

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE LABRINTO, ISIDORO LABRINTO, IÑIGO LABRINTO,
RICARDO LABRINTO AND BIENVENIDO LABRINTO,
ACCUSED-PPELLANTS;THE PEOPLE...**

G.R. Nos. L-43528-29 & L-48067. October 10, 1980

Ponente: AQUINO, J.

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AQUINO, J.:

Vicente Labrinto and his four sons named Bienvenido, Isidoro, Iñigo and Ricardo appealed from the decision of the Court of First Instance of Eastern Samar, Guiuan Branch VI, finding them guilty of murder, sentencing each of them to reclusion perpetua and ordering them to pay solidarily to the heirs of the victim, Simplicio Germones, an indemnity of twelve thousand pesos (Criminal Case No. 294).

Vicente and his son Isidoro also appealed from the portion of that same decision, finding them guilty of frustrated murder and sentencing each of them to an indeterminate penalty of six years and one day of prision mayor as minimum to twelve years and one day of reclusion temporal as maximum (Criminal Case No. 296).

Vicente was allowed to withdraw his appeal in the murder case, now L-43528 (Res. of April 12, 1978), while Isidoro was allowed to withdraw his appeal in the frustrated murder case, now L-48067, formerly CA-G. R. No. 19524-Cr. (Res. of December 15, 1978).

The two cases were tried jointly. Only one decision was rendered by the trial court. The frustrated murder case, which was appealed to the Court of Appeals, was elevated to this Court in its resolution of March 3, 1978 because the frustrated murder arose out of the same occurrence and was committed on the same occasion as the murder and, consequently, it is within the exclusive appellate jurisdiction of this Court (Sec. 17[2][1], Judiciary Law).

As factual background, it should be stated that Vicente Labrinto is the uterine brother of Yulita Odang, the wife of Simplicio Germones, and of Macario Odang and Roman Odang. There was a controversy between Vicente and Yulita regarding a parcel of coconut land located at Sitio Biasong, Barrio Canvilla, Quinapondan, Eastern Samar.

The Germones spouses filed a forcible entry case against Vicente for having dispossessed them of the land (Civil Case No. 13).

Macario Odang was a witness against Vicente in the criminal cases for qualified theft and illegal fishing which were later dismissed. And on September 30, 1974, Yulita Odang went to the poblacion to file a complaint against Vicente and his children for having challenged the Germones spouses.

Thus, considerable tension and antagonism had developed between Vicente and his uterine sister and brother and his brother-in-law, Simplicio.

The prosecution's evidence shows that at about two o'clock in the afternoon of September 30, 1974, in Sitio Biasong, while Nilda (Nelda) Germones, 15, was at the window of the house of her uncle, Roman Odang, where

her family was staying, she saw her father, Simplicio Germones, coming down from a coconut tree.

As Simplicio neared its trunk, Iñigo Labrinto suddenly hacked him on the left knee with a bolo (sansibar) (Exh. B). The wound almost severed the knee from the body. Simplicio fell on the ground in a sitting position near the coconut tree. While in that position, Iñigo hacked him on the neck.

Isidoro Labrinto, a brother of Iñigo, appeared on the scene and wounded Simplicio on the head also with a sansibar, causing the victim to sprawl on the ground face up. In that position, Bienvenido Labrinto wounded Simplicio in the abdomen while Iñigo and Isidoro stood by.

Vicente Labrinto, the father of the assailants, stabbed Simplicio in the abdomen, sadistically twisting his weapon inside that organ. Ricardo, another son of Vicente, stabbed Simplicio's right arm. And while Iñigo was holding Simplicio's forefinger, Isidoro sliced a portion of the skin of Simplicio's arm.

Macario Odang, who also witnessed the assault, approached the assailants in order to pacify them. Isidoro met him and stabbed Macario's left hand, while Vicente hacked the left side of Macario's head. Macario collapsed on the ground. He was unconscious.

On noticing that Simplicio was dead, the five Labrintos fled from the scene of the assault. Simplicio sustained nine wounds while Macario had four wounds. Simplicio died on that same day. Macario regained consciousness in the yard of his brother's house.

The chief of police charged the Labrintos with murder and frustrated murder in the municipal court in a complaint dated October 25, 1974. On December 12, 1974, the fiscal charged them in separate informations with murder and frustrated murder in the Court of First Instance. Treachery, evident premeditation and abuse of superiority were alleged as aggravating circumstances in the two cases.

