

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE CASAS, WENCESLAO PALARCA, JAIME RODRIGUEZ, AND
GREGORIO OCLARIT, ACCUSED-APPELLANTS.**

G.R. No. 59546. July 25, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the defunct Court of First Instance of Misamis Oriental, an information for murder was filed on October 24, 1977, against VICENTE CASAS, WENCESLAO PALARCA, JAIME RODRIGUEZ and GREGORIO OCLARIT which reads as follows:

"That on or about the 17th day of December, 1976, at more or less 6:30 o'clock in the evening, at Pangayawa, Malibud, Gingoog City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together, and mutually helping one another, with deliberate intent to kill and with evident premeditation and treachery to better accomplish their purpose and by employing means or method to insure its execution without risk to themselves, and by taking advantage of superior strength, armed with a sharp-pointed bolo with which the accused were conveniently provided, did then and there wilfully, unlawfully, and feloniously assault, attack and stab one ROGELIO ABUGHO, thereby wounding the victim at the right lower abdomen, which injury caused his instantaneous death. That the commission of the crime was attended by the following aggravating circumstances, to wit: (a) evident premeditation and (b) taking advantage of superior strength."

The trial court, in a decision dated June 6, 1980, rendered the following judgment:

"IN VIEW OF ALL THE FOREGOING, the Court finds all the accused guilty beyond reasonable doubt of the crime of murder qualified by abuse of superior strength, treachery being absorbed by the former, sentences each and every one of them to reclusion perpetua, to jointly and severally indemnify the heirs of Rogelio Abugho in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. They shall be credited with full preventive imprisonment they have undergone."

All of the accused filed a joint notice of appeal on December 12, 1980, which explains why the case is before this Court.

Wenceslao Palarca filed a motion dated April 8, 1983, to withdraw his appeal. The motion was attested by Senior Prison Guard Bernardina B. Revesencio and Prison Guard Nemesio Ricardo. The motion was granted in the resolution of April 25, 1983. Subsequently a letter dated June 6, 1983, was sent to the Chief Justice by Palarca's wife, Bonifacia, and his daughter, Vilma. They claim that the withdrawal of Palarca's appeal was "not his own voluntary decision" and that "he must have been cajoled, pressured or threatened to do so." Their claim which is a mere conjecture and absolutely bereft of proof cannot hold water but it is mentioned in this decision if only to show that the Court is not insensitive to the feelings of persons who are affected albeit indirectly by judicial action.

Jaime Rodriguez in a letter dated March 27, 1982, requested that his appeal be withdrawn. He reiterated his request in a sworn statement dated September 28, 1982. The resolution of October 11, 1982, granted the withdrawal of the appeal.

Gregorio Oclarit also filed a motion to withdraw his appeal on December 23, 1982. The motion was granted in the resolution of February 16, 1983.

This decision refers to Vicente Casas whose appeal has not been withdrawn.

The People's version of the facts is as follows:

"About 4:00 p.m. of December 17, 1976, Santo Enciso and the deceased Rogelio Abugho were in the house of Renato Cabuntokan located at the checkpoint of Pangyawa, Malibud, Gingoog City to buy 'household needs.' Later, Roberto Hilongos arrived in the store which occupied a portion of the ground floor of Cabuntokan's house and joined them (pp. 3-4, 12, 24, tsn, April 27, 1978).

"After making the purchases, they idled their time away in the store watching passersby and drinking few glasses of tuba (pp. 12-13, 24-25, id). Santo Enciso testified that about 5:00 p.m. he saw appellant Jaime Rodriguez standing on the road at a distance of around 10 meters from the store (p. 9). At approximately 6:00 p.m., appellants Casas, Palarca and Oclarit were seen by Enciso and Abugho approaching the store; but they stopped about 7 meters away (p. 15, id).

"At 6:30 p.m., more or less, Enciso and Abugho, together with Hilongos, started for home (pp. 5, 15, 25, id). As soon as they stepped out of the store, Rodriguez called for Abugho and, touching his shoulder, said, 'He's here.' (Exh. "B" or Exh. "1"). Then Palarca, Casas and Oclarit approached them (p. 5, id). Trying to avoid the group, Enciso swerved to the right followed by Hilongos, while Abugho swerved to the left (pp. 38-39, id). Oclarit at this instance called out 'Kill him.' (pp. 5-6, id). Palarca suddenly went behind Abugho and placed his arms around him, pinning Abugho's arms to the sides, at the same time saying 'Finish him.' (pp. 6, 40-42, id). Casas immediately stabbed Abugho on the abdomen with an 18-inch sharp-pointed bolo locally known as 'flamingco' (Exh. "A"; pp. 6-7, 43-45, id). Santo Enciso, because of fear, could not help; he could not move seeing Casas wielding the bolo. Hilongos, on his part, ran when he saw Abugho already wounded (pp. 45-46, id).

