

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ISIDORO PEREZ Y GAYETA ALIAS “OROY”, FELICISIMO PEREZ Y PEREZ ALIAS “SIMO”, CLARITO PEREZ Y PEREZ, JUANITO PEREZ Y GAYETA ALIAS “JUAN”,...

G.R. Nos. 110100-02. December 11, 1996

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

Internecine (internecinus) is not an idle word. "Internecine strife" conveys a fight among the same kin or group. Thus, the historian Tacitus observed that "the bitterest hatreds are those of next of kin," *acerrima proximorum odia*. This is the case before us, a brother with bolo hacking to death a sister allegedly caused by land boundary dispute.

Accused-appellant Isidro Perez, Felicisimo Perez, Juanito Perez, Rolando Perez, and Pablo de Guzman, were charged with the crime of murder in three separate informations all dated January 11, 1991 and filed with Branch 7, Regional Trial Court, Batangas City. The accusatory portions of aforesaid informations reads as follows:

Criminal Case No. 5033

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Arcadio Montalbo y Perez, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of his body which directly caused his death.

Contrary to law."

Criminal Case No. 5034

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Arsenia Montalbo y Ortega, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of her body which directly caused her death.

Contrary to law."

Criminal Case No. 5035

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Aurelia Montalbo Y Perez, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of her body which directly caused her death.

Contrary to law."

The cases against accused Pablo de Guzman was before arraignment dismissed upon motion of the public prosecutor by reason of insufficiency of evidence. At arraignment all the accused-appellants pleaded "not guilty" to the charges.

After trial on the merits, the trial court on March 15, 1993 found all the accused-appellants guilty beyond reasonable doubt of the crime of murder, the pertinent portion of which reads as follows;

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds the accused ISIDRO PEREZ, FELICISIMO PEREZ (alias Maximo Perez), CLARITO PEREZ, JUANITO PEREZ, and ROLANDO PEREZ guilty beyond reasonable (doubt) of the crime of murder in respect of the death of ARCADIO MONTALBO and ARSENIA MONTALBO and of homicide for the death of AURELIA MONTALBO.

The penalty for murder is reclusion temporal in its maximum period to death, and for homicide, reclusion temporal. Since the murders were committed with the aforementioned qualifying and generic aggravating circumstances without any mitigating circumstance, the penalty imposable is death. However, in view of Article III, Section 19, Subsection (1) of the Cory Constitution of 1987 as interpreted in the cases of *People v. Munoz, et al.*, 170 SCRA 107 (1989), *People v. Badilla*, 185 SCRA 554 (1990), and more recently in *People v. Saulo*, G.R. No. 94547, July 29, 1992, prohibiting the imposition of the death penalty, the Court hereby imposes upon the said accused the following penalties:

In Criminal Case No. 5033 in respect to the death of Arcadio Montalbo, reclusion perpetua.

In Criminal case No. 5034 in respect of the death of Arsenia Montalbo, reclusion perpetua.

In Criminal Case No. 5035 in respect of the death of Aurelia Montalbo, an indeterminate penalty of imprisonment of 12 years of prision mayor as minimum to 20 years of reclusion temporal as maximum.

Each of the accused shall indemnify the heirs of each deceased namely, Arcadio Montalbo, Arsenia Montalbo, and Aurelia Montalbo, the sum of P50,000.00. With costs against the accused."[1]

The antecedent facts are as follows:

On November 19, 1990, Arcadio Montalbo, Arsenia Montalbo, and Aurelia Montalbo were found dead in their house at Barangay Dagatan, Municipality of Taysan, Batangas province. One of the victims, Arsenia Montalbo, was 28 weeks pregnant.

Prosecution witnesses included the brothers Gilbert Montalbo, 14 years old, and George Montalbo, 13 years old, who claimed to have seen the incident. Both testified that on November 19, 1990, at about 7:00 o'clock in the evening, they were in the house of Leonardo Ortega at Barangay Dagatan, Taysan, Batangas watching television when they heard a group of noisy people pass by. They sensed that something might be wrong so they left for home which was about 10 to 15 meters away from the house of Ortega. Upon reaching their house, they saw

Rolando Perez stand by the door and shoot their father Arcadio Montalbo. After shooting Arcadio, Maximo and Clarito Perez entered the house and hacked the fallen Arcadio with a bolo. Isidoro Perez guarded the door leading to the kitchen while Rolando Perez was left at the main door. The boy's mother, Arsenia, who was also inside the house, was next to be killed. Clarito Perez hacked Arsenia on her head and right cheeks, the blow splitting the latter's head into two ("nabiyak ang ulo"). Not satisfied, Rolando Perez also shot Arsenia. Then the group left but they returned when the boys' grandmother, Aurelia, arrived carrying a light.

Aurelio Montalbo, who lived nearby, probably heard the commotion and went to the house of the spouses Montalbo. When Aurelia was already inside the house, Isidoro Perez shot her. Rolando Perez guarded the door while Clarito Perez again hacked the wounded Arcadio. Juanito Perez also hacked Aurelia. Thereafter, the group left.

