

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT TOMIMBANG, ACCUSED-APPELLANT.

G.R. No. 66474. March 07, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. On March 7, 1974, Pablito Romero, 34, of Barrio Solinog, Calamba, Misamis Occidental, disappeared. His neighbors conducted a search. The next day his body was found in a deep portion of the Langaran River downstream in Solinog with six lacerated wounds in the head, four abrasions and contusions in the cheeks and chest and a contusion on the right ear (Exh. A).

He had died of cerebral concussion and drown-ing. According to the municipal health officer, one lacerated wound near the right ear, two inches long, with contusion around it, was fatal. Who killed Romero?

The arrow of suspicion naturally pointed to Robert Tomimbang, 34, a farmer, who had a dispute with the Romero spouses regarding a parcel of coco-nut land. On February 11, 1974, he had threatened to kill them. Tomimbang did not join in the search for Romero's body. While the search was going on, he was just pasturing his carabao.

Lina Abiero, 42, a neighbor, testified that at around five o'clock in the afternoon of March 7, 1974 while Romero was washing his clothes on the bank of the Langaran River, she saw Tomimbang, who was about three meters behind Romero, throwing a stone at the latter, hitting him on the right ear. The blow caused Romero to topple into the river. (See Sketch; Exh. 3.) Lina was about twenty meters from the edge of the river. Tomimbang picked up another stone but at that point Lina was already shocked and frightened. She went home.

Tomimbang at the trial denied that he had a land dispute with the Romeros. He claimed that in the afternoon in question he was in the vicinity of Sitio Napisik, Solinog, because he and his wife had just transferred to the new cottage in that place belonging to his father.

The trial court rejected Tomimbang's alibi. His house was about two hundred meters away from the river. It convicted him of murder, sentenced him to an indeterminate penalty of eight years and one day of prision mayor as minimum to fourteen years and eight months of reclusion temporal as maximum and to pay an indemnity of P12,000 to the heirs of Romero. He appealed to the Court of Appeals which transferred the case to this Court on the ground that the proper penalty is reclusion perpetua.

Appellant assails the credibility of Lina Abiero. He contends that the trial court erred in presuming that Romero's other lacerated wounds, abra-sions and contusions were caused by the stones in the river when he fell into its bed.

There was no ulterior motive for Lina to tes-tify against Tomimbang. She was not related to the victim. The fact was that she was at a higher ele-vation when she saw Tomimbang behind Romero (18-26, tsn Jan. 21, 1975). The photographs of the scene taken more than two years after the occurrence, which show some obstruction to Lina's view, are not reliable evidence.

The presumption made by the trial court is of secondary importance. What is decisive is the fatal wound inflicted by Tomimbang when he hit Romero with a stone. This was positively testified to by Lina. Hence, Tomimbang's guilt was proven beyond reasonable doubt.

The killing was qualified by treachery. Stoning, the victim from behind with the intent to cause the victim to fall into the river was a form of attack which directly insured the killing without any risk to the offender.

The trial court did not explain why it imposed an indeterminate penalty. The proper penalty is reclusion perpetua, the medium period of the penalty for murder, because there were no generic mitigating and aggravating circumstances.

WHEREFORE, the trial court's judgment of conviction is affirmed with the modification that the penalty should be reclusion perpetua and the indemnity is increased to P30,000. Costs against the appellant.

SO ORDERED.

Makasiar, Acting C.J., (Chairman), Concepcion, Jr., Guerrero, Abad Santos, De Castro and Escolin, JJ., concur.

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