

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PRIMITIVO YBAÑEZ, JR. AND PAULO LARA, ACCUSED, PRIMITIVO YBAÑEZ, JR., DEFENDANT AND APPELLANT.*G.R. NO. L-30421. March 28, 1974*

Ponente: AQUINO, J.

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This is an appeal of defendant Primitivo Ybañez, Jr. from the decision of the Court of First Instance of Leyte, finding him and his co-accused, Paulo Lara, guilty of murder, sentencing Ybanez to reclusion perpetua and Lara to an indeterminate penalty of six (6) years and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal and ordering them to indemnify solidarily the heirs of Fructuoso Donayre in the sum of twelve thousand pesos and to pay the costs. Lara did not appeal (Criminal Case No. B-476).

The case for the prosecution rests mainly on Lara's testimony and affidavits (Exhs. A, B, Y, Y-1). He took the witness stand in spite of the trial court's warning that his declaration might prejudice his own case. "I will testify to the truth of the case", Lara assured the court.

He declared that in the evening of February 24, 1968, he, Ybañez (Boy Ybañez) and Beato Lao managed a game of chance known as hantak near the dance hall located at Barrio Palhi, Baybay, Leyte. During the game, a misunderstanding arose because a fifty-centavo bet placed by Rufino Loreto mysteriously disappeared. Fructuoso Donayre (Docdoc) was suspected of having pocketed the amount. An argument ensued among Ybañez, Loreto and Donayre. Lara tried to pacify the trio by reimbursing the fifty centavos but they continued their heated bickering.

Suddenly, Ybañez struck Donayre with a piece of wood. Donayre staggered towards Lara. Since the light coming from a Pepsi-Cola bottle filled with kerosene was snuffed out during the commotion, Lara mistakenly thought that Donayre was going after him. Lara unsheathed his samurai knife and stabbed Donayre. Before the light went out, Lara saw Ybañez stabbing Donayre with an ice pick (Exh. C) frontally and on one side of the body.

After stabbing Donayre, Lara ran towards the house of the barrio captain but he could not report the incident since the latter was already asleep. On the following day, he reported it to the police authorities.

Editha Lara, Paulo's fourteen-year old daughter, testified that on that evening of February 24th, when a benefit dance was held, she was operating a makeshift store in front of the dance hall. Later in the evening, Boy Ybanez (a twenty-year old young man), together with some friends, stopped at her store, bought a half gallon of tuba and mixed it with Pepsi-Cola. After imbibing that concoction, Ybañez and his companions repaired to the place behind the house of Ninoy Oracion near the dance hall where a game of hantak was then going on.

At about eleven o'clock, Felix Gallo, who had been selling wares at the dance hall, went to the scene of the hantak game, looking for his child. At that moment, he saw Ybañez hitting Donayre on the back of the head with a piece of wood about a meter long and about the size of a forearm. After Donayre was hit by Ybañez, Paulo Lara stabbed

him with a samurai knife (Exh. D) on different parts of the chest and abdomen. Beato Lao, who was watching the game, also saw Ybanez stabbing Donayre with a small pointed weapon.

The stabbing affray caused the hantak players to scurry away from the scene. Ybañez fled in the direction of the dance hall. While passing by Editha's store, he threw an ice pick into her basket, saying: "I am going to leave this" (Exh. C). Frightened by the commotion, she hurriedly closed her store and brought the basket home. The next day a policeman named Terio took the ice pick from her (Exh. C).

The scene of the crime was deserted except for a person named Jovencio Varron, when Patrolman Antonio Capillanes chanced to pass through Barrio Palhi. He espied Donayre's lifeless body sprawled face down on the ground. Capillanes turned the body of Donayre face up. He noticed a broken samurai knife stuck in the abdomen below the nipple. He pulled out the knife (Exh. D), wrapped it and brought it to the police headquarters. Jovencio Varron was also brought there for questioning.

