

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURICIO LABIS AND ISABELO CABILES, DEFENDANTS-APPELLANTS.

G.R. No. 22087. November 15, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Mauricio Labis and Isabelo Cabiles are appealing from a judgment of conviction for murder. The two were, on February 29, 1960, charged by the provincial fiscal for the killing of the deceased Clarito Fabria in Barrio Taytay, Municipality of El Salvador, Misamis Oriental. After trial, the Court of First Instance of Misamis Oriental sitting at Cagayan de Oro City, on September 12, 1963, found both accused guilty as charged and sentenced each to "suffer the penalty of RECLUSION PERPETUA, to indemnify the heirs of the victim Clarito Fabria in the sum of P6,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs."

The prosecution, relying mainly on the testimonies of two eyewitnesses - Vidal Masong and Ahenor Pagasihan - and that of Dr. Megdonio Bacal, attending physician, established the following:

At about 3:00 p.m. on August 1, 1959, in Barrio Taytay, Municipality of El Salvador, Misamis Oriental, appellant Labis, with a bolo, chased the deceased Clarito Fabria near the national highway. When the latter happened to pass by a coconut tree, appellant Cabiles who was standing there, grabbed him and locked his arms around the shoulders of Clarito Fabria, with Cabiles' chest pressing against the right shoulder of Clarito. This enabled Labis to overtake Clarito Fabria and thereupon, the former stabbed the latter with the bolo at his back.

Appellant Cabiles then released the deceased who, badly wounded, tried to run further towards his father's house. Later, Clarito Fabria was brought for treatment to the provincial hospital at Cagayan de Oro City, where he died two hours later.

The attending physician, Dr. Bacal, found an opening stab wound, about three inches long, at the back lumbar region, middle, which deviated laterally to the left, and causing an exit wound of one inch in front, at the left iliac region (lower abdomen).[1] Dr. Bacal also testified that the two wounds could have been caused by a bolo and that the decedent's death was due to profuse internal hemorrhage resulting from multiple perforation of the sig-moid and mesentery of the intestine, organs usually found on the left of the abdominal cavity.

The defense narrated the events differently. According to appellants Labis and Cabiles and three of their alleged eyewitnesses, what transpired was this:

On the morning of August 1, 1959, Labis and Cabiles with several of their barriomates attended a community group work, locally known as "pahina", at the public school compound. About noontime, they all proceeded to the wedding party at Pedro Estrada's house where the deceased and the latter's brother-in-law, Raul Espejon, were also present. Lunch over, the group left the place together at the invitation of the decedent and Espejon. On the way home, the two walked ahead while Labis, Cabiles and the rest followed about 20 meters behind.

As the decedent Fabria and Espejon neared the national highway, the latter stopped near a coconut tree. As appellant Labis approached, Espejon confronted him with a bolo, asking whether he had a grudge against Clarito Fabria. Labis answered that they ought not fight as they were brothers. Sensing trouble, Francisco Labis, a third degree cousin of Mauricio Labis, intervened and advised the two not to fight. Raul Espejon then repaired towards the near-by house of Dionisio Gaid and Labis with the others went their way.

At this moment, Clarito Fabria, brandishing a bolo, came running towards them and asked Labis if the latter had any grudges against him. Labis retreated with upraised hands and endeavoured to pacify the deceased by calling him brother and pleading that they should not fight. Clarito answered by slashing his bolo at Labis who, in trying to parry the blow, was wounded on his left wrist. Labis retreated further but Raul Espejon reappeared on the scene and bled Labis at the nape, wounding him also. Appellant Labis then turned to face Espejon when Clarito Fabria hurled his bolo at him with the handle-end thereof hitting Labis on the breast. The decedent now bent down to pick up the bolo which fell by Labis' left side but the latter immediately ward off Clarito's hands. This caused the decedent to turn half-way to his right, exposing his left flank to Labis. Instantly, Labis drew his own bolo from the waist and thrust it at the decedent's back, at the left side of the lumbar region on the level of the pelvis.

