

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMILIO AGAG, REYNALDO AGAG AND ABRAHAM AGAG, ACCUSED,
REYNALDO AGAG, ACCUSED-APPELLANT.**

G.R. No. 64951. June 29, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Emilio Agag, Reynaldo Agag and Abraham Agag were charged with murder by the Provincial Fiscal of Ilocos Norte before the then Court of First Instance of the same province in an information which reads:

"That on or about 1 March 1979, in the municipality of Bangui, province of Ilocos Norte, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating with each other and helping one another, did, then and there, willfully, unlawfully, and feloniously, with evident premeditation and taking advantage of superior strength, and with accused Emilio Agag and Reynaldo Agag being each armed with a small bolo, and with accused Abraham Agag being armed with a big piece of stone, attack and strike therewith one CHARLES LALLAVE, inflicting upon the latter stab, lacerated, and incised wounds, and contusion on the different parts of his body, some of which were necessarily mortal, causing the instantaneous death of said Charles Lallave.

"CONTRARY TO LAW, with the qualifying circumstance of evident premeditation and abuse of superior strength, and with respect to accused Reynaldo Agag, as a generic aggravating circumstance, that he is a recidivist." (pp. 56-57, Rollo)

After trial, they were all found guilty in a decision, dated September 27, 1982, the dispositive portion of which reads:

"WHEREFORE, in view of the foregoing, the court finds all the accused, Emilio Agag, Abraham Agag and Reynaldo Agag, guilty beyond reasonable doubt of the crime of murder as charged in the information. Consequently, after considering the aggravating circumstances of abuse of superior strength and recidivism insofar as the accused Reynaldo Agag is concerned, he is hereby sentenced with the supreme penalty of death. Insofar as the accused Emilio Agag and Abraham Agag are concerned, after considering the aggravating circumstance of abuse of superior strength, they are hereby sentenced with the penalty of Reclusion Perpetua or life imprisonment, with all the accessory penalty of the law, that all the three accused to indemnify the heirs of Charles Lallave in the amount of P12,000.00; and to pay the cost of this proceedings.

"Pursuant to the provisions of law, let the records of this case, together with all the testimonial and documentary evidence, be forwarded to the Supreme Court for automatic review." (pp. 57-58, Rollo)

The case of Reynaldo Agag is before Us now on auto-matic review because of the sentence imposed upon him which is the supreme penalty of death.

The People's evidence shows that between 5:30 and 6:00 in the afternoon of March 1, 1979, Charles Lallave was in the house of Braulio Mallari at Barangay Masikil, Bangui, Ilocos Norte talking with Adela Mallari. He was

with his mother, Ines Flora Lallave, who fetched him at the house of Caridad Canciano, where he was, so that they could take their supper. Ines Flora was standing on the road waiting for her son, Charles, when the accused Emilio Agag and his son, Reynaldo, and a nephew, Abraham Agag, arrived in a tricycle. The three accused alighted therefrom and immediately Emilio went inside the house of the Mallaris, armed with a bolo. After opening the door of the house with a kick, he began stabbing Charles who was hit at the breast which proved to be fatal because "the stab wound penetrated the chest and perforated the heart from its anterior surface to its posterior surface (p. 48, tsn., June 10, 1980)" Reynaldo Agag and Abraham Agag who also were inside the house of Mallari helped each other in carrying Charles, outside, pigstyle, following which Emilio stabbed Charles again while the latter was being held by Reynaldo and Abraham Agag. Emilio continued stabbing Charles several times followed by Reynaldo who was helped by Abraham by holding their victim by the arms. Ines Flora was not able to do anything except to cry and shout for help.

After the three accused had stabbed Charles they all went away. Ines Flora called for Dr. Domingo Samonte, Jr. who immediately responded but found the victim already dead. Post mortem examination was conducted on the cadaver and the autopsy report shows a total of 38 wounds all over the body. Of these wounds, six of them, all caused by a "sharp pointed, bladed instrument are fatal wounds (pp. 48-52, tsn., June 10, 1980)." The body of the deceased Charles was brought to his house which is only 20 meters from the Mallaris.

A complaint was filed by the Integrated National Police Substation Commander Arthur C. Agullano with the Municipal Circuit Court of Bangui. After a preliminary examination of the witnesses, the Municipal Circuit Judge issued a warrant for the arrest of the three accused.

In his defense, Reynaldo Agag claimed that after he, his father, Emilio, and Abraham had alighted from the tricycle at barangay Masikil, he proceeded to the store of Braulio Mallari to buy a pack of cigarettes. He was already near the store when he saw for the first time Charles Lallave about three (3) meters away from him. At the time, Charles was in the act of drawing out from his waist a sharp pointed bolo and, addressing him, said: "Vulva of your mother, I am going to kill you." Reynaldo stepped backward and picked up a stone about the size of a fist and threw it at Charles who was hit in the forehead, between his eyes, causing him to fall to the ground. Reynaldo picked up another stone and threw it at Charles who was hit again in the forehead. Upon seeing that Charles was still alive and moving, Reynaldo took the bolo from Charles and used it in stabbing him several times. Thereafter, he threw the bolo away and unsheathed his own which is bigger and hacked Charles many times again, following which he ran away until he met his father, Emilio, and Abraham. He told them that he had killed Charles.

