

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO LUMACANG, PABLO LUMACANG AND DOMINGO LUMACANG, ACCUSED-APPELLANTS.

G.R. No. 120283. February 01, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Pablo Lumacang assails the decision rendered by the Regional Trial Court of Oroquieta City, Branch 13 finding him and his co-accused, Pedro Lumacang and Domingo Lumacang, guilty beyond reasonable doubt of the murder of one Elmer Salac.

The facts of the case are as follows:

On August 11, 1993 at 4:00 o'clock in the afternoon, brothers Pablo, Pedro and Domingo Lumacang, Rogelio Balan, a relative, and Nicolas Limosnero played basketball at the Tuburan Basketball Court in Tuburan, Villaflor, Oroquieta City. The Lumacang Brothers were then carrying hunting knives. After playing basketball, all five men decided to go to the house of Longlong Jalandoni where they drank four (4) liters of tuba. After drinking tuba, they proceeded to the house of Romy Leopoldo where a pre-wedding party was being celebrated. Before reaching the house of Romy Leopoldo, they decided to drop by the house of Nonoy Jonson to drink some more tuba. While in the house of Nonoy Jonson, they chanced upon the deceased, Elmer Salac, whom they invited to drink with them. The men consumed two (2) liters of tuba which Elmer gallantly paid for. It was already 8:00 o'clock in the evening when they finished drinking tuba. They proceeded to the house of Romy Leopoldo. When they got there, Rogelio Balan called out to the persons inside the house but nobody answered. Suddenly, without any warning, Pedro Lumacang unsheathed his hunting knife and stabbed Elmer Salac on the left side of the chest. Elmer ran away and shouted for help but the three brothers pursued him until they caught up with him near a banana plantation five (5) meters away where they took turns stabbing him. There was no moon but the sky was illumined with stars, and there was light coming from the house of Romy Leopoldo. The stabbing incident was witnessed by their friends Rogelio and Nicolas without much difficulty.

That same evening, at around 11:00 o'clock, Buntawan Barangay Captain Cosme Jonson and the father of the deceased, Faustino Salac, reported the crime to the Oroquieta City Police Station. The following day, at around 6:30 o'clock in the morning, SPO4 Leoncio T. Jabonillo, SPO1 Samuel Caulin, PO3 Allan Adlaon, SPO2 Marcial, and SPO4 Oscar Laranjo went to the crime scene with Rural Health Physician Dr. Guillermo Flores. The Lumacang brothers were implicated during the initial investigation and were subsequently arrested.

The postmortem examination conducted on the deceased revealed the following findings:

1.

Body length- 166 cm.

2.

The corpse is already in state of rigor mortis.

3.

Wound, lacerated, 5 cm. diameter, anterior shoulder, medial 3rd, clavicular line, left.

4.

Wound, penetrating, 2 cm. diameter, 8 cm. depth, 3rd intercostal space, medial 3rd, clavicular line, anterior chest, left.

5.

Wound, penetrating, 2 cm. diameter, 5 cm. depth, intercostal space, para-sternal line, anterior chest, left.

6.

Wound, penetrating, 2 cm. diameter, 8 cm. depth anterior, lumbar area, left.

7.

Wound, lacerated, 2 cm. diameter, medial aspect, proximal 3rd, thigh, right.

8.

Wound, lacerated, numbers 3, 2 cm. diameter each, scapular area, left.

9.

Wound, lacerated, 2 cm. diameter, infrascapular area, left.

10.

Wound, lacerated, 3 cm. diameter, anterior aspect, proximal 3rd, arm, right.

11.

Wound, penetrating, 7 cm. diameter, posterior aspect, proximal 3rd arm, right, inter-connected with finding 10.

12.

Wound, penetrating, 2 cm. diameter, 7 cm. depth, back of the neck, left.

13.

Wound, lacerated, 2 cm. diameter, posterior shoulder, right.

14.

