

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MELANIO ANIN AND EDUARDO ANIN, ACCUSED AND APPELLANTS.***G.R. No. L-39046. June 30, 1975*

Ponente: ANTONIO, J.

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This appeal presents for review the case of Melanio Anin and Eduardo Anin, father and son, respectively, who were convicted of the crime of murder for allegedly conspiring together and helping one another in hacking to death Fermin Tabunan. Melanio Anin, being a recidivist, was sentenced to suffer the maximum penalty of death, while his son Eduardo Anin, was sentenced to suffer reclusion perpetua.

From the maze of evidence of the prosecution and defense, the following facts are evident: At about 7:30 o'clock in the evening of September 13, 1970, Marcelino Rivera and his uncle, Fermin Tabunan, were on their way home from Barrio Pagonsino bound for Barrio Mantanibong, Bagabag, Nueva Vizcaya. As they were walking in front of appellants' house in Barrio Kinacao, Bagabag, they were met by the dogs of the latter who immediately began to bark at them.

According to the appellants, prior to the barking of the dogs, they heard someone stoning their house. In order to pacify his dogs, Melanio Anin went down his house and saw that his dogs had already surrounded two persons, one of whom Melanio recognized to be Marcelino Rivera. As Melanio was trying to pacify his dogs, a companion of Rivera, who turned out to be Tabunan, grabbed a bolo and hacked at the dogs. In the process, Melanio was apparently struck by Tabunan, resulting in an injury on his left arm.

Upon hearing Melanio's shout for help, Rivera and Tabunan went away.

Melanio Anin went up his house to have his wounds treated and thereafter he and his son, Eduardo Anin, followed Tabunan and Rivera. At some place on the road leading towards the Bagabag sawmill compound, Marcelino Rivera, who was walking a few paces ahead of Tabunan, noticed that the two appellants were trying to overtake them. Some moments later, he saw Melanio Anin overtake Fermin Tabunan and it was at this juncture that Melanio Anin hacked Tabunan. According to Rivera, the assailant was at the right side of Tabunan when he boloed the back of the latter. Sensing impending danger, Tabunan had also drawn his bolo to defend himself but before he could use it, he was struck as aforesaid and fell to the ground unconscious. Eduardo Anin at that moment was also able to overtake Rivera and succeeded in hitting the latter on the left arm with a piece of wood. As Rivera started to run, he was again hit on the left side of the body. When Rivera ran towards the Bagabag sawmill compound, he was pursued not by Eduardo Anin but by appellant Melanio Anin. Melanio, however, failed to overtake him.

At the Bagabag sawmill compound, Rivera related the incident to Policeman Aurelio Lodriguito who at that time was assigned as temporary security guard in the said compound. From the sawmill compound, Policeman Lodriguito and Rivera started on their way to the Municipal building of Bagabag, Nueva Vizcaya. On the way, they met Bagabag Mayor Benigno M. Tabago who was aboard a jeep, together with appellant Melanio Anin and

some other persons. Rivera related to Mayor Tabago the facts and circumstances surrounding the incident in question and pointed to Melanio Anin, who was then sitting inside the jeep, as the person who boloed Fermin Tabunan. In the face of such accusation, appellant Melanio Anin, however, maintained a stoic silence.

Upon hearing this report of the incident, the Mayor chided Melanio Anin for not relating to him the actual facts, for, earlier that evening, appellant Melanio Anin and his companion, Antonio Lumapit, had gone to the Mayor's house in Bagabag to request that he be treated by a doctor because of an injury he sustained in his hand as a result of an accident. It was only because of the report of PC Sgt. Juan Capicio that someone was murdered in Barrio Kurasay that the Mayor decided to proceed to Barrio Kurasay bringing with him Melanio Anin, Lumapit and two of his policemen. At Kurasay, they saw the body of the deceased Fermin Tabunan. It was after they left Barrio Kurasay that they met Policeman Lodriguito and Rivera.