It is clear that appellant Reynaldo Agag admitted sole responsibility for all the injuries sustained by Charles Lallave but alleged having done it in self-defense. Further, it is his submission that the trial court erred when (1) it found him as the one who killed Charles Lallave; (2) it imposed upon him the maximum penalty of death; and, (3) it did not appreciate the duly proven mitigating circumstance of voluntary surrender.

The evidence of the prosecution is clear that We are constrained to give Our affirmance to the findings and conclusion of the trial court. The positive earmarks of a conspiracy are present. All the three accused, namely: Emilio, Reynaldo and Abraham, all surnamed Agag, arrived in barangay Masikil in a tricycle and all alighted near Braulio's house where the victim, Charles, was. Emilio kicked the door wide open and gained entrance, while Reynaldo and Abraham entered through the eastern gate. Emilio started stabbing the victim while Reynaldo and Abraham held the victim by the hands. The three then lifted and brought Charles out of the house like a pig and, laying him flat on the ground, face upward, Abraham continued to hold the arms, and Reynaldo the two legs of Charles, while Emilio stabbed him again many times. Immediately thereafter, they left together.

The three accused, by their acts, aimed at the same object, one performing one part and the others performing

another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent are in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments. The trial court, therefore, is justified in concluding that the conduct of the three defendants before, during and after the commission of the crime clearly shows that they acted in concert (People vs. Cabiltes, 25 SCRA 112).

But even on the basis of appellant's testimony that it was he alone who assaulted and killed Charles Lallave, he cannot escape liability inasmuch as We cannot give credence to his self-defense theory. In the first place, the deceased sustained 38 wounds, some of which were inflicted when he was already lying prostrate on the ground, helpless; whereas, appellant did not even suffer a scratch, contusion or abrasion. Second, no weapon, deadly or otherwise, was found about or near the victim's body for if there was one, which appellant claims he took away from Charles, he should have surrendered it to the police. And, finally, the element of unlawful aggression, the primordial requisite for self-defense, is not present considering that there was no real danger to life or personal safety (People vs. Sabio 19 SCRA 901). In the case at bar, the deceased was not even able to draw the alleged bolo from his waist when appellant threw a stone at him causing him to fall to the ground. Otherwise stated, appellant's life was at no time in danger.

With respect to the claim that appellant should have been accorded the mitigating circumstance of voluntary surrender, suffice it to say that the day after the incident a warrant of arrest was served upon Reynaldo Agag by Pat. Tomas Agustin who took him into custody and brought him to the police station. Thus, there was no voluntary surrender to speak of since he only gave himself to the custody of the police after the warrant of arrest was served on him. On the other hand, relative to the allegation in the information regarding the presence of the aggravating circumstance of recidivism, appellant himself admitted during the trial that he had been previously convicted of the crime of less serious physical injuries for which he was sentenced to imprisonment of one (1) month. Hereunder is his testimony on this point:

“FISCAL:

Q (TO THE WITNESS)

Now, have you ever been convicted of any offense before?

COURT:

Is that alleged in the information?

ATTY. MANUEL:

Yes, your Honor. He was imprisoned for one (1) month.

COURT:

For what offense?

ATTY. MANUEL:

Less Serious Physical Injuries, your Honor.

FISCAL:

Q (TO THE WITNESS)

Have you ever been convicted of any crime before?

A Yes sir, Less Serious Physical Injuries.

Q After that have you ever been convicted of any other crime?

A No more, sir.

Q Are you sure of that?

x x x x x x x x

FISCAL:

Q (TO THE WITNESS)

Were you convicted for the second offense?

A Yes, sir.

Q Where were you convicted, in what municipality?

A At the Bangui Municipal Court, sir.

Q What crime did you commit?

A Less Serious Physical Injuries, sir.

Q For the third offense, were you again convicted?

A No, sir.

Q Are you sure of that?

A Yes, sir." (tsn., pp. 5-6, Sept. 30, 1981)

WHEREFORE, the judgment appealed from is AFFIRMED, but modified in the sense that, for lack of necessary votes, appellant Reynaldo Agag is hereby sentenced to reclusion perpetua, and the indemnity to the heirs of the victim, Charles Lallave, is increased to P30,000.00. With costs.

SO ORDERED.

Fernando, C.J., Makasiar, Aquino, Concepcion, Jr., Guerrero, Abad Santos, Plana, Escolin, Gutierrez, Jr., De la Fuente, and Cuevas, JJ., concur.

Teehankee, J., no part.

Melencio-Herrera, J., on leave.

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