A postmortem examination of Donayre's body was conducted by Doctor Emilio B. Martinez, the municipal health officer. His autopsy report contains the following findings:

- "1. Stab wound located at the left side of the chest, about 6 inches below the left shoulder, and about 6 inches lateral to the median line, measuring about 3/4 inch long, about 1 cm. wide and about 5 inches deep with the course of the wound directed downward and medially forming an angle of about 45 degrees and forward, forming an angle of about 43 degrees penetrating the left lung.
2. Stab wound located at the left epigastric region of the abdomen, about 5 inches below the left nipple and about 5 inches lateral to the median line, measuring about 1/2 inch long, about 1 cm. wide and about 4-1/2 inches deep with the course of the wound directed downward and medially forming an angle of about 45 degrees penetrating the intestines.
3. Stab wound located at the left epigastrium, at the level of the upper of the umbilicus and about 5 inches lateral to the median line, measuring about 1 inch long about 1 inch wide and about 9 inches deep with the course of the wound directed medially and slightly upward forming an angle of about 10 degrees penetrating into the intestines.
4. Stab wound located at the middle portion of the hypogastrium, about 1/2 inch below the level of the umbilicus, measuring about 3/4 inch long, about 1 cm. wide and about 1 inch deep, with the course of the wound directed to the left and downward forming an angle of about 45 degrees.
5. Stab wound located at the dorso-lateral upper third of the left forearm, measuring about 1 cm. long, about 2 cm. wide and about 3/4 inch deep, with the course of the wound directed forward forming an angle of about 45 degrees.
6. Contusion with hematoma located at the left pinna of the ear involving the left temporamaxillary and mastoid portion of the face." (Exh. F).

Doctor Martinez declared that each of the first three wounds were mortal (Exh. X) and that the contusions on the left cheek were caused by a blunt instrument. He said that the contusions would be fatal if there was a "cerebral concussion". He affirmed that the six (6) wounds were caused by two different weapons wielded by more than one assailant. The first two wounds could have been caused by a knife.

The death of the twenty-two year old victim was caused by "(1) primary shock secondary to severe hemorrhage due to stab wounds penetrating the vital organs of the body (lung, intestine), (2) hemothorax and (3) hemoperitoneum".

A day after the stabbing incident, Lara surrendered to the police authorities. He executed an affidavit wherein he

described in detail how he and Ybañez mortally stabbed Donayre (Exhs. A, B, B-1, Y, Y-1).

Lara declared that, before the trial, he and Ybañez were lodged in the same cell at the provincial jail. They quarreled. Lara was beaten up and boxed by Ybañez. Thereafter, they were confined in different cells. Lara declared that Ybañez requested him twice to admit the sole responsibility for the stabbing of Donayre since he (Lara) had already executed a statement admitting his guilt. Ybañez promised to pay him five hundred pesos but Lara refused to assume the full responsibility for the killing. The father of Ybañez made the same request. Lara rebuffed him.

In this appeal, appellant Ybañez (a) assails the credibility of the prosecution witnesses, (b) contends that only Lara should be held responsible for Donayre's death, and (c) concludes that the trial court erred in convicting him of murder.

He interposed the defense of alibi. He claims that at the time Donayre was killed, he (Ybañez) was in the house of his aunt, Aquilina Domaguing, having come from the dance at around ten-thirty, and that he woke up at two o'clock in the morning.

His aunt did not corroborate his defense of alibi. His own witness, Susana Locheros, testified that the house of Aquilina Domaguing was only fifteen meters away from the scene of the crime. It was easy for Ybañez to be at the scene of the crime, at the time it was committed, and, after its commission, take refuge in his aunt's house.

An alibi is credible if the accused had proven that he was at another place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People vs. Lumantas*, L-28355, July 17, 1969, 28 SCRA 764; *People vs. Resayaga*, L-23234, December 26, 1973). Under that rule the alibi of Ybañez cannot be given credence.

Moreover, his alibi cannot negate the testimonies of Lara, Gallo and Lao who positively identified him as Donayre's assailant. Editha Lara also recognized him as the one who placed in her basket the ten-inch long ice pick (Exh. C). That weapon probably caused the nine-inch deep fatal stab wound found in the victim's abdomen, near the navel, which penetrated the intestines (Exh. X. No. 3 in Exh. F).

