

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MATEO ABAGON AND ABNER ONGONION, ACCUSED-APPELLANTS.

G.R. No. 68940. May 09, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Accused-appellants Mateo Abagon and Abner Ongonion were charged with the crime of murder in an Information filed with the then Court of First Instance of Masbate, which reads:

"That on or about April 17, 1981, in the evening thereof, at Barangay Pinamarubuhan, Municipality of Mobo, Province of Masbate, Philippines, within the jurisdiction of this court, the said accused conspiring and helping each other, with intent to kill, evident premeditation, treachery and superiority of strength, did then and there wilfully, unlawfully and feloniously attack, assault and stab with a knife 'machete' one Celis Lupango, hitting the latter on the different parts of the body, thereby inflicting wounds which directly caused his instantaneous death.

"Contrary to law." (p. 55, Orig. Records)

Upon arraignment on March 5, 1982, each entered a plea of not guilty. The trial court, however, after evaluating the evidence presented, found the accused guilty as charged and accordingly issued a decision the dispositive portion of which reads:

"WHEREFORE, premises considered, the guilt of both accused having been proven beyond reasonable doubt, accused MATEO ABAGON and ABNER ONGONION are hereby both found guilty of the crime of murder, and accused MATEO ABAGON, in the absence of any aggravating or mitigating circumstance, is hereby sentenced to the penalty of RECLUSION PERPETUA, together with all the accessory penalties provided for by law, while accused ABNER ONGONION, in view of the mitigating circumstance of voluntary surrender and in the absence of any aggravating circumstance, is hereby sentenced to an imprisonment ranging from ELEVEN (11) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to NINETEEN (19) YEARS of Reclusion Temporal, as maximum. Both accused shall indemnify the heirs of the victim, jointly and severally, in the amount of TWELVE THOUSAND (P12,000.00) PESOS and shall pay their proportionate share of the costs." (p. 194, Orig. Records)

The case is now before us on appeal.

The evidence on record shows the following facts to have attended the commission of the crime:

"x x x that at about 6:00 o'clock in the afternoon of April 17, 1981, at Barangay Pinamarubuhan, Mobo, Masbate, while the herein victim Celis Lupango and companions Isabelo Radaza, Jr., Benjamin Bergado and Nilo Lalaguna were inside the store of Corazon Cana to celebrate the birthday of Isabelo Radaza, Jr., two persons, later identified as Mateo Abagon and Abner Ongonion, entered and stabbed Celis Lupango. First to enter was Abner Ongonion, followed closely behind by Mateo Abagon, and with a six-inch double-bladed knife stabbed Celis Lupango three (3) or four (4) times. Mateo Abagon, in turn, with a seven-inch knife also stabbed Celis Lupango 'several times'. After Celis Lupango fell to the ground the two accused left. At this

point Teresito Lupango, brother of Celis Lupango, arrived and he carried Celis Lupango, with the help of Benjamin Bergado and Nilo Lalaguna whom he found inside the store, outside the store intending to bring him to the hospital. Outside the store, the waiting Abner Ongonion, who was with Mateo Abagon, Julio Ongonion, Alejandro Ongonion, Romulo Barruga, Antonio Danao and Arnel Onarosa, drew his firearm and fired two (2) shots at them. Upon being fired at, Benjamin Borgado and Nilo Lalaguna ran away while Teresito Lupango sought cover. Abner Ongonion and his companions approached and they took turns in stabbing the prostrate body of Celis Lupango with bolos and knives. Teresito Lupango was eventually able to report the incident.

"Assistant Provincial Health Officer, Dr. Emilio C. Quemi, conducted the post-mortem examination on the cadaver of victim Celis Lupango and found the following wounds in the body, to wit:

"1. Incised wound, measuring about one inch located at the forehead;

"2. Incised wound, located at the upper left lip measuring about 3/4 of an inch;

"3. Stab wound, measuring about 1/2 inch at left nipple with a depth of about 2 inches;

"4. Stab wound, located just below the left subcostal area, with an opening of about 1/2 inch and depth of about 3 inches;

"5. Multiple stab wounds (3) located at the anterior right shoulder measuring about 1/2 to 3/4 of an inch;

"6. Stab wound, located just below the right nipple, with an opening of about 3/4 of an inch, and depth of about two inches;

"7. Stab wound, located at the right scapular region with an opening of about 1/2 inch;

"8. Incised wound, located at the occipital region, measuring about 2 inches long;

"9. Stab wound, about 1-1/2 inches wide located at the left axilla, with depth of about 2-1/2 inches;

"The cause of death was established to be shock, secondary to massive external hemorrhage caused by multiple stab and incised wounds.

"Testifying, Dr. Quime admitted the possibility that the wounds were inflicted by one or two assailants.

"The defense presented both accused to deny the charges.

