

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO AGUDO ALIAS "TONY", REYNALDO
SALVADOR ALIAS "NALDO", AND ROBERTO
SALVADOR ALIAS "BERTING", DEFENDANTS,
REYNALDO S...**

G.R. No. L-43796. July 15, 1985

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Appeal from the judgment of the Court of First Instance of Ilo-ilo finding the appellant Reynaldo Salvador alias "Naldo" and his co-accused, Roberto Salvador alias "Berting" guilty of the crime of Murder and sentencing each of them to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law, to indemnify, jointly and severally, the heirs of the victim in the amount of P12,000.00, and to pay the costs.

The incriminatory facts of the case are as follows: In the early evening of December 31, 1972, the late Johnny España visited his girlfriend, Nimfa Macatual, at the latter's house near Infante Street, Molo, Iloilo City. He was accompanied by his friend Danilo Villadelgado. At about 7:00 o'clock in the evening, Johnny España and Danilo Villadelgado left. Nimfa Macatual walked with them towards the road (Infante Street). When they were about four (4) meters from the said street, Antonio Agudo, Reynaldo Salvador and Roberto Salvador suddenly emerged from a dark place and without warning, Antonio Agudo stabbed Johnny España with a knife. Johnny España fell and then Reynaldo and Roberto Salvador hit him with stones. After stabbing Johnny España, Antonio Agudo thrust his knife at Danilo Villadelgado, but the latter was able to parry it. Danilo Villadelgado then ran away to seek police aid, leaving Johnny España behind. Nimfa Macatual shouted for help as she ran home. When Danilo Villadelgado returned to the scene of the incident with some policemen, they saw Johnny España lying prostrate on the ground. They brought Johnny España to the Iloilo Doctor's Hospital for medical treatment, but he was pronounced dead on arrival.[1]

Dr. Tito B. Doromal, Assistant Medico-Legal Officer of the Ilo-ilo City Police Department, conducted an autopsy on the cadaver of Johnny España and found the following lesions:

"AUTOPSY FINDINGS

"HEAD AND NECK

1. Contusion, 3 x 2 cm. in diameter with central lacerated wound, 2 cm. long, left forehead, just below the hair-line.
2. Superficial lacerated wound, 1 cm. long Mid-central forehead, just below the hairline.

"THORAX

1. Abrasion, 0.5 x 2 cm. in diameter; left anterior axillary line, level of the 10th intercostal space.
2. Abrasion, 0.5 cm. in diameter; above lesion No. 1.

"ABDOMEN

1. Stab wound, 2.5 cm. long, diagonal, sharp on the inferior end, left para-umbilical region, one (1) inch from the mid-line, 1 1/4 inch from and above the umbilicus, 41.0 inches from the left heel, penetrating with intestinal loops coming out of the wound, perforating thru and thru, the small intestines, with bowels coming out of the wound, perforating thru and thru the posterior peritoneal wall, with massive hemorrhage around, incising partially the abdominal aorta, at the level of the 3rd lumbar vertebrae. The direction of the wound is antero-postero medially to the right horizontally. About two (2) liters of blood was extracted from the abdominal cavity.

"EXTREMITIES UPPER

1. Abrasion, 0.5 x 1 cm. in diameter, antero-lateral aspect, right cubital fossa.
2. Abrasion, 0.5 x 1 cm. in diameter, antero-lateral aspect, upper 3rd. right forearm.
3. Abrasion, 1 x 0.6 cm. in diameter, posterior aspect distal portion, right arm.
4. Abrasion, 5 x 8 cm. in diameter, posterior aspect, upper 3rd. right forearm.
5. Abrasion, 1 x 0.5 cm. in diameter, superior aspect, Hypothemal aspect, Palmar area, right hand.
6. Abrasion, 0.7 cm. in diameter, posterior aspect, right wrist.
7. Abrasion, 0.3 cm. in diameter, Thenar aspect, Palmar area right hand.

"LOWER

1. Superficial confluent, abrasion, 3 x 2 cm. in diameter, superior boarder, left knee.

"CAUSE OF DEATH

Shock, hemorrhage, due to stab wound. (Exhibit A, Records, p. 46)."

As a consequence, Antonio Agudo alias "Tony", Reynaldo Salvador alias "Naldo", and Roberto Salvador alias "Berting" were charged before the Court of First Instance of Iloilo with the crime of murder, committed as follows:

"That on or about the 31st day of December, 1972, in the City of Iloilo, Philippines, and within the jurisdiction of this Court, said accused, armed with knife and stones, conspiring and confederating among themselves, working together and helping one another with deliberate intent and without any justifiable motive and with treachery and with intent to kill, did then and there wilfully, unlawfully and criminally stab, hit and wound with said knife and hit with said stones Johnny España, with which the said accused were provided at the time, thereby causing upon the latter stab wound on vital part of his body, which caused his death few moments thereafter."

But, only Reynaldo and Roberto Salvador, who both entered a plea of not guilty, were arraigned, as the whereabouts of Antonio Agudo alias "Tony" is still unknown.

