

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ISAIAS MACALISANG, ACCUSED-APPELLANT.

G.R. No. L-24546. February 22, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The charge is murder. The judgment below sentenced appellant to life imprisonment, to indemnify the heirs of the deceased in the sum of P6,000.00, and to pay the costs.

Following are the facts:

In the morning of November 14, 1949, two bloody incidents occurred in the town of Sinacaban, Misamis Occidental.

About 9:00 o'clock in the morning of that day, Victoriano Simbajon, defeated candidate for Mayor of Sinacaban, approached incumbent Mayor Sofronio Avanceña, his opponent and the victor, near the municipal building. Victoriano Simbajon - who was then accompanied by his son, Panfilo, and his son-in-law, Arturo Yap - while still at a distance, raised his hands apparently to signify that he accepted defeat, invited the Mayor to ride with him in his jeep in going to a wedding party to which both were invited. Mayor Avanceña politely declined. Simbajon and his party left, went down the slope leading to the national highway.

Sometime later, Avanceña, followed by the Chief of Police, herein appellant Isaias Macalisang and Patrolman Liborio Dominguez left on foot, followed the same route. As they approached the highway, Simbajon - then standing near the house of one Isabelo Plaza - again offered his jeep to Avanceña. The latter again declined, stated that he would take the jeep of the municipal health officer. Immediately thereafter, there was a burst of gunfire in rapid succession. Mayor Avanceña was mortally wounded; his two companions critically wounded.

Parenthetically, for these crimes, Victoriano Simbajon, Feliciano Simbajon, Panfilo Simbajon and Bonifacio Simbajon, in separate cases jointly tried, were prosecuted for (1) the murder of Mayor Avanceña, the frustrated murder of herein appellant Isaias Macalisang, and (3) the frustrated murder of Patrolman Liborio Dominguez. They were all convicted below. For the crime of murder, they were all sentenced to reclusion perpetua, and for the other two crimes, they were separately given prison terms by the trial court. Bonifacio Simbajon did not appeal. The judgment as to the rest was affirmed by this Court on September 30, 1965 (G. R. No. L-18073-75), with a slight modification as to the penalty for the frustrated murders.

Minutes after the incident heretofore described, Fr. William Bourke, the town parish priest, who heard the shots, came upon the scene of the crime together with his houseboy, Benjamin Lopez, in the former's jeep. He administered the last sacraments. Appellant Isaias Macalisang was lifted by Benjamin Lopez and placed in the front seat of the jeep between him and Fr. Bourke, who was at the wheel. They proceeded to Ozamis City. While the jeep was negotiating a curve in Barrio Casoy of Sinacaban, appellant Macalisang pointed his gun at Francisco Dano, who was at the curb of the road by the mountainside, and fired. Francisco Dano was hit. The bullet entered

his back at the right of the mid-spinal line; it came out thru the right chest. He shouted to his wife: "Help help, Day, I am hit by the gun. Help, I will die." Francisco Dano's wife, Perfecta, rushed to his side and found that he was bleeding in front and in the back of his body. She asked Dano who shot him. Dano's reply: "Chief Isaias Macalisang." Brought to Ozamis City, Dano expired on the same day.

Came the present prosecution for murder with the result noted at the start of this opinion.

1. That it was appellant Macalisang who fired the shot which killed Dano, we do not doubt. Upon hearing the shot, Fr. Bourke saw the gun held by appellant still pointed at the side of the road. Benjamin Lopez testified that he first noticed the deceased Dano some forty meters away; that as they were getting closer to Dano, appellant took his gun from his lap, pointed it at the former, fired once; that he grabbed the gun from Macalisang; that thereafter, they proceeded to Ozamis City; and that there, Fr. Bourke took the gun from him and surrendered it to the Philippine Constabulary. And then, there is the testimony of Perfecta vda. de Dano that when she approached her husband, the latter told her that it was Chief Macalisang who shot him. This is in the nature of a dying declaration. At that time, Dano felt that he was at the point of death. Indeed, he was in a very serious condition. In fact, he died on the same day.[1]

2. But appellant pleads that he was unconscious or under shock at the time the act was committed. The factual support for this is that in the earlier incident, he received gunshot wounds "from the point of my penis hitting my x x x (gonads) to my lap"; that his left leg was broken; that he fell into the canal. He further relates that from then on, he lost consciousness until he was already treated at the Medina Hospital in Ozamis City. As prop for his testimony, he presented Dr. Rico Medina his attending physician.

The doctor's version is that appellant was in a very serious condition when brought to the hospital because of the bullet wound he suffered at the tip of the penis that pierced the right lateral portion of the scrotum, the bullet wound on the lower, right extremity, and loss of blood. According to the doctor, these injuries would cause momentary unconsciousness for a length of time depending upon the resistance of the patient. Appellant is robust. In this case, the doctor opines that "there is very big proba-bility" that Macalisang "during the time of the accident was unconscious." He stressed, however, that it was possible that Macalisang could "recover consciousness after 10 minutes," could have recognized persons, and could have been in full control of the upper extremities which were not affected at all by the wounds.