Wound, lacerated, 5 cm. diameter, posterior aspect, proximal 3rd, thigh, left.[1]

Dr. Flores opined that it was possible that the wounds found on the body of the deceased were probably inflicted with the use of several weapons.[2]

On August 13, 1993, an information was filed against the brothers Pedro, Pablo and Domingo Lumacang which reads as follows:

The undersigned First Assistant City Prosecutor accuses Pedro, Pablo, and Domingo all surnamed Lumacang of the crime of Murder committed as follows:

That on or about August 11, 1993 at about 8:00 o'clock in the evening at Sitio Tuburan, Barangay Villaflor,

City of Oroquieta, Philippines, and within the jurisdiction of this Honorable Court, the above-named three accused armed with bladed weapons, confederating, conspiring and helping one another, with intent to kill and taking advantage of the nighttime to facilitate the commission of the crime, taking advantage of superior strength and with treachery did then and there wilfully, unlawfully and feloniously attack, assault and stab Elmer Salac inflicting multiple stab wounds on the different parts of his body which directly resulted in his almost instantaneous death.

Contrary to Article 248 of the Revised Penal Code and that the commission of the crime was attended with the qualifying circumstances of treachery, and abuse of superior strength, and generic aggravating circumstance of nighttime, and with aggravating circumstance of recidivism as against accused Pablo Lumacang, he having been convicted by final judgment of the crime of murder on September 15, 1982 in Criminal Case No. 733, Regional Trial Court, Branch 12, Oroquieta City, and was sentenced to an imprisonment of 10 years and 1 day to 14 years and 8 months.[3]

The three accused pleaded not guilty upon arraignment. Pablo Lumacang testified that on August 11, 1993, at around 4:00 o'clock in the afternoon, he and his two brothers, Pedro and Domingo played basketball together with Nicolas Limosnero and Rogelio Balan in Tuburan, Oroquieta City. After playing basketball, the five men went to the house of Longlong Jalandoni to buy cigarettes and tuba. After consuming 6 ½ liters of tuba, Nicolas invited them to attend a pre-wedding party at the house of a certain Romy Leopoldo. On their way to the house of Romy Leopoldo, they dropped by the house of Nonoy Jonson. Since a lot of people were present, Pablo, Nicolas and Domingo only stayed for a short while after which they proceeded to the house of Romy Leopoldo. Pedro and Rogelio were left behind together with Elmer Salac who happened to be present at that time. Seeing that there was not much activity in the house of Romy Leopoldo either, accused-appellant Pablo and Domingo returned with Nicolas to the house of Nene Jonson. They did not stay long however, and after a while, Pablo Domingo and Nicolas decided to go home. Nicolas spent the night in Pablo's house and left at 5:00 o'clock the following morning.[4]

Domingo Lumacang testified that he and his brother, accused-appellant Pablo Lumacang, did not have any knowledge that Elmer Salac was stabbed in the evening of August 11, 1993. He said that at 8:00 o'clock in the evening of the date in question, his brother Pedro arrived home and told them that he accidentally killed Elmer Salac. Nicolas Limosnero was even present when Pedro arrived since he spent the night at their house until 5:00 o'clock the next morning.[5]

