

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS COLINARES Y SOLMERANO ALIAS CALOY (ARRESTED) & ERNANI BASAYSAY ALIAS DOMINADOR ITALIA Y PLOFINO — (AT LARGE), ACCUSED-A...

G.R. No. 72025. June 30, 1988

Ponente: PARAS, J.

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PARAS, J.:

Carlos Colinares y Solmerano and Ernani Basaysay alias Dominador Italia y Plofino were charged before the Regional Trial Court, Quezon City with the crime of murder allegedly committed as follows:

"That on or about the 29[th] day of November, 1981, in Quezon City, Philippines, the abovenamed accused, conspiring together, confederating with and mutually helping one another, with intent to kill, with evident premeditation and treachery and taking advantage of superior strength, did then and there, willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one ARMANDO CARDINAS (sic.) Y LUBERIANO, by then and there, stabbing him on the parts of his body with the use of one (1) single-bladed knife, hereby inflicting upon said Armando Cardenas y Lumberiano serious and mortal wounds which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of the victim in such amount as may be awarded to them.

"Contrary to law." (p. 10, Rollo)

Basaysay having remained at large, trial proceeded with Colinares after which the trial court rendered a decision[1] finding him guilty as charged, with the qualifying circumstance of abuse of superior strength, and sentenced to suffer the penalty of reclusion perpetua and to indemnify the heirs of the victim, Armando Cardenas in the sum of P30,000.00, without subsidiary imprisonment in case of insolvency and with the accessories provided for by law.

Hence, this appeal with the following:

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT GRAVELY ERRED IN TOTALLY DISREGARDING THE TESTIMONY OF GOVERNMENT WITNESS, COL. GREGORIO C. BLANCO, MEDICO LEGAL EXPERT AND CHIEF OF THE MEDICO LEGAL BRANCH PHILIPPINE CONSTABULARY, CAMP CRAME, THAT THE CADAVER OF THE VICTIM WAS ALREADY IN RIGOR MORTIS (MORE THAN TWELVE (12) HOURS DEAD) WHEN HE AUTOPSIED IT AT HIGH NOON OF NOVEMBER 29, 1981 WHICH PROVE FALSE THE CHARGE THAT ACCUSED COMMITTED THE CRIME OF MURDER IN THE MORNING OF NOVEMBER 29, 1981 AT ABOUT 10:00 O'CLOCK.

II

THE TRIAL COURT GRAVELY ERRED IN TOTALLY DISREGARDING THE CONTRADICTORY STATEMENTS OF GOVERNMENT WITNESSES ON VERY MATERIAL MATTERS WHICH WOULD CREATE SERIOUS DOUBTS AS TO THE CULPABILITY OF ACCUSED WHICH IS A GROUND FOR ACQUITTAL.

III

THE TRIAL COURT GRAVELY ERRED IN TOTALLY DISREGARDING THE INHERENT IMPROBABILITIES IN THE TESTIMONIES OF GOVERNMENT WITNESSES THAT WOULD LIKEWISE GENERATE SERIOUS DOUBTS AS TO THE CRIMINAL LIABILITY OF ACCUSED.

IV

THE TRIAL COURT GRAVELY ERRED IN CONCLUDING THAT THE ACCUSED COMMITTED THE CRIME OF MURDER ON ONE CIRCUMSTANTIAL EVIDENCE.

V

THE TRIAL COURT GRAVELY ERRED IN SENTENCING HEREIN ACCUSED TO LIFE IMPRISONMENT NOTWITHSTANDING THE FACT THAT HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

From the testimonies of five witnesses, namely: spouses Roberto and Trinidad Lopez, their granddaughter Rowena Lopez, Col. Gregorio C. Blanco, Chief of the Medico Legal Branch, PC, Camp Crame, and Police Sgt. Amador Morris, SID, QCPS, the version of the prosecution is briefly stated as follows:

The victim Armando Cardenas just recently arrived from the Visayas, was the nephew of spouses Roberto and Trinidad Lopez, residents of Don Fabian Subdivision, Fairview, Quezon City.

Roberto Lopez testified that at about 10:00 o'clock A.M., November 29, 1981 a quarrel between his neighbors the de Leon family and the Martinez family ensued in front of his house.

