

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ADRIANO CAÑETE AND JOSE BILOG ALIAS BOY, DEFENDANTS-APPELLANTS.

G.R. No. L-37945. May 28, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Charged and convicted of the crime of murder by the then Court of First Instance of Palawan, the two (2) accused, Adriano Cañete and Jose Bilog, were both sentenced to the maximum penalty of death, and to pay jointly and severally the heirs of the deceased, Douglas Bilog, in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency and to pay proportional costs.

The People's version of the facts is as follows:

"Accused Jose Bilog and Douglas Bilog were brothers. They were owners of adjoining ricelands adjacent to the Inagawan Sub-Colony at Puerto Princesa, Palawan (p. 10, tsn, Jan. 4, 1973, Anonas). They were not in good terms and always quarreled because Jose resented the fact that Douglas has received a bigger share of the lands inherited from their parents. (pp. 12, 20, tsn., Anonas).

The ire of Jose against his brother became unbearable that on or about April 28, 1971, he got his father's shotgun and waylaid Douglas at the bridge leading their house. A tragic incident was averted only when Concepcion, the wife of Douglas, informed her uncle, Cervancia, of Jose's evil scheme. Cervancia immediately went after Jose and succeeded in retrieving the gun from the latter and tried to settle their differences (p. 10, tsn, Anonas).

Through the intercession of Mr. Aniceto Gamo, a Chief of Section in the Inagawan Sub-Colony, Jose Bilog had allowed his farm to be worked by Nicasio Dayao, a prisoner at the Colony (pp. 4-5, 13, tsn, Duero). Sometime in May, 1971 while Dayao was working in the ricefield, Jose Bilog offered him P300.00 if he (Dayao) would kill Douglas. Dayao asked Jose Bilog why he wanted his brother liquidated. Jose replied that Douglas poisoned their mother and if Douglas would not be liquidated he (Douglas) would eventually kill all of them in the family (p. 7 tsn., Duero). Dayao rejected the proposal and offer of reward. He explained to Jose that he could not kill Douglas because he has many children to think about (p. 8, tsn., Duero).

On April 19, 1972, at about 5:00 p.m., Concepcion Bilog saw from the window of their house in the ricefield, Jose Bilog riding on a bicycle going towards the ricefield. On that occasion she saw Jose Bilog converse with two colonists (pp. 6-7, 10, tsn., Jan. 4, 1973, Anonas).

Almost at the same time on that day, Angel Rebong, a prisoner of the colony was sent by Aniceto Gamo to get some palay from Roming, who lived near the ricefield of Jose Bilog (p. 53, tsn., Duero). On the highway, Angel Rebong met Jose Bilog who was then riding a bicycle. Jose told him not to mention to anybody what he might see in the ricefield (pp. 35, 49, 53, tsn., Duero). Angel, however, did not see anything unusual in the ricefield so he went directly to the house of Roming. He left Roming's place at about 6:00 p.m. and reported to Mr. Gamo that he failed to get the palay. Thereafter, he returned to the General Services Barracks in the

colony's compound. He reached his hut at about 7:00 p.m. (pp. 36-37, tsn., Duero).

At about 5:00 o'clock that same afternoon, Antonio Cabig, an inmate of the Colony was on his way from the Colony's PX to the Coconut Division (pp. 64-65, tsn, Duero). He passed the ricefield of Jose Bilog and saw Douglas and Jose drinking wine in the latter's hut. They were seated in front of a table with about five bottles of 'Cuatro Cantos' gin on it (p. 92, tsn., Duero). When Cabig was 3 or 4 meters from the hut, Douglas saw him and offered him a drink. He accepted the drink but stayed outside the hut (pp. 68, 93, tsn., Duero). Not long thereafter, two persons arrived and joined the drinking party. Appellant Adriano Cañete also arrived and joined the group. He sat beside Jose Bilog (pp. 90, 93, tsn., Id.).

When those around the table were already drunk, Jose (Boy) Bilog stood up and drew from his waist a 'laring', a bladed instru-ment about 1-1/2 feet long. Sudden-ly, Jose stabbed Douglas at the front part of his body (pp. 75, 77, 114, tsn., Id.). Cabig witnessed the incident, but could not tell how many stab blows Jose Bilog delivered. He noticed that the knife embedded in Douglas' body. At this juncture, Cañete got hold of the knife and stabbed Douglas on the stomach (p. 144, tsn., Id.). Douglas stood up and fought his assailants with karate blows (p. 118, tsn., Id.). The two persons who had arrived earlier helped Jose and Cañete by hitting Douglas with a piece of wood. When Boy Bilog called for assistance, a colonist, one Roming, came and helped them until Douglas fell dead. The victim was then dumped in a nearby canal. Cañete got the 'laring' and proceeded to the Colony's brigade with it (p. 140, tsn., Duero).

