

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FELIX RESAYAGA, HIPOLITO RESAYAGA, JULIO BABOL, MARCELO DOROIN, AVELINO BRITANICO, AND MACARIO RESAYAGA, DEFENDANTS, MARCELO D...

G.R. No. L-49536. March 30, 1988

Ponente: PADILLA, J.

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PADILLA, J.:

In Criminal Case No. 6828 of the Court of First Instance of Camarines Sur, Felix Resayaga, Hipolito Resayaga, Julio Babol, Marcelo Doroin, Avelino Britanico, and Macario Resayaga were charged with Homicide, committed as follows:

"That on or about the 23rd day of April, 1960 in the Municipality of Baao, Province of Camarines Sur, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring, confederating together and mutually helping one another, with intent to kill and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with their icepicks one Paulo Balane, thereby inflicting upon him several mortal wounds which caused his instantaneous death"[1].

When arraigned, the accused Felix Resayaga entered a plea of "Guilty" and the court sentenced him to suffer an indeterminate penalty of from 8 years and 1 day of prision mayor, as minimum, to 14 years, 8 months and 1 day of reclusion temporal, as maximum, to indemnify the heirs of the deceased in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs.[2]

The other accused, upon the other hand, entered pleas of "Not Guilty" and, after trial, the court, finding that the information, although designated as one for Homicide, is in reality one for Murder, in view of the allegation therein that the accused had taken advantage of superior strength in the killing of the deceased - a circumstance which qualifies a killing to murder - found them guilty of Murder and sentenced each of the accused to suffer the penalty of from 17 years, 4 months and 1 day of reclusion temporal, as minimum, to 20 years of reclusion temporal, as maximum; to indemnify, jointly and severally, the heirs of the late Paulo Balane in the amount of P12,000.00 and P15,000.00 as moral and exemplary damages; and to pay proportionate costs of suit, without subsidiary imprisonment in case of insolvency[3].

The accused appealed to the Court of Appeals. However, of the five (5) appellants, only the appeal of Marcelo Doroin remains to be resolved, the appeals of Hipolito Resayaga, Julio Babol, Macario Resayaga, and Avelino Britanico having been dismissed on 9 January 1976[4], 20 January 1977[5], 11 July 1977[6], and 3 October 1978[7], respectively.

On 3 November 1978, the Court of Appeals rendered a decision on the appeal of Marcelo Doroin, finding him guilty of Murder. The appellate court, however, believed that the proper penalty to be imposed upon the appellant is at least reclusion perpetua, and certified the case to this Court for review[8].

The facts of the case, as found by the appellate court, are as follows:

"The evidence for the prosecution tends to show that on April 23, 1960, at about 9:00 P.M., Cresenciano Briones of Barrio San Francisco, Baao, Camarines Sur, went to Barrio San Nicolas of the same town and province to get back his 'bakia' (wooden shoes) which he left behind two hours earlier in the house of his parents-in-law. He was accompanied by Paulo Balane, the deceased, and Crispin Brizuela both of whom he passed by along the way. Upon reaching the place, they were accosted by Felix Resayaga who inquired from them whether their purpose in going to the barrio was to look for trouble. Briones replied that he was there to get back his wooden shoes from the house of his parents-in-law and that his companions went with him upon his invitation.

"While the three companions were talking with Felix Resayaga, Avelino Britanico appeared and invited Briones to go to the store of Jose Llorens, about ten meters away from where they stood, to drink wine. Briones went with Britanico to the said store leaving behind his two companions, Balane and Brizuela. Britanico entered the store while Briones merely stood outside with his back leaning against the concrete wall thereof.

"Shortly thereafter, the appellant Marcelo Doroin appeared and told Briones just to let Britanico buy the wine which they would drink. But before Britanico could offer the wine, Briones saw Macario Resayaga, father of Felix Resayaga, who was seated with Hipolito Resayaga on a bench in the store of Fruto Baesa on the opposite side of the road, stood up and said, 'attack them now as it is already the occasion, and that now that they are here, there was no need to look for them.'

"In obedience to the order of Macario Resayaga, Felix Resayaga and Julio Babol, respectively, held the left and right arms of Paulo Balane. Hipolito Resayaga appeared and stabbed Balane on the stomach. Then the three of them, Felix Resayaga, Julio Babol and Hipolito Resayaga, took turns in stabbing Balane with icepicks. From a distance, Briones and Brizuela could hear Balane mercifully pleading, 'Forgive me Padi'.

"When Briones tried to approach Balane, the appellant Doroin blocked his way. Babol also met Briones with an ice pick and said to him, 'Will you defend him (Balane)?' So Briones ran away, Brizuela then tried to approach Balane but when the appellant and Britanico started throwing bottles at him, he also ran away.

"The stabbing commotion attracted the attention of Claro Babilonia. When he went to the window of his house, he saw five or six men assaulting a man who was down flat on his back. All the assailants ran away when he shouted at them to stop assaulting the fallen man. A policeman arrived and, with the help of two other men, the victim was brought to the private clinic of Dr. Robosa. However, no medical treatment was administered because the victim was already dead.

"The dead body was then brought to the Municipal Building of Baao, Camarines Sur, where Dr. Leonila de Leon-Villanueva, Municipal Health Officer, conducted an autopsy"[9].

