

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAGNO GUPO Y GAYETA, FLAVIO GUPO Y RAMOS AND RUDY NAZUL, (AT LARGE), DEFENDANTS-APPELLANTS.

G.R. No. 75814. September 24, 1990

Ponente: FERNAN, CJ.

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FERNAN, CJ.:

In this appeal, father and son, Magno and Flavio Gupo, seek a reversal of the decision of the Regional Trial Court of Batangas City convicting them of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua and to indemnify the heirs of Miguel Atienza in the amount of P12,000.[1]

On June 14, 1978, the following information for murder was filed against Magno Gupo, Flavio Gupo and Rudy Nazul:

"That, on or about the 10th day of November, 1977 at about 8:00 o'clock in the evening, in Barangay Piña, Municipality at Taysan, Province of Batangas, Philippines. and within the jurisdiction at this Honorable Court, the two (2) above-named accused, together with one Rudy Nazul alias Rodolfo Tongga, alias Rodolfo Moralejo who is still at large, conspiring and confederating together, and acting in common accord, armed with lethal sharp-pointed instrument, commonly known as 'tres cantos', bolo and lead pipe, with intent to kill, with the qualifying circumstance of either treachery or evident premeditation, did then and there, wilfully, unlawfully and feloniously, attack, assault and stab with the said weapons, one Miguel Atienza y Perez, suddenly and without warning, thereby inflicting upon the latter multiple stabbed and cut wounds and abrasions causing massive internal hemorrhage secondary to stab wounds, which directly caused his death.

"That in the commission of the offense, the aggravating circumstance of the accused having taken advantage of superior strength was present."

At their arraignment on December. 17, 1979, the accused pleaded "not guilty" to the crime charged and thereafter, the prosecution. presented their version of the crime which is as follows:

At around 8:00 o' clock on that fateful night of November 10, 1977, Miguel .Atienza was riding on the service jeepney owned and driven by Pablo Acob. Riding with them at the front seat, was Patrolman Estelito Africa. Seated at the back were Eufonio Lontok and Danilo Sabado. Coming from barangay Dagatan, they were bound for Bacao, Taysan, Batangas where Patrolman Africa resided.

When they arrived at .sitio Duhat, barangay Piña, also in Taysan, they saw a group of men holding bolos and a lead pipe. Patrolman Africa alighted from the jeepney and asked the group why, they were in the middle of the road armed with bolos. Magno Gupo replied that, they had just come from the construction of a house.

Then, Magno punched Miguel. Reacting, Miguel alighted from the jeepney and fought back. A fistfight ensued. Patrolman Africa separated theprotagonists and told the .group of Magno to go home. The men in the jeepney then proceeded to Bacao where .they left Patrolman Africa at his house.

On their way back, they were "waylaid" ("hinarang") by Magno's group near the house of a certain Felipe where there was a mahjong session. According to prosecution witness Eufonio Lontok, Flavio Gupo, who was then with Magno, Rudy Nasul (or Nazul) and one Juan Magtibay, stopped the jeepney on which they were riding by flailing his right hand in a stopping gesture. Upon seeing that Magno was holding a lead pipe and acting suspiciously, Eufonio alighted from the jeepney and tried to pacify Magno.

Eufonio saw Flavio as the latter grabbed and pulled Miguel from inside the jeepney. Rudy Nasul embraced Miguel from behind and stabbed him twice, at the chest and at the armpit. As Rudy Nasul loosened his hold on Miguel who, although staggering, ran towards Eufonio, Flavio hacked Miguel at the nape with a bolo while Magno delivered a blow on Miguel with the lead pipe.[2]

According to another eyewitness, Pablo Acob, after Flavio pulled Miguel from the jeepney, Rudy positioned himself behind Miguel, placed his left hand on top of Miguel's left shoulder and delivered two stab wounds on Miguel with his right hand which was holding a sharp instrument. Rudy then left while Miguel staggered to the jeepney. Flavio saw Miguel and hacked him at his fontanelle with a bolo. Miguel was still standing when Magno, armed with a lead pipe, dealt him a blow on the nape.[3]

