

**PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. TEOFILO VILLANUEVA ALIAS "LABO"; MARIO DE LUNA Y LAGUARTILLA, FELIPE NAVA-CILLA Y SALVA, NOEL PALAD AND PETER CANIESO, ACCUSED...**

*G.R. No. 96469. October 21, 1992*

Ponente: FELICIANO, J.

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**FELICIANO, J.:**

Mario de Luna and Felipe Navacilla appeal from a decision of the Regional Trial Court of Lucena City finding them guilty of murder.

The two (2) appellants were among five (5) persons who were charged under the following information:

"That on or about the 18th day of January 1988, at Poblacion, Municipality of Sariaya, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bladed and pointed instruments and stones, conspiring and confederating together and mutually helping one another, with intent to kill, with treachery, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said bladed and pointed weapon and hit with the said stones one Romanito Matocinos y Albunan, thereby inflicting upon the latter wounds and injuries on different parts of his body which directly caused his death.

That the accused attacked and stabbed said Romanito Matocinos y Albunan, suddenly and unexpectedly, without giving the latter any opportunity to defend himself or to escape.

Contrary to law."<sup>[1]</sup>

Two (2) other accused, Noel Palad and Peter Canieso, have remained at large, while the accused Teofilo Villanueva also known as "Labo" was discharged from the information and utilized as a state witness.

At arraignment, appellants Navacilla and de Luna entered a plea of not guilty. Trial ensued and judgment was rendered on 24 September 1990 as follows:

"WHEREFORE, the accused MARIO DE LUNA y LAGUARTILLA and FELIPE NAVACILLA y SALVA are hereby found guilty beyond reasonable doubt as principals of the crime of Murder, qualified by treachery, defined and penalized under Article 248 of the Revised Penal Code, and there being no modifying circumstance to either aggravate or mitigate their liability, both accused are each sentenced by the Court to suffer the penalty of life imprisonment or reclusion perpetua; to pay the heirs of the deceased Romanito Matocinos, jointly and severally, the sum of P6,302.00; compensatory damages of P50,000.00, by way of unrealized earnings; and to pay the costs."<sup>[2]</sup>

The prosecution's version of the relevant facts, which was essentially accepted by the trial court, was presented principally through the testimony of Manuel Atienza. Atienza's testimony was summarized by the trial court in the following manner:

"At about 11:00 o'clock in the evening of 18 January 1988, while Atienza was passing Valderas Street at Sariaya, Quezon, Atienza saw a man whom he later on recognized as 'Ayo' or Romanito Matocinos being ganged up by the accused Teofilo Villanueva, Mario de Luna, Felipe Navacilla and two (2) other male persons whom he knew by their faces only. Romanito Matocinos was stabbed by Teofilo Villanueva, Mario de Luna and Felipe Navacilla one after the other. It was Teofilo Villanueva who stabbed the victim first, followed by Mario de Luna and Felipe Navacilla. One among the assailants also struck the victim with a stone but he failed to see who, among them, did it. Romanito Matocinos was hit in the front and back parts of his body. He (Manuel Atienza) also heard somebody shout and plead for the life of the victim although he did not know who they were. The accused ran away after they stabbed the victim and the people present thereat carried the victim to a tricycle. Manuel Atienza then left the scene of the incident which was brightly lit by a mercury lamp coming from an electric post situated about five (5) meters away." [3]

The accused Teofilo Villanueva who turned prosecution witness gave a somewhat different version of how the victim Romanito Matocinos met his violent death, a version which the trial court set out in the following terms:

"At about 11:00 o'clock in the evening of 18 January 1988, while Teofilo Villanueva was passing Valderas Street at Sariaya, Quezon, on his way home after visiting a certain Marites Valdoria, he noticed a commotion in front of a store, and he saw Manolito or Romanito Matocinos being stabbed by Peter Alcanse (Canieso) when he went to the scene. At that instance, he heard Noel Palad utter the following: 'Pare, ako naman,' and after removing the weapon previously lunged at the victim's stomach, he also stabbed the victim with it. The accused Mario de Luna then followed and after taking the same weapon from the stomach of the victim, he likewise stabbed the latter with it. Peter Alcanse (Canieso) then removed the weapon, which is a 'gulukan' or small bolo from the victim's stomach, and together with the accused de Luna and Palad, he fled the scene of the incident. Teofilo Villanueva after witnessing the stabbing of Romanito Matocinos, went around Magdami Street and while he was getting out at San Pablo Street, he met the three (3) assailants. Peter Alcanse (Canieso) warned him not to report what he (Villanueva) saw to the police otherwise he will be the next person to follow the victim. Promising that he will not report the incident to any policeman, he then proceeded to the place where he used to sleep at night and he saw accused Felipe Navacilla already sleeping thereat." [4]

