

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO HERNANDEZ, VIVENCIO REMO AND VICTORINO REMO, ACCUSED, ROMEO HERNANDEZ, ACCUSED-APPELLANT.

G.R. No. 90641. February 27, 1990

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Another birthday party, another drinking spree, ended tragically for one of the guests, for, as commonly happens in a revelry among ignorant and semi-illiterate folks, the spirit of the "demon rum" filled the vacuum in their cranium where their brains should have been.

On November 6, 1981, a number of persons, mostly tricycle drivers, had been invited to the birthday celebration of Sergeant Leonardo Hernandez in Barangay Galamay-Amo in San Jose, Batangas. A group of them were already engaged in a drinking spree when at around 6:30 in the evening, they were joined by another group of five tricycle drivers, including Arturo Ilagan. After a short while, Ilagan went out of the house to answer a call of nature. While he was thus occupied, a group of three men, one of whom was armed with a bladed weapon, suddenly encircled him, and pinned him closely ("dikit-dikit") to the center. Two men held his hands, while a third stabbed him repeatedly in different parts of his body. They left him prostrate and moaning in pain, with blood oozing from his twelve (12) stab wounds. He was rushed to a hospital but he expired at 4:00 a.m. of the next day. The cause of death was diagnosed as "hypogeleemic shock" due to multiple stab wounds on the waist, abdomen and extremities.

The stabbing incident was immediately reported to the police of San Jose, Batangas, by Leonardo Hernandez who identified the three assailants as Romeo Hernandez, Vivencio Remo and Victorino Remo, all tricycle drivers who had attended his birthday party. On November 10, 1981, one Abelardo Joyag executed a statement before the police, naming the same persons as the murderers of Arturo Ilagan.

An information for murder was filed on September 20, 1982 by the Third Assistant Provincial Fiscal of Batangas City against them, but only Romeo Hernandez and Vivencio Remo were arrested and arraigned.

"The undersigned Third Assistant Provincial Fiscal accuses Romeo Hernandez, Vivencio Remo and Victorino Remo of the crime of Murder, defined and penalized under the provisions of Article 248 of the Revised Penal Code, committed as follows;

"That on or about the 6th day of November, 1981, at about 6:30 o'clock in the evening, in Barangay Galamay Amo, Municipality of San Jose, Province of Batangas, Philippines and within the Jurisdiction of this Honorable Court, the above-named accused, armed with bladed weapons, conspiring and confederating together, acting in common accord and mutually helping each other, with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab with said weapons one Arturo Ilagan y Gonzales, thereby inflicting upon the latter multiple wounds on the different parts of his body which directly caused his death.

"Contrary to law." (p. 6, Rollo.)

Romeo Hernandez and Vivencio Remo pleaded not guilty, Victorino Remo remains at-large.

During the early stages of the trial, Vivencio Remo died. The case against him was dismissed on July 9, 1985. The trial proceeded against the remaining accused, Romeo Hernandez.

The prosecution presented six (6) witnesses, including Joyag, who testified that at about 6:30 o'clock in the evening of November 6, 1981, in the company of Gregorio Perez, Artemio Austria, Leonardo Mapalad and Arturo Ilagan, he arrived at the house of Leonardo Hernandez in Barangay Galamay-Amo, San Jose, Batangas, as an invited guest; that he saw Vivencio Remo, Victorino Remo ("whom he had not met before"), and Romeo Hernandez in the sala drinking "liliw" (a native wine). Vivencio Remo introduced him (Joyag) to his companions. After a while Arturo Ilagan left the group and went out of the house, telling Joyag that he was going to answer the call of nature. Vivencio and Victorino Remo, accompanied by Romeo Hernandez, followed Arturo. Feeling the urge to relieve himself also, Joyag left the sala to urinate outside. Before he could do so, he saw at a distance of some eight (8) meters away. Victorino, Vivencio and Romeo encircle Arturo. It was beginning to get dark ("takipsilim") but he had an unobstructed view of the trio as they ganged up against Arturo. He saw two of the group hold Arturo's hands, and although he failed to actually see the weapon, he saw Victorino's hand moving from different directions stabbing the victim's breast and other parts of his body. He also saw Arturo's head move in different directions, in an effort to evade the knife thrusts. Joyag rushed inside Leonardo's house shouting for his companions to come out because Arturo was being attacked. Upon reaching the place, they found Arturo lying on his back, moaning and bleeding. His assailants were nowhere in sight. With the aid of Gregorio Perez and Leonardo Mapalad. Joyag rushed Arturo to the hospital.

Joyag's testimony was corroborated by other prosecution witnesses.

However, notwithstanding his previous identification of Ilagan's assailants to the police. Leonardo Hernandez underwent a change of heart. He and his wife testified in favor of their neighbor and second cousin, Romeo Hernandez. They alleged that they had requested Romeo Hernandez to buy cigarettes from the store of Leonora Pintor, which is 600 meters away from their house (where the birthday party was held), and that Romeo was still doing his errand when the stabbing incident occurred. They allegedly saw Romeo Hernandez again the following day, even though he was prevented by his parents from leaving their house because of the incident.

