

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO ABLAO, DEFENDANT-APPELLANT.

G.R. NO. 69184. March 26, 1990

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is an appeal from the decision of the Regional Trial Court of Laguna, Branch 26, the dispositive portion of which reads:

"WHEREFORE, the Court finds accused MARIO ABLAO, 25 years old, of Lumban, Laguna, guilty beyond reasonable doubt of the crime of MURDER as charged in the information with aggravating circumstance of disregard due the deceased on account of his rank as Barangay Captain and as President of the Association of Barangay Captains of Lumban, Laguna and hereby sentences him to suffer the supreme and extreme penalty of DEATH; to pay the heirs of Andres Manambit, Sr., the sum of P30,000.00 with the accessory penalties provided for by law, and to pay the costs.

"Accused ALBERTO ALMARIO, ZENON SAMONTE and HECTOR SAMONTE are acquitted of the crime of MURDER for lack of evidence against them." (Rollo, p. 22)

The information charging accused Mario Ablao, Alberto Almario, Zenon Samonte, Hector Samonte and Bruno Ablao reads:

"That on or about December 16, 1977 in the Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with each other, then provided with unlicensed firearms, did then and there wilfully, unlawfully and feloniously with evident premeditation and treachery and with intent to kill, attack, assault and shoot at one ANDRES MANAMBIT Y MENDOZA thereby inflicting upon the latter multiple mortal and serious gunshot wounds on the different parts of the body which immediately caused his death, to the damage and prejudice of the heirs of the victim, Andres Manambit y Mendoza." (At p. 7, Rollo)

The prosecution evidence upon which the trial court based its finding of guilt beyond reasonable doubt is summarized by the trial court as follows:

"LT. DOMINGO GAPAS Y RAMIREZ - police lieutenant and at the same time Station Commander of Lumban, Laguna, testified that on or about 5:00 o'clock in the afternoon of December 16, 1977 while he was performing his duties as Station Commander in Lumban, Laguna, Mario Ablao shot to death the deceased Andres Manambit, Sr. He (witness) pointed to the accused as the assailant. According to him, while there was a session of the members of the Sangguniang Bayan of Lumban, Laguna in the canteen near the municipal building, a report of gunfire inside the canteen was heard. Upon hearing the shot, he ran towards the place where the session of the Sangguniang Bayan was being held and when he was about to reach the canteen, he saw accused Mario Ablao coming out of the door of the canteen carrying a .45 caliber pistol who, upon seeing him (Gapas) fired a shot at him but missed. He chased Ablao who was running very fast towards the direction of Caliraya mountain. Failing to catch up with him, he returned to the place of the shooting and found the

deceased Andres Manambit, Sr., lying in front of the door of the canteen already dead face down. The deceased had a bullet wound at the right side of the neck. He knows Andres Manambit was then the president of the Association of Barangay Captains of said municipality and as such, was attending that session of the Sangguniang Bayan. At the time he heard the first shot, he was only about 10 meters away from the canteen and it was only the accused Mario Ablao whom he saw come out of the door of the canteen running carrying a .45 caliber gun immediately after the shooting. He was not able to fire back at Ablao for fear of hitting other people around. He conducted an investigation in his capacity as Station Commander and was able to gather witnesses who pointed to Mario Ablao as the one who had shot Andres Manambit. He himself executed a written statement (Exhibit A). On his request, the body was autopsied by Dr. Maximo Reyes. That same evening he went personally to the then Mayor Bruno Ablao (the brother of Mario Ablao) and informed him about his (mayor) brother having shot someone requesting him also to cause the surrender of his brother. Mayor Ablao replied that he did not know his brother's whereabouts. The Provincial Commander also talked to the mayor regarding the apprehension and/or surrender of Mario Ablao because at that time accused Mario Ablao was residing in the house of the mayor. A manhunt was conducted for the arrest of Mario Ablao in Caliraya but produced negative result. The arresting team was sent to the house of Mayor Ablao to effect the arrest but they were not able to capture him. He (witness) filed a complaint for Attempted Murder with Assault against Mario Ablao.

