

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE ASTO, BIENVENIDO ABAGAT @ “FELIPE”, FERNANDO AQUINO, ALMARIO VELO AND EDUARDO MARIANO (AT LARGE), ACCUSED-APPELLANTS.

G.R. No. 108611. August 20, 1997

Ponente: ROMERO, J.

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ROMERO, J.:

Before us is an appeal from a murder conviction involving five men accused of clubbing Gerardo Peregrino to death. Accused-appellants Bienvenido Abagat, Jose Asto and Almario Velo seek a reversal of the decision of the Regional Trial Court of Villasis, Pangasinan Branch 50 in the case of “People of the Philippines v. Jose Asto, Bienvenido Abagat @ ”Felipe,” Fernando Aquino, Almario Velo and Eduardo Mariano” (Criminal Case No. V-0043).

The prosecution established the following facts mainly from the narration of witness Almario Nabong:

Gerardo Peregrino, a thirty-five year old civil engineer, was at home in Barangay Laoac, Alcala, Pangasinan on April 7, 1985, which was an Easter Sunday. At about seven o’clock in the morning, Almario Velo, Eduardo Mariano, Eduardo Aquino, and a boy they called “Ngo Ngo” arrived and invited him to a padasal or prayer service at Inggo Velasco’s house in the same barangay. After taking leave from his sister Lydia Peregrino, Gerardo Peregrino, together with Almario Nabong (Nabong), left with the group at around eight o’clock in the morning.

Upon reaching the dike also located at Barangay Laoac, the group met Fernando Aquino (hereinafter referred to as Aquino). The latter proposed that they go to the house of Bienvenido Abagat for a drinking session in lieu of the padasal. Peregrino and Nabong agreed. The group, leaving Eduardo Aquino behind, then proceeded to Abagat’s house in Barangay Olea, Malasiqui, arriving there at about ten in the morning.[1] Ino Gapoy and Abagat joined them in drinking gin, at Abagat’s neighbor’s house.[2] Well into their second bottle of gin, at about eleven o’clock that morning, Fernando Aquino and Peregrino had a verbal tussle. Fernando Aquino declared that he was going to run for councilor of Alcala, Pangasinan. Peregrino countered by saying: “If you will run for that post, cousin, I will fight you.”[3] After a brief exchange of words, Fernando Aquino, laughing, went to sit beside Abagat. As Aquino continued with his mirth, Abagat stared at Peregrino with contempt.[4]

By one o’clock in the afternoon, they had already finished three bottles of gin. Thereafter, Abagat invited them to his sister’s house located in front of the Elementary School in Barangay Olea. Abagat, Gapoy, Aquino, Velo and Mariano walked ahead while Peregrino and Nabong trailed behind. The latter two observed that the men in front of them were whispering to each other. When they reached the house of Abagat’s sister, one case of Manila beer was ordered. Jose Asto and a slender, fair-skinned man joined their drinking spree. After finishing the beer, Peregrino and Nabong were told by Jose Asto to go ahead, so the two proceeded to Barangay Laoac. Some fifty meters away, Peregrino and Nabong looked back and again saw the men conferring in whispers. The men they left

behind, including Jose Asto, caught up with them and told them to go to Gapoy's house in Barangay Curareng, in Alcala, Pangasinan.[5]

When they reached Gapoy's house, they shared four bottles of beer grande. On the northern side of the rectangular table on which they were seated were Aquino and Gapoy. Peregrino and Nabong were at the opposite end. Abagat and Asto were at the eastern side and Velo and Mariano were seated at the western side. The slender, fair-skinned man was seated behind Gapoy. As Peregrino was about to finish his beer, Abagat, suddenly and without warning, clubbed him with a piece of Ipil-ipil wood about one meter long and three inches in diameter. Having been hit on the forehead, Peregrino fell. As he attempted to stand up, Asto grabbed the wood from Abagat and hit Peregrino at the back of his head, causing the latter to hit the edge of the table with his chest. But before collapsing, the bench cushioned his fall. Nabong rushed to help Peregrino but Abagat clubbed him on the head as well. Aquino likewise attempted to strike Nabong with the wood but the latter parried the blow. Aquino then turned and hit Peregrino on the face. By then, their victim's arms and legs were shaking and trembling. Velo and Mariano also clubbed Peregrino. Nabong later testified that the pieces of wood used by these men were taken from a pile of Ipil-ipil nearby and that he last saw Peregrino slumped on the ground near the table.

