

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CRISOSTOMO ABONALES, JUAN ABONALES, SIMEON ABONALES AND ROSALES CATONGAY, DEFENDANTS AND APPELLANTS.

G.R. No. 12152. September 22, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The defendants, Crisostomo, Juan and Simeon, all surnamed Abonales, and Rosales Catongay, appeal from the decision of the Court of First Instance of Samar, the dispositive part of which reads as follows:

"WHEREFORE, the Court hereby renders judgment, finding the defendants Crisostomo Abonales, Juan Abonales, Simeon Abonales and Rosales Catongay guilty beyond reasonable doubt of the crime of murder and imposes upon defendants Juan Abonales, Simeon Abonales and Rosales Catongay the penalty of reclusion perpetua and upon defendant Crisostomo Abonales an indeterminate penalty ranging from Ten (10) years, Eight (8) months, and One (1) day of prision mayor as a minimum to Eighteen (18) years, Two (2) months and Twenty-one (21) days of reclusion temporal as a maximum with the accessories prescribed by law and to indemnify jointly and severally the heirs of Reyes Mahinay in the sum of P6,000.00 and, to pay the costs."

Later, Crisostomo asked for the withdrawal of his appeal, which petition was granted by this Court on July 18, 1957.

The determination of this appeal hinges in great measure on the credibility of witnesses and the probability or improbability of the story recounted by them during the trial. After analyzing the record and going over the findings of the trial court and taking into account the fact that it was in a position to gauge the credibility of witnesses testifying before it, we find the following facts to have been duly established: On June 23, 1956, Vivencio Catamora was hired by Reyes Mahinay to work on his farm located at barrio Pungdol, San Antonio, Samar. After the day's work, both employer and employee, about 6:30 in the afternoon, started for barrio Manraya of the same municipality, where Reyes lived, evidently with his father, Nicasio Mahinay. On their way, and at a point beyond a certain bridge, between the barrios of Rizal and Manraya, the two riding on a carabao, Reyes in front and Vivencio behind, met the four accused. It would appear that these four individuals were making some noise and Vivencio, according to him, inquired why they were behaving so. For response, Crisostomo began hurling stones or rocks at the two riding on the carabao, who because of their position, could not very well dodge the missiles. One of the stones struck Reyes squarely on the forehead, stunning him, as a result of which he toppled from the carabao and into a ditch where he fell prostrate, face downward. Immediately, Crisostomo followed by his three companions, pounced upon him. Crisostomo stabbed him with his pocket knife in various parts of the body, specially on the back and the neck. The other three cooperated with him in the assault; whether with knives or with other instruments or with their bare hands, or whether they merely held Reyes down while Crisostomo continued to stab him, is not clear. Completely scared and realizing that he might be the next victim and that he was no match to the four, Vivencio jumped from the carabao and sped toward the house of Nicasio Mahinay, father of Reyes, only about 150 meters away and excitedly told him that his son was being assaulted by

the four accused, mentioning their names. Nicasio jumped from his house and ran in the direction indicated to him, followed by Vivencio and another person named Silvino Solasta. Upon nearing the spot where Reyes and his four attackers were at the ditch, he heard someone, presumably Crisostomo say: "Help me in killing for I am the one who will go to jail." Upon getting nearer, closely followed by Vivencio and Silvino, Nicasio saw Crisostomo and his three co-defendants supposedly stabbing his son and otherwise belaboring him. So, he shouted to them to stop and inquired for the reason of their attack, upon which the four accused fled. Nicasio hurried to the side of his son who evidently hearing and recognizing the voice of his father, said: "Please help me because I am wounded." Nicasio with the help of his two companions raised Reyes from his prostrate position in the ditch. Then Reyes remarked that if his attackers had not ganged up on him and helped each other, he might still live. A few seconds later, he collapsed and died.

Dr. Manuel L. Bunyag who examined the body of Reyes, found a lacerated wound on the forehead, evidently caused by the stone that hit him, and multiple punctured wounds on the back and on the neck. His finding was that the majority of said wounds on the back were fatal because they perforated the lungs; so were the wounds on the neck because they cut the jugular vein.

