

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HORACIO JARDINIANO, APOLINARIO JARDINIANO AND RODOLFO ORTEGA, DEFENDANTS-APPELLANTS.

G.R. No. L-37191. March 30, 1981

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Automatic appeal from the Decision of the Court Of First Instance of Oriental Mindoro, Branch II, in Criminal Case No. R-57, convicting the accused Apolinario Jardiniano, his son Horacio Jardiniano, and his son-in-law Rodolfo Ortega, of Murder, and sentencing them to death.

The victim, Balud, a 60-year old Mangyan, was killed on the night of February 11, 1970 at around 10:00 o'clock outside his house at Sitio Siangi, Barrio Lisap, in the Municipality of Bongabon, Oriental Mindoro. The autopsy performed by Dr. Fernando A. Vilorio, Municipal Health Officer of Bongabon, Oriental Mindoro, revealed that the victim had suffered bleeding of the nose and ears, and a lacerated wound, 3 inches long, at the occipital region (Exhibit "A"). Dr. Vilorio declared that the wound could have been caused by the infliction of a blow on the head with a hard blunt instrument like a piece of wood, causing brain damage, as indicated by the bleeding of the nose and ears, which resulted in the death of the victim.[1]

The prosecution presented two eyewitnesses Win-ay, the second wife of Balud, also a Mangyan, and Eustaquia Redoma. Win-ay testified that on, the night of the incident, she and her husband with their four-year-old son Dayao, were already sleeping, when she was awakened by the sudden entrance of accused, Horacio Jardiniano, into their house. She did not see the companions of Horacio because it was dark. Horacio dragged her husband outside. Then, one of his companions tied her hands behind her, bound her to the fence near the door of the house, and hit her on the head rendering her unconscious. When she came to, she called her son to untie her, after which, she lit a light and, with the little boy, went to the house of a certain Ago, whose wife is her relative.[2] Before they left, she saw her husband lying on his back, about a yard away from the door of their house, his face covered with blood, and still breathing.[3]

Eustaquia Redoma declared that she was in the house of Hignay, the first wife of Balud, when the incident occurred. That house is only three meters away from Balud's house where the latter lived with his second wife, Win-ay. She saw Horacio enter the house of Balud and Win-ay and pull Balud outside. Accused Apolinario then tied the hands of Balud behind him, while accused Rodolfo focussed his flashlight on Balud. Then she saw Horacio box and club the victim who supplicated "Do not kill me, just get my chickens." Terrified at what she witnessed, she fled.[4]

The defense presented an altogether different version. Witnesses Balitang and Ganid, brother and nephew, respectively, of the deceased, declared that they, together with Lugak, another brother of the deceased, witnessed the whole incident because they slept that night in the house of Hignay, the deceased's first wife, to help the deceased in the clearing of his "kaingin" the following morning. They stated that it was Anao, another Mangyan,

who killed the deceased because of a boundary dispute. Semaco Manato, former Barrio Councilman of Lisap, and Diosdado Martinez, Barrio Captain of Lisap, confirmed the alleged boundary dispute between the deceased and Anao.

On their own behalf, the three accused, who are also residents of Siangi, Bongabon, Oriental Mindoro, individually interposed the defense of alibi. Horacio Jardiniano alleged that on February 11, 1970, he went to Barrio Luna, Bongabon, to repair the roof of the house of his in-laws, and stayed there up to the fourteenth. His testimony was corroborated by Francisco Salagubang, who allegedly went to the same barrio on that date to visit his mother-in-law, who was dying. Accused Rodolfo Ortega declared that he went to Masaguisi, Bongabon, on February 9, 1970 to harvest palay and returned to Siangi only on February 20, 1970. Accused Apolinario Jardiniano claimed that he was in his house at Siangi on the night of the incident. He confirmed the respective testimonies of his son, Horacio, and his son-in-law, Rodolfo, as to their whereabouts that evening.

The trial Court gave credence to the version of the prosecution and, on June 9, 1973, rendered its Decision with the following dispositive portion:

"WHEREFORE, accused, Apolinario Jardiniano, Horacio Jardiniano, and Rodolfo Ortega, are hereby found guilty beyond reason able doubt of the crime of murder as defined and penalized in Art. 248 of the Revised Penal Code, qualified by treachery and all the accused having taken advantage of their superior strength, with all the attendant aggravating circumstance as enumerated in the information, without any mitigating circumstance to offset the same, consequently, the Court has no alternative but to impose as it hereby imposes upon all the accused the capital punishment of DEATH. They are likewise condemned to pay jointly and severally the heirs of the victim, Balud Mangyan, the amount of P12,000.00 as indemnity, with out of course, subsidiary imprisonment in case of insolvency in view of the nature of the penalty, and to pay the costs."

In this appeal, appellants maintain that:

"The lower Court erred in holding that appellants were guilty of murder in the absence of proof beyond reasonable doubt as disclosed by the facts established by the evidence on record."

Appellants insist that they have not been positively identified by prosecution witnesses Eustaquia Redoma and Win-ay, their testimonies being filled with inconsistencies and riddled with self-contradictions.

