

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PAULINO MORALES, ACCUSED-APPELLANT.***G.R. No. L-37107. April 27, 1982*

Ponente: ERICTA, J.

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Paulino Morales was accused of murder in an information which reads as follows:

That on or about December 26, 1971, in the municipality of Passi, province of Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, conspiring, confederating and working together with Ludovico Morales who is still at large, armed with home-made firearm and a balisong, taking advantage of their superior strength and of the nighttime to better realize their purpose, with treachery and evident premeditation and with deliberate intent and decided purpose to kill, did then and there wilfully, unlawfully and feloniously attack, assault, aim, shoot, hit, stab and wound one RICARIDO MANDATE with their firearm and balisong with which they were provided, thereby inflicting fatal pellet and punctured wounds on the vital parts of his body which caused his death thereafter.

After trial the defendant was convicted of murder and sentenced, among others, to the penalty of reclusion perpetua. The defendant filed a motion for new trial on the ground of newly discovered evidence which consists of the retraction of Victor Mandate, the deceased's father, who was the only eyewitness for the prosecution. The motion for new trial was denied.[1] The defendant, hereinafter called the appellant, appeals from both the judgment of conviction and the order denying the motion for new trial.[2]

Victor Mandate, father of the victim Ricarido Mandate, was the only eyewitness for the prosecution. He testified that at about 7:00 o'clock in the evening of December 26, 1971, the appellant, Paulino Morales and his brother, Ludovico Morales, were in his (Victor Mandate) house at Bo. Sablogon, Passi, Iloilo, drinking wine with his son, Ricarido Mandate. Because it was already dinner time, he invited them to dinner. After dinner Victor Mandate and his son, Ricarido, accompanied the Morales brothers to their house at Bo. Maasin, Passi, Iloilo, 5 kilometers away.[3] Paulino was armed with a gun locally called "pugak-hang", while Ludovico was armed with a butcher's knife.[4] Victor was six (6) arm's length behind his three other companions because they walked faster.[5] Upon reaching Bo. Bayan, the appellant Paulino suddenly shot Ricarido Mandate who fell to the ground. Thereupon, Ludovico stabbed him.[6] After Ludovico stabbed Ricarido, the appellant fired a second shot at Ricarido.[7] Because of fear, Victor lay flat with his face downward to the ground.[8] After his son was dead, the Morales brothers went away.[9] The killing occurred at 8:00 that evening.[10] Upon seeing that his son was already dead, Victor went home.[11]

At about 6:00 the following morning, Victor reported the incident to the Chief of Police of Passi.[12] He accompanied the Chief of Police, the Rural Health Physician and some policemen to the scene of the crime where they found the dead body of Ricarido at 7:00 that same morning.[13] After examining the dead body of Ricarido, the Chief of Police asked Victor who killed his son. Victor told the Chief of Police that "Luding and Pauling"

(referring to Ludovico and Paulino Morales) killed his son.[14]

The post-mortem examination showed the following injuries:

x x x

2. Fracture of the skull 1½ by 1 inch on the left side of the occiput.
3. Seventeen (17) pellet wounds 1 cm in diameter on left lumbar and left hypochondrium.
4. Punctured wound 1 inch in length below the left nipple.
5. Three punctured wounds on the right breast about 1½ inches in length. The upper wound, the depth is 1½ inches. Second wound, the depth is 6 inches and the third wound, the depth is about seven inches.
6. Thirteen pellet wounds on the left thigh with the left knee fractured and the knee joint dislocated.

The cause of death was "fracture of the skull due to brain damage." (Exhibit "A").

The appellant, Paulino Morales interposed the defense of alibi. He testified that in the morning, afternoon, and evening of December 26, 1971, he was in his house at Bo. Maasin, Passi. To support his alibi, the appellant presented his mother Asuncion Morales, his aunt Barbara Moleño, and his brother Rogelio Morales. The distance from Bo. Sablogon to Bo. Maasin is five (5) kilometers.[15]

The appeal lacks merit. The commission of murder is clearly established. While the deceased and the Morales brothers were walking together, suddenly, without any warning, the appellant fired at Ricarido who fell to the ground. Thereupon, Ludovico stabbed the fallen man with his butcher's knife. The appellant then fired a second shot at the fallen man. The deceased, not aware of any impending assault had no chance to defend himself. The killing was perpetrated with treachery. There was also abuse of superior strength because the Morales brothers were both armed with deadly weapons while the deceased had no arms.[16] However, abuse of superior strength is absorbed by treachery.

The circumstances of premeditation and nocturnity may not be taken into account. There is no evidence showing premeditation and there was no showing that the Morales brothers purposely sought the cover of darkness to facilitate the commission of the crime.

The appellant was definitely identified. Victor had known the Morales brothers for about a year before the incident.[17] The appellant and his brother dined with Victor and his son one hour before the killing. They walked together for one hour before the assault began. The night was clear.[18] There were only four persons at the time of the commission of the crime, namely, the appellant Paulino Morales, his brother Ludovico Morales, the deceased Ricarido Mandate and the prosecution witness, Victor Mandate, father of the deceased. Significantly, there is no evidence adduced by the defense showing that Victor had any improper motive to testify falsely against the appellant. The absence of evidence of any improper motive actuating the principal prosecution witness tends to sustain the conclusion that no such improper motive existed and that his testimony is worthy of full faith and credit.[19]

Vis-a-vis the positive identification of the appellant, the weight of alibi as a defense is nil, specially as in the instant case, the witnesses are the appellant, his mother, his aunt and his brother.

Neither did the lower court err in denying the motion for new trial based on the recantation of Victor Mandate, the only prosecution witness.

The motion for new trial will not be granted if the motion is based on an affidavit of recantation of a witness

whose effect is to free the appellant from participation in the commission of the crime.[20] It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who had given it later on changed his mind for one reason or another for such a rule will make a solemn trial a mockery and place the investigation of truth at the mercy of unscrupulous witnesses.[21] It is not improbable that such a retraction was made for a consideration, usually monetary.[22]

WHEREFORE, finding no error committed by the trial Court, We hereby affirm in toto the decision appealed from. With costs.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, and Escolin, JJ., concur. Concepcion, Jr., J., out of the country. Abad Santos, J., on official leave.

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[1] p. 76, Rollo.

[2] p. 26, Record.

[3] pp. 36-37, tsn, June 1, 1972.

[4] p. 56, id.

[5] p. 38, id.

[6] pp. 38-39, 43-44, id.

[7] p. 50, id.

[8] p. 46, tsn, June 1, 1972.

[9] p. 47, id.

[10] p. 57, id.

[11] p. 47, id.

[12] p. 48, id.

[13] pp. 51-52, id.

[14] p. 53, id.

[15] tsn, pp. 17-21, August 22, 1972; pp. 61-69, September 25, 1972.

[16] *People vs. Develos*, 16 SCRA 46.

[17] p. 43, June 1, 1972.

[18] p. 44, id.

[19] *People vs. Amiscua*, 37 SCRA 813.

[20] *People vs. Bocar*, 97 Phil. 398.

[21] *People vs. Ubiña*, 97 Phil. 515, 526.

[22] *People vs. Francisco*, 94 Phil. 975, 983.

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