

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ABELARDO MASIC, ET AL., DEFENDANTS-APPELLANTS.***G.R. No. L-12050. May 26, 1960*

Ponente: BAUTISTA ANGELO, J.

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Abelardo Masic, Juan Masic, and Arturo Duma were charged with murder before the Court of First Instance of Leyte who, after trial, were found guilty as charged and sentenced each to reclusion perpetua, to indemnify jointly and severally the heirs of the deceased in the amount of P6,000.00, and to pay proportionately the costs. Abelardo Masic and Juan Masic's appeal has been withdrawn.

On June 15, 1954, at about 7:30 in the evening, there was an anniversary celebration in the house of Gualberto Basas situated in Julita, Leyte to which were invited, among others, Escolastica Mas-ing and Santiago Isio. As Escolastica was returning home, she saw Juan Masic thrust a bolo at the back of Jose Isio who was about one meter distant. As Isio turned his head towards his right side, Masic slashed him again hitting him at the left side of his face. Juna Masic stepped backward at which juncture Abelardo Masic, who was then sitting near the trunk of a gumamela tree, rose and also stabbed Isio on the stomach.

Upon seeing Isio wounded, Escolastica shouted, "Agui, Jose Iso is wounded!" Santiago Isio then came down to find out what was going on while Escolastica proceeded to her house out of fear. As she looked back, she also saw Arturo Duma unsheath his bolo and thrust it at Jose Isio running away afterwards causing Isio to fall down. Escolastica told Felipe Isio, a relative of the victim, of the aggression, who in turn informed his parents. Soon after, Vice Mayor Felipe Palanca was informed of the incident by Gualberto Basas, and not finding any policeman around, Palanca set out to investigate personally what has happened.

When he arrived at the place, he saw Jose Isio prostrate on the ground seriously wounded but still alive. He investigated him. Isio told him that he was wounded by one "Patpat", nickname of Abelardo Masic, Arturo Duma and another person whom he did not recognize. Palanca wrote down his declaration which was marked Exhibit C. He died moments later. After examining his body, Sanitary Inspector Cesario Lanuza found eight (8) stab wounds and one (1) laceration in different parts of his body, concluding that his death was caused by shock due to hemorrhage.

The defense of Juna Masic is alibi. He testified that when the killing of Jose Isio took place, he was not present because he was then in his house in sitio Monbon situated near the boundary of Julita and Dulag. In the morning of the day of the occurrence, he invited Urbana Amillas to attend to his wife who was about to deliver. Urbana, accompanied by her husband, went to his house and stayed there until the following morning because the delivery took place at 12:00 o'clock at night. After waking up at about 6:00 a.m., they returned home. During the whole night he was in his house attending to his wife. He also testified that between him and Escolastica Mas-ing there was a grudge because the land of the latter was mortgaged to him by her and her husband and that while the mortgage was still pending and unredeemed, the husband cut come posts standing on the land which prompted

him to file a complaint against him in 1950.

Abelardo Masic admitted having inflicted the wounds found in the body of the deceased. He testified that while he was sitting in the balcony of his house, Jose Isio, who was in the balcony of Gualberto Basas' house about 10 to 12 meters away, called him. He heeded the call. When he came near Isio the latter asked for cigarettes but Abelardo told him that he had none. This apparently angered Isio who then accused Abelardo of having maltreated a friend. After uttering this charge, Isio boxed and choked Abelardo who was able to free himself by jumping over the balcony. Then Isio picked up a piece of wood and hit Abelardo on his back. Abelardo ran towards his house and was likewise followed. Abelardo went inside his house and was likewise followed. Abelardo went inside his house and picked up a bolo. There he was cornered and as he was afraid Isio would come up and kill his family, he ran towards his yard. In the yard Isio again approached Abelardo and hit him with a piece of wood he was still holding. Abelardo tried to talk to him to stop him out Isio struck him again which he was able to dodge. It was then that Abelardo used his bolo and slashed him on the left face. Again Isio hit him with the piece of wood but missed and Abelardo struck him once more hitting him on the back. Then Isio rushed towards Abelardo who then embraced him and stabbed him once more. After this, Abelardo went up his house and told his mother to report the incident. Hardly had his mother left the policemen arrived and arrested Abelardo.

There is no doubt that in the night of June 15, 1954, on the occasion of an anniversary celebration then being held in the house of Gualberto Basas in the town on Julita, Leyte, Jose Isio was assaulted by the three accused inflicting upon him eight stab wounds which caused his death that same evening. This is evidenced by the testimonies of Escolastica Mas-ing and Santiago Isio who were present when the aggression took place and saw how the same occurred. From their testimony it appears clear that Jose Isio was first assaulted by Juan Masic by hitting him at the back with a bolo followed by another thrust on the left side of his face when he turned around, and as Isio tried to defend himself, Abelardo Masic who was sitting near a trunk of a gumamela tree, rose and stabbed him on the stomach. Almost at the same time, Arturo Duma, apparently a companion, unsheathed his bolo and likewise gave him a thrust and then ran away as Isio fell down. That the three were the aggressors also appears from the ante-mortem statement given by the victim before Vice Mayor Palanca who wrote down said statement and wherein Isio indicated that Abelardo Masic, known as "Patpat", Arturo Duma and another person were his aggressors. This other person undoubtedly has reference to Juan Masic because he was the only other person who helped and participated in assaulting the deceased.

It is true that Abelardo Masic tried to impress upon the court that he was the only one who inflicted upon the deceased the wounds which caused his death thereby exculpating his two co-accused, but such attempt was not entertained by the trial court because it runs counter to what was testified to by the witnesses for the prosecution who were explicit in their avowal that without any provocation on the part of their victim Juan Masic and his brother Abelardo and their companion Arturo Duma attacked and wounded him. Moreover, such attempt is belied by the ante-mortem declaration of the deceased wherein it appears that the ones who attacked him are the three accused. The claim of Abelardo that he inflicted said wounds merely in self-defense is also belied by the same evidence. Indeed, it cannot be believed that Jose Isio would get angry at Abelardo simply because he was not able to please him when he asked him for cigarettes because then he had none and would then and there choke and box him and hit him with a piece of wood to the extent of pursuing him to his very house until, as claimed by him, he got hold of his bolo and used it slashing Isio to death.

As regards Juan Masic, we cannot also give any value to his alibi not only because his presence at the scene of the time was clearly attested by two eyewitnesses but because the story given by him, even if true, cannot preclude his having taken part in the attack and killing of Jose Isio. Victoriano Palobe, who corroborated Juan Masic, stated that he slept in his house in the night in question and woke up only at six o'clock the following morning which

indicates that he could not possibly state that Juan Masic, did not leave the house that night to take part in the aggression considering that his house was only one kilometer distant from the scene of the crime. The dying declaration of the deceased which points indirectly to him as one of the aggressors also belies such defense, and while Juan Masic is not directly mentioned therein this is only due to the fact that he was not then living in the same place but in sitio Monbon along the boundary of Julita and Dulag. Verily, such defense cannot prevail over the positive evidence of the prosecution identifying him as one of the assailants.

We agree with defense's counsel that the evidence does not clearly show that the aggression took place with evident premeditation for the attack was unexpected and it occurred on the occasion of an anniversary celebration. But we are of the opinion that the aggression was accomplished with treachery considering that it was so sudden that Jose Isio was not given any opportunity to defend himself aside from the fact that the attack came when Jose was showing his back to his aggressors. This qualifies the crime committed as murder and not merely as homicide as claimed by the defense.

All things considered, we find that the decision of the trial court is in accordance with law and the evidence, and therefore it should be affirmed.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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