In a handwritten letter in the dialect dated April 21, 1975, or after these cases were filed in court, Vicente asked his sister Yulita for forgiveness. He proposed an amicable settlement (Exh. E and F). Yulita rejected the proposal.

The defense of the accused (except Iñigo) is that they had no participation in the killing of Germones and the wounding of Macario Odang.

Vicente, the father, withdrew his appeal in the murder case, thus implying that he took part in the assassination of Germones. His offer of compromise was an implied admission of guilt. (2nd sentence of Sec. 24, Rule 130, Rules of Court.)

Iñigo assumed responsibility for the killing of Germones and the wounding of Macario to the exclusion of his father and three brothers. He pleaded self-defense and defense of his family's property rights.

Iñigo declared that in the afternoon of September 30, 1974, he asked his uncle Macario why he was gathering coconuts on the land of the Labrintos. Macario allegedly rushed at him and tried to hack him with a bolo but missed. In retaliation, Iñigo attacked Macario and wounded him until the latter ran away.

While the incident was taking place, Germones, who was near the top of a coconut tree, allegedly shouted that he would fight Iñigo. The latter accepted the challenge, waited for Germones at the base of the coconut tree and wounded him several times without any intervention of the other Labrintos. Iñigo surrendered to the barrio captain and later to a policeman.

During the assault, Vicente was allegedly in his farm in Sitio Lubang about two kilometers away from the scene of the crime.

The alibi of Bienvenido Labrinto was that at the time of the killing he was making copra at Sitio Tenatabayahan,

Barrio San Roque, General MacArthur, Eastern Samar where he and his wife lived in the house of his father-in-law. Tenatabayahan is about twenty-two kilometers away from Quinapondan. Bienvenido allegedly had been staying in Barrio San Roque since November 28, 1973. He worked on the land owned by Hermogenes Cabanillas. The latter corroborated Bienvenido's alibi.

Isidoro Labrinto testified that at the time of the killing in Sitio Biasong he was in Sitio Opencut, Barrio Santa Fe, General MacArthur, Eastern Samar, about twenty-four kilometers away from the scene of the crime. He had allegedly been residing in Barrio Santa Fe since 1966.

Isidoro allegedly was hired by Nicetas Cadayong to haul fourteen logs from the forest and bring them to Cadayong's house. Cadayong corroborated Isidoro's alibi.

The fifth accused, Ricardo Labrinto, testified that at the time of the killing, he and his brother-in-law Gil Escaldre were fishing in General MacArthur where he and his wife had been residing since May 1, 1973 in the house of his in-laws. Escaldre confirmed Ricardo's alibi.

A defense witness, Hilario Sabejon, tried to rebut the testimony of prosecution witness Nilda Germones by declaring that at the time of the killing Nilda was in front of the house of the chief of police in the poblacion of Quinapondan. Nilda was with her mother, Yulita.

Lawyer Gerardo A. Pabello, as appellants' counsel in the murder case, contends that the trial court erred (1) in giving credence to the testimony of the fifteen-year-old Nilda, (2) in disbelieving the alibis of the Labrintos (except Iñigo), (3) in not regarding the victims as the aggressors and (4) in convicting the accused of murder.

Lawyers Rosario R. Rapanut and Teodoro C. San Juan of the Citizens Legal Assistance Office in the frustrated murder case contend that the trial court erred in rejecting the version of Iñigo Labrinto that he alone wounded Macario Odang and in convicting Vicente Labrinto and Isidoro of frustrated murder.

These contentions are no longer valid as to Vicente who withdrew his appeal in the murder case (he is still an appellant in the frustrated murder case) and as to Isidoro who withdrew his appeal in the frustrated murder case (he is still an appellant in the murder case).

We hold that the trial court did not err in giving full probative value to the testimonies of Nilda Germones and Macario Odang who witnessed the assault against Germones and in not giving credence to appellants' alibis.

There is no reason why Nilda would frame up her uncle Vicente and her first cousins or why Macario would fabricate evidence against his brother and nephews. Appellants' guilt was established beyond reasonable doubt. Iñigo's plea of self-defense and the alibis of the other Labrinto children are manifest fabrications.