"For his defense, accused Mateo Abagon claims that at the time of the incident he was in his house at the seashore of Pinamarubuhan about 100 meters away from the scene of the incident. He went out of the house only when he learned of the stabbing incident when he saw many persons running towards the scene. After seeing the lifeless body of the victim, he returned home immediately. He did not see his co-accused Abner

Ongonion at the scene. In fact, he did not see any other person there.

"On the other hand, accused Abner Ongonion, claims that at that particular time he left his house to fetch his mother at the Tugbo River where she washed clothes. On his way he passed by the store of Corazon Cana to buy cigarettes. At the store he was pulled inside by Celis Lupango where the latter was drinking with others, among whom was Jun Radaza. He was asked to drink but he refused because of a headache. Celis then asked him 'why are you brave' and then he pulled out his knife, but as he did so the knife bumped the edge of the table and fell to the ground. As Celis recovered the knife from the ground, Ongonion was able to get hold of Celis' hand and they grappled for the knife. While grappling he succeeded in thrusting the knife to the left breast of Celis and again he thrust it to the stomach. After he was able to get possession of the knife he kept on stabbing Celis, being by then angry. In the meantime, as they grappled, the companions of Celis Lupango jumped out of the window, while Jun Radaza who was there watching ran away when he saw Celis was stabbed. He then went out and proceeded to the PC Headquarters at Masbate and surrendered. Benjamin Bergado and Teresito Lupango were not seen by him in the store. He also stated that his co-accused Mateo Abagon was not in the store. When cross-examined he admitted that in 1981 his older brother (Julio) had a quarrel with Celis and his brother was stabbed on the right thigh by a cousin of Celis named Gualberto Rogas. He admitted also that he holds a grudge against Celis because about four months before April 17, 1981, while his brother Julio was still in the hospital, he was chased by Celis in the street near the store of Corazon Cana and only escaped being stabbed because he ran away." (p. 7-9, Rollo)

Accused-appellants, thru their counsel, raise the following assignment of errors:

I

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION'S EVIDENCE CONSISTING OF THE TESTIMONY OF ITS WITNESSES SUFFICIENTLY ESTABLISHED THE GUILT BEYOND REASONABLE DOUBT OF THE ACCUSED FOR THE KILLING OF ONE CELIS LUPANGO, WHICH KILLING WAS QUALIFIED TO MURDER BY TREACHERY.

II

THE HONORABLE REGIONAL TRIAL COURT ERRED IN HOLDING THAT THE DEFENSE OF ALIBI ON THE PART OF THE ACCUSED MATEO ABAGON AND OF SELF-DEFENSE ON THE PART OF ACCUSED ABNER ONGONION WILL NOT LIE.

III

THE HONORABLE REGIONAL TRIAL COURT ERRED IN DECLARING THAT CONSPIRACY HAD BEEN SUFFICIENTLY ESTABLISHED.

IV

THE HONORABLE REGIONAL TRIAL COURT ERRED IN FINDING BOTH ACCUSED GUILTY OF THE CRIME OF MURDER CONSIDERING THAT THEIR GUILT WERE NOT ESTABLISHED BEYOND REASONABLE DOUBT. (p. 1, Appellants' Brief)

Inasmuch as the first, second, third, and fourth assignment of errors are closely interrelated, we shall discuss them jointly.

Appellant Ongonion's theory of self-defense is untenable. According to the testimonies of Bergado, Radaza, and Lupango, the attack by the assailants was unprovoked.

The sudden attack on the victim with knives drawn indicates that the stabbing was intentional. No other conclusion can likewise be surmised from the gunshots fired by the assailants at those who tried to bring Celis to the hospital. While the victim's body lay helpless on the street, the appellants kept on stabbing the victim, thereby

ensuring his death.

The appellants assail the credibility of the prosecution witness alleging contradictions in their testimony. This Court has ruled that minor inconsistencies in the testimony of prosecution witnesses do not affect their credibility, as what is important is that they had positively identified the accused as the assailants (*People v. Dava*, 149 SCRA 582).

Having admitted the killing, Ongonion must clearly establish that he acted in self-defense. The burden of proof is now shifted to him. He must, therefore, rely on the strength of his own evidence and not on the weakness of the prosecution (*People v. Sadie*, 149 SCRA 240, and *People v. Regulacion*, 121 SCRA 40) for even if the latter's evidence is weak, it could not be disbelieved after the appellant admitted the killing (*People v. Llamera*, 51 SCRA 48; *People v. Bauden*, 77 Phil. 105; and *People v. Ansoyon*, 75 Phil. 772). The number and nature of the stab wounds inflicted by more than one person belie Ongonion's theory of self-defense.