Appellants de Luna and Navacilla offered their own story concerning the incident, stressing that they were chance observers, passers by who happened to have seen a fight. Their story was set out by the trial court in its decision as follows:

"At about 8:00 o'clock in the evening of 18 January 1988, after eating supper at a restaurant in Sariaya Quezon, accused Felipe Navacilla, who was then a conductor of a jeepney plying the Lucena City-Candelaria route, invited accused Mario de Luna, also a jeepney conductor, to accompany him in his visit to a girl whom he was courting in Sariaya. Unfortunately, the house of the girl was already closed when they arrived at her place so, they went home. On their way home, however, they saw three (3) persons fighting with one another. At first, they did not mind what they saw but when they heard a woman shouting for help, accused Navacilla tried to approach such persons. Both accused were then met by a man with a gun who told them not to interfere otherwise something may happen to them. As they noticed that the assailants were armed with guns and knives (balisong), they did not interfere and proceeded to the jeepney where they slept." [5]

Appellant Navacilla in a separate brief assigned three (3) errors while a joint brief for appellants Navacilla and de Luna set out four (4) alleged errors. This assignment of errors may be condensed in the following manner:

The trial court erred in:

- (a) according credence to the testimony of the prosecution witness Manuel Atienza;
- (b) accepting and believing the testimony of Teofilo Villanueva, accused turned state witness; and
- (c) convicting the appellants.

In respect of their first assignment of error, appellants point to a variance between statements made in Atienza's affidavit executed on 4 March 1988 before the police authorities and his oral testimony in open court given on 15 March 1989. In his affidavit ("Salaysay"), Atienza stated that he had seen appellant de Luna and Navacilla holding and wielding stones at the deceased victim while the other accused were wielding knives:

"x x x x x x x x x x

T- Isalaysay mo nga sa akin kung papaanong pagtutulong-tulong ang ginawa nitong sinasabi mong mga tao?

S- Iyong dalawa pong hindi ko kilala ang pangalan ay patalim ang (sic) kita kong armas, ang kay Labo o Teofilo ay patalim din samantalang ang hawak naman nitong dalawa ni Mario at Felipe ay bato at (sic) kita ko naman nagsisisigaw itong isang bakla at isang babae na hindi ko mga kilala ang pangalan."[6]

During the preliminary investigation of the case, it appears that Manuel Atienza reiterated that he saw appellants holding stones:

"Q: While you were walking from the North going to South along Rodriguez Street on January 18, 1988 at around 11:30 in the evening, do you still remember what unusual incident that you saw?

A: Yes, sir. At first I heard a commotion and then when I looked said commotion, I saw a free for all fight 'labo-labo,' sir.

Q: Do you know who were engaged in said 'labo-labo'?

A: I only (sic) Teofilo Villanueva alias Labo, Mario de Luna and Felipe Navacilla and other two (2) persons whom I do not know, sir.

Q: You said looked the commotion that were going on, in what particular act did this alias Labo was doing? (sic)

A: I saw him opened the dagger, sir.

Q: What about Mario de Luna?

A: Mario de Luna and Felipe Navacilla were holding stones, sir.

Q: After that, what happened?

A: And the other persons whom I do not know the names were holding weapons, sir.

Q: After that, what happened next?

A: I saw that a certain person punch Romanito Matocinos, sir.

Q: In other words, said persons were able to hurt Romanito Matocinos?

A: I believe, sir.

Q: Why do you believe?

A: Because I saw, sir.

Q: And what happened to Matocinos?

A: The boy was trying to parry it, sir.

Q: Was he able to parry the same?

A: I believe no, sir.

Q: And where is now Matocinos?

A: He was already dead, sir.

x x x x x x x x"[7]

However, appellants insist,[8] Atienza stated in open court that appellants de Luna and Navacilla stabbed Romanito Matocinos.

