

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MACALINO Y LAGMAN, NELSON BAUTISTA ALIAS NELSON INTSHIK AND DOMINADOR ROBLES ALIAS DOMING, DEFENDANTS-APPELLANTS.

G.R. No. 79387. August 31, 1989

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

Jose Macalino, Nelson Bautista alias "Nelson Intshik" (or "Intsik") and Dominador Robles alias "Doming" were charged with murder in Criminal Case No. C-16360 (81) before the Regional Trial Court, National Capital Region, Branch 121 (Caloocan City) in an information dated November 12, 1981 which alleged:

"That on or about the 11th day of August, 1981 in Kalookan Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring together and mutually helping one another, with deliberate intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, stab and hack with the use of an axe on the different vital parts of his body one Renato Chavez y Chavez, thereby inflicting upon the latter serious physical injuries, which injuries caused the victim's death at the Kalookan City General Hospital." [1]

Upon being arraigned, the three accused pleaded "not guilty".

The evidence for the prosecution shows that at about three o'clock in the afternoon of August 11, 1981 at Isla San Juan, Tambakan, Maypajo, Caloocan City, Renato Chavez, twenty-five years old, married, and doormat maker, was stabbed at an alley by the three accused. He died several hours later at the Caloocan General Hospital from multiple stab wounds.

The stabbing incident ("saksakan") was witnessed by Carlito de Leon, twenty-seven years old, jobless, who was then on his way to the house of Chavez to have the socket of his flat iron repaired by the latter. Nearing his destination and about two arms length from the scene of the assault, De Leon noticed Chavez talking with Macalino. The latter was holding a knife. They seemed to be arguing but from where De Leon stood, he could not understand what they were saying. Nelson Bautista and Dominador Robles, two companions of Macalino, stood in front and at the right side of Chavez, respectively. Suddenly, Bautista, who was facing Chavez, stabbed the latter, hitting him in the front part of his body. Chavez turned around and ran away but his attackers pursued him. Then Bautista axed him ("pinalakol"), striking him at the back. Robles and Macalino also stabbed the victim. [2]

People scampered away. De Leon became frightened. He stepped farther back and tried to hide himself ("tumabi"). [3]

Chavez fell to the ground. His three assailants then fled from the scene. Soon after, several persons came to help Chavez. De Leon himself was not able to help as he was shocked by what he had just seen. [4]

At the time of the stabbing, Chavez's wife, Nelia Lopez, about nineteen years old, was at home, sick. She heard a

girl shouting that her husband was being stabbed. She ran out of the house and almost collided with Chavez who was bloodied and could not speak. She went out to call her brother-in-law, Restituto Chavez.[5]

Restituto, the brother of the deceased Chavez, was then cleaning inside the church at J.P. Rizal St. when he was summoned by Nelia, the victim's wife. He proceeded at once to the residence of his wounded brother whom he found to be very pale, with eyes almost closed, and immediately rushed him to the hospital. On the way, on board a tricycle, the victim told Restituto that his attackers were Jojo Calcal (also known as Jose Macalino), Nelson Bautista and Dominador Robles. Restituto knew the trio personally. At one time, they were together in a welcome party of the "cursillo".[6]

At the Ospital ng Kalookan, Chavez was examined by resident physician Dr. Lorenzo R. Bernal. Bernal noted that Chavez was bleeding profusely and his face was pallid. There was no heartbeat and blood pressure was "zero-zero". Efforts to revive the victim were futile. Bernal pronounced him dead on arrival.[7]

The medico-legal certificate dated January 31, 1983 indicated the following injuries sustained by Chavez:

- "- Punctured wd. 0.3 cm. parasternal area level of 2nd ICS (R).
- Stabbed wd. 1 cm. ant. lumbar (L); 1.5 cm. 7th ICS (L).
- Multiple lac. wd. ranging 1-2 cm. No. 2 dorsal hand (L).
- Stabbed wd. 1.5 cm. middle 3rd post. (L) forearm; 4 cm. ant. aspect middle 3rd (L) forearm; 2.5 cm. posterior lateral aspect proximal 3rd upper arm (L.); 1 cm. lat. lumbar (L); post acillary line (L) level of 9-10 ICS 1.5 cm."[8]

