

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAMASO DEL VALLE, CARLOS LACABA AND ROBERTO LACABA, DEFENDANTS-APPELLANTS.

G.R. No. L-49181. March 27, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

From the judgment of the Court of First Instance of Laguna, Branch VI, imposing upon them the penalty of reclusion perpetua for the murder of Mario Cursunada and ordering them to indemnify the heirs of the deceased in the sum of P 12,000.00 and to pay the costs, Roberto Lacaba, Carlos Lacaba and Damaso del Valle interposed the instant joint appeal. A fourth accused; John Doe, has up to the present remained at large and unidentified.

The facts, as established by the prosecution, quoting from the appellee's brief, are as follows:

"On May 5,1971, the municipality of Bay, consisting, among others, of the bar-rios of Calo, Maitim, San Isidro and Dila, in the province of Laguna, was celebrating its annual fiesta (p. 6, tsn, Sept. 8, 1972; p. 5, tsn, Dec.14, 1972; p. 3, tsn, Sept. 17, 1973; p. 5, tsn, April 29, 1976; p. 4, tsn, July 26,1974). In the morning of that day, Mario Cursunada and his brother, Epimaco Cursunada, Jr., and their companions, namely Roberto Lacaba, Damaso del Valle, Carlos Lacaba, Eleng Gala, and others were on the streets of Bo. San Isidro, distributing tickets and collecting money from tricycle and jeepney drivers, for and in behalf of its barrio captain, Melquiades Algarne, ostensibly for the fiesta celebration and barrio projects (pp. 7-9, tsn, Sept. 8, 1972; p. 20, tsn, April 29,1976; pp. 22-23,tsn, July 26, 1978; Exhibit "B").

"After the said group were through collecting money from the drivers, they proceeded to the house of the said barrio captain and turned over to him the col-lected money. For their cooperation, barrio captain Algarne gave them a family-size bottle of Tanduay Rhum. From there the group went to the house of Mang Mundo Pantas in the same barrio of San Isidro where they engaged in a drinking spree. While they were drinking, Damaso del Valle ordered Epimaco Cursunada, Jr. to get "pulutan" of "dinuguan" from the house of Mang Tomas nearby, which Epimaco, Jr. did and brought the "pulutan" to the house of Mang Mundo Pantas where the group continued with their drinking spree, partaking of the said "pulutan" (pp. 9-10, tsn, Sept. 8,1972; pp. 8-12,tsn, Dec. 14,1972). Mang Mundo Pantas and Carlito Pantas are father and son, while the latter is the brother-in-law of accused Roberto Lacaba. Said father and son resided in the same house where the drinking spree took place (pp. 31-32, tsn, July 26,1978).

"During the drinking spree in the house of Mang Mundo Pantas, an alternation or trouble broke out between Damaso del Valle and Mario Cursunada. Epimaco, Jr. who was at the barber shop, also located in the same house of Mang Mundo Pantas, heard Damaso del Valle utter the words: "Putang ina mo, pag kami ay napahamak x x x", to which Mario Cursunada retorted: "Bakit masama ang sinabi mo?" (pp. 12-13, 14-15, tsn, Dec. 14,1972 p.44, tsn, July. 26,1974). Sensing trouble, Epimaco, Jr. left the place to go home, and he reported the matter to his mother, Natividad San Gre-gorio, who immediately went to the house of Mang Mundo Pantas. On his part, Epimaco, Jr. left to go to the house of his Ate Mianang where he took his lunch (pp. 10-12, tsn. Sept. 8,1972; pp. 13, 16, 23,25, tsn, Dec. 14,1972).

"Upon arrival at the house of Mang Mundo Pantas, Natividad San Gregorio saw her son Mario Cursunada with his companions there, still arguing with each other. Among his companions were Damaso del Valle, Roberto Lacaba and Carlos Lacaba. She then told her son, Mario, to go home. Both mother and son left the place to go home (pp.12-13, tsn, Sept. 8, 1972; p. 10, tsn, Oct. 6,1972).