The theory of the defense is that only Crisostomo assaulted the deceased and killed him and that this was on the occasion of a fight provoked by the latter, and that Crisostomo acted in self defense. However, if this were true, it is hard to understand why he abandoned his appeal, thereby practically admitting his guilt of the crime of murder with which he was charged. According to the defense, in the afternoon of June 23, 1956, the three defendants, Crisostomo, Simeon and Juan, who were brothers, and their friend Rosales Catongay, went to the house of Mongcoy Bongcales, brother-in-law of Juan, in barrio Manraya to attend the tapus prayer (last day of the prayer for a dead person); that after eating there and about 5:30 or 6:00 o'clock in the afternoon, Crisostomo, Simeon and Rosales left to return home in the barrio of Rizal; that while passing the house of Nicasio Mahinay, father of the deceased Reyes, Nicasio's dog bit Crisostomo in the hand, whereupon, Crisostomo requested Nicasio to give him some medicine with which to treat the bite because the dog might have the rabies; that Nicasio refused to give any medicine, saying that he had not ordered his dog to bite him, but Crisostomo insisted, as a result of which, there ensued a discussion between the two men; that just then, Reyes arrived and he sided with his father and that when Crisostomo insisted that he be given the medicine to treat the bite, Reyes became furious and assumed an aggressive attitude; that his companions Simeon and Rosales advised Crisostomo to return home with them, but Crisostomo told them to go ahead because he would insist in his request that he be given medicine by Nicasio; that Simeon and Rosales left; that thereafter, Juan Abonales arrived and he witnessed the heated discussion between Reyes and Crisostomo and feeling that the exchange of Words may develop into a fight, he left and went to the house of one Takio de la Torre, a rural policeman, and told him to hurry to the house of Nicasio and pacify the two men who were quarrelling; that de la Torre did as he was told and presumably saw that Reyes and Crisostomo were still engaged in a heated discussion, and that thereafter, de la Torre returned home and presumably informed Juan, who was still in the house of de la Torre, of what he had seen, and that thereafter, Juan asked de la Torre to accompany him to the seashore because he was afraid that Nicasio and his son Reyes or their friends might do him harm; that as a result of the discussion or quarrel between Reyes and Crisostomo, the former knocked the latter down; that Crisostomo got up and ran away to avoid further trouble, but he was pursued by Reyes and because Crisostomo due to his defective legs could not run fast enough, Reyes overtook him at the very spot near the bridge; that Reyes renewed his assault upon Crisostomo, inflicting injuries on his body; that in self defense, Crisostomo drew out his pocket knife and struck at his assailant, inflicting some wounds; that Reyes continued struggling with him until finally, both men fell down with Reyes on top, further belaboring and beating up his opponent; that in this position, with his hand free behind the back of Reyes, he, Crisostomo, was able to inflict the several wounds at the back of the deceased; that thereafter, Crisostomo went to his home in barrio Rizal

where he reported the incident and he was advised to surrender to the authorities, which he did.

We are willing to believe that in the afternoon of the day in question, the three brothers (Crisostomo, Simeon and Juan) and their friend Rosales, attended a prayer meeting in the house of Mongcoy Bongcales. We are willing to believe also that drinks were served on that occasion, as a result of which, Crisostomo got drunk. We, however, believe that thereafter, the three brothers and Rosales left for their home in barrio Rizal and that while on their way, they met Reyes and Vivencio Catongay riding on a carabao, and it was then that Crisostomo, his two brothers Simeon and Juan, and their friend Rosales assaulted, beat up and stabbed Reyes after he fell from the carabao when struck in the forehead by a stone hurled by Crisostomo. If it were true that Crisostomo had really been bitten by the dog of Nicasio and that Crisostomo had been begging that he be given medicine with which to treat the bite, but in vain, it is not explained why when Crisostomo later went to Dr. Bunyag to treat his superficial injuries on his body, which according to Dr. Bunyag could have been self-inflicted, Crisostomo never even mentioned the supposed dog bite. Again, it is not explained why, if according to the defense, on the occasion of the heated discussion between Nicasio and Crisostomo in the yard of Nicasio, which discussion was later joined by Reyes, and where Reyes and Crisostomo later came to blows, the defense could not present a single witness outside of the defendants themselves, in spite of the fact that quite a number of people in the barrio had supposedly gathered to witness the discussion and the light.

