

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VICENTE MENDOZA, HILARION MENDOZA, AND EMILIANO SINU-AG,
DEFENDANTS AND APPELLANTS.***G.R. Nos. L-4146 and L-4147. March 28, 1952*

Ponente: MONTEMAYOR, J.

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In the Court of First Instance of Occidental Negros defendants-appellants Vicente Mendoza, his brother Hilarion Mendoza and Emiliano Sinu-ag, were charged with murder for the killing of Pio Concerman, and in a separate case, appellant Hilarion Mendoza was also accused of serious physical injuries for wounding Simplicio Concerman, brother of Pio Concerman, in the left side of the chest. Because the two crimes were said to have been committed on the same occasion the two cases were tried jointly by agreement of the parties and after trial, the lower court in a single decision found Hilarion Mendoza guilty of serious physical injuries and sentenced him to suffer an indeterminate penalty of not less than three (8) months of *arresto mayor* nor more than one (1) year and eight (8) months of *prision correccional*, to indemnify Simplicio Concerman in the sum of P241.00, with subsidiary imprisonment in case of insolvency, and to pay the costs. In the murder case the Court found that the three accused therein killed Pio Concerman in his own home, the killing having been attended by the qualifying circumstance of evident premeditation and the aggravating circumstance of treachery. All the defendants were sentenced to suffer the penalty of *reclusion perpetua*, to jointly and severally indemnify the heirs of the deceased in the amount of P6,000, and to pay the costs. The three accused in both cases have come here on appeal. However, after the brief for appellant Emiliano Sinu-ag had been filed, he moved for the withdrawal of his appeal. By resolution of this Court of August 7, 1951, said motion was granted and final judgment as to him was entered accordingly.

There is no dispute as to the following facts: On the occasion of the *barrio fiesta* of Mabini, municipality of Escalante, province of Negros Occidental, the Parent-Teacher's Association of the *barrio* held an amateur singing contest at about seven o'clock in the evening of April 30, 1949. A platform was built on the school grounds and a fairly big crowd attended the contest. About twenty contestants took part, and from these, five were selected for the finals. At first, it was proposed to have a board of judges select the winners and Pio Concerman and his brother Simplicio Concerman were selected as members of the board, but they demurred saying that they were not qualified to appreciate and pass upon the merits of the musical contest and so it was decided that the public itself should decide by acclamation who were the best singers. Rufino Sebua was designated to take charge of the contest. Among the five contestants was his son Sofronio Sebua and one Ruth Dueñas. After the contestants had finished singing, it is said that among the five contestants Ruth was the only one who was asked by the public for an *encore*, that is to say, to sing her song again, a sign of the popularity of her song and the way she sang it. After the singing, Rufino Sebua held his hand over the head of each of the contestants and the public applauded, the applause varying in degree according to how much the audience appreciated the song of each contestant. It is also said that when Sebua held his hand over the head of Ruth Dueñas, the applause was great, even overwhelming.

Nevertheless, Rufino declared that a little girl, one of the contestants, won the first prize and his son Sofronio won the second prize, and the third prize went to another boy, and Ruth Dueñas won no prize. This supposedly unjust decision infuriated Emiliano Sinu-ag, husband of Ruth and he vented his resentment and anger on her, saying that her failure to win a prize exposed him to shame and ridicule. He called her down from the platform and then boxed and kicked her at the same time saying that there will be a fight. Pio Concerman left his seat on the platform and went down and spoke to Emiliano, according to the prosecution, to pacify Emiliano telling him not to make trouble for the contest was held for the benefit of the barrio residents. According to the defense, however, Pio Concerman approached Emiliano chiding him and asked if he wanted to fight. From this point on, the version of what occurred thereafter given by the prosecution and the defense appears to be in sharp conflict.

After receiving the evidence and after observing the manner the witnesses testified the trial court accepted the story given by the Government witnesses. We have read every page of the transcript of the evidence and we agree with the trial court that the version given by the prosecution in the main, is more reasonable and natural.

According to the evidence we find that as Pio Concerman approached Emiliano and asked him not to make any trouble because the program was being held for the benefit of the whole barrio, Hilarion Mendoza who was near and currying a knife rushed to Pio, held him by the arm and asked if he was angry. Pio shook him off and before he could answer the question of Hilarion, the latter struck at him with his knife. Pio parried the blow and punched him in the face, sending him reeling backward into the crowd. Hilarion dazed but infuriated came face to face with Pio's brother, Simplicio, whom he immediately stabbed in the left chest, causing a wound about three inches deep. The wound took about forty days to heal and cost Simplicio Concerman P241 in medical bills. In the meantime, Emiliano clubbed Pio felling the latter to the ground, and Hilarion evidently to avenge the punch he had received, went to Pio and with his knife struck the prostrate man on the back of the neck. Then Hilarion and Emiliano left the scene and went to the house of Vicente Mendoza, Hilarion's brother. The wounds sustained by Pio and Simplicio did not prevent them from retiring to their respective homes. Pio told his wife Bienvenida Arañez that he had been wounded by Hilarion. She heated some water, while he rested on the ground floor of the house. She had hardly washed his wound when she heard the three accused Emiliano, Hilarion and Vicente in front of their house shouting and demanding that Pio come out for they would kill him. She and her husband left the ground floor and proceeded to climb the stairs up to the second floor, but they were intercepted by the three accused, Vicente entering through an opening he had made in the wall of the landing and his companions entering through the door. They pulled Pio from the stairs to the ground floor, Vicente holding him by the neck and the two other defendants by his legs and then they proceeded to stab and strike him mercilessly and indiscriminately with their knives, inflicting wounds on different parts of the body, the deep wounds on the clavicular region proving fatal. Bienvenida pleaded with them not to kill her husband but they not only ignored her but even threatened to kill her. Scared by the threat, she went up to the second floor and from the window she saw the three appellants drag the limp body of her husband across the street and dump it into a canal on the other side where they left it dead. With the aid of a friend she boarded an automobile and reported the killing to the police in the poblacion. The police authorities hurried to the scene of the killing. Among the policemen who came was Pilemon Amoan who, after viewing the dead body and having been given the names of the killers, hurried to the house of Vicente Mendoza where he found the three accused. Upon asking them if it was true that they were the ones who killed Pio, they answered in the affirmative and he forthwith placed them under arrest and took them to the poblacion. Sgt. Graciano Navarro went to the house of Simplicio Concerman and found him in a serious condition and he had him sent to the hospital of the Insular Lumber Company.

