

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANGELITO GUARDO, ET AL., DEFENDANTS, ANGELITO GUARDO,
CATALINO GIPAL AND MAXILIANO GIPAL, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-23541. August 30, 1968

Ponente: DIZON, J.

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DIZON, J.:

Angelito Guardo, Catalino Gipal and Maxiliano Gipal together with Margarito Bolabog, Paquito Herandoy and Justo Constantino were charged with murder in the Court of First Instance of Surigao del Norte (Criminal Case No. 3789). After due trial upon a plea of not guilty the court found Angelito Guardo, Catalino and Maxiliano Gipal guilty as charged, but acquitted the three other defendants for in-sufficiency of evidence, the dispositive portion of the de-cision being as follows:

"WHEREFORE, premises considered, the court finds the accused Angelito Guardo, Catalino Gipal and Maxiliano Gipal guilty beyond reasonable doubt of the crime charged. Angelito Guardo having appeared the most guilty is hereby sen-tenced to an imprisonment for the rest of his natural life. Maxiliano Gipal to an imprison-ment of seventeen (17) years, four (4) months and one (1) day to twenty (20) years; Catalino Gipal to an imprisonment of twelve (12) years and one (1) day of reclusion temporal and all three (3) accused to indemnify the heirs of the deceased in the amount of Three Thousand (P3,000.00) Pesos in equal shares of P1,000.00 each, and to pay the costs of the proceedings also in equal shares. The guilt of Justo Constantino not having been proved beyond all reasonable doubt is hereby adjudged not guilty of the offense and hereby acquits him. Paquito Herandoy and Margarito Bolabog are hereby declared acquitted on reasonable doubt.

SO ORDERED."

From the foregoing decision Guardo and the Gipals interposed the present appeal.

The prosecution evidence shows that Maxiliano Gipal and the deceased Apolinario Edradan had quarrelled on several occasions prior to the fatal incident of December 9, 1963. As a result of one of their quarrels Maxiliano charged Apolinario with slight physical injuries before the Justice of the Peace Court of Surigao, Surigao. The case, however, was dismissed.

On the evening of December 9, 1963, while Apolinario was taking his supper at his mother's home in Surigao, appellant Catalino Gipal, Jr., and Paquito Herandoy arrived to invite him - at the instance of Maxiliano - to go with them to a place known as Riverside, to meet the latter. Apolinario accepted their invitation.

Prosecution witness Teresita Casura testified that at about 11:00 o'clock that evening, while she was out looking for Apolinario at the request of the latter's grandmother, she saw him being mauled by all the defendants at Gonzales St. near appellant Guardo's store; that she saw Guardo stab the deceased with a small bolo at the center of the breast, as a result of which the latter fell to the ground face upwards; that while he was in this position, Guardo stabbed him again on the breast; that he was then dragged by the shoulders by Catalino Gipal and Guardo

to the latter's place, all of them followed by Maxiliano Gipal who was holding a paddle; that once there, Guardo stabbed the deceased twice; that upon witnessing all these, she immediately reported the incident to the victim brother, Sabiniano Edradan, who repaired to the scene of crime where he found his brother mortally wounded. He was then taken to the hospital where he died.

Another eye-witness to the fatal incident was Candido Ronquillo who testified that, while standing at the corner of Gonzales and Rojas streets looking for his son, he saw Maxiliano Gipal hit Apolinario Edradan with a paddle on the dorsal portion of his neck; that thereupon, Catalino Gipal stabbed Apolinario with a small bolo on the right arm, followed by more bolo thrusts by Margarito Bolabog and Justo Constantino on different parts of the victim body, after which he was dragged to Guardo's store where latter mortally stabbed the deceased twice.

A post mortem examination made by Dr. Lourse H. Panaligan showed that the victim sustained numerous wounds in different parts of the body and that his death was due to "shock secondary to internal and external hemorrhage due stabbed wound on the chest".

The assignment of errors made in appellants' brief assail the sufficiency of the prosecution evidence to establish their guilt beyond reasonable doubt, claiming that the trial court erred: firstly, in finding that the wound suffered by the deceased Edradan on the neck was caused by a paddle used by Maxiliano Gipal; secondly, in finding that before said deceased was stabbed to death, appellants rained fist blows upon him; thirdly, in finding that Catalino Gipal stabbed the deceased on the latter's right arm; fourthly, in giving full credence to the testimonies of the prosecution witnesses, and lastly, in not finding that Angelito Guardo was "the sole author of the death of the deceased".

We find all the above contentions to be not well founded.

As the lower court held, the motive for the killing of the deceased Apolinario Edradan was well established because the prosecution evidence - practically uncontradicted is to the effect that before he was fatally assaulted there had been several quarrels between him and Maxiliano Gipal. The latter must have felt that he was the aggrieved party because he took Edradan to court. This feeling must have been aggravated by the fact that the case was dismissed.

That the appellants (and their co-accused in the lower court who were acquitted) had conspired together, to kill Edradan is shown by the fact that upon direction of Maxiliano his brother Catalino and Paquito Herandoy, a laborer working in a launch belonging to the former, invited Edradan to go with them for the purpose of meeting Maxiliano at a place known as Riverside. But apparently even before reaching that place, the Gipal brothers, Angelito Guardo and other persons assaulted him with fist blows first and ended up by attacking him with a paddle and bladed weapons. According to the testimony of the eye witnesses mentioned heretofore, Guardo inflicted upon Edradan two mortal stab wounds; Maxiliano Gipal hit him with a paddle on the neck, while Catalino Gipal also stabbed him with a small bolo on the right arm. While we have noticed some inconsistencies between their respective testimony, we do not consider them sufficient to weaken the prosecution's case, much less to show bias and improper motives on the part of said two eye witnesses.

The fact that Angelito Guardo admits that he was the only one who killed Edradan is clearly a mere attempt to save his co-appellants. It is furthermore belied by the fact that the deceased suffered multiple wounds caused by different weapons.

Considering the evidence of record, it is clear that the crime committed by appellants was that of murder, qualified by treachery, and aggravated by nocturnity and the use of superior strength. The impossible penalty, therefore, is reclusion temporal in its maximum period, to death, and as the three appellants have common

responsibility because of the clear evidence of conspiracy, they should suffer the same penalty. However, for lack of the necessary number of votes to impose the same, each one of the appellants is hereby sentenced to reclusion perpetua.

THUS MODIFIED, the appealed decision is affirmed in all other respects.

Concepcion, C.J., Reyes, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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