Clarito Fabria then ran away wounded towards Dionisio Gaid's house. A few moments later, policeman Maximo Gallego, who had fired several shots upwards while still at a distance, arrived at the scene of the incident and Labis surrendered to him the bolo (Exh. C, also marked as Exh. 12) he used in stabbing Clarito Fabria and also the bolo (Exh. 14) which the latter allegedly hurled at him. Policeman Gallego placed Labis and Cabiles under custody and then went after Raul Espejon in the house of Hugo Fabria and got Raul's bolo. Still later, Gregorio Salas, the Chief of Police of El Salvador, arrived and brought appellants Labis and Cabiles to the municipal building for investigation.

Appellant Cabiles denied having held the decedent Clarito Fabria as testified to by the prosecution witnesses. He claimed that when the deceased confronted Labis with a drawn bolo, he (Cabiles) and Francisco Labis stood between the protagonists and tried to pacify them and prevent a fight. However, when Clarito Fabria threw his bolo at Labis, Cabiles retreated about four meters away since he was afraid that Clarito carried a dagger also which he might use.

As between the two conflicting versions, the trial court upheld the prosecution's and rejected that of the defense. And We quote the findings and conclusions of said court:

"At first blush the theory advanced by the defense would seem foolproof but a closer examination of the same reveals weaknesses that cannot stand the test of judicial scrutiny. The defense witnesses, either close friends or relatives of the accused, gave evidently well-rehearsed testimonies likely to mislead the gullible and unsuspecting person. However, a careful evaluation of their version of the incident would show its inconsistency with the natural course of events and human conduct. For instance, their claim that the accused Mauricio Labis delivered the fatal blow at the back of Clarito Labis while they were embracing each other and as the latter was about to pick up his bolo from the ground, is not borne out by the position and direction of the wounds of said victim. Their observations do not also coincide because one declared that Mauricio Labis pushed aside Clarito Fabria instead of embraced him as two others testified. Some even asserted that Clarito Fabria was hit on the left side of his back which is not true.

"The finding of Dr. Megdonio Bacal, the examining physician at the Provincial Hospital of Misamis Oriental, located the entrance wound of about 3 inches in length at the back of Clarito Fabria across the lower portion of his spinal column, and the injury deflected laterally towards his left front side below the waistline causing an exit wound of about an inch in length (Exhs. 'B', 'B-1' and 'B-2'). Since it is admitted that the accused Mauricio Labis, who is right-handed, used the bolo, Exh. '12', about two feet long, pointed and wide at its

middle, by no stretch of imagination could the wound have followed such a course, irrespective of whether said Clarito Fabria was slightly bending to pick up his weapon or in a standing position locked in an embrace with said accused as the defense tried to picture during the reenactment of the incident in open court. The wound should have come out on the right side of the deceased if the accused was in front of him when he delivered the fatal thrust. The only plausible hypothesis deducible from the position and direction of the wounds of Clarito Fabria is that it was inflicted by a right-handed assailant who was either directly behind him or towards his right side. Such circumstances therefore, lend color of truth and bear out the testimonies of the prosecution witnesses that Mauricio Labis stabbed Clarito Fabria from the back as Isabelo Cabiles was holding the deceased. It must be remembered, however, that according to the defense witnesses themselves, Clarito Fabria was more robust and stronger in build than the accused Mauricio Labis so that he could not have been easily bested by the latter. But as the defense would put it, the encounter involved Clarito Fabria and his brother-in-law Raul Espejon on one side against Mauricio Labis alone on the other, and if that is true, the latter must be a superman to have come out of the struggle practically unscathed.