The trial court did not give much weight to appellants' argument, and, we believe, rightly so. Insofar as the alleged inconsistency between statements in Atienza's affidavit and Atienza's testimony in open court is concerned, it has often been noted by this Court that an affidavit being taken ex parte is almost always incomplete and often inaccurate, sometimes from partial suggestion and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for correction of the first suggestion of his memory and for his accurate recollection of all that belongs to the subject.[9] Moreover, affidavits are frequently not complete reproductions of what the declarants had in mind, considering that affidavits are frequently prepared by the administering officer and cast in the latter's language or the latter's understanding of what the affiant had said, while the affiant frequently simply signs the affidavit after the same has been read to him.[10] The statements made by witness Atienza during the preliminary investigation of the criminal case were merely reiteration of what Atienza's affidavit had set out and it may be recalled that preliminary investigations are commonly fairly summary or truncated in nature, being designed simply for the determination (not of guilt beyond reasonable doubt but) of probable cause prior to the filing of an information in court.

It is the statements of witness Atienza made in open court during the trial which deserve careful consideration. Examination of this testimony shows that Atienza had seen five (5) persons including the two (2) appellants ganging up on the victim Romanito Matocinos; that he knew three (3) of the five (5) persons involved by name and by face, having known them for sometime before the commission of the crime; that he had observed a "labo-labo" with the accused attacking Romanito with knives and stones; that he saw three (3) of the accused stabbing at Romanito either successively or nearly simultaneously and that Romanito was also assaulted with stones held by the two (2) appellants. This testimony should be taken in conjunction with the medical evidence submitted at the trial to the effect that Romanito had suffered seven (7) stab wounds (at least three [3] of which were identified as mortal in character), five (5) incised wounds and two (2) abrasions in different parts of his body and face. Thus, the fact that witness Atienza stated in open court that he had observed the accused Teofilo Villanueva, Mario de Luna and Felipe Navacilla stab or lunge at Romanito Matocinos with bladed weapons, does not necessarily show that the two (2) appellants de Luna and Navacilla, had not also struck the victim Romanito Matocinos with stones. Appellants de Luna and Navacilla may well have struck Romanito with stones (rather than hurled stones at him) and then dropped the stones and stabbed Romanito with a knife or knives. Indeed, state witness Teofilo Villanueva had stated in open court that appellant de Luna pulled out a bladed weapon thrust by one of the other accused into the stomach of the victim, only to stab the victim once more with it.

It is also relevant to note that the allegation of conspiracy was adequately proved, that the accused were attacking the sole and luckless victim Romanito Matocinos with knives and stones in a deliberate and concerted manner and that the accused fled together when other people arrived at the scene of the assault. In this situation, it is not essential that the prosecution shall have proved the precise and detailed participation of each of the accused, since well-established doctrine holds that where conspiracy is shown, the act of one is the act of all.[11] Finally, we must note that Atienza had known both appellants and the victim before the occurrence of the crime and that he had positively identified appellants and state witness Teofilo Villanueva as among the attackers of Romanito

Matocinos. Appellants have neither alleged nor proved any evil and improper motive on the part of Atienza for falsely imputing a crime as grave as murder to appellants.

In their second assignment of error, appellants fault the trial court for accepting and believing the testimony of Teofilo Villanueva who had become a prosecution witness. This assignment of error indicates some confusion in appellants' minds. For appellant Felipe Navacilla took advantage of Teofilo Villanueva's testimony in his effort to rebut the declaration of prosecution witness Manuel Atienza that he (Felipe Navacilla) had participated in the stabbing of Romanito Matocinos. Navacilla contends that the trial court had failed to consider the fact that he had not been positively identified by Teofilo Villanueva as one of the assailants.[12] It is true that Teofilo Villanueva did not mention the name of Felipe Navacilla in identifying the attackers of Romanito Matocinos. Teofilo Villanueva's failure to mention Felipe Navacilla did not, however, impress the trial court. The trial court pointed out that appellants de Luna and Navacilla had themselves admitted in open court their presence at the scene of the crime.[13] Moreover, we may add that witness Manuel Atienza had positively identified Felipe Navacilla as one of the attackers of Matocinos along with Teofilo Villanueva and Mario de Luna.

The gist of appellants' third assignment of error is that the trial court erred in finding the presence of treachery.

As indicated earlier, the post mortem examination report showed that Romanito Matocinos suffered seven (7) stab wounds, five (5) incised wounds and two (2) abrasions in different parts of his body. Death was attributed to the multiple stab and incised wounds, many of which were sustained by the victim on his chest. The number and location of these wounds indicate clearly that the perpetrators intended not merely to inflict physical injuries upon Matocinos, but also to snuff out his life.

