

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
AMADOR MASANGKAY ALIAS “ADOR MASANGKAY,” JAIME
MASANGKAY AND CARLITO MIRANO ALIAS “CARLING MERANO,”
ACCUSED-APPELLANTS.**

G.R. No. 73461. January 25, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

Acting on the Motion for Reconsideration of the Decision of this Court of October 27, 1987, filed by accused-appellants, Carlito Mirano and Jaime Masangkay, the Court Resolved to DENY the Motion in so far as it seeks their acquittal but to AMEND the Decision in so far as the penalty is concerned, as follows:

“AMENDED DECISION

This is an appeal from the judgment * of the Regional Trial Court of Masbate in Criminal Case No, 3447, convicting Amador Masangkay alias ‘ADOR Masangkay,’ JAIME Masangkay, his brother, and CARLITO Mirano alias ‘Carling Merano,’ his brother-in-law, of murder and sentencing ‘all the said accused, in the absence of any mitigating or aggravating circumstance, to suffer the penalty of RECLUSION PERPETUA, together with all the accessory penalties provided for by law; to pay, jointly and severally, indemnify to the heirs of the victim in the amount of P30,000.00 and to pay the costs.’[1]

The Information filed against said three accused charged them as follows:

‘That on or about July 21, 1981, in the evening thereof, at Market Site, Municipality of Masbate, Province of Masbate, Philippines, within the jurisdiction of this Court, the said accused confederating together and helping one another, with intent to kill, evident premeditation, treachery, superiority of strength and taking advantage of nighttime, did then and there willfully, unlawfully and feloniously attack, assault and stab with a knife one Ely Verano, hitting the latter on the different parts of the body, thereby inflicting wounds which caused his death.’[2]

The evidence for the prosecution is reproduced below:

‘At about 10:30 o'clock in the evening of July 21, 1981, at the market site in Masbate, Masbate, Ely Verano arrived home, having just come from their newly constructed house where he was earlier drinking with Tony Castillo. He told his son, Arthur Verano, to prepare the flashlight and a gallon of water as they would sleep in their new house. After checking that the flashlight batteries were weak, Ely told Arthur to get four new ones. In the meantime, he (Ely) would just go to accompany Tony Castillo home because the latter was already drunk. After around thirty minutes, Arthur followed his father and proceeded to the house of Tony Castillo which was located near the footbridge. Nearing the place, or from a distance of five (5) meters from where he stood, Arthur saw his father being ganged up by Ador Masangkay, Jaime Masangkay and Carling Merano. Because it was a moonlit night, Arthur dearly saw Ador Masangkay stab his father, while Carling Merano covered the mouth and Jaime Masangkay held the hands of his father at the back. Arthur shouted at the assailants, “Please

don't do that to my father." Ador Masangkay then said to his two companions, "Flee because I can tackle this." Jaime Masangkay and Carling Merano released Ely Verano from their hold and chased Arthur who immediately ran home. Upon reaching their house, he awakened his mother, Feligonia, from sleep and told her about the incident (tsn., July 19, 1982, pp. 6-12).

'After Ely Verano left the house of Tony Castillo, the latter's wife, Osita, went to the kitchen. Then she heard some shouting, and then a shout for help (tsn., Nov. 12, 1984, p. 9). When she opened the door she saw, in front-of the house of Cecilia Cantillana which is near the footbridge, Ely Verano lying down while Ador Masangkay was bending towards the former. Ely Verano was asking for help so Castillo rushed and pulled back Ador. As Ely Verano stood up, she saw that he was hit and she heard him say, "Tama na Ador, may tama ako durha ako sa hospital." When Castillo saw Ador holding a bladed weapon, she got afraid and immediately went back to her house. After ten minutes she came out again but Ely Verano was no longer in the place where she found him. Castillo decided to inform Ely's wife about the incident, whose house was about two hundred (200) meters away from her place, (tsn., Oct. 16, 1984, pp. 5,11-13,18).

'When Feligonia Verano was awakened and informed by her son Arthur about the attack made against her husband Ely by Ador and Jaime Masangkay and Carling Merano, she at once changed her clothes and went out to find out about the incident. As she went out of the house, Osita Castillo arrived and informed her that her husband was brought to the hospital. Feligonia proceeded to the hospital of Dr. Chang, whereat upon arriving, she saw her husband being brought outside. Upon seeing her husband, she immediately embraced him. When she asked him about what had happened, Ely told her that he was stabbed by Ador (Masangkay), held by Jaime (Masangkay) while his mouth was covered by the hands of Carling (Merano) (tsn., Aug. 13, 1984, pp. 2-5).