"Furthermore, it would seem odd if not contrary to human behavior for Clarito Fabria to have hurled his own weapon at Mauricio Labis in the course of their armed struggle and endeavor again to retrieve it knowing that Mauricio Labis was also provided with a bolo. The court cannot also conceive why the wound of Mauricio Labis on his left forearm allegedly caused by the thrust of Clarito Fabria's bolo appeared small and superficial, involving only the skin and that on his nape only an abrasion, although it was supposedly produced by a slash administered by Raul Espejon with another bolo, considering the sharpness of the weapons used and strength of the blows delivered as described by the witnesses for the defense. Certainly, a potent bolo like the one allegedly used by Raul Espejon would not have produced just an abrasion which according to medical science may be caused by mere rubbing of the skin against a hard object. Likewise, the arm wound of Mauricio Labis would have been bigger or deeper because the bolo (Exh. '14') allegedly used by Clarito Fabria is not only sharp but also double-edged at its point.

"The court, nevertheless, is inclined to believe that the deceased Clarito Fabria was not provided with a bolo at the time because he came from the wedding party in the house of Pedro Estrada and the accused themselves observed him carry none while they were yet there. On the other hand, Mauricio Labis admitted having brought his bolo along and declared that Isabelo Cabiles also carried a bolo as both of them came from the 'pahina' (group labor) at the schoolhouse. Isabelo Cabiles, nevertheless, denied having a bolo at that time, but Francisco Labis and Dionisio Gaid declared that he was also provided with a bolo.

"It is very probable that one of the bolos delivered by Mauricio Labis to patrolman Gallego may be that of the accused Isabelo Cabiles and Gallego's testimony about the ownership of that bolo by Clarito Fabria is unworthy of credence because of his affinity to said Mauricio Labis by marriage.

"The testimonies of Dionisio Gaid and Demosthenes Dadolo are not entitled to belief as is that of the Chief of Police Gregorio Salas because it appears that these witnesses were never investigated by said Chief at all although according to him, he saw them there immediately after the incident and he went back to the place the next day to look for eyewitnesses but could only find the prosecution witnesses Ahenor Pagasihan, Vidal Masong and Simplicio Martinez. Moreover, if the Chief of Police believed that Isabelo Cabiles did not have any participation in the killing why did he include him as one of the accused in his amended complaint filed before the Justice of the Peace of El Salvador on August 7, 1959? But the actions of said Chief of Police in connection with this case are susceptible of suspicion for his failure to take immediate steps to insure the testimonies of eyewitnesses to the incident before they had a chance for reflection." [2]

In their first three assignments of errors, appellants assail the above findings and conclusions and would have this Court believe their witnesses - whom the trial court discredited - rather than the prosecution witnesses. The issue posed then is one of credibility of witnesses. And the rule is that unless appellants satisfactorily show that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and substance as would

offset the results of the case, the appellate court will not disturb said court's findings especially when the same are based on the evidence on record.[3]

Appellants here failed in that task. They merely harped on the requisites of self-defense and casually ex-cused the inconsistencies in the testimonies of their witnesses as "immaterial". Their theory of self-defense is negated by the nature and location of the victim's wounds which, having a right-to-left direction, could not have possibly been inflicted by a right-handed person in front of the victim with a two-feet long bolo. Moreover, it appears highly improbable that appellant Labis suffered no serious cut wound,[4] as per the medical certificate Exh. 8, altho the defense witnesses uniformly testi-fied that Labis was slashed at the wrist with a sharp bolo by the decedent, and on the nape with a similar le-thal instrument by Raul Espejon. Appellant Cabiles was even emphatic that he saw blood oozing from Labis' nape.[5] Having advanced self-defense, the burden was on appellant Labis to justify the killing of the decedent by clear and convincing evidence. And the trial court having dis-credited his witnesses, it was further his duty in this appeal to prove the lower court in error. Unfortunately, appellant has submitted no cogent reason for Us to disregard the trial court's findings and conclusions which are all based on the evidence on record.

