

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLINARIO LUMANTAS @ PEOLE, DEFENDANT-APPELLANT.

G.R. No. L-28355. July 17, 1969

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Olimpio Badiang and Apolinario Lumantas were convicted of the crime of murder by the Honorable Mariano A. Zosa of the Court of First Instance of Misamis Occidental (Branch III - Oroquieta) and sentenced to different penalties. The dispositive part is phrased as follows:

“- - - -; and, pursuant to the provisions of Article 248 taken together with the provisions of Article 14, paragraphs 9 and 15 and Article 64, paragraph 6 of the same Revised Penal Code, as to Olimpio Badiang alias Lim, the court sentences him to suffer an imprisonment of SEVENTEEN (17) YEARS, FOUR (4) MONTHS and ONE (1) DAY to TWENTY (20) YEARS of Reclusion Temporal; and, likewise sentences Apolinario (Peole) Lumantas, who, after having made a stab wound to the deceased, fled (sic) from the scene of the crime, to suffer an imprisonment of one degree lower or TEN (10) YEARS, and ONE (1) DAY of prison mayor in its maximum period, to indemnify, the heirs of Laureto Limpahan in the sum of P1,500.00 each, without subsidiary imprisonment in case of insolvency, to pay the proportionate costs of the proceedings and suffer the accessory penalties provided for by law.

"The instruments exhibited are hereby declared confiscated."

Both accused appealed the decision to the Court of Appeals, but the appeal of Olimpio Badiang was dismissed on 14 September 1965 upon his own petition. The Court of Appeals found that the imposable penalty upon the remaining appellant, Apolinario Lumantas, is reclusion perpetua, for which reason it certified the case to the Supreme Court.[1]

The evidence on record shows that many people had gathered in the marketplace of Mobod, Oroquieta, Misamis Occidental, at about five o'clock in the afternoon of Thursday, 14 November 1963. Although it was not a market day, a fair was being held in extended celebration of All Saints' Day. There was cockfighting and a "hantak" game was being played. Among the players in the said game was the late Laureto (or Laurito) Limpahan.

The principal witness for the prosecution, Francisco Bati-on, who was about two (2) meters away from where the "hantak" game was being played (t.s.n., page 31), saw accused Badiang and Lumantas at both sides of the deceased. This witness narrated what happened moments later, as follows:

"Q You said that you knew Apolinario Lumantas, do you know what he was doing at that time?

"A I saw only Peoley (Apolinario Lumantas) who was standing beside Laurito Limpahan.

"Q What did Peoley do there?

"A When Laurito was in the "hantak" game I saw him stood up and counted his money; and, it was at that time that this Lim Badiang slapped him with the back of his palm at his face and with his left hand delivered a thrust

to him.

"Q What happened next?

"A When Laurito was hit (witness was pointing to the left side of his body his hand up; next he made a motion jerking up) and then Peoley stabbed him at the right side of the body (witness pointing to the right side of his body below the armpit). When Peoley stabbed him, Lim stabbed him by the left hand.

"Q You said that Apolinario Lumantas stabbed Laurito Limpahan where did that land in the body of Limpahan?

"A Peoley thrust him to the right armpit of Laurito." (T.S.N., pages 11-12) (sic)

After he was stabbed, Laurito Limpahan ran away, with Badiang and Lumantas in pursuit. Limpahan collapsed after running a distance of ten meters. Badiang kicked him in the face. Prosecution witness Bati-on, who was a friend of Badiang, entreated the latter to stop kicking Limpahan as he was already dead, but Badiang tried to stab Bati-on instead. When Lumantas saw that Limpahan was dead, accused left the place and went home.

The people scampered away even as Badiang brandished his bloody bolo and challenged everyone to a fight. Policeman Hospecio Pausal happened to be in the marketplace at the time, serving subpoena. He was attracted by the commotion and, seeing Olimpio Badiang carrying a bolo covered with blood, fired a shot in the air and commanded Badiang to put down his weapon. Badiang did as commanded. Pausal brought him to the municipal building and turned him over to the guard on duty.