Shortly thereafter, some thirty armed persons among whom was accused Carlos Cardenas, arrived at the residence of the above-named spouses. Inside the house at that time were spouses Roberto and Trinidad Lopez, their son Romeo and the latter's daughter 13 years old Rowena and the victim Armando Cardenas. Some of these thirty persons hit with their guns, mauled and kicked Roberto Lopez, Romeo Lopez and the victim Armando Cardenas. The accused, Carlos Colinares, together with some of his companions chased and continued to maul Armando Cardenas as the latter ran towards the back of the house. Meanwhile, Roberto Lopez was able to run and to hide himself in the nearby cogon grass. He could see what Carlos Colinares and companions were doing to Armando but he could not do anything to help his nephew. Armando Cardenas, sprawled on the ground and bleeding, was picked up and taken to the barangay service jeep by accused Carlos Colinares and the sons of Rosendo de Leon, a neighbor of the Lopezes. After Armando was taken away, Roberto Lopez came out of the cogon grass and together with his wife, Trinidad, rode on a passenger jeepney to find out where Armando was being taken. They saw the barangay service jeep in front of the Commonwealth Barangay Hall, along Don Mariano Marcos Avenue. They alighted from the passenger jeepney and went near the barangay jeep. They saw their nephew Armando Cardenas, bleeding and seated on the floor of the vehicle leaning against the driver's backseat. Sitting beside the victim was accused Carlos Colinares, while sitting beside the driver (Ernani Basaysay) was Ely Colinares, brother of the accused and the chairman of Barangay Commonwealth at that time. Aside from these persons, they also saw others among them a son of Rosendo de Leon seated inside the jeep.

Upon seeing Roberto and Trinidad Lopez, Armando Cardenas spoke and implored their help as he was afraid he would be killed by his companions inside the jeep. Roberto Lopez assuaged Armando's fears by telling him that

these persons are government authorities (barangay) and that they would not kill him. (t.s.n., March 3, 1982, p. 3). Trinidad Lopez, thinking that Armando would be brought to a hospital, wanted to board the barangay jeep to accompany her nephew but the accused Carlos Colinares prevented her from doing so. That was the last time that Roberto and Trinidad Lopez saw Armando Cardenas alive.

As per records, Armando Cardenas was brought to the Quirino Memorial Hospital, Quezon City at about 10:40 o'clock in the morning of November 29, 1981. He was pronounced dead on arrival, per medico-legal necropsy report, dated January 6, 1982 issued by Lt. Col. Gregorio C. Blanco (Exh. "A"). The same Lt. Col. Blanco performed the autopsy on the cadaver of Armando Cardenas at about 12:00 o'clock noon on November 29, 1981 at the Oro Memorial Homes, Cubao, Quezon City. Armando Cardenas sustained several injuries, but the fatal wounds were the following:

- a.) hacked wound, neck, measuring 15 X 3 cm, crossing the anterior midline 7 cm to the left and 8cm to the right lacerating the larynx, trachea, esophagus, left common carotid artery and vein;
- b.) stab wound, right hypochondriac region measuring 2.5 by 0.3 cm, 11cm from and anterior midline, 5 cm deep, directed upwards, posterior wards and medial wards, piercing the 7th right intercostal space, lacerating the right lobe of the liver and right dome of the diaphragm. (Exhibit "A").

Armando Cardenas died of cardio-respiratory arrest due to shock and hemorrhage secondary to the stab wound of the trunk and the hacking wound on the head. (Exhibit "A-1").

On the other hand, the version of the defense is simply stated as follows:

Accused Carlos Colinares testified that at about 7:00 o'clock A.M. of November 29, 1981, he was putting up an electrical post at Barangay Commonwealth, which task he finished at about 9:00 o'clock A.M. of the same day. He then went home which is about 10 meters away from the barangay hall to get some wires which he brought back to the barangay hall and left these wires with Barangay Tanod Domingo Tuazon. From here, he proceeded to the "paradahan" (parking lot) of the "Manila Bus" bound for Quiapo, where he was one of the dispatchers assigned that morning. Patrolmen Moris, Dizon and Belen of the Quezon City Police Force, approached and invited him to go to the Quezon City Police Headquarters to see Maj. Romeo San Diego. He was brought to the headquarters in EDSA, Kamuning where he was left to await Major San Diego. Nobody arrived until 3:00 P.M. When the complainants arrived at headquarters, accused was informed that there is a complaint against him but not told of the nature of their complaint. Thereafter, accused was brought at 8:00 o'clock P.M. by Pats. Dario and Balia to the house of a certain Fiscal located at the back of PHHC. Later, he was brought back to the police headquarters and detained at Quezon City Hall. Accused denied having known the victim and his relatives, Roberto, Trinidad, Romeo and Rowena, all surnamed Lopez. Accused also denied knowledge or awareness of the incidents testified to by prosecution witnesses.

