

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARTIN CAGADAS, JR., MACARIO BARBERO, ROMY TULIO, CORITO PIASIDAD, RENE BALONG, ROBERTO CULTURA AND TATOR SALVADOR, APPELLANTS.

G.R. No. 88044. January 23, 1991

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This case was elevated to this Court on appeal as the penalty of reclusion perpetua was imposed upon the appellants.

On June 6, 1973, at around 6:30 in the morning, Rex Ballena and his sister, Lucia Ballena-Tabo, left their residences at Longganapan, San Vicente, Davao, bound for the capital town of Tagum, to withdraw some money with which to pay their farm laborers. In order to reach their destination, they had to pass through Sitio Rizal in Binancian, Municipality of Asuncion, Davao, to take a jeepney ride to Tagum. While waiting inside the jeep at the Sitio Rizal Terminal, some members of the Integrated Civil Home Defense Force (ICHDF), including the accused, approached them and asked where they were bound for and why. Rex Ballena naively informed them that they were on their way to Tagum to withdraw money from the bank with which to pay his farmhands. When asked if they would be returning to Longganapan that day, Lucia replied that only her brother, Rex, would do so. One of the ICHDF members who approached them was identified by Lucia Tabo as Martin Cagadas, Jr.

Rex and Lucia arrived in Tagum at nearly noon. After withdrawing P800 from his Family Savings Bank Account No. 1517020387, Rex purchased some necessities for his family, reserving P500 for his workers' wages. He returned to Longganapan the following day, leaving his sister Lucia in Tagum.

Rex was able to pass Sitio Rizal unmolested. In fact, he met Santiago Vercede, his neighbor in Longganapan, while travelling on Dalisay Road at around 3:30 that afternoon, proceeding toward Sangab.

The following day, Lucia returned to Longganapan and discovered that her brother never arrived home and was missing.

On June 9, 1983, at around 8:30 in the morning, Lucia informed their barangay councilman, Jose Magunot, who was also the deacon of the Iglesia ni Kristo Church, that she was looking for her brother Rex. Together with other farmers living near the Bontiqui/Lapatigan Creek, they searched for Rex. On their way to Rizal, they met members of the ICHDF namely, Miguel Daub, Martin Cagadas, Jr., Macario Barbero, Romy Tulio, Corito Piasidad, Rene Balong, Roberto Cultura and Tator Salvador, who inquired about their mission and dissuaded them from continuing their search for Rex. They were advised to report the matter to the barangay officials in Binansian, Asuncion, which they did. However, no action was taken by the said barangay officials.

In the evening of June 10, 1983, due to the very strong stench emitting therefrom, the decomposed body of Rex Ballena was found lying face down in a deep ravine below the mouth of the Macjum River about one-half

kilometer away from the Bontigui Creek. His body bore multiple stab wounds in the chest and stomach, with the intestines protruding, his throat slashed, and head smashed with a hard and heavy object. His mouth was still gagged with a red handkerchief and his hands bound with boracan vines behind his back. His money was gone but his Savings Account passbook was found beside the decaying corpse. Without waiting for the Municipal Health Officer's post-mortem necropsy examination or the Municipal judge's Inquest Report, his remains were laid to rest the next day.

On November 8, 1984, or more than a year later, an Information for murder was filed against the armed ICHDF members, namely: Miguel Daub, the ICHDF team leader, Martin Cagadas, Jr., Macario Barbero, Romy Tulio, Corito Piasidad, Rene Balong, Jose "Roberto" Cultura and Saturnino "Tator" Salvador, who had been seen by eyewitnesses leading Rex, with hands hogtied behind his back and his mouth gagged by a red handkerchief, towards the deep gully where his decomposing body was found. The ICHDF was a para-military group organized by local units of the Armed Forces of the Philippines and composed of selected civilians in the locality to assist the Army in its peace-keeping duties.

The amended information, filed on December 3, 1984, reads:

"The undersigned accuses MIGUEL DAUB, MARTIN CAGADAS, JR., MACARIO BARBERO, ROMY TULIO, CORITO PIASIDAD, RENE BALONG, JOSE CULTURA and TATOR SALVADOR of the crime of Murder under Article 248 of the Revised Penal Code, committed as follows:

"That on or about June 6, 1983, in the Municipality of San Vicente, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill and armed with guns and bladed weapons, did then and there wilfully, unlawfully and feloniously attack, assault, hack and stab one Rex Ballena, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

"That in the commission of the foregoing offense all the above-named accused took advantage of their public position as members of the Integrated Civil Home Defense Force and their superior strength which circumstances aggravate their crime." (p. 3, Trial Court's decision; p. 24, Rollo.)

The accused were arraigned on December 14, 1984. Each entered a plea of "Not Guilty" to the charge. At the trial, the prosecution presented five witnesses and the defense, thirteen. Two prosecution witnesses, Ramos Magunot and Jose Magunot, testified that they saw on June 6, 1983 at around 4 p.m., from their farm huts situated along the Bontigui Creek in Sitio Rizal, Rex Ballena, hogtied and being led by the accused toward the Macjum River, where his corpse was later discovered. Leading the way was Martin Cagadas, Jr.; on the left side of Rex was Romy Tulio who held the vine tied around Rex's hands; on the right was Tator Salvador, and directly behind was Macario Barbero, who held a gun against the victim's back, followed by Corito Piasidad, Rene Balong, "Jose" Cultura and ICHDF team leader Miguel Daub. Jose Magunot testified that he was summoned by the ICHDF team the same evening because their leader (Daub) caught him (Jose) watching when they hogtied Rex. He was warned not to tell on them at the risk of his own life. There was, however, no eyewitness to the actual killing.