"It was almost 12:30 o'clock past noon of the same day, May 5,1971, when they arrived home, and she caused her son, Mario to sleep on the main first floor of their house because he was then drunk. After her son, Mario, went to sleep, she seated for a while (pp. 13-14, tsn, Sept. 8,1972). Their house was low, one storey, about 5 by 6 meters in size, which has a ground floor open on all sides (pp. 29-31, tsn, Sept. 8,1972). She noticed her husband, Epimaco Cursunada, Sr., lying down on the ground floor of their house (pp. 14-31,36 tsn, id). Thereafter, she left their house to go to the house of barrio captain Algarne, which was less than a minute walk from their house, to await at the latter place for her sister, Cayetana San Gregorio, to deliver to her the "suman". But after waiting for her sister at the house of the said barrio captain for about three minutes, and still her sister did not arrive, Natividad San Gre-gorio left the place to return home (pp.14-16 31-34, tsn, Sept. 8,1972; Exhibit "B").

"While Natividad San Gregorio was just in front of the house of the barrio captain, from where she could see clearly her nearby house, she saw four persons, namely: Roberto Lacaba, Carlos Lacaba, Damaso del Valle, and a fourth person whose name she did not know, jump from the stairs of her house, carrying blood-stained weapons. The first to jump out of her house was Damaso del Valle; followed by the fourth person whose name she did not know; then Carlos Lacaba; and followed by Roberto Lacaba as the last person to jump out of the house. All the four persons ran towards the backyard of her house, and sped away (pp.16-19, tsn, Sept. 8, 1972; pp. 12,20, tsn, Oct. 6, 1972; Exhibit "B"). The distance from where she stood in front of the barrio captain's house to her house was about 18 meters, and there was no obstacle to obstruct her view towards the stairs of her house at that time. It was just past noon, and the day was bright (pp. 3-5, 7, tsn, Oct 6,1972). She had known the three persons, namely: Roberto Lacaba, Carlos Lacaba and Damaso del Valle, except the fourth person, very well because they were the "barkada" of her son, Mario Cursunada, and they were their townmates -(pp-. 27-29, tsn, Sept. 8,1972, Exhibit "B").

"After she saw them jump from her house, Natividad San Gregorio ran home and asked her husband, then lying on the ground floor, what had happened; saying: "Apay, ano bang nangyayari?" She noticed from his face that her husband had slept. Her husband then answered, telling her that blood was dripping from the floor of their house: "Aba, tumutulo ang dugo." (pp. 19-20, 38-39, tsn, Sept.8,1972; pp. 11-12, tsn, Oct. 6,1972; Exhibit "B"). Both went upstairs, and they saw their son, Mario lying unconscious on the first floor, full of blood, and with stab wounds on his body (pp. 20-22, 40, tsn, Sept. 8,1972; pp.15-16, tsn, Oct. 6,1972; Exhibit "B"). She shouted for help. She then told her husband what she had seen earlier the four persons who jumped off their house, with blood-stained weapons in their hands, as well as the identities of the three persons, except the fourth person. Her husband, however, advised her not to give any information or statement to anybody, regarding what she had seen telling her that he himself would kill the perpetrator's of their son's death (pp. 40-41, tsn, Sept. 8,1972). In response to her shout for help, many people arrived at their house. Imme-diately their wounded and unconscious son, Mario, was brought by her husband and a neighbor by the name of Pedy to the hospital, while Natividad San Gregorio remained at home. Her son, Mario died, however, on the way to the hospital (pp. 22, 45-46, tsn, Sept. 8, 1972; pp. 4, 11, tsn, March 1,1971).

"Soon thereafter, Chief of Police Gerardo Dilla of the Bay Police Intergrated District arrived at the place of the incident. When interviewed by him, Natividad San Gregorio told the said chief of police that she had seen Roberto Lacaba, Carlos Lacaba, Damaso del Valle and a fourth person jump out of her house with blood-stained weapons in their hands just before she and her husband came upon their wounded and unconscious son Mario, lying on the first floor of their house. She told the chief of police, how-ever, of the earlier instruction of her husband not to give any statement to any person because, according to her husband he would kill the persons who killed their son. To these informations, Chief of Police Dilla did not say anything

(pp. 23-24, 43-44, 49-50, tsn, Sept. 8, 1972; pp. 6-7, tsn, Oct. 6, 1972; Exhibit "B").

