

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PERFECTO MACASABWANG, ZOSIMO OLVIDA AND RODOLFO
JAYLO, ACCUSED, ZOSIMO OLVIDA AND RODOLFO JAYLO,
ACCUSED-APPELLANTS.**

G.R. No. L-36806. April 28, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal from the decision of the Court of First Instance of Samar in Criminal Case No. 102, convicting appellants Zosimo Olvida and Rodolfo Jaylo of murder, the dispositive portion of which reads:

"WHEREFORE, the Court finds ZOSIMO OLVIDA guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code and hereby sentences him to RECLUSION PERPETUA and to pay one half of the costs; the Court finds RODOLFO JAYLO guilty beyond reasonable doubt of the crime of murder under the same article and hereby sentences him to an indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor as minimum to EIGHTEEN (18) YEARS EIGHT (8) MONTHS and ONE (1) DAY of RECLUSION TEMPORAL as maximum and to pay one-half of the costs; the preventive imprisonment already suffered by the accused Rodolfo Jaylo shall be deducted from the principal term of his penalty if and when he shall abide by the rules and regulations prescribed by the Bureau of Prisons upon convicted persons otherwise only four-fifths of his preventive imprisonment shall be credited to him; the Court hereby acquits PERFECTO MACASABWANG on reasonable doubt without pronouncement as to costs.

"Zosimo Olvida and Rodolfo Jaylo are ordered to pay jointly and severally the heirs of Pablito de los Reyes the sum of P12,000.00."

The respective versions of the prosecution and of the defense of what occurred are as follows:

Prosecution - About 7:30 in the evening of November 10, 1969, victim Pablito de los Reyes was on his way home from Canlapwas District, Samar after coming from Patag District, Catbalogan, Samar, where he watched, together with others, a combo playing at the street. Cecilio Mabignay, driver of Pablito, and Fermin Alegro were following him. On the way Pablito decided to pass the house of the accused Zosimo Olvida to give him money so that the latter would not continue campaigning for Decoroso Rosales, the political opponent of Fernando Veloso, the brother-in-law of Pablito de los Reyes, in the election of November 11, 1969 for congressman. Upon reaching the store of Estrella Vargas, Pablito stopped to get the political support of Estrella's husband, after which he proceeded to the house of appellant Olvida which was a few meters away.

In the meantime, Mabignay and Alegro were on the other side of the street. They heard Pablito saying: "Good evening" and almost simultaneously they heard several gunshots coming from the house of Olvida. Mabignay and Alegro dropped to the ground as they saw Pablito and Olvida grappling with each other, and appellant Rodolfo Jaylo making thrusting movements with his right hand at Pablito who, thereafter, fell to the ground on his back.

The place was bright because of the Petromax lamp at the store of Estrella Vargas and the electric bulb from a

12-feet lamp post.

Mabignay and Alegro ran away from the scene towards the house of Pablito where they informed his wife, Wilifortes Daz, of what happened. Upon request of Wilifortes they returned and retrieved the body of the victim who was still breathing but soon thereafter died.

The next day, November 11, 1969, the cadaver of Pablito was autopsied by Dr. Cabrasawa who found several gunshots and stab wounds on the victim (Exhibit "D").

On January 10, 1970, the body of the victim was exhumed to determine the cause of death. Exhumation report and findings show:

"Body intact and well preserved.

"Postmortem incision sutured 53.5 cms. long anterior median, extending from the upper sternal region up to the symphysis pubis.

"Abrasions linear two (2) in number 17.9 x 0.1 and 16 x 0.05 cm. crossing each other at a point 1.0 cms to the left of dorsal median line, located at the lower region back of chest.

"Wound lacerated 3.0 x 0.4 cm. with its long axis oriented obliquely downward and laterally at the left lower dorsal lumbar region, with a maximum depth of 0.1 cm.

