

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PONCIANO MITRA, ET AL., DEFENDANTS. PONCIANO MITRA,
VIRGINIO ZURBITO, AND JESUS MITRA, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-13339. June 30, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Ponciano Mitra, Jesus Mitra, Virginio Zurbito, Mario Ballesteros, and Felizardo Cantuba were charged in the Court of First Instance of Masbate with the crime of murder, for the killing of Manuel Brabante. Upon arraignment, they pleaded not guilty and petitioned for and were granted separate trials in the presentation of their defense. After the prosecution had finished presenting its evidence, counsel for Ballesteros and Cantuba filed a motion to quash on the ground that the prosecution failed to establish a prima facie case against them. Resolving said motion to quash, the court, then presided by Judge Pascual Santos, issued an order on November 12, 1956 reading, in part, as follows:

"* * * Both of these two witnesses frankly admitted that while it was true that they saw the five accused pursuing the late Manuel Brabante, nevertheless, they did not see whether the accused Mario Ballesteros and Felizardo Cantuba really participated in the stabbing of the victim which caused his instantaneous death. Moreover, the prosecution, has miserably failed to establish the element of conspiracy alleged in the information that all these accused have planned to liquidate the deceased. In the absence of these essential facts, the Court cannot do otherwise, but to accede to the motion to quash conditioned, however, in the interest of good administration of justice, that the dismissal of the case with respect to the accused Mario Ballesteros and Felizardo Cantuba would be a provisional one so that in case any of the rest of the accused may point any one of them as the author or authors of the stabbing of the deceased, the prosecution could revive the case against them, but if not, this dismissal shall be considered absolute and definite.

"IN VIEW HEREOF, let the case against the accused Mario Ballesteros and Felizardo Cantuba be dismissed provisionally, with 2/5 costs de oficio. * * *."

At the continuation of the hearing on July 24, 1957, the defense presented its evidence, the court this time being presided by Judge Ambrosio Dollete, Judge Pascual Santos having resigned in the meantime. The former decided the case on November 11, 1957, when he was already in his station at the Court of First Instance of Bataan. In his decision, the judge found the existence of a conspiracy among the accused. Although there were no eyewitnesses to the stabbing of the deceased, he was convinced that the five accused committed the crime. Ballesteros and Cantuba were found "as much guilty as the other three accused", in spite of Judge Santos' order of November 12, 1956, dismissing the case provisionally as to them. In the same decision, the provincial Fiscal was directed to take "such steps as are necessary to bring Ballesteros and Cantuba within the pale of the law, or initiate any collateral proceedings in the interests of the State." Ponciano Mitra, Jesus Mitra, and Zurbito were found guilty of the crime of murder, and sentenced each to suffer the penalty of life imprisonment, and to pay indemnity, solidarily, to the

heirs of the deceased and costs. From this judgment, they appealed to us.

The facts, as disclosed in the records are as follows: At about one o'clock in the afternoon of April 24, 1955, Avelina, Maria, and Manuel Brabante went to the house of their aunt, Juana Brabante, at sitio Cawacawa, barrio Rizal, Batuan, Masbate, to visit her, as she was ill. After having greeted her, the three went downstairs and seated themselves on a bench in the yard. A few minutes later, the accused Jesus Mitra, Zurbito, Ballesteros, and Cantuba, led by Ponciano Mitra, came from behind the house. Upon seeing Manuel Brabante, Ponciano Mitra said: "You are here", and immediately unsheathed his bolo from its scabbard and with it struck at Manuel. Luckily, the blow did not hit Manuel but landed on the post of the ladder near which Manuel was seated. The rest of the accused stood at a distance of one braza from Ponciano, when the latter stabbed Manuel. Upon hearing Ponciano, Avelina and Maria Brabante stood up, the latter placing herself between her brother Manuel and Ponciano, and urging Manuel to run, which he did. Seeing Manuel run, the five accused chased him. Too scared to do anything, Avelina and Maria Brabante remained at Juana's house for about an hour. Later, they saw the five accused led by Ponciano, coming from the direction whence they had pursued Manuel, pass by on their way home.

Thereafter, Avelina and Maria Brabante looked for Manuel Brabante. They found him at a distance of around 150 meters from Juana Brabante's house, on the trail by a creek, already dead with face downwards. Avelina hurried home to inform her parents about the incident, while Maria remained at the place. Coming back, the former was accompanied by her father and brother. At around five o'clock in the same afternoon, Chief of Police Perocillo and policeman Canales having been informed of the incident, arrived at the scene and conducted an investigation of the crime.