"DR. MAXIMO REYES - medico-legal officer of the NBI, after establishing his qualifications, testified as follows: On December 16, 1977, he received a request to perform an autopsy on the body of Andres Manambit Sr., who was identified by the relatives of the deceased. He examined the cadaver, reduced the result thereof in writing entitled - Necropsy Report No. 77-104 (Exh. C) and had it approved by Dr. Pedro Solis, the Director of Technical Services of the NBI. The necropsy report contains the following post mortem findings.

"Pallor, lips and integument.

Abrasion, brownish, 2.0 x 4.0 cms., right, temporal region.

Lacerated wound, 2.0 cms., area of the left side of the face.

"Gunshot wound:

"Ovaloid, located over the occipital region, 1.0 x 1.2 cm. with a contusion collar of 0.2 cm. over the supra lateral aspect 1.0 cm. to the left of the posterior median line and just below the external occipital protuberance, 156 cms. from the sole of the left foot, edges inverted, directed forwards and slightly laterally and downwards involving the skin and soft tissues into the cranial cavity perforating the left cerebral hemisphere after fracturing the occipital bone then fracturing the greater wing of the sphenoid bone at the left and where a deformed bullet was lodged and recovered among the soft tissues of the left side of the face underneath the left maxilla, 8.5 cm. from the anterior median line and 154 cms. from the sole of the left foot.

"Hemorrhage, meningeal; epidural, subdural and subarachnoidal extensive and generalized.

"Heart, covered with moderate amount of adipose tissue and cardiac chamber containing minimal amount of dark fluid blood.

"Other visceral organs are pale and congested.

"Stomach, one third (1/3) filled with partly digested and undigested food materials.

"CAUSE OF DEATH:

"Hemorrhage, acute, profuse, secondary to gunshot wound of the head.'

He explained that the cause of death is hemorrhage secondary to gunshot wound of the head; that the gunshot wound found on the body of the deceased was the fatal injury. On the basis of the location of the wound, the

death of the victim was instantaneous. The gunshot wound, which is situated at the back indicates that the possible position of the man holding the gun was at the back of the deceased with an approximate distance of about 24 inches away from the point of entry. Based on the size of the wound, the caliber of the gun used was possibly a .45.

"ABRAHAM ABAYARI - farmer and resident of Lumban, Laguna testified that on December 16, 1977, he was a barrio captain of Sto. Niño, Lumban, Laguna; that he was attending the session of the Sangguniang Bayan of the municipality of Lumban on said date in connection with the holding of referendum the following day. He remembered having seen inside the session hall Municipal Secretary Juan Llantos, Judge Lotus Sobejana, Municipal Development Officer Herminio Alviar, Atty. Zenon Samonte representing the capital sector, ABC President Andres Manambit, Emiliano Macalagay, representing the professional sector, Andres Rivera, the agricultural sector, Brgy. Captain Alberto de Robles, Councilor Ading Sabido, Councilor Felix de Ramos and others whom he could no longer remember. The session started at about past 5:00 o'clock in the afternoon. Between 5:00 to 6:00 o'clock in the afternoon after leaving the canteen, he heard a shot ring out. He looked towards the left and saw Lt. Domingo Gapas being fired at by Mario Ablao.

"FELIX DE RAMOS - businessman and a resident of Lumban, Laguna testified that on December 16, 1977 at about 5:00 o'clock in the afternoon, he was very near Andres Manambit, Sr. at a canteen near the town hall of Lumban when suddenly, a shot rang out that nearly impaired his hearing (natulig). He closed his eyes because of fear and opening them, he saw Andres Manambit already lying on the ground, dead. He heard two more shots and saw a person being chased by two policemen.

"CATALINO GARCIA - technical sergeant of the constabulary and resident of Bagumbayan, Santa Cruz, Laguna testified that on August 27, 1980 he was already a member of the Philippine Constabulary and knows a person by the name of Francisco Baldemeca whom he had investigated on various incidents that had happened at Lumban, which investigation was reduced to writing. (Exhibit G)." (Rollo, pp. 10-14)

The version of the defense is shown in the testimony of the accused-appellant. It is summarized as follows:

