

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JESUS LARGO, VILLARDO ROLDAN, AMADOR HERMOSA, CLEMENTE
DE LOS REYES, CIRILO DIMAANO AND MARCIAL DIMAANO,
DEFENDANTS, J...**

G.R. No. L-28106. August 18, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is an appeal taken by defendants Jesus Largo, Villardo Roldan and Cirilo Dimaano from the decision of the Court of First Instance of Oriental Mindoro in its Criminal Case No. R-2595 convicting them of the crime of murder and sentencing each to suffer the penalty of life imprisonment, to indemnify jointly and severally the heirs of the victim, Antonio Raagas, in the sum of P6,000.00, and to pay the costs. In a resolution dated March 7, 1969, this Court granted the motion of Villardo Roldan to withdraw his appeal.

On July 23, 1963 Antonio Raagas left his home in Bongabon, Oriental Mindoro, with Virgilio Lorente and Rogelio Ojo as companions, to get lumber at the Mabuhay Sawmill. He was then wearing a white T-shirt and blue denim (maong) pants. Before leaving he remarked to his wife, Elena Militar, that he had enemies in barrio Sumagui, particularly naming Josing (Jesus Largo) and Villardo (Roldan), and mentioning two others whom he did not identify. Josing, he told his wife, had threatened him.

Two days later Virgilio Lorente and Rogelio Ojo came to see Elena Militar and inquired from her whether her husband had already returned. She replied in the negative; and they told her that after they had been to the Mabuhay Sawmill their truck developed engine trouble and that while they were repairing it Raagas disappeared.

On July 27, 1963 Elena went to Bansud, Oriental Mindoro, in search of her husband. Her mother-in-law informed her that she had seen Antonio Raagas in the house of a certain Paulina Lusterio the day before (July 26), and that from there he proceeded to the poblacion of Bansud. Failing to find her husband, she then returned to Bongabon. Not long after her arrival at her house, Severo Tolentino, a dispatcher of the Mindoro Transportation Company (MITRANCO), came and informed her what happened to her husband while on board MITRANCO Bus No. 154 at around eight o'clock in the evening of July 26, 1963. Tolentino then accompanied her to the MITRANCO garage, where she was able to talk to the driver and the conductor of Bus No. 154, who related to her the incident involving her husband. The following day, July 28, Elena Militar went to the PC detachment in Bongabon and reported the matter to one Sgt. Antonio. On July 29, at around nine o'clock in the morning, she went to Bansud and informed her mother-in-law what she had learned. She then proceeded to the Office of the Chief of Police to ask for the latest information about her husband, but received none. On her way home she met Sgt. Quinton and Cpl. Collado, and while they were talking about her missing husband Mrs. Dimaano arrived and told them about the reported discovery of a dead person near the seashore between barrios Tiguisan and Sumagui. With that information, they went to the place, where they saw the severed head of a person, part of a belt and part of a destroyed pair of maong pants. The head was no longer recognizable because the lower jaw was separated

from the upper portion of the skull. Nevertheless, she was able to identify it to be that of her husband because of a missing tooth which had been extracted the year before. She also recognized the belt and the destroyed maong pants to be those of her husband.

Eugenio Caspe, a policeman of Bansud, recalled that on July 26, 1963, at about 5:00 o'clock in the afternoon, Antonio Raagas went to the Office of the Chief of Police and requested police escort in going to Sumagui because a certain "Diosing" (Jesus Largo) was there to waylay him. However, Raagas was not able to get the police escort requested as he left without Caspe's knowledge.

With the leads given by Elena Militar and Eugenio Caspe, the Philippine Constabulary conducted an intensive investigation of the case. On August 7, 1963 PC Sgt. Antonio filed a complaint for murder in the Municipal Court of Bansud against Jesus Largo, Villardo Roldan, Erning Junior, and Ador Caviteño. On August 9, 1963 the criminal complaint was amended by changing the name "Erning Junior" to Severino Reyes, Jr. and the name "Ador Caviteño" to Amador Hermosa. Again the complaint was amended on August 20, 1963 to include as additional accused Clemente de los Reyes, Cirilo Dimaano and Marcial Dimaano. Severino Reyes, Jr., was excluded.

