

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEONIDO CADAG, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-13830. May 31, 1961*

Ponente: DE LEON, J.

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Shortly before 9:30 in the evening of May 23, 1956, Camilo Mendoza and Nicolas Yutiga, who were boarding with Antonio Mauleon in a house in Masbate, Masbate, left the store of the latter at the market place of said town in order to go to the wharf and meet relatives who were arriving on a boat scheduled to dock that night. On the way to the pier, Camilo Mendoza stepped on a hat lying on the street. After walking a distance of about two brazas, they were met by the herein defendants. Leonido Cadag asked, "Primo, what are you doing with my hat?" and at the same time tried to box Mendoza. Failing in this, Leonido Cadag confronted Yutiga and gave him a fist blow. Leonido Cadag next drew his Batangas knife, and threatened Mendoza who ran away towards the store of Mauleon. Yutiga ran to the same place, and the two of them reported the matter to Mauleon. Mauleon approached the accused, who were then some distance from his store, and inquired from them what the trouble was, but he got no reply. In the meantime, Mendoza and Yutiga went to where Mauleon was and the three, who were unarmed, were encircled by the four accused. Yutiga asked Leonido Cadag, "Primo, why did you box us when we did not have any fault at all?" Leonido Cadag got near Yutiga who ran away, hiding himself behind Mendoza. Mendoza similarly asked why Leonido Cadag boxed him and his companion, and Leonido Cadag retored, "Why are you angry?" Forthwith, Leonido Cadag boxed Mendoza with his left hand, and when Mendoza made a move to run, he (Leonido Cadag) held said Mendoza by the shoulder and stabbed him in the neck. At the same time, Dominador Arado, Bonifacio Cadag and Antonio Gatun shouted, "Go ahead and stab that Tagalog" and "That is the Tagalog, stab him." Bonifacio carried a piece of wood (Exhibit E), Antonio Gatun held a stone, and Dominador Arado was armed with a knife and stone. The accused hurled stones at Yutiga while running back to the store of Mauleon, after which they chased wounded Mendoza up to the slaughterhouse.

The foregoing is the prosecution narration of the fatal encounter. In exculpation, the defendants interposed alibi.

Camilo Mendoza was rushed to the Masbate Provincial Hospital. That same night, his dying declaration narrates details of the incident and does not name the declarant's assailants. Mendoza succumbed to his injury on the thorax of his neck the following day.

The trial court found all the accused guilty as co-principals of the crime of murder, and sentenced them to suffer the penalty of *reclusión perpetua*, to the accessory penalties of the law, to indemnify jointly and severally the heirs of the deceased Camilo Mendoza in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency and to pay the costs," making the following conclusions:

"The evidence presented by the prosecution clearly shows that each and every one of the accused was duly identified by the witnesses for the government. Because of this clear and positive identification, the defense of alibi could not be given any credit at all and deserves no consideration.

"It is also contended by the defense that since it was only Leonido Cadag who inflicted the injury it should be he only who should be punished for the evidence of the prosecution failed to establish clearly the existence of conspiracy. The Court believes that the existence of conspiracy in this case can be deduced from the acts of each and every accused taken as a whole. The placing of the hat in the middle of the road or street is the product of a common agreement among the four accused because when the deceased stepped on the hat all the four accused confronted him and his companion and asked them why he stepped on the hat. The behaviour of the four accused in placing a hat in the middle of the road and punished the person who first stepped on it is clearly an evidence of the intention of the four accused. When the four of them chased the deceased after the latter had stepped on the hat shows that they were united in their intention to punish the person who first stepped on said hat. The fact that the deceased was the one who stepped on the hat can be considered accidental. It does not matter to the four accused who stepped on the hat so long as they do bodily harm to the one who stepped on it first. Again, when the accused Leonido Cadag was holding already the deceased by the shoulder, Bonifacio Cadag, Antonio Gatón and Dominador Arado said: "Proceed, proceed, stab, stab him." All these acts clearly establish that it was premeditated intention of all the four accused to do bodily harm to the deceased, Camilo Mendoza, who happened to step on the hat. It does not matter whether only one stabbed the deceased. What is important is to find out whether the four accused had the same intention of inflicting bodily harm to the deceased. The evidence presented by the prosecution was sufficient to show this. There was, therefore, conspiracy on the part of the four accused to do bodily harm to the deceased. It having been clearly established that the attack on the deceased was a complete surprise to him and considering that he was defenseless at the time, the crime committed by the four accused is qualified as murder and the liability of each of the accused should be the same."

During the pendency of this appeal, defendants' counsel filed a motion for a new trial supported by affidavits. The affidavit of Mayor Benjamin Magallanes of Masbate states that Bonifacio Cadag and Antonio Gatón are the confidential men of the Mayor and the two were detailed at the pier, together with Chief of Police Sulpicio Rataga, to watch out for contraband which might be unloaded from a vessel which was scheduled to dock at 9:00 in the evening in question. In his own affidavit, Leonido Cadag has confessed to the killing of the deceased but that he did so in self-defense. The affidavit of Teofilo Deocaresa tends to support this theory of self-defense.

