

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. WILFREDO MALINAO ALIAS “WELLY,” WENCESLAO MORABE ALIAS “ESLAO,” AND SERGIO MENDIONA ALIAS “DODONG,” ACCUSED, WENCESLAO MORABE,...

G.R. NO. 63735. April 05, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

On November 17, 1982, the Court of First Instance of Leyte, Branch IV, in Palo, Leyte, rendered judgment in Criminal Case No. 3619, the dispositive portion of which reads:

"WHEREFORE, the court finds accused Wilfredo Malinao and Wenceslao Morabe guilty beyond reasonable doubt of the crime of murder qualified by superior strength and treachery as charged in the information. Taking his voluntary surrender into account accused Wilfredo Malinao is hereby sentenced to an indeterminate penalty of not less than ten (10) years and 1 day of prision mayor to not more than seventeen (17) years, 4 months and 1 day of reclusion temporal and to pay 1/3 of the costs. There being no mitigating nor aggravating circumstances attending the crime the court hereby sentences accused Wenceslao Morabe to reclusion perpetua and to 1/3 of the costs. Both should indemnify jointly and severally the heirs of Miguel Manang, thru his widow, Diosdada Diorico Manang of Gimiranat East, La Paz, Leyte, in the amount of P12,000.00 without subsidiary imprisonment in case of insolvency.

"Let it be noted that Wilfredo Malinao has been detained since June 4, 1979 and Wenceslao Morabe since June 14, 1979. It is therefore ordered that this preventive imprisonment be credited to them if they agree to abide by the laws and disciplinary rules imposed upon convicted prisoners; otherwise, they shall be credited with 4/5 only of such preventive custody in accordance with Art. 29 of the Revised Penal Code as amended by R.A. 6127." (p. 136, Original Record.)

Only Wenceslao Morabe appealed. His co-accused, Wilfredo Malinao, elected to abide by the decision and serve his sentence. The third accused, Sergio Mendiona, is still at large.

The facts, as established by the evidence and recited in the decision of the trial court, are as follows:

"x x x In the morning of June 3, 1979 a child of Dominador Abuya was baptized. At noon there was a baptismal party for the child in the house of Dominador in Buracan, La Paz, Leyte. The godparents were Jose Igloria, Luz Suyom, Lita Igloria and Wilfredo Malinao. Among those who attended the party at noon were Wenceslao Morabe, Sergio Mendiona and the godparents. At about 4 o'clock in the afternoon Miguel Manang, Esteban Lora and Reynaldo Diorico attended the party. They were served with food and later joined a drinking session with the guests in the yard of the house. There was also a dance in the yard. At about 5 o'clock in the afternoon Wilfredo Malinao, Wenceslao Morabe and Sergio Mendiona left for their respective homes. At about 6 o'clock Miguel Manang and his two companions also left. On their way home on the footpath to Gimiranat East about 100 meters from Dominador's house, Wilfredo Malinao, Sergio Mendiona, and Wenceslao Morabe ambushed Miguel Manang. Without warning Wilfredo attacked Miguel Manang with a bolo twice. Miguel was

hit on the head and his shoulder. Miguel fell to the ground. At this juncture Sergio Mendiona and Wenceslao joined the assault. Sergio attacked first followed by Wenceslao Morabe with their bolo-like knives locally known as "pisaw." The three then left. Esteban Lora and Reynaldo Diorico who witnessed the assault, immediately informed Silverio Manang, father of the deceased, about the crime who lives in Gimiranat East about 500 meters from the scene of the crime. Silverio then asked Esteban and Reynaldo to inform the police about it. A few hours later four policemen from La Paz arrived [in] the place. At about 10 o'clock in the morning of the next day, June 4, Wilfredo Malinao surrendered to the police station at the neighboring town of Mayorga. Wilfredo brought with him a long bolo (Police blotter entry of the Mayorga Police Station for June 4, 1979, marked Exh. B). Wilfredo was taken by La Paz policemen from the Mayorga town jail a few days later and brought to La Paz." (pp. 130-131, Original Record.)