Treachery qualifies killing into murder and the well-known rule is that treachery is to be appreciated where means and methods are adopted which render the victim unable to defend himself and permit the attackers to carry out their felonious intent without danger to themselves arising from any means of defense or retaliation which the victim may have.[14] In the present case, the victim Romanito Matocinos was alone and unarmed when he was attacked simultaneously or "ganged up" by five (5) persons, armed with knives and stones. He was literally surrounded and overwhelmed by the five (5) attackers, each of them thrusting away at him with a knife or striking him with a stone. Under the circumstances, Romanito Matocinos did not stand a chance against his assailants, and we agree with the trial court that his slaying must be regarded as murder.[15] The trial court found the sequence and combination of the facts and circumstances proven as sufficient to produce a conviction of guilt beyond reasonable doubt. Appellants have not presented any basis for overturning the conclusion so reached by the trial court.

Turning lastly to the award made by the trial court of "compensatory damages of P50,000.00 by way of unrealized earnings," we note that the victim Romanito Matocinos was 20 years old at the time of his slaying. The trial court found that he was earning P800.00 a month and a net annual income of P5,000.00. Under the 1980 Commissioner's Standard Ordinary Mortality Table, Matocinos was expected to live for another fifty-one (51) years had he not been murdered.[16] Since, however, a man does not normally continue working to earn money up to the final year or month of his life, fifty-one (51) years may reasonably be reduced to forty (40) more years. For that period of time, the net or compensable earnings lost by reason of Romanito Matocino's death is P200,000.00 (P5,000.00 x 40).

WHEREFORE, for all the foregoing, the decision of the trial court appealed from is hereby **AFFIRMED**, except that the phrase "life imprisonment" in the dispositive portion of that decision is hereby **DELETED**,<sup>[17]</sup> and except for the award of compensatory damages by way of unrealized earnings which is hereby **INCREASED** to P200,000.00.

**SO ORDERED.**

Regalado, Nocon, and Campos, Jr., JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

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[1] Information, pp. 1-2; Rollo, pp. 9-10.

[2] Trial Court Decision, p. 11; Rollo, p. 47

[3] Id., p. 4; Rollo, p. 40.

[4] Id., p. 5; Rollo, p. 41.

[5] Id., p. 6; Rollo, p. 42

[6] Appellants' Brief, p. 5; Rollo, p. 92.

[7] TSN, 12 April 1988, pp. 2-3; Records, pp. 12-13.

[8] Appellants' Brief, p. 6.

[9] *People v. Gonzales*, 99 SCRA 697 (1980).

[10] *People v. Dumpe*, 183 SCRA 547 (1990); *People v. Anggot*, 105 SCRA 168 (1981); *People v. Gonzales*, *supra*.

[11] *Angelo v. Court of Appeals*, G.R. No. 88392, 25 June 1992; *Paulino v. Court of Appeals*, G.R. No. 89978, 26 June 1992; *People v. Punzalan*, 203 SCRA 364 (1991); *People v. Alvarez*, 201 SCRA 364 (1991); *People v. Pascual*, 204 SCRA 618 (1991).

[12] Appellant Felipe Navacilla's Brief, p. 8; Rollo, p. 76.

[13] Trial Court Decision, p. 9; Rollo, p. 99.

[14] *People v. Coyo*, 196 SCRA 447 (1991); *People v. Tiozon*, 198 SCRA 368 (1991); *People v. Toribio*, 198 SCRA 529 (1991); *People v. Mabuhay*, 185 SCRA 675 (1990).

[15] See, e.g., *People v. Lao*, 204 SCRA 337 (1991); *People v. Jumadiao*, 143 SCRA 383 (1986); *People v. Lopez*, 132 SCRA 188 (1984); *People v. Surban*, 123 SCRA 218 (1983); *People v. Centeno*, 130 SCRA 198 (1984); *People v. Gutierrez*, 26 SCRA 143 (1969).

[16] The formula is set out and applied in, e.g., *People v. Quilaton*, 205 SCRA 279 (1992); and *People v. Daniel*, 136 SCRA 92 (1986).

[17] E.g., *People v. Hasiron*, G.R. No. 100797, promulgated 15 October 1992.

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