

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO BACAY, ACCUSED-APPELLANT.

G.R. No. L-38787. September 12, 1984

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an appeal from the decision of the Court of First Instance of Quezon, finding Mariano Bacay guilty of the crime of murder, qualified by abuse of superior strength, and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased Pedro Macata-ngay in the amount of P12,000.00

The gravamen of the charge, in the language of the information, is recited thus:

"That on or about the 20th day of February 1971, in the Barrio Mangalang I, (Aratan), Municipality of Sariaya, Pro-vince of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the said accused Mariano Bacay, together with Margarito Watiwat, who is already accused in Criminal Case No. 186, with intent to kill, armed with a deadly wea-pon, with evident premeditation and treachery, taking advantage of their superior strength to better accomplish their unlawful purpose, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said deadly weapon, one Pedro Maca-tangay y Manalo, thereby inflicting upon the latter, several mortal wounds in the different parts of his body, which caused the death of said Pedro Macatangay y Manalo."

Margarito Watiwat, co-accused of appellant Bacay, died during the pendency of the trial; and the charge against him was dismissed.[1]

The facts established by the prosecution are summarized in the People's brief as follows:

"On February 20, 1971, at about 6:00 o'clock in the morning, Venancio Abdon was feeding his cows and carabaos near his house amidst a coconut plantation located at sitio Aratan, Barrio Mangalang Tulo-tulo, Sariaya, Quezon. While going about his chores, he saw Pedro Macatangay approaching him from the south, and Mariano Bacay together with Marga-rito Watiwat approaching him from the east (pp. 2, 3, 4, 8, 9, 15, tsn). As the trio were about to converge near him, Venancio Abdon turned his back with the intention of going to his daughter's house towards the north (pp. 10, 15, 16, id). But hardly had he walked four paces when he heard Bacay's remark: "Ano ang iyong ginagabot (What are you pulling)?", and Macatangay answering "No, no" (pp. 10, 14, 15, 16, id). Immediately facing them, Venancio Abdon saw Bacay and Watiwat raising their hands and pounding something on the back of Macatangay's shoulder (pp. 2, 8, 10-11, 14-15, 16, id). Without a moment longer, Venancio Abdon, who was only about two meters away, ran towards the house of barrio councilman Fernando Barsoto, located about 250 meters from the southwest. Abdon asked Barsoto to go with him even as he re-reported the incident near his house. Abdon told Barsoto that the persons quarelling were Pedring, Mariano and Garito (pp. 2, 3-4, 11, 15, 16, 17, 19, 36, 37, id). Both ran to the scene of the incident and upon reaching the place saw the lifeless body of Macatangay (pp. 8, 12, 37, 38). Bacay and Watiwat were no longer at the scene of the crime (p. 4, id). Subsequently, Venanco Abdon went straight to his house (pp. 12, 13, 38, id).

"According to Venancio Abdon, there were no other persons in the vicinity at the time Bacay and Watiwat

thrust something on Macata-ngay's shoulder (p. 4, id). Abdon had known Bacay, Watiwat and the victim for about 20 years (p. 6, id).

"Investigation conducted by police authorities disclosed that the perpetrators of the crime were Mariano Bacay and Margarito Watiwat. This information was furnished by Venancio Abdon to Cesar Mendoza, a member of the Sariaya Police Force (pp. 30, 31, id). Pat. Mendoza found the victim at a place about 30 meters from the house of Venancio Abdon, lying on the ground, face down-ward and already dead (pp. 31-32, id). Under the victim's chest was an empty jute sack; near his head about two feet away was a yoke (paod) with bloodstains; and near his feet was a three-cornered paper scabbard about 8 inches in length (pp. 31--33, id). A search for a three-bladed instrument proved futile (p. 33, id).

"The cadaver was examined by Dr. Gregorio Rodriguez, Rural Health Officer of Sariaya, Quezon at the cemetery before the burial on February 20, 1971 and in the presence of the Sanitary Inspector, Nestor Lising (pp. 28-29, id). The result of the examination was reduced to writing, Exhibit "A" (pp. 29-30, id, p. 4, rec.), and showed the following injuries inflicted on the victim:

'HEMORRHAGE SEVERE

1. Wound, stabbed, shoulder, left (superficial)
2. Wound, stabbed, 2nd rib, 3-1/2 inches depth, left (fatal)
3. Wound, stabbed, 2nd rib, left (superficial)
4. Wound, stabbed, sternum, mid (superficial)
5. Wound, stabbed, sternum, mid, 1-1/2 inches from wound No. 4 (superficial)
6. Wound, stabbed, abdominal region, lower, 2 inches depth, left;
7. Wound, stabbed, shoulder, 2 inches depth, right;
8. Wound, stabbed, scapular region, 2 inches from spinal column, 1/2 inch depth, right;
9. Wound, stabbed, thoracic cavity, 2-1/2 inches below wound No. 8, entering 5th interspace, 1/2 inch width, 3-1/2 inches depth, right (fatal);
10. Wound, stabbed, entering 8th interspace, 4-1/2 inches depth, (fatal), wound going upward direction, right;
11. Wound, stabbed, entering 8th interspace (superficial)
12. Wound, stabbed, scapular region, 2 inches depth, left;
13. Wound, stabbed, thoracic cavity, entering the 6th interspace, 3-1/2 inches depth, left; (fatal) wound going down;
14. Wound, stabbed, thoracic cavity, 1 inch below wound No. 13, entering 7th interspace, 5 inches depth, left (fatal) and
15. Wound, stabbed, 5 inches above waist-line, 4-1/2 inches depth, left (fatal wound going upward direction.)'