When Nabong realized that the men were now approaching him menacingly, he ran and hid in the grassy area covered by talahib on the other side of the dike. After thirty minutes, he came out of his hiding place and fording the river, proceeded to Barangay Laoac where Velo caught up with him. While pointing a scythe at his side, Velo ordered him to bring the shovel he was holding to Aquino's house. When Nabong got there, he was led to a dark place and Aquino informed him of Peregrino's death. Mariano who was holding a scythe and Aquino, a bolo, threatened to kill Nabong if he squealed on them. Thereafter, Nabong ran to the Peregrino household.[6]

At about six in the evening of the same day, Modesto (Rudy) Sinampaga, Peregrino's cousin, informed Lydia Peregrino and her mother Francisca, that her brother Gerardo was beaten to death. Francisca then went to Velo's house to verify the news since it was Velo, a second cousin, who invited Peregrino to the padasal early that morning. After being informed that Velo was at the Bayambang Emergency Hospital, Francisca went back home. Nabong arrived later and confirmed Gerardo's death as a result of the assault. Francisca Peregrino and Nabong then proceeded to the Alcala Police Station to report the matter.

The victim was found dead, lying face down in a tobacco plantation at Curareng, Pangasinan near Gapoy's house. There were no signs of a scuffle that had occurred in the surrounding area. The plants were not destroyed and no weapons could be found. Only a bit of bloodstain near Peregrino's head was observed. But there were several foot prints running in various directions.

An autopsy conducted the next day, April 8, 1985, by the Rural Health Officer of Alcala, Pangasinan yielded the report of the cause of death by Dr. Constante F. Parayno to be "Cerebral Hemorrhage, Secondary to Fractures of the Skull (Frontal Bone, Parietal Bone and Nasal Bone)." Peregrino also bore a contusion on his nose bridge, lacerated wounds on the frontal and parietal regions of the head and he reeked of liquor.

Bienvenido Abagat, also known and initially charged as Felipe Abagat,[7] Jose Asto, Fernando Aquino, Almarino Velo and Eduardo Mariano (at-large) were charged with Murder in an Information which reads:

"That on or about the 7th day of April, 1985, in the afternoon, at Brgy. Curareng, x x x Alcala, x x x Pangasinan, x x x the above-named accused together with Eduardo Mariano who is still at-large, conspiring, confederating and mutually helping one another, with intent to kill and with treachery, evident premeditation and superior strength, did then and there, willfully, unlawfully and feloniously assault, attack and maul GERARDO PEREGRINO, thereby inflicting upon the latter, the following described wounds:

xxx xxx xxx

EXTERNAL FINDINGS

- Contusion on the bridge of his nose.
- Lacerated wound at the Frontal Region, 2 cms. in length, right side.
- Lacerated wound at the Parietal Region, 3 cms. in length, left side.

INTERNAL FINDINGS

- Fracture of the Frontal Bone, right side.
 - Fracture of the Parietal Bone, left side.
 - Fracture of the Nasal Bone
 - Blood Clot found inside the Cranial Cavity especially on the Frontal and Parietal area
- which wounds directly cause the death of said Gerardo Peregrino.

Contrary to Art. 248 of the Revised Penal Code.”[8]

Upon arraignment, Bienvenido Abagat, Jose Asto, Fernando Aquino and Almario Velo each entered a plea of not guilty. Eduardo Mariano is still at-large.

