

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RODRIGO AGUSTIN, JULITO RIZARDO, SILVERIO APOLINARIO,
CONRADO APOLINARIO, ARSENIO AGUSTIN, PEDRO BETUDIO,
PEDRO AGUSTI...**

G.R. No. L-18368. March 31, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

In the Court of First Instance of Antique, Rodrigo Agustin, Julito Rizarido, Silverio Apolinario, Conrado Apolinario, Arsenio Agustin, Pedro Betudio, Pedro Agustin, Diosdado Apolinario, Adriano Apolinario, and Tranquilino Betudio were charged, under two separate informations, with the murder of Benito Labauan and the frustrated murder of the latter's wife, Emilia Labauan, respectively. All were acquitted of the charge of frustrated murder. Pedro Betudio, Pedro Agustin and Tranquilino Betudio were likewise acquitted of the charge of murder, but the rest, namely, Rodrigo Agustin, Arsenio Agustin, Julito Rizarido, Diosdado Apolinario, Adriano Apolinario, Conrado Apolinario and Silverio Apolinario, were found guilty, with the qualifying circumstance of treachery, the mitigating circumstances of voluntary surrender, lack of instruction and extreme poverty, and the aggravating circumstances of evident premeditation, abuse of superior strength and commission of the crime in an uninhabited place. Each was sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally with the others, the heirs of Benito Labauan in the amount of P6,000, and to pay 1/7 of the costs.

The case is now before us on appeal by Julito Rizarido, Silverio Apolinario, Conrado Apolinario, Diosdado Apolinario and Adriano Apolinario. They claim that the lower court erred (1) in convicting them after it had acquitted Pedro Betudio and Pedro Agustin, who were the ones principally charged with the crime; (2) in giving credence to the testimony of Emilia Labauan; (3) in considering Rodrigo Agustin's extrajudicial admission against them; and (4) in not holding that the prosecution failed to prove their guilt beyond reasonable doubt.

The killing of Benito Labauan was the aftermath of a land controversy. It appears that in the Court of First Instance of Antique he sued some residents of Iglonoy, Bugasong, Antique, for the recovery of land on which they had their houses. He won the case but the defendants adamantly refused to vacate the premises even after a writ of execution and an alias writ of execution had been issued against them. Appellants are among these residents of the barrio affected by the case.

On July 9, 1960 the local deputy sheriff and some constabulary soldiers went to Iglonoy to enforce a demolition order issued by the Court. The deputy sheriff showed the order to Pedro Betudio, barrio lieutenant, informing him that he and the other squatters would be given time to remove their houses, but that if they failed to do so, the deputy sheriff would execute the order. Betudio, claiming that he and the others had nowhere to transfer their houses, asked for a period of grace, but Labauan refused, so the demolition started. Demolished were the houses of Pedro Agustin, Manuel Betudio, Adriano Apolinario, Dionisio Apolinario, Manuela de la Cruz, Diosdado Apolinario and Antonio Francisco. When the turn of his house came Pedro Betudio approached the sheriff and

Labauan and offered to recognize the latter's ownership on condition that he be allowed to remain on the land as tenant. Labauan readily agreed, and proposed that he and Betudio meet the following Tuesday in San Jose, with their respective attorneys, in order to put their agreement into writing. The meeting, however, failed to materialize.

Concerning the crime itself Emilia Labauan, widow of the deceased, testified to the following effect: In the afternoon of Wednesday, July 13, 1960, she and her husband and another person named Juan Lam-an were on their way home from their farm in Iglonoy. They walked single file, with Labauan leading and his wife immediately behind. On their way they crossed Iglonoy creek. As Labauan was about to step from the creek to the bank, Pedro Betudio suddenly appeared from a nearby thicket on a slightly elevated portion of land and hacked Labauan with a bolo. He was joined in the attack by Pedro Agustin, Julito Rizado, Silverio Apolinario, Adriano Apolinario, Diosdado Apolinario, Tranquilino Betudio, Arsenio Agustin, and Rodrigo Agustin. Emilia also tried to escape, but was caught by a blow with a bolo wielded by Basilio Agustin (who was not included as an accused because he was at large). Basilio then helped the others hack and stone Labauan even after he was already dead.

Badly injured as she was, Emilia managed to crawl away and hide, and regaining some strength later on, walked to Bagtason. There two policemen investigated her and took her statement (Exh. C), thinking she would die. Thereafter she was taken to the hospital where she was investigated by constabulary soldiers. She related that Pedro Betudio boloed her husband while Basilio Agustin inflicted the six-inch wound she received in the scapular region.

