

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CAGALINGAN Y ROMINA, JOVITO CAGALINGAN Y ROMINA AND VICTOR ROMINA, JR. Y VELANCIO, DEFENDANTS-APPELLANTS.***G.R. No. 79168. August 03, 1990*

Ponente: PADILLA, J.

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This is an appeal interposed by the accused from the judgment\* rendered in Criminal Case No. X-87-187 of the Regional Trial Court of Cagayan at Aparri, finding them guilty of the crime of Murder and sentencing the accused Jovito Cagalingan y Romina and Victor Romina, Jr. y Velancio to suffer the penalty of reclusion perpetua; the accused Alfredo Cagalingan y Romina, to suffer an indeterminate penalty of 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, and ordering all of said accused to pay, jointly and severally, the heirs of the deceased Joemar Desor the amounts of P11,500.00 as actual damages, and P30,000.00, as indemnity for the death of said Joemar Desor, and the costs of suit.

The facts of the case, according to the People's counsel, are as follows:

"On or about 1:30 in the afternoon of June 4, 1984 at Looban, Block 14, Centro, Aparri, Cagayan, eight persons were playing bingo in the house of the spouses Alfredo and Benita Flores. Two of the players were Lory Bunabon and Veron Cagalingan (pp. 6-7, tsn, Dec. 11, 1984). Not long after her arrival and while seated at the door of the balcony. Lory Bunabon saw the accused Jovito Cagalingan about six meters away holding a basket containing claws of crabs. Joemar Desor (the victim) approached Jovito, took hold of the basket, and jokingly asked the latter to give him the crabs so that he could roast them. Jovito refused saying that he was bringing them home for their viand (PP. 50-53 and 58-59, tsn, Dec. 11, 1984).

Soon thereafter, the two were laughing although each of them was grappling for the possession of the basket (pp. 53-54, tsn, Dec. 11, 1984).

In order to gain advantage over Jovito to secure the possession of the basket, Joemar held the throat of Jovito with his right hand (pp. 51-54, tsn, Dec. 11, 1984). Jovito however was able to remove the hand of Joemar and went at the back of the latter (p. 80, tsn, Dec. 11, 1989).

Veron Cagalingan, wife of Alfredo Cagalingan, saw them and shouted that Jovito was being killed by Joemar. This impelled accused Alfredo Cagalingan, who was inside the house of his parents-in-law Alfredo and Benita Flores, to jump out of the house and proceed to the scene. Holding a bolo measuring 15 1/2 inches long (Exh. C), Alfredo went behind Joemar and stabbed him twice on the right side of his body parallel to his navel (pp. 9-10, tsn, Dec. 11, 1984).

Jovito who was able to free himself from Joemar drew his nine-inch kitchen knife from his waist and also stabbed the victim twice (pp. 11-12, tsn, Dec. 11, 1984).

While the stabbing was being perpetrated, accused Victor Romina, Jr. jumped out of the window of his house

to join the other accused. Using a nine-inch kitchen knife (Exh. D) , he also stabbed Joemar once. The latter at the time was already immobile, lying prostrate on the ground (p. 12, tsn, Dec. 11, 1984).

Mercedes Desor, mother of the victim, heard the commotion and rushed to the crime site. There she saw his (sic) son Joemar lying prostrate on the ground with the three accused still holding the bladed weapons dripping with blood. At this juncture, Alfredo Cagalingan was heard uttering a challenge saying who else still is brave man companion of Joemar Desor' (pp. 27-28, tsn, May 15, 1985).

Thereafter, Alfredo and Jovito Cagalingan went towards the direction of the police precinct while Victor Romina, Jr. ran eastward towards the Ryan Cinema (p. 28, tsn, May 15, 1989).

The mother of the victim embraced and pulled her son up but both of them fell down. She screamed for help. Her nephew and cousin responded and brought Joemar to the Aparri Emergency Hospital where the victim was treated by a certain Dr. Macria Ayuyang (pp. 28, 29, tsn, May 15, 1985). Unfortunately, Joemar died after then (sic) minutes from arrival due to loss of blood (PP. 3-8, tsn, Aug. 12, 1985).

Dr. Romulo de Rivera, Municipal Health Officer of Aparri, Cagayan, conducted an autopsy on the cadaver of the victim and submitted his medico-legal necropsy report (Exh. H) containing the following findings, to wit:

- '1. stabbed wound - 4.0 cm. x 1.5 cm x 11.0 cm. depth below the right axilla directed inward with sharp end backward.
2. stabbed wound - 6.0 cm. x 3.0 cm. x 22.0 cm. in depth over the right flank with 8th rib fractured sharp end anteriorly.
3. stabbed wound - 4.0 cm. x 1.5 cm. x 26.0 cm. in depth perpendicular end of the wound with sharp end downward.
4. stabbed wound - 3.5 cm. x 1.5 cm. x 6.0 cm. over the right lumber region with sharp end upward.
5. stabbed wound - 2.0 cm. x 1.0 cm. x 5.0 cm. along left infra - axillary region with sharp end downward.

