

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PIO RICOHERMOSO, SEVERO PADERNAL, JUAN PADERNAL,
ROSENDO PERPEÑAN, MACARIO MONTEREY AND RITO MONTEREY,
DEFENDANTS, JUA...**

G.R. NOS. L-30527 & L-30528. March 29, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

Severo Padernal and Juan Padernal appealed from the decision of the Circuit Criminal Court at Lucena City, convicting them of murder, sentencing each of them to reclusion perpetua and ordering them to pay solidarily the sum of twelve thousand pesos to the heirs of Geminiano de Leon and to pay the costs (Criminal Case No. CCC-IX-37-Quezon or 1922-CFI-Gumaca).

In the same decision they were convicted of lesiones leves. Each one was sentenced to suffer the penalty of fifteen (15) days of arresto menor and to pay the costs. Rosendo Perpenan, Rito Monterey and Macario Monterey were acquitted (Criminal Case No. CCC-IX--38-Quezon or 1923-CFI-Gumaca).

The facts disclosed in the prosecution's evidence, on which the judgment of conviction was based, are as follows:

At about nine o'clock in the morning of January 30, 1965 Geminiano de Leon, together with his thirty-three-year old common-law wife Fabiana Rosales, his twenty-four-year old son Marianito de Leon and one Rizal Rosales, encountered Pio Ricohermoso in Barrio Tagbacan Silangan, Catanauan, Quezon.

Geminiano owned a parcel of land in that barrio which Ricohermoso cultivated as kaingin. Geminiano asked Ricohermoso about his share of the palay harvest. He added that he should at least be allowed to taste the palay harvested from his land. Ricohermoso answered that Geminiano could go to his house anytime and he would give the latter palay. Geminiano rejoined that he could not get the palay that morning because he was on his way to Barrio Bagobasin but, on his return, he would stop at Ricohermoso's house and get the palay.

When Geminiano returned to Barrio Tagbacan Silangan, he stopped at Ricohermoso's place. It was about two o'clock in the afternoon. Geminiano sat-on a sack beside Fabiana Rosales in front of the house while Marianito stood-about three meters behind his father. A .22 caliber rifle was slung on Marianito's right shoulder. Ricohermoso stood near the door of his house while Severo Padernal was stationed near the eaves of the house.

Geminiano asked Ricohermoso about the palay. The latter, no longer conciliatory and evidently hostile, answered in a defiant tone: "Whatever happens, I will not give you palay." Geminiano remonstrated: "Why did you tell us to pass by your house, if you were not willing to give the palay?"

At that juncture, as if by prearrangement, Ricohermoso unsheathed his bolo and approached Geminiano from the left, while Severo Padernal (Ricohermoso's father-in-law) got an axe and approached Geminiano from the right. The latter looked up to the sexagenarian Severo Padernal, with both hands raised and pleaded: "Mamay

(Grandpa), why will you do this to us. We will not fight you." While Geminiano was still looking up to Severo Padernal on his right, Ricohermoso walked to Geminiano's left, and, when about one meter from him, stabbed him on the neck with his bolo. Geminiano fell face downward on the ground. While in that helpless position, he was hacked on the back with an axe by Severo Padernal.

At that same place and time, while Severo Padernal and Ricohermoso were assaulting Geminiano de Leon, another episode was taking place. Juan Padernal (Ricohermoso's brother-in-law and the son of Severo) suddenly embraced Marianito de Leon from behind, with his right arm locked around Marianito's neck and his left hand pressing Marianito's left forearm. They grappled and rolled downhill towards a camote patch. Marianito passed out. When he regained consciousness, his rifle was gone. He walked uphill, saw his mortally wounded father Geminiano in his death throes, and embraced him. He carried Geminiano for a short distance. The fifty-one year old Geminiano died at two o'clock on that same day.

Doctor Isabela A. Matundan certified that Geminiano de Leon sustained the following wounds:

- "1. Wound, incised, neck, lateral aspect, left, cutting the carotid artery and jugular vein, 4 inches in length crosswise with fracture of the cervical vertebra.
2. Wound, incised, back, lumbar region, left 4-1/2 inches, directed anteriorly, 3 inches deep.
3. Wound, incised, waist, dorsal, 1-1/2 inches, skin only.
3. Hematoma, forearm, upper third, left." (Exh. B).

Doctor Matundan said that the first wound was fatal. It could have caused instantaneous death because it was a deep wound which pierced the carotid artery and jugular vein (Exh. C). The second wound on the back could likewise have caused the victim's death if it had penetrated the kidney.

Doctor Matundan found that Marianito de Leon sustained multiple abrasions on the neck and abdomen and a lacerated wound on the left foot which would heal from one to nine days even without medical treatment.

Appellants' version is that in the afternoon of January 30, 1965, when Ricohermoso refused to give any palay to Geminiano de Leon, because the land tilled by the former was allegedly a public land, Geminiano approached Ricohermoso. When Geminiano unsheathed his bolo, Ricohermoso met him, drew his bolo and struck Geminiano on the left side of the neck. The latter tried to parry the blow. He was wounded in the wrist. As Geminiano turned right to flee, Ricohermoso struck him again on the left side of his body, causing him to fall on the ground. Geminiano died on the spot due to the bleeding from the wound on his neck.

