

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID
ANDALES Y MALOBAGO ALIAS "ABIE";
ACCUSED-APPELLANT.**

G.R. No. 130637. August 19, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a review of the decision of the Court of Appeals in CA-G.R. No. 16408 declaring David Andales y Malobago and Jellie Andales y Malobago guilty of murder qualified by treachery.[1] The appellate court applied Art. 248 of the Revised Penal Code, prior to its amendment by RA 7659 which took effect 31 December 1993, and there being neither aggravating nor mitigating circumstance, imposed upon David Andales the penalty of reclusion perpetua, but meted a lower penalty on Jellie Andales on account of his voluntary surrender.[2] However, in view of its recommended penalty for David Andales, the Court of Appeals refrained from entering judgment with regard to him but entered judgment against Jellie Andales. Conformably with *People v. Traya*[3] and pursuant to Sec. 13, Rule 124, of the Rules of Court, the instant case of David Andales was thereafter certified to this Court and the records elevated for review. The case of Jellie Andales could also have been subject of a similar review but for his failure to appeal so that judgment as to him became final. Hence, we are here concerned only with the case of accused David Andales y Malobago.

On 10 November 1993 the brothers David Andales y Malobago alias "Abie" and Jellie Andales y Malobago alias "Elic" were charged by the Provincial Prosecutor of Northern Samar with the crime of murder, qualified by treachery and evident premeditation, before the RTC-Br. 19, Catarman, Northern Samar.[4] David Andales pleaded not guilty to the charge, while Jellie Andales pleaded guilty to homicide, instead of murder, which the trial court did not accept in view of the objection of the offended party.[5]

The evidence shows that on 4 September 1993, at around 6 a.m., in Sitio Banica, Brgy. Bugko, Mondragon, Northern Samar, the spouses Sonia Malobago and Rodolfo Malobago were at their coconut plantation about thirty (30) yards away from their house. Sonia was looking for some fallen nuts while Rodolfo was on top of a coconut tree tapping "tuba." Suddenly, from among the reeds appeared the brothers David Andales and Jellie Andales. Jellie rushed towards the tree where Rodolfo was straddled and without compunction fired several shots at him with a handgun. Stunned by the attack, Rodolfo slid down from the tree trunk with a bleeding nose, and upon reaching the ground, ran with his wife Sonia towards the highway. Anacorita de Guia, who was then waiting for Rodolfo and Sonia at their residence, saw David and Jellie pursuing the couple, still firing at them whenever they could. Sonia was able to run towards a nearby uninhabited house, while Rodolfo fled towards the highway. Weak and wounded, Rodolfo collapsed and fell face down on the ground. David then turned Rodolfo over and with the use of a bolo savagely hacked him repeatedly, ending Rodolfo's life with a vicious cut on his throat. After David and Jellie left, Sonia went over to her husband's lifeless body and, upon confirming that he was dead frantically ran towards their house. There, she met Anacorita de Guia to whom she recounted the atrocity suffered by her husband in the hands of David and Jellie.

Sonia Malobago intimated during the trial that a boundary dispute concerning land situated in Sitio Bangon could have precipitated the attack. The lands of the Malobagos and Andaleses were adjoining each other and demarcated by a pili tree which the Andaleses cut. So that since then the Andaleses claimed as theirs the land of the Malobagos, then occupied by Rodolfo as caretaker.[6] Genaro Malobago, father of Rodolfo, testified that he had already gratuitously given a portion of the land, a half hectare of riceland, to the Andaleses to resolve the conflict.[7] However, he surmised that the latter might have continued to harbor ill feelings towards his son Rodolfo.[8] As proof of this, he revealed that David and Jellie had on three previous occasions made attempts on the life of Rodolfo Malobago for which two criminal charges were filed against them although they were acquitted.[9]

David Andales denied any participation in the crime. He testified that he was in his sister's house at Brgy. Imelda, Mondragon, Northern Samar, repairing beams and had been staying there since 1 September 1993. In the morning of 4 September 1993 he and laborer Nonoy Roncales were quietly working on the beams when his brother Jellie Andales suddenly arrived and reported that he had slashed Rodolfo Malobago. Thereafter, upon the request of Jellie Andales, their sister Nellie Palacio accompanied Jellie to the municipal building to voluntarily surrender himself.

