

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
DANILO SY Y GERSALIA, ALIAS DANNY SY, PEDRING ARFON, ALIAS
FEDERICO LILOY AND BITOY EDDIE LAURON, ALIAS EDDIE &
JOHN DOE, ...**

G.R. No. L-39400. March 29, 1982

Ponente: ERICTA, J.

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ERICTA, J.:

Danilo Sy y Gersalia, alias Danny Sy, together with Pedring Arfon, alias Federico Liloy alias Bitoy, Eddie Lauron, alias Eddie and two unidentified persons, was accused in the Court of First Instance of Rizal of the crime of Murder in an information which reads as follows:

That on or about the 7th day of September, 1972, in the municipality of Mandaluyong, pro-vince of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, with intent to kill, evident premedi-tation and treachery to the person of one Carlito Maglaya y Demapelis, and armed with a fan knife (balisong) did, then and there, wilfully, unlawfully, and feloniously attack, assault and stab said Carlito Maglaya y Demapelis, as a result thereof, sustained stab wounds on his stomach which directly caused his death.

Contrary to law, and with the aggravating circumstance of known premeditation.[1]

Of the four defendants, only Danilo Sy was arrested. After trial, he was convicted of Murder and sentenced, among others, to life imprisonment.

Danilo Sy now appeals to this Court.

The evidence for the prosecution shows that in the evening of September 7, 1972, between the hours of 8:00 and 9:00 o'clock, while Gregorio Maglaya, the elder brother of the deceased Carlito Maglaya, was in apartment 626 Guerrero St., Mandaluyong, Rizal, where he was working as a houseboy--cook, he heard shouts for help from his brother (Carlito) who was then outside. Upon hearing the shouts, he opened the door and saw his brother, wounded and bleeding, being chased by Danilo Sy (the accused-appellant herein), Federico Liloy, and two other persons, whom he failed to recognize clearly. When the pursuers saw Gregorio, they ran away and his brother (Carlito) shouted that he was socked by Danny and stabbed by Bitoy.[2] Thereafter, Gregorio Maglaya brought his brother to Our Lady of Lourdes Hospital for medical attention.

The Mandaluyong Police Department received a telephone call at about 10:30 o'clock that evening of September 7, 1972, regarding the incident and Patrolman Lucrecio Silvestre, who was then on duty, was dispatched to the Lourdes Hospital to investigate the matter. Upon arrival at the hospital, he observed that Carlito Maglaya was in critical condition but, nevertheless, he was able to interrogate and get Carlito's statement in his own handwriting (Exhibit "A", p. 1, Folder of Exhibits) while the latter was lying on bed at the emergency room.[3] In his statement aforesaid, the victim identified his assailants as Danny (accused-appellant herein), Bitoy and two others

stating that Bitoy stabbed him with the help of Danny. Likewise, when asked how he felt, Carlito replied that he was having pains and difficulty in breathing and that he might die. Because of the victim's condition at the time, Patrolman Silvestre could not ask the victim to elaborate further on the stabbing incident. After the statement was taken, the victim, with the help of Patrolman Silvestre, affixed his right thumbmark thereto inasmuch as the victim could not sign the same because of his very weak condition. Said statement, Exhibit "A", was signed by Dr. Cermando Real as a witness to its execution.[4] Thereafter, Patrolman Silvestre, together with Patrolman Santos who was with him at that time, proceeded to look for Danny Sy and Bitoy but were unable to locate them at their houses. They were informed that Danny and Bitoy had left the place.[5]

Carlito Maglaya died at 10:40 o'clock that same evening of September 7, 1972. The cause of death, as testified to by Dr. Rosauro Cabailo, was due to hemorrhage, metraspecotoneal severe, secondary to stab wound, abdomen.[6]

On the other hand, the appellant, testifying for his defense, declared that at about 8:00 to 8:45 o'clock in the evening of September 7, 1972, he was in his residence at 628 Guerrero St., Mandaluyong, Rizal, when Eduardo Lauron (Eddie), one of the accused in this case, arrived and asked him if he wanted a job and he answered in the affirmative. While he was thus talking with Eddie, Pedring Arfon alias Bitoy suddenly arrived and told Eddie thus: "Eddie, we will liquidate Lito" (Carlito Maglaya).[7]

Danilo Sy told Eddie and Bitoy not to kill Lito who was their neighbor, but Bitoy told him not to interfere. It was then that Carlito Maglaya went out to the street. Bitoy called him and Lito approached Bitoy. Bitoy then held Lito by the arm and the latter made an effort to extricate himself and then ran away after he got himself free from Bitoy's hold.[8]

Bitoy and Eddie chased Carlito Maglaya. When they had overtaken Carlito, they pummeled him with fist blows. Danilo Sy tried to pacify Bitoy and Eddie, but his way was blocked by Eddie who told him not to interfere. As Eddie was facing him, he saw Bitoy pummeling Lito with fist blows until the latter fell.[9] He said that Bitoy told him to get out of the place and that was the reason why he ran away because he was afraid.[10]

The appeal lacks merit. Although there was no eye-witness to the killing, the totality of the evidence for the prosecution establishes the guilty participation of the appellant. Gregorio Maglaya, brother of the deceased, opened the door of his apartment upon hearing the shouts of his brother from outside the apartment on September 7, 1972. Upon opening the apartment, he saw his wounded brother, Carlito Maglaya, being chased by Danilo Sy (appellant herein), Federico Liloy alias Bitoy and two other persons whom he failed to recognize. When the pursuers of his brother saw him, they ran away and his brother Carlito shouted that he was socked by Danny and stabbed by Federico Liloy.[11] Said statement of Carlito Maglaya at the time when he was just bleeding is admissible as part of the *res gestae*. When Carlito was in the hospital, conscious that he was about to die, he made a dying declaration which reads as follows:

T - Sino ang sumaksak sa iyo?