"Dr. Rodriguez also issued the death certificate, Exhibit "B" (p. 3, rec.; p. 39, tsn). Igliceria Vicuña, the victim's widow and who cleaned the dead body, stated that her deceased husband sustained several stab wounds on his back penetrating up to the chest and some on the abdomen (pp. 19-20, 26, tsn).

"Prior to the incident, or on January 2, 1971, Mariano Bacay, who was then drunk, went to the house of the deceased and asked the latter's wife his whereabouts. Igliceria Vicuña answered that her husband was not in the

house at that moment. She however inquired why Bacay was looking for him and Bacay told her he would take re-venge ("Ako ay maghihiganti") [p. 20-22, 23, 24, id].

"According to Igliceria Vicuña, Mariano Bacay wanted to take revenge because her brother Vicente Vicuña, who was shot by Alejandro Bacay (brother of Mariano Bacay), filed a criminal case against Alejandro Bacay. The deceased Pedro Macatangay took a keen interest in having the case filed and in fact always accompanied Vicente Vicuña during the trial until Alejandro Bacay was convicted (pp. 21- 26, id)."

For his part, appellant interposed the defense of alibi. He testified that on February 11, 1971, he left Bo. Mangalang, Sariaya, Quezon, for Bo. Binabaan to look for work; that on the day of the incident, February 20, 1971, he was already working in the coconut plantation of Juan Martinez in Bo. Binabaan; that he was in that place since February 11 up until the end of that month, staying in the house of his friend, one Benito Rabano.[2]

The defense presented the testimonies of Sofronio Martinez and Jose David to corroborate the claim of appellant that on the day of the incident, February 10, 1971, the latter was in the house of Benito Rabano in Bo. Bina-baan.

The lower court did not err in finding the appellant's alibi unworthy of credence. Indeed, such alibi cannot prevail over the clear, positive and convincing testimony of eyewitness Venancio Abdon as to the appellant's identity. Abdon could not have been mistaken in his identification. He was barely two (2) meters away from the assailants at the time of the incident, and he had known them well for over a period of twenty (20) years.[3] What is more, no evidence had been adduced to show that said witness was actuated by any improper motives in testifying against the appellant. Needless to add, alibi as a defense can easily be fabricated to serve the purpose of the accused.

But even as we hold appellant responsible beyond reasonable doubt for the killing of the victim, we find no legal basis for his conviction of the crime of murder. Indeed, the trial court erred in concluding that the offense was qualified by the circumstance of superior strength. It is a settled rule that abuse of superior strength can be considered only where the accused deliberately used excessive force out of proportion to the means of defense available to the person attacked.[4]

The mere fact that two aggressors inflicted fatal wounds on the deceased does not, by itself, show abuse of superior strength in the absence of proof demonstrating that they cooperated in such a manner as to secure advantage from their superior number to weaken the defense. Thus, in *People v. Bustos*,^[5] where the two accused, upon meeting the victim, pursued him and, on overtaking him, inflicted several injuries upon him as a result of which he died, this Court held that the circumstance that there were two aggressors did not constitute per se abuse of superior strength in the absence of evidence in the record as to the relative physical strength of the aggressors and the victim.

In the case at bar, prosecution witness Venancio Abdon declared that when he looked back, he saw that appellant Bacay and his co-accused Watiwat had each of their hands on the shoulder of the victim while their other hands were raised in a motion "to press down something" on the back of the deceased, after which the latter fell on the ground.[6] This circumstance, coupled with the fact that the meeting between the victim and his assailants was purely unexpected and accidental^[7] hardly indicate deliberate use of numerical superiority or abuse of superior strength. Besides, the mere holding of the victim's shoulder in the manner demonstrated by the witness could not have so immobilized the deceased as to render him completely helpless to put up any resistance, considering that he still had the free and unimpeded use of his arms and legs.

In the absence of clear showing that abuse of superior strength or any other qualifying circumstance had attended its commission, the crime committed is homicide. The penalty therefor is reclusion temporal which is imposable

in its medium period.

WHEREFORE, the decision appealed from is modified. Mariano Bacay is hereby found guilty of homicide and sentenced to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum, and to indemnify the heirs of the deceased Pedro Macatangay in the amount of P30,000.00. Cost de oficio.

SO ORDERED.

Makasiar (Chairman), Aquino, Abad Santos, and Cuevas, JJ., concur.

Concepcion, Jr., and Guerrero, JJ., on leave.

[1] p. 107, original records.

[2] tsn, pp. 48-49

[3] tsn, p. 6

[4] People v. Cabiling, 74 SCRA 285; People v. Bello, 10 SCRA 298.

[5] 51 Phil. 385

[6] tsn, pp. 2, 8, 10-11, 14-17

[7] tsn, p. 9

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