for mercy, appellant dragged him to a pit nearby, and hacked him relentlessly to the last of his breath.

The fourth witness for the prosecution was Rosa de los Reyes, widow of one of the victims, Bienvenido. She declared the same story with respect to the death of her husband as she was beside him on the ground near the foot of the stairs when accused all of a sudden struck Bienvenido from behind. However, she was not present anymore when appellant slew her father-in-law, Agapito. She ran likewise when defendant threatened to liquidate all the Sarmientos.

There is no merit to the argument in appellant's brief that the declarations of Sergia Sarmiento and Rosa de los Reyes do not deserve any consideration as they are closely related to both decedents. In another case, this Court said:

"We find no sufficient basis upon which to reverse or disturb the finding of the trial court. No motive is attributed to said witnesses falsely to implicate the appellant. Two of said eye-witnesses, Tomasa Ballestefos and Domingo Luis, were related to two of the victims within the first degree of consanguinity. Why should they impute the killing of their beloved to the wrong person? They were more interested than the State itself in having the guilty punished. * * *" (People vs. Antonio Guillermo, et al., 86 Phil., 395; 47 Off. Gaz., No. 12, Supplement)

Moreover, barrio lieutenant Aguado, who admittedly is an impartial witness, testified to the appellant's slaying of Bienvenido, and his seizing Agapito. Appellant, on the other hand, could not volunteer any explanation why the prosecution witnesses should, as alleged, send an innocent man to jail.

Defendant likewise claims that he is entitled to an acquittal in the absence of any proof as to motive. It has been repeatedly held by this Court that it is not essential to prove motive in murder cases if the evidence is clear and overwhelming so as to leave no doubt of the guilt of the prisoner (People vs. Miranda, G. R. No. L-47032, June 6, 1941; 40 Off. Gaz. No. 2, p. 259; People vs. Cada, 82 Phil., 671; Jan. 25, 1949; 46 Off. Gaz. 3052. July, 1950).

Appellant's defense was a mere denial. He claims that Agapito and Bienvenido Sarmiento were killed by his brother, the late Pablo Tagaro. He alleges that when he was about to separate Pablo (in order to prevent him from hacking his father-in-law, defendant was met and boloed by the deceased : Bienvenido, and that he (appellant) was able to parry it with his left hand; that he ti to run away but that he was again boloed on the right arm by Bienvenido; and that it was at this moment when Pablo Tagaro arrived and hacked Bienvenido Sar-miento at the back, as a result of which he fell to the ground.

Appellant's contention is unacceptable. First, because according to the eyewitnesses for the prosecution, Pablo Tagaro left the scene of the incident after having been disarmed by his brother. Second, because the scars which accused exhibited in open court were obviously superficial. They could not have been caused by strong bolo blows. In fact, the appellant did not care to secure a certified medical certificate from Dr. Infantado, although he claims to have been treated by the physician.

It is true that Pablo Tagaro was also killed that same afternoon; but he was slain much later, in a separate incident between him and Fulgencio Sarmiento, as asserted by the accused himself. Testifying in his own behalf, the prisoner contended that after his brother Pablo had liquidated both Bienvenido and Agapito Sarmiento, accused and his brother left for their way home. But midway, Pablo Tagaro went back alone, allegedly because he forgot something. After having waited for him for about twenty minutes, defendant retraced his steps, and saw his brother and Fulgencio Sarmiento engaged in a bolo duel, as a result of which Pablo Tagaro died.

Aside from himself, appellant presented only one witness, Martin Herrera, whose testimony is of very little value. A complete stranger to the said barrio, Herrera was not among the many persons present at the party. He claims to have gone to the barrio in question that afternoon for the sole purpose of collecting a debt of over P400.00 which defendant owed him, and arrived after the incident in question had already taken place. He was so far from the scene of the incident (about 40 meters) that he could not even distinguish the face of the man whom he claims to have seen bolo the accused.

The instant appeal hinges entirely on the credibility of the witnesses. We find no ground to disturb the findings of fact of the trial court, which had the opportunity to observe the demeanor and the conduct of the witnesses.

The court below considered the two offenses to constitute double murder. We think this is error. The qualifying circumstances averred in the information were premeditation and treachery. Of premeditation there is no trace, since the state's evidence is clear that the killing-of the two Sarmientos came as a sequel to the sudden quarrel that flared up between appellant's brother, Pablo, and the latter's father-in-law, Agapito Sarmiento. And the crimes may not be held qualified by treachery (alevosia), since it is established jurisprudence that for alevosia to exist the aggressor must have consciously . adopted a mode of attack intended to facilitate the commission of the crime without risk to himself (People vs. Caiete, 44 Phil., 478; U.S. vs. Balagtas, 19 Phil., 164; U.S. vs. Namit, 38 Phil., 26; People vs. Tunaob, 83 Phil., 732; People vs. Calinawan, 83 Phil., 642). In the present case, the appellant can not be said to have deliberately sought to kill Bienvenido and Agapito Sarmiento at no risk to himself, since their slaying- was immediately preceded by an altercation (People vs. Lincuna, 86 Phil., 284; People vs. Abalos, 84 Phil., 773). The killing could be deemed to constitute murder, qualified by abuse of superior strength, were it not for the fact that the information did not allege that particular circumstance.

We, therefore, find the appellant guilty, beyond reasonable doubt, of double homicide committed on the persons of Agapito and Bienvenido Sarmiento, aggravated by abuse of superior strength; and sentence him, for each offense, to not less than twelve (12) years of prision mayor and not more than twenty (20) years of reclusion temporal. In all other respects, the judgment appealed from is affirmed. Costs against appellant.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal,

JJ., concur.

Judgment affirmed with modification.

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