Miguel fell flat on his belly near the canal.[4] Pablo, a nephew of Miguel, then moved the jeepney backward and called for his companions. Danilo and Eufonio. The two carried Miguel to the jeepney. They brought him to the Batangas Regional Hospital where he was pronounced dead on arrival. Pablo later proceeded with Danilo to the Fortune Cement to report the incident to the police.[5]

The postmortem examination report reveals that Miguel, who was thirty-five years old when he died, sustained the following wounds:

- "1. Multiple abrasion - external periorbital, and zygomatic prominence in the left side.
2. Abrasion two streaks 4 inches below nipple - right side.
3. One (1) inch clean-cut wound at level of ear lobe mastoid area diagonally situated.
4. Clean-cut wound cutting all layers of scalp 2 inches long running diagonally to the coronal section of the occipito-frontal section scalp.
5. Stab wound triangular in shape about 1 inch below level of the nipple at the anterior chest wall a little to the right at the anterior midline. When probed found to be directed upward backward to a depth of about 5 inches.
6. Stab wound level of the nipple at the anterior axillary line when probed found to be directed upward and medially to a depth of 3 inches."[6]

The death certificate indicates that Miguel died of massive internal hemorrhage due to multiple stab wounds.[7]

On the other hand, the defendants denied having perpetrated the crime. Like the prosecution, they pointed to Rudy Nasul as the culprit who stabbed Miguel. They alleged that two unidentified persons aided Rudy in his dastardly act.

Flavio testified that Rudy Nasul and his two companions whom he did not know, arrived at his House at around 2:00 o'clock in the afternoon of November 10, 1977. Rudy, who was his "bilas", their wives being sisters, wanted to know where he could buy dogs. Flavio accompanied them to the place where a "sibi" a shade used for wadding ceremonies, was being built. There, they met Narciso Gupo who had been looking for Flavio because he wanted to sell the cow in Flavio's care ("paiwi"). They stayed near the "sibi" until around 8:00 o'clock in the evening. With them were Juan, Magtibay and several other persons.

When they were leaving the place, a jeepney stopped and a policeman loudly asked them why they were still 'out that late at night. The policeman added, "Don't you know that it is martial law." They shouted back telling the policeman that they came from the construction of a "sibi."

As Rudy approached the jeepney, Miguel Atienza boxed him and they exchanged blows. Miguel alighted from the jeepney and a fistfight followed. The policeman held Miguel by the arm caused him to board the jeepney and told Flavio's group to go home. After the jeepney had left, Flavio, Narcisa Gudo, Juan Hagtibay, Rudy and his two companions stayed by the roadside.

When Flavio asked Rudy why he was boxed by Miguel, Rudy replied that they had a misunderstanding regarding the purchase of dogs. They then went to the "madyungan" of one Felipe in sitio Duhat. At around 9:00 o'clock, the jeepney arrived and someone from inside the jeepney yelled asking if Rudy was still around. Rudy himself shouted back, "Narini" (I am here). The jeepney then moved backward towards the place where Rudy was. After the three occupants of the jeepney had alighted, Flavio heard a "tagupakan" (exchange of fist blows), and a commotion ensued. Flavio overheard someone say, "Patawarin mo ako, Rudy." Rudy retorted, "Mamatay ka nang putang inamo ka."

At that instance, Magno arrived and informed Flavio that his wife had stomachache. They were about to go home when Flavio saw the jeepney as it moved backwards. Through the headlight of the jeepney, he saw a man lying on the canal. The men on the jeepney carried the man "lying flat on the canal" to the jeepney and it proceeded towards the direction of Batangas City.[8]

For his part, Magno, who was 54 years old when the incident occurred, testified that at about the time when the crime was committed, he was at home. His grandson, the son of Flavio, arrived and informed him that his mother, Rosario, was having a stomachache. His grandson relayed to Magno his daughter-in-law's request that Flavio should be fetched and that Magno should buy medicine for her.

Acceding to that request, Magno went to the place where a "sibi" was being erected. Not finding Flavio there, Magno went to the "madyungan" where he saw Flavio a "curious onlooker" ("nanonood") to what was happening in the place. There were people milling around a man lying on the ground. When he asked Flavio what happened, Flavio told him that there had been a fight between Rudy and Miguel.