The corroborative testimonies of Rosendo de Leon and son Mario showed that in the morning of November 29, 1981 at about 7:00 o'clock A.M., Prudencio Martinez and son Jojo Martinez had a fight with them after an argument regarding a fence constructed on the lot of de Leon. After the fight the de Leons proceeded to the Iglesia ni Cristo Central Clinic a distance of about 10 kilometers from their place to be treated for their wounds. They went back to their house at about 11:30 o'clock A.M. but did not notice if accused Carlos Colinares was there. They also denied having known the deceased.

Witness Charles Bitoon, a neighbor of the de Leon and Lopez families, testified that from his house, he saw on November 29, 1981, at about 9:00 A.M. two Metrocom soldiers remove the walls of the house of Roberto Lopez. Short of this, he did not notice any unusual incident that morning.

Barangay Commonwealth Captain Nemesio T. Manaog testified that on November 29, 1981 at about 9:00 o'clock A.M. Trinidad Lopez arrived at the Bgy. Hall and stated before him "ganoon nga ba tayo ngayon kapitan, banat na lang ng banat wala ng tanungan" referring to the mauling of her nephew Armando. He advised her not to worry but to make inquiry first as to where or what hospital Armando was brought and to come back after his office to lodge her complaint, if any. More than five minutes after Trinidad Lopez had left, witness saw accused Colinares walk by the Hall with a pair of pliers, screw driver and a few rolls of electric wire towards the direction of Tandang Sora. Witness admitted on cross-examination that he does not have any personal knowledge as to the killing that took place on November 29, 1981 in his barangay because he conducts investigations only when the office is informed and no such information reached his office as Trinidad Lopez never came back to make any complaint. He only came to know of such incident when he went to the office of the Criminal Investigation Section (CIS) to follow up the release of the barangay jeep which had been impounded by the CIS. He testified further that the first time he saw the barangay jeep in question on that fateful day, November 29, 1981, was at about 11:00 o'clock A.M. being driven by Ernie Basaysay, the authorized driver of the jeep, who informed him that he just came from the Labor Hospital where he brought a patient whose identity he does not know. Thereafter Basaysay left to clean the jeep. Manaog claimed he did not know the suspect in the case until he appeared before a certain Fiscal residing at Teacher's Village.

The appeal deserves consideration. In finding the accused guilty, the lower court relied heavily on the positive identification by government witnesses Roberto, Trinidad and Rowena, all surnamed Lopez, of the accused as the perpetrator of the alleged mauling incident equating it also as a positive identification of the same accused as the one who killed Armando Cardenas. Such inference has no legal and/or factual basis. It is noted that the lower court admitted in its decision that there is "no evidence presented to show where the crime took place and who inflicted the fatal wounds sustained by Armando Cardenas," (p. 6, Decision, Crim. Case No. Q-18289) and yet the same court concluded that the accused committed the crime charged based on the circumstantial evidence that accused was identified by the prosecution witnesses as the one who mauled the victim and that the victim was last seen alive in his company, among others. Such finding cannot be sustained. To uphold a judgment of conviction on circumstantial evidence, the circumstances must be "an unbroken chain which leads to one fair and reasonable conclusion, which points to the defendant to the exclusion of all others, as the guilty person. (U.S. vs. Villar, 6 Phil. 510; People vs. Subano, 73 Phil. 692). It would have been a different judgment if the prosecution witnesses saw herein accused kill the victim and testified thereon. Such would have been positive evidence because his pointing to said accused as the perpetrator is positive identification which will defeat the defense of alibi put up by the accused.

