

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
BONIFACIO SIMBAJON, ET AL., DEFENDANTS. VICTORIANO
SIMBAJON, ET AL., DEFENDANTS AND APPELLANTS.**

G.R. Nos. L-18073-75. September 30, 1965

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Occidental Misamis in Criminal Case No. 5121, Criminal Case No. 5122, and Criminal Case No. 5123, now G. R. Nos. L-18073, 18074 and 18075, respectively, convicting Bonifacio Simbajon, Victoriano Simbajon, Feliciano Simbajon and Panfilo Simbajon of the crime of frustrated murder in the two first cases, and of murder, in the last.

The three separate informations filed against appellants on November 16, 1959 were, by agreement between the prosecution and the defense, tried jointly upon a plea of not guilty, after which the trial court rendered a single judgment of conviction, sentencing appellants as follows:

"In Criminal Case No. 5121 for frustrated murder, Bonifacio Victoriano Simbajon, Feliciano Simbajon and Panfilo Simbajon are hereby sentenced each to suffer an indeterminate penalty ranging for FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) of prision correccional, as minimum, to TEN (10) and ONE (1) day of prision mayor, as maximum, to indemnify jointly and severally Liborio Dominguez, the offended party of his expenses in the treatment of his wounds here and in Manila in the amount of Two Thousand Pesos (P2,000.00) and each to pay one-fifth (1/5) of the costs.

"In Criminal Case No. 5122 for frustrated murder Bonifacio, Victoriano Simbajon, Feliciano Simbajon and Panfilo Simbajon are hereby sentenced each to suffer an indeterminate penalty ranging from FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as minimum, to TEN (10) YEARS and ONE (1) DAY of prision mayor, as maximum, to indemnify jointly and severally Isaias Macalisang, the offended party, his expenses in the treatment of his wounds here and in Manila in the amount of P1,800.00, and each to pay one-fifth (1/5) of the costs.

"Consequently in Criminal Case No. 5123 for Murder, Bonifacio Simbajon, Victoriano Simbajon, Feliciano Simbajon and Panfilo Simbajon are hereby sentenced each to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Sofronio Avanceña in the amount of P6,000.00 (People vs. Amansec, (G.R. No. L-927; People vs. Banlos, G. R. No. L-3413) and each to pay one-fifth (1/5) of the costs.

"Arturo Yap is hereby declared acquitted in the foregoing three cases, with one-fifth (1/5) of the costs de oficio, and the bond posted by him for his provisional liberty is hereby ordered cancelled."

Victoriano, Feliciano and Panfilo, all surnamed Simbajon, appealed, but Bonifacio, no.

The evidence for the prosecution shows that before the elections of 1955, Sofronio Avanceña and Victoriano Simbajon were opposing candidates for the position of vice-mayor of Jimenez, Misamis Occidental. Upon the

creation of the municipality of Sinacaban, Avanceña was appointed mayor thereof, and in the general elections of November 8, 1955 as well as of November 10, 1959, he defeated Simbajon who ran against him for the position aforesaid.

During his incumbency as mayor of Sinacaban, Avanceña was openly referred to as "Tawantawan, the Moro bandit of Lanao" due to his propensity to the use of violence in dealing with his opponents. For instance, a week after the elections of 1959, he assaulted Isabelo Plaza, supporter of Simbajon; Alejandro Esteban and Gorgonio Maghuyop were likewise assaulted on November 12 and 13, respectively, by Avanceña and his henchmen.

At about 9:00 o'clock in the morning of November 14, 1959, Simbajon, accompanied by his son, Panfilo, and his son-in-law, Arturo Yap, approached Mayor Avanceña near the municipal building of Sinacaban, and while still at a distance raised his hands and said: "Pre, we surrender". Then, after shaking hands with Avanceña, Simbajon said: "Pre, we just forget everything in the past; let us restore our former friendship we had in the past", to which Avanceña replied: "That is alright, let us forget everything, anyway, that is always the case of election, some will lost and the other will win". A little later, Simbajon invited Avanceña to ride with him in his jeep in going to a wedding party to which apparently both had been invited, but the latter declined saying that he would use the jeep of the Health Office.