After nearly five years of trial,[9] the Regional Trial Court resolved the case on July 2, 1992 convicting all the accused of the crime of Murder.[10] The dispositive part of the sixty-nine page decision states:

“WHEREFORE, this Court finds the accused Bienvenido Abagat alias “Felipe”, Jose Asto, Fernando Aquino and Almario Velo guilty beyond reasonable doubt of murder and hereby sentences each of the said accused with the penalty of life imprisonment and orders said accused to jointly and severally pay to the heirs of Gerardo Peregrino the sum of P50,000.00 as indemnity for the death of said Gerardo Peregrino and the sum of P31,084.40 as actual damages and moral damages in the amount of P50,000.00.

Costs against all the accused jointly and severally.”

Hence, this appeal by accused-appellants Jose Asto, Almario Velo and Bienvenido Abagat[11] who contend that the testimony of the prosecution’s lone eyewitness, Almario Nabong, not being credible, is insufficient to prove their guilt beyond reasonable doubt. They highlight inconsistencies in his testimony and his close relationship to the victim as a source of bias. The Court will discuss the issues of credibility, conspiracy, the presence of treachery, evident premeditation, abuse of superior strength, the penalty imposed and damages awarded seriatim.

1. After an exhaustive review of the records of the case, we are convinced that the trial court did not err in characterizing Almario Nabong as the credible witness. The different versions presented by the accused-appellants are replete with inconsistencies and incredulous statements that firmly support this conclusion.

In defense of accused-appellant Abagat, his wife Leonida testified in support of his alibi. She narrates that at around noontime of April 7, 1985, as she and Bienvenido got home, they saw Peregrino, together with Velo, Nabong, Mariano and Aquino, under their neighbor’s (Crisanta Viernes) house drinking gin. Leonida invited their visitors to partake of the food she cooked for lunch. After lunch, their visitors were joined by Ino Gapoy (Leonida’s uncle) in going to Barangay Olea. Bienvenido Abagat was with the group. At about four o’clock in the afternoon, she fetched them at Catalina Bondoc’s store fronting the elementary school in Barangay Olea. As they reached the Abagat residence, their visitors went on their way and her husband proceeded to the field to get their carabao. Peregrino, Nabong and Mariano walked ahead of Aquino and Velo. Leonida claims that she followed their visitors going home. Upon reaching the bend going to Barangay Laoac, Peregrino, Nabong, Velo,

Aquino and Mariano were suddenly clubbed by Jose Asto, Leonardo Asto and Nicomedes Asto. Mariano and Nabong succeeded in running away while Peregrino hid inside a camarin.[12] When he emerged, all three attackers gave chase and overtook him when they reached the tobacco plantation. There the Astos clubbed Peregrino to death. When they were through beating him up, Leonida allegedly asked them why they killed him. According to her, they replied that he is merely unconscious but still alive, whereupon Leonida then left for home. When she reached the house, her husband had just arrived from the field. Accused-appellant Abagat corroborated Leonida's testimony.

The Court is in complete agreement with the trial court in finding Leonida Abagat's testimony as a fabrication in an effort to save her husband from criminal liability. Her actions during and in response to the mauling of Peregrino are not consistent with the reactions of an ordinary person and can thus be safely discredited. First, we find unworthy of belief her statement that she accompanied their visitors in going to another barangay, leaving her husband, after drinking gin, to proceed to the field to get their carabao. According to Abagat, he went to the field to continue working there. It is unseemly for the woman of the house to accompany her male visitors, who were under the influence of alcohol, to a barangay where some of them reside.

Second, it is not very likely, according to her testimony, that the three attackers were not even slightly repulsed by the five men (Peregrino, Nabong, Mariano, Velo and Aquino) whom they surprised. Third, her narration concerning the attack of the three Astos does not ring true. She neither shouted for help nor sought assistance from passersby. Keeping her ground, she merely watched them beat up her "visitors" and followed them as they chased and ganged up on Peregrino. Fourth, and most significantly, after all this commotion and the fate that befell Peregrino whom she knew to be one of her husband's companions earlier in the day, she merely went home and stayed there. She did not, as a gesture of civic duty or concern, report the matter to the police or to any other authority, soon after the incident or even when the police questioned her husband as a suspect. In sum, Abagat's defense fails as a discredited tale concocted to help extricate him from conviction. Nabong's positive identification of Abagat as one of Peregrino's assailants stands uncontroverted by creditable proof.