Appellant Ybañez cites certain discrepancies in the testimony of Editha Lara. It should be noted that the case for the prosecution was not based on her testimony. She did not witness the assault. She testified on collateral matters.

Ybañez mentions the testimony of Policeman Antonio Capillanes that he suspected Jovencio Varron as having stabbed Donayre. That testimony cannot create any doubt as to the guilt of Ybañez. The investigation conducted by the police revealed that Varron had no complicity in the killing of Donayre.

Ybanez contends that the testimony of Felix Gallo indicates that Lara was the only assailant. That contention is belied by the record. Gallo testified unmistakably that both Lara and Ybañez assaulted Donayre. The excerpts from the testimony of Beato Lao, quoted in appellant's brief, also prove that Ybañez struck Donayre, with a piece of wood.

On the other hand, the testimony of Susana Lacheros, a defense witness, that Lara used the ice pick and the samurai knife (Exh. C and D) in stabbing Donayre appears to be incredible. The trial court, which had the opportunity of observing Susana on the witness stand, concluded that she was "extremely eager" in testifying for Ybañez, "even if not asked, but in most cases she was evasive". She tried to corroborate the alibi of Ybañez which, as already noted, is not credible.

This Court is convinced that the complicity of appellant Ybañez in the killing of Donayre was established beyond

reasonable doubt. He and Lara both inflicted mortal wounds on the victim. As correctly held by the trial court, there was no conspiracy between them. But they are both liable as principals because the victim's death was the direct result of the fatal wounds which each inflicted on the victim.

"Death was the joint result of their acts. As the spark of life went out, each wound was a contributing cause." (U.S. vs. Abiog, 37 Phil. 137, 143). As noted in a case, "drop by drop the life current went out from those wounds." Although a man cannot be killed twice, two persons, acting independently, may contribute to his death and each be held liable therefor. A person dying is still alive and may be killed. (People vs. Lewis, 124 Cal. 551 cited in Abiog case).

Lara and Ybañez were charged with murder with the aggravating circumstances of treachery, premeditation, abuse of superiority and nighttime. After a careful review of the record, the Court finds that those aggravating circumstances cannot be appreciated in this case.

The assault on Donayre was preceded by an altercation over a fifty-centavo bet. He was attacked by Ybañez on the spur of the moment. The attack was perpetrated in a frontal encounter as indubitably shown by the location of the wounds on the front part of the victim's body. There were no wounds on the back. The assailants did not make any deliberate, surprise attack on the victim. They did not consciously adopt a treacherous mode of attack. They did not employ means, methods or forms in assaulting Donayre which tended directly and specially to insure the consummation of the killing without any risk to themselves arising from any defense which he might have made (See par. 16, Art. 14, Revised Penal Code).

Nor was the attack premeditated. It was not preceded by any cool thought and reflection upon any resolution to kill Donayre. There was no such resolution. The assault was an immediate sequel to a heated discussion.

There was no abuse of superiority because Lara and Ybañez did not cooperate in such a way as to secure advantage from their combined strength. The fact that they did not conspire to kill Donayre implies that they did not jointly exploit their superior strength. Numerical superiority does not always mean abuse of superiority.

Although the killing was committed at night, that circumstance is not aggravating. It was an accidental circumstance. It was not purposely sought by the offenders so as to attack Donayre with impunity or prevent their recognition.

Hence, as to Ybañez, the killing should be characterized as homicide, not attended by any modifying circumstances (Arts. 64[1] and 249, Revised Penal Code).

ACCORDINGLY, the lower court's judgment as to appellant Ybañez should be modified. He is convicted of homicide and sentenced to an indeterminate penalty of nine (9) years of prision mayor as minimum to fifteen (15) years of reclusion temporal as maximum and to pay the costs. In other respects, the trial court's judgment is affirmed. So ordered.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.

Antonio, J., took no part.

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