Altho motive need not be considered anymore on account of the positive identification of the accused,[6] yet contrary to appellants' insistence, there is ample proof of motive. Reuben Bajuyo testified[7] that on July 23, 1959, appellant Labis and one Isaias Bahian went to his house looking for the decedent to kill him for having stolen his (Labis') chicken. The trial court did not disbelieve Bajuyo's testimony but rather held it insufficient to establish evident premeditation.

Appellant's next submission that prosecution eyewit-nesses Pagasihan and Masong were not present in the scene of the crime is without merit. They base their claim on the testimonies of their witnesses whom the lower court found devoid of credibility. Moreover, the negative testimonies of these witnesses cannot prevail over the positive statements of said prosecution witnesses.

However, the testimony of prosecution witness Pagasihan cannot be given full credit in view of its serious contra-diction with his sworn affidavit, Exhs. 5 and 5-A wherein Pagasihan claimed to have seen only the chasing of Raul Espejon by Rufo Labis and that in the fight between Mauricio Labis and the decedent, appellant Cabiles did not hold the decedent but even tried to stop the fight. Of course Pagasihan, when confronted with said affidavit, repudiated it and claimed that he was bribed and threatened into signing it by appellant Labis.[8]

Still, Masong's lone testimony is sufficient to sustain appellants' conviction.[9] The fatal stabbing of the decedent occurred just about five meters away from him.[10] No improper motive has been shown why he would impute actuations of serious consequences against appellants. The minor flaws in his testimony he satisfactorily explained, thus: altho he also saw the chasing of Raul Espejon by Rufo Labis, he did not mention that fact anymore in his direct testimony since it was not the subject of the case being tried, a point which was also noted by the trial court.[11] Masong stated that as of the date when he was testifying he could no longer remember the exact amount of Asuncion Fabria's debt which he was trying to collect since it was only a little account from his sari-sari store.[12] He was not able to collect from Asuncion that day since the door of her house was closed and because of the stabbing incident that happened in his presence.[13] The reason why he saw no policemen in the scene of the crime and why he was not investigated there, was because he immediately went home after the incident[14] and Masong did not tell his wife about the stabbing since he did not want her to get nervous.[15]

His defense of justified killing unsustainable, appellant Labis must suffer the consequences for his unlawful act. The killing of the decedent was qualified treachery. It has been clearly established that Clarito Fabria was being held firmly by appellant Cabiles thereby preventing the former from moving or making any defense when Labis

struck him from behind with a bolo. There was hardly, if any, risk at all for Labis; the decedent was defenseless.[16] Appellant Labis is liable for murder.

This brings Us to the liability of appellant Cabiles. Unlike Labis, Cabiles did not advance self-defense. His stand was non-participation in the killing. However, the entire defense version of the incident was discredited by the lower court. Even with particular reference to appellant Cabiles, We are satisfied that the trial court did not err.

First, it is clear from the evidence on record that Cabiles' alignment and sentiments were with Labis. They were together at the "pahina". They went together to the marriage celebration and then went home in company. Secondly, it strikes Us as strange behavior for appellant Cabiles to act courageously and bravely when danger is near and real, and then to lose such courage when danger has become less imminent and remote. According to the defense version, Cabiles was standing between Labis and the decedent, who had a drawn bolo, trying to prevent the fight. And yet, after the decedent had allegedly thrown his bolo at Labis and had, to all appearances, become unarmed, Cabiles withdrew about four meters away on the conjecture that the decedent might still be possibly armed with a dagger. A man sincerely desirous of putting an end to such incident would have immediately taken advantage of the decedent's momentary armlessness by holding him. Cabiles himself admitted his being a cousin of the decedent.[17] And besides, there were two of them - he and Francisco Labis - who could have subdued the decedent whom they pictured as the one itching for a fight. Lastly, it appears odd why appellant Cabiles never vigorously insisted on his innocence from the very start. It does not appear that he ever strongly protested being placed under police custody together with appellant Labis - who openly admitted having stabbed the decedent - and being brought with Labis to the municipal building for investigation. If he had no participation really, why should he be placed under arrest like Mauricio Labis? Francisco Labis was, allegedly, in exactly the same situation as he was. Yet, Francisco Labis was never placed under police custody. These considerations are incompatible with Cabiles' belated plea of innocence.