Gilbert Montalbo witnessed the incident while he was hiding under the bed. He was able to see the assailants because the house was illuminated with electric lights. His sisters Geraldine and Jecelyn and brother, Jake had also seen what happened since they were in the veranda and near the stairs going to the second floor. They were shouting and pleading to the accused not to kill their parents. On the other hand, his brother George was outside the house but he saw what was happening inside because he was looking through the window.

After the group left, Gilbert left his hiding place and ran toward the house of Leonardo Ortega. As he ran, he was seen by Isidoro Perez who fired at him twice. Gilbert was not hit because he stumbled down. He was able to reach the house of Leonardo Ortega who persuaded him to stay and hid him inside an aparador for the group was searching for the boy. George, on his part, went to the house of Mamay Piriong and had stayed there until morning.

The testimonies of the brothers Gilbert and George Montalbo were denied by the accused. All of them alleged that they were at home at that time. Isidoro Perez, whose house was only about 100 arms-length from the house of the Montalbos, alleged that he was with his wife at home and after their supper, he went to sleep at about 7:00 o'clock in the evening. He claimed to have heard gunshots but was not bothered about it so he went back to sleep. He learned about the death of the Montalbos only the following day. The deceased Aurelia was his sister and Arcadio was his nephew and so upon hearing the news, he went to check on them. Later that day, he was taken to town by the policemen and after being told that he was one of the suspects, he was detained. Isidoro's wife, Lucia, corroborated his story.

Clarito Perez, son of Isidoro, lived about three kilometers away from Barangay Dagatan. He also alleged to be at home with his family at the time of the incident. He denied hearing anything unusual and like the other accused, he only learned of the incident the following morning. His wife Valentina Manalo, narrated the same story.

Rolando Perez, another son of Isidoro Perez, was living in Barangay Bacao which was about ten kilometers away from Barangay Dagatan. It takes about four hours to reach Barangay Dagatan from Barangay Bacao. Rolando also maintained that he was at home, then ate his supper, and at 7:00 o'clock that evening, he cleaned his children and then went to bed. His wife, Leticia Gayeta, had just given birth to another child on November 17, 1990. She testified that the days following, her husband's daily routine was cooking, cleaning, taking care of the children, and looking after the cow. She testified that Rolando was at home when the incident happened.

The next accused was Felicisimo Perez, who was also the son of Isidoro Perez. His house was only 50 meters away from his father's and about 200 meters away from the house of the Montalbos. Like the other accused, he also alleged that he was at home and he never went out that night. His wife, Divina Delica, confirmed his story and testified that it was the following morning when she went out to fetch water that she learned of the killings.

The last accused was Juanito Perez, the brother of Aurelia Montalbo and Isidoro Perez, who claimed to have been sick with influenza at the time of the incident and was at home all that time. Juanito was living in Barangay Laurel which was about one kilometer away from Barangay Dagatan. His wife Rufina Tordecilla corroborated his story and even added that she went to see Simon Malaluan, an "herbolario", to consult about her husband's ailment. Both of the spouses learned about the deaths of the Montalbos the day after.

The trial court gave more credence to the testimonies of the prosecution witnesses. The defense of the accused lacked credibility, in fact, they had the same alibis. As the court observed, it was incredibly coincidental that on the evening of November 19, 1990, both Isidoro and Felicisimo Perez went to sleep at 7:00 o'clock while Juanito, Clarito and Rolando slept at 8:00 o'clock. Moreover, not one of the accused, not even their wives, ever went to condole with the family, an unusual behavior, considering that they were related to the victims. During the trial, the court had also observed that the accused were groping for answers even to simple questions. Accused Rolando Perez took an average of thirty five seconds to answer the questions. There were also instances wherein he would correct himself after probably realizing that some of his answers did not jibe with his previous answers. Felicisimo Perez, on the other hand, seemed to be in a trance while he was in the witness stand.

In convicting the accused, the court took into consideration the qualifying circumstances of treachery and evident premeditation with respect to the killing of Arcadio Montalbo. There was treachery because at the time he was shot, Arcadio was chopping feeds for the chicken with his back at the door and Rolando Perez shot him from behind. Evident premeditation was also present since the crime was obviously planned. In the case of Arsenia Montalbo, evident premeditation and cruelty were present. There were likewise the aggravating circumstances of nighttime, dwelling and abuse of superior strength. The killing of Aurelia Montalbo was probably not part of the plan but still the aggravating circumstances of cruelty and abuse of superior strength were attendant.

Hence, this appeal by the accused with this sole assignment of error:

The trial court erred in finding the accused-appellants guilty beyond reasonable doubt of the crime of murder in connection with the death of Arcadio Montalbo and Arsenia Montalbo and of homicide for the death of Aurelia Montalbo in the face of the fact that the prosecution failed to established beyond the cavil of doubt the accused-appellants' participation or agency in said crimes.

The appeal is devoid of merit.