"Wounds gunshot with its external opening modified by postmortem suturing and embalming: (1) Entrance 1.0 cm. long located at the sternal region level of the 4th intercostal space along anterior median line, directed backward and slightly to the right and downward into the chest cavity, producing a punch-in hole at the corpus sterni, circular in shape cm. in diameter perforating the pericardial sac thereby perforating the left and the right auricles of the heart, perforating the diaphragm and penetrating the abdominal cavity, lacerating postero superior portion right lobe of the liver and causing a depressed fracture of the anterior surface right side body of the 9th thoracic vertebra; and (2) 1.8 cms. long oriented slightly obliquely upward and medially at the front of the left chest level of the 7th intercostal space 4.2 cms. from the anterior median line and 115 cms. above sole of feet directed backward slightly upward and medially into the chest cavity thru the 7th intercostal space thereby producing a circular hole at the intercostal muscle thereat, penetrating the chest cavity, perforating the lower lobe of the lung, perforating the posterior chest wall thru the 8th intercostal space thinner diameter of hole is circular and 0.6 cm. and then caused an exit beyond 1.1 cms. long at the left intercostal space 3.0 cms. from the dorsal median line and 120.3 cms. above sole of feet.

"Wounds stab sutured postmortem with its edges and extremities modified by suturing and embalming: (1) 3.0 cms. long oriented obliquely downward and medially at the anterior aspect left chest level of the 6th intercostal space, medial and lateral extremities are 6.8 cms. and 9.5 cms., respectively, from the anterior median line, directed medially backward and downward perforating the left chest cavity thereby cutting the anterior lumbar base left lung, perforating the diaphragm and penetrating the abdominal cavity up to the lesser curvature of the fundus of the stomach, with a depth of 14 cms.; and (2) 1.2 cms. long oriented horizontally at the left dorsal lumbar region 12.2 cms. from the dorsal median line, directed forward slightly upward and medially taking a muscular course with a depth of 3.0 cms.

"Clotted blood particles within the pericardial sac, left chest and abdominal cavity.

"Stomach is empty.

"Heart cavities contain small amount of clotted blood particles."

Defense - Before 8:00 in the evening of November 10, 1969 Zosimo Olvida was in the house of Beato Franco, in Canlapwas District, Catbalogan, Samar talking about the elections to be held the following day and was proposing

to Franco that they support the candidacy of Decoroso Rosales for congressman. About 7:30 he went home to eat. He was in their kitchen while his wife Pilar was at the door calling his son Zosimo, Jr. His nephew Rodolfo Jaylo was sitting on the bench near the kitchen. Olvida heard his wife shouting "Pulis, Pulis, Pulis." He rushed to the door, elbowed and pushed his wife towards the wall of their living room when he saw a person pointing a gun at her. The man asked Olvida if he was Zosing and when he answered in the affirmative the gun fired. He immediately felt numb on the left side below his nipple. He lifted his left knee and it struck the right hand of the man which was holding the firearm. He then held the right hand of the man with both hands and the gun went off again. They grappled as he intended to wrest away the man's firearm. In their struggle, the man's back was pushed to the bamboo door shutter and, as a consequence, the door was detached from its hinges. He pushed the man hard against the shutter and they both fell on the seat of their pants. He finally succeeded in taking away the gun from the man who tried to retrieve it. The gun went off again and the man slowly slumped on his back.

He tried to get up as he called his nephew Rodolfo Jaylo who brought him to the hospital where he tried to deliver the gun to Dr. Cabrasawan who, however, refused to accept it. He was taken to the emergency room and he placed the gun on the table where he was made to lie down. He lost consciousness and regained it when he heard a commotion outside the room. An agent of the National Bureau of Investigation came to investigate and his statement was reduced to writing (Exhibit "P").

Appellant Rodolfo Jaylo did not take the witness stand but relied on the evidence presented by his co-appellant Zosimo Olvida.

In this appeal, the defense has made the following assignment of errors:

I

"THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT ZOSIMO OLVIDA OF THE CRIME OF MURDER ON THE GROUND THAT HE ACTED IT LEGITIMATE SELF-DEFENSE.

II

"THE LOWER COURT ERRED IN APPRECIATING THE PRESENCE OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY AS AGAINST ACCUSED-APPELLANT ZOSIMO OLVIDA.

III

"THE LOWER COURT ERRED IN CONVICTING ACCUSED-APPELLANT RODOLFO JAYLO OF THE CRIME OF MURDER QUALIFIED BY THE QUALIFYING CIRCUMSTANCE OF TREACHERY CONSIDERING THAT THE PROSECUTION FAILED TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

IV.

"THE LOWER COURT ERRED IN ASSUMING FACTS TO HAVE BEEN PROVEN BASED MERELY ON CONJECTURES, SUPPOSITIONS AND PROBABILITIES."