Pedro Lumacang, for his part testified that he and his brothers, Pablo and Domingo together with their friends, Rogelio Balan and Nicolas Limosnero, played basketball at Tuburan, Oroquieta City in the afternoon of August 11, 1993. After playing basketball, Rogelio brought them to the house of Nonoy Jalandoni where they drank 4 ½ liters of tuba courtesy of Rogelio. After drinking tuba at Jalandoni's place, Rogelio invited them to attend a pre-wedding party in the house of Romy Leopoldo. On their way to the house of Romy Leopoldo, they passed by the store of Nonoy Jonson. Pedro and Rogelio lingered at the store of Nonoy Jonson while the others went ahead. While at the store of Nonoy Jonson, they chanced upon the deceased, Elmer Salac, who was with a friend. Seeing only the deceased and his friend at the store of Jonson, Pedro and Rogelio decided to proceed to the house of Romy Leopoldo. The deceased however tailed them all the way to Romy Leopoldo's house. It was 6:00 o'clock in the evening at the time and it was not yet very dark. While standing outside Romy Leopoldo's house, the deceased insolently asked Pedro about a previous quarrel the latter had with the brother of the deceased. Pedro, however, tried to brush off the insults of the deceased by saying that he and the latter's brother had made amends. The deceased was not appeased and hit Pedro on the abdomen. The deceased continued to throw punches at Pedro which the latter tried to parry. Pedro then looked around for stones but it was too dark, so he drew his bolo and stabbed the deceased. On the other hand, the deceased got hold of a piece of wood 1 ½ feet in length and one inch

in diameter to protect himself. The deceased ran when he was stabbed but Pedro gave chase and finished him off. Rogelio ran away at the time the deceased first hit Pedro on the abdomen. Consequently, Pedro was alone with the deceased when the stabbing incident happened.[6]

When Pedro arrived home, he told his brothers that he stabbed Elmer and killed him by accident. They replied, "Why did you stab him? He is a friend." Pedro intended to surrender to the barangay captain but was fearful, of a reprisal from the relatives of the deceased. He then spent a restless night near the bamboo groves. Pedro maintained on the stand that he did not have any intention to kill the deceased. His only purpose was to inflict pain on him since he was insulted. He stabbed the deceased to defend himself since he was smaller.[7]

Rogelio Balan and Nicolas Limosnero, however, belied the testimony of the three brothers. According to Rogelio Balan, in the afternoon of August 11, 1993, he played a game of basketball with the Lumacang brothers and Nicolas Limosnero. The brothers brought hunting knives which they prominently displayed on the goal of the basketball court.[8] After playing basketball and upon the invitation of Nicolas, they proceeded to the house of Romy Leopoldo where there was a pre-wedding party. The brothers had their hunting knives tucked in their waist. On their way to Romy Leopoldo's house, the five men decided to drop by the store of Jalandoni where they consumed some 6 ½ liters of tuba. Thereafter, they proceeded on their way. Before reaching Romy Leopoldo's house, however, they dropped by at the house of Nonoy Jonson to drink more tuba when they chanced upon the deceased. The deceased had a previous quarrel with accused-appellant Pablo Lumacang since Pablo burned Elmer with a cigarette.[9] The two, however, appeared to have reconciled since the five men even invited the deceased for a drink which he graciously accepted and paid for. After drinking tuba, the five men and the deceased, Elmer Salac, went to the house of Romy Leopoldo. Upon reaching the house of Romy Leopoldo, Rogelio called out to announce their arrival but nobody answered. Romy Leopoldo's house was lit at the time with a kerosene lamp although the windows were closed. Without any warning, Pedro, who was standing at the right side of the deceased, unsheathed his hunting knife and stabbed the latter on the left chest. The deceased managed to run away and shout for help but the three brothers began to pursue him and, upon reaching him, took turns stabbing the hapless victim.[10] Rogelio witnessed the entire sequence of events because he was directly behind Pedro and the deceased at the time the first stabbing occurred and he managed to follow the three brothers near the banana plantation where they took turns in stabbing the deceased. Rogelio categorically stated that he saw the three stab the victim on that moonless night because the stars were bright and there was light coming from Romy Leopoldo's house.[11]