Policeman Pausal inspected the body of Laurito Limpahan and found at the left side a sharp-pointed bolo, with the blade partly drawn from its scabbard about two (2) inches, and an Indian slingshot in the right pocket.

The municipal health officer of Oroquieta, Dr. Henry Y. Dullin, performed a post-mortem examination of the cadaver of Laureto Limpahan at eight o'clock that evening and found the following:

"- wound located over the left chest just below the nipple about 4 inches in length, deep penetrating which injured the heart, lung and great blood vessels around the heart and lungs;

"- wound located over the right axilla about 2 inches in length, deep;

"- wound located over the right chest about 2 inches in length, deep, situated over the 6 intercostal space along the right mid-axillary line;

"- wound over the left forearm lateral surface 5 inches in length;

"- wound over the right thenar eminence;

"- abrasion over the forehead, bridge of the nose and left cheek." (Exhibit "A")

As this appeal pertains only to Apolinario Lumantas, we shall limit this review to his case, skipping the version of his co-accused, Olimpio Badiang.

The appellant's defense is alibi, claiming that at the time of the commission of the crime, in the afternoon of 14 November 1963, he was not at Mobod but at Upper Lamak, about one and a half to two kilometers away, to gather tuba from 17 coconut trees.

Appellant argues that the testimony of prosecution witness Francisco Bati-on is unreliable because while he recognized the weapon used by Badiang the witness was not clear on the weapon used by appellant Lumantas. This uncertainty as to the kind of weapon used does not necessarily impair his reliability. There was a wound just below the left nipple of the deceased, while two wounds existed at the right side of his body. These wounds tally

with Bati-on's testimony that Badiang inflicted one wound at the left and the knife came out at the right side, and that the second wound at the right side of the victim was inflicted by Lumantas. Bati-on's non-recognition of the weapon used by Lumantas does not alter the fact that the latter did use a weapon to produce the wound described.

Neither do we find that this eyewitness acted through improper motives, the charge of personal enmity by the accused not being adequately supported.

A defense witness, Anselmo Mahawan, testified that, as a member of the police force at the time of the stabbing, he was designated to look for witnesses. He went to the scene of the crime, saw the mother of the deceased crying over her son, and asked her about the companion of her son. The mother pointed to Francisco Bati-on. When Mahawan inquired from Bati-on what he knew about the incident, Bati-on denied knowledge of anything. This testimony of defense witness Mahawan was un rebutted; but while the fact that Bati-on denied any knowledge about the crime soon after its commission before the investigating policeman reduces the credibility of Bati-on, such diminution is not substantial. It is not unusual for witnesses at first refusing to be involved in a criminal proceeding. The witness disclosed what he knew about the incident shortly thereafter, on 16 November 1963, when he signed a statement taken from him by the police at the municipal building; gave additional answers to interrogations by the municipal Judge; and swore to the truth thereof on 17 November 1963 (CFI Criminal Case Rec. Wrapper, page 7). This sworn statement was not offered in evidence, but it forms part of the record of the preliminary investigation conducted by the municipal judge and can be taken judicial notice of by both the trial court and the Supreme Court. (People vs. Bautista, 60 Phil. 1026)

Alibi is one of the weakest defenses that can be resorted to by an accused (People vs. De la Cruz, 76 Phil. 701). To establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (U. S. vs. Oxiles, 20 Phil. 587; People vs. Palomos, 49 Phil. 601; People vs. Resabal, 50 Phil. 780). These requisites accused-appellant failed to establish; he did not even show how long he stayed in Upper Lamak, which was only two kilometers away from the Mobod market place.

Appellant Lumantas props his defense of alibi with the fact that prosecution witness, policeman Hospecio Pausal, did not see said appellant in the market place when he apprehended Badiang after the stabbing incident. That appellant was not seen by Pausal may be explained by the fact that appellant Lumantas had left the place when he saw that Limpahan was already dead, and the patrolman's attention was concentrated on Badiang who was challenging all and sundry while brandishing a bolo.

The prosecution did not prove any motive of appellant Lumantas for committing the crime, but lack of motive does not preclude conviction of the offense when the crime and the participation of the accused are definitely proved, as was done in this case (People v. Tanco, 58 Phil. 255; People v. Reyno, L-19071, 30 April 1965; People v. Villalba, L-17243, 23 August 1966, 17 SCRA 948).