"Accused MARIO ABLAO testified that he is 25 years old, single and was in 1977, 18 years old. In the afternoon of December 16, 1977, he went to the municipal building of Lumban on instructions from his brother Mayor Bruno Ablao. In the municipal building, he was told that the mayor was not there, so he went to the canteen on the other side of the street very near the municipal building where he found him. The mayor had many companions conversing with each other. At the canteen, he merely showed himself to his brother and stood by the door of the canteen watching a basketball game that was going on outside. A session of the Sangguniang Bayan about the referendum that was to take place the following day was going on and lasted up to about 5:00 o'clock in the afternoon. When the people stood up and each of them was about to go out of the door, he (accused) approached his brother who was paying the bill for what they had eaten and waited for whatever the latter was going to tell him. He followed his brother on his way out of the canteen. The rest of the participants also stood up and proceeded to go out of the canteen. While he and his brother were going out of the canteen, he suddenly heard a shot. Immediately thereafter, his brother handed a gun to him telling him to run away with it. With said firearm which he admitted to be short and heavy, he went out towards the Lumban Elementary School running. While doing so, he heard another shot, so he ran towards the back portion of the Lumban elementary school where he stayed until late in the evening. Then he proceeded to the house of his brother, the mayor, and asked his brother what he would do. The mayor gave him money and told him to go to Manila and to wait for further instructions. He went to Manila to hide. From that date he left Lumban on December 16, 1977, it was only on August 17, 1980 when his father died that he returned to said place and again when he was detained at the PC headquarters in Santa Cruz after he had surrendered to Hon. Assemblyman Estanislao Fernandez. He does not know who shot Andres Manambit because he was then behind his brother looking at the basketball players.

"On cross-examination, he testified that he has been a resident of Lumban since birth up to the time he finished

high school. At about 4:00 o'clock in the afternoon of December 16, 1977 when the meeting was taking place, he was already in the canteen, because, prior to that date, he had been summoned by his brother to be there. Of the six or seven people in that meeting, the only person he knew was his brother. He testified that after the first shot, he heard two more shots after the gun had been handed to him. He went into hiding because of fear of being in possession of said gun then. He carried the gun with him to his hiding place and returned the same to his brother that very evening. Then, he continued hiding. He went to Manila. That time, he already knew that he was the suspected assailant of the deceased. A week after the incident, his father went to Manila and told him that he was being suspected as the killer of the deceased Andres Manambit confirming his being a wanted man. In fact, he testified that his father told him not to go home. He continued hiding in the house of his relatives in Pasay, Sampaloc, Tayuman of Metro Manila, moving from one house to another. When he was able to talk to his father again, he was told that there was a message conveyed by his brother telling that he (his brother) was making ways (gumagawa ng paraan). He went to Nueva Ecija also and stayed with his niece, Mayor Ablao's daughter, for about seven months. It was while in hiding that he came to know that again, he, together with other persons, was a suspect in the killing of Judge Lotus Sobejana of Lumban and his 7 year old son. He sent feelers for his surrender to Assemblyman Fernandez. On July 16, 1980, he surrendered to Justice Fernandez." (Rollo, pp. 14-17)

The appellant, Mario Ablao, raises the following assignment of errors in this appeal, to wit:

I

THE HONORABLE COURT ERRED IN HOLDING THAT ACCUSED-APPELLANT MARIO ABLAO SHOT THE LATE ANDRES MANAMBIT.

II

THE HONORABLE COURT ERRED IN FINDING THAT THE PROSECUTION'S EVIDENCE PROVED THAT THE CRIME COMMITTED WAS MURDER.

III

THE HONORABLE COURT ERRED IN IMPOSING THE DEATH PENALTY ON THE ACCUSED-APPELLANT.

IV

THE HONORABLE COURT SHOULD NOT HAVE MENTIONED IN ITS PREFATORY STATEMENT THE ALLEGED SERIES OF VIOLENCE AND POLITICAL VENDETTA IN LUMBAN, LAGUNA, WHICH, APROPOS, IS NOT FOUND IN THE EVIDENCE ON RECORD.

