

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESPERIDION RECIMIENTO, JR., AND ROMEO RECIMIENTO,
DEFENDANTS-APPELLANTS.**

G.R. No. 54000, March 06, 1984

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is an appeal from the decision of the Court of First Instance of Cebu, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused, Esperidion Recimiento, Jr. and Romeo Recimiento, guilty beyond reasonable doubt of the crime of murder described in the aforequoted information. Appreciating in favor of the accused Esperidion Recimiento, Jr., the mitigating circumstance of voluntary surrender, but counting against both defendants the aggravating circumstance of complete disregard of the respect due the offend-ed party on account of his age and rank, the said accused should be, as they each are, hereby sen-tenced to the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify the heirs of the deceased Gregorio Macapaz in the sum of P12,000.00, and to pay the costs."[1]

The two appellants are brothers. Only Romeo seeks complete acquittal claiming he had no part in the killing of the deceased, while Esperidion seeks modification of the crime committed from murder to simple homicide. The Solicitor General after analyzing the evidence recom-mends that the crime committed be modified as requested, but insists on the participation of Romeo as a co-principal, at least, or as a co-conspirator.

The evidence for the prosecution would seek to prove the following facts as stated in the People's brief:

"At about 6 o'clock in the evening of May 15, 1978, on the occasion of the fiesta in Asturias, Cebu, the family of barrio councilman Gregorio Macapaz gathered at his house in Barrio Agtarap together with some guests. Gregorio's son, Frisco Macapaz, who was present, had eaten his supper at his father's house although he resided at another house nearby. (tsn, September 12, 1978, pp. 3-4).

"Suddenly, a scream rang from Frisco's house. Frisco's wife Visitacion was crying for help as there was a fight going on near the house. Gregorio, Frisco and a guest by the name of Freddie Tabañag responded. (Id., 4-5). On their way, the three met Gregorio's other son, Elpidio, who told them that Gali Lacaba and appellant Esperi-dion Recimiento, Jr. were quarrelling. Gregorio and Frisco proceeded on their way but Tabañag stayed behind to converse with Elpidio. (Id., 5-6).

"Further on, Frisco went up his house to comfort his wife. She told him that appellants Esperidion and Romeo Recimiento, on the one hand, and Gali Lacaba, on the other, were having a fight near the house. Frisco looked out from the window and saw his father Gregorio, with lamp in hand, approach the protagonists. (Id., 6-7).

"Gregorio urged appellants not to harm Lacaba since he was their own cousin. Appellant Romeo turned on Gregorio instead and, without warning, stabbed him on the chest with a small bolo. (Id., 7-8, 12). The latter reeled back with the lamp still in his hand. Forthwith, ap-pellant Esperidion moved up and also stabbed him on the chest with a stainless hunting knife. (Id., 9-10, 13). As Gregorio fell down the char-coal pit, he cried out to

his son Frisco to help him. (Id., 11).

"Frisco hurried down from his house but, before he could get to his father, appellants Romeo and Esperidion took turns in further stabbing Gregorio. (Id., 18-19). As Frisco reached his father's side, however, his assailants moved back. Frisco cuddled his father who then acknowledged that he was going to die of the wounds inflicted by the appellants. (Id., 20).

"Just then, Elpidio Macapaz, Gregorio's other son, arrived and took his father into his arms. Frisco faced appellants who began throwing stones. One stone in particular hit Elpidio. (Id., 21-22). Freddie Tabañag also arrived prompt-ing appellants to flee. When Tabañag asked Gregorio who his assailants were, he replied that they were the appellants. (Id., 22-23).

"Gregorio was carried to his house but he died before reaching it. (Id., 24) According to the municipal health officer who conducted an autopsy of the body of the deceased, the latter sustained the following wounds:

"External Examination:

Patient is in state of Rigor Mortis. There was signs of decom-position.

"Estremeties:

- Stab wound with clear-cut edges which is located on the lateral side of forearm right which is 2 1/2 inches in length; 1 1/2 inch in depth.
- Lacerated wound which is loca-ted on the left arm which is 1 inch in length.
- Stab wound with clean-cut edges which measures 2 1/2 inches in length found on the right arm which is about 1 1/2 inch from the wrist joint.

"Chest:

- Stab wound located on the left chest at the level of the 4th inter-costal space which measures 3 1/2 cm. in length; 2 1/2 inches in depth which directed obliquely going downward towards the left. Stab wound is loca-ted 1 inch from the left nipple.
- Stab wound with clean-cut edges located on the left chest at the level of the 5th intercostal space which measures 4 1/2 cm. in length; 4 cm. in depth with an oblique direction going downward towards the left. Stab wound is located 7 cm. from the midline.

