

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SANTIAGO CAJANDAB, MANUEL ONGRAY AND PORFERIO
MAGDARAOG, DEFENDANTS-APPELLANTS.**

G.R. No. L-29598. July 26, 1973

Ponente: MAKALINTAL, Actg. CJ.

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MAKALINTAL, Actg. CJ.:

The appellants here were convicted of the crime of murder by the Court of First Instance of Samar in its decision dated August 9, 1968 in Criminal Case No. C-1157. They were each sentenced to reclusion perpetua and to indemnify the heirs of the deceased in the amount of P6,000.00, to pay moral damages in the amount of P2,000.00, plus costs.

The first information filed with the trial court was for homicide against Santiago Cajandab alone. Subsequently an amended information for murder was filed, including therein Manuel Ongray and Porferio Magdaraog and alleging that the three accused, "conspiring and confederating together and helping one another, with treachery and evident premeditation, taking advantage of their official positions and of superior strength, and employing means to insure impunity, did then and there willfully, unlawfully and feloniously hold, attack, assault, stab and wound ALFONSO GARCIA with a pointed sharp-bladed deadly weapon, commonly known in the locality as 'kinogon,' which the accused had at hand for the purpose, thereby inflicting a mortal injury on said victim's body, to wit: x x x which caused the immediate death of said ALFONSO GARCIA."

The fatal incident in question took place in Bo. Lagundi, municipal-ity of Allen, Province of Samar, in the afternoon of January 26, 1965. Two eyewitnesses testified for the prosecution, namely, Concepcion Alido, the victim's elder sister, and Tomas de los Santos. Concepcion was a public school teacher in Bo. Kinaguitman and Tomas was a student who was then boarding with the Alidos. In the afternoon of the incident Concepcion came home from school and took a seat by the window facing the provincial road. In the house with her at the time were her husband Apolinario Alido, their three children, Tomas de los Santos and Alfonso Garcia. Alfonso was then lying in a hammock inside the bedroom. At about half past five that afternoon Manuel Ongray came near the house and in a loud voice challenged Alfonso to come down so that they could shoot each other. Alfonso did not heed the challenge and after a while Manuel left the premises. Some twenty minutes later Alfonso told her sister that he was going to the neighboring house of Eslao Carlon to get a fighting cock, and asked Tomas to accompany him. Together the two went out through the kitchen door. Canon's house was about sixty (60) meters distant. Hardly had Alfonso and Tomas gone out of the gate of the Alidos and gained the provincial road when they noticed Manuel Ongray and Porferio Magdaraog leave their respective houses, which were located near that of the Alidos, and start running in their direction. When they sensed that they were the object of the pursuit they ran in different directions - Tomas to Alfonso Garcia's house across the road and Alfonso himself back to the house of the Alidos. Tomas reached the porch of Garcia's house and from there was able to see what happened to his companion. At the gate of the Alidos Alfonso tripped on one of the crossbars thereof and stumbled to a kneeling position, with his left leg bent under him and his right stretched forward, and his left hand supporting his weight

on the ground. He was in that position when his two pursuers caught up with him. Ongray held him by the right arm with one hand and aimed a revolver at him with the other. Magdaraog, who was barefoot, stepped on Alfonso's left hand while pressing him down by the left shoulder. From her position by the window Concepcion heard her brother plead that he be spared and say that he had not committed anything against his assailants. Right at that moment Santiago Cajandab arrived at the scene on a bicycle, coming from the direction of the town of Allen. Leaving his bicycle near the house of one Felino Reyes across the road from where Alfonso was, Santiago drew his bolo from his waist, ran toward Alfonso's left side and from the rear stabbed him in the front part of his body just below the right clavicle. Apparently caught unawares by the sudden turn of events, Manuel Ongray and Porferio Magdaraog released Alfonso and fled in the direction of the town. Santiago Cajandab, on his part, withdrew the bolo from his victim's body and stepped backward. Alfonso stood up, bleeding profusely, and managed to stagger hurriedly to the house, with Santiago still chasing him and stopping only when Apolinario Alido met the wounded man at the kitchen door and helped him inside. He was able to make a few statements to the effect that he had been stabbed by "Tiaguing," meaning Santiago, and that he was going to die, as he did after a few moments.

The stab wound, according to the necropsy report, was 1-1/2 inches in length and 1/2 inches in width, was located in the right infraclavicular region directly downward and to the middle of the body, penetrating the pleural cavity, the upper lobe of the right lung and the superior venacava. Hemorrhage was the immediate cause of death.