Jellie Andales claimed self-defense. He testified that on 4 September 1993 he was on his way to Sitio Banica to get their carabaos when from among the reeds suddenly emerged Rodolfo Malobago. Upon uttering the words "So I finally caught up with you," Rodolfo lunged his bolo at him. Owing to his agility, he was able to evade Rodolfo's attacks and, using his bolo, delivered his own blows instead. As the fight ensued, Jellie heard Rodolfo's brother Rubencio Malobago shout "Manoy!" from a distance, and when he turned, he saw Rubencio running towards them and aiming his gun at them. Jellie then embraced Rodolfo, turned him around and used him as a shield against the shots of Rubencio. As Rodolfo and Jellie fell to the ground, Rubencio scampered away towards his own house. Rodolfo died while Jellie survived the attack unscathed. Jellie thereafter went to the house of his sister in Brgy. Imelda and told her and his brother David, who was then staying with his sister, of the events which had transpired.

With regard to the two (2) criminal cases previously filed against David and Jellie Andales, accused David and Jellie reasoned out that they had already been exonerated of those charges and that the complaints, like the instant case, were only fabricated by the Malobagos to prevent them from tilling the land.[10]

The trial court did not believe David and Jellie Andales. On 30 March 1994 it ruled in favor of the prosecution. However, it could only hold David and Jellie guilty of homicide, instead of murder, since the prosecution failed to establish the presence of treachery and evident premeditation.[11] On appeal, judgment was modified and David and Jellie were declared guilty of murder qualified by treachery.[12] But since the crime was committed prior to the passage of RA 7659, which took effect 31 December 1993, the applicable penalty was reclusion temporal in its maximum period to death.[13] Hence, there being no aggravating nor mitigating circumstance in his favor, David Andales was meted the penalty of reclusion perpetua, while Jellie Andales was meted a lower penalty taken from prision mayor maximum to reclusion temporal maximum, on account of his voluntary surrender.[14]

Upon certification of the case to this Court for review, accused David Andales was given an opportunity to submit a petition for review but failed twice to do so within the prescribed period. In his "Motion and Manifestation" dated 19 August 1998 he begged the Court that his petition be given due course despite the delay, or in the alternative, that his petition be considered part of the records. In its resolution dated 15 March 1999 the Court denied the motion but allowed him to file an additional appellant's brief within a non-extendible period of twenty (20) days. Despite the accommodation, however, he again failed to file his additional brief. Hence, in reviewing his case, we are constrained to rely on the pertinent arguments presented in his Brief before the Court of Appeals.

We sustain the conviction of David Andales. Findings of fact by the trial court are given great weight and credence and, absent any arbitrary or compelling reason, are not to be disturbed on appeal. We find no reason to deviate from the rule.

The prosecution relied heavily on the testimonies of Sonia Malobago and Anacorita de Guia to establish its case against David and Jellie Andales. The Court has no reason to discredit them as they each gave a clear, straightforward and unequivocal narration of the events that transpired. The fact that Sonia and Anacorita are related to the victim - the former being the widow of Rodolfo Malobago and the latter the mother-in-law of Rodolfo's sister - does not render their clear and positive testimonies less worthy of full credit. No law disqualifies a person from testifying in a criminal case in which his relative is involved if the former was really at the scene of the crime and witnessed the execution of the criminal act.[15] Sonia was within the vicinity when Jellie Andales shot her husband Rodolfo. From the coconut plantation to the highway, she not only saw but even experienced the terror of being relentlessly chased and fired at by David and Jellie Andales. Anacorita, for her part, witnessed David and Jellie Andales hotly pursuing the couple from a distance of thirty (30) yards while waiting at the Malobago residence. Each of them gave a convincing and straightforward testimony and no degree of relationship can detract from the veracity of their statement that they each saw David and Jellie, at different stages, attack Rodolfo Malobago.