When Angel Rebong arrived in his hut, Dugguan Abao, his hutmate, informed him that appellant Adriano Cañete came to their hut with blooded clothes. Cañete got Angel's clothes and wore them and left his blooded clothes (pp. 37-38, tsn., Duero). Angel then left for the General Ser-vices Barracks because he was to perform guard duty at 8:00 p.m. There he saw appellant Cañete wear-ing his black pants and Vonnel T-Shirt. The latter told him that he got his (Angel's) clothes be-cause he had no clothes to wear (pp. 39, 44, 59, tsn., Duero).

On April 27, 1972, police investigators received information about the persons seen at the scene of the crime prior to its commission. They took into custody Adriano Cañete and Angel Rebong and brought them to Puerto Princesa for inter-rogation. When they reached Puerto Princesa, Adriano Cañete informed Angel Rebong that he killed Douglas Bilog (p. 57, tsn., Duero). Upon investigation, appellant Cañete readily admitted that he together with Jose Bilog, Pedro Macabihag and Ramon Dealogo killed Douglas Bilog. Cañete then voluntarily gave a written statement. (Exhibit "C"; pp. 157, 158-159, tsn. Duero). Later, he led Sgt. Maduro to his quarters in the Colony and surren-dered the fatal knife (pp. 162, 180, tsn., Id.). On June 22, 1972 Cañete gave another statement. This time he stated that only he and Jose Bilog had a hand in the killing of Douglas (p. 177, tsn., Duero).

Dr. Oscar Magtang, Rural Health Physician at Puerto Princesa, Palawan conducted an autopsy on the cadaver of Douglas Bilog. He found 26 injuries, twenty-four (24) of which were incised and stab wounds scattered all over the body, particularly on the face, head, chest, abdomen, back, arms, and fingers of both hands. There were abrasions on the neck and lower abdomen. Death was due to severe hemorrhage (pp. 55-58, tsn. Anonas). Dr. Magtang made a written report, Exhibit "F" (p. 53, tsn. Id.). According to said doctor, the most severe of these wounds were those inflicted on the left mammary region of the chest going vertically downward and injuring the heart, and the stab wound on the abdomen (pp. 60-61, tsn., Anonas).

Adela Pereyna, Chief, Record and Document Section and Parcel Investigation, of the Iwahig Penal Colony testified that per records in her custody Adriano Cañete was convicted by the Court of First Instance of Cebu of robbery on September 7, 1960; that he transferred to Davao Penal Colony for work assignment bearing Serial No. 34831-P; that he escaped while serving sentence on January 10, 1963, but was captured and recommitted to prison on the following day; that he escaped again on April 7, 1964; that on August 6, 1966, he was committed to the Iwahig Penal Colony after having been convicted of robbery by the Court of First Instance of Ormoc City; that because he did not reveal his identity, he was included in the list of new arrivals and given serial No. 55791-P; that at the Verification and Identification Section, his identity was established as

the same Adriano Cañete who was previously given Serial No. 34831-P and who escaped from the Davao Penal Colony on April 7, 1964; that he was prosecuted for evasion of sentence in the Davao Court of First Instance with the aggravating circumstance of recidivism; and, that his term of sentence Davao Court of First Instance with the aggravating circumstance of recidivism; and, that his term of sentence was due to expire on August 23, 1975 (pp. 41-43, tsn, April 16, 1973, Anonas; Exh. "D", p. 109, Rec)." (pp. 4-10, Appellee's Brief).

Appellant Adriano Cañete assails the decision against him and submits that the lower court erred (1) in not rejecting his extra-judicial confession, Exhibit "C", notwithstanding that the case was merely concocted, incredible and in conflict with the People's evidence; (2) in not finding that there were at least seven (7) possibilities or versions as to who committed the crime and in not acquitting him on reasonable doubt; (3) in finding that the crime was committed in conspiracy with the attendance of evident premeditation, price, treachery and in not finding that Cañete should have been found guilty only of physical injuries or at most homicide.

On the other hand, appellant Jose Bilog claims that the lower court erred (1) in giving credit to the testimony of prosecution witness Antonio Cabig, notwithstanding that said witness is "known to be a confirmed degenerate and an admitted perjurer"; (2) in disregarding his defense of alibi; and (3) in not acquitting him on reasonable doubt.

Appellant Cañete submits that the extra-judicial admission, Exhibit "C", should have been disregarded, not due to violence in the taking thereof, but on the ground that the same had been successfully explained by him; that the contents thereof were merely concocted and this is supported by the evidence of the prosecution; that aside from the irreconcilable conflict between what is contained in his extra-judicial confession and what prosecution witness Antonio Cabig testified in court, said extra-judicial confession contains statements which are strikingly incredible; and that the credibility of prosecution witness Cabig as to the participation of appellant Cañete in the killing of Douglas Bilog is doubtful.

The contention is utterly without merit. The findings of the trial court is entitled to great weight that Cañete's retraction was merely a last minute effort at exculpation, considering that his extra-judicial confession, Exhibit "C", given in April 1972, was freely and voluntarily given. The fact is, there was no evidence presented that said confession was obtained as a result of violence, torture, intimidation or promise of reward or leniency, nor that the investigating officer could have been motivated to concoct facts narrated in said confession.

