

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEODEGARIO BALONGCAS, ET AL., DEFENDANTS. JULIAN
PORTALLO, DEFENDANT AND APPELLANT.**

G.R. No. 11340, March 17, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Leodegario Balongcas, Francisco Balongcas, Luis Lumayag and Julian Portallo were charged with murder for the death of Placido Amorcillo before the Court of First Instance of Misamis Occidental, while Leodegario Balongcas was charged with frustrated murder for the injuries sustained by Leon Agad.

Upon agreement of the parties both cases were tried jointly after which the court found the accused above mentioned guilty of murder with the qualifying circumstance of treachery and the aggravating circumstance of superior strength and sentenced each to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased jointly and severally in the amount of P3,000.00, with the accessory penalties provided for by law, and to pay the costs. In the other case, Leodegario Balongcas was found guilty of less serious physical injuries and was sentenced to suffer the penalty of 3 months of arresto mayor and to pay the costs.

From the above decision, only Julian Portallo and Luis Lumayag appealed, but on January 8, 1957, upon his petition, the appeal of Lumayag was withdrawn. Hence, only the appeal of Portallo is before us for determination.

In the evening of May 14, 1952, a benefit dance to celebrate the barrio fiesta was held in Buracan, municipality of Bonifacio, Misamis Occidental. Because there were more men than ladies in the gathering, the managers of the affair headed by barrio lieutenant Mariano Limatoc decided to sell three different colors of ribbons to the men, namely, red,, blue and white. In order that there may be order in the dance, the man wearing ribbons of the same color were requested to dance for pieces that correspond to that color. At about 8:30 of the evening, Leodegario Balongcas, Francisco Balongcas, Luis Lumayag and Julian Portallo arrived to attend the dance. Since the four carried only P1.00, only Leodegario and his brother Francisco bought two red colored ribbons at P0.50 each. It appears that upon entering the hall the two brothers immediately danced and in fact continued dancing in spite of the fact that the piece played were intended for the men wearing blue and white ribbons. Thereupon, barrio lieutenant Mariano Limatoc called the attention of the two brothers that they were not dancing properly warning them not to dance unless the pieces played correspond to their ribbons in order that the other young men may not be offended. The Balongcas brothers, however, did not heed, the warning and so Limatoc asked Placido Amorcillo, a special agent of the provincial governor, to talk to them. Acceding to the request, Amorcillo addressed the gathering requesting the men not to dance unless the pieces correspond to the color of their ribbons. A dance piece was thereafter played for men wearing blue ribbons and this time the Balongcas brothers did not dance. Forthwith barrio lieutenant Limatoc began selling flowers.

During the refreshment period the two brothers and their companions Lumayag and Portallo were seen gathered together behind the string band engaged in a conversation. Placido Amorcilla refused the refreshment offered him

saying that he had stomach trouble and went forthwith outside to defecate. A little later, Leon Agad, one of the members of the string band playing in the dance, heard the voice of Amorcillo asking for a help so he ran towards him to find out what was happening. Limatoc who saw Agad running followed whereupon both saw the four men, Leodegario Balongcas, Francisco Balongcas, Luis Lumayag, and Julian Portallo, assaulting Placido Amorcillo. As Limatoc drew nearer, Francisco Balongcas, Luis Lumayag and Julian Portallo ran away, while Leon Agad caught and held Leodegario Balongcas who in the ensuing struggle stabbed him (Agad) three times.

Maura de Amorcillo, wife of Placido, who was also at the dance, heard the shouts for help of her husband and when she ran towards the place where his voice was coming from she saw the same four person attacking him. Her plea to spare his life was unheeded.

Mariano Limatoc, Leon Agad and Amancio Aballe also approached Placido Amorcillo after being left alone who, upon being asked what happened, said, " I am wounded. I am going to die." Amorcillo said that those who attacked him came from inside the chapel situated nearby. Limatoc then called for a policeman to report the matter to the chief of police after which Amorcillo was brought to the clinic of Dr. Evaristo Payad. He died two hours after he was operated on by the latter. According to Dr. Payad, death was caused by hemorrhage and shock resulting from the wounds inflicted on the deceased. These wounds were described by Dr. Payad in a medical certificate copy of which appears transcribed in the brief of the government.

