

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ILDEFONSO CORTEZ, ET AL., DEFENDANTS. ALEJO UY, DEFENDANT
AND APPELLANT.**

G. R. No. L-13968. October 31, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On January 11, 1956 an information for murder was filed in the Court of First Instance of Isabela against Alejo Uy, Sergio Pataueg, Felix Sacang and Ildefonso Cortez in connection with the death of Librado Pascual. After trial Cortez was acquitted; Pataueg and Sacang were convicted of slight physical injuries; and Uy was found guilty of murder and sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P6,000.00 and to pay one-fourth of the costs. Uy appealed to the Court of Appeals, which forwarded the record to this Court in view of the penalty imposed.

The facts established by the prosecution are as follows: On the night of October 24, 1955 a dance was held in the yard of Juan Saguisi in Turod, Reina Mercedes, Isabela, to celebrate the wedding of his daughter and Angel Calimag. Many person were gathered at the place, which was sufficiently illuminated by several electric light bulbs. At about 9:30 o'clock Balbino Dulay, who was acting as master of ceremonies, announced a special dance number for all candidates present who were running for municipal offices. While some of them were dancing Dulay asked one Elpidio Pedro to request the spectators who were crowding in on the dancers to move back a little. As Pedro tried to push back the crowd he was in turn pushed back by someone standing near Sergio Pataueg, Felix Sacang and Alejo Uy, all residents of Banquero, a barrio of Reina Mercedes about four kilometers from Turod. When Pedro again requested the people to move back Pataueg gave him a fist blow, causing him to retreat to the center of the dancing area. At that juncture Ernesto Pascual and Remigio Pascual arrived at the scene and told the three Banquero residents—Pataueg, Sacang and Uy—not to make trouble. Immediately Pataueg hit Ernesto and a fist fight ensued between the Pascual brothers on one side and the three Banquero residents on the other. From the place where he had been making his announcements, Dulay saw Uy with a drawn balisong and Sacang holding another weapon. Dulay rushed forward to stop the fight and led the two armed men, together with Pataueg, to their former places. In the meantime the Pascual brothers had run away.

As Dulay was going back to his original position, policeman Pedro Cortes fired a shot in the air. Thereupon Uy, Pataueg and Sacang rushed to the middle of the dancing space where Librado Pascual, brother of Ernesto and Remigio, was standing with both arms crossed over his breast. Coming from behind, Pataueg clubbed Librado with a long piece of wood, the blow landing on the upper part of his back. Librado wheeled around to defend himself and with raised hands faced Pataueg. Sacang then hacked Librado with a bolo on the back of the head. Librado turned to face him, and it was at that moment that Alejo Uy, coming from Librado's right, stabbed him with a dagger on the right chest just below the armpit. The three assailants then run away.

Librado Pascual was promptly taken to a clinic at Cauayan, Isabela, where Dr. Angel P. Albano admitted him at

12:30 o'clock in the morning of October 25. The doctor found that he had sustained three injuries, of which one, 2-1/2 inches wide and 6 inches deep at the fourth interspace above the right nipple, penetrated the lung. The other two were a contused wound on the head and an ecchymosis on the scapular region. Due to the seriousness of the stab wound an operation was performed, after which the doctor, having been told by Librado that he was surely going to die, advised Sgt. Ordonez of the Cauayan police force to take his ante mortem statement. The police officer put it in typewritten form, after which it was signed by the declarant. A portion of that statement (Exh. A) read as follows:

"Q

-

What brings you here in the Albano's Clinic of Cauayan, Isabela?

"A

-

I was brought here sir by my brothers to have my wounds be treated.

"Q

-

What are those wounds which you sustained and which are to be treated at the Albano's Clinic?

"A

-

I sustained a stab wound at my right breast and a cut at the left side of my head sir.

"Q

-

Who inflicted those injuries which you sustained?

"A

-

Sergio Pataueg was the one who clubbed my head which caused the injury thereon and Alejo Uy was the one who stabbed me.

"Q

-

What kind of weapon did Sergio Pataueg use in clubbing you?

"A

-

A piece of wood, sir.

"Q

-

How about Alejo Uy, what kind of weapon did he use in stabbing you?

"A

-

A sharp pointed knife sir.