The theory of the defense is that it was Emiliano and not Hilarion Mendoza who stabbed Pio and Simplicio Concerman in the school grounds, and that it was Emiliano alone who killed Pio Concerman; that shortly after the singing had ended that evening, Vicente Mendoza left his house to the school grounds to get his children who had

gone there to attend the amateur singing contest; that as he was walking in front of the house of Pio Concerman, the latter and his son Romeo suddenly attacked him, punching and clubbing him and that after he had fallen to the ground, Pio sat astride him and squeezed his neck to strangle him, and that just then Emiliano arrived and, either trying to defend Vicente or to give vent to his grudge against Pio, proceeded to stab the latter to death. The lower court rejected this story. Neither can we believe it. The stabbing of Simplicio by Hilarion is clearly established by the testimony not only of Simplicio himself but also by that of Rufmo Sebua and Sofronio Sebua. And as to the killing of Pio, the sincerity of his wife Bienvenida Arañez in vividly recounting to the court the manner in which the three appellants entered her home and killed her husband, even dragging his body across the street and dumping it into a canal, is so convincing that her story must be accepted. Furthermore, the breach in the wall of the house caused by Vicente Mendoza to enter the house, the house furniture battered and scattered all over the floor, the sewing machine overturned and lying on its side the pool of blood on the cement floor and the drops of blood in the street across which the body of Pio was evidently dragged, from the house to the canal where the body was left by his assailants, all of which had been found and noted by the police, mutely but eloquently testify to the violent manner the appellants entered Pio's home, the force and violence employed therein, the murderous attack on him, and his futile attempts to resist and to defend himself. Besides, we see no reason or motive why Bienvenida should falsely accuse the two brothers Vicente and Hilarion of killing her husband.

We therefore find Hilarion Mendoza guilty of serious physical injuries for stabbing Simplicio Concerman. We also find that the three appellants are responsible for the death of Pio Concerman. It is not necessary to ascertain the specific acts of aggression committed by each of them inasmuch as it is clear that they acted in concert and by previous agreement, not only immediately preceding the attack but even from the house of Vicente Mendoza where they gathered before sallying forth to carry out their evil plan.

The trial court found that the killing was done with evident premeditation. We agree with the Solicitor-General that there is no proof of such premeditation. On the contrary, the evidence shows that from the school grounds Emiliano and Hilarion hurried to the house of Vicente Mendoza and soon thereafter, they went to the house of Pio. The interval was so short that there was no time or sufficient period for meditation and reflection. The appellants did not have an opportunity to coolly and serenely think and deliberate on the meaning and the consequences of what they planned to do, an interval long enough for their conscience and better judgment to overcome their evil desire and scheme. One may even say that the killing of Pio in his house was a continuation of the trouble and fight in the school grounds, the stop made at Vicente's house being to consolidate their forces by enlisting the aid of Vicente, and to plan the details of the attack.

We believe that what attended the commission of the crime was the appellants' having taken advantage of superior strength. Pio Concerman wounded, weak and unarmed was no match to the three defendants who were all carrying blade weapons. In fact, Pio was unable to put up an effective resistance. By superior strength he was dragged down from the stairs of his house to the ground floor and there butchered. This circumstance of superior strength qualifies the killing and raise it to the category of murder. It is also true that the killing was done in the very dwelling of Pio Concerman. However, we have our doubts as to the consideration of this aggravating circumstance in order to impose the penalty in its maximum degree. Pio was not attacked and killed just for the sake of killing. The attack really began in the school grounds. We are inclined to believe that Pio provoked the attack, otherwise it is hard to understand why the displeasure, resentment, and anger of Emiliano Sinu-ag and Hilarion Mendoza should be vented and loosed upon Pio instead of Rufino Sebua who was supposed to have made and given the alleged unjust and arbitrary decision awarding the prizes to other contestants including his own son and none to Ruth Dueñas who was said to have given the best performance and merited the approval of the public. We repeat that there is reason to believe that as the defense witnesses stated in their testimony, Pio not only tried to pacify Emiliano but also asked him if he wanted to fight. This, added to the fact that Pio punched

Hilarion in the face while Hilarion was holding him to pacify and prevent him from provoking a fight with Emiliano, inclines us to believe and to find that Pio had given provocation, in which case, the attendance of the crime being committed in the dwelling of the deceased should not be considered (People vs. Cabellon, 51 Phil. 846 and U.S. vs. Licarte, 23 Phil. 10)

We find that the dispositive part of the decision of the trial court is supported by the evidence and is in conformity with law. Therefore, the same is hereby affirmed with costs as regards appellants Vicente Mendoza and Hilarion Mendoza in both cases of murder and serious physical injuries.

So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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