Dr. Bernal opined that the fatal wounds could have been the ones on the chest (parasternal area) and at the anterior lumbar area or left side of the abdomen because they were deep penetrating wounds and could have perforated a vital organ. From the nature and number of wounds, he concluded that several weapons were used and they were all sharp ones.[9]

Sergeant Renato Balbin of the Northern Police district investigated the August 11, 1981 stabbing incident. After seeing the cadaver of Chavez at the hospital, Sergeant Balbin proceeded to the crime scene at Tambakan, conducted an ocular inspection of the alley and questioned several eyewitnesses, including Godofredo Mariano, a brother-in-law of the victim. He gathered from them that while Chavez was walking home in the afternoon of August 11, 1981, his way was blocked by Jojo Calcal (Jose Macalino). He was "boloed" by Macalino. At this juncture, Bautista came from behind and stabbed Chavez. Chavez fled but Macalino chased him and stabbed him, causing him to reel and fall. Then Dominador hacked the victim with an axe and thereafter the accused left him for dead.[10]

Many of the people then present were markedly reluctant to tell Sergeant Balbin what they had seen. They also refused to testify. Thus the police officer did not bother anymore to take down their names. It was only Mariano who gave a statement.[11] He told the police that Macalino became angry at Chavez because Chavez reported to the police that it was Macalino who had stabbed Mariano the previous day, August 10th.[12] For reasons not shown in the records, Mariano did not appear in court despite repeated service of subpoena.

The defense presented a totally different picture of the killing of Chavez. Its basic theory was that Chavez met his death at the hands of a rival Tondo gang during a rumble.

Accused Dominador Robles, a twenty-one year old tailor, testified that on August 11, 1981 at three in the afternoon, he was then in front of a store at Tambakan, which, as the name denotes, is a garbage dump area. He was talking with the two other accused, Nelson Bautista and Jose Macalino.[13]

He noticed four persons approaching. He recognized one of them as Romy, an acquaintance from Tondo. Then pandemonium broke loose as two warring gangs, one from Tondo, led by Romy, and the other group from Tambakan, headed by the victim Chavez or "Rene," tangled with one another.[14]

The appellants lost no time in joining the free-for-all. Since "Rene" was from their place, they rallied behind him. They picked up stones and threw these at the outsiders. When the latter tried to flee, they ran after them but failed to catch any one. The whole thing was over in fifteen minutes, after which the accused went home. They did not know what happened to Chavez because they were then pursuing the rival group from Tondo. It was only after an hour later that they were told that Chavez had been stabbed and taken to the hospital.[15]

The other accused, Jose Macalino, a calamansi vendor, then about eighteen years old, corroborated the story of Robles. He testified that he did not witness the actual killing of Chavez.[16]

The third accused, Nelson Bautista, was not presented as a witness because, according to the defense, his testimony would only be corroborative.[17]

Unconvinced by the version of the defense, the trial court rendered judgment on June 13, 1986, the dispositive portion of which reads:

"WHEREFORE, the Court finds the accused JOSE MACALINO y LAGMAN, NELSON BAUTISTA alias 'Nelson Intsik' and DOMINADOR ROBLES alias 'Doming' GUILTY beyond reasonable doubt and as principals, of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code, and there being no attendant mitigating nor aggravating circumstances, hereby sentences them to suffer imprisonment of RECLUSION PERPETUA to jointly and severally indemnify heirs of the deceased Renato Chavez in the sum of thirty thousand pesos (P30,000.00) as actual and compensatory damages, fifty thousand pesos (P50,000.00) as moral damages plus costs of the suit." [18]

On behalf of the three accused, their counsel de oficio appealed to this Court. It should be noted however that as to Jose Macalino, the appeal is considered abandoned by reason of the fact that he is presently at large, having escaped from confinement in the local city jail during the pendency of the trial in the lower court on June, 19, 1984.[19]

Appellants contend that the court a quo erred in (1) not finding that the prosecution witness Carlito de Leon was a perjured witness; (2) in finding that the victim made a dying declaration; and (3) in not finding that the prosecution failed to prove their guilt beyond reasonable doubt.