Nicolas Limosnero corroborated Rogelio Balan's story and testified that in the afternoon of August 11, 1993, he played a game of basketball with Pedro, Pablo and Domingo Lumacang together with Rogelio Balan. The three brothers came to the basketball court armed with hunting knives. After playing basketball and upon his invitation, they decided to go to Romy Leopoldo's house where there was supposed to be a pre-wedding party. On their way to Romy Leopoldo's house, the five men dropped by at Jalandoni's store to drink some tuba. They were able to consume 6 ½ liters of tuba which Rogelio paid for. On their way to Leopoldo's house, they met the deceased Elmer Salac in the house of Nonoy Jonson and invited him to go with them. Upon reaching the house of Romy Leopoldo, Nicolas saw Pedro put his arm on the shoulder of the deceased, pullout his knife and, without a word, stab him on the left chest. The deceased managed to run but the three brothers took pursuit and, having overtaken him, took turns in stabbing him mercilessly. Nicolas said that the incident occurred at around 8:00 o'clock in the evening of August 11, 1993. There was no moon but the sky was bright with stars. Like Rogelio, he was able to witness the entire sequence of events because he was near the deceased at the time he was first stabbed. He also followed the three brothers near the banana plantation when they stabbed the victim to death. Upon seeing the gruesome murder, he turned back and ran away.[12]

On February 20, 1995, the Regional Trial Court of Oroquieta City, Branch 13, found Pablo, Pedro and Domingo Lumacang guilty beyond reasonable doubt of the crime of murder in a decision, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, this Court finds accused Pedro Lumacang, Pablo Lumacang, and Domingo Lumacang guilty beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, with the qualifying circumstances of treachery and abuse of superior strength, and the generic aggravating circumstance of nighttime, without any mitigating circumstance to offset the same, hence, each of the accused is hereby sentenced to suffer the penalty of RECLUSION PERPETUA, together with the accessory penalties provided for by law, to indemnify the heirs of the victim the amount of P50,000.00 and to pay the costs. Said accused must be credited of the time they spent under preventive imprisonment.

SO ORDERED.[13]

Only Pablo Lumacang appealed to this Court raising the following assignment of errors:

- The lower court erred in holding that accused-appellant Pablo Lumacang (was) guilty beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code.
- The lower court erred in appreciating the qualifying circumstances of treachery and abuse of superior strength, and the generic aggravating circumstance of night time.
- The lower court erred in appreciating that some wounds inflicted on the body of the victim, Elmer Salac was inflicted by the weapon own (sic) by the accused Pablo Lumacang without establishing that such weapon is actually owned by the accused and without producing the same.[14]

We shall deal with the issues seriatim.

With regard to the first contention, accused-appellant avers that the witnesses for the prosecution, namely Rogelio Balan and Nicolas Limosnero, never made a categorical statement that they saw him stab the deceased. Accused-appellant maintains that they also could not have witnessed the sequence of events from the time the deceased was stabbed by Pedro and chased all the way to the banana plantation inasmuch as it was dark at that time, the only source of illumination being a petroleum lamp.

We are not convinced.

Contrary to accused-appellant's assertion, Rogelio and Nicolas were steadfast in identifying him as having a hand in the gruesome stabbing and killing of Elmer Salac. Rogelio made the following declaration on the witness stand:

Q: When you said that after Elmer Salac was hit by the stab of Pedro he ran away, what did you observe with Domingo and Pablo?

A: When Elmer ran away he shouted for help and the three brothers rushed at him.

Q: When you said that the two other brothers Pablo and Domingo rushed at Elmer Salac, what were (sic) these two brothers do to Elmer Salac ?

A: They helped in stabbing Elmer Salac.

Q: What kind of weapon used by the two brothers in stabbing Elmer Salac?

A: Flaminco (hunting knife).

Q: In what particular place did the two other brothers rushed and stabbed the victim that you saw them?

A: In the banana plants.

Q: What was your distance when you saw the three of the accused rushed and stabbed the victim Elmer Salac?

A: (Witness pointing to the wall of the session hall to be 8-10 meters).[15]

Nicolas for his part had the following testimony:

Q: After Elmer Salac was hit on the left breast what happened next?

A: Elmer ran and shouted for help.

Q: After Elmer Salac ran and shouted for help, what did you witness next?

