

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CONCESO ACLO, VICENTE ACLO, AND MACARIO PITO,
DEFENDANTS. CONCESO ACLO, DEFENDANT-APPELLANT.**

G.R. No. L-28710. April 22, 1977

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Appeal of the accused Conceso Aclo from the decision of the Court of First Instance of Misamis Occidental finding him guilty of the crime of Murder and sentencing him to suffer the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify the heirs of the deceased Valentin Acuram the amount of P6,680.00, without subsidiary imprisonment in case of insolvency; and to pay his proportionate part of the costs.

It is undisputed that on May 27, 1967, Nicasio Simporios, from Barrio Bongabon, Tudela, Misamis Occidental, went to Barrio Cahayag of the same town to ask for the hand in marriage of the daughter of Margarito Yecyec. As custom required it, Simporios brought with him food and drinks to the house of his prospective bride to be served to her close relatives and friends. It is also the custom of the place for the prospective bridegroom and his relatives to take care of the kitchen chores. Among those invited by Simporios from his barrio were Bernardo Aclo, nicknamed "Bandoy", who was the intermediary, his two sons Vicente and Conceso Aclo, Macario Pito, Pretextato Balais, and Claudio Adapon. The latter two were the cooks, while Conceso Aclo was their kitchen help.

The conversation on the approaching marriage terminated at about 11:30 o'clock in the morning, and lunch was served soon thereafter. At about 2:00 o'clock in the afternoon, a commotion occurred in the kitchen of the house and some women were shouting that there was a fight.[1] Moments later, a bloody Valentin Acuram, an uncle of the prospective bride, came out from the kitchen. Jose Lumbay, the barrio captain of Bongabon, went to him and asked: "What happened to you cousin?"[2] and Valentin Acuram replied: "I was stabbed by the son of Bandoy." Acuram went downstairs, and in the yard, he saw Conceso Aclo. Upon seeing him, Acuram shouted: "There is the man who stabbed me. You chase him."[3] The residents of Barrio Cahayag were out-raged and went around looking for weapons to use against those from Bongabon. Macario Pito drew out his knife and dared them to come near him. Canuto Namuco, the barrio captain of Cahayag, asked Pito to surrender his knife, but the latter refused. So, Namuco took hold of a pestle and advanced towards Pito who put his knife away. Pio Acla then wrested the knife from Pito, thus averting a free-for-all between the residents of Barrios Cahayag and Bongabon.

Valentin Acuram went back to the house but collapsed at the landing of the stairway.[4] Without delay, he was brought to town for medical treatment. At the puericulture center of Tudela where Acuram was first brought for medical attention, Tudela Municipal Police Sgt. Manuel Muñoz investigated Valentin Acuram and helped prepare the latter's dying declaration[5] wherein Acuram pointed to the son of Bandoy as his assailant. Subsequently, Valentin Acuram was taken to the Doctors' Hospital at Ozamis City where he died the next day. Dr. Jose Libunao, who attended the deceased, issued a certificate of the following tenor:[6]

"This is to certify that Mr. Valentin Acuram, 50 years of age was admitted and treated in this hospital on May 27, 1967 at 5:25 P.M. because of multiple stab wounds. Exploratory laparotomy was performed immediately after the patient was prepared for operation.

"Unfortunately the patient died after approximately 25 and one half hours after admission.

Description of Injuries:

"(1) Punctured and penetrating wound at the left iliac region approximately 2 inches of the wound. Part of the small intestines measuring approximately 3 feet came out and the appearance were already marked cyanotic and non-viable.

"(2) Lacerated wound of the right middle finger at the interphalangeal joint almost cutting the whole finger.

"(3) Lacerated wound of the right index finger measuring 1/2 inch in width with several abrasions.

"(4) Lacerated wound of the right thumb measuring 1/2 inch in width.

"(5) Lacerated wound of the left ring finger approximately 1 inch in width almost cutting the whole finger.

"(6) Lacerated wound of the left index finger approximately 1 inch in width.

"(7) Lacerated wound of the thumb finger approximately cutting the whole finger with involvement of bones.

"(8) Presence of a round hematoma at the right supra clavicular region simulating a human bite.

"(9) Presence of a punctured and lacerated wound at the left gluteal region measuring approximately 1 inch in width.

Major findings of operation:

"(1) Presence of a non-viable, cyanotic almost gangrenous small intestine measuring approximately 3 feet long which was constricted at the site of entrance of the wound.

"(2) Abundant sero-sanguinous discharge after exploring the peritoneum which indicates bleeding due to punctured mesenteric blood vessels.

"(3) Failure of the non-viable small intestines to react with warm normal salt solution.

Cause of Death:

"(1) Generalized peritonitis.

"(2) Apparent hemorrhage due to the punctured and lacerated mesenteric blood vessels and other loss of blood of the other sites of injuries."