After questioning Rivera, the Mayor brought both Rivera and Melanio Anin to the municipal building for further investigation.

A postmortem examination conducted by Dr. Elpidio Quines on the cadaver of the deceased Tabunan revealed that the deceased sustained the following injuries:

- Rounded scalp wound, together with the bone and brain tissue at the occipital area.
- Incised wound 2" long and at the back along the vertebrae with injuries to the skin and subcutaneous tissue.
- Contusion and swelling of the right forehead." (Exhibit "C", p. 51, Record.)

According to Dr. Quines, Wound No. 1 is a fatal wound as it involved a vital area of the brain and the victim died instantaneously as a consequence of profuse hemorrhage - and shock. He also testified that Wound No. 2 is a superficial wound, possibly caused by a sharp bladed instrument, while Wound No. 3 could have been caused when the victim fell on a hard object.

At about 11:00 o'clock that same evening, appellant Eduardo Anin was also arrested at his house by the police authorities.

There are two (2) assignments of error which this Court finds meritorious — first, regarding the nature and character of the offense, and second, the criminal liability of each of the appellants. Appellants contend that (a) the crime committed is simple homicide because the requisite qualifying circumstance to elevate the killing to the more serious offense of murder has not been proven; and (b) conspiracy has not been sufficiently proven and, therefore, the appellants should be individually held responsible for the consequences of their separate acts. The Solicitor General concedes that the crime committed is simple homicide, and that conspiracy has not been clearly established, and, therefore, appellants Melanio Anin and Eduardo Anin should be held criminally responsible, respectively, only as principal and as accomplice of the crime of homicide.

Upon examination of the record, We find the stand of the Solicitor General in accord with the evidence. The encounter between the victim and the appellants was certainly unexpected. Prior thereto, there is no evidence of the existence of any deep-seated resentment or ill will on the part of appellants vis-a-vis Tabunan or Rivera. Were it not for the stoning of the house of the appellants and the wounding of Melanio Anin by Tabunan, it is probable that there might not have been any occasion for this tragic denouement. The decision of Melanio Anin to pursue and injure the deceased was evidently made in the heat of anger which was brought about by the stoning of his house and the injury inflicted upon him by Tabunan-. It is evident, therefore, that such decision was not the result of cool and serene reflection. It is well-settled that evident premeditation ought to be demonstrated by clear external signs and not by mere suspicions. In order that the circumstance of evident premeditation may be considered to exist, it is necessary to establish (a) the time when the offender decided to commit the crime; (b) a

notorious act manifestly indicating that the culprit has clung to his determination; and (c) a sufficient lapse of time between the time when he decided to perpetrate the criminal act and its actual execution, to allow him to reflect upon the possible consequences of his act. There must exist a "period of time sufficient in a juridical sense to afford full opportunity for meditation and reflection and long enough to allow the appellant's conscience to overcome the determination of his will if he had desired to harken to its warnings." [1] Here, in view of the aforecited facts, there was obviously no opportunity for appellant Melanio Anin to coolly and serenely think and deliberate on the meaning and the consequences of what he planned to do, or for his conscience and better judgment to overcome his evil desire and scheme. [2]

Neither was the attack characterized by treachery. It is reasonable to assume that both Rivera and Tabunan went away in a hurry after Tabunan injured Melanio because they must have anticipated that the person injured by Tabunan would retaliate. Treachery does not imply the element of surprise alone, but it must be shown that the offender has employed means, methods or forms which tend directly and specially to insure the execution of the offense and at the same time to eliminate or diminish the risk to his own person from a defense which the other party may offer. [3]

Considering that Rivera noticed the approach of the two appellants from behind although he was walking ahead of Tabunan, it is not improbable that Tabunan could have been aware of the impending attack. This is specially true, considering that according to Rivera, Melanio Anin was on the right side of Tabunan when he boloed the latter. As a matter of fact, Tabunan was able to draw his bolo but Melanio Anin hit him mortally before he could use his weapon.

