

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FRANCISCO AGUILANDO, FELICISIMO ENERO, RUFINO MALOBAGO,
AND PEDRO CAGRO, DEFENDANTS AND APPELLANTS.**

G.R. No. L-5346. January 30, 1953

Ponente: JUGO, J.

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JUGO, J.:

The appellants Francisco Aguilando, Felicisimo Enero, Rufino Malobago, and Pedro Cagro were found guilty of murder by the Court of First Instance of Samar, with the mitigating circumstance of passion and obfuscation and sentenced to suffer from ten (10) years and one (1) day of prision mayor to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, to indemnify the heirs of the deceased Victor de los Reyes in the amount of P2,000 without subsidiary imprisonment in case of insolvency and each to pay proportionately the costs with the benefit of one-half the preventive imprisonment that they had undergone.

They appealed to the Court of Appeals, but the Special Division thereof, composed of Presiding Justice Alejo Labrador and Associate Justices Jose Ma. Paredes and Buenaventura Ocampo, after a thorough study of the evidence, reached the conclusion that the appellants are guilty of the crime of murder with the qualifying circumstance of abuse of superior strength, without any mitigating or aggravating generic circumstance, and should be punished with the penalty of reclusion perpetua, forwarding the case to this court in accordance with law.

It has been proved that at about 5:00 o'clock p.m. of Saturday May 12, 1948, one Victor de los Reyes upon arriving at the house of Genoveva Malobago in the barrio of Bugco, municipality of Mondragon, Province of Samar, spread a mat on a table of said house and laid on it Alfredo Aliposa whom he had wounded with a knife in a previous encounter. Victor and his companion Remigio Mananguete left the house and proceeded to a place known as banquerohan to borrow a bicycle for the purpose of fetching the Sanitary Inspector to treat the wound of Aliposa. After they had left, Arquilao Marino, Bonifacio Arneo, and Julio Custorio arrived at said house. When Arquilao learned that Aliposa had been wounded by Victor, he said to his companions: "Let us go and run after him because we will fight him and we will not forgive him." The three went away. Genoveva fearing that there might be trouble in her house asked Aliposa, who could still walk, to go away, and she closed the windows and door of the house. Victor and Remigio Mananguete, finding that the bicycle was out of order, came back to Bugco. On their way on the provincial road, they met Felicisimo Enero, Pedro Cagro, and Bonifacio Arneo, who were standing on the side of the road. Enero asked Victor and Mananguete where they were going. Victor answered that they were proceeding to Mondragon. Francisco Aguilando and Rufino Malobago appeared on the scene. Aguilando then asked Victor if he was the "pillo" (bully) of Catarman, Samar, who had been saying that he had been kissing women and throwing firecrackers at people, without having been punished by them because he was feared. Without waiting for the answer, Aguilando struck Victor with his fist. Victor tried to return the blow but missed Aguilando, hitting Rufino Malobago instead. Pedro Cagro approached from behind and hit Victor below the left ear, causing him to fall. The latter arose and fled, but was pursued by Aguilando, Malobago, Enero,

and Cagro. Victor was overtaken by his pursuers near a Chinese store about seventy meters away, where his pursuers pounced on him. Enero hit Victor with a wooden club on the head. Victor fell. Cagro mounted on the body of Victor seizing his neck and giving him numerous fistic blows. Cagro pulled out a sort of weapon from his pocket and thrust it into the face of Victor. Malobago took a wooden pestle and struck with it Victor's thigh. After these simultaneous aggression on Victor, his four assailants left him prostrate on the ground.

Dr. Benjamin Azansa on the next day, May 13, examined the corpse of Victor, finding numerous injuries which, he describe as follows:

Head and Neck.— Left side of the face was markedly swollen with extensive ecchymosis in the left forehead, left eye, left cheek, left ear and left side of the neck. Multiple contusions on the right side of the face.

Multiple comminuted fracture of the left jaw, left cheek bone and left forehead. Depressed fracture of the left parietal bone. The head presents six (6) open wounds.

- Lacerated wound located in the mastoid process behind the left ear 1 inch long, 1 cm. deep and gapes wide open extending obliquely from above downwards. Surrounding area of the wound including left ear ecchymotic. Wound caused by a blunt instrument.