Aside from the fact that there is no evidence presented to show where the crime took place and who inflicted the fatal wounds sustained, the record is not clear as to the time of the mauling incident and the death of the victim. Roberto Lopez testified that the mauling incident happened on November 28, 1981 between 10:00 o'clock A.M. and 11:00 o'clock A.M., Trinidad Lopez testified that it happened on the same day but at 7:30 o'clock A.M. and Rowena Lopez testified that it happened at 10:00 o'clock A.M. Another witness for the prosecution Col. Gregorio C. Blanco after qualifying himself as a medico-legal expert testified that the cadaver of the victim was already in rigor mortis (more than twelve (12) hours dead) when he autopsied it at high noon of November 29, 1981. Taking into consideration this unimpeachable testimony of the doctor and the necropsy report (Exh. "A") which substantially supported the doctor's oral testimony, the death of the victim could be calculated to have occurred at least 12 hours before time of necropsy which is about November 28, 1981 at 12:00 o'clock midnight. Thus the mauling incident of the victim did not happen or could not have happened because the victim was already dead at that time of the alleged mauling incident. There is no inconsistency between the doctor's oral testimony and the Necropsy Report because the time and date of death of the victim appearing on the Necropsy Report as a/1040 H

29 November 1981 pertains to the time and date as reported to the doctor by the authorities concerned since the victim was DOA (Dead on Arrival) at 10:40 o'clock A.M. November 29, 1981 at the Quirino Memorial General Hospital, Quezon City.

Furthermore, We cannot entertain the claim of witness Rowena Lopez that their failure to report the incident to any police authority near them was because they were afraid since they were guarded. The fact that Roberto and Trinidad Lopez freely left their house to search allegedly for their nephew belies Rowena's claim that they were guarded. Very intriguing also is the fact that in spite of witness Rowena Lopez testimony of the presence of Metrocom soldiers during the mauling incident, the prosecution failed to implead these Metrocom soldiers and/or the other occupants of the barangay service jeep where the victim was allegedly last seen alive. These are material facts which cannot just be ignored and certainly cast grave doubt as to the guilt of the herein accused.

PREMISES CONSIDERED, the prosecution has failed to establish the guilt of the accused Carlos Colinares beyond reasonable doubt. Accordingly, the Court hereby ACQUITS him of the crime charged and hereby ORDERS his immediate RELEASE with costs de officio.

SO ORDERED.

Yap, C. J., Padilla, and Sarmiento, JJ., concur.
Melencio-Herrera, J., see attached dissent.

[1] Penned by Judge Antonio P. Solano promulgated on July 22, 1985.

DISSENTING

MELENCIO-HERRERA, J.,:

The chain of circumstances point to appellant's guilt, at the very least, for homicide. After the victim was initially mauled and kicked and as he ran to the back of the house, appellant Carlos Colinares and his companions chased and continued to maul the victim (p. 4, Decision). Roberto Lopez witnessed the mauling of the victim, his nephew, but could not do anything to help (Ibid.). Roberto then saw the victim sprawled on the ground, bleeding. Appellant picked him up and placed him inside a barangay service jeep. Thereafter, Roberto and his wife followed the jeep up to the barangay hall. There, Trinidad saw the victim slumped on the floor of the jeep against the driver's seat, still bleeding. Sitting beside the victim was the accused Carlos Colinares, while sitting beside the driver was Ely Colinares, brother of Carlos and Chairman of the so-called Barangay Commonwealth. Aside from these persons, they also saw others seated inside the jeep (Ibid.) The victim implored his aunt and uncle for help as he was afraid he would be killed by his companions inside the jeep. Trinidad wanted to accompany the victim in the jeep, thinking that he would be taken to the hospital. But Carlos prevented her. That was the last time the spouses saw their nephew alive.

While it may be that there was no eyewitness who testified to having seen appellant inflict the fatal blow, yet, the circumstances above narrated point to no other conclusion but that appellant and companions were responsible for the victim's death (People vs. Lingao, L-28506, January 31, 1977, 75 SCRA 130). Appellant and his companions acted in conspiracy [People vs. Del Rosario, 68 Phil. 720 [1939]] and the act of one must be deemed as the act of all [People vs. Paredes, No. L-19149, August 16, 1968, 24 SCRA 635].

The medico legal expert's testimony as to the hour of death was far from accurate, was merely an estimate ("more

than twelve [12] hours") and cannot be made to negate a finding of culpability considering the attendant circumstantial evidence leading to a fair and reasonable conclusion of guilt.

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