Frustrated murder case, L-48067, Criminal Case No. 296. - A careful review of the record in L-48067 leads to the conclusion that only attempted homicide was committed in that case. The four wounds inflicted by Vicente and Isidoro on Macario Odang did not affect any vital organ. The doctor certified that the period of incapacity was "around one week or a little bit more, barring complications" (Exh. A in Crim. Case No. 296).

He ambiguously testified that the wounds "may cause death if the wounds were fatal" (15 tsn July 3, 1975) but he did not testify that the wounds would be fatal if there were no medical attendance.

On the other hand, the assault on Macario was made on the spur of the moment and he was in the beginning face-to-face with his two assailants. Vicente, Macario's uterine brother, even met him and asked him if he (Macario) was aggrieved (p. 11, Record of Crim. Case No. 294, Sworn Statement of Macario Odang).

Thus, when Isidoro tried to stab Macario in the neck, the latter parried the blow with his left hand and so

Macario's index finger was injured.

For the attempted homicide, Vicente Labrinto who is now the only appellant in L-48067 and who was a co-conspirator of his son Isidoro, should be sentenced to an indeterminate penalty of six months of arresto mayor as minimum to three years of prision correccional as maximum.

Murder case, L-43528, Criminal Case No. 294. - As to Simplicio Germones, the crime is murder because he was treacherously assaulted by Iñigo Labrinto. After he had been rendered helpless because of the initial wound on the knee inflicted by Iñigo, Vicente and his three other sons assaulted Simplicio. By their conduct, they showed that they had community of design with Iñigo to liquidate Simplicio. Treachery absorbs abuse of superiority.

The trial court erred in appreciating evident premeditation because there is no evidence as to the time when the accused resolved to kill Simplicio and there is no proof of an act manifestly indicating that the accused had clung to their determination to eliminate him and, therefore, it cannot be said that there was a sufficient interval of time between the determination and the killing to allow their consciences to overcome the resolution of their wills had they desired to hearken to the warnings thereof. (U. S. vs. Gil, 13 Phil. 530, 547.)

Iñigo, Bienvenido and Isidoro voluntarily surrendered to the authorities as shown in the return of the warrant of arrest (See back of p. 16 and pp. 19 and 20 of the Record in Crim. Case No. 294).

Giving them the benefit of the mitigating circumstance of voluntary surrender to the authorities, the penalty imposable on them should be taken from reclusion temporal minimum which is the minimum period of the penalty for murder. They are entitled to an indeterminate sentence.

The sentence to be imposed on each of them is not reclusion perpetua but an indeterminate penalty of twelve years of prision mayor as minimum to twenty years of reclusion temporal as maximum.

Ricardo Labrinto testified on November 24, 1975 that he was eighteen years old. That clearly implies that on September 30, 1974, when the murder was committed, he was seventeen or below eighteen years (173 tsn). He was the youngest son of Vicente.

Under article 68(2) of the Revised Penal Code, he is entitled to the privileged mitigating circumstance of minority which lowers the penalty by one degree. The penalty imposable on him should be taken from reclusion temporal minimum which is the medium period of the penalty next lower in degree. He is not entitled to the mitigating circumstance of voluntary surrender to the authorities because he was actually arrested on November 26, 1974 (174 tsn).

The penalty imposable on Ricardo is an indeterminate sentence of seven years of prision mayor as minimum to thirteen years of reclusion temporal minimum as maximum.

WHEREFORE, the lower court's judgment is affirmed with the modifications (1) that in L-48067 Vicente Labrinto is sentenced to an indeterminate penalty of six months of arresto mayor as minimum to three years of prision correccional as maximum and to pay an indemnity of two thousand pesos to his uterine brother Macario Odang and (2) that in L-43528-29 Ricardo Labrinto is sentenced to an indeterminate penalty of seven years of prision mayor as minimum to thirteen years of reclusion temporal minimum as maximum, while Isidoro, Bienvenido and Iñigo, all surnamed Labrinto, are each sentenced to an indeterminate penalty of twelve years of prision mayor as minimum to twenty years of reclusion temporal as maximum. Costs de oficio.

SO ORDERED.

Barredo, (Chairman), Fernandez,[*] Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., is abroad.

[*] Fernandez, J., was designated to sit in the Second Division.

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