

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFONSO PAJENADO ALIAS OSOY, EDILBERTO PAJENADO, CECILIO PAJENADO, CARLITO PAJENADO, AND ANICETO TQLING, DEFENDANTS-APPELLANTS.

G.R. No. L-26458. January 30, 1976

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Mandatory review of the judgment of the Court of First Instance of Samar finding the accused guilty of the crime of Murder and sentencing all of them to DEATH, to jointly and severally indemnify the heirs of the deceased Jorge Tapong the sum of P6,000.00, and to pay the costs.

In the evening of March 26, 1966, there was a party at the house of Constancio Pajenado in barrio Dapdap, Las Navas, Samar, to celebrate the betrothal of his daughter to the son of one Guillermo Quebec. Food and drinks were served to the guests among whom were the municipal mayor of Las Navas, one Ases Jolejole, barrio captain Teofilo Jorda, barrio policemen Domingo Pajac and Benito Sacay, the deceased Jorge Tapong, and the five accused. At the height of the festivities, Mayor Jolejole commented that the deceased Jorge Tapong was already drunk and should be brought home. Consequently, the barrio captain, Teofilo Jorda, ordered two of his barrio policemen then present, Domingo Pajac and Benito Sacay, to help him in taking Tapong to the house of Pelagia Tapong Gutaba, a cousin of the deceased. While they were on their way, the five accused, each armed with a piece of wood, suddenly emerged between the houses of Victoria Pajac and Elicito Gutaba, and with the accused Alfonso Pajenado focusing his flashlight on the eyes of Tapong, they started beating the latter in different parts of his body until he fell. At the time of the incident, the street was well-lighted by the light coming from a Petromax lamp in the house of one Donata Pajac. Teofilo Jorda who was following behind and who witnessed the entire incident blew his whistle and tried to stop the said accused from beating Tapong, but they did not heed him. After Tapong fell down, the five accused ran away.

Teofilo Jorda aided by rural policemen Pajac and Sacay brought Tapong to his house and attempted to secure a statement from him. But, the deceased was already in a coma and was unable to talk. So, Jorda sent for Tapong's relatives who took the deceased to the poblacion of Las Navas to seek medical attendance, but Tapong died while they were on the way.

Jorda immediately reported the incident to the chief of police of Las Navas. Thereafter, an autopsy of the deceased was made by Dr. Angel Tan. The medical examiner found that the deceased suffered the following injuries:

- "1. Hematoma 4 cm. x 1 cm., irregular in shape, left supraorbital region.
2. Abrasion-hematoma, linear in shape surrounded by an area of swelling, forearm, right, proximal portion.
3. Abrasion-hematoma 6 cm. x 1 cm., with its long axis perpendicular to the neck, situated at the left

supra-auricular region.

4. Abrasion-hematom a, 4 cm. x 4 cm. infra-suricular region, right.

5. Abrasion-hematoma, linear in shape 3 cm. x 3 cm. situated at the left lateral aspect of the trunk, crossing the 6th, 7th, 8th, and 9th ribs backwards and downwards.

6. Swelling neck, right side.

7. Hematoma with swelling right parieto-temporal region."

He concluded that the cause of death is "Uncal herniation leading to death from an increase in intracranial pressure brought about by an intracranial hemorrhage on account of a fracture of the right parieto-temporal bone"; and that "the swelling in the right side of the neck could have exerted pressure on the trachea thereby further embarrassing respiratory excursions and should therefore be considered as contributory factors in the causation of death." [1] The doctor further testified that the aforesaid injuries could have been caused by a blunt instrument like a piece of wood.

The accused Aniceto Toling admitted responsibility for the injuries sustained by the deceased Jorge Tapong and denied that his other co-accused had any hand in beating up the deceased. In justification, he claims that he acted in the lawful performance of a duty or office. According to him, he was a barrio policeman of barrio Dapdap and was also present in the house of Constancio Pajenado when the incident complained of took place; that when Tapong became drunk and noisy at the party, he helped Teofilo Jorda and Benito Sacay in taking Tapong to the house of Pelagia Tapong Gutaba; that while they were on their way, Tapong was asking why he was taken away from the party; that when they arrived at the house of Pelagia, Tapong again asked them why he was brought there, and the barrio captain replied that his actuations were shameful to the mayor; that Tapong became angry and got a bolo (debang) from the wall of the house and jumped out; that the barrio captain blew his whistle and ordered them to disarm Tapong; that in compliance with said order, he picked up a piece of bamboo and told Tapong to drop his weapon, but Tapong, instead, lunged at him, for which reason, he struck Tapong in the arm; that Sacay, who was behind Tapong, also beat Tapong several times with a piece of wood; that his co-accused Alfonso Pajenado was focusing his flashlight on Tapong while he was beating up the latter; that after Tapong fell, he got the bolo from the hands of the prostrate Tapong and handed it to Patrolman Ortiz who was standing nearby, and then left for home, across the river; that the following morning, he went to his farm and while there, his conscience bothered him for which reason, he went to the chief of police of Las Navas the next day and reported the matter, but the chief of police told him to wait for the complaint; and that in the meantime, he was held in protective custody.