"Meanwhile, Police Sergeant Brigido R. Revilla of the same Bay Police Integrated District, at the police station that same afternoon of May 5, 1971 received a report from Councilor Alhama that a person was stabbed at his house while sleeping and died on the way to the hospital, which report was duly entered in the police blotter. Acting on said report, Police Sgt. Revilla, together with Judge Perles and Pat. Alvarez, left for Bo. San Isidro to make a spot investigation of the stabbing incident. Upon arrival at Bo. San Isidro Police Sgt. Revilla saw Chief of Police Dilla already in the house of the deceased Mario Cursunada, investigating the incident; hence, he no longer conducted his own investigation of the incident, which fact and other information he duly entered in the police blotter upon their return from the scene of the crime to the police station that same afternoon (Exhibits "F" and "F-1"; p. 9, tsn, Feb. 22, 1974; pp. 21-22, tsn Feb. 22, 1974; pp. 13-20, tsn, March 1, 1974).

"At about 6:00 o'clock in the after-noon of the same day, May 5, 1971, Dr. Sergio Gasmen, a physician of the Bay Community Hospital, conducted an autopsy of the body of the deceased Mario Cursunada the said hospital's morgue. This autopsy was requested by the police department of Bay, Laguna (pp. 7-8, tsn, March 29, 1973). He found ten (10) incise wounds on the body of the deceased which, as narrated in his autopsy report, with an illustrative diagram an anatomy of a human body (Exhibits "1", "D-1"; pp. 8-10, tsn, id.) are as follows:

- '(1) On the second inter-costal space, left, two inches from the middle of the front portion of the chest, 2 inches long and penetrating into the left pleural cavity;
- '(2) Located in the third intercostal space, left at parasternal line, 3/4 inches long, quite deep, penetrating the left thorax, perforating the pericardium, which is the covering of the heart and then through the right ventricle cavity;
- '(3) Located in the third intercostal space, left, 1, 1/2 inches lateral to the sternum, deep, which is close to Wound No. 2 and directed downward medially, 3/4 inch long penetrating into the thorax and mediastinum. Penetrating Wounds No one, two and three caused the hematoma and emphysema of the mediastinum, and hemothorax of the left pleural cavity of 1500 cc's causing the collapse of the left lung;
- '(4) Located on the tenth intercostal space, midaxillary line, left, 1 1/2 inches long, penetrating the thorax, perforating the left leaf of the diaphragm into the abdomen, lacerating the lower pole of the spleen continuing into the anterior part of the greater curvature of the stomach, perforating the stomach at the subsphod area;
- '(5) Located on the third intercostal space, right two inches to the right of the sternum, 1/2 inch long, deep, penetrating the right thorax, puncturing the middle lobe of the right lung, with a hematoma of the lower lobe, and the whole right lung collapsed with a hematoma of 500 cc's;
- '(6) Located on the right epigastrium, 1 inch long, deep, penetrating into the abdomen, with the omentum plugging the wound, and perforating the left lobe of the liver;
- '(7) Located on the left midaxillary line, two inches above the iliac crest, 3/4 inch long, going into retroperitoneal area causing a hematoma of 200 cc's then lacerated the kidney at the middle portion near the pelvic, about 1/5 inch deep, and 1/5 inch near the hilus;
- '(8) Located at the left mid-axillary line, immediately above the iliac crest, 3/4 inch long, penetrating the abdomen, perforating the descending colon, six inches from the splenic flexure, 2 inches in diameter each, through and through;
- '(9) Located at the dorsum of the index finger, superficial, 1/2 inch long, left hand;
- '(10) Located at the dorsum of the index finger, superficial, 1/2 inch long, left hand,'

(Decision, pp. 319-322, Vol. II, id; Exhibits "D", "D-1" and "D-2"; pp. 10-24, tsn, March 29, 1973)