The contention is baseless. Eustaquia Redoma pointed categorically to appellant Horacio Jardiniano as the one who forcibly dragged the deceased outside his house and then boxed and clubbed him. Win-ay attributed the same role to appellant Horacio. And although Win-ay did not see the other two appellants, they were specifically identified by Eustaquia and their respective participation fully described by her - appellant Apolinario tied the deceased's hands behind his back, while appellant Rodolfo focused his flash-light on the deceased. But even assuming the existence of a few minor contradictions in the statements of said witnesses, they would have no effect on the probative value of their statements as their declarations are consistent in pointing to the accused as participis criminis in the killing of the victim.[5]

The inconsistencies and contradictions assailed by the defense are more apparent than real. First, they maintain that Eustaquia and Win-ay gave different versions regarding the utterances made by the deceased when he was being assaulted. Even admitting such inconsistencies, it is evident that they refer to minor details with respect to which persons witnessing the same occurrence are bound to disagree in the ordinary course of events. This is usual among witnesses and will not affect their credibility.[6]

Secondly, there is no basis either to the alleged inconsistencies between Eustaquia's testimony and that of Win-ay as to the house from where Eustaquia viewed the incident. Eustaquia stated that she was in the house of the first wife (Hignay) of the deceased when she saw the three appellants commit the crime for which they were

indicted.[7] Contrary to the defense posture, Eustaquia did not say that she was in the house of Win-ay. Win-ay herself declared that Eustaquia was in Hignay's house on February 11, 1970. Thus, their testimonies, are, in fact, consistent with each other.

Thirdly, Eustaquia and Win-ay did not contradict each other regarding the number of persons staying in the deceased's house when the incident took place. Eustaquia said that there were four persons residing in the house of the deceased at the time of the incident, which is not incorrect, as Win-ay herself stated that she has two children with the deceased, a boy and a girl.[8] Win-ay never stated that there were only three people living in their house. What she said merely was that her son Dayao slept with her-and her husband that night.[9]

Fourthly, relative to the house nearest which the deceased was killed, considering the minimal three-meter-distance between the house of Hignay from where Eustaquia viewed the incident, and the house of Win-ay from where the deceased was dragged and clubbed to death, it is not really incorrect to state that the deceased was killed outside Hignay's house. But, again, this is but an inconsequential matter.

Fifthly, appellants, further assail Eustaquia's credibility because although, on direct, she declared in detail how she saw appellants kill the deceased, on cross, she stated that the persons she saw that evening were wearing masks and her only basis for testifying that appellants killed the deceased was that while she was lying down about to sleep, she overheard voices which were familiar to her. Once more, this is inaccurate, because Eustaquia further stated that when she heard the voices, she got up, went to the stairs, and saw appellants perpetrate the offense. She recognized the culprits because Rodolfo trained the flashlight on the deceased. The light provided sufficient illumination to enable her to recognize all the appellants, whom she had known for a long time since they were residents of the same muni-cipality.[10]

The overriding issue raised by the defense sim-mers down to the credibility of prosecution witnesses, with respect to which, this Court has always accorded the highest degree of respect to the findings of the trial Judge, unless there is proof of misappreciation of evidence,[11] which is absent in the case at bar.

Appellants' individual defense of alibi cannot be sustained. It is well settled that evidence to support the same must preclude the possibility of the accused's presence at the scene of the crime while the evidence relative to his identification must be weak and insufficient.[12] No proof has been shown that it was physically impossible for appellants to have been at the scene of the incident at the time it occurred. The place where appellants Horacio and Rodolfo claimed to be were within the same munici-pality where the offense was committed although in different barrios. The evidence discloses that passenger vehicles ply those places and appellants could have easily negotiated the respective distances by taking a motor vehicle. Appellant Apolinario was in the same municipality of Siangi and it would have been an easy matter for him to have gone to the deceased's house at about 10 o'clock in the evening, participated in killing him, and slipped back to his house. Moreover, the defense of alibi assumes importance only when the evidence for the prosecution is weak especially on the aspect of identity of the culprit.[13] In this case, positive identification of appellants was furnished by witnesses Eustaqui and Win-ay, sufficient to estab-lish their guilt to a moral certainty.

As the trial Court found, appellants' criminal act was motivated by their desire to get the land of the deceased. The deceased had already given up a sizable portion of his land to appellant Apolinario, which the latter distributed to his fellow Christians, but Apolinario wanted to acquire the remaining land. Win-ay declared that appellant Apolinario got their piece of land at Gantong (Gandon) and never paid for it.[14] She was positive that appellants' killed her husband because they wanted to get the piece of land, on which their house stood, but the deceased refused to give it to them.