The accused Alfonso Pajenado admitted that he was the one focusing his flashlight on the deceased when Toling was beating Tapong, but denied having participated in the said beating of the deceased.

All the other accused, namely:- Edilberto Pajenado, Cecilio Pajenado, and Carlito Pajenado, did not testify in court.

Inasmuch as Aniceto Toling admitted that he was the author of the death of the deceased Jorge Tapong, it was incumbent upon him, in order to avoid criminal liability, to prove the justifying circumstance claimed by him on the strength of his own evidence without relying on the weakness of that of the prosecution, for even if the evidence of the prosecution were weak it could not be disbelieved after the accused himself had admitted the killing. [2]

A person incurs no criminal liability when he acts in the fulfillment of a duty or in the lawful exercise of a right of office. [3] There are two requisites in order that the circumstance may be taken as a justifying one: (a) that the

offender acted in the performance of a duty or in the lawful exercise of a right or office; and (b) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office.[4] In the case at bar, we find no legal basis to justify Toling's action. As found by the trial court, Toling's claim that he was a barrio policeman of Dapdap at the time of the incident is not worthy of belief as his appointment as such by the Municipal Mayor of Las Navas, Samar on February 24, 1964 is null and void inasmuch as the municipal mayor does not possess the power to appoint barrio policemen, such power being vested in the barrio captain pursuant to the provisions of Section 14(e) and (i) of Republic Act No. 3590. Further, barrio captain Teofilo Jorda categorically stated that the accused Aniceto Toling is not a policeman of the said barrio.

Besides, we find Toling's action not indicative of a person clothed with authority performing a lawful duty. Thus, he testified that after Tapong fell he ran towards the people who had gathered around, especially towards the person who was focusing a flashlight, and after recognizing his co-accused Alfonso Pajenado to be the one doing it, he came back to the deceased and picked up the bolo (depang) from the hands of the prostrate Tapong and gave it to the municipal policeman who was standing nearby. Immediately thereafter, he ran home and the following day, he went to his farm. Why did he run? To run away from the scene of a crime is indicative of guilt. Why did he not inform the barrio captain of the incident considering that it was the barrio captain who had allegedly ordered him to disarm Tapong? Such unnatural action negates and renders improbable the claim that he was acting in the fulfillment of a duty.

Appellants' counsel points to several facts and circumstances which the trial court allegedly failed to appreciate or give due weight to, which should have caused the rejection of the case for the prosecution or, at least, rendered it doubtful.

Foremost, is the alleged lack of motive for the five accused to harm the deceased. It is true that no motive has been shown why the appellants would beat Jorge Tapong to death, but this Court has repeatedly held that motive is pertinent only when there is doubt as to the identity of the culprit, something which does not obtain in the case at bar as the five accused were positively identified by prosecution witnesses to be the assailants of the victim.[5]

Appellants make capital of the affidavits executed by prosecution witnesses Teofilo Jorda and Domingo Pajac which are conflicting and contradictory to what they have testified in court. It is unfortunate that the original records of this case were lost[6] and the aforementioned affidavits have not been reconstituted. At any rate, it can be gleaned from the records that on March 28, 1966, when Teofilo Jorda and Domingo Pajac reported the incident to the chief of police of Las Navas, their statements were reduced to writing.[7] In said statements, they said, among others, that while they were escorting Jorge Tapong to the house of Pelagia Tapong Gutaba, Tapong got sore and attacked the policemen with a bolo (depang) so that they scampered away and did not know who later on beat up Tapong. Then, on March 29, 1966, they subscribed to affidavits[8] pointing to the accused as the assailants of the deceased but disclaiming knowledge of the start of the incident, for Jorda stated that he just saw the accused beating the deceased, while Pajac said that he arrived at the scene only upon hearing the whistle blown by Jorda. Admittedly, their declarations are conflicting. These inconsistent statements, however, were explained by Jorda and Pajac to the effect that their first statements (Exhs. 2 & 4) were dictated to them by Mayor Jolejole who wanted to protect the accused who were his political followers and they were afraid to displease the mayor,[9] and that the wording of their second statements (Exhs. 1 & 3) was that of the chief of police who typed the same.[10] Anyway, the inconsistency refers to a trivial detail. It cannot destroy the probative value of their consistent testimony on how the five accused assaulted the deceased.