Chief of Police Ospicio Semino investigated the scene of the incident where he found a dagger which belonged to Leodegario Balongcas. In a sworn statement signed by the latter before the justice of the peace he stated that he stabbed the deceased with a dagger and that he is the only one who killed him.

Appellant did not take the witness stand but merely relied on the testimony of his co-accused Francisco Balongcas and Leodegario Balongcas and of one Miguel Villahermosa. The first two declared that they went to attend the dance together with their cousin Luis Lumayag and appellant, a friend who was allowed by them to live in their house. Because they had only P1.00 at the time only Leodegario and Francisco bought red ribbons costing P0.50 each who danced to the pieces corresponding to their ribbons as requested by the managers of the dance. They said that at ten o'clock in the evening Francisco Balongcas, Luis Lumayag and appellant went home leaving Leodegario in the dancing hall. Francisco Balongcas claims that he and Luis Lumayag left for Cebu early the next morning to deliver corn and chickens to his brother and stayed there for about one week. He did not know of the stabbing and so he was surprised when upon going home he was arrested by the police authorities.

Leodegario Balongcas, on his part, declared that he stayed in the dance hall for about 3 or 4 hours after his companions had left; that when he was leaving the hall, Leon Agad followed him and all of a sudden Agad boxed him on his lower nape; that when he asked Agad why he boxed him, one Placido Amorcillo arrived, and immediately pressed his neck with his left arm; that he tried to escape and when he could not do so he remembered the knife he had in his waist which he took and with it stabbed Amorcillo several times; that he later went home without telling his mother about the incident and left for the mountains; that he was later arrested by the authorities for the death of Amorcillo; and that in the investigation made of him by the chief of police, he signed a statement wherein he admitted that he alone killed Amorcillo.

The plea of alibi which the defense set up in exculpation of appellant even if the same finds support only on the testimony of his co-accused who were found guilty by the trial court is of no avail for the simple reason that his identification and participation in the assault heaped on the victim Placido Amorcillo appears established by positive and competent evidence. Indeed, there are eyewitnesses who testified that appellant was seen in a huddle previous to the attack and that he is one of those who simultaneously wounded and inflicted injuries upon the victim.

Thus, Mariano Limatoc, the barrio lieutenant of the place of the incident, declared that he positively saw appellant, together with his co-accused, in a huddle near the string band after the deceased warned them not to dance to the pieces which do not correspond to their ribbons. When he followed Leon Agad to the place where the shouts came, he saw appellant and his co-accused in the act of simultaneously assaulting the victim near the chapel, and that as he drew nearer, appellant and some of his companions ran away. His testimony was corroborated by Leon Agad, a member of the string band, and even by the victim himself when hours before he expired he declared before Limatoc that it was the four accused herein who attacked him. To the same effect is the testimony of Maura Amorcillo, wife of the deceased, who likewise went to the place of the incident when she heard the outcries of her husband and saw him being attacked by the four accused. There can, therefore, be no doubt of appellant's identification and participation in the killing of the deceased.

There is an intimation in the evidence that the stabbing of Amorcillo was motivated by a personal grudge. It appears that sometime in 1949, at the instance of the deceased, the house of Bernarda Lumayag was searched by some constabulary soldiers who found there one carbine and one pistol as a result of which Bernarda was prosecuted for illegal possession of firearms. This Bernarda, it should be noted, is the mother of accused Leodegario Balongcas and Francisco Balongcas. It is true that appellant is not a relative of the Balongcas, but suffice it to state that he is their friend so much so that when the incident took place he was living in their house as a member of their family.

Appellant's guilt is further established by the fact that he together with Francisco Balongcas and Luis Lumayag disappeared from their homes immediately after the commission of the crime for which reason the chief of police could not effect their arrest until three days thereafter. This unexplained flight may be considered as a circumstance tending to establish guilt. (U.S. vs. Alegado, 25 Phil., 510).

The decision appealed from being in accordance with law and the evidence, we are presumed to affirm the same.

Wherefore, the decision appealed from, insofar as appellant is concerned, is affirmed with the proportionate costs against appellant.

Bengzon, Acting C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon, JJ., concur.

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