On the basis of the second amended complaint, which was remanded to the trial court for further proceedings, the Provincial Fiscal filed the corresponding information, which reads as follows:

"That between 8:00 and 10:00 o'clock in the evening of July 26, 1963, in the barrio of Salcedo, municipality of Bansud, province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Jesus Largo, Villardo Roldan, Amador Hermosa and Cirilo Dimaano, conspiring and confederating together with Marcial Dimaano and Vicente de los Reyes; alias Clemente de los Reyes, both of whom are still at large and whose preliminary investigation has not as yet been conducted, and aiding one another, with treachery and evident premeditation and the decided purpose to kill, and taking advantage of their superior strength, all armed with balisong, knives and boloes, willfully and feloniously maltreated and dragged Antonio Raagas inside the MITRANCO passenger bus No. 154 and dragged him outside, then brought him in an uninhabited place near the seashore between Sumagui and Tiguisan and while there, hacked said Antonio Raagas with a bolo on his neck, thereby severing the head from the body and thereby causing the instantaneous death of the said Antonio Raagas; that the said accused, in order to conceal the crime which they committed, dumped the head and body of the said victim under the aroma trees near the mouth of Tiguisan River.

"That in the commission of the foregoing offense, the qualifying circumstances of treachery and the generic aggravating circumstances of (1) evident premeditation, (2) that the accused were in band, (3) that the crime was committed in an uninhabited place, and (4) that the accused took advantage of their superior strength are present."

When the accused Jesus Largo, Villardo Roldan, Amador Hermosa and Cirilo Dimaano were arraigned on March 11, 1964, they all pleaded not guilty. Clemente de los Reyes, who was apprehended later, also pleaded not guilty when arraigned on May 12, 1964.

Upon petition of the prosecution and over the objection of the defense Hermosa was discharged from the information and utilized as a state witness. Clemente de los Reyes, who was granted a separate trial, failed to appear during the scheduled hearing on February 23, 1965 and since then he has remained at large.

Amador Hermosa's testimony is substantially as follows: On July 26, 1963, between eight and ten o'clock in the evening, he was in barrio Salcedo, Bansud with Villardo Roldan, Jesus Largo, Cirilo Dimaano, Marcial Dimaano and Clemente de los Reyes. Jesus Largo flagged down MITRANCO Bus No. 154, and when it stopped he and Villardo Roldan climbed aboard. Upon seeing Antonio Raagas among the passengers they forcibly dragged him

out. The bus conductor tried to intervene but Jesus Largo threatened him. Largo and Villardo then clubbed Raagas, while Clemente de los Reyes and Cirilo Dimaano "were on guard watching for some companions that may arrive." When Antonio Raagas was already weak from the beating, Largo and Roldan dragged him to the seashore some two kilometers away, where upon arrival Largo hacked the victim with a bolo, completely severing his head from the body.

The prosecution presented Modesto Leynes to corroborate Hermosa's testimony. Leynes was the conductor of Bus No. 154 of the Mindoro Transportation Company (MITRANCO) on July 26, 1963. At about eight o'clock in the evening of that day, he testified, the bus was on its way to Bongabon, and when it reached the place in front of the waiting shed at barrio Salcedo a man with three companions stopped the bus. Two of the group boarded it, pulled Antonio Raagas to the ground and proceeded to kick him. Leynes pleaded for Raagas' life but was told to go on his way. Of the group he recognized only Jesus Largo, although he did not know him by name at the time of the incident.

Ambrosio Cometa was another corroborating witness. On July 26, 1963, at about 10 o'clock in the evening, he narrated, he was at the seashore between the barrios of Tiguisan and Sumagui. He saw Jesus Largo, Villardo Roldan, Cirilo Dimaano, Marcial Dimaano and Amador Hermosa carrying Antonio Raagas. They dropped Raagas on the sand, and then Jesus Largo beheaded him with a bolo he got from Cirilo Dimaano. Cometa declared on cross-examination that he was at the seashore waiting for smugglers who might land there, having learned from the PC that anybody who could report the presence of smugglers would be rewarded. He left after seeing Raagas beheaded. He neither reported the incident to any police officer nor informed the victim's wife, although he knew she was looking for her husband, because he was scared. Sometime in 1964, however, he related the incident to the private prosecutor. On re-direct examination, the witness explained that it was Clemente de los Reyes who warned him not to talk and that he was afraid because the accused had not yet been apprehended at the time.