The necropsy report showed that the victim sustained multiple stab wounds in his body and contusions on the head; and the cause of death was: "Acute internal hemorrhage, thorax and abdomen"[10].

The appellant assigns the following errors allegedly committed by the trial court:

- The trial court erred (a) in disregarding, *motu proprio*, the information filed by the Provincial Fiscal which specifically charged the accused of the crime of HOMICIDE, defined and penalized under Article 249 of the Revised Penal Code, (b) in asserting that the allegations of the information constitute the crime of murder, and (c) in convicting the accused therefor; and
- The trial court erred in convicting the appellants Marcelo Doroin and Avelino Britanico.
- The appellant maintains that the Information filed in this case is only for Homicide. He points to the fact that

the original complaint filed by the Chief of Police against him before the Justice of the Peace Court of Baao, Camarines Sur was for murder. However, when the case was elevated to the Court of First Instance of Camarines Sur, the Provincial Fiscal conducted a re-investigation, after which, he filed an information for Homicide.

The contention is without merit. Reliance is placed mainly upon the designation of the offense given to it by the fiscal. It is well-settled that the real nature of the criminal charge is determined, not from the caption or preamble of the information nor from the specification of the law alleged to have been violated - these being conclusions of law - but by the actual recital of facts in the complaint or information[11]. In the instant case, the information specifically alleges that "the said accused conspiring, confederating together and mutually helping one another, with intent to kill and taking advantage of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab with ice picks one Paulo Balane, thereby inflicting upon him several mortal wounds which caused his instantaneous death". Since the killing is characterized as having been committed by "taking advantage of superior strength", a circumstance which qualifies a killing to murder, the information sufficiently charged the commission of murder.

- Under his second assignment of error, the accused-appellant maintains that conspiracy was not established, since there is no showing that there was a previous agreement relating to the commission of the crime, it appearing that the meeting between the victim and the group of Felix Resayaga was casual and the aggression made at the spur of the moment.

Indeed, conspiracy was not proven, since the attack upon Paulo Balane was not agreed upon beforehand[12]. As pointed out by counsel for the appellant, the meeting between the group of Cresenciano Briones and that of Felix Resayaga was not sought after or planned in advance. It was casual and the aggression was made at the spur of the moment, triggered by Macario Resayaga who said: "attack them now as it is already the occasion, and that now that they are here, there was no need to look for them".

The Solicitor General claims, however, that Marcelo Doroin and Avelino Britanico lured Briones, one of the companions of the deceased, by inviting him to a store on the pretext that they will buy wine and drink; that while Briones was waiting for appellant Doroin who was in the store allegedly buying wine, the other accused started attacking and assaulting the deceased; that when Briones tried to approach the deceased, his way was blocked by appellant Doroin and later, accused Julio Babol met him with an ice pick, so that Briones had to run away leaving the deceased; that when Crispin Brizuela, the other companion of the deceased, tried to go near the deceased to help him, Doroin and Britanico prevented him by throwing bottles at him, so that Brizuela, like Briones, had to run away.

The claim of the Solicitor General that the appellant had lured Briones to the store of Jose Llorens is a conclusion not supported by evidence, since the People's evidence shows that it was Avelino Britanico who invited Briones to the store and not the appellant Marcelo Doroin. However, the act of the appellant Marcelo Doroin in blocking the way of Cresenciano Briones and Crispin Brizuela in order to prevent them from coming to the aid of the deceased, is undoubtedly one of help and cooperation to the assailants. But, it was not indispensable to the stabbing of Paulo Balane by Felix Resayaga, Hipolito Resayaga and Julio Babol. Hence, the appellant should be held merely as an accomplice.

As Viada says:

"The person who entertains the owner of a house while robbers are assaulting it, so that he will not return thereto until after the robbery has been consummated, is also an accomplice in the crime, inasmuch as he cooperated therein by a simultaneous act, although not an indispensable one for its accomplishment"[13].

This same conclusion would have been arrived at in the case of Avelino Britanico and his sentence modified accordingly, had he not withdrawn his appeal.

As an accomplice, the appellant Marcelo Doroin, should suffer an indeterminate penalty of from four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum. However, the indemnity to be paid to the heirs of the deceased should be increased to P30,000.00.

WHEREFORE, with the modification above-indicated, the judgment appealed from should be AFFIRMED in all other respects. Let a copy of this decision be furnished the President of the Philippines, through the Secretary of Justice, for consideration of the propriety of extending to the accused Avelino Britanico the benefits of executive clemency after service of such period as may be deemed sufficient to justify the demands of justice and public welfare. With proportionate costs against the appellant, Marcelo Doroin.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

[1] Original Record, p. 118

[2] Id., pp. 206-209

[3] Rollo, p. 11

[4] Original Record, pp. 2094-2095

[5] Rollo, p. 83

[6] Id., p. 111

[7] Id., p. 124

[8] Id., p. 126

[9] Id., Id.,

[10] Exh. H, Orig. Rec., p. 2

[11] Matilde vs. Jabson, G.R. No. L-38392, Dec. 29, 1975, 68 SCRA 456

[12] People vs. Palencia, G.R. No. L-38957, April 30, 1976, 71 SCRA 679

[13] Vol. 1, p. 370 cited in U.S. vs. Driz, 26 Phil. 133, 136

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