

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO LOJO AND JOSE MENDOZA, JR., ACCUSED, JOSE
MENDOZA, JR., DEFENDANT-APPELLANT.**

G.R. No. L-33522. June 24, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Circuit Criminal Court, Eighth Judicial District, in Criminal Case No. CCC-VIII-118, convicting the accused Marciano Lojo, as principal, and Jose Mendoza, Jr., as accessory after the fact, of the crimes of murder and homicide, the dispositive portion of which reads:

"a) As regard the killing of deceased victim Rodolfo Dimaano, the court finds defendant Marciano Lojo y Maralit guilty beyond reasonable doubt as Principal of the crime of Murder, qualified by the circumstance of treachery. In the absence of any modifying circumstance the court hereby sentences the said defendant to suffer the penalty of RECLUSION PERPETUA, to jointly and severally, with his co-defendant Jose Mendoza, Jr., indemnify the heirs of the said deceased victim in the sum of TWELVE THOUSAND (P12,000.00) PESOS and to pay the costs.

"b) With respect to the killing of deceased victim Romeo Dimaano, the court finds defendant Marciano Lojo y Maralit guilty beyond reasonable doubt as Principal of the crime of Homicide. In the absence of any modifying circumstance, the court hereby sentences the said defendant to suffer an indeterminate penalty [ranging] from 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, to indemnify the heirs of the deceased victim Romeo Dimaano in the sum of TWELVE THOUSAND (P12,000.00) PESOS and to pay the costs.

"c) With respect to defendant Jose Mendoza, Jr., the court finds said defendant guilty beyond reasonable doubt as an Accessory after the Fact in the Murder of deceased victim Rodolfo Dimaano. In the absence of any other circumstance, applying the provision of the Indeterminate Sentence Law, as amended, the court hereby sentences said accused to suffer an indeterminate penalty ranging from TWO (2) YEARS, FOUR (4) MONTHS AND ONE (1) DAY of Prision Correccional, as minimum, to EIGHT (8) YEARS AND ONE (1) DAY of Prision Mayor, as maximum, to jointly and severally, with his co-defendant Marciano Lojo, indemnify the heirs of the said deceased victim Rodolfo Dimaano in the sum of TWELVE THOUSAND (P12,000.00) PESOS and to pay the costs."

Both accused appealed the case. However, Marciano Lojo subsequently withdrew his appeal which was allowed by this Court in its resolution dated June 8, 1971. Thus, this appeal concerns Jose Mendoza, Jr., only.

The recital of facts attendant to the commission of the crime charged, as set forth in the People's brief being accurate, is hereby quoted as follows:

"In the afternoon of May 25, 1969, Romeo Dimaano and Rene Lojo went to the store of Pastor de Jesus where a game of 'pakito' was going on (p. 8, tsn., Oct. 27, 1970). Rene Lojo was holding the deceased Romeo

Dimaano who was then crying and complaining that defendant Marciano Lojo had hit him with the butt of a gun (p. 61, tsn., Oct. 12, 1970). Rodolfo Dimaano, brother of Romeo, who was then playing 'pakito' with Rodolfo Empleo, Alberto Katigbak, and one Isidro, on hearing the remarks of Romeo, stood up and approached his brother Romeo to pacify him (pp. 61-62, tsn. Oct. 12, 1970). While Rodolfo was pacifying Romeo, defendant Marciano Lojo was walking toward them. Sensing that something untoward incident might happen, Rodolfo approached defendant Marciano Lojo and tried to lead him away from the place. At the same time, Romeo Dimaano continued cursing the defendant Marciano Lojo (pp. 62-63, tsn. Oct. 12, 1970). The defendant Marciano on hearing the remarks, approached Romeo and asked him 'What is it now' at the same time pulling his gun. (p. 15, tsn., testimony of Danilo Templo, Oct. 28, 1970). Defendant Lojo shot first Rodolfo Dimaano from behind as the latter was facing Romeo. Then followed by the next shot directed to Romeo Dimaano. Both the victims fell to the ground and while Romeo Dimaano was lying on the ground face downward, Lojo continued firing at victim Rodolfo Dimaano (pp. 64-65, tsn., Oct. 12, 1970). Defendant Lojo left the place of the incident and went to the house of Jose Mendoza (p. 14, tsn., Oct. 27, 1970). He boarded the jeep driven by Jose Mendoza Jr. and proceeded toward the direction of the poblacion, Lipa City on the way to Rosario, Batangas, where he was apprehended on August 19, 1970 (p. 66, tsn., Oct 12, 1970). Jose Mendoza, Jr. even uttered the words 'sakay kayo Kakang Siano, baka tayo'y abutin pa.' (p. 15, rec.; p. 45, tsn., testimony of Jaime Umali y Torres, Oct. 28, 1970)" (pp. 4-5, Appellee's brief).