In his appeal, Morabe alleges that the trial court erred:

1. in not finding that his participation in the commission of the offense, was not sufficiently proven;
2. in finding that there was abuse of superior strength and treachery;
- 3 in denying to the accused Morabe his right to due process; and
4. in not requiring the presence of the prosecuting fiscal at every stage of the criminal proceedings. (p. 3, Appellant's brief.)

Those assignments of error are devoid of merit.

The trial court correctly found that the three accused, Morabe, Malinao and Mediona, were co-conspirators in the killing of Miguel Manang. Morabe's participation in the treacherous attack against Manang was proven by two eyewitnesses, Reynaldo Diorico and Esteban Lora, both of whom testified that when Manang fell to the ground after being hacked with a bolo by Wilfredo Malinao, Mendiona and Morabe also stabbed him with their knives, locally known as pisao (pp. 10-11, tsn, June 25, 1981; and p. 13, tsn, Aug. 13, 1980).

"When each of the accused performed specific acts in the commission of the crime with such closeness and coordination that would indicate a common purpose or design, conspiracy has been established beyond reasonable doubt (People vs. Petenia, 143 SCRA 361).

"The findings of the lower court on the existence of a conspiracy should not be disturbed, not only because they are logical, but also because they are based on evidence appearing on the record (People vs. Archis, 144 SCRA 687). Thus, all those who participated in the conspiracy are liable (Ibid).

Malinao's acceptance of his sentence and Mendiona's flight after the commission of the felony, prove not only their guilt but also that of their companion, Morabe (p. 12, Appellee's brief).

There was abuse of superior strength because the three assailants were armed with deadly weapons: Wilfredo Malinao with a long bolo (p. 13, tsn, Aug. 13, 1980), while Morabe and Mendiona were armed with short bolos known as pisao (pp. 13-14, tsn, Aug. 13, 1980). Their victim was unarmed.

Treachery was also present because the victim was ambushed by the accused. The attack was sudden and unexpected.

"Treachery exists when the offender commits any crime against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to insure its execution, without risk to himself arising from any defense which the offended party might make." (People vs. Rojas, 147 SCRA 169.)

"The waylaying and sudden attack on the victim show that the elements of treachery or alevosia are present." (People vs. Bravante, 150 SCRA 569.)

Morabe's and Mendiona's act of finishing off the deceased after he had fallen on the ground, wounded and disabled, was treacherous (People vs. Paras, 147 SCRA 594).

When the issue is one of credibility of witnesses, we have always accorded the highest degree of respect to the findings of the trial court (People vs. Egas, 137 SCRA 188), unless the court had plainly overlooked certain facts of substance and value that, if considered, might affect the results of the case. (People vs. Alcid, 135 SCRA 280.)

There is no merit in the contention of the accused that he was denied due process of law because there were times when the trial of the case proceeded even in the absence of his counsel.

The transcript of stenographic notes shows that on January 27, 1981, for instance, the case was called twice because, although the appellant Morabe was in the court room, his counsel was not present. The rest of the transcript does not show whether appellant's counsel was still absent when the prosecution witness, Cpl. Ignacio, was placed on the witness stand. In any event, as pointed out by the Solicitor General, even if appellant's counsel were indeed absent, appellant was not prejudiced for Cpl. Ignacio's testimony was limited to the identification of the bolo that was used by Malinao (not Morabe) in mortally wounding the deceased. The witness did not give evidence against Morabe. Furthermore, his counsel could have cross-examined the witness at the next hearing if he thought it was necessary to do so. (U.S. vs. Ramirez and Seradoy, 26 Phil. 616).

Neither was the absence of the fiscal at the trial on February 27, 1980, prejudicial to the accused for only Dr. Nicanor L. Tansingco was presented to testify on his autopsy report on the deceased Manang. Since no objection was interposed by appellant's counsel, Atty. Paulino Cabello, either to Dr. Tansingco's competency or his postmortem findings (Exh. A), the doctor's testimony was dispensed with (p. 3, tsn, February 27, 1980). The defense likewise waived the fiscal's presence on that date.

WHEREFORE, the appealed decision is hereby AFFIRMED, except the indemnity to the heirs of the deceased, Miguel Manang, which should be increased to P30,000. Costs against the appellant.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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