'Ely Verano was subsequently brought to the Masbate Provincial Hospital where after a few minutes, he died (tsn., id., pp. 6-7). The medico-legal certificate issued by the attending physician, Dr. Ruth Almanzor, showed that Ely Verano sustained the following injuries, thus:

"1. Stab wound, neck anterior, 2 cm., superficial;

"2. Stab wound, 3 inches, chest, anterior level of 1st rib, penetrating, directed lateralwards towards the right;

"3. Stab wound, 3 inches, penetrating, level of 5th rib, left with evisceration of SC. fat;

"4. Stab wound, 3 cm., level of 6th rib, penetrating, left." (Record p. 2, Exhibit "A")

'According to Dr. Almanzor, wounds Nos. 2, 3 and 4 were fatal, and that Ely Verano died due to severe hemorrhage because of severe blood loss (tsn., Aug. 9, 1983, pp. 7, 9)[3]

For his part, ADOR pleaded self-defense, describing the circumstance thereof, thus:

"The evidence for accused Amador Masangkay indicate that on that particular time of the evening of July 21, 1981, while he was sleeping in his house at Market Site, Masbate, Masbate, he was awakened by someone shouting outside who turned out to be Ely Verano, the victim, "Ador go out and I will kill you, if you will not go out I will go inside and I will kill you all." After shouting these words three or four times, Ely Verano banged the door of the house of Amador Masangkay with a piece of wood. At this point Amador Masangkay rose up from bed, opened the door and went out of his house holding an opened Batangas knife. He found Ely Verano just one meter away from him and the latter struck him twice with the piece of wood which was 2' by 2" and a meter long. He parried the first blow and was able to get hold the piece of wood on the second blow. He then stabbed Ely Verano who stepped backward about three meters away. He followed and continued stabbing Ely Verano until the latter fell. He then felt someone holding him by his belt and when he turned he saw that it was Osita Castillo. He became afraid and ran away because he was "nawala sa sarili ko." He finally reached Mayngaran and stayed in the house of the grandmother of his wife. From there, accompanied by Atty. Amador and his brother-in-law Carlito Merano, he went to the P.C. Camp and surrendered to Col. Veloso.

'He claimed that he and Ely Verano had a misunderstanding about the tatter's pigs. Ely Verano tied his pigs in

front of his dry goods store in the market and this made his place dirty and attracted flies.’[4]

Accused JAIME Masangkay disclaimed any participation in ganging up on the victim and offered alibi as his defense. He contended that he and his wife were asleep in their house, which is near the place of the incident, at the time when the victim was stabbed;[5] and that he came to know of said stabbing only when Atty. Oscar Amador, the Municipal Attorney, with some companions, went to see him shortly before 12 o'clock midnight of July 21, 1981 looking for ADOR.[6]

Accused CARLITO Merano similarly interposed alibi. He claimed that he was sleeping with his children in his house when the stabbing incident occurred;[7] that while asleep, he was awakened by a banging sound from the house of ADOR;[8] and that about ten to fifteen minutes later, he heard someone saying from the bamboo bridge where the incident happened: ‘Ely is already dead.’[9]

In this appeal, the accused maintain that:

I

The lower Court erred in not holding that the testimonies of the deceased's son and widow were replete with serious inconsistencies and improbabilities and therefore, unworthy of credence.

II

The Court a quo erred in holding that Feligonia's revelations about her discussion with her husband form part of the *res gestae* or are *ante mortem* (dying) declarations of the deceased.

III

The Court a quo erred in giving credence to Feligonia's decorum as against her inconsistent, incredible declarations in open Court.

IV

The Court a quo erred in concluding that conspiracy existed between Ador Masangkay, Carlito Merano and Jaime Masangkay.

V

The Court a quo erred in not holding that accused Ador Masangkay killed Ely Verano in self-defense.

VI

The Court a quo erred in not appreciating bias in the testimony of Arthur and Feligonia Verano.’

Except for Errors II and IV, the other errors assigned revolve around the issue of credibility of witnesses and are unmeritorious. Like the Trial Court, we find no reason to doubt the testimony of Arthur Verano, an eyewitness to the incident, who categorically testified that he saw the appellants ganging up on his deceased father, with ADOR in the act of stabbing, CARLITO covering his father's mouth and JAIME holding the victim's hands. He was only about five (5) meters distant from them and could see clearly because it was then a moonlit night. And because he dared ask them to spare his father's life, he was chased by JAIME and CARLITO. That Arthur Verano did witness the brutal killing of his father is shown by the fact that about an hour after the killing the police already set out looking for ADOR who was nowhere to be found in the locality.

Corroborating Arthur's testimony is that of Osita Castillo, who lived across ADOR's house. She heard a shout for help, rushed out, and saw ADOR bending over the victim who was pleading that ADOR stop his attack. Osita pulled ADOR by the latter's belt only to see that the latter was holding a bladed knife. Osita's declaration that she

pulled ADOR by the belt is corroborated by ADOR himself.

The revelation of the victim's wife that her husband had disclosed to her the identity of the three assailants and the manner of their respective participation as he was about to be transferred to the Masbate Provincial Hospital does form part of the *res gestae*. It was made within an hour after the stabbing incident, a startling occurrence, respecting the circumstances thereof, when the victim did not have time to contrive nor devise a falsehood.[10] It is competent testimonial evidence to support the appellants' conviction. That Feligonia failed to inform the authorities immediately regarding her husband's declarations is understandable in view of the state of shock that she was in. It should be stated, however, that even without it, the testimonies of eyewitnesses Arthur Verano and Osita Castillo suffice to sustain appellants' guilt.