CAUSE OF DEATH: shock secondary to hemorrhage due to multiple stabbed wounds.'

On the basis of the foregoing happenings, the Assistant Provincial Fiscal of Cagayan, after due preliminary investigation, filed the corresponding Information for murder against the three accused-appellants with the Regional Trial Court."<sup>[1]</sup>

The defendant-appellant Alfredo Cagalingan, while admitting having inflicted injuries upon the deceased Joemar Desor, insisted that he acted in legitimate defense of his brother when he inflicted the mortal wounds which resulted in the death of the said Joemar Desor. His version of the incident is summarized by the trial court as follows:

"x x x that about 1:30 in the afternoon of June 4, 1984. he was inside their house, owned by his parents-in-law Alfredo Torres and Benita Flores, at Looban, Aparri, Cagayan, listening to a radio drama when he heard screams from the bingo players. Looking through the window he saw Joemar Desor on top of his brother Jovito, about seven meters away, lying on the ground being strangulated by Joemar. He went to pacify Joemar telling him 'do not 'do that manong we are but one.' Joemar answered 'even all of you.' When Joemar partly unsheathed his knife he stabbed him several times with a big bolo (Exh. '5'-defense, Exh. 'C'-prosecution), thinking that Joemar will kill his brother with his (Joemar's) stainless steel knife (Exh. '1'-defense). Thereupon he went to the police headquarters and surrendered to Pat. Edwin Reyes telling him 'sir, I am surrendering because I killed somebody, Joemar Desor.'"<sup>[2]</sup>

The accused-appellant, Jovito Cagalingan, upon the other hand, denied having stabbed the deceased Joemar Desor. He claimed that while he was on his way home, at about 1:00 o'clock in the afternoon of 4 June 1984, he

was suddenly boxed on his right cheek by Joemar Desor. He just cried and went away because Joemar Desor was bigger than he and was the recognized "kingpin" of the neighborhood. But Joemar Desor followed and boxed him several times on the chest causing him to fall. When he fell, Joemar Desor went astride him and sat on his belly, and then held his neck, choking him. As a result, he lost consciousness. When he regained consciousness, he saw his brother, Alfredo Cagalingan, jumping out from the window of their house and coming to them. Alfredo then stabbed Joemar Desor with a bolo. After a while, Pat. de la Cruz of the local police arrived at the scene and he (Jovito) was brought to the police precinct.[3]

The defendant-appellant Victor Romina, Jr. also denied having stabbed the deceased Joemar Desor and interposed the defense of alibi. He declared that at about 12:20 o'clock in the afternoon of 4 June 1984, he went to see a movie at the Ryan Cinema with his friend, one Ferdinand .from Faire, Cagayan. At around 3:00 o'clock in the afternoon, his name was flashed on the screen of the cinema as "wanted outside". He went outside and was met by policemen who then arrested him and brought him to the police station for investigation.[4]

His testimony was corroborated by Ferdinand Ugale who declared that he and Victor Romina, Jr. went to see a movie at the Ryan Cinema at about 12:30 o'clock in the afternoon of 4 June 1984; and that while they were watching a movie, the name of Victor Romina, Jr. was flashed on the screen as "wanted outside" and Victor Romina, Jr. left him inside the moviehouse. [5]

In support of their appeal, the defendants-appellants claim that the trial court erred: (1) in not holding that the accused Alfredo Cagalingan killed the deceased Joemar Desor in defense of his relative; (2) in not holding that Jovito Cagalingan and Victor Romina, Jr. had no participation in the killing of the said Joemar Desor; and (3) in sentencing the accused Jovito Cagalingan to suffer the penalty of reclusion perpetua.

1. The appellants first claim that the trial court seriously erred in finding that unlawful aggression was not present in the killing of Joemar Desor. They argue that there was unlawful aggression on the part of the deceased because the latter was strangulating Jovito Cagalingan when he was stabbed by Alfredo Cagalingan.

A review of the evidence, however, fails to lend credence to the appellants' claim that there was unlawful aggression on the part of the deceased. Lory Bunabon categorically stated that the deceased Joemar Desor and the appellant Jovito Cagalingan were laughing and joking as they were grappling for the possession of the basket of crabs which Joemar Desor wanted to get from Jovito Cagalingan. For unlawful aggression to be present, there must be a real danger to life or personal safety.[6] Here, there was no danger to the life of Jovito Cagalingan as they (Jovito and Joemar) were in a frolicsome mood.