Magno watched as; three persons helped each other lift Miguel and carried him to the jeepney. After the jeepney had left, Magno, Flavio and Narciso Gupo proceeded to the store to buy medicine and, finding it closed, they went home.

When they arrived at the house of Flavio, they found Rudy and his two companions preparing to leave. The three were all covered with blood. When Magno asked him why he quarrelled with Miguel who used to be Rudy's business partner in buying dogs. Rudy answered that they had parted ways because Miguel was "makulit." Rudy added that Miguel apologized to him but he replied, "Mamatay ka na, Miguel."

After Rudy's group had left, Magno and Flavio conversed with the latter's wife, looked for herbs to cure Rosario's ailment and then went to bed. At around 4:00 o'clock in the morning, Magno and Flavio were awakened by Rosario who told them that the police were looking for Rudy. When they did not find Rudy, the police invited Magno and Flavio for an investigation. At first, Magno objected, telling the police that they had "nothing to do about" the incident. Nonetheless, Flavio accompanied the police to Libio to look for Rudy.

Together with Juan Magtibay, Magno and Flavio were investigated at the police station. Flavio was even tortured the police allegedly poured wine over his nostrils.[9]

Narciso Gupo, who was 78 years old when he testified, was the only witness presented by the defense to corroborate the testimonies of Magno and Flavio Gupo. A second cousin of Magno, Narciso added that after the first encounter of the two groups, someone from the jeepney remarked, "Kami'y babalik" (we're coming back).[10] He also stated that when the jeepney returned, Miguel asked Rudy why he was still in the vicinity. As the jeepney moved backward to the place where Rudy was, the "light of the jeep was put off", the passengers alighted and Narciso saw six men fighting each other ("nagpanggarote"). The three men from the jeepney were holding "panggarote" which they used beating their opponents.

The protagonists were moving while fighting until they were behind the jeepney. After one minute, two men boarded the jeepney, started the engine and switched on the headlight which revealed one man lying on the ground. That man was lifted by the two from the jeepney and then they went towards the direction of the poblacion.

Thereafter, together with Magno and Flavio, Narciso went to the house of Flavio where they found Rudy and his two companions. Rudy was hit on his forehead while his two companions were respectively hit on the left wrist and the back. The three were packing their things before leaving for Quezon for treatment.[11]

Finding that the accused conspired with each other in killing Miguel Atienza, that the "attacks were made in a sudden and successive manner while the victim was defenseless and unaware, of any ill-plan against his life" and hence in a treacherous manner, and that no other modifying circumstances attended the execution of the crime, the court imposed the aforementioned penalty. It recommended executive, clemency for Magno on account of his poor health and advanced age (he was 64 years old when the decision was promulgated on August 6, 1984). It also exhorted the Philippine Constabulary and the Integrated National Police to exert their best efforts, in arresting Rudy Nasul alias Rodolfo Tungga alias Rodolfo Moralejo.

Defendants Magno and Flavio Gupo interposed this appeal professing innocence of the crime for which they were convicted.

We hold that, the prosecution has-proven beyond reasonable doubt the culpability of the herein appellants in the killing of Miguel Atienza. They were positively identified as the perpetrators of the crime together with the still at-large Rudy Nazul.

The stand of the defense on the impossibility of identifying the culprits on account of the weather condition then which was dark, moonless and starless, crumbles in the face of the positive identification of the defendants as the ones responsible for hacking and beating Miguel Atienza by prosecution eyewitnesses Acob and Lontok. While it might have been true that the headlights of the jeepney were switched on only after the assault on Miguel, the testimony of Lontok that there was light in the jeepney[12] was not satisfactorily rebutted by the defense. Coupled with this is the fact that both eyewitnesses, who were also residents of Taysan, had known the Gupos for a long time.[13] It is a fact that when one meets a person known to him, identification takes place at first sight.[14]

The defense tried to demolish the credibility of Patrolman Africa by presenting proof that he had, so to speak, an ax to grind against the Gupos because Magno's daughter, who used to be Africa's helper, refused to return to his household and that Flavio who also used to be a worker in Africa's "atisan", did not do his job to Africa's satisfaction.[15] Granting that these testimonies are true, the prosecution's solid evidence against the Gupos has not been dented thereby inasmuch as Africa's testimony does not relate to the fatal assault on Miguel. In fact, Africa was already home when it occurred. No evidence, however, was offered by the defense to impeach the credibility of eyewitnesses Acob and Lontok or that they were impelled by improper motives in testifying against the Gupos.[16] Consequently, said eyewitnesses identification of the Gupos should be given full credit.[17]

