

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
WARLITO PLATEROS Y CALATRAVA, ALIAS BABIE, AND MURILLO
LAHOY Y BUENO, ALIAS BOY, DEFENDANTS-APPELLANTS.**

G.R. No. L-37162. May 30, 1978

Ponente: AQUINO, J.

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AQUINO, J.:

Warlito Plateros and Murillo Lahoy appealed from the decision of the Court of First Instance of Bohol dated May 17, 1973, finding them guilty of murder, sentencing each of them to reclusion perpetua and ordering them to pay solidarily to the heirs of Pedro Candel an indemnity of P12,000 (Criminal Case No. 566).

In that same decision, the trial court convicted Lahoy of attempted murder (Plateros, his co-accused, was acquitted) and sentenced him to an indeterminate penalty of two years, four months and one day of prison correccional, as minimum, to six years and one day of prison mayor, as maximum, and to pay Tomas Metucua's father the sum of P15 as medical expenses (Criminal Case No. 567). From that part of the decision, Lahoy appealed to the Court of Appeals (CA-G. R. No. 15288-Cr.).

Acquittal of appellant Lahoy in the attempted murder case. - Before resolving the merits of the appeal in the instant murder case, it is necessary to pass upon the incident regarding the acquittal by the Court of Appeals of appellant Lahoy in the attempted murder case.

Lahoy's appeal ought to have been certified to this Court by the Court of Appeals because the attempted murder imputed to Lahoy was committed on the same occasion and arose out of the same occurrence as the murder imputed to him and Plateros in this case, as contemplated in section 17(1), formerly section 17[4], of the Judiciary Law, which reads:

"SEC. 17. Jurisdiction of the Supreme Court. - x x x

"xxx xxx xxx

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm on appeal, as the law or rules of court may provide, final judgments and decrees of inferior courts herein provided, in -

"(1) All criminal cases involving offenses for which the penalty imposed is death or life imprisonment; and those involving other offenses which, although not so punished, arose out of the same occurrence or which may have been committed by the accused on the same occasion, as that giving rise to the more serious offense, regardless of whether the accused are charged as principals, accomplices or accessories, or whether they have been tried jointly or separately; x x x ."

The attempted murder case, like the instant murder case, comes within the exclusive appellate jurisdiction of this Court and should have been decided together with the instant murder case (*People vs. Sy Pio*, 94 Phil. 885; *People vs. Ricohermoso*, L-30527-28, March 29, 1974, 56 SCRA 431, 438; *People vs. Yu*, L-29667, November 29, 1977; *People vs. Cuaresma*, 94 Phil. 305; *People vs. Almazora*, 87 Phil. 596).

In fact, the trial court tried the two cases jointly and, as shown above, rendered only one decision for the two cases. However, the Court of Appeals (whose attention was not called by the Solicitor General to the necessity of elevating Lahoy's appeal to this Court) decided the attempted murder case and acquitted Lahoy in a decision dated September 23, 1975.

We came to know of that decision when appellant Plateros in the instant murder case, in his letter of January 20, 1977 to the Chief Justice, enclosed a photostatic copy of that decision. In view of that development, the parties and the Court of Appeals were directed in this Court's resolution of November 28, 1977 to state whether that above-mentioned decision should be set aside for lack of appellate jurisdiction or as a "lawless thing" (*Banco Español-Filipino vs. Palanca*, 37 Phil. 921, 949).

The Solicitor General, believing that the said decision is void, recommended that the record of the attempted murder case be elevated to this Court so that it could be decided anew together with the instant murder case.

Two Justices of the Court of Appeals, who took part in that decision, stated in their manifestation of March 20, 1978 that the attempted murder case was decided "in absolute good faith, in the desire to expedite a detention prisoner's appeal, and based on the evidence on record". They admitted that there was an oversight in the disposition of the appeal because the jurisdictional angle was overlooked.

The rule in section 17(1) is designed to avoid conflicts between the decisions of this Court and the Court of Appeals in cases involving offenses which arose from the same occurrence or which were committed on the same occasion usually by the same accused.

That general rule has an exception. Where, by allowing the Court of Appeals to decide a case involving an offense, which is not punishable by death or reclusion perpetua but which arose out of the same occurrence or was committed on the same occasion, as the case involving an offense punishable by death or reclusion perpetua pending in this Court, there will be no conflict between the decisions of this Court and the Court of Appeals, the former case need not be elevated to this Court (*People vs. Cariño*, 101 Phil. 1206).

Thus, in the *Cariño* case, this Court rejected the certification made by the Court of Appeals under section 17(4), now section 17(1), of a case appealed to it, involving an offense which arose out of the same occurrence as the case for rebellion with multiple murder pending in this Court because the issues raised in the case pending in the Court of Appeals were not raised in this Court and, therefore, the decision of this Court could not affect the determination of the case pending in the Court of Appeals.