While Geminiano was being assaulted, his son Marianito tried to shoot with his rifle but Juan Padernal disabled him and wrested the gun. Marianito suffered abrasions on the neck and other parts of the body (Pages 1 to 3, appellants' brief).

It is manifest that the defendants fashioned their version in such a way as to shift the responsibility for the killing to Ricohermoso, a fugitive from justice who has not been tried. They also tried to exculpate Severo Padernal and to prove that Ricohermoso acted in self-defense.

The appellants filed their brief on February 6, 1970. Later, Severo Padernal withdrew his appeal. The withdrawal was granted in the resolution dated November 3, 1970 (Page 206, Rollo). That withdrawal strengthened the case for the prosecution or the appellee and rendered inoperative appellants' version of the case. Severo Padernal in effect accepted as correct the prosecution's version of the tragic incident and the trial court's finding that he conspired with Ricohermoso and his son, Juan, to kill Geminiano de Leon.

The only issue in this appeal, which concerns Juan Padernal, is whether he conspired with Ricohermoso and Severo Padernal to kill Geminiano de Leon.

The trial court rationalized its conclusion that there was conspiracy by stating that their conduct revealed unity of purpose and a concerted effort to encompass Geminiano's death.

Appellant Juan Padernal invokes the justifying circumstance of avoidance of a greater evil or injury (par. 4, Art. 11, Revised Penal Code) in explaining his act of preventing Marianito de Leon from shooting Ricohermoso and Severo Padernal. His reliance on that justifying circumstance is erroneous. The act of Juan Padernal in preventing Marianito de Leon from shooting Ricohermoso and Severo Padernal, who were the aggressors, was designed to insure the killing of Geminiano de Leon without any risk to his assailants.

Juan Padernal was not avoiding any evil when he sought to disable Marianito. Padernal's malicious intention was to forestall any interference in the felonious assault made by his father and brother-in-law on Geminiano. That situation is unarguably not the case envisaged in paragraph 4 of article 11.

Juan Padernal contends that he was not a co-principal because he did not take any direct part in the killing of Geminiano, that he did not force or induce Ricohermoso to stab Geminiano and that he allegedly did not cooperate in its commission. That contention is not well-taken.

It should be recalled that, in the morning, Geminiano had an understanding with Ricohermoso that he (Geminiano) would return in the afternoon to get his share of the palay harvest. Ricohermoso gave Geminiano the impression that he (Ricohermoso) was amenable to giving Geminiano his share of the harvest. However, during the interval, Ricohermoso changed his mind. Instead of remaining steadfast to his original intention to give Geminiano palay, Ricohermoso planned with his father-in-law, Severo Padernal, and his brother-in-law, appellant Juan Padernal, the manner of liquidating Geminiano so as to stop him from pestering Ricohermoso with demands for a share in the harvest.

So, when Geminiano reappeared at Ricohermoso's place in the afternoon, Severo Padernal, Ricohermoso and Juan Padernal, like actors in a well-rehearsed play, performed their assigned roles with dramatic precision. Severo Padernal and Ricohermoso, one armed with an axe and the other with a bolo, in a pincer movement, confronted Geminiano de Leon. Simultaneously with that maneuver, the thirty-five-year old Juan Padernal embraced Marianito de Leon and prevented him from firing at Severo Padernal and Ricohermoso or from helping his father.

Considering the trio's behavior and appellant Juan Padernal's close relationship to Ricohermoso and Severo Padernal, the ineluctable conclusion is that he acted in conspiracy with them. He coordinated and timed his seizure of Marianito with the assault of Ricohermoso and Severo Padernal on Geminiano. It is doubtful if the assailants could have consummated the killing of Geminiano, without their suffering any injury, if Marianito had not been rendered helpless by appellant Juan Padernal.

The circumstances surrounding the killing of Geminiano de Leon disclose alevosia or treachery. His hands were raised and he was pleading for mercy with Severo Padernal, when Ricohermoso struck him on the neck with a bolo. The fact that an exchange of words preceded the assault would not negate the treacherous character of the attack. Geminiano did not expect that Ricohermoso would renege on his promise to give him palay and that he would adopt a bellicose attitude. Juan Padernal's role of weakening the defense, by disabling Marianito de Leon, was part and parcel of the means of execution deliberately resorted to by the assailants to insure the assassination of Geminiano de Leon without any risk to themselves (Par. 16, Article 14, Revised Penal Code).

Treachery was appreciated in a case where the accused fired at the victim who, with hands upraised, pleaded in a loud voice: "Do not shoot me; investigate first what was my fault" (People vs. Barba, 97 Phil. 991. See People vs.

Dagundong, 108 Phil. 682, 684, 693).

As to the other case, L-30528, the charge against the appellants was attempted murder with respect to Marianito de Leon. The trial court convicted them of lesiones leves. The case was included in this appeal apparently pursuant to the provision in section 17(1) of the Judiciary Law that a case arising out of the same occurrence, as that in which reclusion perpetua was imposed, is appealable to this Court.

Inasmuch as Juan Padernal did not touch upon the lesiones leves case in his brief, he, like his father Severo, seems to have acquiesced in the correctness of the trial court's decision.

WHEREFORE, the judgment of the lower court as to appellant Juan Padernal is affirmed with costs against him.

SO ORDERED

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

Antonio, J., took no part.

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