"Dr. Gasmen concluded that Wound No. 2 in the heart was fatal, and death could be instantaneous; that the other wounds could be fatal also if not treated immediately like Wound No. 1 which perforated the chest and could produce bleeding inside the chest; that the cause of death was cardiac temporade secondary to hemopericardium; that Exhibit "D-2" shows the front portion of the body; that Wounds Nos. 5, 7 and 8 are at the midaxillary line but could be seen from the front; and that the victim had already been dead for about four to six hours when he conducted the autopsy. He also issued the corresponding death certificate (Exhibit "E", Decision, pp. 222-237, Vol. II, id; pp. 17, 23-25, 26 28-29, tsn, March 29, 1973). Dr. Gasmen finally declared that from the nature, number and location of the wounds, it is possible that one or more weapons were used in inflicting them, and that said weapons were double-bladed (pp. 26, 28-30, tsn, id.).

"Subsequently, Natividad San Gregorio was able to convince her husband to refrain from taking the law into his hands to avenge the death of their son. Both then decided to go to the authorities to reveal what they knew about the felonious death of their son. Thus, after the interment of their son, both went to see Chief of Police Dilla to inquire as to the status of the police investigation of the son's case. But the chief of police told them "to lay low first" (pp. 51-52, tsn, Sept. 8, 1972; p. 14, tsn, Oct. 6, 1972). One week later, she and her husband returned to the chief of police, and this time, the latter told them that he would accompany them to the CIS-PC in Canlubang, Laguna, where they were instead instructed to see the PC detachment at Calauan, Laguna. At the latter place, they appeared, without the chief of police however, accompanying them, before PC Sgt. Solano on June 18, 1971 wherein they executed their affidavits in connection with the death of their son (pp. 24-27, tsn, Sept. 8, 1972; Exhibit "B"). PC Sgt. Solano there-after filed a criminal-complaint for murder against the abovenamed three accused and a fourth unidentified person. On learning of the filing of the criminal complaint, Chief of Police Dilla confronted Epimaco Cursunada Sr. and asked him why he gave a statement to the PC when they (police) were still investi-gating the case (pp. 17-18, 20, tsn, Feb. 22, 1974).

"Epimaco Cursunada, Sr. was able to testify in this criminal case in the court below only on direct examination. He died on August 15, 1972 before his cross-examination (pp. 1-16, tsn, June 27, 1972; pp. 1-4, tsn, Sept. 8, 1972). Consequently, his testimony on direct examination was not considered by the trial court in passing upon the guilt or innocence of the accused in this criminal case (Decision, p. 212, Vol. II, Records)."[1]

Filing a single brief, all appellants had made only one assignment of error, that "the trial court erred in convicting the accused of the crime charged in the infor-mation.[2] In support of this lone assignment of error, appellants, however, submit several contentions, which are that: (1) they had no motive in committing the act imputed to them;[3] (2) the testimony of the only principal eye-witness is beset with unbelievable assertions and insin-uations;[4] (3) said witness' identification of the four assailants of her son was belied by the Chief of Police;[5] and (4) despite her complaint, no action was taken by the Chief of Police or the Sergeant of Police.[6]

From their contention as above-stated, appellants' defense is essentially one of alibi, with the assertion that they were not properly identified as the culprits, vaguely hinting that the killing could have been a case of suicide.

As repeatedly held in innumerable cases, motive is not essential when the culpability of one accused for murder has been established beyond reasonable doubt.[7] In the present case, the testimony of the state eyewitness, Natividad San Gregorio, established appellant's guilt beyond the peradventure of any doubt. It is she who had no motive to falsely charge appellants, as to entitle her testimony to full faith and credit.

It is not disputed that Natividad knew the appellants very well. The Lacabas are the "barkada" of his son, Mario, the deceased, a fact established by admission of appellant Roberto Lacaba himself. The other appellant, del Valle, also admitted knowing Natividad, and the latter knowing him very well. In broad daylight, Natividad could not have been mis-taken in identifying the appellants as the assailants of her son, and her candor in doing so, and

charging them with an extremely grave offense, is shown by her admission of not knowing the identity of a fourth companion of appellants whom she saw jumping down their house, holding blood-stained weapons, running towards their backyard in a hurried escape.