Jesus Largo's defense is alibi. He denied that he was with his co-accused on July 26, 1963, or that he knew Antonio Raagas, or that he had anything to do with his death. From 5:00 o'clock in the afternoon of July 26, 1963 up to about 5:00 o'clock the next morning, he said, he was in the house of his employer, Filemon Salcedo, Jr. His inclusion in the complaint was attributed by him to one Santos Frane, who had a personal dispute with his employer.

Filemon Salcedo, Jr., corroborated Largo's alibi.

The other accused, Villardo Roldan and Cirilo Dimaano, merely denied participation in the killing. Dimaano said he did not know Raagas, and both he and Roldan gave the same reason as that given by Largo for their inclusion in the complaint, namely, the dispute which Santos Frane had with their employer, Filemon Salcedo, Jr.

In finding the accused guilty of murder, the trial court considered treachery as a qualifying circumstance, but found no aggravating circumstance.

The appellants allege that the trial court erred: (1) in holding that the identity of the victim was sufficiently established; (2) in finding that there could have been no reason for Amador Hermosa to testify falsely against his co-accused; (3) in giving credence to Modesto Leynes and Ambrosio Cometa; (4) in holding that there was conspiracy to kill Antonio Raagas; (5) in not giving weight to the testimony of Jesus Largo; (6) in not giving weight and consideration to the testimony of Filemon G. Salcedo, Jr. to the effect that Jesus Largo slept in his house on the night of July 26, 1963 and could not, therefore, be a participant in the killing of Antonio Raagas; (7) in not holding that appellant Cirilo Dimaano not only did not conspire with his co-accused Jesus Largo in killing Antonio Raagas but actually had no knowledge about the same; and (8) in not acquitting the appellants for the failure of the prosecution to prove their guilt beyond reasonable doubt.

With respect to the first assigned error, the appellants dispute the identification by Elena Militar of the skull found at the seashore as that of her husband in view of the fact that when the skull was found the lower jaw was already detached therefrom, and in fact was lying about half a yard away. The identification, however, was made by the widow on the basis of a missing tooth, extracted the year before, and also of the torn pair of pants and the belt which were found nearby. She recognized the pants to be the same ones her husband was wearing when he left home on July 23, 1963. For a wife to recognize her husband's personal belongings is certainly not improbable. Moreover, the identity of the victim and the circumstances of his death at the hands of the appellants were fully established by testimonies of Amador Hermosa and Ambrosio Cometa.

Amador Hermosa's testimony is challenged as coming from a "polluted source." The trial court found no reason why Hermosa should fabricate his testimony; and while he was himself a participant in the crime, who was discharged to be a state witness, this fact does not necessarily make him unworthy of belief, especially since his testimony is corroborated by other witnesses. Indeed the appellants themselves have not given any reason why Hermosa should testify falsely against them.

It is contended that the testimony of Ambrosio Cometa is of doubtful veracity, considering that it took him more than a year before he revealed what he knew, when he informed the private prosecutor about it. Ordinarily such long silence would engender suspicion. But Cometa explained it by the fact that he was afraid, knowing what the appellants were capable of doing and having been warned by one of them - Clemente de los Reyes - not to talk about what he had seen.

As in the case of Cometa's testimony, the appellants have also failed to point out any flaw in the testimony of Leynes, or any circumstance that would make it unworthy of belief.

Settled of course is the rule that where the issue is one of credibility of witnesses the findings of the trial court are given great weight, considering that it is in a better position to decide such issue, having heard the witnesses and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if properly considered, would affect the result of the case.[1]

As regards the existence of conspiracy, the trial court made the following findings:

