

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIEGO HERMOSILLA, OLEGARIO PLONE ALIAS DARIO, GREGORIO RELEVANTE ALIAS GILLY, MACARIO PLONE, SR., RAUL ADAP AND LEOPOLDO C...

G.R. No. 58414. June 24, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

The six accused appealed from the judgment of the Court of First Instance of Negros Oriental, finding them guilty of murder, sentencing each of them to "life imprisonment", except Macario Plone, Sr., who was sentenced to death (being a recidivist), and ordering them to indemnify the heirs of the deceased Leopoldo Lagradilla in the sum of P12,000 (Criminal Case No. 3049).

Diego Hermosilla, Leopoldo Cañete and Gregorio Relevante are the three sons-in-law of Macario Plone, Sr. Olegario Plone is his son, while Raul Adap is Hermosilla's adopted son.

According to the prosecution, sometime in January, 1979, Macario Plone, Jr. had an altercation with his neighbor, Leopoldo Lagradilla, because Plone's horse destroyed the coconut plants of Lagradilla.

At around four o'clock in the afternoon of February 27, 1979, Macario, Sr., his son, his three sons-in-law and Adap invited Lagradilla to drink tuba in the house of Macario, Jr. who was then in Bacolod City. After sometime, Lagradilla went home in an intoxicated condition. He just lay down on the balcony of his house which was located at Sitio Habuyo, Barangay Nagbinlod, Sta. Catalina, Negros Oriental.

Macario, Sr. and his five companions followed Lagradilla to his house and offered to buy his pig but the latter answered that he could not sell it because he was not the owner. Then, suddenly, without any preliminaries, Olegario Plone, Cañete and Adap held Lagradilla's feet while Relevante stabbed Lagradilla in the right chest with a spear.

The assailants brought Lagradilla downstairs. Macario, Sr. hacked Lagradilla in the abdomen with a bolo, thus causing his intestines to come out. Hermosilla struck him in the neck. The others took their turns in stabbing the helpless victim until he was dead (Exh. C). They brought his corpse to the house of Macario, Jr.

Lagradilla, 34, sustained nine incised wounds and three stab wounds, most of which were serious or fatal (Exh. A and B).

Against the testimony of the eyewitness, the surviving spouse, Anita, that all the six accused took part in the liquidation of her husband Lagradilla, the accused offered the defense that Hermosilla alone inflicted the twelve wounds which caused Lagradilla's death.

Hermosilla testified that Lagradilla belittled his prowess as a weight-lifter. They quarrelled and Hermosilla killed Lagradilla in self-defense. The other five accused offered alibis. At the time the killing was perpetrated, Cañete

was allegedly harvesting corn and peanuts in his plantation, together with Adap and Olegario Plone, Relevante was at his tobacco plantation and Macario, Sr. had gone to a place called Lambo to cut posts. When Macario, Sr. arrived at his house at around five o'clock in the afternoon of that day, his wife informed him that Lagradilla had been killed by Hermosilla.

The trial court rejected the self-defense interposed by Hermosilla and disbelieved the alibis of the other accused. In this appeal, counsel de oficio assails the credibility of Anita Lagradilla, argues that credence should be given to the testimony of Hermosilla and to the alibis of the other five accused and contends that according to the examining physician the twelve wounds could have been inflicted by one person.

The physician was asked whether the twelve wounds were inflicted by several assailants. He answered that "it is possible, but you see, it is also possible that it can be inflicted only by one person, if the person is indulged to kill" (9 tsn November 21, 1979). It is evident that the doctor's opinion was purely speculative. The nature of the wounds, which were incised and stab wounds, is indicative that there was more than one assailant and that more than one weapon was used.

The trial court correctly disregarded the alleged self-defense of Hermosilla and the alibis of the other accused. The killing was proven beyond reasonable doubt by the testimony of the victim's wife. The six accused acted in concert to effect the liquidation of Lagradilla.

The killing was murder qualified by treachery and aggravated by abuse of superiority which is absorbed by treachery.

The trial court in the last page, page 25 of its decision said that it had to impose the death penalty on Macario, Sr. because he was a recidivist. This conclusion is manifestly unwarranted. There is absolutely nothing in the record to support such a conclusion. Recidivism was not alleged in the information.

To prove recidivism, it is necessary to allege the same in the information and to attach thereto certified copies of the sentences rendered against the accused to be presented during the trial. The same should actually be admitted as evidence with the knowledge of the accused (U.S. vs. De Mesa, 7 Phil. 729; People vs. Scott, 62 Phil. 553). Hence, the death penalty was erroneously imposed.

Appellant Adap executed an affidavit dated March 23, 1979 wherein he alleged that he was "less than 15 years of age". On October 23, 1980, or nineteen months later, when he took the witness stand, he declared that he was sixteen years old. These circumstances show that he was really less than fifteen years old on February 27, 1979, when the crime was committed. He is entitled to a two-degree reduction of his penalty (Art. 68, Revised Penal Code).

On the other hand, Hermosilla testified without contradiction that he voluntarily surrendered to the Constabulary (26 tsn April 28, 1980; 3 tsn Oct. 30, 1980). Patrolman Jonadab Cantila, an investigator, declared that Hermosilla was turned over to his headquarters (38 tsn Jan. 3, 1980). Hermosilla should be given the benefit of the mitigating circumstance of voluntary surrender to the authorities.

WHEREFORE, the trial court's judgment is affirmed with the modification (1) that Macario Plone, Sr. is sentenced to reclusion perpetua, (2) that Raul Adap is sentenced to an indeterminate penalty of four years of prision correccional as minimum to seven years of prision mayor as maximum and (3) that accused Hermosilla is sentenced to an indeterminate penalty of fourteen years of reclusion temporal as minimum to nineteen years also of reclusion temporal as maximum. The payment of the indemnity by the six accused should be in a solidary capacity. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Relova, J., took no part.

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