On the other hand, it has been sufficiently established that appellant Cabiles seized the running decedent in such a manner that the latter could not even move or turn around. This enabled the pursuing Labis, who was armed with a drawn bolo and was barely five meters away from the decedent, to finally overtake him and stab him at the back with hardly any risk at all. Cabiles therefore performed another act - holding the decedent - without which the crime would not have been accomplished. This makes him a principal by indispensable cooperation.[18] Consequently, appellant Cabiles is also liable for murder.

As recommended by the Solicitor General, the mitigating circumstance of voluntary surrender will be appreciated in favor of appellants Labis and Cabiles. Instead of running away, they voluntarily went with the policemen who took them into custody. With no aggravating circumstance to offset voluntary surrender, We must impose the penalty for murder – reclusion temporal maximum to death - in the minimum pe-riod, which is reclusion temporal maximum.

Since the resulting penalty is neither death nor life imprisonment, the Indeterminate Sentence Law applies.[19] Appellants are therefore entitled to an indeterminate sentence, the maximum term of which is reclusion temporal maximum - the penalty to be imposed in view of the mitigating circumstance of voluntary surrender - and the minimum term - which is one (1) degree lower from the penalty prescribed by the Code for murder - is anywhere from ten (10) years and one (1) day of prision mayor maximum to seventeen (17) years and four (4) months of reclusion temporal medium.

WHEREFORE, the judgment appealed from is hereby modified and the appellants Mauricio Labis and Isabelo Cabiles are sentenced to imprisonment for a minimum term of seventeen (17) years and four (4) months of reclusion temporal medium, and not to exceed a maximum term of twenty (20) years of reclusion temporal

maximum. In all other respects, the judgment appealed from is affirmed. Costs against appellants.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Exhs. B, B-1 and B-2.

[2] Rollo, pp. 12-16; emphasis supplied.

[3] People v. Daga, L-22371 Oct. 26, 1967; People v. Castro, L-20555, June 30, 1967; People v. Sira-on, L-15631, May 27, 1966; People v. Tania, L-18514, April 30, 1966; People v. Secapuri, L-17518-19, Feb. 28, 1966.

[4] Exh. 8 shows that the cut wound on Labis' forearm is only one (1) cm. wide.

[5] T.s.n. REMOLADO, p. 111; however, Exh. 8 shows only a superficial abrasion on Labis' nape.

[6] People v. Portuguesa, L-22604, July 31, 1967.

[7] T.s.n. MONTES, pp. 43-44; 50-51.

[8] T.s.n., MONTES, pp. 118-119.

[9] See: People v. Templanuevo, L-12280, Jan. 30, 1960.

[10] T.s.n. MONTES, pp. 14, 20-21.

[11] Id., pp. 12-13; 33-34.

[12] Id., pp. 15-16.

[13] Id., p. 18.

[14] Id., p. 32.

[15] Id., p. 39.

[16] See: People v. Mario, L-13295, May 31, 1960; U.S. v. Feria, 2 Phil. 54.

[17] T.s.n. REMOLADO, p. 67.

[18] Art. 17, par. 3, Rev. Penal Code; People v. Mario, supra; U.S. v. Cueva, 23 Phil. 553; U.S. v. Feria, supra.

[19] Sec. 2 of the Indeterminate Sentence Law (Act 4103, as amended) directs that said law "shall not apply to persons convicted of offenses punished with death penalty or life imprisonment." (Stress Ours) Thus, in People v. Castro, L-20555, June 30, 1967, the accused, though convicted of murder, got an indeterminate sentence. His voluntary surrender reduced the penalty for murder to its minimum period, reclusion temporal maximum.

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