"Q

-

What caused Sergio Pataueg and Alejo Uy to inflict those wounds upon you?

"A

-

I was pacifying a trouble between Sergio Pataueg and Alejo Uy on the one hand and some residents of Turod, Reina Mercedes, Isabela, on the other.

"Q

-

So that you were clubbed by Sergio Pataueg and stabbed by Alejo Uy without any just cause, is that right?

"A

-

Yes sir, because I only intervened and tried to pacify their trouble."

Librado Pascual died at 1:20 o'clock the same morning, the cause of death being certified by Dr. Albano as internal hemorrhage due to the stab wound on the breast.

At the trial about two years after the occurrence; one Domingo Paul testified for the defense and declared that he was the one who stabbed the deceased. He did so, he said, because while he was running away during the fight at the dance Librado Pascual blocked his way and then hit him with the fists and clubbed him on the back.

Domingo Paul's confession is obviously a last-minute concoction designed to exculpate the accused. He said he and Librado were facing each other; if so, the club wielded by the latter could hardly have landed on his back. Paul also said that he was boxed and clubbed, also on the back, by several other men and yet he sustained no wound or bruise as a result thereof. He said he wanted to save innocent persons from being convicted of a crime they did not commit, but he did not inform the police when the four accused were arrested on October 26, 1955.

He explained his failure on the ground that he was afraid of reprisal from the victim's relatives; yet he claims he informed one Tirso Gaffud of what he had done to Librado, with the request that the information be conveyed to the police. Gaffud was presented as witness for the accused, but he mentioned nothing about the alleged information and request of Paul.

Appellant testified that he saw Paul stab Librado and that, in Paul's presence, he told the latter's parents about it. If that were true, why should Paul still inform appellant, after the latter was released on bail, that it was he who stabbed the deceased? And if appellant knew that Paul was the killer, it is difficult to understand why he did not so inform the police when he was arrested or the justice of the peace during the preliminary investigation. As it was, Paul's admission came out only when he executed his statement on September 24, 1957, or about two years after the incident and while the defense was presenting its evidence. All these circumstances, taken together with the clear and convincing testimony of several witnesses who were present during the incident, render Paul's confession utterly unworthy of credence.

Appellant assails the credibility of the said witnesses, namely, Jeremias Lungub, Balbino Dulay and Gregorio Santua. No motive has been shown, however, for these witnesses to implicate him falsely. Appellant admitted that he knew of no grudge which Lungub and Santua might have against him. The fact that the deceased was Lungub's brother-in-law is no reason why the latter should perjure himself.

Appellant questions the admissibility of the ante mortem statement of the deceased. The testimony of Dr. Albano, who was present at the time Librado gave the declaration, and of Sgt. Ordonez, who put it in typewritten form, sufficiently proves its authenticity. That the deceased gave it under the consciousness of impending death is shown also by Dr. Albano's testimony as well as by the serious nature of the wound, which in fact resulted in death shortly after the statement was taken. *People vs. Chan*, 50 Phil., 182; *People vs. Andia, et al.* 112 Phil., 338.

The trial court found appellant guilty of murder, qualified by treachery. The Solicitor General disagrees, and points out that at the moment of the stabbing Librado Pascual was already under attack by Pataueg and Secang, and was in fact trying to defend himself. In other words, appellant did not commit the act in such a manner as to insure its success or to make it impossible or hard for the victim to do anything in his own defense. The decision to kill was sudden and if the latter's position at that precise moment was vulnerable, it was not deliberately sought by appellant, but was purely accidental. *People vs. Cadag, et al.* 112 Phil., 314. But while the element of treachery cannot be considered so as to qualify the crime as murder, the abuse of superior strength, although not alleged in the information, must be treated as a generic aggravating circumstance. The aggressors not only had the numerical superiority, but were all armed against the weaponless victim.

The judgment appealed from is modified by finding appellant Alejo Uy guilty of homicide, with the aggravating circumstance aforesaid and no mitigating circumstance to offset it, and sentencing him to an indeterminate penalty of from 8 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal, as maximum; to indemnify the heirs of Librado Pascual in the sum of P6,000.00, and to pay one-fourth of the costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon and Regala, JJ., concur.

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