- Contused wound located in the root of the nose extending laterally downwards to the right side of the nose in a tortuous direction for a distance of about 2 inches. Caused by a blunt instrument.

- Contused wound in the left cheek, of irregular outline and superficial located about 1 inch above the angle of the left jaw. Caused by a blunt instrument.

- Punctured wound located in the upper part of the left jaw. Opening is ½ inch long, 1 cm. wide and 1 inch deep. Wound directed obliquely from left to right. Bottom of wound opens into floor of the mouth.

- Incised wound, 1 inch long, 2 cms. wide, 1 cm. deep extending obliquely in the lower part of the left jaw with the lower margin of the wound almost touching the midpoint of the chin.

- Incised wound located in the region of the large fontanelle of the skull, 2 inches long and as deep as the bone of the cranium. Wound covered by red coagulated blood. Hair surrounding wound is thickly matted with blood. Wound caused by a big blunt heavy instrument.

Thorax, Abdomen and Extremities:--Multiple contusions in the back of the neck and both shoulders. Contusions in both left and right is axilla extending down to the lateral sides of the thorax and abdomen. Right hand swollen and bruised especially the knuckles. Contusions in the dorsal and medial surfaces of the arm and forearm of both sides.

The cause of death according to the doctor was fracture of the skull and concussion of the brain.

The version given by the defense is as follows:

When Felicísimo Enero asked Aguilando who was that person bragging about his prowess and the annoyances he had committed against other persons on account of his physical strength, Victor, the person alluded to, immediately hit Enero with his fist and when Enero returned the blow, Victor took a knife from his pocket and with it attacked Enero, but the latter was able to evade the blow and escape. Victor then chased Enero, and Cagro followed Victor. When Enero saw this he pulled a post from a fence and struck Victor with it, causing the latter to fall. But when Victor was about to stab Enero with a knife, Cagro struck Victor from behind with a bamboo club hitting him on the face below the left ear. The attack continued until Victor slumped. Although Victor was then almost dead, Enero continued hitting him until Victor died.

The trial court did not believe the version given by the defendants in their attempt to establish self-defense and

defense of a companion. We believe that the trial court was correct, for the reason that it is unbelievable that Victor, even though he was of an aggressive and provocative nature, would not have attempted to attack Enero who was simply asking who was the person talking, considering that Enero had three companions belonging to the same gang, who were ready to repel any attack on any member. The defendants had a motive in ferociously assailing Victor, because the latter on a previous occasion had wounded Alfredo Aliposa in a fight, Alfredo being a member of the gang of the defendants. If Victor had a knife or a deadly weapon, it is strange that no one of the defendants was wounded, taking into consideration that Victor was a physically big and strong man. The alleged knife was not found and produced at the trial. The salient fact is that four persons armed with a knife, big clubs, and sticks attacked Victor who was alone and unarmed.

We do not agree with the trial court and the defense that there was no conspiracy among the defendants to commit the crime. The conspiracy or concerted action is shown by the fact that Arquilao invited his companions to fight Victor, and the circumstance that the four appellants, simultaneously and helping each other, assailed Victor with their fists, a knife, clubs and a bamboo post, Victor being unarmed and alone. These simultaneous acts of aggression plus the previous invitation by Arquilao to find and attack Victor, show beyond doubt that there was conspiracy or concerted action among the defendants (*People vs. Carbonel, et al.*, 48 Phil., 868). There having been conspiracy and concerted action, each of the defendants is responsible for the acts of the others.

The qualifying circumstance of abuse of superior strength was clearly present. There could have been no mitigating circumstance of passion and obfuscation, because Alfredo was wounded several hours before and Victor was even trying to lay him on a mat and call a Sanitary Inspector to treat him. Victor was already on good terms with Alfredo. Even if passion and obfuscation had been felt by the defendants, they had time to cool off especially when they saw Victor trying to take care of Alfredo.

In view of the foregoing, the judgment appealed from is hereby modified by imposing upon each of the four appellants the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the sum of P6,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. In all other respects it is affirmed. It is so ordered.

Paras, C.J., Pablo, Feria, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.

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