Appellant Zosimo Olvida, having admitted that he was the author of the death of the deceased Pablito de los Reyes, it was incumbent upon him, in order to avoid criminal liability to prove the justifying circumstance claimed by him - self-defense - to the satisfaction of the court. To do so he must rely on the strength of his own evidence and not on the weakness of the prosecution, for even if they were weak it could not be disbelieved after he (Zosimo Olvida) himself had admitted the killing (People vs. Ansoyon, 75 Phil. 772).

We find Olvida's version incredible for the following reasons:

The ballistic reports (Exhibits "I" & "I-1") of Artemio Panganiban, Jr., of the National Bureau of Investigation show that a .32 caliber lead bullet fired from a Colt type firearm was recovered at the scene of the crime, and a .38 caliber bullet fired from a Smith & Wesson revolver was extracted from the cadaver of Pablito de los Reyes. It is clear then that there were two different firearms used that evening. Likewise, the chemistry report (Exhibit "K") of Manuel Enecilla, Forensic Chemist of the NBI, explained that de los Reyes sustained five gunshot wounds and two knife wounds in his body (front side) and two gunshot wounds and two knife wounds at the back. These reports contradict the claim of Olvida that it was he alone who inflicted the injuries sustained by the deceased in the course of their struggle. The stab wounds suffered by the victim clearly indicate that there was another person who inflicted them and, considering the testimonies of Alegro and Mabignay that during the struggle between de los Reyes and Olvida they saw Rodolfo Jaylo making the thrusting movements on the victim, the inevitable conclusion is, both appellants Olvida and Jaylo assaulted de los Reyes. As found by the trial court, the two government witnesses (Alegro and Mabignay) were so situated during the attack that they were able to see clearly the participation of each of the accused herein in the assault of Pablito de los Reyes taking particularly into account the fact that the place was well lighted with an electric bulb hanging from an electric post near the house of Zosimo Olvida. (See *People vs. Padrones*, CA-G.R. No. 1343-P, January 20, 1948). While it may appear that there are apparent contradictions between the testimonies of Cecilio Mabignay and that of Fermin Alegro, such contradictions in the opinion of the Court, are trivial and insignificant discrepancies which can easily be reconciled with the rest of the circumstances without upturning the illation and appreciation of the evidence they have given. (See *People vs. Bautro*, No. L-4260, January 21, 1952). Two or more eyewitnesses to an incident cannot give exactly the same account of what they had observed and seen.

The first requisite of self-defense - unlawful aggression, has not been shown. Mabignay and Alegro testified that the purpose of de los Reyes in going to the house of Olvida, a die-hard Rosales man, was to get the latter's peaceful support in favor of the candidacy of Fernando Veloso. The reaction of Olvida to that attempt of de los Reyes was revealed by his wife Pilar Olvida, as follows:

"Q

You stated a while ago that your husband Zosimo Olvida was in the house of Beato Franco in that evening before 8:00 o'clock conversing politics. Can you tell this Honorable Court the nature of the conversation of your husband and Beato Franco, considering that the distance was according to you at your hearing distance?

A

They were conversing about politics.

Q

They were also conversing about the progress of their candidate, about Decoroso Rosales?

A

Yes, sir.

Q

You likewise heard them that one of the leaders of Fernando Veloso would come to see your husband being the political leader of the opposing party, for support, am I correct?

A

I heard.

Q

What was that that you heard from your husband while conversing with Beato Franco, will you please tell this Honorable Court?

A

Somebody told us in the house that Pablito delos Reyes was coming to our house to convince my husband to support Fernando Veloso and they will give him money and if he would not accept the money they will force him to accept and my husband answered that they will only pulverize me but I will not change my support to Man Cosoy Rosales."

(TSN, September 12, 1972 hearing, pp. 20-21).

It is reasonable to assume that de los Reyes in going to the house of Olvida for the purpose of convincing the latter to switch his support for Veloso would be friendly so as to win him to his side. We cannot imagine one in his place to be belligerent and hostile. In fact, Mabignay and Alegro heard de los Reyes say "Good evening". On the other hand, Olvida anticipated the coming of de los Reyes and so he and his nephew, Rodolfo Jaylo, were prepared to meet the offer with gunshots.

Thus, in the absence of unlawful aggression, which is a main and essential justification for self-defense, the plea of exemption from criminal liability cannot be considered because the concurrence of the other two requisites, namely: reasonable necessity of the means employed to prevent or repel it, and lack of sufficient provocation on the part of the person defending himself depend upon the aggression.

