

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CELSO ACABADO, DEFENDANT-APPELLANT.

G.R. No. L-26104. January 31, 1969

Ponente: CAPISTRANO, J.

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CAPISTRANO, J.:

This case was certified to the Supreme Court by the Court of Appeals in view of its finding that the appellant committed, not homicide but murder, and that he should be sentenced to reclusion perpetua.

At about 9:00 o'clock in the evening of May 14, 1963, on the occasion of the barrio fiesta of San Isidro, Sulat, Samar, while Manuel Penis and Sunday Jabole were walking side by side towards the seashore, Celso Acabado, coming from the opposite direction, suddenly stabbed Manuel Penis with a knife on the epi-gastric region and immediately ran away towards the house of Imboy Lobederio. Sunday Jabole recognized Celso Acabado as the attacker. Upon being stabbed, Manuel Penis declared to his attacker, "I know you. You are Celso Acabado." Jabole then took the wounded victim to the house of Barrio Lieutenant Francisco Plaza where his dying declaration, Exh. "B", was taken by ex-Mayor Zosimo Opimo.

In his dying declaration, Exh. "B", the wounded victim identified his assailant as Celso Acabado. Upon learning of the wounding of her son, Manuel Penis, Eustaquia Sobremonte went to the house of Barrio Lieutenant Francisco Plaza, where her son lay gravely wounded. In their conversation, Manuel told his mother that it was Celso Acabado who stabbed him and requested her to take the necessary action against Celso Acabado. The wounded man was then taken to the Borongan Emergency Hospital where he died on May 16 due to internal hemorrhage resulting from the knife wound. The death certificate, Exh. "A", described the wound as follows: "Wd. stab 1-1/2 inches long hypochondriac region, left, directed inwards, medially penetrating. Wound perforating the greater curvature of the stomach." On the witness stand the attending physician attributed the death to internal hemorrhage.

The trial court erred in finding that the killing was homicide on the ground that the night attack was from in front. There was treachery because although the attack was from in front, it was sudden and in the dark. The killing should therefore be qualified as murder.

Appellant contends that the evidence is insufficient to identify him as the knife-wielder. The contention is unmeritorious. Appellant was positively identified by the eyewitness, Sunday Jabole, and by the victim himself who declared at the time of the night attack, "I know you. You are Celso Acabado." Appellant was also identified by the victim in his dying declaration taken by ex-Mayor Zosimo Opimo and in his verbal declaration to his mother, Eustaquia Sobremonte, in the same evening. The evidence shows that Manuel Penis and Sunday Jabole knew Celso Acabado who was a resident of the nearby barrio of Nato prior to the stabbing.

Appellant contends that the lower court erred in not sustaining his defense of alibi. According to him and his witnesses, on the night of the incident he was in the barrio of Nato, some 9 kilometers away from the barrio of San Isidro, attending a dance. The contention is untenable. Alibi is one of the weakest defenses, and is easily

fabricated. We have examined the testimonies in support of this defense of alibi, and have found the same unworthy of credence. Even if the alibi were to be given credence it would not constitute a good defense because the appellant could easily have taken time to go to the barrio of San Isidro in half an hour by bicycle or in less than two hours by foot and because of the positive identification of appellant, in the circumstances, by Sunday Jabole and by the victim himself.

There being no mitigating or aggravating circumstance attending the commission of the murder, appellant should be given the penalty of reclusion perpetua. The civil indemnity of P6,000 should be raised to P12,000 (People vs. Pantoja, G.R. No. L-18793, October 11, 1968).

PREMISES CONSIDERED, the appealed judgment is modified by: 1. sentencing the appellant Celso Acabado to reclusion perpetua with the accessory penalties of the law; and 2. ordering the said appellant to pay the heirs of Manuel Penis the sum of P12,000 as civil indemnity.

Costs against the appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Teehankee, and Barredo, JJ., concur. Castro, J., took no part.

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