Accused-appellants' defense consisted merely of alibis and denials while the prosecution's main witnesses, the brothers Gilbert and George Montalbo, had clearly narrated what happened that scary night and had positively identified the accused-appellants as the assailants. Settled is the rule that alibi is the weakest of all defenses since it can easily be concocted and that it cannot prevail over the positive identification of the accused by the witnesses. All the appellants alleged that they were at home and had gone to bed at the time of the incident. This defense lacks credence considering that all of the appellants failed to prove that it was physically impossible for them to be at the scene of the crime at the time it was committed.

Appellants pointed to several inconsistencies in the testimonies of the brothers Montalbo regarding the number of assailants and the wounds inflicted on the victims. The variances, however, referred only to minor details and did not affect the veracity of the testimonies of the witnesses. Inconsistencies in testimonies on minor details do not impair the credibility of witnesses where there is consistency in relating the principal occurrence and positive identification of assailant.[2] Apparent conflict in testimonies of eyewitnesses in describing details of occurrence may be due to differences in observation and memory which does not necessarily imply falsehood on their part.[3]

The testimonies of the prosecution witnesses were vivid and straight-forward. In fact, in recalling the scene, the brothers not only remember the acts but also felt the pain of the memory, as they cried while testifying. Thus, it

would be hard not to believe the simple but candid testimonies of the prosecution witnesses. We also found no reason why the witnesses would falsely testify against the accused-appellants since they were their close relatives. The reason given by accused-appellant Isidoro Perez was that the ill motive was prompted by a land boundary dispute. While the accused-appellants and the victims of these sordid crimes might have had a dispute over their property, it would defy imagination why the children (then only 13 and 14 years old) would still be involved therein as they must have been spared the ignominy of accused-appellants' dastardly misdeeds. The court a quo noted that - "they would have wanted to kill Gilbert Montalbo, too, as they did their parents and grandmother. And for what reason? To cover up their crimes." [4]

The circumstances leading to the commission of the offense indicate that accused-appellants planned and conspired to commit it. Thus, in *People vs. Moreno, Jr.*, this Court stated, thus:

"Settled is the rule that conspiracy need not be established by direct evidence, but may be proven through a series of acts done in pursuance of a common unlawful purpose. In the present case, there are strong evidences which indicate that the accused conspired to commit robbery. And when they did so, and armed themselves for the purpose, no member of the group may disclaim responsibility for any act of violence that is perpetrated by reason or on occasion of the robbery. Such violence is reasonably expected to happen either to overcome active opposition or to forestall it altogether by disabling the victim at the very onset, or even silence him completely thereafter." [5]

The qualifying and generic aggravating circumstances in the commission of murder were duly proven in the trial court, the pertinent portion of which is stated hereunder, to wit:

"The crimes were committed with the qualifying circumstances of treachery and evident premeditation in respect of the killing of Arcadio Montalbo, treachery because he was chopping feeds for the chicken with his back towards the door when Rolando Perez shot him from behind, and evident premeditation, because his killing was pre-planned. However, for the purpose of imposing the penalty, evident premeditation shall only be considered as generic aggravating circumstance. In respect of Arsenia Montalbo, her killing was committed with the qualifying circumstance of evident premeditation because it, too, was pre-planned. The manner of execution attest to this. There was cruelty in the way the victims were hacked. There were present, too, the aggravating circumstances of nighttime which was purposely sought to insure the success of their acts; dwelling, because the crimes were committed at the home of Arcadio and Arsenia Montalbo; and abuse of superior strength, because there were five of them and fully armed with guns and bolos. Poor Montalbo's, they didn't have a Chinaman's chance of defending themselves.

In respect of Aurelia Montalbo, only the aggravating circumstances of cruelty and abuse of superior strength were present. The accused killed her because apparently she could identify the accused. It does not appear that she was part of the plan. She just happened to be at the wrong place at the wrong time." [6]

We agree with the recommendation of the counsel for the people that the "killing of Aurelia Perez Montalbo was attended with superior strength and cruelty" and as such "should be changed to murder and the corresponding penalty be raised to reclusion perpetua" [7] and be imposed on accused-appellants. This modification as to the penalty is rendered imperative considering the attendant circumstances which changes the crime of homicide to murder.

In the fairly recent case of *People vs. Rodico*, we emphasized that -

"As to the credibility of witnesses it is well established that the findings of fact of the trial court thereon should not be disturbed on appeal said court being in a better position to decide the question, from having itself heard and observed the demeanor of the witnesses on the stand, unless it has plainly overlooked certain facts of substance and value which, if considered, could affect the result of the case. The present case, gives no reason to depart from this rule." [8]

ACCORDINGLY, the decision appealed from dated March 15, 1993, is hereby AFFIRMED with the modification as above-stated.

SO ORDERED.

Regalado, (Chairman), Romero, Puno, and Mendoza, JJ., concur.

[1] Decision, Records, p.250.

[2] People vs. Briones, Jr., G.R. No. 101257, September 23, 1993.

[3] Ibid.

[4] Decision, p. 40.

[5] G.R. No. 94755. April 10, 1992.

[6] Decision, pp. 12-13.

[7] Appellee's Brief, p. 19.

[8] G.R. No. 107101, Oct. 16, 1995.

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