

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
PONCIANO LUMAGUE, JR., MARIO LUMAGUE, ROLANDO LUMAGUE
AND JUANITO LUMAGUE, ACCUSED WHOSE DEATH SENTENCES ARE
UNDER REVIEW.**

G.R. No. 53586. January 30, 1982

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PER CURIAM:

This is a murder case. Early in the morning of July 25, 1977, Antonio A. Regalado, 39, a credit investigator of the Social Security System, was maliciously killed in the Marikit Subdivision, Marikina, Rizal.

The postmortem examination revealed that he had fourteen incised wounds, two lacerated wounds, ten punctured wounds and ten stab wounds, or thirty-six wounds in all, eight of which were fatal because they affected his vital organs like his lungs, liver, heart and intestines (Exh. A). The wounds were located in different parts of his body: front and back, head, arms, legs, abdomen, knees, chest and shoulders (Exh. B). Obviously, he had been assaulted by more than one person.

The incised and stab wounds were caused by a bladed weapon such as a kitchen knife. The lacerated wounds were caused by a blunt instrument such as a piece of wood or iron bar. The punctured wounds were caused by a pointed instrument such as an icepick.

Elma Icatер Regalado, a thirty-nine-year-old businesswoman, the victim's widow, testified that she spent P25,000 for the funeral of her husband and for miscellaneous obligations (Exh. J to J-8). Aside from his widow, the deceased was survived by his two children, Ian, 4, and Shiela, 6. In her letter to General Romeo C. Espino, she said (Exh. K):

"In our own little world, my husband and I planned the future of our children.

"Ma. Shiela was to be a nurse while L. Ian, x x x was to be a doctor according to his wish. We planned and rejoiced in our little hopes even when life was difficult, until last July 25, 1977 at about 0030 Hrs., when a gang of hoodlums pounced upon my husband and his companions while they were on their way home and robbed him and brutally and mercilessly murdered him, and with him, the beautiful dreams we had for our children.

"Even a mad dog or an abominable criminal did not deserve his manner of death! He, who never harmed anybody nor spanked his children out of love, lay there in a muddy street of the Marikit Subdivision, gasping for breath and calling our x x x son even as his assailants took turns in stabbing him and pummeling him with a garden hoe that broke at the handle as it hit my helpless husband as he lay on the ground.

"Our house that was once a happy home when he was around is no longer the same since he has gone. Our little girl, Ma. Shiela, eats her breakfast silently with tears streaming down her face; our son L. Ian keeps asking me when his father will wake up, and I will never get used to the emptiness and the void that he has left behind."

The Marikina police could not solve the crime. At the request of Mrs. Regalado, General Espino referred the case to the Constabulary criminal investigation service (CIS) at Camp Crame.

As a result of the investigation, the four Lumague brothers, Ponciano, Jr., 27, Rolando, 25, Mario, 23, and Juanito, 21, and their brother-in-law, Rodolfo de la Cruz, were charged with murder for the killing of Regalado. Ponciano, Rolando and Mario were arrested on August 20, 1977. Juanito was arrested on October 10, 1977 when the prosecution had already finished the presentation of its evidence against his three brothers. De la Cruz is at large.

The Lumague brothers came from a family of five boys and five girls. They grew up in the slum area of Tondo, Manila. Their parents were natives of La Union. The father, a convict, was killed by a member of the Oxo gang (p. 138, Record).

Even before the Lumague brothers were implicated in the killing of Regalado, Rolando had been charged in the municipal court of San Fernando, La Union with frustrated murder and slight physical injuries (Exh. L and M). In the same court, Ponciano was charged with frustrated homicide (Exh. P). He was also charged in the provincial fiscal's office of La Union with direct assault of an agent of a person in authority and robbery (Exh. R and S).

Ponciano is married with four children. He used to be a shoe repairman. He finished grade four. Rolando is married with three children. He finished grade five. He used to be a tricycle driver. Mario is married with three children. He finished grade three. He was jobless.

