

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMAN GALLEMA, ET AL., DEFENDANTS, RODOLFO LACADEN ALIAS
RUDY LACADEN, VICENTE GAGARIN AND MAXIMO CAPINDING,
DEFENDANTS-AP...**

G.R. Nos. L-30588-89. June 10, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, taken by defendants Rudy Lacaden, Vicente Gagarin and Maximo Capinding, from a decision of the Court of First Instance of Nueva Ecija, convicting them of two (2) crimes of murder and sentencing them, for each, to life imprisonment, with the corresponding accessory penalties, to indemnify the heirs of each of the victims in the sum of P12,000.00 and to pay three-fifths (3/5) of the costs.

It is not disputed that, in the evening of November 11, 1967, Rufino Madriago and Conrado Gardose died in the Barrio of Guiset, Municipality of Guimba, Province of Nueva Ecija, in consequence of multiple wounds inflicted upon them. In February, 1968, Cri-minal Cases Nos. 403-G and 404-G of the Court of First Instance of Nueva Ecija were filed against Roman Gallema, Benjamin Delo and the aforementioned appellants, as the alleged assassins of Madriago, in case No. 403-G, and Gardose, in case No. 404-G. The two cases were tried jointly, insofar only as appellants herein are concerned, defendants Gallema and Delo not having been apprehended as yet.

The evidence for the prosecution consisted mainly of the testimony of five (5) witnesses and Exhibits I and I-1, an extra-judicial statement of appellant Vicente Gagarin. Juanita Daprisa, widow of Rufino Madriago, and Rosita Antonio, widow of Conrado Gardose, limited themselves to confirming the death of their respective husbands. Dr. Felipe Batangan gave evidence concern-ing the post-mortem examination he made of the deceased Madriago and Gardose, whereas the municipal judge of Guimba, Hon. Alfredo Guiang, testified with respect to the extrajudicial statement (Exhi-bits I and I-1) sworn to before him by appellant Vicente Gagarin.

The testimonial evidence for the prosecution relative to the commission of the crimes charged was given by Tirso Rapisora who declared that, in the evening of November 11, 1967, while drinking wine in his store, in the barrio of Guiset, municipality of Guimba, defendant Roman Gallema told his co-defendant Benjamin Delo that Condring - referring presumably to Conrado Gardose - and Rufo - referring supposedly to Rufino Madriago -had stoned him (Gallema); that, thereupon, Delo proposed to Gallema that they waylay Condring and Rufo and kill them; that, as they started to leave the store - after talking and drinking further - when they were already intoxicated, Gallema and Delo remarked that they were going to call Rudy, Maxy and Vicente -referring seemingly to appellants Rudy Lacaden, Maximo Capin-ding and Vicente Gagarin, respectively - to accompany them; and that Gallema and Delo were then armed with scythes.

Exhibits I and I-1 are an affidavit of appellant Gagarin before Judge Guiang of Guimba, stating that, in the evening of November 11, 1967, defendants Gallema and Delo, as well as appellants Lacaden and Capinding, went

to his (Gagarin's) house and invited him to a dance at Barrio Tandoc; that he accepted the invitation; that, outside Barrio Guiset, they saw two (2) persons, one astride a carabao pulling a sledge, on which Rufino Madriago was; that, thereupon, Gallema overtook them, and, saying "why did you box me sometime ago," stabbed Madriago; that, as his companion (who later turned out to be Conrado Gardose) got off the carabao, seemingly to help him (Madriago), defendant Delo met and repeatedly stabbed him (Gardose); that Gagarin then ran away and went home that, the next morning, Gallema and Delo went to his house and bade him to keep his mouth shut, for, otherwise, he would have the same fate as those killed the night before; and that, because of fear, he did not report the occurrence to the authorities.

The evidence for the defense consisted of the testimony of appellants Lacaden, Gagarin and Capinding, which, apart from reiterating substantially the version given by Gagarin in said Exhibits I and I-1, disclosed the following details, namely: that Capinding was invited by Gallema to attend a party; that, there-after, Gallema, Delo and Capinding invited Lacaden to go to a dance; that, subsequently, Gallema, Delo, Capinding and Lacaden extended a similar invitation to Gagarin; that appellants Lacaden, Gagarin and Capinding were together with Gallema and Delo when these two (2) defendants attacked Madriago and his companion; that Delo used a little bolo in stabbing Madriago's companion, although Lacaden claimed not to have seen the weapon used by Delo; that appellants did nothing to stop the aggression upon Madriago and his companion, and, instead, ran away; and that the morning after the occurrence, Gallema and Delo, likewise, threatened to kill Lacaden should he squeal on them.