The rationale of that exception to the general rule is found in the maxim: *Cessante ratione legis, cessat et ipsa lex*. (The reason for the law ceasing, the law itself also ceases.)

That doctrine of the *Cariño* case may be applied in this case because here there can be no conflict between the decision of the Court of Appeals and this Court's decision in the instant murder case inasmuch as the victims in the two cases are different. The attempted murder case decided by the Court of Appeals involved the wounding of a certain Tomas Metucua (Criminal Case No. 567) whereas, in the instant murder case the victim was Pedro Candel. The acquittal of Lahoy in connection with the wounding of Metucua would not affect the determination of his guilt or innocence in connection with the death of Pedro Candel (Criminal Case No. 566).

Considering the peculiar circumstances of this incident and following the precedent established in the *Cariño* case, we are disinclined to disturb the 1975 decision of the Court of Appeals acquitting Lahoy in the attempted murder case. (See *People vs. Pascua*, 71 Phil. 235 and *People vs. Berdida*, L-20183, June 30, 1966, 17 SCRA 520.)

This holding does not in anyway emasculate the rule in section 17(1) that criminal cases appealed to the Court of

Appeals, involving offenses which arose out of the same occurrence, or which were committed on the same occasion as the offense punished by death or reclusion perpetua, should be certified to this Court by the Court of Appeals. It is this Court that would determine whether or not the cases appealed to the Court of Appeals should be decided together with the case appealed to this Court.

Appeal in the instant murder case. - According to the prosecution, before midnight of July 30, 1972, Jacinto Piquero and Fernando Añora, both pedicab drivers, entered Inday's Kitchenette located at El Filibusterismo Street, Tagbilaran City. They had parked their pedicab near a closed door of the restaurant. They joined at the table other pedicab drivers named Pedro Candel, Genaro Bruñidor and a certain Ibong. They drank beer and, without lady partners, they danced to the music from the jukebox.

Tomas Metucua, a second year college student and a friend of the pedicab drivers, was also at the kitchenette. Seated at another table were Warlito Plateros and Murillo Lahoy who also drank beer. (The house of Plateros was near the kitchenette.)

Metucua and Plateros were rivals for the affection of Estrella Silmaro, the cashier. When Metucua was talking with Estrella, his alleged sweetheart, Plateros went near them and refused to leave them, thereby annoying Metucua.

At about midnight, Piquero, Candel and Añora, accompanied by Metucua, left the kitchenette and went to their pedicab while Bruñidor and Ibong also went to their pedicab which was parked at the opposite side of the street.

Candel was seated in the sidecar of the tricycle. Metucua sat on the driver's seat. Piquero and Añora stood by the side of the pedicab's motorcycle. While the four were engaged in conversation, Lahoy and Plateros came out of the kitchenette. Lahoy appeared to be angry, hostile and menacing.

Without any warning, he stabbed Candel two times. Plateros also stabbed Candel. Moved by the instinct of self-preservation, Candel jumped out of the sidecar. He fell on the ground face down. Lahoy allegedly stabbed Metucua and tried to assault Añora who was helping Candel. Añora evaded the assault by running away. Plateros chased Piquero who was able to elude him. Then, Plateros and Lahoy fled from the scene of the assault.

Candel was placed in the pedicab of Bruñidor and was brought to the hospital, arriving there at 12:35 in the morning of July 31. He died at 6:25 on that same morning.

The autopsy disclosed that the twenty-one year old Candel sustained (1) a stab wound in the upper right arm, penetrating the thorax and right lung; (2) a stab wound in the chest between the ninth and tenth ribs, penetrating the diaphragm and lacerating the right kidney and (3) a stab wound in the sacral region. Blood had accumulated in the pleural and peritoneal cavities (hemothorax and hemoperitoneum) of Candel. Death was due to irreversible shock, brought about by the stab wounds.

According to Doctor Rosalinda L. Tima-an, the wounds sustained by Candel were fatal. She testified that Candel told her that he was asleep in the sidecar when he was stabbed. The holes in the clothes, which Candel was wearing when he was stabbed, coincided with the location of the wounds in his body.

Evidently, the killing was motivated by jealousy on the part of Plateros against Metucua, a companion of Candel. Lahoy took part in the killing as a comrade or co-conspirator (barkada) of Plateros.

Piquero and Añora were investigated by the police in the early morning of July 31. They pointed to Lahoy and Plateros as the assailants. The information for murder against Plateros and Lahoy was filed on August 23, 1972. As already stated, Plateros and Lahoy were convicted of murder by the trial court.