An autopsy performed by Municipal Health Officer Lozano, disclosed the following wounds suffered by the victim:

"A. A punctured wound on the left face, an inch long, about half an inch wide, and about one and three fourths inches deep.

"B. A gaping wound more to the right side of the neck and upper about two and a half inches long, more than an inch wide and about one and a half inches at the deepest part.

"C. A gaping wound at the back of the neck more to the left side of the same, with the length of about five and a half inches, about two and a half inches at its widest part, and about three inches deep, cutting at almost halfway the thickness of the neck.

"D. An open incised wound at the anterior right arm, running almost parallel to same, with a length of about two inches, an inch at the widest part and about two and a half inches deep.

"E. An open incised spearshape wound due to the meeting of the two ends of similar wounds at the upper left side of the back of the trunk, each with about five and a half inches in length, two and a half inches at its widest part and about an inch deep.

"F. An elongated punctured wound at the right side of the upper back, about half an inch in length, one fourth inch wide and about one and a half inches deep.

"G. An open incised wound at the upper left side of the back about three and a half inches long and about one and a half inches deep.

"H. A perpendicular to the length of the body, a wound of about five and a half inches long, two and a half inches at the widest part, and about two inches deep.

"I. An open incised wound at the back of the lower left arm about seven inches long, two inches wide and

about two and a half inches at its deepest part,

"J. An incised wound at the inner lower right leg about two and a half inches long, one inch wide and about an inch deep.

"K. An elongated punctured wound at the right breast, about an inch long, half an inch wide and with about an inch more or less in depth." (Exh. A.)

According to said Officer, wounds B, C, D, and F were fatal and must have been caused by a sharp-pointed bolo.

At around 4:30 o'clock of the same afternoon, Ponciano Mitra surrendered to Policeman Canales at the Batuan Municipal Building. He also surrendered to Canales a bolo (Exh. B), with its scabbard (Exh. B-1), a machete (short bolo) (Exh. C), and a locally-made .45 caliber pistol (Exh. D). Upon examining the pistol, Canales found an empty shell (Exh. D-1) in its chamber. Ponciano confessed to Canales that he stabbed the deceased with the bolo and machete, but stated that the pistol belonged to said deceased.

The police blotter at Batuan, Masbate, states the following entry on April 24, 1955:

"At 4:30 P.M. a person of Ponciano Mitra reported to the office of the Chief of Police that he stabbed to death Manuel Brabante in sitio Cawacawa, Batuan, Masbate with one bolo; one machete and one locally made pistol with an empty shell inside. During my investigation he alleged that the pistol and one machete belongs to the deceased. Same date at 10:20 P.M., Felizardo Cantuba was also arrested by the Chief of Police with two policemen as alleged by the aggrieved party in connivance with the killing of Manuel Brabante in the same sitio this municipality." (Exh. E and pp. 76-77, t.s.n.)

Other than his verbal confessions to Chief of Police Perocillo and Patrolman Canales that he stabbed the deceased, Ponciano Mitra refused to give any other statement, especially a written one, to the police.

As already stated, there was separate trial during the presentation of the evidence for the defense. Nevertheless, Ponciano Mitra and Jesus Mitra, represented by the same counsel, introduced evidence jointly while appellant Virginio Zurbito presented his separate evidence. The defense offered by Jesus Mitra is alibi. While he admitted that he was in sitio Cawacawa (the place where the house of Juana Brabante was situated) in the morning of the incident to see the cockfighting, he claimed that he left the place at 11 o'clock in the same morning and went home where he stayed the whole day without going out.

On his part, Ponciano Mitra admitted that he had an encounter with the deceased Manuel Brabante at the time and place testified to by the witnesses for the prosecution. However, his version is that it was the deceased Manuel Brabante who, upon seeing him, said: "It is good that you are here. You are so arrogant during the time when there was a dance", and then immediately gave him (Ponciano) a fist blow on the chest. Thereupon, Ponciano ran away without retaliating because Manuel was bigger. Manuel chased Ponciano while Virginio Zurbito and Mario Ballesteros also ran after Ponciano. After running a distance of from 150 to 200 meters, he (Ponciano) heard a gunshot and as he turned his head, he saw Virginio Zurbito and Mario Ballesteros hacking Manuel Brabante with their bolo and machete. As Brabante fell to the ground, the 2 beckoned at him and as he approached them, he saw Zurbito take a pistol from the right hand of the prostrate Manuel. When he got near, Mario Ballesteros and Virginio Zurbito told him to surrender with the pistol and their bolo and machete, which he did allegedly "because of the fact that they killed the deceased out of my sake, according to them."

