

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GERONCIO MENDEZ, ALIAS BABY, AND ABING BOLIOC,
DEFENDANTS WHOSE DEATH SENTENCES ARE UNDER REVIEW.**

G.R. No. L-48131. May 30, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This is a case of double murder. Geroncio Mendez and Abing Bolioc (Ricardo Bulloc, a member of the cultural minority) were convicted of murder for the killing of Roberto Boiser, sentenced to death and ordered to indemnify his heirs in the sum of fifteen thousand pesos. They were also convicted of the murder of Angel Ibañez, sentenced to reclusion perpetua and ordered to indemnify the heirs of Ibañez in the same amount of fifteen thousand pesos. (Criminal Case No. 546.)

The two accused did not appeal. So, this is an automatic review of the death penalty imposed on the two accused for the killing of Boiser. The judgment in the Ibañez case is not under review. It has become final and executory.

The prosecution states as factual background that in September, 1974, Roberto Boiser, 23, filed a complaint for lesiones leves against Geroncio Mendez and Celestino Mendez in connection with an incident in a basketball game. Getoncio and Celestino filed a counter-charge for lesiones graves. Angela Abay-Abay, the mother of Boiser, filed against Abing Bolioc a complaint for lesiones menos graves.

According to the prosecution eyewitnesses, at about five o'clock in the afternoon of October 20, 1974, Boiser, together with his sister Beatriz and his cousin Elsa, boarded a pedicab at the crossing of Barrios Macangao and Manikling bound for Tagbua, all in Lupon, Davao Oriental. The other passengers were Angel Ibañez, Dioseto Garcia and a child.

When the pedicab reached a creek, Boiser, Beatriz and Elsa left the pedicab to enable it to negotiate an ascending road but Ibañez, Dioseto and the child remained in the pedicab.

As Boiser was about to reenter the pedicab after the ascent, Felimon Mendez suddenly emerged from the roadside and struck him on the forehead with a piece of wood (Exh. A), causing him to fall on the ground. Beatriz told Felimon Mendez not to strike Boiser for the second time.

Then, Geroncio Mendez, Leonido Estellero, Demetrio Mendez, and Bolioc suddenly materialized. They emerged from the "alepante" grass. Geroncio Mendez stabbed Boiser with a hunting knife (Exh. B) while Bolioc, Estellero and Demetrio Mendez one after the other struck him with pieces of wood. Beatriz repeatedly told the attackers to stop the assault.

Meanwhile, Ibañez pleaded with Felimon Mendez not to kill Boiser but Geroncio Mendez chased Ibañez and stabbed him twice. The assailants then forced the pedicab driver to take them to a place called the New Visayas.

Boiser had five wounds. He was wounded near the eyebrows and on the bridge of the nose. He had a four-inch

long hematoma from the lower half of the left ear down to the left angle of the mouth, a clean-cut wound below the left nipple which injured his lungs (evidently a fatal wound), and a back wound. He had bruises on the left leg. (Exh. E.)

Ibañez had a head wound five and one-fourth inches long which penetrated his brain and a shoulder wound.

Only Geroncio Mendez, Celestino Mendez, Demetrio Mendez and Bolioc were charged in a single information with double murder. Felimon Mendez and Estellero remained at large. Demetrio Mendez died during the trial. The trial court rendered the judgment of conviction already mentioned against Geroncio Mendez and Bolioc. It acquitted Celestino Mendez.

Counsel de oficio contends that the trial court erred in convicting Geroncio Mendez of murder "and imposing upon him the penalty of death and in not imposing a lighter penalty on grounds of reasonable doubt". That contention has no merit.

Geroncio Mendez (he was 29 in 1977), a resident of Barrio Tagbua, testified that at the time the double murder was perpetrated, he was in Barrio Macangao purposely to buy some viands; that on his way home from Macangao he happened to hear Elsa Boiser and Beatriz Boiser shouting: "Do not kill my brother"; that he was about thirty to forty meters from the scene and did not recognize the person sprawled on the ground face down; that he did not stop because he was afraid; and that after he passed that place he noticed the presence of his cousins, Etil Mendez, Lim Mendez and Nito Estellero with Etil holding a bloodstained bolo and Lim holding a piece of wood. He did not see Bolioc. He went home, passing along the coconut groves. He informed no one of the incident he had just witnessed.

Geroncio Mendez had previously pleaded guilty to the charge of lesiones leves filed by Roberto Boiser. His participation in the killing of Boiser was established by the testimonies of the prosecution witnesses. Their testimonies are conclusive.

The fact that the hunting knife (Exh. B) was left by Felimon Mendez with Estanislao Mero does not necessarily mean that it was not used by Geroncio Mendez, as contended by counsel de oficio. Whether Geroncio used a bolo or a hunting knife (and it is admitted that he used a deadly weapon) would not alter his culpability in the case.

The other co-accused, Bolioc, did not testify. Celestino Mendez provided an alibi for him. Bolioc is the brother of the wife of Celestino. He lived with them at Barrio Tagbua and worked there as a helper. Celestino testified that when the double murder was committed, Bolioc was in Celestino's house preparing their food. The house is about two kilometers from the creek.

The testimony of Celestino cannot prevail over the positive identification made by the prosecution witnesses pointing to the indubitable fact that Bolioc was one of those who attacked Roberto Boiser and killed him.

After the promulgation of the sentence, the parents of Abing Bolioc moved for a new trial on the ground of Bolioc's minority. He was allegedly born on December 18, 1959. They asked for a suspended sentence for Bolioc. They averred that being members of the cultural minority they failed to have his birth registered with the local registrar. So, when the crime was committed, Bolioc was only fourteen years, ten months and two days old. The trial court denied the motion on the ground that the Child and Youth Welfare Code does not apply to those convicted of offenses punishable by death, or reclusion perpetua (Presidential Decree No. 603, as amended by Presidential Decree Nos. 1179 and 1210). The fact is Bolioc is now twenty-three years old. He is not entitled to a suspended sentence.

He is entitled to a two-degree reduction of the penalty (Art. 68, RPC). He should be sentenced to four years of

prision correccional as minimum to eight years and one day of prision mayor medium as maximum for the death of Boiser. (Apparently, there was no conspiracy to kill Ibañez. Geroncio Mendez killed him on the spur of the moment. Only Geroncio should be held liable for Ibañez's death.)

The trial court correctly ruled that the killing of Boiser was murder qualified by evident premeditation and aggravated by treachery. Hence, the death penalty was properly imposed. However, for lack of necessary votes, the capital punishment cannot be imposed.

WHEREFORE, the trial court's judgment is affirmed with the modification that the death penalty imposed on Geroncio Mendez is commuted to reclusion perpetua and that the penalty on Abing Bolioc is reduced as indicated above. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Relova, J., no part.

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