

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ISRAEL CARMINA ALIAS “BOY” AND VALERO CARMINA,
ACCUSED. VALERO CARMINA, ACCUSED-APPELLANT.**

G.R. No. 81404. January 28, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The grisly details of the killing cannot be told without revulsion, but they must be told. It is unbelievable that it happened in this day and age and not in a distant and savage time when brutality was a way of life and death when it came aroused no special reverence. This case belongs to that barbaric past.

The victim was Jose Billy Agotano, who was only twenty years old when he was killed in cold blood. According to the prosecution, the killers were Valero Carmina, the herein accused-appellant, and his son Israel Carmina, also known as Boy.

The two were charged before the Regional Trial Court of Mati, Davao Oriental, in an information reading as follows:

That on or about November 15, 1986, in the Municipality of Tarragona, Province of Davao Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, armed with garand rifles and sharp-pointed bolo (pinuti), and with intent to kill, did then and there wilfully, unlawfully and feloniously attack, assault and shoot with said garand rifle one JOSE BILLY AGOTANO, thereby inflicting upon the latter wound which caused his death, and not contented with that, with the use of the said bolo, accused slaughtered the dead body of said Jose Billy Agotano.

The commission of the crime was attended by the aggravating circumstances of abuse of superior strength and adding ignominy to the natural effects of the crime.

Only Valero Carmina could be arraigned and tried because Israel disappeared and remains at large to date. After trial, the accused-appellant was found guilty and sentenced to life imprisonment.[*] He was also required to pay civil indemnity in the amount of P30,000.00 to the victim's heirs plus the costs of the suit.[1]

The case for the prosecution was established mainly through the testimony of two eyewitnesses, namely. Victoriano Agotano, the victim's brother, and Ramon Katiad, in whose yard the crime was committed.

Victoriano testified that he and Billy were on their way home from their farm when they were intercepted at gunpoint by Valero, his wife Ernita, their son Israel, and Aileen Masanguid at about 2:30 o'clock in the afternoon of November 15, 1986. Valero had a carbine, Israel a Garand rifle and a hunting knife, and Ernita a bolo at her waist. The group accused Billy of being a "pulahán" because of the red t-shirt he had wrapped around his head to cover it from the rain. The two of them were taken to the nearby house of Dionisio Megriño, where Billy was struck in the forehead by Valero and in the chest by Israel with the handle of their respective firearms.

The group stayed there for about thirty minutes, and then Victoriano and Billy were ordered to march to their brother Alfredo's house, with their captors trailing them closely. He, Billy and Alfredo, together with two other persons named Pilo and Roger, who happened to be in the house at the time, were ordered to fall in line and sing "Bayang Magiliw." When they reached the line "Ang mamatay nang dahil sa iyo," Valero and Israel told them, "You shall die." Twenty minutes later, they were all taken to a cousin of the Agotanos from whom the Carminas demanded tuba, rice and chickens. Alfredo, Roger and Pilo were forced to drink the tuba with Valero and Israel. The drinking lasted for two hours. Then the Carminas decided to leave, taking with them Victoriano and Billy, who were, ordered to carry a kettle, the rice and the chickens.

The group walked to the house of Ramon Katiad about one and a half kilometers away and arrived there at 6:30 p.m. Katiad was not there at the time but came home at about seven o'clock. The Agotanos cooked the rice and roasted the chickens which they and the Carminas ate. Katiad and his family had their own supper later.

At about ten o'clock, Israel told Billy, "You can no longer be home, Do." When asked why, he replied: "Because you are wearing a red cloth around your head." Katiad pleaded that Israel not do anything in his house but Israel said, "I am going to kill him." In desperation and fear, Victoriano told Billy to kneel before Israel and beg for his life, which Billy did. But to no avail. Israel took Billy with him downstairs while Valero detained Victoriano in the house, pointing his rifle at him.

In the yard, Israel pushed Billy from behind and then shot him, hitting him in the nape. Billy died as he felt to the ground. Israel then stripped and exposed the dead body. He went back to the house to get his mother's bolo and ordered Victoriano to go down and look at his brother's corpse. The Katiad family (including the children) was also told to go to the yard. When everyone had gathered around the dead body, they watched in horror at the gruesome acts that followed.

Israel chopped off Billy's arms and legs. Then he beheaded the corpse and, raising the severed head, shouted "Taganlang," meaning God. He cut open the stomach and pulled out the intestines. He hung these around Victoriano's neck, saying, "You use this as your necklace, the intestines of your younger brother." Going back to the dismembered corpse, he pulled out the liver and the lungs. Triumphant raising them, he shouted, "We will use this as pulutan!"

Having done all this, Israel then turned his attention to Victoriano and said "I will kill you next!" He lunged at Victoriano but lost his balance and the latter was able to parry the blow. Victoriano ran for his life! It was, as he put it later, "a suicide run." Israel pursued and took a shot at him but missed. Victoriano made good his escape. Arriving at about two o'clock in his mother's house, he reported what had happened and warned the family that the Carminas were after them. Under cover of darkness even as deathly fear stalked them, they took refuge in a neighbor's house. Later in the morning, they reported the killing to the authorities.

Victoriano's narration of the killing and slaughter was corroborated by Katiad, the other eyewitnesses. He added the distasteful detail that after shooting Billy to death, Israel broke into happy song: "Siga-siga sa baryohan, hindi natatakot sa barilan!" He said that the Carminas took him with them after Victoriano's escape but finally released him after about fifteen minutes. Later, he and several policemen gathered the parts of the dismembered corpse that were scattered in his yard and put them in a sack.