Zurbito, on his part, admitted that he too was at the house of Benjamin Hate (son of Juana Brabante) at about 1 o'clock on the day in question, and that he saw Ponciano Mitra, Jesus Mitra, Mario Ballesteros and Felizardo Cantuba, coming to the same place all armed with boloes and machete, except Mario who had a pistol. He said that upon the arrival of the four, Ponciano immediately stabbed Manuel Brabante but did not hit him. Manuel

thereupon ran away and was chased by Ponciano, Jesus, Mario and Cantuba. He tried to stop them, but they did not heed him. Later, he saw them help each other and gang up on Manuel Brabante, using their weapons.

Appellants assign as error the finding of the trial court that they committed the crime of murder. In addition, appellants Ponciano and Jesus Mitra, raise the following legal issues: (1) Failure of the trial court to dismiss the case against them as it did with respect to Ballesteros and Cantuba; and (2) Lack of authority of Judge Dollete to decide the case. These issues will be discussed first.

In their brief, Ponciano and Jesus Mitra take advantage of the statement of Judge Dollete in his decision that "Virginio Zurbito and Jesus Mitra . . . were in the same category as Ballesteros and Cantuba after the prosecution has rested its case." From this, it is argued that since the case was dismissed provisionally as to Ballesteros and Cantuba, Jesus Mitra should now be acquitted instead of being convicted. The discrimination, according to him, denies him equal protection and due process of law. He contends that the provisional dismissal of the case as to Ballesteros and Cantuba, in effect, terminated the case as to him. He, therefore urges that the case against him be likewise dismissed so that he may be placed "in parity" with Ballesteros and Cantuba. It will be noted, however, that unlike said two accused, Jesus Mitra never filed a motion to quash. The trial court, therefore, in disposing of the motion of Ballesteros and Cantuba, had no opportunity to examine the evidence against Jesus Mitra. The court (in the person of Judge Santos) passed solely upon the evidence against movants Ballesteros and Cantuba, but not against non-movants Ponciano Mitra, Jesus Mitra, and Zurbito. Later, however, after the defense had closed its evidence and the court had the opportunity of weighing everything before it, the trial court through Judge Dollete, found and concluded that Ballesteros, Cantuba, Zurbito and Jesus Mitra are all in the "same category", that is, they are all equally guilty. Consequently, he sentenced Mitra and Zurbito, but could not do so with respect to Ballesteros and Cantuba because these two have been previously discharged. Hence, Jesus Mitra's claim that the trial court should have also discharged him when it did discharge Ballesteros and Cantuba, even if he did not file a motion to dismiss, is without any basis. His contention that he has been denied equal protection and due process of law is, therefore, untenable considering that he is not similarly situated as Ballesteros and Cantuba, who had filed a motion to quash.

The argument that it is dangerous procedure "to leave the life and liberty of a man hanging on the individual opinions of two judges acting separately and independently of each other," assumes that the guilt of Jesus Mitra was not proved "in the opinion of Judge Santos", but appreciated otherwise by Judge Dollete. The fact, however, is that, Judge Santos never passed upon the question of Jesus Mitra's guilt. To conclude that there was a reappraisal of the same evidence by another judge of equal rank, is to consider as a fact that which never took place. The only judge who was given the opportunity to weigh all evidence submitted to the trial court was Judge Dollete, and the latter found evidence sufficient to sustain a conviction of all the accused, notwithstanding the provisional dismissal of the case made by Judge Santos as to Ballesteros and Cantuba. It was not, therefore, possible for him to dismiss the case as to Jesus Mitra as alleged in the first assigned error.

The next issue raised is the lack of authority of Judge Dollete to decide the case. It is contended that Judge Dollete was without any authority to decide the case on November 11, 1957, as he was already in his station at the Court of First Instance of Bataan.

The contention is without merit. Judge Dollete heard and decided this case, among others, pursuant to the authority granted by the Supreme Court, upon petition of the Secretary of Justice, by reason of the vacancy in the Court of First Instance of Masbate created by the resignation of Judge Santos. Thus, his decision is valid as expressly authorized under Section 9, Rule 124 of the Rules of Court and Section 51 of the Judiciary[1] which, respectively, provide that—

"SEC. 9. Signing judgments out of province.—Whenever a judge of a Court of First Instance shall hold a

session, special or regular, in any province, and shall thereafter leave the province without having decided a case heard at such session, it shall be lawful for him, if the case was duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare and sign his decision anywhere within the Philippines and send the same to the clerk of the court by registered mail, to be filed in the court as of the day when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the filing of the judgment." (Italics supplied.)

"SEC. 51. Detail of judge to another district or province.— * * * Whenever a judge appointed or assigned in any province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction." (Italics supplied.)

