

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF?APPELLEE, VS.
ANASTACIO MAISUG, ET AL., DEFENDANTS, HERMINIGILDO TADO,
DEFENDANT--APPELLANT.**

G.R. No. L-22187. March 28, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from a decision of the Court of First Instance of Cebu in its Criminal Case No. V-8884, convicting the appellant Herminigildo Tado of the crime of murder.

It appears that at about nine o'clock in the evening of February 17, 1962, a card game known as "pares-pares" was held at a certain gambling house in the barrio of Tungasan, municipality of Mandawe, Cebu. Among those present therein were the appellant Herminigildo Tado, the other accused, Anastacio Maisug, who pleaded guilty, Regino Gala, Alberto Belle, Rodolfo Bregente and Federico Alcuizar. Appellant who owned the cards being used in the game, was the shuffler, banker and dealer. At about 10:00 o'clock, several players had already lost their money, among them Anastacio Maisug and Regino Gala. In apparent disgust, Gala tore one of the cards. This angered appellant who immediately asked him why he did it. Verbal altercations followed among appellant, Gala and the other players. Alberto Belle suggested to appellant the use of the joker in lieu of the torn card. At this juncture, Anastacio Maisug suddenly stabbed Gala on the back from behind with his knife. Commotion ensued. Later that same evening, Gala was found already dead at a distance of about 15 meters from the gambling house.

The following day, February 18, 1962, Anastacio Maisug surrendered to the police authorities of Mandawe, Cebu. He executed a statement (Exhibit A) admitting having stabbed the deceased Regina Gala in the back from behind and implicating appellant thus: Earlier that evening of the incident, appellant instructed him to stab anyone who would take trouble during the card game, and so, when the deceased Gala tore one of the cards and appellant signalled him, he immediately drew his knife and drove it into the body of said deceased. On the same day, Rodolfo Bregente and Alberto Balle executed also affidavits narrating the incident which led to the killing of the deceased. Their narration, however, mentioned nothing about any signal allegedly given by appellant to Maisug.

On March 12, 1962, an information for the murder of Regino Gala was filed against Anastacio Maisug and appellant. It was alleged therein that on February 17, 1962, both accused "with deliberate intent to kill, evident pre-meditation and treachery, conspiring and confabulating with each other", stabbed from behind the deceased Regino Gala, "thereby inflicting upon the latter a stab wound at the left side of the portion of his body which produced his death." Upon arraignment, accused Maisug pleaded guilty to the charge and asked permission to prove mitigating circumstances which he claimed attended the commission of the offense or his liability. The permission granted, he proved and the court considered three mitigating circumstances, namely, voluntary surrender, plea of guilty and drunkenness. Accordingly, the lower court sentenced him on April 16, 1962, to a penalty of four (4) years prision correccional, as minimum, to eight (8) years prision mayor, as maximum, and to

indemnify the heirs of the deceased in the sum of P6,000 and to pay the costs. Appellant, on the other hand, pleaded not guilty, hence trial was held as to him.

After due trial, on June 28, 1963 the lower court rendered the appealed decision. Said the court:

"Based on what appears on record, the Court is convinced that the criminal participation of the accused Herminigildo Tado in the commission of the offense charged in the information against him and his co-accused, Anastacio Maisug, has been clearly and positively established. The evidence shows that it was the said accused, Herminigildo Tado, who owned the torn playing card; that the said accused was mad at the deceased Regino Gala when this tore the said card for no justifiable reason known to said accused; and that due to the act of said deceased, the game was stopped. The evidence further shows that he (Herminigildo) was the dealer who shuffled and distributed the gaming cards. According to his own admission, he and the manager or owner of the game, Emilio Mature, had the understanding that whatever tong was collected in the game played that night would be divided between them equally; and that when the game was stopped no more tong was collected. The Court, finds and declares that the accused Herminigildo Tado participated as principal by induction because he was the one who instructed and signalled his co-accused Anastacio to stab the deceased (Art. 248, par. 1, Revised, Penal Code).

"The allegation of conspiracy and confabulation made in the information against both has been clearly shown and established by the coordinated acts of both accused such as the fact that, in the early hour of that evening of the incident, there was an understanding between both accused that the accused Anastacio Maisug would stab anyone making trouble in the course of the card game; and that after the deceased Regino Gala tore the card belonging to the dealer Herminigildo Tado, the latter immediately gave the 'go signal' to the other accused to stab the trouble maker who happened to be the said deceased, Regino Gala. The act of stabbing the deceased was characterized by treachery because it was done from behind when the victim was unaware and not in a position to defend himself while the attacker was behind without exposing himself to any risk arising from the defense that the victim may put up. Hence the charge of the fiscal against both accused is murder.

