

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRISCILLANO BADO ALIAS DODONG, ACCUSED-APPELLANT.

G.R. No. L-44775. March 05, 1984

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

The appellant, PRISCILLANO BADO, was convicted of murder in Criminal Case No. 307 of the defunct Court of First Instance of Misamis Occidental. The information and the judgment read respectively as follows:

"That on or about the 30th day of August, 1975, at barangay dela Paz, in the municipality of Pana-on, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, stab and wound one Felix Sumile with the use of a knife, inflicting upon the latter a stab wound at the 'inferior border of the 7th left rib and midsternal line', with treachery, the said accused having inflicted the fatal wound in a sudden manner during nighttime on a road while the said Felix Sumile was unaware of the attack, which injury caused the direct and immediate death of Felix Sumile, to the damage and prejudice of his heirs in the amount of not less than P12,000.00." (Expediente, p. 20.)

"ACCORDINGLY, this Court finds the accused, PRISCILLANO BADO alias DODONG, guilty beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code, and applying the provisions of No. 1, Article 64 of the Revised Penal Code, there being neither mitigating or aggravating circumstances which attended the commission of the crime, the said accused, PRISCILLANO BADO alias DODONG, is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, with all the accessory penalties provided for by law; to in-demnify the Heirs of Felix Sumile the following amounts: P12,000.00, as compensatory damages; P29,400.00 for the loss of the earning capacity of the deceased, Felix Sumile, who was 51 years of age at the time of his death, computed at his average monthly income of P175.00, until age 65 years; P1,075.00, for funeral expenses; and, P6,000.00 as moral damages for their mental anguish by reason of the death of Felix Sumile; and, to pay the costs." (Idem, pp. 83-84.)

The following is the People's version of the facts:

"On August 30, 1975, at about 8:00 p.m., the accused together with Candro Clavecilla, Porfirio Mapiot and Eduardo Mapiot, were at the roadside at Barangay De la Paz, Pana-on, Misamis Occidental, having a drinking spree with dog meat as their ap-petizer (tsn., April 2, 1976, p. 19). While they were drinking, the accused had a hunting knife which he used to slice the dog's liver (tsn., June 4, 1976, p. 3). The accused, who was distributing bottles of Pepsi Cola as chaser, got angry upon knowing that Eduardo Mapiot got the last bottle (tsn., April 2, 1976, p. 20). Noticing this, Candro asked the accused to go home with him. The accused agreed. After reaching home, Candro and the accused decided to go to the seashore to buy fish. It was already 8:30 in the evening. The accused brought with him his hunting knife. As there was no fish for sale, they went back, and on their way home, they saw, at a distance, a person walking with a lighted flashlight in hand. Candro was walking ahead, about a fathom away from the accused (Id., p. 22). When the person passed by the left side of Candro, the latter looked back and saw the accused embrace the person with his left hand, and stab him with the hunting knife in his right hand, hitting the person on the left side of his body. During and after the stabbing,

the flashlight was on, being held by the person stabbed, who turned out to be Felix Sumile, a fisherman of De la Paz. It was around 9:00 p.m. at that time. Both Candro and the accused ran towards home (Id., pp. 24-26).

"Porfirio and Eduardo Mapiot came upon the body of Felix Sumile lying on the ground with the lighted flashlight still in his hand. Noticing that Felix Sumile had a stab wound on his left side, Porfirio and Eduardo reported the matter to the victims' younger brother, leaving the body on the road. When they went back to the place, they saw the body being examined by Dr. de los Santos and Sgt. Santos (tsn., June 4, 1976, pp. 6-9).

"Pana-on Municipal Health Officer Dr. Esrelita de los Santos later examined the body of the deceased (tsn., June 17, 1976, pp. 6-8). Dr. de los Santos found 'a stab wound located at the anterior border of the 7th left rib and midsternal line. The wound measured approximately 3 inches in length traversing all layers of skin, muscles, diaphragm, lungs and heart' (Exhibit "B", p. 21, Records). According to Dr. Alfonso R. Apduhan, Provincial Health Officer of Misamis Occidental, the cause of death was internal hemorrhage resulting from the wound, which could have been inflicted with a sharp bladed instrument such as the hunting knife, Exhibit "A" (tsn., June 17, 1976, pp. 4-5)." (Brief, pp. 3-5.)

It should be added the appellant is a recidivist. On October 31, 1973, he was found guilty of the crime of slight physical injuries and sentenced to suffer an imprisonment of seven (7) days by the City Court of Iligan in Criminal Case No. 9065-AF. (See testimony of Elizer Sumile on August 13, 1976, and Exh. E on p. 92 of the Expediente.)