The probation officers found the Lumague brothers to have marked criminal tendencies and to have a propensity for anti-social behavior (p. 139, Record).

Trial of Ponciano, Rolando and Mario Lumague. - These three brothers were tried first because the other two accused, Juanito Lumague and Rodolfo de la Cruz, were at large. According to the prosecution, in July, 1977, the Lumague brothers with their mother, Emerenciana Morales, and their sister and brother-in-law, Rodolfo de la Cruz, were renting from Walter Romero Gutierrez a shack or "barong-barong" in the Marikit Subdivision in Marikina near the residence of Virgilio Pacunayen.

At about eleven o'clock in the evening of July 24, 1977, Regalado, with his friends, Roberto Asuncion, Gerardo A. Ducha, Lorenzo Gravador and Rogelio Bautista, had a drinking spree at the Havana Pub and Beerhouse located at Barrio Concepcion, Marikina, Metro Manila. Each of the five drank three bottles of beer. They watched the floor show.

Shortly after midnight, the group left that place and, as it was curfew time, they decided to walk to Bautista's house in the subdivision about a kilometer away and sleep there. (Regalado was a resident of 5-C Annapolis Street, Cubao, Quezon City, a neighbor of Asuncion who resided at 5-D Annapolis Street.)

What happened while the group was walking was testified to by two eyewitnesses, Asuncion, 30, and Pacunayen, 21, a high school graduate, who, as noted above, was residing at a house near the shack where the Lumague family was staying and who claimed to have been a victim of an assault perpetrated by the members of the Lumague family in June, 1977.

Asuncion testified that he and Regalado were walking together. Gravador was ahead of them. Bautista and Ducha followed Regalado and Asuncion. While walking on the street in front of the shack occupied by the Lumague family and Pacunayen's house, Asuncion heard Ducha shouting that Bautista had been stabbed. When Asuncion looked behind, he noticed that Ducha and Bautista were running because they were being pursued by two persons.

Asuncion's impulse was to follow Bautista and Ducha but after taking a few steps, he turned around and looked at the place where he had left Regalado. He saw Mario Lumague beating Regalado on the back with a hoe (Exh. D).

Asuncion was about two fathoms away. Regalado fell on the ground face down. Asuncion got a stone and threw it at Mario.

Mario pulled Regalado to a dark grassy place near the lighted street. Four persons approached Regalado. Asuncion identified three of them as the brothers Ponciano, Mario and Rolando Lumague. Ponciano hit Regalado many times with his fist and struck him on the back with an adobe stone.

Rolando also threw an adobe stone at the head of Regalado and boxed him many times. Juanito repeatedly stabbed Regalado. Rodolfo de la Cruz clobbered Regalado with a club ("pamalo") about two feet long.

Then, Mario who was armed with a hoe, turned his attention to Asuncion, Ducha and Bautista who fled upon his approach. Mario pursued them. He did not overtake them. Shortly thereafter, the five assailants left the place where they had assaulted Regalado.

Asuncion approached Regalado who was bloodied all over but was still breathing. Asuncion directed Bautista to fetch a vehicle. Ducha went to the police station. When a taxicab passed by, Asuncion hailed it and placed Regalado inside the taxicab. He was brought to the E. Rodriguez Hospital but was already dead on arrival thereat.

Asuncion's testimony is a confirmation of his sworn statements dated August 8 and 22, 1977 before the Constabulary investigator of the CIS police intelligence section at Camp Crame (Exh. C and C-2).

Pacunayen, the other prosecution witness, a neighbor of the Lumague family, who was acquainted with the members thereof, testified that at past midnight on July 25, 1977 he was in the balcony of his house overlooking the lighted street.

He witnessed the assault on Regalado which was perpetrated by the four Lumague brothers and their brother-in-law Rodolfo de la Cruz. Pacunayen, who was at a distance of fifteen meters from the scene of the assault, corroborated the particulars thereof as narrated by Asuncion. Pacunayen's testimony is a confirmation of his sworn statement dated August 9, 1977 before the Constabulary investigator of the CIS police intelligence section at Camp Crame (Exh. G).