V

THE HONORABLE COURT SHOULD NOT HAVE MENTIONED THE FACT THAT THE ACCUSED-APPELLANT IS ALSO ONE OF THE SUSPECTS TOGETHER WITH OTHERS IN THE ALLEGED MURDER OF THE LATE JUDGE SOBEJANA AND HIS SON, BECAUSE SAID STATEMENT TENDS TO CAST UNNECESSARY PREJUDICE AGAINST THE ACCUSED, SPECIALLY ON APPEAL TO THE HIGHER COURT." (At pp. 47-48, Rollo)

The appellant denies shooting the victim and contends that the gun he was carrying was given to him by his brother, Mayor Bruno Ablao, who died during the course of the trial.

This contention is not supported by the evidence.

It is highly improbable under the circumstances of the killing that the Mayor was the gunman and would have wanted to implicate his innocent brother in a very serious criminal offense, which was then punishable by death.

We agree with the trial court:

"The contention of the accused that the .45 pistol which he brought to his hiding place was given by Mayor Ablao, a participant in the session of the Sangguniang Bayan after he heard the first shot, is a last minute concoction of the defense to explain and to rebut the prosecution evidence that he was seen running away and in possession of the possible fatal weapon immediately after the first shot, the one that finished off Andres Manambit, Sr. It is clear that accused Mario Ablao was shifting the blame or crime on his co-accused Mayor Ablao who unfortunately is now dead and can no longer refute his statement." (Rollo, pp. 19-20)

The appellant further contends that he went into hiding as he was then only 18 years old, confused and afraid and because of his brother's moral ascendancy over him. He had merely obeyed his brother's order to hide.

This contention is without merit.

If, indeed, the appellant was merely obeying his brother's order to hide, he had no reason to shoot at Lt. Gapas while he was running out of the canteen. His acts are more consistent with his having shot the victim and continuing to shoot at pursuers. The appellant was seen shooting at the police chief of the municipality by barangay captain Abraham Abayari. There was cool-headedness and dangerous criminality instead of the fear and confusion of an eighteen year old.

An 18 year-old youth would not spend the productive years of his life hiding from the authorities for a crime he did not commit. Moreover, it has been repeatedly observed, "The guilty flee when no man pursueth but the innocent are as bold as a lion." (People v. Espinosa, G. R. No. 72883, December 20, 1989)

There is no reason why he should flee while the elder brother, leader of the clan, whom he tags as the killer would remain.

As there was no eyewitness to the killing of Manambit who was willing to directly point to the appellant, his conviction was based on circumstantial evidence. The businessman who was near the victim at the time stated he closed his eyes during the shooting and opened them only when Manambit was lying on the ground dead and the apparent killer was already being chased. The circumstances pointing clearly to the guilt of the appellant are:

"(1) the victim fell very near the place where the appellant stationed himself.

"(2) the appellant was the first person seen coming out of the door running and carrying a .45 pistol after the shooting of the victim.

"(3) there was nobody else who could have shot the victim, especially not the mayor.

"(4) the appellant shot at Lt. Gapas upon seeing him.

"(5) the appellant ran away from the scene of the crime and remained in hiding for 2 1/2 years.

"(6) the fatal wound was caused by a .45 caliber bullet or slug, similar to the bullets of the gun carried by the appellant.

"(7) from all the people who were present during the killing of the victim, only the appellant went into hiding."

We agree with the trial court that the combination of all the above circumstances is such as to prove the guilt of the appellant beyond reasonable doubt. (See Sec. 5, Rule 133, Rules of Court; People v. Agan, G. R. 77713, February 6, 1990; People v. Asuncion, G. R. No. 83870, November 14, 1989; and People v. Salcedo, G. R. No. 78774, April 12, 1989)

However, the Court finds that the trial court's conclusion that the appellant is guilty of murder, the crime charged,

is not supported by the established facts and the law. There is insufficient evidence to show that treachery or evident premeditation, the qualifying circumstances alleged in the information, attended the commission of the crime. While the political vendetta and the more than thirty killings resulting from the feud are well known to the Judge who was handling these cases, the non-presentation of the evidence attesting to premeditation in this particular case prevents us from sustaining the charge of murder. To the extent that conspiracy and the circumstances raising the crime to murder may not be proved by a Judge's notice of evidence in other cases, the fourth and fifth assigned errors are given partial consideration. It is well-settled that the circumstance that would qualify the crime to murder have to be proved as indubitably as the crime itself. (*People v. Salcedo*, supra)