In his appeal, Bado claims that it was Candro Clavecilla, his companion, who killed Felix Sumile and "that even granting arguendo that the accused-appellant authored the killing of the deceased, yet the same was not attended by treachery so as to qualify the offense committed to murder." The People insists that Bado was the killer but admits that the crime he committed is homicide only, not murder. We sustain the People.

Who killed Felix Sumile? There were only two eye-witnesses to the crime - the appellant and Candro Clavecilla - and each pointed to the other as the killer. Unfortunately, We cannot render a Solomonic judgment by declaring both of them guilty for there was only one death weapon and the deceased suffered only one stab wound. Hence, it has to be one or the other and according to the trial court the appellant was the killer. We have to sustain the trial court's finding because it was in a better position to determine the credibility of the witnesses.

The appellant disclaims guilt by indulging in the "probability x x x that it was Candro Clavecilla who might have killed the de-ceased." He bolsters his conjecture by claiming that he had no motive to kill the deceased for they had no misunderstanding and, moreover, he had been a resident of De La Paz for only a few days. This posture of the appellant is without merit. Considering that he had been drinking that evening for quite sometime, the presence of motive is not necessary to attribute the crime to him. A person who is high on liquor does not always act rationally. Moreover, there are circumstances mentioned by the trial court which point to the appellant as the author of the crime:

"From a perusal of the medical certificate issued by Dr. Estelita G. delos Santos, then Municipal Health Officer of Pana-on, who examined the dead body of Felix Sumile, it is apparent that the direction of the stab wound at the 7th left rib was upwards, towards the lungs and heart which were traversed by the wound, and which, according to Dr. Alfonso R. Apdujan, Provincial Health Officer of Misamis Occidental, whose competency as an expert and as a physician was admitted by the de-fense, could be caused by a hunting knife, such as Exhibit "A", thrust upward. This is confirmed by the testimony of Judge Casiano L. Yuzon, Jr., who said that, at in-quest, he noticed the wound of Felix Sumile to be directed upwards towards the breast from the left side.

"There seems to be no question, therefore, that such a wound would naturally be caused only by a stab, with the right hand, directed towards the left side of the body, thrust upwards, which, according to Candro Clavecilla was made by the accused, but impossibly by a stab with the left hand, thrust forward, as

demonstrated by the accused, as having been made by Candro. For if such were the case, the wound of Felix Sumile should have been directed straight in-wards his body. Much more so, because, on rebuttal, Candro denied being left handed, and proved that he is right handed by showing callouses on his right palm, and none on his left; and, also because the testimony of the accused to the effect that the knife thrust of Candro was directed towards the right side of the body of Felix Sumile, contradicts the bare physical fact, which is not in dispute, that the wound of Felix Sumile was at his left side.

"Furthermore, it does not seem possible that it was Candro Clavecilla who stabbed Felix Sumile, as claimed by the defense, because the actuations of the accused, and the events occurring, after the stabbing incident, demonstrate otherwise. This is explicit from the failure of the accused to explain why, as testified to by Pana-on Acting Chief of Police Severiano Vertudez, the hunting knife used, still with blood in it, which is Exhibit "A", was found inside his room three (3) days after the incident. And, much more so, because, according to the said Acting Chief of Police, the accused admitted to him, in his office, which the accused never denied categorically, that the said hunting knife belongs to him." (Idem, pp. 79-81.)

We sustain the opinions of both the appellant and the appellee that there was no alevosia in the commission of the crime. True it is that the attack upon the deceased appears to have been sudden and unexpected, but there is no showing that the mode of attack was consciously adopted to insure or facilitate the commission of the crime. On the contrary, the crime was the result of a casual encounter so that the appellant had no time to reflect on the method of executing it.

The crime committed is homicide only, not murder. The accused is a proven recidivist but this aggravating circumstance is off-set by the mitigating circumstance of drunkenness which does not appear to be habitual.

WHEREFORE, the judgment of the trial court is modified: the appellant is found guilty of homicide and sentenced (a) to suffer an indeterminate penalty of six (6) years and one (1) day of prision mayor, as minimum, to fifteen (15) years of reclusion temporal, as maximum; (b) to indemnify the heirs of the deceased in the amount of Thirty Thousand (P30,000.00) Pesos; and (c) to pay the costs.

SO ORDERED.

Makasiar, Acting C.J., (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro and Escolin, JJ., concur.

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