Ducha, who, like Gravador and Bautista, did not testify, executed sworn statements dated August 11 and 22, 1977 before the Constabulary CIS investigator (Exh. E and F). Ducha, 25, a high school graduate, narrated how he and Bautista encountered a person who tried to stab Bautista. Then, Ducha saw another person beating Regalado with a hoe. At a confrontation, Ducha identified Mario as the wielder of the hoe, Ponciano as the one who assaulted Regalado with an adobe stone and Rolando as the one who boxed Regalado (pp. 79-83, Record).

Another documentary evidence of the prosecution is the hardly legible sworn statement of Mario Lumague taken by the same Constabulary investigator (Exh. H, pp. 87-90, Record).

The investigator, before interrogating Mario, warned him that anything that he would say regarding the death of Regalado would be used against him in court and that he (Mario) had the rights (1) to remain silent and not to answer any question that would be prejudicial to him, (2) to have counsel, (3) to be investigated in the presence of his lawyer and (4) to have counsel de oficio if he could not afford to hire his own lawyer.

Then, the investigator asked Mario whether after being apprised of his constitutional rights he was willing to give a voluntary statement and to sign an acknowledgment that he understood his constitutional rights. Mario answered in the affirmative. He then signed the following certification, amounting to a waiver of his constitutional rights, which formed part of his statement:

"Ito ay nagpapatunay na nauunawaan kong lahat ang aking mga karapatan na napaliwanag sa akin ng inbestigador gaya ng pagbibigay ng salaysay na kusang loob, at hindi na rin kukuha ng abogado dahil

katotohanan lamang ang aking sasabihin." (Exh. H-1, p. 87, Record.)

Mario's version in his statement is that he and Juanito were in the Havana Pub and Beer Garden from seven to ten o'clock in the evening of July 25 (should be 24), 1977. At around eleven o'clock, when Mario was already in his residence at the Marikit Subdivision (where he lived with his brothers, mother and brother-in-law) he heard a shout coming from the street in front of the house and the sound of an object hitting the roof ("kalabog") and he saw Juanito going out of the house.

Then, later, Beth, the sister of his brother-in-law, informed Mario that some persons had ganged up against Juanito. Mario came out of the house and allegedly saw Juanito prostrate on the street in front of their house. Mario reentered the house, got a hoe and helped Juanito in resisting his four assailants who were holding stones and assaulting Juanito. Mario clubbed on the head the person holding Juanito. Juanito got a kitchen knife from the house and repeatedly stabbed the person whom Mario had clubbed on the head and who was sitting on the ground. The assaulted person fell on the ground. Mario and Juanito ran away.

Mario in his statement disclosed that the persons staying in the house at the Marikit Subdivision were Rodolfo de la Cruz and his wife Hermenegilda (Mario's sister), Ildefonsa or Perlita Lumague, Reynaldo Lumague, Beth de la Cruz, Lita Lumague (Mario's wife) and Juanito (No. 32, Exh. H).

Mario said that only he himself and Juanito assaulted Regalado but he (Mario) was not sure whether he was the only one who killed Regalado (No. 40, Exh. H).

The version of the defense is that Juanito Lumague was the sole assailant of Regalado. Ponciano, Rolando and Mario presented as witnesses their mother Emerenciana Morales and Angelita Ramos, Eleno Gomez and Winnie Camacho to prove their defense of alibi.

Emerenciana, a sixty-nine-year-old widow, testified that in July, 1977 she resided with the spouses Hermenegilda Lumague and Rodolfo de la Cruz in the house which they had been renting for three months in the Marikit Subdivision. In the evening of July 24, 1977 she went to bed at eleven o'clock. She was awakened because of the noise caused by some persons who were passing near the house and who were challenging the Ilocanos to a fight. She came out of the house and saw five men who were very noisy.