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"WHEREFORE, based on all the foregoing considerations, the Court finds and declares the accused Herminigildo Tado guilty, beyond reasonable doubt, as principal by induction, of the offense of murder charged in the information, and said offense is the same crime defined and penalized under Article 248 of the Revised Penal Code and, considering the absence of any modifying circumstance, the said accused is hereby sentenced to serve the penalty of life imprisonment (reclusion perpetua) to indemnify the heirs of the deceased Regino Gala in the sum of P6,000.00; and to pay one-half of the costs. It appearing that said accused Herminigildo Tado has been confined in jail since his arrest on February 18, 1962, up to the present time, he is entitled to be credited with one-half of his total preventive confinement, and to pay the costs. The weapon, Exhibit C, and its scabbard, Exhibit C-1 recovered from the accused are ordered confiscated and forfeited in favor of the government."

Against this judgment, counsel de officio assigns the following errors:

"ASSIGNMENT OF ERRORS

I

THE LOWER COURT ERRED IN NOT HOLDING THAT THERE WAS NO CONSPIRACY PROVED BETWEEN MAISUG AND APPELLANT, AND, HENCE, THEY COULD BE HELD ONLY FOR THEIR INDIVIDUAL ACTS;

II

THE LOWER COURT ERRED IN NOT HOLDING THAT THE ALLEGED CONFESSION OF MAISUG, IS NOT ADMISSIBLE AS AGAINST APPELLANT TO PROVE THE ALLEGED CONSPIRACY BETWEEN THEM;

III

THE LOWER COURT ERRED IN NOT HOLDING THAT IN TRUTH AND IN FACT MAISUG ALONE WAS RESPONSIBLE FOR THE DEATH OF THE DECEASED;

IV

THE LOWER COURT ERRED IN NOT HOLDING THAT GIVING THE EVIDENCE THE APPROPRIATE WEIGHT, THERE IS NO PROOF OF GUILT BEYOND REASONABLE DOUBT AS AGAINST APPELLANT;

V

THE LOWER COURT ERRED IN HOLDING APPELLANT AS GUILTY OF INDUCEMENT IN THE KILLING OF THE DECEASED, AND ERRED IN NOT HOLDING THAT IN TRUTH AND IN FACT THERE IS NO PROOF OF MURDER BY INDUCEMENT, BY APPELLANT, TO SATISFY THE REQUIREMENT OF LAW OF PROOF BEYOND REASONABLE DOUBT."

On the whole, the appeal should be sustained and appellant given the benefit of reasonable doubt.

It is clear from a careful perusal of the record that the only inculpatory evidence against appellant Tado are: (1) the statement of Anastacio Maisug in his extrajudicial confession (Exhibit A) that early that evening of February 17, 1962, appellant instructed him to stab anyone who would make trouble during the card game; that when the deceased tore one playing card, the appellant got angry and signalled him to stab said deceased; and that in compliance with such signal, he immediately drew his knife and drove it into the body of the said deceased; and (2) the testimony of Alberto Balle to the effect that after the deceased tore one of the cards, he saw the appellant give signal to Maisug to stab said deceased. The trial court considered these as sufficient proof of conspiracy and/or inducement, and consequently, held appellant liable for the confessed criminal act of Maisug.

This Court sees appellant's case differently.

As the record stands, Maisug's confession which was relied upon by the trial court cannot be considered as sufficiently dependable evidence to convict appellant, as the trial court did, of such a grave offense as murder and deprive him of liberty for life. To begin with, Maisug himself repudiated in open court the portions of his confession incriminating appellant. And We are satisfied that his testimony in open court when he declared at the separate hearing for the presentation of his evidence to prove mitigating circumstances, after pleading guilty,[1] was more candid and natural than his confession. He straight-forwardly owned the killing of the deceased and denied having been signalled by appellant to do it. "I killed him by my own volition. x x x It was my own volition to kill him", he told the court. To quote further from the transcript of his testimony:

"Q.- Did he make any provocation on you?

A.- Yes, sir.

Q.- What was the provocation?

A.- As he tore the cards, he uttered these words: 'Who among you here is brave enough to challenge me?'

Q.- Because of that provocation, you immediately stabbed him?

A.- Yes, sir." (TSN, p. 4, Sabarre)

x x x

"Q.- So when you said that when the deceased Regino Gala tore the cards, it was Herminigildo Tado who was angered of the act of the deceased, is that correct?

A.- Yes, sir.

Q.- Because Herminigildo Tado was angered, you were signalled by him to stab the deceased according to your affidavit?

A.- He did not, instead I killed him by my own volition." (TSN, p. 6 Sabarre)

x x x

"Q.- Having already seen the owner, Mr. Herminigildo Tado, who was angered of the tearing of the cards, what brought or what motivated you to stab the deceased when there is the owner of the card who was already angered?

