

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORBERTO CASUNDO, ALFREDO BROA, AGAPITO CASUNDO AND
MANUEL CASUNDO, ACCUSED, NORBERTO CASUNDO,
ACCUSED-APPELLANT.**

G.R. No. 66040. January 17, 1985

Ponente: RELOVA, J.

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RELOVA, J.:

Accused-appellant Norberto Casundo, together with Manuel Casundo, Alfredo Broa and Agapito Casundo, was charged with murder before the then Court of First Instance of Surigao del Sur on February 25, 1982, under the following information:

"That at about 3:00 in the morning, July 27, 1981 in barangay Tawagan, municipality of Cagwait, province of Surigao del Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery, evident premeditation and intent to kill, conspiring, confederating and mutually helping each other in their common intent, did, then and there willfully, unlawfully and feloniously, assault, attack, stab and hack, one CIRIACO AGUHOB with the use of bolo, hitting the latter on the different parts of his body, and as a result the said victim sustained the following injuries, viz:

'1. Wound, hacked: 5.1 cm. length, 0.9 cm. depth, involving the skin, subcutaneous tissue, and part of the bone, located at the forehead, 1.5 cm. above the medial end of the left eyebrow;

2. Wounds, Stab:

2.1)

5.0 cm. length, 6.8 cm. depth, located at the base of the neck just below the middle third of the left clavicle; directed downwards involving the skin, subcutaneous tissue, muscle and blood vessels;

2.2)

3.6 cm. length, 7.4 cm. depth, located at the level of the third rib, left nipple, directed forward, downwards, towards the right, involving the skin, subcutaneous tissue, muscle, blood vessels and lungs;

2.3)

3.6 cm length, 6.5 cm. depth, located at the right chest 3.0 cm. to the left of the superior end of the anterior axillary line, directed forward and to the left, involving the skin, subcutaneous tissue, muscle, located at the right chest 3.0 cm. to the left of the superior end of the anterior axillary line, directed forward and to the left, involving the skin, subcutaneous tissue, muscle, blood vessels, and lungs;

3. Wound, Incised:

3.1)

Middle portions of the fore-middle and ring fingers, right, involving the skin, subcutaneous tissue, and muscle;

3.2)

Two incisions at the base of the forefingers, left.

which wounds or injuries caused the instantaneous death of the said Ciriaco Aguhob to the damage and prejudice of his heirs as follows:

P12,000.00 - as indemnity for the death of the victim;

5,000.00 - as moral damages; and

5,000.00 - as exemplary damages

"CONTRARY TO LAW. (ARTICLE 248 of the Revised Penal Code). With aggravating circumstances of evident premeditation and abuse of superior strength." (pp. 7-8, Rollo)

Manuel Casundo was allowed to interpose the plea of guilty to the lesser offense of homicide and was sentenced to imprisonment of from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years and eight (8) months of reclusion temporal, as maximum, and to indemnify the heirs of the victim in the sum of P12,000.00

Agapito Casundo has remained at large. Norberto Casundo and Alfredo Broa pleaded not guilty and, after trial, were found guilty by the lower court in its decision, the dispositive part of which reads -

"Premises considered, this court finds Norberto Casundo guilty as principal by direct participation of Murder as defined in Article 248 of the Revised Penal Code; and, in addition, this court finds Alfredo Broa guilty, beyond reasonable doubt as an accomplice, in relation to Article 18, for facilitating the commission of Murder as defined in the aforementioned Article 248 of the Revised Penal Code. There being no mitigating nor aggravating circumstance proved, the imposable penalty is in the medium period of Article 248; and therefore, this court hereby sentences Norberto Casundo to (sic) RECLUSION PERPETUA; and upon Alfredo Broa, this Court hereby imposes an indeterminate penalty of imprisonment ranging from FOUR (4) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, as minimum to EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as maximum.

