

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GENARO DE LUNA, CARITO KINAWAYAN, SEVERO BARDAJE,
ANASTASIO CINCO, FEDERICO BARDAJE AND ERNESTO REPOSO,
DEFENDANT-APPELLANTS.**

G.R. No. L-6974. May 18, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The six appellants herein (Genaro de Luna, Carito Kinawayan, Severo and Federico Bardaje, Anastacio Cinco and Ernesto Reposo) were accused, tried and convicted by the Court of First Instance of Samar, of having conspired and carried out in concert the murder of Anastacio Calubid. They were sentenced to reclusion perpetua for each, and to pay jointly and severally the costs and an indemnity of P6,000.00 to the heirs of said deceased.

There is no dispute about the fact that on the date afternoon of February 8, 1953, Anastacio Calubid, of barrio San Andres, Villareal, Samar, was killed by stab wound in the upper region of the trunk, that traversed the entire body. The report of the medical examiner on February 9 (Exh. E) is to the effect that the corpse exhibited the following lesions:

1. Contusion on the middle part of the forehead.
2. Abrasion on the right cheek.
3. Contusion on the chin.
4. Stab wound situated on the back of the body about one inch long and penetrating the body at the breast, 2 inches from the left nipple.

The version of the wife and sister of the deceased, upheld by the Court below, is that on or about 5 p.m. of February 8, when the deceased Calubid was in his house seated at table, dining with the witnesses and his three children, the three appellants, De Luna, Kinawayan and Severo Bardaje, suddenly entered, and while Kinawayan held the deceased by the shoulders, de Luna boxed and hit him in the face. Immediately thereafter, the three rained blows with their fists on the deceased until he fell unconscious from his seat to the floor. Then de Luna unsheathed a bayonet knife and stabbed the deceased in the back. Calubid's wife and sister shouted in alarm, whereupon the appellants Kinawayan and De Luna drew revolvers and threatened to shoot the two women. In fear of their lives, the women hurriedly left the house through the kitchen, but on reaching ground they saw the other accused-appellants Ernesto Reposo, Anastacio Cinco and Federico Bardaje, guarding the gate, armed with bolos. While the sister of the deceased had to report to the barrio lieutenant who lived nearby, but altho said official proceeded immediately to the scene of the crime, he found the killers gone. The corpse, left undisturbed, was examined early the next day by Sanitary Inspector Florentino Fabilani.

The following day (February 9), a youth of 15 years, named Rodrigo Cajipe, accompanied by his father, appeared before Mayor Latorre, of Villareal, and the youth told the Mayor he had killed a man. In the course of the investigation the Mayor was struck by the strange behavior and expression of Rodrigo; and upon being informed

by the father that the youth was innocent, and was shielding someone, the Mayor questioned Rodrigo more closely, and finally the youth admitted that the real killer was one Erning. Thereafter, Rodrigo Cajipe was placed in custody of the Chief of Police, and on February 14, 1953, he signed and executed an affidavit (Exh. F) sworn before the Justice of Peace and the army (PC) investigators, stating that he had been maltreated by the deceased, and had reported the incident to his relatives appellants herein; that thereafter the latter went to the barrio where the deceased lived, and later returned, telling Rodrigo they killed Tacio (Anastacio Calubid).

At the trial, however, Rodrigo Cajipe testified for the defense, and reiterated that he had stabbed the deceased Calubid because the latter had refused to pay for some clams that he bought from Rodrigo; that not content with refusing payment, Calubid boxed and felled his creditor, who stood up and gave Calubid a thrust and that caused the deceased to fall face down by the fence of his ownhouse. Cajipe further testified that he then ran away and on passing the town cockpit was met by his relatives, herein appellants de Luna and Kinawayan, to whom he narrated what had transpired, and who expressed satisfaction at the event, saying that the deceased was a cruel man. Rodrigo Cajipe repudiated his own affidavit (Exh. F), claiming that he was taught the contents thereof; that he signed it because of fear and because Calubid's sister or wife had promised he would be freed.

The burden of the present appeal is that the lower court erred in disbelieving Rodrigo Cajipe, and in rejecting his testimony, altho it was supported by Pedro Bolito, who asserted having witnessed how Rodrigo stabbed the deceased. Appellants Kinawayan, De Luna and Federico Bardaje also narrated in Court how they and appellant Anastacio Cinco had seen Rodrigo on the afternoon of February 8, with swollen face and bearing a blood-stained bolo.

Upon due consideration of the evidence, we see no error in the trial Court's rejection of Rodrigo Cajipe's testimony. In addition to its unreliability, shown by the contradictory affidavit Exh. F, Cajipe's version in Court is belied by the fact that, according to the wife and sister of the deceased, as well as the findings of the medical examiner, the deceased was stabbed from behind, and not from in front, as Cajipe and Bolito asserted. It is well to note also that Mayor Latorre from the very start suspected Rodrigo's assumption of guilt, and actually heard him admit it was someone else who did it. In addition, it is strange that, having decided to make clean breast of what happened, Rodrigo failed to surrender the bolo allegedly employed by him, or to explain its disappearance.

As to the alleged coercion in the execution of his affidavit Exh. F, the testimony of Rodrigo is extremely ambiguous and indefinite, and he repeatedly failed to point out who coerced or threatened him, or what acts inspired his alleged fear. He contended himself with evasively saying that "due to my fear, I testified that way because they promised me that I will be free". There is nothing on record to indicate why the widow of Anastacio Calubid should induce Rodrigo to point out the appellants herein, instead of accepting Rodrigo's own confession. The fact that the affidavit, Exh. F, was executed after four days' confinement is devoid of significance, for Mayor Latorre testified that on his examining Rodrigo the day following the killing, Rodrigo already admitted to him that he was not the real culprit. It is more probable, as pointed out in the decision appealed from, that the appellants killed Calubid in revenge for the beating he administered to their kinsman Rodrigo, than that the wife and sister of the deceased should have induced Rodrigo to deny his own guilt and pin the blame instead on persons against whom they bore no grudge.

As to the conspiracy, the lower Court correctly held that no direct evidence of agreement or concert is required, and that conspiracy is inferable from the conduct of the appellants themselves. While appellants Ernesto Reposo, Anastacio Cinco and Federico Bardaje took no part in the actual assault on the deceased, but remained at the gate, their conduct shows clear evidence of their participation in the criminal design. For despite shouts of the deceased's womenfolk, said appellants neither attempted to succor them, nor made themselves scarce (as they would have done if they did not want to be involved). Instead they remained armed and guarding the gate of

Calubid's house until the tragedy was over.

Finding no merit in this appeal, the decision of the trial Court is affirmed, with costs against appellants.

Pablo, Bengzon, Padilla, Montemayor, Reyes , Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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