She advised them to go home because it was already very late. They allegedly answered that they did not observe the curfew and they cursed the President for enforcing it. Emerenciana said that the five men pushed her towards the door of her house and she fell on the ground. She was allegedly stoned by the five noisy individuals. She was hit in the cheek, chest, left foot and front part of her body. A woman named Marilou (Angelita) was also stoned and her foot was injured ("napilay") (412).

Emerenciana admitted that when the incident happened she, her children and son-in-law were staying in the house but when asked to clarify her answer she said that her daughter Hermenegilda, son-in-law Rodolfo de la Cruz and her grandchildren were staying in the house (398). She declared that she did not know who killed Regalado and that when Regalado was killed her four sons "were not there" (399), meaning that Rolando, Ponciano and Juanito were in the province, Mario was in Tondo and Rodolfo was in the house (400-3). When pressed by counsel de oficio to clarify the whereabouts of Juanito, Emerenciana answered that Juanito arrived in the house when Emerenciana was pushed by the five persons (406-9).

Emerenciana categorically declared that Ponciano never resided with her in Marikina (410-11). She testified that when Juanito was boxed by the men, a fight ensued between them and Juanito. She admitted that Juanito had previously been confined in the Madrigal Rehabilitation Center for having been involved in a homicide case with his brother-in-law, Maximino Dacanay.

Angelita Ramos, 20, a helper of Emerenciana, testified that Pacunayen used to go to Emerenciana's house. In the afternoon of July 24, 1977, Ponciano was not in the house in Marikina but was in Bauang, La Union, Mario was in Tondo and Rolando was in Barrio Ambangonan, Pugo, La Union, but Juanito was in Emerenciana's house in the Marikit Subdivision, Marikina.

Angelita corroborated Emerenciana's testimony that at about midnight on July 24 five persons passed by Emerenciana's house and challenged the Ilocanos to step out. Emerenciana came out of the house and told the five persons to go home. She was pushed by the five persons and she fell on the ground.

At that juncture, Juanito and Pacunayen arrived. Regalado allegedly boxed Juanito. The five persons threw stones and the witness, Angelita, was hit in the ankle. Pacunayen assaulted Regalado with a hoe. Regalado fell on the ground face down. Pacunayen repeatedly stabbed Regalado (461).

Because Angelita was not available for cross-examination, her testimony on direct examination was stricken out of the record (506).

Eleno Gomez, 50, a farmer, a resident of Barrio Quinavite, Bauang, La Union, and a first cousin of Julian Camacho, who in turn is a first cousin of the Lumague brothers, testified that in the evening of July 24, 1977 he acted as guard at a dance held on the occasion of a wedding in Barrio Quinavite and that Ponciano, Rolando and Mario were present at that dance (475). Juanito and De la Cruz were not present at that dance. A few moments later, Gomez testified that Rolando and Mario were not present at the wedding party (489).

Winnie Camacho, a twenty-three-year-old housewife, whose husband is a first cousin of Rolando, testified that on July 24 and 25, 1977 Rolando was at her house in Barrio Ambangonan, Pugo. He planted rice on July 24. The next day he went fishing in the river.

Decision in the case of Ponciano, Rolando and Mario Lumague. - At the conclusion of Winnie's testimony on January 31, 1978, defense counsel Galvan announced that he would present the accused as witnesses at the next hearing scheduled on February 24. That hearing was not held. The case was reset for March 14. No hearing was held on that date for reasons not shown in the record.

On that date, the trial court issued an order requiring the prosecution to present its memorandum within ten days and giving defense counsel Galvan five days within which to file a reply memorandum. It scheduled on April 18 the promulgation of its sentence.

The prosecution in a motion dated March 20, 1978 offered its Exhibits L to S which were marked during the cross-examination of the defense witnesses. Galvan objected to Exhibits L, M and N. He did not make any comment on Exhibits P to S because copies thereof were not attached to the motion.

The prosecution filed its memorandum on April 5. Galvan was furnished with a copy thereof. He did not submit his reply memorandum. As scheduled, the death sentence against Ponciano, Rolando and Mario was "dictated and promulgated in open court" on April 18, 1978.