When the accused Romeo Hernandez himself took the witness stand, he affirmed that he was in Leonora Pintor's store buying cigarettes during the stabbing of Ilagan.

After the trial, the court found Romeo Hernandez guilty of murder "as principal by indispensable cooperation with conspiracy, x x x with the qualifying circumstance of abuse of superior strength" (p. 20. RTC Decision) without any attendant modifying circumstance. It sentenced him to suffer an indeterminate penalty of imprisonment ranging from FOURTEEN (14) YEARS, TEN (10) MONTHS and TWENTY-ONE (21) DAYS, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of reclusion temporal, as maximum, to indemnify the heirs of the deceased, particularly Lourdes Gonzales, in the sum of THIRTY THOUSAND PESOS (P30, 000), to pay actual and moral damages to the said heir in the total sum of TWENTY-FIVE THOUSAND PESOS (P25,000), without subsidiary imprisonment in case of insolvency and to pay the costs. The court credited him in the service of his sentence with one-half (1/2) of the period of his preventive imprisonment, pursuant to Article 29 of the Revised Penal Code, as amended.

The accused appealed to the Court of Appeals alleging that the trial court erred:

- in giving full weight and credence to the testimony of Abelardo Joyag, and

- in finding him guilty by indispensable cooperation of the crime charged.

The appellate court, after a thorough examination of the evidence, gave full credit to the testimony of the eye-witness, Abelardo Joyag, because by the appellant's admission, he met Joyag only on the day that he testified in court, and he knew of no reason why Joyag would testify falsely against him. Moreover against Joyag's positive and unequivocal identification of the accused, the latter's alibi could not but crumble like a house of sand.

The court also rejected the testimonies of the Hernandez spouses not only because they evidently were merely covering up for their cousin, but also because, immediately after the stabbing incident, before extraneous considerations had set in to cause his change of heart. Leonardo himself reported the crime to the San Jose police and named the three accused as Ilagan's assailants.

While appellant capitalized Joyag's four-day delay in giving his statement to the police, the Court of Appeals Correctly observed that it was not enough to discredit him for he came forward of his own free will as soon as he had recovered from his shock over the death of his friend.

The appellate court and the trial court found the appellant guilty as a co-conspirator in the murder of Arturo Ilagan qualified by abuse of superior strength. For a collective responsibility among the accused to be established, it is sufficient that at the time of the aggression, all of them acted in concert, each doing his part to fulfill their common design to kill their victim. Although only one of them may have actually stabbed Ilagan, the act of that one is deemed to be the act of all (*People vs. Napoleon Montealegre*, 161 SCRA 700; *People vs. Dominador Roca*, 162 SCRA 696). The Court of Appeals correctly determined that —

“x x x. In the absence of any attendant modifying circumstance, the penalty imposable upon the appellant is reclusion perpetua, in accordance with the ruling in *People vs. Munoz*, G.R. Nos. L-38968-70. February 9, 1989, which only the Supreme Court can impose [Sub-paragraph (d), paragraph (2), Section 5, Article VIII, of the 1987 Constitution). There it was held that Article III, Section 19(1) does not change the periods of the penalty prescribed by Article 248 of the Revised Penal Code except only insofar as it prohibits the imposition of the death penalty and reduces it to reclusion perpetua. The range of the medium and minimum penalties remains unchanged. x x x there being no generic aggravating or mitigating circumstance attending the commission of the offenses, the applicable sentence is the medium period of the penalty prescribed by Article 248 of the Revised Penal Code which, conformably to the new doctrine here adopted and announced, is still reclusion perpetua. x x x As it is beyond this Court's competence to enter judgment in such a situation it is mandated to certify the case and elevate the entire record thereof to the Supreme Court for review (Section 34, Republic Act No. 296, as amended; paragraph 3, Section 13, Rule 124. Revised Rules of Court, as amended), (p. 44, Rollo.)

The crime committed by the accused was murder with treachery by taking advantage of superior strength with the aid of armed men or by employing means to weaken the defense. Three men, armed with a knife, crept up in the dark against a defenseless and unsuspecting victim who was answering a call of nature. When two of Ilagan's attackers pinioned his arms so that their companion could stab him repeatedly and with impunity, they thereby employed means which assured the execution of the crime without risk to themselves arising from the defense that their victim might make.

The penalty for murder is reclusion temporal in its maximum period to death (Art. 248, Revised Penal Code).

In view of the absence of aggravating and mitigating circumstances to modify the criminal liability of the accused, the medium period (reclusion perpetua) of the penalty prescribed by law is imposable on the accused.

WHEREFORE, the decision of the Court of Appeals finding the accused, Romeo Hernandez, guilty beyond reasonable doubt of murder is affirmed. The accused is hereby sentenced to suffer the penalty of reclusion

perpetua with the accessories of the law and to indemnify the legal heir of the deceased, his surviving spouse Lourdes Gonzales, in the sum of Thirty Thousand Pesos (P30.000), to pay to the said heir actual and moral damages in the total sum of Twenty-five Thousand Pesos (P25.000), without subsidiary imprisonment in case of insolvency, and the costs.

SO ORDERED.

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

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