The appellants were positively identified by Nicolas Yutiga and Antonio Mauleon. The defense has made no pretense that these witnesses have any "axe to grind" particularly against Bonifacio Cadag, Antonio Gatón and Dominador Arado who has maintained their plea of alibi in this appeal. However, their alibi is weak and dubious. Arado said that he went to sleep at 9:30 p.m. and before that he was riding on a bicycle which he had hired from Oscar Amador. Oscar Amador said that he remained in the same place where Arado was riding on a bicycle up to 8:40 p.m. only when he left for home. Antonio Gatón's statement that he went to sleep at about 9:30 was not satisfactorily corroborated. Alejandro Echegoyin, his witness, said that he did not see this appellant when he went to his house at about 9:30 in the evening. Bonifacio Cadag declared that he was at the pier working as a baggage boy up to 10:00 in the evening when he also went home and slept. Chief of Police Sulpicio Rataga gave testimony to the effect that he saw Dominador Cadag at the pier, but he failed to state the time when he saw said appellant and testified furthermore that he was not certain if the same appellant was still at the pier when he boarded the truck that took him to the scene of the killing. Considering the defense evidence, it was not impossible for Arado, Gatón and Dominador Cadag to join Leonido Cadag, the self-confessed killer, immediately prior to the incident.

Anent the contents of the affidavits of appellant Leonido Cadag and Teofilo Deocaresa, they can hardly reach to the level of newly-discovered evidence. They smack of "manufactured" evidence. In his court testimony, Leonido Cadag falsely claimed that he went home as early as 4:00 and to bed at 10:00 that night of the incident. A person who has no scruple to testify falsely under oath and before a court of justice will certainly perjure himself anew in any desperate move to extricate himself from a trap into which he had fallen through his own undoing. If honestly, Leonido Cadag mortally stabbed the deceased in legitimate self-defense of his person, we can not

comprehend, and this appellant did not avail of his affidavit to explain, why he interposed alibi during the trial of the case. Eventually, his conduct has betrayed his guilty conscience.

We believe that the important question at issue is as to the crime committed and the liability of the appellants for that crime. The Solicitor-General submits that the offense committed is homicide only. We agree. The intention to kill became manifest when the deceased and Yutiga returned and joined Mauleon who was then talking to the appellants, giving the latter the impression that Mauleon and his companions have prepared themselves for a showdown. Prior thereto there is no clear evidence of an understanding between the appellants. There is no showing that Leonido Cadag had intentionally left his hat in the street, much less, that he placed his hat in the middle of the street to entice the deceased. The deceased arrived from San Luis, Batangas, a week before the affray. Yutiga said he did not know the appellants. The lack of motive for the killing also militates against the possibility of a pre-arranged killing. If appellants had agreed to kill the deceased and so placed the hat in the street to attract his attention, Leonido Cadag would have used his knife, instead of his fist, at the very start of the encounter. There was no sufficient time between the inception of the intention and its fulfillment dispassionately to consider and accept the consequences. There was no opportunity for reflection and the persistence of the criminal intent that characterize the aggravating circumstance of evident premeditation (*People vs. Custodio, et al.*, 97 Phil., 698; 52 Off. Gaz., [4] 1999). And treachery cannot logically be appreciated because the accused did not make any preparation to kill the deceased in such a manner as to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate. The purpose was to kill, the decision was sudden, and the position of the victim was accidental and did not matter (*People vs. Tumaob*, 83 Phil., 738; 46 Off. Gaz., 190; *People vs. Calinawan*, 83 Phil., 647; *People vs. Abalos*, 84 Phil., 771; 47 Off. Gaz., 1800).

The Solicitor-General agrees with the court below that conspiracy among the four appellants has been proven. They are correct. There is no direct evidence of the conspiracy, but conspiracy can seldom be proved except by circumstantial evidence, and once it is proved the acts of the conspirators are the acts of all (*People vs. Romualdez*, 57 Phil., 148). Antonio Gatón, Dominador Arado and Bonifacio Cadag were with Leonido Cadag in accosting the deceased and his friend; they joined Leonido Cadag in encircling the deceased and his companions; they gave him encouragement by their armed presence and their urgings to kill the deceased; they chased Yutiga and the deceased; and together they left the scene of the crime. It is unreasonable to presume that Gatón, Arado and Dominador Cadag were present only as curious onlookers; possession of their weapons and company with the killer just before and after the killing—all these are inconsistent with such an assumption. On the other hand, these circumstances are not consistent with innocence (*People vs. Mahlon, et al.*, 92 Phil., 883). Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence. From the legal viewpoint conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution (*U.S. vs. Ancheta, et al.*, 1 Phil., 165; *U.S. vs. Santos, et al.*, 2 Phil., 453; *People vs. Mandagay and Taguiawan*, 46 Phil., 838; *People vs. Agbuya, et al.*, 57 Phil., *People vs. Ibañez*, 77 Phil., 664; *People vs. Macabuhay, et al.*, 83 Phil., 464; 46 Off. Gaz., [11] 5469; *People vs. Dima Binasing, et al.*, 98 Phil., 902; 53 Off. Gaz., [16] 5208). In conclusion, we hold that herein appellants had conspired to kill the deceased as they, in fact, did, without the attendance of any of the circumstances of murder.

The penalty for the offense of homicide is *reclusión temporal* and same should be imposed in its medium period, or from 14 years, 3 months and 1 day to 17 years and 4 months of *reclusión temporal*, there being no modifying circumstance to consider. Applying the Indeterminate Sentence Law, as amended, each of the four appellants is hereby sentenced to suffer an indeterminate prison term of from 12 years of *prisión mayor* to 14 years, 8 months and 1 day of *reclusión temporal*.

Wherefore, modified as above indicated with respect to the crime and penalty, the judgment a quo is hereby affirmed in all other respects, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon and Natividad, JJ., concur.

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