S - Sinaksak ako ni Bitoy at ni Danny at 2 pa.

T - Anong oras ka sinaksak at saan lugar ka sinaksak?

S - Alas 8:45 ng gabi 7 ng Setiembre sa Guerrero Street.

T - Anong dahilan at ikaw ay sinaksak nina Bitoy?

A - Dahil po sa aking kapatid.

T - Ano ang pakiramdam mo ngayon.

S - Masakit po at nahihirapan ako at baka ako ay mamatay.

T - Ilang ulit ka sinaksak ni Bitoy?

S - Isa po, pero katulong po si Danny.[12]

When Carlito made the aforequoted statement, he was having pains and difficulty in breathing and he expressed belief that he might die. Pat. Silvestre took the dying declaration at about 10:30 p.m. of September 7, 1972[13], and Carlito died at 10:40 that same evening or shortly after his dying declaration was taken. In the dying declaration, the deceased pointed to the appellant and Federico Liloy as his assailants.

The warrant of arrest against the appellant was issued on September 25, 1972[14] but he was arrested only on January 2, 1973 or three months after the issuance of the warrant of arrest, although the appellant was leaving in the same apartment where the deceased resided. Obviously, the appellant went into hiding.

Finally, the appellant himself, during his testimony, admitted that there was bad blood between him and the deceased and they had not been in talking terms for one week before the incident.[15] The appellant also stated in his direct testimony that his co-accused Federico Liloy and the deceased were not in good terms because the latter was degrading the former with their common employer. These differences between Carlito and Federico were known by Danilo Sy. Thus, earlier in the evening of the incident at around 6:00 o'clock, Danilo went to the apartment of Gregorio Maglaya to ask for money and when he refused Danilo boxed Gregorio at the pit of his stomach.

Conspiracy has been fully established. The defendant himself testified that at 7:00 o'clock in the evening of September 7, 1972, he was in his house resting when his co-accused Eddie Lauron arrived. While they were conversing with each other for about five minutes, Federico Liloy alias Bitoy arrived in the house of the appellant and suddenly proposed, "Eddie, we will liquidate Lito", meaning the deceased Carlito Maglaya. At about the moment that Bitoy was proposing the killing of Carlito, the latter went out to the street. Thereupon, he was met by the appellant who boxed him in the eye, Federico Liloy alias Bitoy who stabbed him and the two other unidentified companions. When Gregorio Maglaya opened the door of his apartment upon hearing the shouts of his brother, the appellant, together with his three companions ran away. Obviously, the bad blood existing between the deceased on the one hand and the appellant and Federico Liloy on the other hand made the four accused conspire "to liquidate Lito".

To establish conspiracy, it is not essential that there be proof of previous agreement to commit a crime, it being sufficient that the malefactors have acted in concert pursuant to the same objective.[16]

Conspiracy to exist does not require an agreement for an appreciable period prior to the occurrence. From the legal viewpoint, conspiracy exists if, at the time of the commission of the offense, the accused had the same purpose and were united in its execution.[17]

Conspiracy having been proven the act of one is the act of all.[18]

Although in the instant case, there was only one stab wound resulting to the death of Carlito, all the co-conspirators including the appellant should be held guilty as principals of the crime committed. Nobody saw the actual stabbing of Carlito. There is no evidence to show how the assault was commenced. What Gregorio Maglaya saw was his bloodied brother running away being chased by the appellant and his three companions. The information alleges treachery and premeditation as qualifying circumstances. We believe that the evidence has not proven either of said qualifying circumstances. Abuse of superior strength, however, which is not alleged in the information but proven during the trial may be appreciated as an ordinary aggravating circumstance. Thus, where two assailants with weapons killed a defenseless victim, the aggravating circumstance of abuse of superior

strength was appreciated.[19]

The crime committed is simple homicide with the aggravating circumstance of abuse of superior strength.

WHEREFORE, modifying the decision of the lower court, We hereby convict the appellant of homicide, and appreciating the aggravating circumstance of superior strength, hereby impose upon him the penalty of twelve (12) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum.

The other portions of the decision of the lower court are hereby affirmed. With costs.

Barredo, (Chairman), Aquino, Concepcion, Jr., De Castro, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] pp. 1-2, Solicitor's Brief.

[2] tsn, April 11, 1973, pp. 3, 4, 5, 10 to 11.

[3] tsn, July 16, 1973, pp. 1 to 2.

[4] tsn, pp. 2, 5 and 6, id.

[5] tsn, p. 4, id.

[6] Please see Exhibits "E" and "F", pp. 5 and 6, Folder of Exhibits.

[7] tsn, p. 2, Sept. 5, 1973.

[8] tsn, pp. 2-3, id.

[9] tsn, pp. 5-6, id.

[10] tsn, p. 7, id.

[11] tsn, April 11, 1973, pp. 3, 5, 10 & 11.

[12] Exhibit "A", page 1, record of exhibits.

[13] tsn, July 16, 1973, pp. 1 to 2.

[14] p. 2, Record.

[15] tsn, September 5, 1973, p. 5.

[16] People vs. San Luis, 86 Phil. 485.

[17] People vs. Cadag, 2 SCRA 388.

[18] People vs. Cadag, supra.

[19] People vs. Develos, 16 SCRA 46; People vs. Boyles, 11 SCRA 88.

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