The next morning a group of policemen and soldiers found the body of Labauan on a trail near Iglonoy creek, an uninhabited area. They also recovered from the place an empty scabbard, a slingshot, a buri hat and a denim cap.

The autopsy on Labauan's corpse (Exhibit B) revealed that he suffered multiple wounds on the face (which was hardly recognizable because of its "macrated" condition), on the head, in the neck and in both upper extremities. The right forearm was completely severed.

On July 15, 1960 Rodrigo Agustin signed a confession (Exhibit I for the prosecution; Exhibit 1 for the defense), in which he admitted his guilt and at the same time implicated Julito Rizado, Silverio Apolinario, Arsenia Agustin, Conrado Apolinario, Basilio Agustin and several others whose names he said he could not remember at the time.

The defense presented by each of appellants is alibi.

The first error assigned by them questions their conviction of the charge of murder after the trial court acquitted Pedro Betudio and Pedro Agustin. Contrary to appellants' claim these were not the only ones principally charged with the crime. All of them were so charged, including the two who owned their complicity, namely, Rodrigo Agustin and Arsenio Agustin. In this appeal the issue is not whether Pedro Betudio and Pedro Agustin were guilty but whether the prosecution has established beyond reasonable doubt the guilt of each of the appellants. The record shows that with respect to Julito Rizado, Silverio Apolinario, Diosdado Apolinario and Adriano Apolinario, the prosecution has proven its case.

Emilia Labauan, the victim's widow, who witnessed the attack and was herself wounded, identified these four appellants as among the assailants. The attack was made in the afternoon when it was still bright enough for her to clearly see them. She was only three meters away. She had known them for years previous to the incident as they used to pass by her house. At the trial, she pointed at each of them in court when she testified as to how they chased, stoned and boloed her husband.

Appellants argue that since the lower court doubted Emilia with respect to her statements as to the culpability of

Pedro Betudio and Pedro Agustin, then the rest of her testimony involving appellants in the crime is likewise subject to doubt. The conclusion does not follow from the premise insofar as this appeal is concerned. The case against Pedro Betudio and Pedro Agustin is not before us for review, but only the case against appellants. The doubt entertained by the lower court with respect to the former - with which we do not necessarily concur - does not affect our own appraisal of the evidence.

Appellants say Emilia contradicted herself when she stated at the trial that when Pedro Betudio initiated the attack he hit Benito Labauan on the right arm amputating it, while in the statement she made after the incident she declared that she did not know where Pedro Betudio hit her husband. Considering that she had just suffered a great emotional and physical shock and was practically semi-conscious when her statement was taken, it is not surprising that she could not then give the details of the attack.

Against the convincing and positive identification made by Emilia the alibis of said four appellants cannot stand. Julito Rizado and Diosdado Apolinario insist they were farming in Manlakbo, Valderrama, Antique, on the day of the crime. The distance between barrio Manlakbo and barrio Iglonoy was not stated. Julito merely said that the first is very far from the second. Also, both he and Diosdado admitted that they did not know when July 13, 1960 was and stated that they were only told by Mariano Pantaleon, an alleged copworker, that they were in Manlakbo on such date. Mariano Pantaleon attempted to boost the testimony of the two. However, he could not explain why that date, July 13, 1960, happened to be fixed in his mind. Diosdado claimed that he was in Manlakbo from July 5 to July 15, 1960 and that he did not learn that his house had been demolished on July 9, 1960 until after he came home on July 15, 1960. This is hardly credible.

Appellant Adriano Apolinario claims that he was in Buruangan, Valderrama—about 6 kilometers by road from Iglonoy—working, together with appellant Conrado Apolinario, in the Land of Purificacion Bando. The latter also tried to support Adriano's alibi, but she admitted that she was not working in the field but simply stayed at home, where she could not see him all the time. So Adriano could have left without her knowledge. Silverio Apolinario testified that from March to July 17, 1960 he was in Linientian, Lauan, Antique. But like Julito and Diosdado, he admitted that he did not know when July 13, 1960 was, but his attention was called to it only later on. He presented Jose Vergara, who attempted to corroborate the alibi by declaring that Silverio was in his place at that time. Vergara, it appears, is the father-in-law of Silverio's brother, and naturally would try to help Silverio out of his predicament.