On the factual findings of the trial court, all three appellants assail the credibility of the Brabante sisters. We have examined the records and we are satisfied that the incident occurred as testified to by the prosecution witnesses. Their testimony is corroborated by the admissions of Ponciano Mitra as well as those of Zurbito. For instance Ponciano admitted that he was accompanied by Ballesteros and Zurbino who were both armed. Zurbito, on the other hand testified that Ponciano arrived at the place with Jesus Mitra, Cantuba, and Ballesteros, all armed with boloes and machete, except the latter who had a revolver, and that the two Brabante sisters were really with their brother Manuel. Both appellants admit the chasing, although Ponciano claims he was the one chased.

It is true that there is no evidence on record about the actual slaying of the deceased other than that given by appellants Ponciano Mitra and Zurbito against each other and against the other accused. It is, likewise, true that because of the separate trials for the accused, the aforementioned evidence can not be used against any of the accused. Nevertheless, said absence of evidence about the actual slaying does not preclude the conviction of herein appellants. The facts which the trial court considered as establishing conspiracy, in our opinion, carry sufficient weight to sustain conviction, considering that the declaration of prosecution witnesses Maria and Avelina Brabante, partially corroborated as noted above by admissions of the appellants, tally with their statements given to the police on the very spot where the deceased was found (pp. 24-25, t.s.n. in relation to pp. 4-5, rec.) These statements were given at a time when fabrication was farthest from the minds of said witnesses. On the basis of their testimonies, the trial court correctly found the existence of conspiracy from the following facts: (1) arrival of the five accused all armed, in the yard of Juana Brabante's house, where the deceased and his two sisters were; (2) the immediate hacking by Ponciano Mitra; (3) the chase made by the five accused when the deceased ran away; (4) the return of the five accused to their homes, passing by the house of Juana Brabante, shortly thereafter; (5) the finding of the deceased's body in the place where he was chased; (6) the presence of several wounds on the deceased's body; and (7) the surrender of Ponciano Mitra to the authorities of Batuan, Masbate. In addition, mention may also be made of the fact that the four accused, posted themselves one braza from their companion Ponciano Mitra while the latter stabbed the deceased. That the details of a common plan do not appear in evidence, is immaterial. It is enough that each accused pursued the same object and achieved it through their collective acts. Direct proof is not essential to show conspiracy. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting

among them to concert means is proved. (People vs. Carbonel, 48 Phil., 868; People vs. Cu Unjieng, 61 Phil., 236; People vs. Racid Lucman, 97 Phil., 575; 52 Off. Gaz. [4] 2010.) [2] There being conspiracy, all the accused are liable for the crime committed.

We do not agree with the finding of the trial court that there was treachery in the killing of the, deceased Manuel Brabante. Although the act of Ponciano Mitra in stabbing the deceased from behind while the latter was seated on the bench may be considered treacherous, there is no competent evidence that after he was chased by the five accused, the deceased was stabbed in a treacherous manner at the actual place where he was found dead. Except for the testimony of the appellants themselves against each other, which is inadmissible because of the separate trial, there was no eyewitness to the stabbing which resulted in the death of the deceased. Neither do we find the circumstance of evident premeditation attendant in the commission of the crime, because there is also absent the slightest evidence on record that the five accused had, prior to the moment of the killing, resolved to commit the crime, nor is there any proof that the deceased's death was the result of meditation, calculation, reflection on the part of the accused. (U.S. vs. Donoso, 3 Phil., 234; U.S. vs. Balagtas, 19 Phil., 164.) The crime committed, however, is qualified by abuse of superior strength, it appearing that the accused were all armed and decidedly superior in number than the deceased who was unarmed. (People vs. Caroz, et al, 68 Phil., 521.) Hence, the trial court is correct in finding appellants guilty of the crime of murder. Ponciano Mitra is entitled to the mitigating circumstance of voluntary surrender, as he surrendered voluntarily to the police immediately after the commission of the crime. His sentence should, therefore, be reduced to reclusion temporal in its maximum period. However, in accordance with the Indeterminate Sentence Law, we impose upon him the in determinate penalty of from 10 years and 1 day of prision mayor, as minimum, to 17 years, 4 months, and 1 day of reclusion temporal, as maximum.

Modified as above indicated, the judgment of the trial court is affirmed, with costs against the appellants. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur. Montemayor, J., took no part.

[1] Rep. Act 296, as amended.

[2] People vs. Calucer, 95 Phil., 192, People vs. Alfiler, 104 Phil., 410; 56 Off. Gaz. (5) 936; People vs. Moises, L-10876, September 23, 1958.

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