

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NICOLAS CANAMO, ANTONIO CANAMO, JUANCHO MAHUSAY AND
LITO BULANGAN, DEFENDANTS-APPELLANTS.**

G.R. No. 62043. August 13, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Appellants Antonio Canamo, Nicolas Canamo, Juancho Mahusay and Lito Bulangan were found guilty beyond reasonable doubt of the crime of murder by Judge Regino Hermosisima, Jr. of the then Circuit Criminal Court of Cebu City and were sentenced "to the penalty of RECLUSION PERPETUA, with the accessory penalties of the law; to indemnify the heirs of the deceased Henry Vercide in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency; and to pay proportionate costs." (p. 83, Record)

Prosecution evidence shows that in the evening of May 14, 1981, witnesses Norman Inocando and Alden Cobcoban were in the store of Mr. Chiuat Sto. Niño Village, Banilad, Cebu City buying cigarettes. About forty (40) meters away were several persons among whom were herein appellants Nicolas Canamo, Antonio Canamo, Juancho Mahusay, Lito Bulangan and a certain Talino and Toto. They noticed appellant Nicolas Canamo carrying a bolo, Antonio Canamo holding a hunting knife, Juancho Mahusay carrying a saw and appellant Lito Bulangan holding a club (pospos). Suddenly, the four (4) appellants attacked and assaulted Henry Vercide by hacking, striking and stabbing him with their respective weapons. Vercide slumped down to the ground as appellants continued to attack him.

Inocando and Cobcoban left the place and learned the following day that Henry Vercide had died. Dr. Jesus P. Cerna, a Police Medico-Legal Officer, conducted the autopsy on the body of the deceased Vercide, submitting that the latter suffered abrasions, contusions, incised and lateral wounds, and stab wounds on the different parts of his body. Cause of death was "hemorrhage, massive, secondary to multiple stab, hack and incised wounds, head, body and extremity." (p. 75, Record)

The defense is denial and alibi with respect to appellant Nicolas Canamo; mere denial with regard to appellants Juancho Mahusay and Lito Bulangan; and, self-defense on the part of appellant Antonio Canamo.

Appellants Juancho Mahusay and Lito Bulangan claim that in the evening of May 14, 1981 they, together with the deceased, Toto, Talino and appellant Antonio Canamo, had a drinking spree in Chiu's store at Sto. Niño Village, Cebu City. They started drinking at 6:00 in the afternoon, and all of them were partaking Añejo Rhum.

About 7:00 p.m., Juancho Mahusay left the group, followed by Lito Bulangan at 7:30 p.m., and finally, by Toto and Talino at 10:30 p.m. Appellant Antonio Canamo and the deceased were the only ones left behind to finish what was left by their companions. Ten minutes later, or after they had finished drinking, appellant Antonio Canamo told the deceased that he would take the short cut route in going home but the deceased who had a bicycle replied he could bring him home. To his surprise, the deceased did not conduct him to his home; instead, he was brought to his (deceased) usual hangout where he saw Toto and Talino waiting. Upon seeing them, the two

attacked Vercide. He tried to pacify the protagonists but he failed. Thus, to stop the fight, he blocked the deceased from rushing towards the two armed persons. However, the deceased mis-interpreted his intentions, boxed him at the nape. At first, he did not mind the blow but, when he was hit again at his side, he flared up, grabbed the knife of Toto and stabbed the deceased.

On the other hand, appellant Nicolas Canamo, father of appellant Antonio Canamo, asserts that at the time of the killing he was asleep in his house, about a stone's throw from the scene of the crime and learned of the incident only the following morning.

After all his co-appellants had been arrested, accused Antonio Canamo surrendered to the police and admitted sole responsibility for the death of the victim.

In this appeal, accused-appellants contend that the trial court erred: (1) in giving credence to the testimonies of prosecution witnesses Norman Inocando and Alden Cobcoban; (2) in convicting appellants Nicolas Canamo, Juancho Mahusay and Lito Bulangan, despite the admission of Antonio Canamo owning sole responsibility for the offense; and, (3) in not appreciating the mitigating circumstance of voluntary surrender in favor of accused Antonio Canamo.

In the case at bar, Norman Inocando and Alden Cobcoban witnessed the commission of the offense by the accused-appellants. They positively identified the accused and described the mode of attack they had committed against the deceased Henry Vercide. Their testimonies find support in the medical findings of Dr. Jesus P. Cerna, who conducted an autopsy on the body of the deceased. Hereunder is the testimony of Dr. Cerna:

"THE COURT:

Q

Judging from the nature of the wounds, can you ascertain whether only one person inflicted the injuries or more than one person?

A That is very impossible, because at least three kinds of weapons were being used, double bladed, single bladed and dull bladed weapons. It is impossible that only one person inflicted the wounds.

Q What is your idea, one, two persons, or more than three persons?

A More than one person, that is at first, two person is possible, at least two person is possible, at least two persons inflicted." (p. 78,tsn., July 15, 1981 hearing)

Thus, there could be no question that the said appellants, as testified to by eyewitnesses Inocando and Cobcoban had inflicted the 13 stab wounds, 3 abrasions, 1 contusion, 3 incised wounds, 2 lacerated wounds and 3 hack wounds on the deceased Henry Vercide and, each must have used different kind of weapons as testified to by Dr. Cerna. The trial court, therefore, correctly rejected appellant Antonio Canamo's confession owning sole responsibility for the crime.

The positive identification of the appellants by the eyewitnesses, Inocando and Cobcoban, as the authors of the offense belies the defense of denial and alibi by appellants Nicolas Canamo, Juancho Mahusay and Lito

Bulangan. No ulterior motive was imputed to these two eyewitnesses, and thus, the presumption is that they were not actuated by improper motives and their testimonies are entitled to full faith and credit. (People vs. Alcantara, 126 SCRA 425)

Moreover, the rule is well-settled that where the issue is one of credibility of witnesses, appellate courts will not generally disturb the findings of the trial court, unless it has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case. Herein appellants failed to demonstrate that their case falls under the exception which will justify Us to overturn the findings of fact by the trial court.

Relative to the last assigned error, We agree with appellants that the trial court did err in not considering the mitigating circumstance of voluntary surrender in favor of appellant Antonio Canamo, The fact that he presented himself to the authorities when all his co-accused, including his father, appellant Nicolas Canamo, were already arrested did not in the least detract from the voluntary character of the surrender in the absence of proof to the contrary. As held in People vs. Hanasan, 29 SCRA 534, the mitigating circumstance of voluntary surrender may properly be appreciated in favor of the accused when the following requisites concur: (a) the offender had not been actually arrested; (b) the offender surrendered himself to a person in authority or to an agent of a person in authority; and (c) the surrender was voluntary.

The foregoing imperatives are present in the case at bar and, therefore, the mitigating circumstance of surrender should be considered in his favor.

WHEREFORE, with the modifications that the penalty imposed to appellant Antonio Canamo is reduced to Twelve (12) Years of Prision Mayor, as minimum, to Twenty (20) Years of Reclusion Temporal, as maximum; and that all the appellants are to indemnify, jointly and severally, the heirs of the deceased Henry Vercide in the sum of P30,000.00, the judgment appealed from is hereby AFFIRMED in all other respects.

With costs.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Gutierrez, Jr., De La Fuente, and Alampay, JJ., concur.

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