Despite the absence of direct evidence of any participation in the killing of Madriago and Gardose, His Honor, the Trial Judge found appellants herein "equally" liable therefor, upon the ground that, by overtaking Madriago and Gardose, appellants showed that they "were really in concert" - presumably with Gallema and Delo - "in pursuing" said victims; that having gone with Gallema and Delo despite their "evil intention," manifested by the fact that they were armed with a scythe and a small bolo, appellants must have known of their "mission"; that their failure to do any-thing to prevent the aggression "proves convincingly" that appellants had conspired with Gallema and Delo in committing the crimes charged; that Madriago and Gardose had altogether sustained 49 wounds, which could not have been inflicted by two (2) persons only - Gallema and Delo - particularly because they used a scythe and a bolo, which could not have caused 11 lacerated wounds allegedly found in the body of Madriago; and that appellants did not immediately report the occurrence to the authorities.

Apart from the fact that the conclusion thus drawn by the trial court does not follow necessarily from the aforementioned premises, some of these are not borne out by the record. Indeed, the same shows that those who overtook Madriago and Gardose were Gallema and Delo, not appellants herein, although it is not improbable that the latter may have been near the former (Madriago, Gardose, Gallema and Delo) after the commencement of the aggression, since the same must have prevented Madriago and Gardose from moving away.

Again, it does not appear that appellants knew, when they joined Gallema and Delo, in the evening of the occurrence, that the latter had a scythe and a small bolo with them. In fact, the appealed decision states that Lacaden had not seen Delo's bolo and that, "instantly" - after asking Madriago "why did you box me this after-noon?" - "Roman Gallema stabbed Rufino Madriago with a scythe, which he took from under his cloth." Under the circumstances, We cannot assume that appellants were aware, before the attack upon Madriago and Gardose, that Gallema and Delo were armed. Besides, it is not unusual for people in rural areas to go about carrying a scythe or a bolo, which are generally used in their ordinary activities. In other words, the presence of said instruments is not necessarily indicative of evil intent of the person or persons carrying them. In fact, Gallema and Delo carried said scythe and bolo, respectively, when they went to the store of Tirso Rapisora, to engage in a drinking spree, although they had, as yet, no idea of doing anything wrong.

Upon the other hand, the lower court indulged in nothing short of sheer speculation when it surmised that

appellants must have inflicted the 11 lacerated wounds - apart from 28 stab wounds - said to have been sustained by Madriago. Moreover, Dr. Batangan, who made an autopsy of the victims, merely found 15 stab wounds in Madriago's body and 8 or 9 stab wounds in that of Gardose, and no lacerated wounds. Similarly, there is no evidence whatsoever that appellants carried or used any object with which they could have caused lacerated wounds. Then, too - since the lower court had resorted to conjectures - there is nothing in the record to indicate that the blades of the scythe and the bolo of Gallema and Delo were not so dull - as, at times, those instruments are - as to be incapable of causing lacerated wounds.

Again, "although before the threats" - made to him the next morning - "he was not afraid" - meaning, obviously, for his life - Gagarin added, "yet he did not report to the police authorities because he was afraid of what had happened." We find in this nothing indicative of a common design or complicity with Gallema and Delo. On the contrary, the fact that, as soon as the latter's intent to kill Madriago and Gardose became apparent, appellants proceeded to run away, suggests that they were unaware of said intent until the very moment of the occurrence.

Frankly acknowledging the inadequacy of the evidence for the prosecution to establish appellants' guilt beyond reasonable doubt, the Solicitor General recommends their acquittal. In the light of the foregoing, We find that such recommendation is well taken.

Accordingly, the decision appealed from should be reversed and appellants Rudy Lacaden, Vicente Gagarin and Maximo Capinding are hereby acquitted for insufficiency of the evidence, with the proportional part of the costs de officio.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.
Castro, J., on leave.

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