Valero's defense was alibi. He declared under oath that at the time of the murder, he was hiding in the mountains of Manay from the family of Elnoro Badadao, whom he "was forced to kill" over a land dispute. He denied knowing the Agotanos and Megriño but admitted that Katiad was his friend and former neighbor. He said the testimonies of the prosecution witnesses were all lies because the last time he was in Ompao was in 1983.

Charito Garsona, the only other witness for the defense, testified that on November 15, 1986, the accused-appellant and three other persons passed by her house in Manay, Davao Oriental, at about 4 o'clock in the afternoon and asked for food.

In his brief, the accused-appellant contends that he should not be blamed for the killing of Billy Agotano, granting arguendo that it was Israel who killed the victim and dismembered his corpse. Israel, if at all, should be held accountable alone for his act. The fact that the accused-appellant did not try to escape but yielded when he was arrested should indicate his innocence, which should be presumed in the absence of proof of his guilt beyond reasonable doubt.

There is indeed such proof. His alibi must fall not only because of its inherent weakness but also because of his positive identification by the two eyewitnesses, one of whom was his near-victim and the other his compadre.

While it is true that it was not he who actually shot and later dismembered Jose Agotano, the evidence has clearly established a conspiracy between him and his son that makes him equally guilty with the latter. The two of them acted in concert in the conception and execution of the killing. The decision to kill Billy was reached by the two of them although it was Israel who personally implemented it. While Israel did his part in the killing yard, Valero detained Victoriano in the house at gunpoint and watched the shooting and dismemberment of Billy. As a father, Valero made no move to restrain his son; on the contrary, he watched with approval as Israel carried out their joint decision.

The crime was qualified with treachery because, although the Victim was forewarned of his impending death, he was shot in the back while he was entirely defenseless and the killers were under no risk whatsoever from any retaliation the victim might make. In *People v. Barba*,^[2] the accused pointed a rifle at the victim from a distance of six meters and said, "Pardong, stand up, we are going to shoot you!" With hands raised, the victim pleaded, "Do not kill me, investigate first what was my fault!" This Court held there was treachery when the accused shot and killed the victim.

Even if treachery were not present in this case, the crime would still be murder because of the dismemberment of the dead body. One of the qualifying circumstances of murder under Article 248, par. 6, of the Revised Penal Code is "outraging or scoffing at (the) person or corpse" of the victim. There is no question that the corpse of Billy Agotano was outraged when it was dismembered with the cutting off of the head and limbs and the opening up of the body to remove the intestines, lungs and liver. The killer scoffed at the dead when the intestines were removed and hung around Victoriano's neck "as a necklace" and the lungs and liver were facetiously described as "pulutan."

Although the information did not categorically allege this qualifying circumstances in the exact words of the law, it was nevertheless deducible from the statement that the "accused slaughtered the dead body of said Jose Billy Agotano."

Thus, in *People v. Obenque*,^[3] the information charged "that after thus shooting Sergio Cabradilla, the accused Elpidio Obenque in the furtherance of his criminal design, loaded the body of his victim in the Volkswagen Brasilia Sedan with Plate No. BEE 164, Series of 1977 and with utmost cruelty, dump the corpse in a ravine x x x." It was held that this act of the accused constituted an outrage of or scoffing at the corpse of the victim.

We agree with the trial court that evident premeditation should be disregarded because sufficient time had not elapsed between the determination to commit the crime and its execution, to enable the accused to reflect upon the consequences of their act. It is not certain that when early in that afternoon, Valero told the captives in Megriño's house that they would die, the Carminas had already definitely resolved to commit the murder. In fact, although

the threat was made to all of the captives, only Billy was killed in the end. Moreover, there was no showing that they had coolly and dispassionately planned the execution of the offense. The events leading to the murder suggest that the Carminas were from the start busy with oppressing the Agotanos or drinking tuba, leaving no time for that detached and undisturbed premeditation of the murder. It was only when they were in Katiad's house that the decision to kill Billy was made, the justification being that "we have already maltreated him, this time we will just finish him because he might retaliate."

Abuse of superior strength was also correctly not considered, being absorbed in alevosia.

But it was incorrect to appreciate adding ignominy to the offense because the victim was already dead when his body was dismembered. This aggravating circumstance requires that the offense be committed in a manner that tends to make its effects more humiliating to the victim, that is, add to his moral suffering.[4]

On the other hand, the fact that Valero yielded when he was apprehended did not operate to mitigate the penalty because mere non-resistance to arrest is not considered voluntary surrender.

What possessed the killers in the commission of their nauseating acts can only be left to incredulous conjecture. What is certain is that whether it was caused by fanatic ideology, or plain intoxication, or an innate bestiality, the bizarre desecration of the corpse was utterly disgusting and deserves the strongest if helpless condemnation. The penalty prescribed by law, which is only reclusion perpetua, does not seem severe enough.

WHEREFORE, the appeal is DISMISSED. The sentence imposed, except only as to the civil indemnity, which is increased to P50,000.00, is AFFIRMED. It is so ordered.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[*] Decision penned by Judge Ricardo M. Berba.

[1] Rollo, p. 26.

[2] G.R. No. L-7136, September 30, 1955.

[3] 147 SCRA 488.

[4] U.S. v. Abaigar, 2 Phil. 417.

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