If Takio de la Torre had really been sent by Juan to hurry to the house of Nicasio to pacify Reyes and Crisostomo and that he witnessed the discussion and the light, it is strange that said de la Torre was not presented as a witness for the defense.

There is no reason why Nicasio and Vivencio should falsely testify against the four defendants and accuse them ' of assaulting and killing Reyes. The defendants themselves admit that there was no bad blood between Nicasio and Vivencio on one side and themselves on the other, and that they were on good terms. Nicasio and Vivencio were positive in their declaration before the court that they saw the four accused assaulting and stabbing the deceased; and the remark made by Reyes a few seconds before he died that had his assailants not ganged up on him and helped each other in their assault, he might still live, belies the claim of the defense that Crisostomo was alone in assaulting him. For these reasons, we are convinced that the four accused took part in the assault against Reyes. It is possible that Crisostomo, drunk as he was at the time, was the only one interested and determined to assault and stab Reyes, but it is understandable that at his request, his two brothers Simeon and Juan and their close friend Rosales should help him as they did, perhaps stabbing him with sharp instruments which could not be recovered, inflicting blows with their bare hands or just holding down the victim, thereby rendering him defenseless as Crisostomo inflicted the stab later found on the victim's body.

So, we find appellants guilty. But we are disposed to be lenient with them. We should bear in mind that appellant Rosales was a close friend of the Abonales family and that Juan and Simeon are brothers of Crisostomo. It was Crisostomo who hurled the stone that caused Reyes to fall from the back of the carabao. It was Crisostomo who immediately pounced upon him and initiated the attack. The three appellants evidently joined only upon his invitation and exhortation, telling them to help him because anyway, he would be the only one to go to jail. Presumably, the three appellants never thought of assaulting the victim. Considering that in view of their close relationship to Crisostomo and considering that they were young and that they could not well refuse, although of course, they are criminally responsible for the attack, they are entitled to leniency.

According to Atty. de oficio Teodoro R. Dominguez who filed a well written and able brief for the three appellants, assuming that his clients were guilty, the penalty for two of them should be reduced for the following reasons Simeon was only seventeen years old at the time of the commission of the crime, and so the penalty as to him should be lowered by one degree. We agree. According to the statement of Simeon when he testified in court,

he was only seventeen years of age. This was not contradicted by the prosecution. As to Juan Abonales, his counsel claims that he is entitled to the mitigating circumstance of lack of instruction under Article 15, par. 1, of the Revised Penal Code, because he is an illiterate, can neither read nor write, and could not even sign his name for which reason he had to use his thumbmark instead. We also agree. We even go further and find that Rosales Catongay was at the time of the commission of the crime less than eighteen years of age. When he testified in court in October, 1956, he said that he was eighteen years old. This was not contradicted by the prosecution. Taking this as a basis, he must have been less than eighteen when the crime was committed in the month of June of the same year, so that his penalty should be lowered by one degree.

In view of the foregoing, considering the existence of the mitigating circumstance of lack of instruction in favor of Juan Abonales, the penalty as to him should be imposed in its minimum degree, that is to say, not more than seventeen (17) years, four (4) months and one (1) day of reclusion temporal and not less than ten (10) years and one (1) day of prison mayor. Lowering the penalty by one degree in favor of Simeon Abonales and Rosales Catongay, the penalty for these two should be not more than twelve (12) years and (1) day of reclusion temporal and not less than six (6) years and one (1) day of prison mayor. With these modifications, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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