These and the testimonies of two (2) eyewitnesses and one peace officer further serve to destroy Ongonion's statement. Moreover, it is a well-settled rule that the findings of fact of the trial court on the credibility of witnesses are generally accorded the highest respect by the appellate court (*People v. Traya*, 147 SCRA 381) for these courts have the privilege of examining the deportment and demeanor of witnesses, and therefore, can discern if such witnesses are telling the truth or not (*People v. Ramilo*, 147 SCRA 102).

Ongonion's claim of self-defense is likewise negated by the physical evidence and other circumstances, such as his failure to present the knife upon surrender (p. 15, TSN, Sept. 9, 1983), his failure to tell the police authorities that he killed the deceased in self-defense, and the absence of any injury on the body of Ongonion while the deceased suffered eleven wounds when, according to the appellant, there was supposedly a struggle that took place. For self-defense to prosper, the following elements should have been proved by appellant: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself (*People v. Balmaceda*, 148 SCRA 194). On the contrary, all the evidence on record shows that not one of the elements of self-defense is present.

Appellant Abagon's defense, on the other hand, is alibi, an inherently weak defense (*People v. Anquillano*, 149 SCRA 442; and *People v. Acelajado*, 148 SCRA 142) especially when it can be proved that it was not physically impossible for him to be at the scene of the crime. In order to be given full faith and credit, alibi must be clearly established and must not leave any room for doubt as to its plausibility and veracity (*People v. Tuando* 150 SCRA 8). The appellant, at the time of the crime was allegedly in a place which was approximately only 100 meters away from the scene of the crime. The possibility of the accused being at the same scene of the crime, renders his defense of alibi not credible (*People v. Petil*, 149 SCRA 92).

Although witness Radaza declared he saw only Ongonion attack the deceased, yet he testified also that he ran away immediately after Ongonion lunged at the deceased. Consequently, he could not have seen the blows of Abagon.

More important, Abagon and his companion were positively identified by eyewitnesses Bergado and Lalaguna. The records show that the appellants took turns at stabbing the victim inside and outside the store. The presence and location of the eleven stab wounds, as testified by Dr. Quemi also indicate that the same were inflicted by more than one person.

That the assailants acted in concerted efforts with community of criminal purpose to ensure the death of the victim is indicative of conspiracy between them. Conspiracy is established by concerted action. (*People v. Rosas*, 149 SCRA 464). It may be noted that even if conspiracy had not been established, the liability of the two appellants

would not change for each inflicted on his own, multiple stabbing blows on the victim resulting in mortal injuries. They acted as principals by direct participation. In the case at bar, the appellants fully concurred in their actions. They came to the victim one after the other and attacked him with undiverted purpose. They also left together. As held in *People v. Bravante* (150 SCRA 569), conspiracy is established by evidence of unity of purpose at the time of the commission of the offense and unity in its execution.

Treachery was likewise proven by the evidence presented. The attack was immediate, 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 specially to insure its execution, without risk to himself arising from any defense which the offended party might make (*People v. Rojas*, 147 SCRA 169). In the case of *People v. Intermediate Appellate Court* (147 SCRA 219), the court ruled that there is treachery where the victims had no inkling that the accused would shoot them.

All things considered, we agree with the Solicitor General that the crime was, proved beyond reasonable doubt.

In view of the abolition of the death penalty under Sec. 19, Art. 4 of the 1987 Constitution, the penalty imposed for murder is modified. The penalty imposable for murder following recent jurisprudence is reclusion temporal, in its maximum period to reclusion perpetua (*People v. Masangkay*, G. R. No. 73461, Jan. 25, 1988; *People v. Lopez*, G.R. No. 71875-76, Jan. 25, 1988; and *People v. Gavarra*, G.R. No. L-37673, Oct. 30, 1987).

"In the absence of any modifying circumstances, the penalty is imposable in its medium period or from eighteen (18) years, eight (8) months and one (1) day to twenty (20) years" (*People v. Masangkay*, supra). This is the penalty appropriate for Mateo Abagon.

In the case of Abner Ongonion, however, the mitigating circumstance of voluntary surrender entitles him to the imposition of the penalty in its minimum period which is seventeen (17) years, four (4) months and one (1) day to eighteen (18) years and eight (8) months of reclusion temporal.

WHEREFORE, the judgment appealed from is AFFIRMED except that the penalties are modified. Appellant Mateo Abagon is sentenced to suffer an indeterminate penalty, of imprisonment from twelve (12) years and one (1) day of prision mayor as minimum to eighteen (18) years, eight (8) months, and one (1) day of reclusion temporal as maximum. Appellant Abner Ongonion is sentenced to suffer an indeterminate penalty of imprisonment from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum. The two accused-appellants shall pay jointly and severally the amount of Thirty Thousand Pesos (P30,000.00) to the heirs of Celis Lupango as indemnity.

SO ORDERED.

Fernan (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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