The Court completely relies on the lower court's findings on the credibility of the witnesses. After all, the matter of credibility of witnesses is within the province of the lower court which, having heard and seen the witnesses as they testified, is in a better position to observe their demeanor and gauge their credibility.[18]

Inconsistencies which may be noticed upon close scrutiny of the prosecution eyewitnesses testimonies like the discrepancies in Acob's and Lontok's versions as to what particular parts of the body of Miguel were hacked or beaten, are not fatal to the prosecution's case if viewed from the quick succession of events resulting in the mortal wounding of Miguel. A fact that one eyewitness may have seen at a particular moment may not have been seen by or may have created a different impression on another eyewitness. This does not mean, however, that the latter witness was not present at all during the commission of the crime.[19] As long, as they do not detract from the substantial truthfulness and credibility of the prosecution evidence, inconsistencies and contradictions in testimonies, may not be considered material.[20] It should be noted, moreover, that the wounds of the victim as revealed by the postmortem examination report aforequoted, are reflective of the manner of inflicting them as testified to by eyewitnesses Acob and Lontok.

Magno Gupo's defense of alibi is shattered not only by his positive identification by the prosecution witnesses[21] but also by his own admission that, the distance between Flavio's house where he was allegedly at the time of the commission of the crime, and the vicinity of the "madyungan" where the crime was committed, was more or less fifty meters which distance could be negotiated in five to ten minutes time.[22] To succeed as a defense, alibi, which is the weakest of defenses and the easiest to fabricate, must be propped up not only by proof that the accused was at some other place at the crucial time but that it was physically impossible for him to have been at the crime scene.[23] The defense failed to present these requisites.

Anent appellants' contention that the prosecution suppressed the testimonies of Nelia Manalo, the wife of the victim who would have testified on the relationship between Miguel and Rudy, and Danilo Sabado, who was also allegedly, wounded during the incident,[24] we hold that even if duly presented, these testimonies would have been merely cumulative evidence which would, not have adversely affected the prosecution's case. At any rate, the non-presentation of some witnesses is a prerogative of the prosecuting fiscal.[25] Furthermore, as correctly observed by the Solicitor General, the failure of the prosecution to present in evidence the weapons used in the assault is at no moment considering that the postmortem examination report substantially established that some of the wounds sustained by Miguel were caused by hacking and beating.[26]

We agree with the lower court that, a conspiracy existed among Rudy Nasul, Flavio Gupo and Magno Gupo. Their respective acts of stabbing, hacking and beating the victim show a unity of action, and a singleness of purpose which is to inflict physical harm on Miguel Atienza.[27] It is not necessary that there be evidence of a previous plan or agreement to commit the assault. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desires to attack so that the act of one accused becomes the act of all.[28]

We find, however, that treachery is not present to qualify the killing as murder. Under Article 14 of the Revised Penal Code and the ruling in *People vs. Samonte*,[29] to appreciate treachery, there must be concurrence of the following conditions: (1) the employment of means, method or manner of execution which would insure the offender's safety from any defensive or retaliatory act on the part of the offended party, which means that no opportunity is given the latter to defend himself or to retaliate, and (2) that such means, method or manner of execution was deliberately or consciously chosen.

On the contrary, there is no treachery where the victim saw the four malefactors as they approached him.[30] Neither may treachery be appreciated where the attack was preceded by a quarrel and a heated discussion because

the victim was placed on his guard.[31] In the case at bar, Miguel Atienza was forewarned by the boxing incident which took place between him and Rudy Nasul an hour earlier. On their trip back, Miguel's group saw how Flavio stopped their jeepney. In fact, Lontok got off the jeepney when he saw Magno holding a lead pipe. Lontok even tried to pacify Magno.[32] Miguel's group, therefore, being equipped with a motor vehicle, had all the opportunity to insure their safety from the attacks of the defendants.