Jose Asto's version of events is markedly different from the tales of his co-accused. Asto testified that on April 7, 1985, around four in the afternoon, Marcelo Ganio informed him that there were intruders in his (Ganio's) tobacco plantation. On the way to Ganio's house, he saw the victim Peregrino together with Abagat, Aquino, Velo and Nabong at the plantation. When Asto asked them what they were doing there, the men replied that they were lost. Asto pointed the way back to Barangay Laoac but did not accompany them. A few minutes later, he heard a commotion in the plantation some two hundred meters away. He claims to have seen several people fighting each other with pieces of wood but did not go to the field to check what was happening. That night, policemen came to his house looking for Bienvenido Abagat. The following day, uniformed men, including Lt. Lolito Peregrino, the victim's brother, went to his house inquiring about Peregrino's death. Asto claims that he was threatened by Lt. Peregrino that he would be charged with Peregrino's death if he did not tell the truth.

Accused-appellant Asto intimated that the evidence against him given by Nabong was concocted upon the instigation of the victim's brother, Lt. Lolito Peregrino. He argues that Nabong could not refuse Lt. Peregrino's directive to implicate Asto because the former was closely related to the Peregrinos and was indebted to them for he had been living in their house for five years without paying anything. Of the three statements given by Nabong, only the third, which was executed with the assistance of Lt. Peregrino, implicated Asto as participant in the assault against Peregrino. It is inconceivable, asserts Asto, that he, a twice-elected Barangay Councilman of good standing in the twilight of his life would join in a drinking spree and beat Peregrino to death. He adds that the court erred in discrediting his alibi and in arriving at a finding of conspiracy.

The Court finds Asto's story similarly incredible. Significantly, Ganio personally knew accused-appellant Abagat

as a barangay tanod of Barangay Olea where they both reside. Consequently, it is inconceivable that he would view Abagat and his friends as intruders in the plantation and accept unquestioningly their tale of being lost as to need directions going to Barangay Laoac. Moreover, it is hard to believe that having witnessed a commotion of about fourteen men in a field some two hundred meters away, none of them decided to look into the disturbance. Considering Asto's position as a councilor who is presumed to be more civic-minded than the average person, his excuse that the fray was not his concern since it was taking place in a different barangay sounds hollow. Asto's claim to good standing in the community cannot overcome these considerations and an eyewitness' positive identification that he was one of the malefactors who beat Gerardo Peregrino to death.

Furthermore, allegations regarding the influence of Lt. Peregrino are unsubstantiated. Nabong adequately explained his three statements in open court. He refused to sign the first one made on April 9, 1985 before Technical Sergeant Rolando Cabalbag of the 153rd PC Command in Bayambang, Pangasinan because the declarations made therein were false and dictated by accused Fernando Aquino who was present when he was interviewed by Cabalbag. The second, subscribed before a municipal court Judge on April 10, 1985, was not read to him and the Judge directed him to explain its errors only during the trial. The third was made before an assistant provincial fiscal on April 25, 1985, presumably when the situation was no longer volatile. Nabong also clarified some of the statements made therein when he testified in court.[13]

Nabong's close relationship to the victim who was his second cousin, does not necessarily give rise to false testimony. Mere relationship of a witness to the victim per se does not impair his credibility as a witness specially when said witness was present at the scene of the crime.[14] Understandably, a relative will seek justice for his kin, prosecute the guilty parties and will not allow the true assailants to go scot-free. Lt. Peregrino's presence when Asto was arrested does not suggest any irregularity as the arresting officers were armed with the proper warrant.