The testimony of Natividad is very natural and positive. She testified having seen earlier in the day his son, Mario, with appellants and other persons collecting money from jeepney and tricycle drivers just 80 meters from her house. She saw her son next in the house of Mang Mundo Pantas in a drinking spree, engaged in an altercation with appellant del Valle, when she repaired in haste to said house on being informed by her other son, Epimaco, about the trouble going on in the house of Pantas involving his son, Mario, who was already so drunk that she brought him home with her. Once at their house, Natividad had Mario go to sleep, after which she left to go to the house of the barrio captain but returned home after only a few minutes. It was on her way back home that she saw four persons jump out from her house with blood-stained weapons, three of whom are the herein appellants, the fourth one not being known to her. The sight of those persons jumping out from her house and escaping hurriedly through her backyard prompted her to run towards her house, and seeing her husband lying on the ground floor just awakened, asked him what was happening. The latter looked up and noticed blood dripping from the first floor and exclaimed: "Aba, tumutulo ang dugo." When the spouses went up, they saw their son lying unconscious with many stab-wounds, bleeding profusely.

Contrary to appellants' contention there is nothing unbelievable in the testimony of Natividad, mother of the deceased. She told the Chief of Police exactly as she saw the events unfold themselves from the time she saw the three appellants jumping out from their house with a fourth companion unknown to her, with blood stained weapons, her brief and shocked talk with her husband just awakened from sleep who noticed the dripping of blood from the first floor, and on going up the house, seeing their son lying unconscious and bleeding from many stab wounds.

Strangely, however, the Chief of Police, testifying as a defense witness, declared that the father and brother of the victim told him that the latter committed suicide, and that nobody told him who could have killed the deceased. It is this testimony of the Chief of Police which is clearly unbelievable. From the number and nature of the wounds, the Chief of Police should have readily discounted suicide. The father and brother of the victim could, therefore, not have told him that the deceased killed himself. The mother, Natividad, categorically stated that when the Chief of Police arrived at their house, she told him (Chief of Police) that she saw the appellants and a fourth unidentified person jump out from their house with blood-stained weapons. She cautioned the Chief of Police, however, about her statement because her husband instructed her not to make such revelation to any person because he would like to avenge the death of his son himself.

Further discrediting the Chief of Police is his Sergeant's testimony, also testifying for the defense, that when he saw his Chief at the scene of the stabbing incident, when he arrived thereat, he no longer proceeded with the investigation which was his very mission in repairing to the scene, which appears contrary to the testimony of the Chief of Police that he instructed the Sergeant to investigate the case.

As to the testimony of the Chief of Police about suicide having been allegedly stated to him by the victim's father and brother as the cause of death, same is plainly belied by the entry in the police blotter which was presented as evidence by the defense that "on or about 3:25 p.m., Councilor Aljama arrived station and reported to this office that a person was stabbed at his house while sleeping and died on the way to the hospital." From the entry in the police blotter, it could be inferred that what had been stated by the victim's kin in reporting to Councilor Aljama is that the deceased was stabbed while he was sleeping, a fact that would rule out suicide, specially as no suicide weapon was ever found which ought to be with, or just beside, the victim. Appellants' contention as stated earlier that the Chief of Police has belied Natividad's claim of having identified the four assailants cannot, therefore, but

meet with Our outright rejection.

It is indeed hard to explain how the Chief of Police ever got to inject the theory of suicide, except to suspect his absolute impartiality and entire want of bias as demanded of his position. This suspicion is heightened by how the police investigation got nowhere, and the Chief of Police advising the victim's parents when they inquired about the progress of their investigation "to lay low first." With the manifestly questionable inaction of the Chief of Police and his Sergeant, the victim's parents found no recourse but to approach the PC detachment in Calauan, Laguna, which actually filed the criminal complaint. Thus is the delay in filing the complaint explained by the police dragging their feet, coupled with Natividad's husband's initial reaction to the violent death of his son of wanting to take the law in his own hands to exact vengeance from the four killers, three of whom none other than appellants herein.