The Solicitor General also correctly discounts the presence of the aggravating circumstance of nighttime or of the existence of conspiracy between the appellants. In order that nocturnity or nighttime may be considered as an aggravating circumstance, it must be specially sought, or taken advantage of by the offender to facilitate the commission of the crime, or for the purpose of capitalizing on the intrinsic impunity afforded by the darkness of the night to insure or facilitate the escape of the culprit. Here, there is no evidence showing that the peculiar advantage of nighttime was purposely and deliberately sought. In default thereof, the mere fact that the offense was committed at night will not be sufficient to sustain the existence of such an aggravating circumstance.

We also find that conspiracy has not been sufficiently established by the evidence. It must be noted that it was only appellant Melanio Anin who attacked and inflicted the fatal blow upon the deceased Tabunan. It would seem that the act of Eduardo in hitting Rivera with a piece of wood after the victim Tabunan had already fallen to the ground was spontaneous and without any agreement with or encouragement from Melanio Anin. As aptly observed by the Solicitor General, if Eduardo Anin conspired with his father to kill Tabunan, he would have armed himself with a bolo or with a more lethal weapon, and concentrated his attack on Tabunan, instead of hitting Rivera, apparently ineffectively, with a piece of wood. At any rate, at that moment, Rivera was already starting to run away from the appellants. It is not sufficient that the attack is joint and simultaneous; it is necessary that the assailants are animated by one and the same criminal purpose and design. This Court has repeatedly ruled that, because of its far-reaching consequences, the same degree of proof required for establishing the crime is required to support a finding of the presence of conspiracy. In other words, conspiracy must be shown to exist as clearly and convincingly as the commission of the crime itself. [4]

It is evident, however, that appellant Eduardo Anin committed the acts imputed to him with the intention of helping morally and materially in the commission of the crime. Thus, he accompanied his co-appellant in following Tabunan and his companion, and upon overtaking them, he hit Tabunan's companion with a piece of wood, apparently to dissuade him from going to the succor of the victim. These overt acts, although done with knowledge of the criminal intent of his co-appellant, was not indispensable to the homicidal assault, for which

reason he should be held liable only as an accomplice in the killing of the victim.

In the light of the foregoing, appellant Melanio Anin should, therefore, be convicted as a principal by direct participation in the crime of homicide, with the aggravating circumstance of recidivism, and sentenced to suffer an indeterminate penalty from ELEVEN (11) YEARS of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FIVE (5) MONTHS of reclusion temporal, as maximum, while Eduardo Anin should be considered criminally responsible as an accomplice for the same offense and sentenced to suffer the indeterminate penalty from TWO (2) YEARS of prision correccional, as minimum, to EIGHT (8) YEARS and ONE (1) DAY, of prision mayor as maximum. In connection with the civil liability of P12,000.00 imposed by the trial court, appellant Melanio Anin shall be primarily liable for P10,000.00 thereof, while Eduardo Anin as accomplice shall be liable for P2,00.00 of said amount. The subsidiary liability of both of them shall be enforced in accordance with Article 110 of the Revised Penal Code.[5]

WHEREFORE, with the aforementioned modifications, the appealed judgment is hereby affirmed.

Makalintal, C.J., Castro, Fernando, Barredo, Makasiar, Esguerra, Aquino, Martin, and Concepcion, Jr., JJ., concur.

Palma and Teehankee, JJ., on leave.

[1] People v. Hanasan, 29 SCRA 534, 544-545.

[2] People v. Mendoza, 91 Phil. 58, 64; People v. Sarmiento, 8 SCRA 263.

[3] People v. Tumaob, 83 Phil. 738; People v. Casalme, 17 SCRA 717.

[4] People v. Portuguez, 20 SCRA 901; People v. Tividad, 20 SCRA 549.

[5] Lumiguís v. People, 19 SCRA 842.

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