Neither is the aggravating circumstance of abuse of superior strength, which is alleged in the information, attendant in this case. The lower court completely ignored it and rightly so. Abuse of superiority cannot be appreciated because the evidence does not show that the Gupos and Rudy Nasul cooperated in such a way as to secure advantage from their superiority in number vis-a-vis their only victim.[33]

Absent any qualifying circumstance, the killing of Miguel Atienza may only be considered a homicide, not murder. Under Article 249 of the Revised Penal Code, homicide is punishable by reclusion temporal. There being no aggravating or mitigating circumstances, the penalty should be imposed in its medium period.[34] Applying the indeterminate Sentence Law, the Court in its discretion fixes the minimum term of the penalty at prison mayor in its maximum period.

WHEREFORE, appellants Magno Gupo and Flavio Gupo are hereby convicted of homicide under Article 249 of the Revised Penal Code and accordingly, they, are imposed the indeterminate sentence at twelve (12) years of prison mayor maximum as minimum penalty to seventeen (17) years and four (4) months of reclusion temporal medium as maximum penalty. They shall indemnify solidarity the heirs of Miguel Atienza in the amount of thirty thousand pesos (P30,000).

The Court adopts the recommendation of the lower court for executive clemency for appellant Magno Gupo. A copy of this decision shall be furnished the Office of the President.

SO ORDERED.

Gutierrez, Jr., Bidin, and Cortes, JJ., concur.
Feliciano, J., in the result

[1] CCC-VIII-799/781.

[2] TSN, July 7, 1980, 17-24.

[3] TSN, May 27, 1980, pp. 10-14.

[4] TSN, .supra, p. TSN, May 27, 1980.

[5] TSN, May 27, 1980, pp. 15-17.

[6] Exhibit B.

[7] Exhibit C.

[8] TSN, July 26, 1983, pp. 3-12; 15.

[9] TSN, July 27, 1983, pp. 3-12.

[10] TSN, July 13, 1982. p. 4.

[11] TSN, July 13, 1982,. pp. 4-8.

- [12] TSN, July 29, -1980, p. 15.
- [13] TSN, May 27, 1980, pp. 25-26; TSN, July 29, 1980, pp. 20-21.
- [14] People v. Aboga, G.R. No. 70255, January 29, 1987, 147 SCRA 404.
- [15] TSN, August 18, 1983, p. 7; TSN, July 26, 1983, p. 33.
- [16] See: People v. Melgar, G.R. No. 75268, January 29, 1988, 157 SCRA 718.
- [17] People vs. Dollantes, G.R. No. 70639, June 30, 1987, 151 SCRA 592.
- [18] People v. Bantac, G.R. No. 77115, November 8, 1988, 167 SCRA 109; People v. Turla, G.R. No. 70270, November 11, 1988, 167 SCRA 278; People v. Francisco, G.R. No. 69580, February 15, 1990.
- [19] People v. Bautista, G.R. No. 68731, February 27, 1987, 148 SCRA 155.
- [20] People v. Ancheta, G.R. No. 70222, February 27, 1987, 148 SCRA 178.
- [21] People v. Guevarra, G.R. No. 63011, November 13, 1989.
- [22] TSN, July 27, 1983, p. 18.
- [23] People v. Reunir, G.R. No. 73605, January 29, 1988, 157 SCRA 686.
- [24] Appellants' Brief, p. 15.
- [25] People v. Andiza, G.R. No. 71986-87, August, 19, 1989, 164 SCRA 642.
- [26] Appellee's Brief, p. 15.
- [27] People v. Masangkay, G.R. No. 73461, January 25, 1988, 157 SCRA 320.
- [28] People v. Montealegre, G.R. No. 67948, May 31, 1988, 161 SCRA 700.
- [29] L-31223, June 11, 1975, 64, SCRA 319, 325-326.
- [30] People v. Casiguran, L-45387, November 7, 1979; 94 SCRA 244.
- [31] Dacanay v. People, L-33240, November 21, 1979, 94 SCRA 383.
- [32] TSN, July 7, 1980, pp. 7-8.
- [33] People v. Mabansag, G.R. No. 60039-40, March. 20, 1985, 135 SCRA 475.
- [34] Art. 64[1], Revised Penal Code.

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