When the PC filed the complaint instead of the Chief of Police doing so, the latter must have been conscience--stricken and wanted to save his face by joining the defense in trying to show that there was no real case against appellants he must have also resented the act of the victim's parents in going to the PC without previously informing him of their move which reflected on his competence and trustworthiness.

It is not quite true, as claimed by appellants, that there was no motive on their part to kill the deceased. As testified to by the victim's brother, Epimaco, Jr., and his mother, Natividad, the victim, while in a drinking spree with appellants and other persons, got into a heated altercation with appellant del Valle. It was while Mario was engaged in such altercation in the house of Mundo Pantas that his mother arrived to take him home, upon being informed by her other son, Epimaco Jr. of the trouble her slain son Mario was involved in. Soon after falling asleep in his house, Mario was stabbed fatally by assailants identified by Natividad as appellants with whom he had a drinking spree at the house of Mang Mundo Pantas, and an altercation with one of them shortly before the stabbing. The distance from the house of Mundo Pantas to the victim's house was only 400 meters that there was no impossibility for them to be the assailants of the deceased at the time and place of the assault. In the light of this fact^[8] coupled with appellants having been positively identified as the assailants by the victim's mother, the alibi interposed by appellants as their only defense, aside from the theory of suicide as was sought ridiculously to be injected by the Chief of Police and appellant Roberto Lacaba, cannot but be futile.^[9]

The information alleges evident premeditation and treachery to have attended the commission of the crime. Evident premeditation, however, has not been duly proven as the three elements thereof, to wit: (1) the time when the accused decided to commit the crime; (2) an act manifestly showing that they clung to the determination to commit the crime; and (3) a sufficient lapse of time between the said determination and the execution of the crime to allow them time to meditate and reflect on the consequences of their acts^[10] are evidently absent.

Treachery was neither shown to be present beyond any doubt. The deceased might have been awake when his assailants attacked him, fully aware and expectant of the assault. What may be clearly present from the number of his assailants as well as of the wounds inflicted, was abuse of superior strength. This aggravating circumstance is usually held absorbed by treachery if the latter circumstance is found attendant independently of the former, but it does not constitute treachery itself, which is distinct from that of abuse of superior strength, both as a generic aggravating and as a qualifying circumstance. (See Art. 14 Revised Penal Code). The qualifying circumstance of abuse of superior strength, however, has not been alleged in the information, so it can only aggravate the killing, not qualify it to murder.

Dwelling was also clearly present but only as aggravating circumstance of the crime committed, which is that of simple homicide, as the killing would be, in the absence of any qualifying circumstance, as none was proved beyond reasonable doubt.

WHEREFORE, the judgment appealed from should be modified by finding that the crime committed is homicide, not murder as charged, aggravated by abuse of superior strength and- dwelling. The penalty to be imposed should be only the maximum period of reclusion temporal.

Pursuant to the Indeterminate Sentence Law, appellants should each be sentenced to an indeterminate penalty of from 12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum. Modified as herein indicated, the judgment is affirmed in all other respects, with cost.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.

Teehankee, J., (Chairman), took no part.

De Castro, J., was designated to sit with the First Division under Special Order No. 225.

[1] pp. 3-14, Appellee's Brief; p. 170, Rollo.

[2] p. 151, Rollo.

[3] p. 152, Rollo.

[4] pp.152-153, Rollo.

[5] p. 153, Rollo.

[6] p. 154, Rollo.

[7] U.S. vs. McMann, 4 Phil. 561; U.S. vs. Carlos, 15 Phil. 47;

[8] People vs. Racca, 3 SCRA 828; People vs. Condemena, 23 SCRA 810; People vs. Ali, 29 SCRA 756.

[9] People vs. Selfaison, 1 SCRA 235; People vs. Peralta, 25 SCRA 759; People vs. Marquez, 30 SCRA 442.

[10] People vs. Tison, 66 SCRA 372; People vs. Mendoza, et al., 91 Phil. 58.

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