The trial court convicted Ponciano, Rolando and Mario Lumague of murder, sentenced each of them to death and ordered them to pay solidarily to the heirs of Regalado an indemnity of thirty-two thousand pesos. Treachery and abuse of superiority were considered qualifying circumstances. Cruelty was appreciated as a generic aggravating circumstance. The trial court did not give credence to the alibis of the accused.

The trial court in its decision explained that the defense waived its right to present further evidence after it failed to present such evidence in spite of numerous postponements and when defense counsel failed to appear in court despite due notice (p. 286, Record).

Galvan filed on April 24 a motion for reconsideration. He complained that the accused were denied due process of law because they were not given a chance to testify in their behalf. The motion was denied. The trial court in its order of April 28, 1978 directed the clerk of court to forward the record of the case to this Court.

Separate trial and decision in Juanito Lumague's case. - As priorly noted, Juanito was arrested in Barrio Ambangonan, on October 10, 1977 when the prosecution had finished the presentation of its evidence against his brothers Ponciano, Rolando and Mario. When arraigned on October 19, Juanito pleaded not guilty. He was given a separate trial.

At the hearing on June 28, 1978, when the medico-legal officer was testifying for the second time in the separate trial for Juanito, Benjamin Santos, Juanito's counsel, interrupted the testimony of the medico-legal officer and manifested that Juanito was withdrawing his plea of not guilty and changing it to a plea of guilty. The doctor's testimony was suspended. Juanito was placed on the witness stand. He took his oath and was interrogated as follows:

"Court to Juanito Lumague: Do you confirm and affirm that you are changing your plea of not guilty to that plea of guilty? - A. Yes, sir, I was not able to talk.

"Q. by Court: You were not able to talk because you were arrested. x x x. - A. No, your Honor. The reason at that time I was asking but I was not able to reason out that I was the one who committed the crime.

"Court: Why did you not tell the lawyer of your brother that you (are) the only one to be presented by the defense lawyer? - A. I stated so, your Honor.

"Court: Did anybody intimidate, coerce you or promise you of (any) leniency for changing that plea of not guilty to that plea of guilty? - A. No, Your Honor." (550-552)

The trial court then ordered the resumption of the presentation of evidence against Juanito. The medico-legal officer was cross-examined by Juanito's counsel. Asuncion and Elma I. Regalado testified again. The prosecution formally offered in evidence against Juanito the same Exhibits A to K which it had already presented during the trial of Ponciano, Rolando and Mario Lumague.

Juanito's counsel did not present any evidence. On July 5, 1978, the trial court rendered in Juanito's case a decision similar to its previous decision. It convicted him of murder, sentenced him to death and ordered him to pay the same indemnity (p. 281, Record).

Ruling. - In this automatic review of the four death sentences, counsel de oficio contends that the trial court erred in not giving the four accused a chance to present other witnesses and to testify in their behalf, in admitting the extrajudicial confession of Mario Lumague, in giving credence to the testimonies of the prosecution witnesses and in convicting the accused of murder.

With respect to Juanito Lumague, who withdrew his plea of not guilty, who was tried separately and whose guilt was also established by means of the evidence presented against him, we find that the counsel's contentions are devoid of merit. Juanito's guilt was proven beyond reasonable doubt. His plea of guilty and the evidence introduced by the prosecution destroyed the presumption of innocence in his favor.

There is conclusive evidence that he was the one who stabbed Regalado. In doing so, he conspired with the other assailants of the victim, particularly with the assailant who treacherously struck Regalado on the back with a hoe. Even Juanito's mother admitted that he took part in the assault (408-9, 413-4). And, of course, the fact that Juanito was a fugitive from justice for several months is an indication of his guilt.

The trial court correctly held that the killing was murder qualified by treachery and abuse of superiority and

aggravated by cruelty. Hence, death is the proper penalty. Juanito's plea of guilty is not mitigating because it was made after the prosecution had commenced the presentation of its evidence.

With respect to the other three accused, Ponciano, Mario and Rolando Lumague, who pleaded not guilty and who were tried ahead of Juanito, there is merit in their contention that they were denied due process of law because they were not given a chance to testify in their behalf and to present additional evidence.