"Internal Findings:

"Heart:

- There was accumulation of blood clots in the pericardial cavity which is about 300 cc.
- Penetrating wound on the apex of the heart.

"Cause of Death:

- Internal hemorrhage due to stab wound penetrating into the heart. -- Exhibit A."[2]

We first dwell on the question of whether Romeo took part in the stabbing of the deceased; which Romeo denies.

There are various circumstances to cast reasonable doubt on Romeo's having stabbed the deceased along with his brother.

(1) Only two witnesses testified against Romeo, and they are both sons of the deceased. The trial court mentioned along also as a witness whose testimony is positive as the other brother, Freddie Tabañag, as having

testified against Romeo. It is not true that Tabañag took the witness stand. One would think, he was suppressed because he would testify against the prosecution and that if the two witnesses, both children of the deceased, testified the way they did, including Romeo, their relationship with the deceased was strong enough a motive to testify falsely, which is not so for a non-relative.

(2) The testimony of the doctor who performed the autopsy would point that the wounds he found were caused by one and the same bladed instrument. (pp. 27-30, tsn, September 4, 1978). Yet the two appellants, according to Frisco Macapaz, had two different weapons, one a stainless knife, and another, a small bolo.

(3) Frisco's testimony as to who delivered the first blow was variant. In the reinvestigation of the Fiscal, he said it was Esperidion. In Court on cross-examination it was Romeo. (pp. 5-6, Appellant's Brief).

(4) The defense explained that Esperidion was surrendered by his father. If the two appellants were not in their house when the police went there, it is not that they fled. Romeo went also to the Asturias Police Station to visit his brother who had surrendered. If Romeo was as guilty as his brother who was surrendered by the father. Romeo should also have surrendered. (p. 9, Appellant's Brief) This could have easily been shown by the police blotter. (p. 10, Appellant's Brief).

If Romeo had delivered as many stabs on vital part of the body of the deceased, Freddie Tabañag who was with Frisco and the latter's brother would have seen Romeo's participation in the killing. Why did not the prosecution present Tabañag as a witness instead of presenting only the two sons of the deceased? As we have earlier stated Tabañag, if presented may come out with the truth and say that only Esperidion had a hand in the killing.

It is true the prosecution made mention of a dying declaration of the deceased which pointed to both Romeo and Esperidion as his assailants. But this was testified to only by Frisco whose testimony as already shown does not itself deserve full credibility for the dying declaration he testified about to be credible.

With the above circumstances, our mind cannot be made to rest easily on the guilt of Romeo. He must accordingly be acquitted.

We agree with the Solicitor General that the crime committed is only simple homicide, the qualifying circumstance alleged not being present, not even treachery as the Solicitor General himself opined.

We, therefore, accept the recommendation of the Solicitor General but only as applied to Esperidion.

WHEREFORE, the appealed decision is modified in that Romeo Recimiento, whose guilt has not been established beyond reasonable doubt, is acquitted and Esperidion Recimiento, Jr. is convicted for the crime of homicide with the mitigating circumstance of voluntary surrender, without any aggravating circumstance and sentenced to an indeterminate penalty of SIX (6) YEARS and ONE (1) DAY of PRISION MAYOR as minimum to TWELVE (12) YEARS and ONE (1) DAY of RECLUSION TEMPORAL as maximum, with the accessory penalties of the law, to indemnify the heirs of the deceased Gregorio Macapaz in the sum of P12,000.00 and to pay the costs. SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

Makasiar, Acting C.J., (Chairman), see partial dissent.

Aquino, J., dissents. The killing was murder qualified by abuse of superiority. The participation of Romeo Recimiento in the killing was proven beyond reasonable doubt as shown in the trial court's findings. He votes to affirm the trial court's judgment.

[1] pp. 1-2, Appellee's Brief, pp. 64-65, Rollo.

[2] pp. 2-6, Appellee's Brief, pp. 65-69, Rollo.

DISSENTING OPINION

MAKASIAR, J.:

I concur with the conclusion that the crime committed is only homicide; because the qualifying circumstance of treachery is not established satisfactorily. However, both brothers-appellants should be convicted of homicide; because the testimonies of the sons of the deceased sufficed to establish that appellant Romeo is a co-principal by cooperation of appellant Esperidion. While state witness Freddie Tabañag was not presented by the prosecution, there is no showing that he was not equally available to the defense. At any rate, the testimonies of the two sons of the deceased demonstrate beyond reasonable doubt the guilt of both appellants.

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