Besides, even with the exclusion of said Exhibit "C", there is the testimony of Antonio Cabig who witnessed the incident from the time Jose Bilog stabbed his brother on his breast up to the time Douglas fell after receiving the thrust of Cañete. Hereunder is Cabig's testimony regarding the horrifying incident:

“Q You said that Douglas Bilog was killed, do you know the persons who killed

Q Do you know how Douglas was killed?

A Yes, sir.

Q In what way was he killed?

A Douglas was drunk and he was stabbed by Boy Bilog.

COURT: (To witness)

Q Where?

WITNESS:

A He was stabbed near the hut and near the river.

COURT: (To witness)

Q Did you see by your own eyes when that incident happened?

A Yes, sir.

FISCAL DILIG:

Q Who was the companion of Boy Bilog when he hit Douglas Bilog?

A Cañete.

Q When you said Cañete, was he the same person whom you have just pointed to?

A Yes, sir.

X X X X X X X X

FISCAL DILIG:

Q You said that Boy Bilog hit with this bladed instrument marked as Exh. "B" Douglas Bilog, was Douglas Bilog hit?

A Yes, sir.

FISCAL DILIG:

Q In what part of the body of Douglas Bilog was hit?

A At the back of the body and here at the front.

Q After Boy Bilog hit his brother Douglas, do you know what happened to the knife marked as Exh. "B"?

A Yes, sir.

Q What happened to that weapon marked as Exh. "B"?

A The knife dropped in the hand of Boy Bilog. After the knife was dropped, Douglas Bilog stood up and he was hit again.

COURT: (To witness)

Q By whom?

A He was hit again by Cañete.

FISCAL DILIG:

Q You said that Douglas Bilog was hit by Adriano Cañete. What instrument did Cañete stab Douglas?

A The same knife used by Boy Bilog.

Q And in what particular part of the body of Douglas was stabbed by Cañete with the same weapon marked as Exh. "B"?

A At, the left side and on the breast.

Q And after Douglas was hit and stabbed by Cañete on the side and breast, do you know what happened to Douglas?

A Douglas stood up and the two civilians helped in clubbing Douglas.

Q After that, what happened?

A Douglas fell down.

Q And after Douglas Bilog had fallen down, what did you do, if any?

A I went home already to the Coconut Section.

Q Prior to that incident, did you already personally know Jose Bilog?

A Yes, sir.

(TSN, pp. 77-78, January 8, 1973 hearing)

Likewise, appellant Jose Bilog's alibi cannot pre-vail over the positive identification of Cabig. He points out that on the day of the incident, April 19, 1972, he was in his house doing household chores as his wife was in Puerto Princesa doing some marketing. On this score, the lower court rightfully observed:

"Jose Bilog's alibi has no merit. His house is but three kilometers away from the place of the incident and he was seen by the widow of the deceased leaving his house on a bicycle about 4:00 o'clock that afternoon. At 5:00 o'clock, he was met by Angel Rebong at the highway while riding his bicycle and at 6:00 o'clock late in the afternoon, Antonio Cabig saw him drinking liquor with the deceased in his hut in the banana plantation (pp. 154-155, Rec.).

The defense of alibi cannot be believed where the distance between two barrios is only eight kilometers and can be traversed by walking one and one-half hour. (People vs. Manangan, L-32733, Sept. 11, 1974, 59 SCRA 31). (pp. 9-10, Appellee's Brief).

Aside from the fact that courts exercise great caution in accepting alibi because it is easily concocted, it may be proper to repeat what one author said about alibi as a defense: "it is a reason with a bad reputation."

Again, We agree with the findings of the trial court that "while Jose Bilog tried to shift the blame at Cañete, Cañete too wanted the Court to believe that it was Jose Bilog who did the heinous act. Repudiating his confession, Cañete tried to convince the Court that he was simply offered P1,000.00 in consideration of his admission of the crime. On cross-examination, however, Cañete slipped and admitted that the P1,000.00 consideration was offered for him to execute the killing. It is therefore evident that cañete's testimony disowning the crime is but a last minute attempt at exculpation."

The killing of Douglas Bilog was qualified by treachery because the attack was unexpected and sudden, and the victim had no chance to defend himself. Like-wise, the aggravating circumstance of price was present in the commission of the crime and this affects not only the person who received the money or the reward but also the person who gave it. (People vs. Taledo, 58 Phil. 539).

WHEREFORE, the judgment appealed from is AFFIRMED but, for lack of necessary votes, the sentence is modified in that both appellants shall each suffer Reclusion Perpetua only, and shall indemnify, jointly and severally, the heirs of Douglas Bilog in the sum of P30,000.00. Costs against both appellants.

SO ORDERED.

Makasiar, Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Gutierrez, Jr., and De La Fuente, JJ., concur.

Fernando, C.J., and Teehankee, J., in the result.

Aquino, J., no part.

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