There being no direct evidence on how the shooting was committed, treachery cannot be appreciated. There are no particulars as to the manner in which the aggression was made or how the act which resulted in the death of the deceased began and developed. (*People v. Bacho*, G. R. No. 66645, March 29, 1989; and *People v. Gaddi*, G. R. No. 74065, February 27, 1989)

The testimony of Dr. Reyes as to the shot in the back of the victim's head is not conclusive proof that there was treachery. The fact that the fatal wounds were found at the back of the deceased does not, by itself, compel a finding of treachery. Such a finding must be based on some positive proof and not merely by an inference drawn more or less logically from hypothetical fact. (*People v. Marciales*, 166 SCRA 436, 449 [1988]) The facts preceding the actual shooting are not in the records.

As regards evident premeditation, there is no clear and convincing proof relative to (1) the time when the appellant determined to commit the crime, (2) an act manifestly indicating that the appellant clung to that determination; and (3) sufficient lapse of time between determination and execution to allow them to reflect upon the consequences of their act (*People v. Batas*, G. R. Nos. 84277-78, August 2, 1989) as to indicate that evident premeditation attended the killing of Manambit. The knowledge of the Judge and of the populace gleaned from the other cases that the feuding enemies were gunning for each other does not show evident premeditation in this particular charge.

There was also no proof presented to indicate that the firearm used was indeed unlicensed.

The appellant also contends that it was an error to consider the disregard or insult of rank as an aggravating circumstance as it was not alleged in the information and granting, arguendo, that there is no need to allege it, there was no proof that Mario Ablao insulted or disregarded deliberately the rank of the deceased.

As held in *People v. Ang*, (139 SCRA 115, 121 [1985]):

"Generic aggravating circumstances, even if not alleged in the information, may be proven during the trial over the objection of the defense and may be appreciated in imposing the sentence."

The aggravating circumstance of disregard or insult of rank is appreciated in this case. The fact that the appellant shot the victim while still in the session hall immediately after the meeting and with the other Sanggunian members still around indubitably prove that the appellant deliberately intended to disregard or insult his rank. Moreover, the appellant was the chairman of the Kabataang Barangay (tsn., p. 137) in their place and was expected to be in close coordination with the victim. He knew the political clout and official position of the victim vis-a-vis his brother, the mayor. The victim was his elder counterpart in the barangay movement.

The mitigating circumstance of voluntary surrender is not present in this case.

In order that voluntary surrender may be appreciated, it is necessary that the same be spontaneous in such manner that it shows the intent of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expense necessarily incurred in his

search and capture. (People v. Lingatong, G. R. No. L-34019, January 29, 1990)

There was no spontaneous surrender in this case as the appellant went into hiding for 2-1/2 years. And assuming the truth of his contention that he surrendered, it was because of the Sobejana killing.

Lastly, the appellant contends that the prefatory statement made by the trial court about the series of violence and political vendetta in Lumban, Laguna and its reference to the accused-appellant as one of the suspects in the killing of Judge Sobejana and son was prejudicial to the accused as it psychologically tends to cast unnecessary prejudice on his person and his presumed innocence.

The Court's judgment as to the author of the killing is based only on the evidence presented. The prefatory statement and the statement that the appellant was one of the suspects in another killing are material insofar as evident premeditation and treachery are concerned. They show that this particular killing was part of a liquidation campaign where the victims are killed with no mercy and qualms being shown. We have, however, discounted these qualifying circumstances.

The crime is now homicide with the aggravating circumstance of disregard or insult of rank.

WHEREFORE, the judgment of the trial court is MODIFIED, and the accused-appellant Mario Ablao is found GUILTY beyond reasonable doubt of the crime of homicide with the aggravating circumstance of disregard or insult of rank. Applying the Indeterminate Sentence Law, the accused-appellant is hereby sentenced to suffer the indeterminate penalty of TEN (10) YEARS and ONE (1) DAY of prision mayor to TWENTY (20) YEARS of reclusion temporal. The award of indemnity, in the amount of THIRTY THOUSAND PESOS (P30,000.00), and costs is AFFIRMED.

SO ORDERED.

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

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