A: Both of the accused helped one another chasing Elmer Salac towards the road.

Q: Who chased Elmer Salac?

A: Pedro Lumacang, Pablo Lumacang and Domingo Lumacang.

Q: After chasing Elmer Salac, what did you witness next?

A: The three of the accused helped one another in stabbing Elmer.

Q: When you said, three of the accused helped in stabbing Elmer, who are you referring to?

A: Pedro Lumacang, Pablo Lumacang and Domingo Lumacang.

Q: What weapon did the three accused use when helping one another in stabbing Elmer Salac?

A: Hunting knives.[16]

When cross-examined, Nicolas reiterated his testimony that the three brothers took turns in stabbing the deceased. Hence,

Q: Were you able to go home that night, during the incident?

A: Yes.

Q: By what means of transportation did you take in going home?

A: I was just running.

Q: You never know what happened after you fled because you went home?

A: I know.

Q: What did you know?

A: That the three accused helped in stabbing Elmer Salac.

Q: How did you know that they, three persons, helped in stabbing when you already ran?

A: I followed them when they chased Elmer, it was two fathoms from the plowed place.[17]

The foregoing testimonies show that Rogelio and Nicolas positively identified the accused-appellant as one of the assailants of the deceased.

Accused-appellant, however, insists that the testimony of the witnesses is improbable because it was dark at the time the incident happened, consequently, it would have been doubtful for them to have seen the entire sequence

of events leading to the death of the deceased, more so since he was reportedly chased and stabbed in a dim portion of a banana plantation.

Although Rogelio and Nicolas did say that it was already dark at the time the stabbing incident occurred, they also clarified that they were able to witness the stabbing incident without much difficulty because the stars were bright that night.[18] Moreover, the house of Romy Leopoldo was illumined by a petroleum lamp and the site where the victim was mercilessly stabbed was only about five (5) meters away.[19] We find no reason not to give credence to the testimony of the two witnesses since the records are bereft of any evidence to indicate that they had any motive to testify falsely against the three brothers. Rogelio is a blood relative of the three brothers[20] and Nicolas is a friend. Even accused-appellant himself admitted that he had no quarrel or misunderstanding with Rogelio and Nicolas.[21] Where there is no evidence and nothing to indicate that the witnesses for the prosecution were actuated by any improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit.[22]

Accused-appellant, in his second assignment of error, contends that the qualifying circumstance of treachery was not proven inasmuch as it was not clearly established that the victim had no chance of defending himself. Accused-appellant points out that the deceased was able to run away the first time he was stabbed, therefore he was not completely helpless since there were other persons at that time and there was always the probability that the victim might receive help from the witnesses themselves. He avers that the deceased was not completely unaware of any attack that might come from the accused because he had a previous misunderstanding with one of them and so he should have already an idea that there might be untoward moves against him.

The essence of treachery is a swift and unexpected attack on an unarmed victim without the slightest provocation on his part.[23] In this case, the deceased was unarmed. Although he had a previous misunderstanding, with Pedro Lumacang when he was allegedly burned by the latter with a cigarette butt, he probably thought that everything was forgotten when he received an amiable invitation by the five men to join them for a drink. It was not even established that the misunderstanding that the deceased had with one of the brothers was serious or recent when they chanced upon him on that fateful day. The allegation that he was not completely helpless since he was able to run away to seek help deserves scant consideration inasmuch as the severity of the assault during the first incident of stabbing had already rendered the deceased completely defenseless. That he was able to run away to seek succor does not negate the presence of alevosia because the wounded victim, in fact, had little opportunity to run far. He was easily overtaken by the three brothers who mercilessly stabbed him to death.

Accused-appellant insists that if ever treachery was present at the time of the commission of the crime, it should only be appreciated against the person who adopted the treacherous mode of attack, i.e., Pedro Lumacang.