It is true that Olvida himself sustained injuries. This would only mean that both Olvida and de los Reyes had each a firearm at the time. But, if it was the intention of de los Reyes to kill Olvida, he would not have gone to the latter's house; he would not have gone that close to the door to give appellant the opportunity to fire at him. He would have waited somewhere at a distance and under cover, shoot Olvida. That way the other would not be able to put up a defense. What did actually happen was, when de los Reyes greeted the inmates in the house "good evening", he was suddenly fired at by Olvida until they grappled with each other; shot again, and stabbed by Olvida's nephew, Rodolfo Jaylo.

We agree with the trial court that there was treachery in the killing of the victim. The first gunshot was made when both were facing each other, but then it was sudden and unexpected, at the time when the victim was on a peaceful mission and on an occasion when it was least expected that any harm would befall him.

However, We agree with the defense that the killing was not attended by the aggravating circumstance of evident premeditation. As held in the case of *People vs. Pantoja*, 25 SCRA, 468, where the time was insufficient for full meditation and reflection there can be no evident premeditation. In the case at bar, the time was not enough for his conscience to overcome the resolution of his will had he desired to hearken to its warning.

Anent the participation of Rodolfo Jaylo, nephew of Zosimo Olvida, We agree with the observation of the Solicitor General that his role in the killing of the victim cannot be anything but treacherous. Jaylo stabbed the victim while the latter was busy scuffling with Zosimo Olvida and, obviously, it was a mode of attack intended to facilitate the perpetration of the crime without risk to himself (Rodolfo Jaylo). Hereunder is the testimony of Cecilio Mabignay on this point:

"FISCAL POLO

Q What did you do after hearing the gun reports?

ATTY. BOHOL

Vague, Your Honor, calls for narration.

COURT

Let the witness answer.

A Pablito and Sosing were scuffling.

Q

When you mentioned Sosing are you referring to the accused Zosimo Olvida?

A Yes, sir.

Q

You said that there was scuffling would you kindly demonstrate before this Court the position making the Interpreter as the accused Zosimo Olvida and yourself as Pablito de los Reyes?

A

Witness representing Zosimo Olvida goes down from the witness stand and faces the Interpreter representing Pablito de los Reyes who was standing and places his right arm around the left side of the Interpreter representing Pablito de los Reyes and his left hand holding the right arm of the Interpreter representing Pablito de los Reyes near the elbow joint.

ATTY. BOHOL

May we inquire which of the two is representing Zosimo Olvida and Pablito de los Reyes.

COURT

Interpreter represents Pablito de los Reyes and the witness represents the accused Zosimo Olvida.

FISCAL POLO

Q When they were scuffling were they carrying anything?

ATTY. BOHOL

Leading, Your Honor.

COURT

Sustained, reform.

Q Where were they scuffling?

A Beneath the leanto.

Q

Do you mean to tell the Court that in front of the main door of the house of Zosimo Olvida is a sort of an overhang from the roof which serves as a ground thereof?

A Yes, sir.

Q This overhang is attached to the front wall of the house?

A Yes, sir.

Q It is supported by a post or posts?

A There are two posts.

FISCAL POLO

Q

Where was the accused Rodolfo Jaylo when you saw Pablito de los Reyes and Zosimo Olvida scuffling?

A Rodolfo Jaylo was on the stair.

Q And what was he doing?

A

I could see him making thrusting movements with his right hand.

COURT

Q To whom were these thrusting movements directed?

A

Those thrusting movements were directed towards Pablito."
(TSN, July 22, 1971 hearing, pp. 12-13)

The attack by appellant Rodolfo Jaylo was treacherous inasmuch as the victim had no time nor opportunity to defend himself in view of his preoccupation in the scuffling with Zosimo. The form and manner of the killing, the support given by appellant Rodolfo Jaylo in making a thrusting movement towards the victim who was fighting with his uncle Zosimo Olvida clearly show unity of intention and action. These circumstances reveal a unity of purpose between appellants and a concerted action to ensure the victim's death. There was conspiracy.

Summing up, the killing of Pablito de los Reyes was attended with treachery but without evident premeditation. There was conspiracy between appellants; but, in the absence of aggravating or mitigating circumstance, the imposable penalty is reclusion perpetua.

WHEREFORE, with the modification in the sense that the penalty for both appellants is reclusion perpetua, the appealed decision is AFFIRMED in all other respects.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Gutierrez, Jr., JJ., concur.

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