An accused has the constitutional right "to be heard by himself and counsel" and the right "to testify as a witness in his own behalf." The denial of such rights is a denial of due process, as held in *People vs. Santiago*, 46 Phil. 734. See *People vs. Abuda*, L-30009, February 27, 1971, 37 SCRA 789.

"Due process of law in a criminal prosecution consists of a law creating or defining the offense, an impartial tribunal of competent jurisdiction, accusation in due form, notice and opportunity to defend, trial according to established procedure, and discharge unless found guilty." (16A C.J.S. 617).

The constitutional right of the accused to be heard in his defense is inviolate. "No court of justice under our system of government has the power to deprive him of that right." (*Abriol vs. Homeres*, 84 Phil. 525, 534.)

Fundamental fairness, which is the essence of due process, requires that the three accused should be allowed to testify on their defenses and to present additional evidence to prove their innocence.

WHEREFORE, we affirm the trial court's separate decision dated July 5, 1978, sentencing Juanito Lumague to death.

Its prior decision of April 18, 1978, sentencing to death Ponciano, Mario and Rolando, all surnamed Lumague, is set aside. It is directed to receive the additional evidence of the said accused, subject to the right of the prosecution to present rebuttal evidence and the right of the accused to present surrebuttal evidence. The evidence already presented subsists and should be taken into account in the rendition of another decision. Costs de oficio.

SO ORDERED.

Teehankee, Barredo, Makasiar, Aquino, Concepcion, Jr., Fernandez, Guerrero, Melencio-Herrera, Plana, and Escolin, JJ., concur. Fernando, C.J., took no part insofar as the separate decision imposing the death sentence on Juanito Lumague and concurs as to the setting aside of the death sentence imposed on Ponciano, Mario and Rolando all surnamed Lumague. He likewise concurs with the reservation of Justice Abad Santos in his brief separate opinion. Abad Santos, J., concurs in a separate opinion. De Castro, J., concurs with J. Ericta's dissenting and concurring opinion. Ericta, J., dissents and concurs in a separate opinion.

CONCURRING OPINION

ABAD SANTOS, J.:

I concur in the result and in doing so I wish to express some thoughts on the case.

The Marikina police could not solve the murder of Antonio A. Regalado. The Philippine Constabulary Criminal Investigation Service (CIS) had to intervene despite the fact that the so-called friends of the deceased, namely: Roberto Asuncion, Gerardo A. Ducha, Lorenzo Gravador and Rogelio Bautista were present when the incident occurred. They did come out immediately to denounce the crime to the police and of the four only Asuncion testified in court; Ducha, Gravador and Bautista did not. If a person has friends like them, who needs enemies?

Ducha's sworn statements (Exhibits E and F) should be totally disregarded. Since he did not testify and hence

could not be cross-examined, they are hearsay. They are prejudicial to the accused.

I would urge the trial court when it renders another decision in the case of Ponciano, Mario and Rolando Lumague to view their social and economic backgrounds in a different light. The decision appears to indicate that because of their life-styles they have a proclivity to commit crime. Maybe it is so. But it should be remembered that they did not choose to be poor and for their poverty society must assume its share of the blame.

CONCURRING AND DISSENTING OPINION

ERICTA, J.:

I do not agree that cruelty has been proven. There were five assailants and the attack was concerted and almost simultaneous. If there were 36 wounds in all, each defendant practically inflicted an average of seven wounds.

In the case of PP vs. Juan Jumauan alias Juancho Jumauan, 98 Phil. 1, the lone defendant inflicted upon the deceased 13 wounds in all. But this Court refused to appreciate the aggravating circumstance of cruelty, because there was no showing that the defendant "deliberately and inhumanly increased the suffering of the deceased."

The test is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse (People vs. Lacao, 60 SCRA 89).

There being no aggravating circumstance, the penalty to be imposed upon Juanito Lumague should be reclusion perpetua.

I concur in the rest of the Decision.

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