The family of the deceased incurred hospital and medical fees in the amount of P680.00.[7]

As a consequence, the chief of police of Tudela filed a complaint charging Conceso Aclo with the crime of murder.[8] This complaint, however, was amended,[9] after Juan Gomonod, a brother-in-law of the deceased, executed an affidavit four (4) days later implicating Vicente Aclo and Macario Pito in the commission thereof,[10] after which an information charging Conceso Aclo, Vicente Aclo, and Macario Pito with the crime of murder, qualified by treachery, was filed in court. After trial, Conceso Aclo was found guilty as charged and sentenced accordingly. Vicente Aclo and Macario Pito were acquitted. Hence, the present appeal.

The appellant pleads self-defense and also contends that the evidence presented merely proves homicide and not murder.

Indeed, We find that the evidence submitted does not support the findings that the crime committed was murder, qualified by treachery. Claudio Adapon, a witness for the prosecution, testified that there were only three (3) of them, namely: Pretextato Balais, Conceso Aclo, and himself, when the deceased Valentin Acuram entered the kitchen and rushed towards Conceso Aclo saying: "Bantay mga bata kay ato na kini," which means "Prepare boys because this is now our time. Here is the fellow I am looking for." [11] When Acuram was near him, Conceso Aclo pulled out his knife and stabbed Acuram in the abdomen. Thereafter, the protagonists wrestled for the possession of the knife. [12] When asked to show how the deceased ran towards Conceso Aclo, the

"Witness got down from the witness stand and demonstrated how Valentin Acuram rushed upon Conceso Aclo by rushing towards the interpreter who was supposed to be Conceso and then when the witness reach . . . was very near the interpreter, he immediately demonstrated to the court how Valentin Acuram was in the act of . . . about to hold the neck with two hands and then Conceso Aclo stooped down and simultaneously pulled out his hunting knife." [13]

Juan Gumonod, another witness for the prosecution and brother-in-law of Valentin Acuram, testified, however, that he was also at the kitchen of the house of Margarito Yecyec when the deceased Valentin Acuram was stabbed by the accused. According to him, Acuram was holding a plateful of cooked rice when Conceso Aclo stabbed Valentin Acuram in the abdomen. Then, he saw Vicente Aclo hold the left hand of Acuram and thereafter Macario Pito stabbed Acuram in the buttocks. Fearing for his life, he jumped out of the kitchen through a window. [14]

Pretextato Balais, testifying for the defense, although listed as one of the prosecution witnesses, declared that there were only three (3) of them, namely: Claudio Adapon, Conceso Aclo, and himself, in the kitchen of Margarito Yecyec when the deceased Valentin Acuram entered the kitchen and rushed towards Conceso Aclo, saying: "Prepare boys, here is the fellow whom we are looking for." When Acuram got near, Conceso Aclo pulled out his knife and stabbed Valentin Acuram in the abdomen, after which the protagonists grappled for the possession of the knife. [15]

The accused Conceso Aclo also testified that the deceased Valentin Acuram entered the kitchen and rushed towards him, shouting: "Prepare boys because here is the one we are looking for." So, he pulled out his hunting knife and thrust it at Valentin Acuram. Acuram was not hit. Acuram stepped backwards and tried to draw out his bolo. He again thrust the knife at Acuram, hitting the latter at the abdomen. Acuram slumped to the floor. So, he ran for home. [16]

As found by the Solicitor General, the element of treachery cannot be considered as the qualifying circumstance in this case since there is no clear proof that the attack on the victim was done suddenly and without affording him a chance to defend himself. If the appellant was in the kitchen at the time, he was there to help in the kitchen chores; and if he had a knife with him, the knife was to be used in the performance of his chores.

Having claimed self-defense, the burden of proof was shifted to appellant to establish the same. Having failed to do so, a conviction for homicide must necessarily lie.

The crime committed being homicide without any aggravating or mitigating circumstances present in its commission, appellant should suffer the indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, as maximum. The civil indemnity to the heirs of Valentin Acuram is hereby increased to P12,680.00.

MODIFIED as above-indicated, the judgment appealed from should be, as it is hereby, affirmed in all other respects. No costs.

Fernando, (Chairman), Barredo, Antonio, and Aquino, JJ., concur.

- [1] tsn, p. 160
- [2] Id., p. 161
- [3] Id., p. 150
- [4] Id., p. 155
- [5] Exhibit "E"
- [6] Exhibit "A"
- [7] Exhibits "L, L-1"
- [8] Exhibit "2"
- [9] Original Record, p. 2
- [10] Exhibits "J, J-1"
- [11] tsn, p. 26
- [12] Id., p. 28
- [13] Id., p. 29
- [14] Id., pp. 77-79
- [15] Id., p. 138
- [16] Id., pp. 168-169

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