ATTY. DAKAY:

It was already answered by the witness in the direct examination that he was provoked by the deceased.

COURT:

Witness may answer.

A.- I killed him because I did not like his attitude in tearing the cards." (TSN, p. 7, Sabarre)

Besides, the alleged signalling of appellant to Maisug for him to stab the deceased does not appear to be clearly proven in the prosecution's evidence. Nowhere in the confession of Maisug is this fact satisfactorily clarified. All that appears therein relative to this point is the following:

"Q.- Will you state if there was any unusual happening during the time you were at the game of paris-paris?

A.- While I was there many people were playing the game of cards commonly known as paris-paris. I also made some bets and I lost Fifty Centavos (P.50). Another person named Regino Gala also lost in the betting and the latter tore out one playing card. The owner of the cards who is Hildo a very close friend of mine was angered by this incident and he signalled to me to stab Regino Gala.

Q.- Did this Hildo know that you had a dagger at that time?

A.- Yes, sir, as we were close friend he knew that I carry my dagger all the time.

Q.- Did you then comply with the signal made by your friend Hildo to strike at Regino Gala with your dagger?

A.- Yes, sir, as I had taken in a certain amount of liquor, I did not need much coaxing, I draw my dagger and with both hands, I drove my dagger into the body of Regino Gala from behind, hitting him on the left side of his back.

Q.- What did Regino Gala do after hitting him on the back with your dagger?

A.- He ran towards the lower ground.

Q.- Do you know this person which you call Regino Gala?

A.- No, sir, I saw him for the first time only last night.

Q.- Did you have any quarrel with this fellow Regino Gala?

A.- No, sir, I did not have any quarrel with him.

Q.- Did you have previous instruction or under-standing with Hildo, to stab Regino Gala?

A.- I was instructed by Hildo early that eve-ning to stab anyone who make trouble in his card games and as it was Regino Gala who made trouble by tearing into pieces a playing card and as Hildo made the signal I immediately complied and drove my dagger into the body of Regino Gala." (Exhibit A)

It can thus be noted that Maisug gave no indications whatsoever as to what was the particular signal to be given to him by appellant as well as the one which was actually given later. Much less did he do this during his testimony, because, as already stated, he categorically denied having been given any signal by appellant.

In an obvious attempt to have a corroboration of Maisug's confession on this point, the prosecution pre-sented the witness Alberto Balle who testified thereon as follows:

"Q.- Why do you say he agreed with an angry mood?

A.- He agreed with a nodding sign, but with a signal to Anastacio Maisug.

Q.- What signal?

A.- With a sign doing this. (INTER-PRETER: Witness holding his right, standing, with fist closed and mak-ing a stabbing motion, thrusting forward.)" (TSN, p. 4, Perez)

only to admit in the next breath that:

"Q.- You mentioned Anastacio Maisug being signalled by Herminigildo Tado with a stabbing motion. What did you understand by that?

A.- I do not know the meaning of it." (TSN, pp. 4-5, Perez)

Further, during the cross-examination, this witness admitted that when his statement was first taken by the police after the incident, he made no reference to the alleged signalling by appellant to Maisug although he explain-ed that this was because he was not asked about it. Indeed, there is nothing in said statement which in anyway implicat-ed appellant, as there was not even any mention of him therein. As a matter of fact, Balle did not even say in said statement that Maisug was the one who stabbed the de-ceased. The only reference to Maisug therein was as fol-lows:

"That I asked my companions to go with me home, and when I stood up to go, I saw Rodolfo Bregente run and stumbled, then I saw one man now known to me to be Anastacio Maisug brandishing his dagger." (par. 6, Affidavit of Alberto Balle, p. 3, Trial Court's Record)

Adding weakness to his evidence, was his admission that it was only in court that he first told anyone about such fact. If this were true, how come that the fiscal presented him as witness against appellant? A wit-ness who denies having revealed to the counsel presenting him at the trial the matter he would testify on is not worthy of credence, for such testimony is unnatural and contrary to ordinary experience. Lawyers do not usually present witnesses without informing themselves regarding the facts that they would prove in the testimonies they would give in court. This is specially true in this case because, without that detail about the signal in question, Balle's testimony was of no particular consequence in the government's case and if the fiscal did not know about said signal, it is difficult to understand why he would still present said witness as, in fact, he did present him.

Moreover, later in the same cross-examination, Belle reiterated that he did not understand the signal and gave the following vague explanation:

"Q.- When you said Mr. Tado made a for-ward motion of his hand you did not know what that meant. Is that not right?

A.- You are right.

Q.- As a matter of fact, you did not even know that that was a signal?

A.- When he made a sign in this manner (INTERPRETER: Witness made a thrust) immediately Rodolfo Bregente ran away.