According to the victim's father, Angel Garcia, and his brother-in-law Apolinario Alido, several incidents in the past had created bad blood between the three accused and the deceased. The said accused were related to one another, either by consanguinity or by affinity. In December 1964 Alfonso Garcia married his wife Crisencia Dipon. The marriage was resented by Manuel Ongray, who wanted the same woman for his cousin Roque Blasquillo, also a suitor of hers. Then in a case of unjust vexation filed by one Visitacio Eulin against Santiago Cajandab's father, Alfonso Garcia was one of the witnesses for the plaintiff. Another incident in 1954 involved Porferio Magdaraog, whom Alfonso Garcia fingered as the man responsible for the loss of some barbed wire fencing the coconut land belonging to a certain Frocto Marcelino.

Santiago Cajandab pleaded self-defense. He said that it was Alfonso Garcia who attacked him, with a bolo, hitting him near the right clavicular region, but he warded off the attack by pushing his bicycle in front of Alfonso and causing the latter to fall down. He grabbed Alfonso's bolo and when he saw that the latter was trying to stand up and pulling a revolver from his hip pocket, Santiago stabbed him, and then went to the municipal hall in Allen and surrendered to a policeman.

The trial court gave no credence to Cajandab's testimony, and We find no reason to disagree. It was quite unlikely that Santiago would have sustained only a superficial cut on his right clavicular area if indeed Alfonso Garcia thrust at him with his bolo, considering that they were very close to each other, Alfonso having grabbed him by the shirt and spoken angrily to him, according to his testimony. Then again, if the fatal bolo belonged to the deceased, from whose hand Santiago Cajandab was able to wrest it, there is no explanation as to why the defense did not produce it at the trial for proper identification in order to bolster the story. Cajandab made no statement as to where the weapon was or what he did with it after stabbing Garcia. In any event, Cajandab's guilt has been fully established by the testimony of the two eyewitnesses.

With respect to the other two appellants, Manuel Ongray and Porferio Magdaraog, the evidence is clear that they did not take part in the killing. No conspiracy between them and Santiago Cajandab has been proven. While the attack perpetrated by Cajandab was characterized by treachery, as far as the record shows it was unplanned and therefore without the previous knowledge of or warning to the other two appellants. These two might have intended to cause harm or injury to Garcia, as their own actions quite clearly indicated; but they did not carry out

their intent, and instead desisted entirely and fled from the scene when Cajandab suddenly appeared and attacked the victim.

There being no conspiracy the accused should be separately judged by their individual acts, each being responsible only for the consequences of what he did personally. In the case of *People vs. Tividad*, 20 SCRA 549, June 30, 1967, this Court, through Mr. Justice Castro, held that since there was no conspiracy among the three accused, the person who inflicted the mortal wound treacherously was guilty of murder, while the two other assailants, who had no intent to kill, were liable only for lesiones leves. In the present case, Manuel Ongray and Porferio Magdaraog may not even be held guilty as accomplices, for in order to be considered as such they must have cooperated in the execution of the offense by previous or simultaneous acts (Art. 18, Rev. Penal Code), and cooperation presupposes knowledge of the criminal intention of the principal. Inasmuch as no injury to the deceased resulted from the acts of these two accused, they incurred no criminal responsibility for any offense included within the allegations of the information for murder filed against them.

The trial court correctly appreciated the qualifying circumstance of treachery against Santiago Cajandab because he attacked Alfonso Garcia while the latter was in a defenseless position. Abuse of superior strength, under the facts of this case, may not be considered, because he acted independently of the other two. The said accused is entitled to the mitigating circumstance of voluntary surrender. Since there is no aggravating circumstance to offset it the minimum of the penalty provided in Article 248 of the Revised Penal Code, which is reclusion temporal maximum to death, should be imposed. Applying the Indeterminate Sentence Law, the penalty of reclusion perpetua imposed by the trial court must be reduced to an indeterminate sentence of from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months and 1 day of reclusion temporal as maximum. The amount of indemnity to be paid to the heirs of the deceased by said accused is, however, raised from P6,000.00 to P12,000.00. As thus modified the judgment against Santiago Cajandab is affirmed, with costs; while the judgment against Manuel Ongray and Porferio Magdaraog is reversed, and they are hereby acquitted and ordered released from custody, with the corresponding costs de oficio.

Ruiz Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.
Zaldivar and Barredo, JJ., are on official leave.

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