Besides, it would appear that the deceased was unarmed at the time and sustained five (5) stab wounds in different parts of his body.[7] which indicates that the act (stabbing) was not in defense of a relative but a determined effort to kill the deceased.

It would also appear that when Alfredo Cagalingan voluntarily surrendered to the police, he did not inform the latter that he killed the deceased in order to protect the life of his brother Jovito. He merely said that he accidentally injured one Desor.[8] As stated by the Court in one case,[9] "if he had really acted in self-defense, the probability is that he would have immediately informed the authorities of that fact if only to minimize his guilt if not to exculpate himself."

2. We also find no merit in the claims of the appellants Jovito Cagalingan and Victor Romina, Jr. that they did not participate in the commission of the crime. Lory Bunabon positively identified the said appellants as among those who stabbed the deceased Joemar Desor.[10] Lory Bunabon could not have been mistaken in her identification of the appellants (Jovito and Victor) as perpetrators of the crime because she was near them and the protagonists

were her immediate neighbors in the community.

Besides, the trial court found that the testimony of Jovito Cagalingan "is replete with self-contradiction - a mark of untruthfulness and incredulosity"[11] and we find nothing in the record which would justify our setting aside said finding.

As for the alibi of Victor Romina, Jr. that he was inside the Ryan Cinema at the time of the commission of the crime, suffice it to state that the said moviehouse is only about 100 to 150 meters away from the scene of the crime and the said appellant has not shown that it was physically impossible for him to be at the scene of the crime at the time it was committed. Besides, his alibi cannot prevail over his positive identification by Lory Bunabon.

3. Finally, the appellants claim that the penalty of reclusion perpetua, imposed by the trial court upon the appellants Jovito Cagalingan and Victor Romina, Jr. is excessive. Appellants argue that with the elimination of the death penalty in the 1987 Constitution, the penalty for Murder was accordingly reduced.

The contention is without merit. This issue had been laid to rest in the case of *People vs. Munoz*,[12] where the Court ruled that Article III, Section 19(1) of the 1987 Constitution does not change the periods of the penalty prescribed by Article 248 of the Revised Penal Code except that it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The Court therein further ruled that the range of the medium and minimum penalties for murder remains unchanged.

We find, however, that Jovito Cagalingan and Victor Romina, Jr. are only accomplices in the crime since their participations therein were not absolutely indispensable in the commission of the crime. Lory Bunabon declared that Jovito Cagalingan stabbed the deceased Joemar Desor after Alfredo Cagalingan had stabbed the deceased at the back, while Victor Romina, Jr. stabbed the said deceased while the latter was already lying prostrate on the ground.[13] While the acts of Jovito Cagalingan and Victor Romina, Jr. show a community of design with the principal, Alfredo Cagalingan, who inflicted the fatal wound, and they (Jovito and Victor) cooperated in hastening the victim's death, the said appellants' acts were not absolutely indispensable in the commission of the crime. A person who assaults a victim already fatally wounded by another, is only regarded as an accomplice.[14]

The penalty for appellants Jovito Cagalingan and Victor Romina, Jr. as accomplices must be modified. They are hereby sentenced to suffer an indeterminate penalty of from eight (8) years and one (1) day of prision mayor, as minimum, to fourteen (14) years, and eight (8) months of reclusion temporal, as maximum.

With the modification above indicated, the judgment appealed from is hereby **AFFIRMED** in all other respects, with costs against the appellants.

### **SO ORDERED**

Melencio-Herrera, (Chairman), Paras, Sarmiento and Regalado, JJ., concur.

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\* Penned by Judge Ricardo A. Daculi.

[1] Appellee's Brief. PP. 3-7

[2] Decision, pp. 13-14

[3] tsn of June 18, 1986, pp. 3-6, 8

[4] tsn of July 22, 1986, pp. 2-5

[5] tsn of August 21, 1986, pp. 4-5

[6] People vs. Sabio, G.R. No. L-23734, April 27, 1967, 19 SCRA 901

[7] Exhibit H

[8] tsn of May 15, 1985, p. 5

[9] People vs. Sarol, G.R. No. 66240, October 8, 1985, 139 SCRA 125, 130-131

[10] tsn of December 11, 1984, p. 9

[11] Decision, p. 43

[12] G.R. Nos. L-38969-70. February 9, 1989, 170 SCRA 107

[13] tsn of December 11, 1984, pp. 11-13; tsn of December 12, 1984, PP. 81-82

[14] People vs. Antonio and Desargo, 73 Phil 421

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