Appellants assail the testimony of Carlito de Leon on the ground that he is not a credible witness as shown by the following circumstances: (1) De Leon is a Sputnik gang member; (2) he was not really an eyewitness since he did not actually hear the subject matter of the alleged argument between the victim and the accused Macalino; (3) he was indifferent to the investigation in that he did not promptly report to the authorities that he had actually witnessed the fatal attack on Chavez, and (4) he made a mockery of the trial when he was noted to have laughed on two occasions while he was being cross-examined on the witness stand.

And what if De Leon belongs to the dreaded Sputnik gang? Appellants have not presented a single piece of proof to show that as a member thereof, De Leon has engaged himself in activities which are likely to affect his integrity and credibility. On the other hand, it has equally been established that De Leon is a member of the Damayan Magkakapitbahay, a neighborhood association involved in civic work.[20]

While De Leon was admittedly two arms length from the scene, this would not make his eyewitness account any less credible. It is not important that he should have heard the conversation between Macalino and the victim. From where he stood, he could clearly see the acts of the accused. He sensed that there would be an ugly

confrontation because Macalino was holding a knife. While he was afraid, he could not contain his curiosity. He watched as the three assailants delivered the fatal blows that would kill Chavez.

The alleged apathy or indifference of De Leon to the ensuing police investigation is not unusual. It is not uncommon for ordinary people to refrain from getting involved. This is of judicial notice.[21] Sometimes, the fear of possible reprisals compels them to remain silent especially if the personalities involved are known notorious characters in the neighborhood. Macalino, for one, is a member of the Commando group which is an adversary of the Sputnik gang to which the deceased Chavez belonged. He has also been in jail once for theft.[22]

The trial court did not err in believing De Leon's narration. Despite its inconsistencies and Del Leon's deplorable behavior at the witness stand, it is a fairly accurate description of how Chavez was killed.

As for the defense, its explanation of the death of Chavez is hardly plausible and is highly speculative. By their admission, neither one of the appellants saw the actual stabbing of the deceased. The positive identification made by De Leon of the three accused as the perpetrators of the crime cannot be overcome by the mere denial of the accused who conjectured that the stabbing came from the Tondo group but without pinpointing the actual knifewielders.

Not only that. The defense has also unsuccessfully refuted the condemnatory ante mortem statement made by the victim in which he named the accused as his assailants. The appellants assail the admissibility of such statement on the ground that the prosecution failed to show that it was uttered under consciousness of an impending death. Appellants contend that the declarant should have categorically stated at the time he implicated the accused that he knew that his death was imminent.

This is untenable and downright absurd. For the dying declaration to be admissible, it is not necessary to prove that the declarant stated that he is at the brink of death. It suffices if, judging from the nature and extent of his injuries, the seriousness of his condition is so apparent to the victim that it may safely be inferred that such ante mortem declaration was made under consciousness of impending death.[23] That his demise came swiftly upon his arrival at the hospital further emphasizes the victim's realization of the hopelessness of his recovery.

Counsel for appellants would want this Court to believe that his clients are innocent as shown by the fact that they did not attempt to leave the locality after the incident. While in proper cases that may indicate lack of guilt, it may also be interpreted to mean that the appellants, notorious as they are, felt complacent that their neighbors would be cowed into keeping quiet. In this regard they were probably right. For despite the many onlookers and bystanders, only a handful had the gumption to reveal what they had witnessed, as disclosed by the police investigator.

Appellants were positively identified by an eyewitness. They were also implicated in the ante mortem statement made by the victim. These crucial pieces of evidence sufficiently negate the alibi and denials proffered by the appellants, more so when the latter have not shown that the murder charge and the testimonies in court were impelled by ill motive. Appellants' guilt has been established to a moral certainty and that guilt or culpability is imputable to all appellants in equal degrees because they acted in unison in snuffing out the life of Chavez. The existence of a conspiracy can be inferred from the fact that the three felons ganged up on the deceased and took turns in stabbing him. They also fled together after accomplishing their violent mission.[24]

Contrary to the finding of the trial court, the fatal assault on Chavez was not characterized by treachery.