It is the submission of appellant Mendoza that he had no knowledge of the commission of the crime of murder by accused Marciano Lojo and that he did not assist in the escape of Lojo after the latter had shot and killed Rodolfo Dimaano and Romeo Dimaano. Further, he claims that the trial court leaned heavily (1) on the testimony of Ricardo Umali to the effect that after firing at the two victims, Lojo ran towards Mendoza's house and later boarded a jeep driven by the appellant; (2) on the declaration of Rodolfo Empleo that he saw Lojo enter the gate of the house of Jose Mendoza, Jr. and when he came out he rode in the jeep driven by Mendoza; and, (3) on the testimony of Jaime Umali that after he heard the shots he went down his house and proceeded to the place of the incident and there heard Mendoza uttered the words: "sakay kayo Kakang Siano, baka tayo'y abutin pa." Appellant argues that "even assuming the statements made by the three named prosecution witnesses to be true, they do not prove indubitably that when Lojo rode in the jeep driven by Mendoza, the latter is aware of the fact that Lojo had shot the two victims. To hold otherwise, would be to indulge in surmises and conjectures."

We are not persuaded. Appellant Mendoza was present when earlier that afternoon of May 25, 1969, Marciano Lojo and Romeo Dimaano quarreled while inside his (Mendoza) jeep. Mendoza testified on this point, as follows:

"Q After slapping Romeo, did Marciano do something else?

A There was, sir.

Q What?

A And then after slapping Romeo, he kicked Romeo.

Q After kicking Romeo, what happened to Romeo?

A Romeo was thrown away and fell in a sitting position, sir.

Q

And after Romeo had fallen on a sitting position, what did Marciano do?

A Marciano alighted from the jeep, sir.

Q How about you and Danilo?

A I and Danilo alighted from the jeep and tried to pacify them.

Q Why did you try to pacify the two, what are they going to do?

A They are almost to box each other, sir.

Q Were you able to pacify them?

A Yes, sir.

Q Now, after pacifying them, what did Marciano do?

A We were able to request Marciano to board the jeep, sir.

Q

How about the three, when Marciano boarded the jeep? I am referring to Romeo, Jaime and Mario?

A They were left behind where we stopped the jeep.

ATTY. LANTIN:

Q

Now, when Marciano was about to board the jeep, did Romeo say anything?

WITNESS:

A There was, sir.

Q

May araw ka rin, gaganti ako sa iyo." (tsn., January 5, 1971, pp. 13-14)

Thus, from the start, appellant Mendoza knew there was the unpleasant relationship between Marciano Lojo and Romeo Dimaano. About 6:30 in the evening of the same date, May 25, 1969, in barrio Lodlod, Lipa City, after herein appellant had arrived in his house, he heard several gunshots coming from the direction of the store of Pastor de Jesus which was quite near his residence. Out of curiosity Mendoza must have inquired what the gunshots were about. And, when Lojo arrived he must have asked about them when the latter allegedly requested to be brought to the police headquarters of Lipa City for the purpose of surrendering. He must have inquired why

Lojo would surrender if he had not done anything wrong, granting that he did not know the shooting incident. It is surprising that he did not even ask Marciano Lojo while they were allegedly on their way to the police headquarters. It is very clear that appellant was not telling the truth. The fact is, as testified to by Santiago Mayor, Lojo was riding in the jeep driven by Mendoza in his escape to Rosario, Batangas, after the incident. They did not go to the police headquarters of Lipa City. Instead, Mendoza assisted Lojo in his escape to Rosario until he was arrested on August 19, 1970.

Under Article 19 of the Revised Penal Code, it is required (1) that the accessory should have knowledge of the crime; (2) that he did not take part in its commission as principal or accomplice; and (3) that he took part subsequent to its commission in any of the three ways enumerated in said article. The foregoing facts are clear that these three requisites are present in the case at bar.

WHEREFORE, judgment appealed from with respect to the case of Jose Mendoza, Jr., is hereby **AFFIRMED** in toto, with costs against said appellant.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Vasquez and Gutierrez, Jr., JJ., concur.
Plana, J., no part.

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