Accused-appellant Velo narrates another story. He admits having participated in a drinking spree with Peregrino, Nabong, Mariano and Aquino and leaving at around four o'clock in the afternoon. About half an hour later, on their way home, he noticed that he forgot his cigarette lighter. Retracing his steps, he went back to the store and met Abagat and Asto who had been following their group. When he asked the two if they had seen his lighter, the latter angrily retorted that the implication is that they were thieves. Thereupon, Abagat punched Velo on the mouth and Asto boxed him on the right eye. Aquino arrived and tried to pacify them. Velo escaped, to be followed by Aquino, as they were pursued by Asto's group. Velo was then mauled by another man whom he did not recognize before he fainted. Asto's group pursued Velo's, including Aquino, Peregrino, Mariano and Nabong. These men were also mauled but were able to flee before serious injuries could be inflicted upon them. Only Peregrino was left to the mercy of Asto's group. Velo then sought medical treatment from Dr. Constanse Parayno, the Rural Health Physician of Alcala after reporting to the Alcala Police Station that same night that he was mauled. Subsequently, he learned of Peregrino's death. He attended the wake on the second night but did not attend the burial because Rudy (Modesto) Sinampaga allegedly threatened him on the fourth night of the wake.

The Court finds no basis to believe accused-appellant Velo. First, the Municipal Health Officer (Dr. Parayno) testified that Velo's contusions were generally slight and superficial[15] much like the injuries of Fernando Aquino and Eduardo Mariano who were also initially treated by Dr. Parayno and who did not return for further consultation.[16] This defense appears to be a contrived effort to make it appear that Velo and company were victims, as well. Second, the criminal complaint for less serious physical injuries filed by Velo against Abagat and Asto does not exculpate him in view of the positive testimony of Nabong that he participated in clubbing Peregrino to death. Third, Velo's suggestion that Nabong's version is incredible because Nabong himself did not try to pacify the attackers, shield Peregrino, shout for help or scare away the assailants is unfounded. Nabong

clearly stated that he was slightly hit with a piece of wood and would have been injured further had he not been able to parry their blows. It is not unrealistic to expect a victim to dissuade his assailants from further attacks. Shielding Peregrino who was heavily attacked, or calling for help or shouting at accused-appellants may be among the different reactions within the range of ordinary human emotion but are not expected of all victims or witnesses. Not everyone reacts in the same manner when confronted with strange, startling or violent situations. Fourth, the Court disagrees with Velo who maintains that if Nabong was telling the truth, the latter would not have been allowed to go scot free by Peregrino's attackers. Nabong's release, while unexplained, is not unthinkable because killing all obvious witnesses to a crime is not always resorted to as a matter of course. Fifth, the Court agrees with the trial court in not giving credence to Velo's claim of having attended the victim's wake. We find Sinampaga's rebuttal to said claim more worthy of belief.[17]

2. The Court also finds that accused-appellants conspired in attacking Peregrino. Direct proof is not necessary to prove conspiracy but may be inferred from the acts of the accused before, during and after committing the crime which suggest that they acted in concert and in pursuance of the same objective.[18] Herein facts show that all the accused took turns in hitting the victim with a wooden club, helping each other and thus clearly manifesting a common purpose and concerted action on their part to kill Peregrino.[19]

3. We agree with the trial court that treachery is present in this case. When the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make, there is treachery or *alevosia*. [20] The unexpected and sudden attack on Peregrino constitutes treachery because said assault rendered him unable and unprepared to defend himself because of the suddenness and severity of the attack.[21]

4. The accused here were charged in an information which included abuse of superior strength as a qualifying and aggravating circumstance to the crime of Murder. Abuse of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked to defend himself.[22] Here, when the five accused, armed with Ipil branches, ganged up on one unarmed, unsuspecting Peregrino, excessive force was intentionally employed. Having appreciated the qualifying circumstance of treachery, as stated above, there is no need to cite the existence of abuse of superior strength in the case at bar because treachery absorbs abuse of superior strength.[23]

5. Evident premeditation, on the other hand, does not exist in the case before us. For this circumstance to be appreciated, there must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim.[24] There is no such demonstration of calculation and previous resolution on the part of the accused. Although the record shows that Nabong and Peregrino twice saw the accused conferring in whispers, the prosecution was unable to confirm the subject matter of these "whispers."