"After stabbing Abugho, Palarca, Casas and Oclarit fled to the house of one Martin (p. 6, id). Enciso did not however see if Rodriguez ran with the three appellants (p. 9, id).

"Abugho embraced Enciso and asked for help, Enciso made him lie down under the eaves of Cabuntokan's house which was already closed and watched over him until the police authorities arrived. The policemen were informed by the barangay captain who happened to pass by (pp. 7-9, id). But Abugho had died before their arrival (p. 8, id).

Rogelio Abugho died of 'shock, physical injuries and hemorrhage due to stabbing.' (Exh. "F"; p. 12, tsn, Sept. 15, 1978; p. 15, tsn, Oct. 9, 1979). The post-mortem examination of the government physician of Gingoog City, Dr. Vicente B. Jadol, showed that at 'the right lower abdomen [of Rogelio Abugho] a large portion of the intestines was . . . coming out from the stab wound measuring about 3 feet.' (Exhs. "D" & "D-1", p. 14, tsn, Oct. 9, 1979; p. 15, tsn, Sept. 15, 1978).

"Pat. Godofredo Cabana, the police investigator at the crime scene, said that Vicente Casas admitted having personally stabbed the victim (pp. 58-60, tsn, April 27, 1978). But while confirming Pat. Cabana's testimony, Casas qualified that his admission/confession was taken out of duress and threats (pp. 48-55, tsn, May 13, 1980)." (Brief, pp. 2-5.)

In the brief filed for Palarca, Rodriguez and Casas the only issue is the credibility of witnesses as demonstrated by the core assignment of error to wit:

"THE COURT, A QUO, ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONIES OF SANTO ENCISO AND VENANCIA VDA. DE ABUGHO, WITNESSES FOR THE PROSECUTION."

Venancia Vda. de Abugho is the widow of the deceased, Rogelio Abugho. When she testified on October 9, 1979, she said that her husband was killed by the four accused. However, she admitted that she was not present when her husband was killed but knew about it "because of my witnesses and according to information by people." (TSN, Oct. 9, 1979, p. 4.) Accordingly, nothing can be derived from her testimony in respect of the killing and only that of Santo Enciso has to be considered.

Santo Enciso was 57 years old, married and a farmer when he testified on April 27 and 28, 1978. He said that in the evening of December 17, 1976, he and Rogelio Abugho were in the store of Renato Cabuntokan to buy household needs. On their way home they met three men, namely: Wenceslao Palarca, Vicente Casas and Gregorio Oclarit. As they passed the three, Oclarit shouted, "Kill him," whereupon Palarca embraced Rogelio and said, "Finish him." Casas then stabbed Rogelio with a flamingco hitting his right abdomen. The three fled after the stabbing. He was not able to bring Rogelio to the hospital because he died while lying near the house of Renato Cabuntokan.

With regard to Jaime Rodriguez, he was at a distance of about 10 meters from the store. When he left the store with Rogelio, Rodriguez said, "He is here, let's go."

The defense of Casas is alibi. He said that at 3:00 p.m. on December 16, 1976, he was on his way to Gingoog City to get a police clearance. He was able to get a ride at 4:30 p.m. and reached Gingoog City after 6:00 p.m. He stayed in Gingoog City for three days at the house of his aunt near the Nawasa office.

The defense of alibi must fail. Casas was positively identified by Enciso as the one who stabbed Rogelio. This testimony is bolstered by that of Patrolman Godofredo M. Cabana of the Gingoog police department. He testified that he investigated the death of Rogelio. When he questioned Enciso who was near the dead body, Enciso told him that Vicente Casas was the assailant. Moreover, Casas "confessed that he was the assailant." (TSN, April 27, 1978, p. 59.) Casas admitted the confession but claimed that he was threatened, cajoled and manhandled by Palarca and Oclarit to make it. It is to be noted, however, that his claim of threat, etc. is unsupported by other evidence.

As to the motive for the killing, Enciso gave the answer: "Because they were driven out from the land of Rogelio Abugho which they squatted and that is why they were angry." (TSN, April 27, 1978, p. 11.) And according to the widow:

"COURT:

Q

Do you know of any reason why they killed your husband?

A

Yes, sir.

Q

What is the reason that you know personally?

A

The cause of the killing was the land. That land was worked by my husband and his brother and these accused entered the land, wanted to work on that land but my husband cannot just give his permission because we do not own that land.

Q

And then?

A

That is why they killed my husband because they believed he was the owner of that land.

Q

You said they entered the land. You mean to tell the Court that all of those accused you pointed to entered the land?

A

Yes, sir." (TSN, Oct. 9, 1979, pp. 7-8.)

WHEREFORE, the appealed judgment is hereby affirmed in toto for being in accord with the evidence and the law. Costs against the appellants.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and Escolin, JJ., concur.
De Castro, J., on sick leave.

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