Shortly after this brief conversation, Simbajon and his party left and went down the slope leading to the national highway, and sometime later, Avanceña and his chief of police, Isaias Macalisang, and Patrolman Liborio Dominguez left the municipal building and followed the same route. As they reached the highway, Simbajon, who was then standing at the rear of his jeep parked near the house of Isabelo Plaza, offered his jeep again to Avanceña, but the latter politely declined the offer saying that he would take the jeep of the municipal health officer. Immediately thereafter shots were fired in rapid succession. As Avanceña was hit by the first shot, he ran towards the house of Plaza followed by chief of police, Macalisang who, apparently, had not been hit. On looking towards Plaza's house, Macalisang saw Bonifacio Simbajon shooting from the window there of immediately above where the parked jeep of his father was. The second shot coming from the same direction hit Macalisang seriously and he fell down to the ground.

Avanceña, Macalisang and Dominguez were brought to Ozamis City for treatment. Later on the last two were brought to Manila for further surgery by a bone specialist.

An ante-mortem statement prepared by Sgt. Cleope Jongco could not be signed but was merely thumbmarked by Avanceña because his arm had an intravenous injection and blood plasma was then being administered to him. During his interrogation by Sgt. Jongco, Avanceña stated that Pani (Panfilo), Victor (Victoriano) and Peping (Feliciano), all surnamed Simbajon, shot him, and ten minutes after he had thumbmarked his declaration, he expired due to shock, secondary to external and internal hemorrhage caused by gunshot wounds.

Immediately after the shooting incident the Constabulary authorities found the 22-caliber rifle of Victoriano in the house of Plaza, and an examination thereof showed that its muzzle smelled of burnt gunpowder; an empty shell was found in its chamber, and near the spot where Avanceña fell, a 22-Caliber slug was found embedded in a piece of wood.

In the afternoon of the same date (November 14, 1959) Feliciano and Bonifacio Simbajon, with 2 shotguns and 1 rifle, approached Arcadio Marimon Feliciano's classmate in the grade school who was fishing in the swamps between Tudela and Cagayanon, Sinacaban, and requested him to take them in his boat to Jimenez because they had killed Mayor Avanceña and the Chief of Police of Sinacaban which he did. Upon arrival at Jimenez, Bonifacio surrendered to Patrolman Arturo Paolden with the shotgun he was carrying, on which was engraved the name of Victoriano Simbajon, and 4 live ammunitions. Asked by Paolden why he was surrendering, Bonifacio

replied that he had shot Mayor Avanceña and his two companions.

We are now no longer concerned with the guilt of Bonifacio Simbajon who did not appeal from the decision of the lower court. What remains for us to decide is the guilt or innocence of his father, Victoriano Simbajon, and his brothers Feliciano and Panfilo.

Uncontradicted evidence of record shows that, in his lifetime and during his incumbency as mayor of Sinacabah, the deceased Avanceña had committed abuses against the political followers of Simbajon, his political opponent. The extrajudicial confessions made by Bonifacio and his brother Feliciano (Exhibits A-1 and B-1, respectively), show that the Simbajon group deeply resented said abuses; that in the evening of November 13, 1959, Simbajon (Victoriano), his children Bonifacio, Panfilo and Feliciano, and his son-in-law, Arturo Yap, met in his house and there agreed to kill Mayor Avanceña, Bonifacio, who was a sharpshooter, having been designated to carry out the killing.

While it is true that these extrajudicial confessions were admissible only against the persons who made them, it is, however, the rule that they may be admitted as corroborative evidence of other facts that tend to establish the guilt of the other defendants. In this connection of following appears to have been conclusively proven:

In the morning of November 14, 1959, Simbajon and aforesaid children, Arturo Yap and Juanito Tanguamos rode in a jeep driven by the former, armed with one Browning shotgun and one 22-caliber rifle, both belonging to Simbajon, another 22-caliber rifle belonging to Yap, and one Winchester shotgun belonging to one Benito Clemen, and proceeded to the house of Isabelo Plaza in the poblacion of Sinacaban, where they unloaded the firearms and took them upstairs; that from said house they proceeded to the municipal building where Simbajon approached Mayor Avacena, and while still at a distance from the latter raised his hands saying that he was "surrendering", then shook hands with him and asked him to forget the past so that they may be friends again; that Avacena agreed to this without knowing that, as stated by Feliciano Simbajon in his confession, all that was "a ruse" to catch Avanceña unaware; that apparently to carry out their conspiracy, Simbajon invited Avanceña to ride with him in his jeep in going to a certain wedding party to which both had been invited - an invitation which Avanceña politely declined; that thereafter Simbajon and his group left and went towards the national highway, Avanceña, doing the same and following the same route sometime later, accompanied by Chief of Police Macalisang and patrolman Dominguez; that as Avanceña's group approached the Simbajon group near the house of Isabelo Plaza, Simbajon reiterated his invitation to Avanceña for the latter to ride with him in his jeep, which Avanceña again declined to accept, saying that he would use the jeep of the municipal health officer; that after this short conversation, successive shots were fired from the window of the house of Plaza which, as already stated before, resulted in the death of Avanceña and the wounding of his companions Macalisang and Dominguez.