Appellants point to Rodrigo Agustin and Arsenio Agustin as the only culprits. But this is disproved by the positive testimony of Emilia Labauan and by the number and variety of the victim's wounds. He received one (1) lacerated and five (5) incised wounds in the head; two (2) incised wounds on the chest; ten (10) incised wounds in the upper extremities; and macerated wounds in the same regions of the body caused by repeated inflictions with sharp bladed instruments. Dr. Justo Nacionales, who performed the autopsy, stated that the different sizes and shapes of said wounds indicated that different boloes were used in inflicting them.

This conclusion of Dr. Nacionales is further supported by the extrajudicial statement of Rodrigo Agustin to the effect that his companions in the murder were "Julito Rizado, Silverio Apolinario, Arsenio Agustin, Conrado Apolinario, Basilio Agustin and others but I could not remember anymore", and that each wielded a bolo during the attack.

Appellants argue that Rodrigo had been forced and intimidated into making his statement. But the defense itself presented the statement (Exhibit 1) as part of its case, thus waiving the right to object to it on that ground. In any event, we are convinced that Rodrigo executed the statement voluntarily. Sgt. Gervasio Jacinto, the officer who took it, thoroughly belied on rebuttal Rodrigo's assertion that he grabbed Rodrigo by the neck, and threatened,

intimidated, or exercised undue influence over him. The statement was taken in the presence of the chief of police and in the office of the municipal mayor, which was open to the public. Furthermore, Justice of the Peace Buenaventura Tolentino stated on the witness stand that after he had explained to Rodrigo the contents of the statement the latter willingly affirmed it.

Appellants question the use of Rodrigo's statement against them. This statement, however, is not the only evidence of their participation since with the exception of Conrado Apolinario, they were identified by Emilia Labauan at the trial. Thus she declared that the persons who jumped from the bank of the creek and first attacked her husband were "Pedro Betudio, Pedro Agustin, Julito, Silverio Ader, Dadong, Tanque and Basilio Agustin" and that those who met her husband from the opposite direction were "Blas, Doroy and Tonio." The only one to whom no reference was made by her is Conrado Apolinario. She did mention the nickname "Dadong," but when she was asked to point out whom she meant she pointed at Diosdado Apolinario. She likewise pointed at appellants Julito Rizado, Silverio Apolinario, Adriano Apolinario and at the accused Tranquilino Betudio, respectively, when asked who "Julito", "Silverio", "Ader" and "Tanque" were. We believe that there is no sufficient identification insofar as appellant Conrado Apolinario is concerned.

We come now to the circumstances that attended the commission of the offense. The condition of lack of instruction cannot be taken as a mitigating circumstance, because it has not been established that illiteracy was coupled with such a low degree of intelligence that the malefactors did not fully realize the consequences of their criminal act. (People vs Ripas, 95 Phil. 63; People vs Gorospe, L-10644, Feb. 19, 1959; People vs Magpantay, L-19133, Nov. 27, 1964). Neither may poverty and voluntary surrender be appreciated in their favor. Extreme poverty may mitigate a crime against property, such as theft, (People vs Macbul, 74 Phil. 436) but not a crime of violence, such as murder. The four aforementioned appellants did not surrender. Silverio Apolinario testified he was arrested in the market, while the three others stated that they went to see the chief of police, not for the purpose of surrendering but because the latter had called for them for reasons they did not know.

On the other hand, the circumstance of treachery -which qualifies the killing to murder - must be taken against appellants, considering the suddenness of the attack, launched by them from a hidden position. This circumstance absorbs that of abuse of superior strength (People v. Tiongson, L-9866-67, Nov. 28, 1964); while the elements to constitute the circumstance of evident premeditation have not been clearly established. The crime was, however, committed by a band of armed men—at the very least six, namely, the four appellants and the two who had owned the crime, each of whom carried a bolo; and in an uninhabited place, which was purposely sought to facilitate the commission of the crime.

The law prescribes the capital penalty for the offense, but for lack of sufficient votes to impose it the Court simply affirms the judgment appealed from with respect to appellants Julito Rizado, Silverio Apolinario, Adriano Apolinario and Diosdado Apolinario with costs. Appellant Conrado Apolinario is acquitted, with the corresponding costs de oficio.

Bengzon, C.J., Bautista Angelo, Concepcion , Reyes, J.B.L., Barrera, Regala, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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