Appellant's testimony falls far short of convincing us, as it did not convince the lower court, that he did not deliberately fire at Dano. He was, indeed, conscious at that time. When placed on the jeep, he took the precaution of placing his service revolver on his lap. Lopez saw him take that gun and fire at Dano. The priest, upon hearing the shot, saw appellant with the gun still pointed at the side of the road. The version of Captain Benjamin Rafols, who interviewed appellant in the hospital, furnishes the clincher. Appellant admitted to the captain, "I was the one who shot Mr. Dano." This statement is definite, although the captain stated that Macalisang was confused as to the shooting incident that occurred earlier in the morning.

And then, the doctor affirmed that it was possible that appellant could have regained consciousness after 10 minutes. Between the time appellant was hit by gunfire to the time the priest in his jeep came by, the evidence is that about 10 to 15 minutes transpired. A criminal act is presumed to be voluntary. We cannot seize upon speculation or guesswork to overturn this presumption.

At any rate, between the self-serving version of appellant and the indecisive testimony of his doctor, on the one hand, and the positive assertion of Fr. Bourke, witness Lopez and Capt. Rafols, on the other, the choice is clear. Fact prevails over assumption.

Absent an aboveboard explanation, the shooting must be declared voluntary and punishable.

3. Treachery, according to the decision below, qualifies the crime as murder. Appellant's assertion to the contrary is not to be slightly taken. It deserves serious consideration.

Jurisprudence has it that the mere location of the bullet wound at the back - as is the case here - by itself, does not prove treachery.[2] Neither will suddenness of the attack alone.[3] Even if the purpose was to kill, so long as the decision was sudden and the victim's position accidental, no treachery attaches to the killing.[4]

The question of treachery perhaps may not be thoroughly under-stood except in the peculiar setting of this case. Appellant knew that Dano was the chief adviser of the defeated candidate for Mayor, Victoriano Simbajon. Dano delivered speeches against Mayor Sofronio Avanceña and wrote leaflets attacking the latter. Chief of Police Macalisang, in turn, was a supporter of the deceased Mayor Avanceña. After Macalisang was wounded, he did not go in search of Dano. It just so happened that on his way to Ozamis City, he saw Dano on the road. Appellant was in a running jeep; the victim standing at the side of the road. It was an impulse of the moment that led to the attack which caused death.

The resulting crime is not murder qualified by treachery. Because, it does not appear that "the method of assault adopted by the aggressor was deliberately chosen with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed may make." [5]

With treachery eliminated, the crime thus committed is homicide. The amended information charged that appellant is a recidivist. He was really convicted of serious physical injuries and less serious physical injuries on September 4, 1941.[6] Therefore, the homicide herein committed is attended by one aggravating circumstance, with none in mitigation. The penalty should be reclusion temporal in the maximum period.

We, accordingly, modify the judgment appealed from,[7] and sentence defendant for the crime of homicide to suffer imprisonment for an indeterminate period ranging from eight (8) years and one (1) day of prision mayor, as minimum, to seventeen (17) years, four (4) months and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of the deceased Francisco Dano in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, but with the accessories of the law, and to pay the costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Section 31, Rule 130, Rules of Court; 5 Moran, Comments on the Rules of Court, 1963 ed., pp. 282-283.

[2] U.S. vs. Perdon, 4 Phil. 143-144; U.S. vs. Pangilion, 34 Phil. 786, 792-793; U.S. vs. Atig, 36 Phil. 303, 312; People vs. Abril, 51 Phil. 670, 675; People vs. Embalido, 58 Phil. 152, 153.

[3] Ramos vs. People, 1967C Phil. 431, 436, citing Perez vs. Court of Appeals, L-13719, March 31, 1965.

[4] People vs. Cadag, L-13830, May 31, 1961.

[5] People vs. Cañete, 44 Phil. 478, 481, citing Viada, 2 Supp., 3d ed., p. 76; emphasis supplied. See: U.S. vs. Devela, 3 Phil. 625, 628; U.S. vs. Namit, 38 Phil. 926, 929; People vs. Calinawan, 83 Phil. 647, 648; People vs. Tumaob, 83 Phil. 738, 742; People vs. Abalos, 84 Phil. 771, 773; People vs. Cadag, supra.

[6] Criminal Case 1984, Court of First Instance of Misamis Occidental, entitled "El Pueblo de Filipinas,

Querellante, contra Isaias Macali-sang, Acusado." See Exhibit D-1.

[7] Criminal Case 5131, Court of First Instance of Misamis Occidental, entitled "People of the Philippines, Plaintiff, versus Isaias Macali-sang, Accused."

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