We do not agree. There is treachery when the offender commits any of the crimes against the person employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution without risk to himself arising from the defense which the offended party might make.[24] As earlier mentioned, the deceased was already rendered completely helpless and defenseless when he was stabbed by Pedro Lumacang. Although he was able to run a short distance, he had absolutely no means of defending himself from the three brothers who were armed with hunting knives, bent on finishing him off. The wounded victim had not even, so much as a stick or a stone to parry off their blows. It should be noted, however, at this point that inasmuch as treachery has been appreciated as a qualifying circumstance, abuse of superior strength should not have been considered separately inasmuch as it is absorbed in treachery.[25]

Nocturnity should not have also been considered as an aggravating circumstance since it was not shown that the accused had purposely taken advantage of the cover of nighttime to insure the commission of the crime. Indeed, it

was established by the prosecution's own witnesses that the five men only chanced upon the deceased when they dropped by the house of Nonoy Jonson. It is basic that for night time to be appreciated as an aggravating circumstance there must be a convincing showing that the accused had purposely sought such period in order to facilitate the commission of the crime or to prevent its discovery or to evade the culprit's capture.[26]

Finally, accused-appellant faults the prosecution for not presenting the weapon allegedly owned by him in stabbing the deceased. However, the fact that the weapon used in stabbing the deceased was not presented by the prosecution is of no moment. It has been established that the deceased suffered numerous wounds which, in the opinion of the examining physician, could have been inflicted using more than one weapon.[27] Accused-appellant was positively identified by no less than his own relative, Rogelio Balan and his friend, Nicolas Limosnero, as having a hand in the killing of Elmer Salac. For conviction of an accused in criminal cases, it is enough for the prosecution to establish by proof beyond reasonable doubt that a crime was committed and the accused is the author thereof. The production of the weapon used in the commission of the crime is not a condition sine qua non for the discharge of that burden.[28]

WHEREFORE, the decision of the Regional Trial Court of Oroquieta City, Branch 13 in Criminal Case No. 1201, finding accused-appellant Pablo Lumacang guilty beyond reasonable doubt of the crime of murder, thereby sentencing him to suffer the penalty of reclusion perpetua together with the accessory penalties provided by law, to pay the heirs the sum of P50,000.00 by way of civil indemnity and to pay the costs, is **AFFIRMED** in toto.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

[1] Records, p. 14.

[2] TSN, February 8, 1994, p. 8.

[3] Records, p. 5.

[4] TSN, April 4, 1994, pp. 2-11.

[5] TSN, July 4, 1994; pp. 7-10.

[6] TSN, June 27, 1994, pp. 2-9.

[7] TSN, June 24, 1994, pp. 10-12.

[8] TSN, February 15, 1994, p. 5.

[9] TSN, February 15, 1994, p. 11.

[10] TSN, February 15, 1994, pp. 7-11.

[11] TSN, February 21, 1994, pp. 17-18.

[12] TSN, March 7, 1994, pp. 2-11.

[13] Records, p. 103.

[14] Rollo, pp. 84-85.

[15] TSN, February 15, 1994, pp. 10-11.

- [16] TSN, March 7, 1994, p. 5.
- [17] Id., p. 10.
- [18] TSN, February 21, 1994, pp. 17-18; TSN, March 7, 1994, p. 11.
- [19] TSN, February 21, 1994, pp. 17-18.
- [20] TSN, February 15, 1994, p. 4.
- [21] TSN, April 4, 1994, pp. 19-20.
- [22] People vs. Genobia, 234 SCRA 699 (1994)
- [23] People vs. Vallador, 257 SCRA 515 (1996)
- [24] People vs. De la Cruz, 242 SCRA 129 (1995)
- [25] People vs. Panganiban, 241 SCRA 91 (1995)
- [26] People vs. Garcia, 258 SCRA 411 (1996)
- [27] TSN, February 8, 1994, p. 8.
- [28] People vs. Cabodoc, 263 SCRA 187 (1996)

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