The crime committed is murder, qualified by treachery, established by the sudden and unexpected attack upon the victim by the two accused, who situated themselves on both sides of the deceased and rendered the victim unable to defend himself (U. S. vs. Castellon, 12 Phil. 160; People vs. Macarinfas, 40 Phil. 1). Abuse of superior strength also attended the commission of the crime, but this circumstance is absorbed in treachery (People v. Limaco, 88 Phil. 35; People v. Ruzol, et al., 100 Phil. 537).

The Solicitor General admits that the prosecution failed to prove evident premeditation (Brief, page 10). We agree; and we, likewise, find no mitigating circumstance.

Murder is penalized by "reclusion temporal in its maximum period to death" (Article 248, Revised Penal Code).

Since there is no aggravating or mitigating circumstance, the penalty should have been imposed in its medium period, which is reclusion perpetua.

The errors of the trial court in the imposition of the penalties, based on its own findings, are at once noticeable; for, having declared Olimpio Badiang^[2] guilty of murder, with the aggravating circumstances of recidivism and superior strength (Nos. 9 & 15, Article 14, Revised Penal Code), without any mitigating circumstance, the court imposed the minimum penalty for murder, reclusion temporal, instead of the maximum, which is death, and misapplied Article 64, paragraph 6,^[3] of the code, on the wrong assumption that the maximum penalty for murder is the maximum period of reclusion temporal. As for Apolinario Lumantas, the court imposed upon him a penalty one degree lower because, after stabbing the victim, he fled from the scene of the crime. Flight may indicate guilt,^[4] but certainly, it is not a reward for committing a crime nor a mitigation of criminal responsibility. On the contrary, the simultaneity of the attacks and the strategy of assailing the deceased from both sides fully establish cons-piracy and common intent.

Not the least of its errors, also on the face of the dispositive portion of its decision, is the trial court's imposition of compensatory damages in the amount of P3,000.00 for the death of the victim (P1,500.00 from each of the two accused). The decision was promulgated on 12 December 1964, but the then existing jurisprudence (since 1948, *People vs. Amansec*, 80 Phil. 424) fixed the amount of indemnification at P6,000.00. The amount was later raised to P12,000.00 in *People vs. Pantoja*, L-18793, 11 October 1968.

Normally, co-conspirators of a crime are held jointly and severally liable in the amount of P12,000.00, by way of indemnification for the death of their victim. But here, the trial court condemned Olimpio Badiang to pay only P1,500.00, and the decision with respect to him has become final when his appeal was dismissed by the Court of Appeals at his own request. The question, therefore, arises: how much should the co-conspirator, Apolonio Lumantas, the herein remaining appellant, be made to pay? We believe that, in justice to the heirs of Laurito Limpahan, he should pay an indemnity of P12,000.00, but with the right to demand contribution from his co-accused in the sum of P1,500.00. While it may appear that this award is to some extent Unfair to this appellant, it is a necessary consequence of the withdrawal of Badiang's appeal, which rendered final the low indemnity awarded by the court below (erroneous though it should be), and above all, to the need of doing justice to the heirs of the victim, whose right to adequate indemnification is paramount.

FOR THE FOREGOING REASONS, the appealed decision, insofar as Apolinario Lumantas is concerned, is hereby modified, to the effect that he shall suffer the penalty of reclusion perpetua, with its accessory penalties, and to pay the heirs of Laurito Limpahan the amount of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate share of the costs; but with a right to demand contribution from his co-accused Olimpio Badiang, in the sum of P1,500.00, to the payment of which said Badiang was sentenced by the court below.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] "Whenever in any criminal case submitted to a division the said division should be of the opinion that the penalty of death or life imprisonment should be imposed, the said court shall refrain from entering judgment thereon and shall forthwith certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal." (Rule 124, Section 12, Rules of Court)

[2] This is not to review his case but only to point to manifest errors committed by the trial court.

[3] "Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period."

[4] U. S. v. Sarikala, 37 Phil. 486; People v. Umali, 96 Phil. 185.

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