

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EUSTAQUIO CAROZ ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 46068. September 23, 1939*

Ponente: LAUREL, J.

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This is an appeal from a decision of the Court of First Instance of Davao convicting the appellants of murder, with the aggravating circumstance of abuse of superior strength and sentencing each of them to suffer reclusion perpetua, with the accessory penalties of the law, to indemnify, jointly and severally, the heirs of Maximo Omboy in the sum of P1,000, and to pay the costs.

Maximo Omboy (deceased) and Eustaquio Caroz, one of the defendants herein, had long been engrossed in dispute concerning a certain parcel of public land in the sitio of Mabo, barrio of Kingking, municipality of Pantukan, Province of Davao. Omboy filed a homestead application in 1930 for the land in dispute, which application was opposed by Caroz who tiled a sales application therefor. The Director of Lands, however, approved Omboy's application in 1931 and rejected the opposition and sales application of Caroz. On February 18, 1937, Omboy secured the issuance in his favor of a homestead patent.

The relationship between the two claimants became more bitter because of the alleged frequent incursions of Eustaquio Caroz and the other defendants herein upon the property of Omboy. On February 8, 1937, Maximo Omboy charged Eustaquio Caroz, together with Bernabe and Panfilo Caroz and Enrique Awing, with robbery of 17 piculs of copra from his house. Again, on June 18, 1937, Omboy accused Eustaquio Caroz, Panfilo Caroz and Felix Sanguenza of qualified theft of 929 coconuts. And again, on July 17, 1937, Omboy filed another charge against Eustaquio and Panfilo Caroz and Felix Sanguenza for qualified trespass of dwelling.

With these antecedent circumstances, it is easy, in the language of the trial court, to understand the natural sequence of events which culminated in the unfortunate occurrence of July 28, 1937.

In the afternoon of July 28, 1937, the deceased Maximo Omboy, together with his wife and laborer Agapito Panerio, went to the land to carry away the coconuts which they had gathered and piled up in the morning. There they found the appellants, sitting near the pile of nuts, all armed with bolos, except Eustaquio Caroz who was armed with a scythe. Nevertheless, Omboy nonchalantly proceeded to gather the coconuts, but Eustaquio Caroz faced him and asked him why he was gathering them. Omboy answered that they belonged to him, whereupon the other defendants surrounded him. While Omboy was engaged in conversation with Eustaquio Caroz, Bernabe Caroz dealt him a blow with a bolo on the left shoulder, and forthwith all the other defendants attacked Omboy with their weapons. Hemmed on every side and wounded, Omboy nevertheless managed to unsheathe his bolo and defended himself and succeeded in wounding Eustaquio and Panfilo Caroz. He nevertheless succumbed in the unequal combat, a fallen victim with twenty-two wounds, six of which were fatal.

Alberta de Omboy and Agapito Panerio who witnessed the full enactment of the crime were afterwards pursued by Felix Sangruenza and Bernabe Caroz, but they managed to. escape by hiding in a nearby bush. These two

witnesses for the prosecution testified to the occurrence in the manner above narrated and the trial court gave full credence to their version.

Defense counsel assigns several errors committed by the trial court. In substance, it is here urged that the defense version of the incident should be accepted as the true one.

Eustaquio Caroz testified in the lower court that while he and his son Panfilo were occupied in putting the coconuts in a sack, the deceased Omboy, with his wife and Agapito Panerio, came and asked, him why he was appropriating the fruits to which he answered that they were his; that thereupon Omboy dealt with a blow with a bolo on the left leg on account of which he fell to the ground; that Omboy then attacked his son Panfilo, hitting him on the head but that the latter was able to wrest the bolo from his assailant; and that while the two were engaged in a struggle he (Eustaquio) was able to retire to the house of his cousin, Bernabe Caroz.

Panfilo Caroz declared that after Omboy had wounded his father the former then gave him a blow on the head, but that having secured hold of the wrist of Omboy he was able to wrest from him the bolo; that with bolo in hand he turned to flee, but Omboy pursued him and overtook and struck him with a piece of wood; and that in self-defense he used the bolo and inflicted upon Omboy the injuries which caused his death.

As for Bernabe Caroz, it is averred that at the time of the fight he was taking a "siesta" in his house some two hundred meters away from the scene of the crime and woke up only after the arrival of Eustaquio and Panfilo Caroz who were both wounded, and that immediately thereafter he asked Rufo Roxas to notify the authorities. Felix Sanguenza stated that he had fever and was then confined in bed in the house of Eustaquio Caroz, while Enrique Awing averred that he was working in a field belonging to Bernabe Caroz around three hundred meters distant from the place of the incident.