We are not convinced that Sonia Malobago merely implicated David and Jellie Andales as part of a scheme to displace David and Jellie from their possession of the farm at Sitio Bangon.[16] It is inconceivable that Sonia would risk the life of her husband for the sole purpose of laying claim over a piece of farm, least of all, if they are indeed its actual owners. The Malobagos did not seem overly concerned about the issue of ownership and possession of the farm such that Genaro Malobago even gratuitously gave a portion of the farm to the Andaleses just to avoid any conflict.[17] On the contrary, it seemed that the Andaleses were very anxious to claim and assert their rights over the farm, staunchly declaring that at no event would they surrender the land.[18]

Neither do we conform to the idea that the instant case was simply hatched to exact revenge from the Andaleses since they were acquitted of the charges of frustrated murder previously filed against them by the Malobagos.[19] No evidence was presented to show spite or evil motive on the part of Sonia to demand retribution from the previous offenses done against her family. The existence of the previous criminal charges instead suggests that the Malobagos would rather resort to judicial proceedings than take matters into their own hands.

In an effort to exculpate himself, Jellie admits the killing of Rodolfo but invokes self-defense. He recounts that it was Rodolfo who stalked and attacked him. But, as correctly observed by the Court of Appeals, the nature and number of wounds inflicted upon the victim negates the possibility of self-defense. The autopsy report revealed that Rodolfo suffered five (5) gunshot wounds and five (5) stab wounds on different parts of his body. The gravity and location of each wound belie any possibility of self-defense, especially that Jellie Andales did not sustain any injury, although he reasons out that his agility allowed him to parry Rodolfo's blows.

Jellie also claims that when Rubencio Malobago attacked him he was able to overpower Rodolfo and used him as shield against Rubencio's shots. We find these reasons lame considering that Rodolfo is much bigger in height and built than Jellie. That he got hold of Rodolfo and moved him from side to side in an effort to dodge the bullets fired at him is likewise preposterous and not worthy of belief. His narration could have only been lifted from pocketbooks and quite akin to what could only be seen in movies. As aptly noted by the Court of Appeals, they were quite theatrical in execution. For evidence to be believed it must not only proceed from the mouth of a credible witness but must also be credible in itself, i.e., it must conform to ordinary human experience and the normal course of human conduct. Jellie's version does not meet this test.

For his part, David Andales completely denies any participation in the offense and argues that his presence at his sister's place exonerates him from the crime charged.[20] The Court has consistently ruled that the defense of alibi should be considered with suspicion and always received with caution not only because it is inherently weak and unreliable, but also because it can easily be fabricated.[21] David's alleged presence in his sister's house seemed too convenient to be true. The defense did not even present witnesses who could confirm his presence in Brgy. Imelda.

Assuming that David's claim is true, his stay in Brgy. Imelda did not preclude his physical presence at the locus criminis or its immediate vicinity as it was highly possible that he went to Brgy. Bugco, committed the crime, and then returned to Brgy. Imelda. It usually takes only 20 minutes to shuttle from Brgy. Imelda and Brgy. Bugco as both destinations are accessible by highway and are served by public and private vehicles.[22] There was nothing that could have impeded David from going to Brgy. Bugco and back to Brgy. Imelda.

Moreover, his alibi cannot prosper against the positive assertion of witnesses that he was present at the crime scene at the time of the incident. David was positively and unequivocally identified by Sonia Malobago as the one who brutally hacked her husband repeatedly. This was corroborated by Anacorita de Guia who saw him and Jellie relentlessly chase Rodolfo and Sonia from the coconut plantation, and to whom Sonia recounted the beastly manner by which David and Jellie killed her husband.

As treachery attended the killing, the appellate court properly ruled that the crime committed was murder and not mere homicide. 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 specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[23] In the instant case, treachery was evident from the inception of the attack up to its culmination. The surprise by which David and Jellie conducted the assault rendered Rodolfo Malobago totally unprepared and defenseless. Rodolfo was then perched on top of a coconut tree making him vulnerable to the attack of the two (2) assailants. He was without any means to defend himself as no weapon was found, nor even intimated to be in his possession. As he and his wife fled towards the highway and with their backs facing David and Jellie, the brothers chased and shot them. Upon reaching Rodolfo's collapsed body, David mercilessly turned him around and hacked his body over and over again, ending his life with a final thrust on his throat. At no time was Rodolfo able to retaliate against the onslaught of attack made by his assailants.