All the accused put up the defense of alibi, claiming that they could not possibly have committed the heinous crime imputed to them, for they were not in the place pointed to by the prosecution witnesses, having either worked in another ICHDF detachment center or in some other place.

On August 24, 1988, the Regional Trial Court of Tagum, Davao (Branch 1) rendered a decision finding all of the accused, excluding Miguel Daub (who died during the trial) "guilty beyond reasonable doubt of the crime of murder as charged, sentencing them to suffer the penalty of reclusion perpetua with all the accessory penalties

provided by law, and to indemnify the widow, Aquila Ballena, and the heirs of Rex Ballena P12,000 as compensatory damages, plus Thirty Thousand (P30,000) Pesos, as and in the concept of moral damages, the filing fees thereof to stand as lien to the full and complete execution for the satisfaction of the awards." (p. 50, RTC decision; p. 137, Rollo.)

The defendants appealed to this Court in view of the penalty imposed on them. They allege that the lower court erred:

1. in convicting them of murder despite the prosecution's failure to prove their guilt beyond reasonable doubt;
2. in giving credence to the improbable and ill-motivated testimonies of prosecution witnesses Ramos and Jose Magunot;
3. in convicting the appellants of the crime charged based on purely circumstantial evidence;
4. in disregarding their defense of alibi;
5. in convicting Roberto Cultura even if he was not one of those charged in the information; and
6. in finding that the aggravating circumstances of (a) taking advantage of public position, (b) superior strength, (c) evident premeditation, and (d) treachery were present in the commission of the crime.

The appeal has no merit.

While it is true that no eyewitnesses to the actual killing were available or brave enough to come forward and testify against the accused, direct evidence is not the only basis upon which their guilt may be predicated. Their guilt may be, as it was, established through circumstantial evidence which suffices for conviction if the following requisites are present, namely: (1) there must be more than one circumstance, (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt (Sec. 5, Rule 133, Revised Rules of Court; *People vs. Alcantara*, 163 SCRA 783).

The following facts or circumstances were proven:

1. that Rex was seen by the prosecution witnesses, Ramos Magunot and Jose Magunot, hogtied and gagged with a red handkerchief in his mouth;
2. that he was being led on foot toward the Macjum river by the appellants;
3. that his body, bearing stab wounds and other injuries, was found at the Macjum river;
4. that the appellants advised Magunot not to report what he had seen; and
5. that the victim did not have his money on his person when his body was found.

The inferences to be derived from those facts are: (1) that Rex was gagged and hogtied by the appellants; (2) that he was killed by the appellants, and, (3) that he was robbed by the appellants.

The web of circumstantial evidence in this case constitutes an unbroken chain leading to a reasonable conclusion that the appellants detained the victim while he was on his way to Sangab that fateful afternoon of June 6, 1983. They hogtied and gagged him, led him to the gully, and as the decomposed corpse later revealed, stabbed him to death with multiple knife thrusts. Their individual participation need not be specified for they were all co-conspirators in the commission of the crime, hence, the guilt of one or some was the guilt of all. (*People vs. Maralit*, 165 SCRA 427; *People vs. Newman*, 163 SCRA 496; *People vs. Salvador*, 163 SCRA 574.)

The trial court did not err in giving full credit to the testimonies of the prosecution witnesses for they were disinterested witnesses, not related at all to the victim. Their testimonies were spontaneous, unrehearsed and unchallenged even during cross-examination. Their initial reluctance to testify does not affect their credibility (People vs. Aliocod, 167 SCRA 665) for the killers were notorious for their lawlessness and barbarity.

The trial court properly rejected the appellants' defense of alibi which is the weakest of all defenses especially in the absence of proof that it would have been physically impossible for them to have been at the scene of the crime (People vs. Masangkay, 157 SCRA 320). Moreover, the testimonies of the defense witnesses are not only replete with material inconsistencies but are also incompatible with one another. The Certification signed by the barangay and purok officials on September 27, 1984, attesting to the presence of the accused in a detachment center in Davao is highly unreliable, as it was not based on personal knowledge of the affiants but on unconfirmed reports or hearsay.

Appellants' contention that the trial court erred convicting Roberto Cultura for he was not one of those indicted in the information but "Jose" Cultura (his father's name), has no merit. The erroneous designation of his name in the information will not vitiate it, as it was clearly proven that the accused, Roberto Cultura, was part of the group that arrested, hogtied and killed the victim. Besides, Cultura did not raise this question of his identity during the arraignment. His acquiescence to be tried under the name "Jose" at that stage of the case is deemed to be a waiver on his part to raise the question of his identity as one of the accused for the first time on appeal (People vs. Maravilla, 165 SCRA 392; People vs. Torres, 165 SCRA 702).

All the appellants are guilty beyond reasonable doubt of the crime of murder qualified by treachery and aggravated by the circumstance of taking advantage of their public positions. There was treachery in the commission of the offense for the victim was gagged and his hands were tied before he was slain, thereby rendering him completely helpless. Furthermore, the appellants abused their office as Civil Home Defense members, who are supposed to be peace officers tasked with maintaining law and order and of protecting life and property in their community. They instead turned out to be murderers and brigands.

The penalty of murder under the 1987 Constitution is reclusion temporal in its maximum period to reclusion perpetua (People vs. Alpetche, 168 SCRA 670). Appellants cannot avail of the Indeterminate Sentence Law, considering the penalty actually imposed.

WHEREFORE, the decision a quo, being in full accord with the evidence and the law, is hereby affirmed in toto.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Medialdea, JJ., concur.

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