Counsel for the appellants would also want this Court to disregard the testimony of the People's rebuttal witnesses Gertrudes Adora, Angel Tapong, and Pelagia Tapong Gutaba for the reasons that Gertrudes Adora, being the

sister-in-law of Domingo Pajac, is biased; that Angel Tapong and Pelagia Tapong Gutaba, brother and sister, being cousins of the deceased, and the son of Angel Tapong having been recently slain by the son of the accused Alfonso Pajenado, have plainly an axe to grind against the defendants surnamed Pajenado. Mere relationship, however, is not sufficient to discard the testimony of credible witnesses, especially where there is no showing that these witnesses have testified merely by reason of relationship or alleged interest in the case, other than a desire to see that justice is done.

It results that the trial court did not err in accepting the prosecution's version as worthy of belief and in concluding that the guilt of the five accused has been proven beyond reasonable doubt.

The appellants dispute the findings of the trial court that all the accused helped one another in beating the deceased Tapong with pieces of wood. Conspiracy, however, may be inferred from the appellants' conduct. The five accused emerged between the houses of Victoria Pajac and Elisoto Gutaba. All of them were armed with pieces of wood. The accused Alfonso Pajenado had with him a flashlight which he focused on the eyes of Jorge Tapong while they were all beating Tapong. All of them fled after Tapong fell down due to the blows inflicted upon him. It is evident that they had community of design.

The appellants, likewise, contend that the crime committed by them, if any, is only homicide and not murder in view of the absence of the qualifying circumstance of either treachery and/or abuse of superior strength. There was treachery because the five accused suddenly intercepted Tapong while he was on his way to the house of Pelagia. The appellants resorted to a mode of attack which insured the consummation of the crime without any risk to themselves. The victim was unarmed and he had no time to defend himself in view of the suddenness of the assault and the fact that he was drunk at the time. Alevosia qualifies the killing as murder. It is not necessary to resolve whether there was abuse of superior strength because the circumstance, if present, would be absorbed in treachery.[11]

Appellants further contend that the trial court failed to appreciate in their favor the mitigating circumstance of lack of intention to commit so grave a wrong. They claim that the weapons used are mere pieces of wood, and the fact that only seven blows were dealt the deceased by the five of them, only two of which turned out to be fatal, shows that the tragic and grievous result was far from their minds. The record shows, however, that the offense committed was characterized by treachery and the appellants left the scene of the crime only after the victim had fallen down. Hence, the mitigating circumstance of lack of intention cannot be appreciated in favor of the appellants.[12]

The crime committed is murder qualified by treachery. Although, as recommended by the Solicitor-General, the circumstance of abuse of superior strength is merged in treachery, there is, however, present the aggravating circumstance of the offense having been committed by a band.[13] The penalty to be imposed should therefore be DEATH. However, for lack of the necessary number of votes, we hereby impose the penalty of reclusion perpetua.

The indemnity should be increased to P12,000.00.

Wherefore, modified as thus indicated, the decision under review is affirmed in all other respects, with costs against the appellants. So ordered.

Makasiar, Esguerra, Muñoz Palma, Aquino, and Martin, JJ., concur.

Castro, CJ., Fernando, and Teehankee, JJ., concur in the result.

Barredo, J., concurs with a note that "the aggravating circumstance of band does not appear to me to have been

sufficiently proven."

Antonio, J., did not take part.

[1] p. 115, Rollo.

[2] People vs. Llamera, G.R. No. L-21604-5-6, May 25, 1973; 51 SCRA 49.

[3] Art. 11, par. 5, R.P.C.

[4] People vs. Oanis, 74 Phil. 257.

[5] People vs. Herila, G.R. No. L-32785, May 21, 1973; 51 SCRA 31.

[6] p. 81, Rollo.

[7] Exhs. 2 and 4.

[8] Exhs. 1 and 3.

[9] pp. 20, 25, 83, 84, t.s.n., Delim.

[10] pp. 31, 32, 75, 76, t.s.n., Delim.

[11] People vs. Velez, G.R. No. L-30038, July 18, 1974, 58 SCRA 21.

[12] People vs. G.R. No. L-32785, May 21, 1973; 51 SCRA 31.

[13] U.S. vs. Juan de la Cruz, et al., 12 Phil. 87.

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