"Let this case be archived as against Agapito Casundo until he is apprehended." (pp. 55-56, Rollo)

Alfredo Broa did not appeal from the aforequoted judgment and was committed to the National Penitentiary for service of his sentence. Norberto Casundo appealed claiming that the trial court erred (1) in finding appellants guilty beyond reasonable doubt of the crime of murder despite the judicial admission of Manuel Casundo that he alone was responsible for the killing of Ciriaco Aguhob which was corroborated by the defense witnesses; (2) in holding that the testimony of the alleged eyewitness, Nicomedes Arreza, is clear and very convincing that there is no place for a doubt as to the guilt of Norberto Casundo and Alfredo Broa in relation to the death of Ciriaco Aguhob; and, (3) in assuming that there is conspiracy.

Prosecution evidence shows that the victim Ciriaco Aguhob and Nicomedes Arreza left barangay Tagmalinao, Cagwait, Surigao del Sur for barangay Tawagan of the same municipality about 2:00 in the morning of July 27, 1981. They rode in separate bancas, with Ciriaco Aguhob paddling ahead of Arreza by about 50 meters. They arrived in Tawagan at about 3:00 dawn. As Aguhob was pulling his banca to the shore, Arreza heard a commotion and saw appellant Norberto Casundo hacking Ciriaco on the head and Manuel Casundo stabbing him on the neck and twice on the breast. Meanwhile, Agapito Casundo and Alfredo Broa kept on flashing light on the victim at the time he was being hacked and stabbed by appellant Norberto Casundo and Manuel Casundo. Ciriaco Aguhob fell and floated on the water.

Nicomedes Arreza fled from the scene of the crime and reported the matter to Miguel Climaco of barangay Tawagan. About 6:00 that morning, Arreza and Climaco went to the shore and saw appellant Norberto Casundo and Manuel Casundo walking around as if looking for something. A little later they saw Manuel Casundo picked up a bolo near the place where Ciriaco Aguhob fell and then the two left in a boat towards the poblacion of Cagwait.

The body of the victim was recovered by his widow Maria Aguhob about 7:00 in the morning of the same day of the incident. A post-mortem examination performed by the Rural Health Physician of Tandag, Surigao del Sur, Dr. Isidro Olanco, showed that the victim sustained multiple stab and incised wounds (Exhibit "A"). Cause of death was severe hemorrhage secondary to multiple stab and hacked wounds.

Appellant Norberto Casundo's defense is alibi. He claims that on July 26, 1981 he was in barangay Bagwasan, Municipality of Bacolod, Surigao del Sur, working in the ricefield from seven to eleven in the morning and from two to five in the afternoon. After clearing the ricefield, he went home and that evening stayed in his house up to the wee hours of the following day, July 27, 1981. He did not leave the house the whole day of July 27. It was only on July 28 when he went to Tawagan to see his relatives there.

The alibi of accused-appellant Norberto Casundo, aside from its inherent weakness, is not corroborated by any reliable proof except his own incredible testimony. In the face of the direct and positive testimony of Nicomedes Arreza who described in detail how the assault on the victim Ciriaco Aguhob was perpetrated, the alibi dwindles into nothingness. There may exist some contradictions in Arreza's testimony, but they are due to human imperfections and they refer to unimportant facts which did not at all affect its veracity. As found by the trial judge, who saw and heard the testimony of Nicomedes Arreza that he "clearly saw Norberto Casundo hack Ciriaco Aguhob in the head first x x x" and, "as borne out by the findings of the doctor who conducted a post-mortem examination on the body of Ciriaco Aguhob" (p. 55, Rollo), We are convinced that there is no place for doubt as to the guilt of Manuel Casundo and Norberto Casundo in relation to the death of Ciriaco Aguhob.

On the whole, We are satisfied and are actually assured that appellant Norberto Casundo is guilty of the crime of murder with no modifying circumstance to appreciate. The attack was launched suddenly and the wounds inflicted upon the victim caused his death.

ACCORDINGLY, the appealed judgment is hereby AFFIRMED with the modification that appellant Norberto Casundo is also sentenced to indemnify the heirs of Ciriaco Aguhob in the sum of P30,000.00.

SO ORDERED.

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

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