Plateros contends in this appeal that the trial court erred in giving credence to the testimonies of the prosecution

witnesses, in finding that the wounds sustained by Candel were inflicted by means of two weapons, "in totally disregarding the evidence of denial" (whatever that means) and in convicting him "despite total absence of motive".

Lahoy contends that his guilt was not proven beyond reasonable doubt and that he had no complicity in the killing of Candel. Although Lahoy's counsel, instead of filing a brief, filed a memorandum, which does not contain any statement of facts and page references to the record, we took pains to examine the evidence against him, his testimony and the testimony of the defense witnesses.

Plateros, twenty-seven years old in 1972, single, jobless, a holder of the degrees of Bachelor of Arts and Bachelor of Science in Education, obtained from the Rafael Palma College, admitted that he was courting Estrella Silmaro. He denied that he stabbed Candel.

His version was that while he was inside the kitchenette on the night of July 30, 1972, he heard a noise coming from the street. He was dragged by Minda, a waitress, to the door to find out what was taking place in the street. He allegedly saw Candel and Bruñidor walking to the pedicab. There was blood on the clothes of Candel. The pedicab made a U-turn and entered Carlos P. Garcia Avenue. Later, Plateros was fetched by his mother. They went home.

Lahoy, twenty-six years old in 1972, married, jobless, a high school graduate, and a former classmate of Plateros, denied that he stabbed Candel. Like Plateros, he testified that while he was inside the kitchenette, he heard a commotion in El Filibusterismo Street, and when he peered outside, he allegedly saw two men coming from Remolador Street, who were walking to the pedicab parked in front of Amper's place in El Filibusterismo Street. The tricycle proceeded to Carlos P. Garcia Avenue. Lahoy returned to the kitchenette. He accompanied Plateros and his mother when they went home.

We are of the opinion that the feeble denials of appellants Plateros and Lahoy (who admittedly were near the scene of the crime, when it was perpetrated) cannot prevail over the positive and unequivocal declarations of the eyewitnesses, Añora and Piquero, that the appellants were the authors of the stab wounds which caused Candel's death. Their guilt was proven beyond reasonable doubt.

The trial court, in a 43 - page decision, painstakingly analyzed the declarations of the witnesses. It characterized the testimonies of Añora and Piquero as credible and convincing. It regarded the defense of Lahoy and Plateros as an alibi which was flimsy and unbelievable.

We have already touched upon the motive for the killing which is that Plateros was jealous because Estrella Silmaro had chosen to bestow her affection upon Metucua. Now, it may be asked: why did Plateros and Lahoy liquidate Candel, who had nothing to do with Estrella, instead of Metucua, her boyfriend?

The only rational explanation for that lamentable aberratio ictus or error en la persona is that, inasmuch as the stabbing was perpetrated at night, the inebriated assailants mistakenly assumed that Metucua, whom they had intended to kill, and who was not a pedicab driver, was the person inside the sidecar (for the passenger) and that Candel, a pedicab driver, was the person on the driver's seat of the pedicab. As previously recounted, Candel, who must have been drunk, was the one inside the sidecar while Metucua was on the driver's seat.

There was a conspiracy between Plateros and Lahoy as shown in their concerted efforts to injure Candel. Plateros and Lahoy, as boon companions, had been together since four o'clock in the afternoon. They had gone to different places and repaired twice to the kitchenette. They were together when they left the scene of the stabbing.

The Solicitor General believes that the killing was simple homicide allegedly because it was made on the spur of

the moment. That view is not correct because Lahoy and Plateros, who could have stabbed Candel or Metucua inside the kitchenette, did not do so. They waited for Metucua and the pedicab drivers to leave the kitchenette. Their intention was to make a surprise attack without any risk to themselves. The assault was deliberate, sudden and unexpected. That is the characteristic manifestation of treachery (*alevosia*). Hence, the killing was properly categorized as murder by the trial court (Art. 14[16], Revised Penal Code).

The Solicitor General recommends that intoxication be appreciated as mitigating circumstance. In Plateros' case, it is not proper to consider intoxication as mitigating because he repeatedly testified that he was not drunk; that he had drunk only soft drinks, and that he did not even finish a bottle of beer at the kitchenette.

On the other hand, Lahoy's intoxication appears to be either intentional or habitual. (See art. 15, Revised Penal Code.)

Reclusion perpetua, the medium period of the penalty for murder, was properly imposed because no modifying circumstances attended the commission of the assassination (Arts. 64[1] and 248, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed with costs against the appellants. They are entitled to credit for their preventive imprisonment under the conditions laid down in article 29 of the Revised Penal Code.

SO ORDERED.

Fernando, (Chairman), Barredo, Concepcion, Jr., and Santos, JJ., concur.

Antonio, J., did not take part.

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