"The Court finds the testimonies of these witnesses positive, clear and unequivocal showing beyond doubt that the accused, in conspiracy with each other, feloniously killed the deceased Antonio Raagas. The conspiracy is clearly shown by the fact that all the accused, in company with each other, met at a certain crossing in the afternoon of July 26, 1963, and from there they proceeded to a store at Barrio Sumagui where, after drinking tuba, they all proceeded to the direction of the Barrio Salcedo where near the waiting shed they stopped the MITRANCO bus where Antonio Raagas was then a passenger. The acts of all the accused while Jesus Largo and Villardo Roldan were inside the bus, grabbing and pulling down Antonio Raagas, clearly indicated a concerted action in aid of Jesus Largo and Villardo Roldan. The other accused stood guards near the bus at their respective assigned positions which were executed and done in order to assure the captivity of Antonio Raagas. And after Raagas was brought down from the bus by force, he was clubbed and all the accused participated in bringing him to the seashore, passing through a foot path leading from the provincial road to the seashore between Barrios Sumagui and Tiguisan. The design to kill Antonio Raagas was known to each and everyone of the accused and if the actual killing of Raagas was only done by Jesus Largo, when he severed the head from the body of Antonio Raagas, the other accused acted in complete concert with Jesus Largo. All of them knew of their mutual intention to kill Antonio Raagas. The Court does not find any evidence which would indicate that not all the accused had actual knowledge of the intention to kill Antonio Raagas. On the contrary, the Court finds from the evidence that they acted either by clubbing the deceased or guarding the bus or manhandling the deceased, all for the purpose of consummating a common design to kill Antonio Raagas. Whether or not the actual killing was done by one of the accused all should be held responsible for the death of

Antonio Raagas, because all acted in pursuance of a common design to kill him.”

The above findings are supported by the evidence. However, the appellants deny the existence of proof of conspiracy because there is no showing that they did agree on the commission of the crime and decided to carry out their agreement. The contention is without merit.

"Article 8 of the Revised Penal Code provides that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement of which the law speaks is not limited to the commission of the crime. It is not necessary that the malefactors, for an appreciable time prior to the commission of the crime, had actually come together and agreed in express terms to pursue a common design. For conspiracy to exist, it is enough that the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances. To establish conspiracy, it is not necessary to prove previous agreement to commit a crime if there be proof that the malefactors have acted in concert and in pursuance of the objective. This Court has repeatedly ruled that conspiracy may be inferred from the acts of the accused themselves when such point to a joint purpose and design. Their action must be judged not by what they say, for what men do is the best index of their intention." [2]

The appellants point out that there is no evidence of any motive on their part for Raagas' killing. This Court has repeatedly held that where the accused have been clearly identified by credible witnesses, lack of known motive is not important. [3]

Appellant Largo's alibi, namely, that he was in the house of his employer, Filemon Salcedo, Jr., when the crime was committed, cannot prevail over the testimony of Ambrosio Cometa and Amador Hermosa positively identifying him as the one who cut the neck of Raagas. [4] Besides, it was admitted by Filemon Salcedo, Jr., that the seashore where the victim was beheaded was only a twenty-minute walk from his house, and hence it was not physically improbable for the accused to be at the scene of the crime at the time it was committed.

In view of the foregoing, we find no reason to disagree with the conclusion of the trial court that the guilt of the appellants Jesus Largo and Cirilo Dimaano has been established beyond reasonable doubt. However, abuse of superior strength, not treachery, qualifies the killing to murder since the appellants took advantage of their greater number and greater power to subdue their unarmed victim when they saw him inside the MITRANCO bus, and to finally take his life by beheading him.

WHEREFORE, modified only with respect to the qualifying circumstance which attended the commission of the crime and with respect to the indemnity, which should be, as it is hereby, increased from P6,000.00 to P12,000.00 [5] the judgment appealed from is affirmed in all respects, with costs against the appellants.

Concepcion, C.J., Zaldivar, Castro, Fernando, Teehankee, Barredo, Antonio, and Esguerra, JJ., concur.

Reyes, J.B.L., and Makasiar, JJ., took no part.

[1] *People vs. Espejo*, No. L-27708, December 19, 1970 (36 SCRA 400, 420), citing *People vs. Sinaon*, No. L-15631, May 27, 1966 (17 SCRA 260).

[2] *People vs. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812, 822-823, and the cases cited.

[3] *People vs. Bautista*, No. L-27638, November 28, 1969, 30 SCRA 559.

[4] *People vs. Gande*, L-28163, January 30, 1970, 31 SCRA 347, and the cases cited.

[5] *People vs. Pantoja*, L-18793, October 11, 1968, 25 SCRA 759.

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