After due trial, Reynaldo and Roberto Salvador were found guilty of the crime charged and sentenced as aforesaid. From this judgment, both Reynaldo and Roberto Salvador appealed. Roberto Salvador, however, subsequently withdrew his appeal.[2]

The accused-appellant, Reynaldo Salvador, admitted having hit the deceased Johnny España with stones. But he denied having conspired with Antonio Agudo and Roberto Salvador in the killing of the deceased Johnny España. He disclaimed knowing Antonio Agudo and Johnny España and claimed that the deceased Johnny España was stabbed after he had left him lying on the ground near the gate of the Iloilo Doctor's Hospital. His version of the incident is as follows: At about 7:00 o'clock in the evening in question, he was fetched from his house by his friend, Gerry Constantino, who had invited him to go to Plaza Libertad at the city proper. They went to Infante Street to catch a ride on a jeepney that would take them to their destination. Upon reaching the street, however, Gerry Constantino told him that he had forgotten something and went back for it, leaving Reynaldo Salvador standing by the roadside. As he was standing there, Reynaldo Salvador noticed stones falling around him and concluded that somebody was throwing stones at him. He hid behind a store, and not long thereafter, he saw two men coming out from an alley and going towards Infante Street. Thinking that they were the ones who threw stones at him, he ran after the men who fled towards the Iloilo Doctor's Hospital. He caught up with one of them near the gate of the hospital and hit him repeatedly with a piece of stone until the man fell down. He was about to hit the man again when his brother, Roberto Salvador, came and pulled him away.[3]

The accused, Roberto Salvador, for his part, declared that at about 7:00 o'clock in the evening in question, having nothing to do, he went to the rondahan near their house. While there, he noticed a commotion in Infante Street and heard people say that somebody had been stabbed. He went to Infante Street and joined a group of people going towards the Iloilo Doctor's Hospital. Upon reaching the gate of the said hospital, he saw his brother, Reynaldo Salvador, with a piece of stone in hand, about to strike a man lying prostrate on the ground. He went to his brother and brought him home.[4]

However, the trial court rejected the defense and found the defendants guilty of the crime, saying:

"While this case was filed on January 10, 1973, as of May 14, 1974, the two accused were not arrested forcing this court to issue another order of arrest and it was only on June 2, 1974 that the said two accused both surname Salvador were arrested. There was flight of the accused Salvador brothers which this Court has to take notice as evidence against them in addition to the testimonies of Danilo Villadelgado and Nimfa Macatual positively identifying the present Salvador brothers as having struck Johnny España with stones.

"It has been contended that as the two accused brothers were not using a knife they cannot be held liable for the death of the victim due to a stab wound.

"In the present case, however, as the three accused came from the same place to suddenly attack the victim, though with a different weapon, are held to be in conspiracy with the one using a knife x x x."

Counsel for the appellant now assails the trial court for giving credence to the testimonies of the witnesses for the prosecution claiming that they are conflicting and contradictory, in that while Danilo Villadelgado declared that Reynaldo and Roberto Salvador struck the deceased Johnny España with stones at the place where he fell after having been stabbed by Antonio Agudo about 4 meters from Infante Street, Nimfa Macatual stated that Johnny España was hit by Reynaldo and Roberto Salvador near the gate of the Iloilo Doctors' Hospital, about 150 meters from where the said Johnny España fell. Counsel for the appellant argues thusly:

"Both Danilo Villadelgado and Nimfa Macatual, claim to be eyewitnesses to the incident. If we were to follow the testimony of Villadelgado, it looks as though the accused Reynaldo and Roberto Salvador hit the victim with pieces of stones right at the place where he was stabbed and that the victim dropped dead right in that place; that the victim has not gone anywhere when he was stabbed. The version of the incident presented by Villadelgado, to a significant extent, varies with the testimony of Nimfa Macatual who equally asserts that the victim hurried away from the place where he was stabbed and proceeded to Infante road; that upon reaching Infante road, he turned towards the Iloilo Doctors' Hospital and upon reaching the gate of the Iloilo Doctors' Hospital, Reynaldo and Roberto Salvador struck him with stones which caused him to fall to the ground. Consequently, the positive assertion of Nimfa Macatual that the victim was struck by these two accused with stones at the gate of the Iloilo Doctors' Hospital negates the assumption or inference of the prosecution that these two accused helped Antonio Agudo stab the victim. x x x"[5]

However, the variance, if any, is on a minor detail which would not destroy the effectiveness of their testimony. We cannot expect absolute uniformity in every detail because witnesses react differently to what they see and hear, depending upon their situation and state of mind. Complete uniformity in details is a badge of untruthfulness. The slight contradictions, on the other hand, strengthen the sincerity of the testimony of a witness.

It is an established fact, however, that Antonio Agudo alias "Tony" was the one who stabbed the deceased Johnny España, and that the appellant, Reynaldo Salvador alias Naldo" and his brother and co-accused, Roberto Salvador alias "Berting", attacked the deceased after the latter had fallen to the ground seriously wounded. The appellant's act of stoning the victim was not in furtherance of the criminal intention of Antonio Agudo, which was to kill, but merely to show off or express his sympathy or feeling of comaraderie with Antonio Agudo. He cooperated in the commission of the offense by previous or simultaneous acts which may have been necessary but not indispensable to the commission of the offense. His liability, therefore, is only that of an accomplice.

The penalty imposed upon an accomplice in a consummated crime of murder is prision mayor in its maximum period to reclusion temporal in its medium period. As the accused is entitled to an indeterminate sentence and since there are no modifying circumstances, the penalty to be imposed upon him should be from 6 years and 1 day of prision mayor, as minimum, to 12 years and 1 day of reclusion temporal, as maximum. The indemnity to be paid to the heirs of the victim is hereby increased to P30,000.00.

WHEREFORE, with the modification above indicated, the judgment appealed from should be, as it is hereby, AFFIRMED. With proportionate costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Abad Santos, Escolin, and Cuevas, JJ., concur.

[1] tsn of Sept. 18, 1974, pp. 3-8.

[2] Rollo, p. 65.

[3] tsn of October 28, 1974, pp. 16-19, 21, 31-32.

[4] tsn of Sept. 30, 1974, pp. 28-29.

[5] Appellant's Brief, pp. 12-13.

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