Q.- But you did not know for a fact that that was a signal? (Later) Please answer my question.

A.- I do not know. In that sense.

Q.- And the next thing that you saw was Mr. Rodolfo Bregente running in this direction as indicated by you in this Exhibit "D". Is that right?

A.- Right.

Q.- And, of course, you were surprised why Rodolfo Bregente was running in that direction?

A.- That is why I turned to one side.

Q.- And when you turned your head you saw Mr. Anastacio Maisug standing on the spot indicated by you in this Exhibit "D" holding his knife?

A.- Yes, sir. That is right.

Q.- In other words, you did not actually see Mr. Anastacio Maisug stab Regino Gala?

A.- I did not see. You are right.

Q.- As a matter of fact, you do not know for a fact that Anastacio Maisug stabbed Regino Gala in response to the supposed signal of Mr. Herminigildo Tado?

A.- What I know for a fact is that when the signal was made there was a commotion at once and that means there must be a stabbing.

Q.- But you did not actually see the exact moment when Anastacio Maisug stabbed Regino Gala?

COURT:

Already answered. He did not see.

Q.- What happened? You said there was a commotion? What was the commotion about?

A.- I did not know the cause of the commo-tion. When I noted somebody running I ran after Rodolfo Bregente.

ATTY. FERNANDEZ:

Q.- Do you wish this Court to understand that the moment you became aware of the commotion was when you saw Rodolfo Bre-gente running away already in the direct-ion you indicated in this Exhibit "D"?

A.- According to Rodolfo Bregente, he was the one who actually saw the stabbing, that is why he ran away. Upon his running away I ran after him on my belief that he was the one stabbed.

Q.- When you ran after Mr. Rodolfo Bregente you did not know for a fact that there was already somebody stabbed. Is that right?

A.- You are right." (TSN, pp. 16-17, Perez)

The ambiguity and inconclusiveness of the proof as to the alleged signalling by appellant to Maisug is pivotal. Such evidence, without more, except the repudiated confession of Maisug, cannot make proof beyond reasonable doubt. The case would have been otherwise, had there been clear proof that the corroborating witness Balle knew what exactly the signal was and this coincided with the signal confessed by Maisug. To convict appellant on mere vague testimony about a signal, allegedly to kill the deceased, when (1) such sup-posed signal does not appear to be even intimated in the circumstances related in the extrajudicial statement of the government witness; (2) the fiscal was never made aware of it; and (3) where said witness himself admitted at the trial thus:

"Q.- When you said Mr. Tado made a forward motion of his hand you did not know what that meant. Is that not right?

A.- You are right.

Q.- As a matter of fact, you did not even know that that was a signal?

A.- When he made a sign in this manner (INTERPRETER: witness made a thrust) immediately Rodolfo Bregente ran away.

Q.- But you did not know for a fact that that was a signal? (Later) Please answer my question.

A.- I do not know. In that sense." (TSN, p.16, Perez)

would be basing conviction on mere inference which can hardly be said to be reasonable, much less in capable.

Neither is the proof that Maisug fully understood every part of his so-called extrajudicial confession convincing. To be borne in mind is the important consideration that since Maisug is an unschooled farmer who does not know how to read and can write only his name because he was taught to do so by his mother, his said confession which is in English had to be read and translated to him allegedly by the Chief of Police of Mandawe, Cebu, Priscillano S. Lumapas. Such a multiple process of reading and translating the questions and translating and typing the answers and reading and translating again the said answers is naturally pregnant with possibilities of human, if unintentional, inadequacies and incompleteness which render the said confession unsafe as basis of conviction for a capital offense, unless sufficiently corroborated. It is notable that in this case, the fiscal dispensed with the presentation of the justice of the peace before whom Maisug allegedly swore his confession, since it is not even definite from the testimony of the chief of police whether Maisug signed the same before him alone, or before the justice of the peace in his presence.

By and large, the evidence on record does not engender enough faith that appellant is guilty of the charge. If somehow it is discernible that it is more the inadequacy of details in the state's evidence that makes it difficult for Us to arrive at definite conclusions rather than, perhaps, the actual facts themselves, still We cannot pin responsibility on appellant. The moral conviction that may serve as basis of a finding of guilt in criminal cases is only that which is the logical and inevitable result of the evidence on record, exclusive of any other consideration. Short of this, it is not only the right of the accused to be freed, it is, even more, our constitutional duty to acquit him.

WHEREFORE, the judgment of this Court is that the guilt of appellant Herminigildo Tado of the crime charged in this case has not been proven beyond reasonable doubt; he is hereby acquitted; and it is ordered that he be set immediately at liberty unless he is held for another legal cause with costs de officio.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

[1] This testimony was expressly adopted by appellant's as part of the defense evidence. (TSN, p. 51 Perez)

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