Defense version of the crime is diametrically opposed to that of the prosecution. We cannot, however, accept this version of the defense. It should be observed that Panfilo Caroz sustained four wounds, the most serious of which was an incision on the frontal and parietal region of the head with a corresponding fracture of the cranium. According to Dr. Manuel Babao of the Public Hospital of Davao who was presented as witness for the defense, this wound produced a partial paralysis of the face and deprived him of the power of speech for three days, and as to the fracture of the cranium this produced instant loss of consciousness. Under the circumstances, it was not likely that, as testified by him, he was able to get hold of the wrist of his alleged assailant, wrest the bolo from him, run and afterwards defend himself and kill Omboy—a man whom he himself admitted was much bigger and stronger than he. Eustaquio Caroz, on the other hand, sustained a wound on the left leg which the trial judge observed to be "completamente transversal, de modo que, si se trazara una linea imaginaria paralela a la pierna, se formaria con aquella, un angulo recto" (p. 6, dec.; p. 102, rec.). Said transverse wound could have been produced only by a person dealing the blow from a position at the level or at the height of the knee of Eustaquio, which fact supports the theory of the prosecution that Omboy defended himself when he was already lying down with his bolo which he was able to unsheathe before falling. If, as Eustaquio Caroz avers, he had been wounded by the deceased while the latter was standing by his left side, the natural and obvious direction of the wound would have been oblique and not transverse. Likewise, the other wounds sustained by Panfilo Caroz on the left forearm and on the left leg, which were all incised wounds and consequently could have been caused only by a sharp cutting instrument, must have been inflicted by Omboy while already lying on the ground defending himself with his bolo. It should also be observed that the deceased Maximo Omboy sustained twenty-two wounds all over his body. It is not explained by the defense how, if Omboy was killed in a struggle with the defendant Panfilo Caroz alone, so many wounds were inflicted upon Omboy.

With regards to the defense of alibi presented by Bernabe Caroz, Enrique Awing and Felix Sanguenza, we find it

to be without merit. It appears that the house of Bernabe Caroz was only five hundred meters and that the plantation where Enrique Awing was alleged to be working was only three hundred meters away from the scene of the crime. It cannot, therefore, be said that it was impossible for both Bernabe Caroz and Enrique Awing to have gone to said places after their participation in the crime. (Klein vs. People, 113 Phil., 596, cited in U. S. vs. Oxiles, 29 Phil., 587, 593.)

The alleged sickness of Felix Sanguenza was not of such gravity as to have made it impossible for him to participate in the perpetration of the crime, because he could walk, and as a matter of fact did help in carrying Eustaquio and Panfilo Caroz to the municipal building, a distance of about one and one-half kilometers (pp. 127, 194, t. s. n.; vide People vs. Limbo and Limbo, 49 Phil., 94).

The testimony of ex-policeman Wakan that in the afternoon of the occurrence of the crime, Alberta de Omboy had told him that it was only Eustaquio and Panfilo Caroz who attacked her husband is not worthy of credence not only because of disavowal of Alberta herself in the trial (p. 200, t. s. n.) but also because the chief of police Albutra testified that Alberta could not be investigated that afternoon because she was crying over the death of her husband (p. 193, t. s. n.).

Alibis cannot stand and prevail over clear and convincing affirmations of credible witnesses. (People vs. De Asis, 61 Phil., 384, citing People vs. Cabantug, 49 Phil., 482, 484-486; People vs. Palamos, 49 Phil., 601, 604, 605; People vs. Medina, 59 Phil., 330; U. S. vs. Garcia, 26 Phil., 289; People vs. Cinco, 37 Off. Gaz., 2740.)

The evidence for the prosecution, considered in the light of surrounding circumstances, point conclusively to the guilt of the appellants. We, however, find the appellants herein guilty of murder with abuse of superior strength not as an aggravating circumstance as found by the lower court but as a qualifying circumstance. We do not find the presence of treachery in the commission of the offense. The deceased was able to unsheathe his bolo and did offer a defense to the risk of his aggressors in consequence of which two of them were wounded. There was struggle and it was because of the overwhelming onslaught upon the victim that he finally succumbed. The number of the aggressors here point to the attending circumstance of superior force, not treachery. (U. S. vs. Banagale, 24 Phil., 69.)

In view of the foregoing, we find the defendants-appellants guilty of murder as qualified by abuse of superior strength as this crime is defined and punished in article 248 of the Revised Penal Code. With the modification indicated, the judgment of the lower court sentencing each of the appellants to reclusion perpetua, with the accessory penalties of the law, to indemnify, jointly and severally the heirs of Maximo Omboy in the sum of P1,000, and to pay the costs, is affirmed. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Concepcion, and Moran, JJ., concur.

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