The trial Court correctly denied credence to the testimonies of defense witnesses, Balitang, brother, and Ganid,

nephew of the deceased, that they saw the latter being clubbed by Anao, as the trial Court stated;

"... if it were true that they, together with Lugak, who was also the brother of the de-ceased, were present, by instinct, one of them being also the nephew of the de-ceased and they being armed with bolos as they were in the vicinity because they would help in the clearing of the kaingin of Balud, they should have gone to the immediate succor of their brother who was in imminent danger, it appearing that Anao was armed only with a piece of wood." [15]

Further, contrary to what Ganid and Balitang claimed Win-ay declared that the deceased's land was not yet ready for "kaingin" so that there would have been no reason for Ganid and Balitang to have been at Hignay's, (the first wife's) house on the night of the incident. And if they really had been there, Eustaquia, who was in the house, would have seen them.

Additionally, in so far as the testimonies of Mangyans, in general, are concerned, the trial Court had this to say:

"It is a matter of common knowledge that in this province where the Mangyans belonging to the cultural minority are residing, their reputation as witness in Court proceedings has usually been discarded by the Court because they are inherently liars; hence, testimony of Balitang, brother and Ganid, nephew, re-spectively of the deceased, can-not be given also any weight be-cause whatever they have declared in Court has been overcome by the testimonies of Eustaquia Radoma and Win-ay Mangyan, surviving spouse of Balud Mangyan; likewise, being unlettered and most of them are residing in the mountains, the Mangyans have always been at the receiving end whenever the transaction is between a Christian and a Mangyan, so much so that in the case at bar, it has been established by competent evidence that the accused, especially Apolinario Jardiniano wanted to grab the land of the deceased, in fact he was already given a sizable portion of the land of the deceased which he distributed to his fellow Christians, and he wanted to have the remaining land of Balud Mangyan even if it would cause him to kill somebody as he did in killing Balud Mangyan." [16]

We come now to the nature of the crime committed and the penalty imposable. The qualifying circumstance of treachery and other aggravating circumstances of abuse of superior strength, nighttime, dwelling, evident premeditation and employment of means to weaken the defense of the victim were considered by the trial Court in imposing the death penalty. It is undisputed that treachery attended the killing of the deceased because his hands were bound, after which, he was clubbed to death. Such means tended directly to insure the consummation of the crime with-out risk to the aggressor, inasmuch as thus bound, the deceased could not defend himself in any manner against his assailants.

Abuse of superior strength is also present but this is necessarily included in treachery. [17]

The aggravating circumstance of dwelling also deserves appreciation. The victim was taken from his house and was killed just outside his abode. Dwelling is aggravating if the victim was taken from his house although the offense was not completed therein. [18]

There is no showing that appellants purposely sought the cover of night or that they had taken ad-vantage of it in order to facilitate the commission of the crime, or for the purpose of impunity. Besides, even if attendant, it would be deemed absorbed by treachery. [19]

There being no proof as to how and when the plan to kill was hatched, or what time elapsed before it was carried out, evident premeditation can neither be appreciated. To properly appreciate this circumstance, it is necessary to establish with proof, as clear as the evidence of the crime itself, (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect. [20]

There is no evidence either that means were employed by appellants to weaken the defense of the victim and,

therefore, this aggravating circumstance should be disregarded.

As treachery attended the perpetration of the offense, the killing was qualified to Murder. The penalty prescribed by law is reclusion temporal in its maximum period to death.[21] Because of the presence of the aggravating circumstance of dwelling, with no mitigating circumstance to offset it, the penalty should be imposed in its maximum period, which is death. For lack of the required number of votes for the imposition of the death penalty, however, the sentence is reduced to reclusion perpetua.

WHEREFORE, except for the penalty, which is modified to reclusion perpetua, the judgment appealed from is hereby affirmed, with costs against the accused appellants.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Barredo, J., concurs with the qualification that Rodolfo Ortega should be convicted only as an accomplice.

[1] T.s.n., September 18, 1970, pp. 5 & 6.

[2] T.s.n., February 1, 1971, pp. 11-14.

[3] Ibid., pp. 15 & 16.

[4] T.s.n., September 18, 1970, pp. 13-15.

[5] People vs. Yu, 80 SCRA 384 (1977).

[6] People vs. Verzo, 65 SCRA 324 (1975).

[7] T.s.n., September 18, 1970, pp. 14-15.

[8] T.s.n., February 1, 1971, pp. 24-25.

[9] Ibid., p. 47.

[10] T.s.n., September 18, 1970, pp. 10-15, 36 & 38.

[11] People vs. Legones, 69 SCRA 210 (1976).

[12] People vs. Peñafiel, 3 SCRA 911, 917 (1961).

[13] People vs. Omega, 76 SCRA 262 (1977).

[14] Tsn., February 1, 1971, pp. 18-19.

[15] p. 30, Decision, p. 49, Rollo.

[16] pp. 34-35, Original Rollo.

[17] People vs. Undong, 66 SCRA 386 (1975); People vs. Pajenado, 69 SCRA 172 (1976).

[18] People vs. Lastimosa, 27 Phil. 432 (1914).

[19] People vs. Tizon, 66 SCRA 372 (1975); People vs. Echaluze, 66 SCRA 221 (1975).

[20] People vs. Diva, 23 SCRA 332 (1968).

[21] Art, 248, Revised Penal Code.

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