6. We also note that the trial court imposed on the accused the penalty of life imprisonment when the proper penalty for Murder as expressly provided in Article 248 of the Revised Penal Code is *reclusion perpetua*. Life imprisonment, a penalty imposed by special laws and not by the Revised Penal Code, is not synonymous with *reclusion perpetua* which carries with it accessory penalties and entails imprisonment for at least thirty (30) years. Administrative Circular No. 6-92 dated October 8, 1992 on the "Correct Application of the Penalty of *Reclusion Perpetua*" reiterated this point, as well as the admonition in *People v. Penillos*[25] that every Judge should take note of the distinction and should not mistake one for the other. Hence, the penalty imposed on the accused should be modified from life imprisonment to *reclusion perpetua*.

WHEREFORE, the decision appealed from is hereby **AFFIRMED** with the **MODIFICATION** that the penalty

imposed is reclusion perpetua. Costs against accused-appellants.
SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

[1] TSN, September 23, 1986, pages 17 and 22.

[2] Crisanta Viernes.

[3] Fernando Aquino is a second cousin of the victim Gerardo Peregrino and Almario Nabong.

[4] TSN, September 17, 1986, p. 6.

[5] TSN, August 20, 1986, pp. 24-29.

[6] TSN, September 23, 1986, p. 11.

[7] Felipe Abagat's true name is Bienvenido Abagat. TSN, August 20, 1986, p. 6.

[8] Filed August 19, 1985, Rollo, pp. 6-7.

[9] From 1985 to 1990.

[10] Decision penned by Judge Alfonso G. Abad, Rollo, pp. 41-109.

[11] Almario Velo was represented by counsel de oficio Atty. Eduardo de los Angeles and Bienvenido Abagat was represented by Ernesto L. Pineda. Jose Asto was represented by the Asuncion Law Office as his counsel de parte.

[12] A storage area.

[13] TSN, October 28, 1986, pp. 7-13. Nabong clarified that it was Fernando Aquino and not Bienvenido Abagat who had a verbal encounter with the victim; that the assault took place in Curareng, Pangasinan not in Barangay Olea per his first statement.

[14] *People v. Patamama*, 250 SCRA 603 (December 4, 1995).

[15] He found a black eye on the right eye, contusions on his right eyebrow, forehead, left lower jaw, scapular region, one to two centimeters in length; Velo also had lacerated wounds on his upper lip and left thigh, one to two centimeters long and an abrasion on his right elbow.

[16] Aquino suffered a two-centimeter contusion at the infra-scapular region. Mariano bore a lacerated wound, one-centimeter in length, in his right eyebrow, a black eye on the right eye and a contusion on his forehead.

[17] TSN, December 28, 1989, p. 23.

[18] *People v. Magallano*, G.R. No. 114872, January 16, 1997 citing *People v. Compil*, 244 SCRA 135 (May 15, 1995) and *People v. Omog-bolahan*, 252 SCRA 213 (January 24, 1996). *People v. Aniel*, 96 SCRA 199 (1980); *People v. Sy*, 113 SCRA 207 (1982).

[19] *People v. Caritativo*, 256 SCRA 1 (April 1, 1996).

[20] *People v. Layno*, G.R. No. 110833, November 21, 1996 citing *People v. Soldao*, 243 SCRA 119 (March 31, 1995).

[21] *People v. Soldao*, *ibid*.

[22] People v. Casingal, 243 SCRA 37 (March 29, 1995).

[23] People v. Panganiban, 241 SCRA 91 (February 6, 1995).

[24] People v. Daquipil, 240 SCRA 314 (January 20, 1995); People v. Cascalla, 240 SCRA 482 (January 25, 1996).

[25] 205 SCRA 546 (January 30, 1992).

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