We find no inconsistencies between the testimonies of Arthur Verano and Osita Castillo. Contrary to the defense posture, Arthur never said that he was only informed by Osita of the incident. What he testified to was that it was when after having been chased by JAIME and CARLITO that Osita (Tia Cita to him) told him that she had also witnessed the incident. He was not merely informed thereof by Osita. He was an eyewitness himself.

The relationship of mother and son (Feligonia and Arthur, respectively) to the deceased would neither militate against the credibility of their testimonies.[11]

We sustain the Trial Court in giving no credence to ADOR's claim of self-defense. Having admitted the killing, it was incumbent upon said accused to prove it by clear and convincing evidence.[12] This, ADOR has not only failed to do but also, the number of the four (4) stab wounds he had inflicted, their location on the chest, and their depth of penetration constitute ample physical evidence belying self-defense. Besides, the requisites of self-defense are sorely absent. The alleged shouted threats and pounding on the door of ADOR's house by the victim do not constitute unlawful aggression, the said accused having been within the safe confines of his home without having been threatened with an attack in an immediate and imminent manner.[13] And even assuming that there was unlawful aggression there was no reasonable necessity of the means employed by ADOR to prevent or repel it. As he had narrated, he had succeeded in disarming the victim of the piece of wood the latter was allegedly carrying so that stabbing with such frequency, frenzy and force can no longer be considered as reasonably necessary.

ADOR's confession that he alone was responsible for the killing was correctly ignored by the Trial Court in the face of the positive declarations and identifications made by a credible eyewitness, Arthur Verano. ADOR's attempt to cover up for his brother and brother-in-law is only too obvious.

The fact must be added that after committing the offense ADOR fled from the scene of the crime and hid in the house of the grandmother of his wife at Mayngaran. As oft-held, flight is considered as evidence tending to establish guilt.[14] The accused's contention that he had voluntarily surrendered is thus negated.

The defenses of alibi interposed by JAIME and CARLITO deserve no credence either in the face of the clear and categorical identification by eyewitness Arthur Verano and in the absence of any showing of the physical impossibility of their having been at the scene of the crime at the time of its commission, their respective houses being near the place of the incident.

As to the aspect of conspiracy, we affirm the Trial Court's finding as to its existence. For conspiracy to be appreciated, it is enough that at the time the offense was committed, the participants had the same purpose and were united in its execution, as may be inferred from the attendant circumstances.¹⁵ The act of JAIME in holding the victim's hands and CARLITO in covering said victim's mouth while ADOR hacked away, eloquently show community of criminal purpose as well as taking advantage of their superior strength. The fact that JAIME and

CARLITO were with the Station Commander in trying to effect ADOR's arrest does not negate conspiracy. Neither would the fact that Osita Castillo saw only ADOR and not JAIME and CARLITO because at the time she went out of her house, the latter two had left to chase Arthur Verano and in obedience to ADOR's behest that they flee since he could tackle the situation. Conspiracy having been established, the act of one is the act of all.

The crime committed is Murder, qualified by treachery. The circumstance of abuse of superior strength, although appreciable, is inherent in treachery. No other modifying circumstance attended the commission of the offense.

Pursuant to Article 248 of the Revised Penal Code, the imposable penalty should be reclusion perpetua, as imposed by the Trial Court. However, with the abolition of capital punishment in the 1987 Constitution, the penalty for Murder is now reclusion temporal in its maximum period to reclusion perpetua. 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.

For purposes of the Indeterminate Sentence Law, the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense is prision mayor in its maximum period to reclusion temporal in its medium period, or, from ten (10) years and one (1) day to seventeen (17) years and four (4) months.

WHEREFORE, the judgment appealed from is hereby modified in that each of the three accused shall suffer an indeterminate penalty often (10) 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; to pay, jointly and severally, indemnity to the heirs of the victim in the amount of P30,000.00, and to pay proportionate costs.

SO ORDERED.”

Yap (Chairman), Paras, Padilla, and Sarmiento, JJ., concur

*Penned by Judge Ludovico C. Lopez.

[1] Judgment, p. 14, Original Records, p. 316.

[2] Rollo, p. 15.

[3] People's Brief, pp. 3-6, Rollo. pp. 55-58.

[4] Judgment, pp. 4-5. Original Records, pp. 306-307.

[5] Tsn., pp. 14-15, October 17, 1984 Hearing.

[6] Ibid., pp. 15-16.

[7] Tsn., p. 3, October 29, 1984 Hearing.

[8] Ibid., p. 4.

[9] Ibid., p. 5.

[10] Section 36. Rule 130, Rules of Court; People vs. de Gracia, L-21419. September 29, 1966, 18 SCRA 197,205-206.

[11] People vs. Lopez, L-33642, September 28, 1984. 132 SCRA 188.

[12] People vs. Plaza, 69511, November 22, 1985, 140 SCRA 277.

[13] People vs. Lachica, et al., G.R. No. L-38175. September 28, 1984, 132 SCRA 230.

[14] People vs. Samonte, Jr., L-31225, June 11, 1975, 64 SCRA 319.

[15] People vs. Manalo, L-42505, December 26, 1984, 133 SCRA 626.

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