Alevosia, to be qualifying, should indicate that the attack was deliberate and unexpected. It is not present where the victim, before being attacked, had a heated argument with one of the malefactors. That must have placed him on his guard. Furthermore, he was standing face to face with them so that the initial assault was not sudden or unforeseen. As a matter of fact, all but one of the stab wounds sustained by Chavez were in front of his body which

would demonstrate that the assault on him was frontal.[25] If at all, the element of suddenness was only the reaction on the part of the eyewitness.[26]

But the commission of the felony was attended by abuse of superiority in number. Chavez was killed by three persons who were all armed and who took advantage of their combined strength to consummate the offense. Against their clearly superior power, it was impossible for the lone victim to resist and defend himself.[27]

It follows that the crime committed is not murder but homicide, modified by the generic aggravating circumstance of abuse of superior force. There being no mitigating circumstance to offset the aggravating circumstance, the penalty to be imposed upon the accused is the maximum period of the penalty prescribed under Article 249 of the Revised Penal Code which is reclusion temporal in its maximum period.

WHEREFORE, the judgment of the court a quo is modified in that accused-appellants Nelson Bautista alias "Nelson Intshik" and Dominador Robles alias "Doming" are found guilty of homicide. They are hereby sentenced to an indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to eighteen (18) years of reclusion temporal as maximum, and to pay the heirs of the victim jointly and severally the reduced amount of P10,000.00 as moral damages, the award of P50,000.00 moral damages by the trial court being excessive. With respect to accused Jose Macalino and the civil indemnity of P30,000.00 to be paid jointly and severally by the three (3) accused, the judgment is AFFIRMED. Costs against the appellants.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Records, p. 1.

[2] TSN, July 27, 1983, pp. 41-43.

[3] TSN, July 27, 1983, p. 43.

[4] TSN, July 27, 1983, p. 44.

[5] TSN, June 27, 1983, p. 33.

[6] TSN, January 31, 1983, pp. 3-4.

[7] TSN, January 31, 1983, pp. 10-13.

[8] Records, Exh. A.

[9] TSN, January 31, 1983, pp. 17, 22.

[10] TSN, June 6, 1983, pp. 27-29; Records, Exh. C.

[11] Records, Exh. B.

[12] TSN, June 6, 1983, p. 30.

[13] TSN, October 18, 1983, pp. 62-63.

[14] TSN, October 18, 1983, pp. 63-64.

[15] TSN, October 18, 1983, pp. 63-64, 68.

[16] TSN, December 20, 1983, pp. 74-77.

[17] TSN, December 20, 1983, p. 84.

[18] Records, p. 146.

[19] Records, p. 138. See Resolution dated November 10, 1988 in G.R. No. 57718, entitled "People v. Patajo".

[20] TSN, July 27, 1983, p. 56.

[21] People vs. Pacabes, G.R. No. 55417, June 24, 1985, 137 SCRA 158.

[22] TSN, December 20, 1983, p. 79.

[23] People vs. Elefano, Jr., No. L-32573, November 25, 1983, 125 SCRA 702; People vs. Jacinto, G.R. No. 51908, November 29, 1984, 133 SCRA 498.

[24] See People vs. Bacho, G.R. No. 66645, March 29, 1989.

[25] People vs. Canete, 44 Phil. 478; People vs. Casiguran, No. L-45387, November 7, 1979, 94 SCRA 244; People vs. Dacanay, No. L-33240, November 21, 1979, 94 SCRA 383.

[26] People vs. Camilet, G.R. No. 70392, June 30, 1986, 142 SCRA 402.

[27] People vs. Baul, 39 Phil. 846; People vs. Villamora, 86 Phil. 287; People vs. Bacho, G.R. No. 66645, March 29, 1989.

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