Conspiracy was also present. Indeed, the prosecution never established the existence of a prior agreement between David and Jellie, nor did any of the prosecution witnesses testified that a plan was hatched by the two (2) to kill Rodolfo Malobago. However, for conspiracy to exist, proof of an actual planning of the perpetration of the crime is not a condition precedent. It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[24]

From the time David Andales and Jellie Andales emerged from the reeds, their purpose to execute Rodolfo Malobago was already evident. Jellie initiated the attack against Rodolfo while the latter was atop a coconut tree and followed it up with a rain of bullets until he collapsed in the highway. David thereafter delivered the final blows that ultimately killed Rodolfo. Each of them delivered blows which though separate and distinct from each other contributed to the realization of one purpose. They acted in concert and cooperation with each other to ensure the death of Rodolfo Malobago. Their being brothers did not assume importance other than to establish their relationship with each other. It was singularly the mode and manner in which the crime was committed that led the appellate court to conclude that conspiracy indeed existed. And when there is conspiracy, all who carried out the plan and who personally took part in its execution are equally liable.

The penalty for murder under Art. 248 of the Revised Penal Code prior to the effectivity of RA 7659 is reclusion temporal in its maximum period to death. There being neither aggravating nor mitigating circumstance in favor of David Andales, the appellate court correctly sentenced him to reclusion perpetua, the medium period of the imposable penalty.

As regards Jellie Andales, it is Art. 65, par. 3, of the Revised Penal Code concerning indivisible penalties that is controlling, and not Art. 64, par. 2, of the Revised Penal Code on divisible penalties. When the penalty is composed of two (2) indivisible penalties and a mitigating circumstance is present, the lesser penalty shall be imposed. However, since he did not appeal from the decision of the Court of Appeals, the penalty imposed by that court stands.

WHEREFORE, the decision of the Court of Appeals (modifying that of the Regional Trial Court) finding accused-appellant David Andales guilty instead of murder and sentencing him to suffer the penalty of reclusion perpetua, and to indemnify the heirs of Rodolfo Malobago in the amount of P50,000.00, jointly with his brother Jellie Andales, and to pay the costs, is AFFIRMED.

SO ORDERED.

Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Decision penned by Justice Oswaldo D. Agcaoili, Eight Division, Court of Appeals, prom. 30 July 1997.

[2] See Note 9.

[3] No. L-48065, 30 March 1979, 89 SCRA 274.

[4] Records, p. 35.

[5] Id., p. 59.

[6] TSN, 11 March 1994, pp. 10-11.

[7] TSN, 28 January 1994, p. 53.

[8] Id., pp. 54-55.

[9] People v. David Andales, Jellie Andales and Eddie Juanpit, Criminal Case No. 1069, frustrated murder; People v. David Andales, Jellie Andales and Gaudencio Andales, Criminal Case No. 1079, frustrated homicide. Both cases decided by J. Cesar Cinco of Regional Trial Court, Br. 20, Catarman, Northern Samar and promulgated on 17 October 1989 and 12 January 1990 respectively.

[10] TSN, 17 March 1994, p. 23; TSN, 11 March 1994, p. 5.

[11] Records, pp. 105-110.

[12] Decision penned by Justice Oswaldo D. Agcaoili, Court of Appeals, Eight Division, prom. 30 July 1997.

[13] Art. 248, The Revised Penal Code as amended.

[14] See Note 9.

[15] People v. Nitcha, G.R. No. 113517, 19 January 1995, 240 SCRA 283.

[16] TSN, 11 March 1994, p. 5.

[17] See Note 4.

[18] TSN, 17 March 1994, pp. 27-28; See Note 13, pp. 9-10.

[19] *Id.*, p. 23.

[20] Appellant's Brief, pp. 3-5.

[21] *People v. Batidor*, G. R. No. 126027, 18 February 1999, citing *People v. Tulop et al.*, 21 April 1998, G.R. No. 124829; *People v. Balane*, G.R. No. 116721, 29 May 1997; *People v. Salvado*, G.R. No. 113025, 16 September 1997, 279 SCRA 164.

[22] TSN, 11 March 1994, p. 7.

[23] Art. 14, par. 16, The Revised Penal Code, as amended.

[24] *People v. Botona*, G.R. No. 115693, 17 March 1999.

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