It can not be denied that the Simbajons and their political adherents, resented the abuses committed by Mayor Avanceña against their followers. It was not therefore unnatural for them to think of some way of stopping him. Neither can it be denied that Victoriano Simbajon was the leader of their group.

On the other hand, two of the firearms brought to the house of Plaza on the morning of the commission of the crime belonged to Simbajon, and one of them was used by his son Bonifacio in mowing down the victims. Moreover, the eleven rounds of ammunitions, most of which were actually fired by Bonifacio at the three victims, were brought by his father two days before the shooting (transcript p. 29, Manlawe).

The facts above mentioned, clearly corroborated by the contents of the extrajudicial confessions under consideration, show the leading role played by Victoriano Simbajon in the conspiracy to kill Avanceña and in the detailed and well studied plan to carry out the purpose thereof.

As far as the participation of Feliciano Simbajon is concerned his confession would seem to be conclusive, corroborated as its material points are by the facts already referred to above. His confession is, in brief, to this effect: that he, together with his father and brothers Bonifacio and Panfilo, and Arturo Yap had conspired in the house of their father to kill Mayor Avanceña; that on the morning of the commission of the crime, they rode in a jeep to the house of Isabelo Plaza, carrying with them two rifles and two shotguns because they had agreed to kill Mayor Avanceña the night before; that those who conspired were his father, his brothers Bonifacio and Panfilo, his brother-in-law Arturo Yap, and himself; that his father shook hands with Mayor Avanceña so as to catch the latter off his guard; and that at the time of the shooting, he was on the ground but could not fire because his shotgun jammed.

With respect to Panfilo Simbajon's participation in carrying out the purpose of the conspiracy, the evidence shows that when the shooting took place, he was inside the house of Plaza; that he was the first to go down when constabulary soldiers who arrived at the scene of the crime ordered everybody inside the house to go down; that he was the one who informed the policemen that the shots were fired from the window of the second floor of Plaza's house.

On the other hand, that the 22-caliber rifle belonging to his father was also used in shooting the victims is conclusively established by the fact that when Sgt. Vitolinomesa examined it immediately after the shooting, the barrel strongly smell of gunpowder; empty shells which fitted the gun were found on the floor of the second storey of the house, and a slug was found by said sergeant near the place where Avanceña fell. Connecting these circumstances with what Bonifacio Simbajon stated in his extra judicial confession to the effect that it was his brother Panfilo who was carrying the Remington rifle of their father, and that said rifle was later found under a bed in the second storey of said house where Panfilo himself admitted in his extrajudicial confession to have been in hiding, the conclusion is clear that it was he who fired the said rifle, inspite of the attempt of the defense to make it appear that all the shots were fired by Bonifacio.

After a conscientious study of all the material evidence of record, We find no other alternative but to arrive at the conclusion that appellants are all guilty of the offense charged in the three informations filed against them.

In Criminal Case No. 5123 (G.R. No. L-18075) the crime committed was that of murder, qualified by treachery with the following aggravating circumstances; the crime was committed in contempt of public authority; with the use or employment of craft; and with evident premeditation. However, the lower court appreciated in favor of Bonifacio Simbajon the mitigating circumstance of voluntary surrender and in favor of all the others the mitigating circumstance of vindication of wrongs committed against their partisans. This justifies, in our opinion, the confirmation of the decision appealed from as far as said case is concerned.

In the other two cases, however, it appears that the penalties imposed by the trial court are below the proper range and should, therefore, be, as they are hereby amended as follows:

In Criminal Case No. 5121 (G.R. No. L-18073) each of the appellants is sentenced to suffer an indeterminate penalty of not less than FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional, as minimum, and not more than SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum; in Criminal Case No. 5122 (G.R. No. L-18074) each of the appellants is sentenced to suffer an indeterminate penalty of not less than FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of prision correccional as minimum, and not more than SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum.

The decision appealed from is affirmed in all other respects. With costs.

Concepcion, Reyes, J. B. L., Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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