

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PEDRO MABANSAG, VEDASTO MABANSAG, AND TRANQUILINO ABEJUELA, ACCUSED-APPELLANTS.

G.R. Nos. 60039-40. March 20, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Two informations were filed on the same day, June 11, 1980, by the Provincial Fiscal of Samar with the then Court of First Instance at that province. The first information was docketed as Criminal Case No. 1855 and was for direct assault on the person of Barangay Captain Zoilo Mendaño. The second information was docketed as Criminal Case No. 1856 and was for the murder of Arcadio Mendaño.

The information for direct assault reads as follows:

"That on or about the 25th day of April, 1980, in the Municipality of San Sebastian, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [VEDASTO MABANSAG], without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab, but was not hit, and seriously intimidate, one Zoilo Mendaño, Barangay Captain of Barangay Dolores, San Sebastian, Samar, duly elected and qualified as such, while said barangay captain was engaged in the performance of his official duties or on the occasion of such performance, that is, pacifying the accused who was then challenging anybody to a fight." (Expediente of CC No. 1855, p. 16.)

The information for murder which was later amended by adding one more defendant reads as follows:

"That on or about the 25th day of April, 1980, in the Municipality of San Sebastian, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [PEDRO MABANSAG, VEDASTO MABANSAG and TRANQUILINO ABEJUELA], conspiring, confederating together and mutually helping one another with Avelino Abejuela alias 'Quirino' and Vicente Mabansag alias 'Venting', who are still at large, with deliberate intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault, stab one Arcadio Mendaño with bolos (binalbag), with which the said accused had conveniently provided themselves for the purpose, thereby inflicting upon him fatal wounds on the different parts of his body which wounds directly caused his death." (Expediente of CC No. 1856, p. 38.)

The two cases were tried jointly by agreement of the prosecution and the defense considering that the incidents occurred at about the same time and place and the evidence was common to both.

The trial court rendered a joint decision. In Criminal Case No. 1855, it found Vedasto Mabansag guilty of direct assault and he was sentenced to an indeterminate penalty of 6 months and 1 day of prision correccional as minimum to 4 years, 2 months and 1 day of prision correccional as maximum, to pay a fine of P500.00 and also the costs. (Expediente in CC No. 1855, p. 136.) In Criminal Case No. 1856, Pedro Mabansag, Vedasto Mabansag and Tranquilino Abejuela were found guilty of murder and each was sentenced to suffer the penalty of reclusion

perpetua and to pay solidarily the heirs of Arcadio Mendaño the sum of P12,000.00 as well as the costs. (Expediente in CC No. 1856, p. 90.)

Notice of appeals were filed in the two cases which accounts for this decision.

The People's version of the incidents is taken from the decision of the trial court with the addition of the page references to the transcript of the stenographic notes. It reads as follows:

"Last April 25, 1980 at about 1:00 o'clock in the morning, Zoilo Mendaño was still at the dance hall, which is the basketball court of barangay Dolores, San Sebastian, Samar, being the Barangay Captain, (Exhibits A & A-1) because that evening was the induction of the officers of the Kabataang Barangay (pp. 6-7, T.S.N., September 30, 1980). The place was lighted by a lamp (petromax) placed at the middle of the dance hall (p. 16, T.S.N., November 19, 1980). The dance started at about 9:00 o'clock in the evening and was attended to by many people including Tranquilino Abejuela, Avelino Abejuela, Vicente Mabansag, Marcelino Tabios, Arcadio Mendaño and the barrio councilman (p. 8, T.S.N., September 30, 1980).

"During that time, Vedasto Mabansag caused a trouble at the dance hall by challenging anybody to a fight. He was carrying a small bolo. After informing Vedasto of his position in the barrio, Zoilo Mendaño approached and pacified him saying 'do not trouble the KB, instead you should help'. Vedasto instead stabbed Zoilo but was not hit because he stooped. With the help of Marcelino Tabios, Zoilo wrested the small bolo from Vedasto, Exhibits B & B-1 (pp. 17-19, 32-33, T.S.N., September 30, 1980; pp. 16-17, T.S.N., November 19, 1980). In the process of pacifying Vedasto, the dance stopped and the people scampered. Thereafter, Vedasto requested Arcadio Mendaño to accompany him to the house of Sabina Mabini which is just near the dance hall (p. 20, T.S.N., April 30, 1980). Upon reaching the yard of that house, near the kitchen, Zoilo Mendaño who was already at the balcony of their house in front; saw Pedro Mabansag coming from the dark and struck Arcadio with a piece of wood but, because the latter escaped, Vedasto instead was hit on his forehead (pp. 21-22, T.S.N., September 30, 1980; pp. 18-19, 29, T.S.N., November 19, 1980). A little later, Tranquilino Abejuela, Vicente Mabansag, Avelino Abejuela armed with their bolos arrived and, with the help of Pedro Mabansag and Vedasto Mabansag, they chased Arcadio Mendaño who was overtaken by them at the middle of the basketball court (p. 10, T.S.N., November 19, 1980). With their bolo locally known as 'binalbag', Tranquilino Abejuela delivered a stab blow hitting Arcadio on his left arm (p. 30, id.). Followed by a stab blow by Avelino Abejuela hitting Arcadio on the left side of his body and by Vicente Mabansag hitting the left knee as a result Arcadio fell. Pedro Mabansag also delivered a stab blow but could not hit. Vedasto did not stab Arcadio (pp. 24-25, T.S.N., September 30, 1980). After Arcadio Mendaño fell, the five (5) of them left to the direction of barrio Sta. Cruz (pp. 20-22, 30-31, T.S.N., November 19, 1980).

"Lying face up at the side of the basketball court, Zoilo Mendaño and Marcelino Tabios approached Arcadio Mendaño and brought him to his house which is about 30 meters distance from that dance hall (p. 22, id., p. 3, T.S.N., October 6, 1980). Thereat, in the presence of his wife, relatives and friends, Marcelino Tabios prepared the dying statement of Arcadio Mendaño Exhibits C, C-1, C-2 & C-3 (pp. 22-25, T.S.N., November 19, 1980). Being his brother, Zoilo Mendaño did not prepare the dying declaration (pp. 33-34, T.S.N., May 13, 1981). At about 3:00 o'clock that morning, Zoilo Mendaño went to the house of the Station Commander, Fortunato Brazil, to deliver the small bolo he had wrested from Vedasto Mabansag (pp. 5-6, T.S.N., October 6, 1980).

"At 8:45 in the morning of April 25, 1980, Arcadio Mendaño, when brought and admitted at the same provincial hospital by Dr. Dominga Perez, after which issued an autopsy report and death certificate, Exhibits D series and E and series, she found the following -

"External Findings:

1. Wound stab thru & thru point of entrance 4 cm. extensor surface are left more on lateral side directed rt. upward, point of exit 5 cm. flexer surface are left more on the medial side.

2. Wound stab 1.5 cm. penetrating directed st. to the right side anterior axillary line chest left.

"Internal Findings:

1. Wound, stab thru & thru lung tissue.
2. Collapsed lung tissue.

"Cause of Death:

Atelectasis secondary penetrating wound.

(pp. 37-43, T.S.N., May 13, 1981).

"Dr. Perez further declared that, cause by a sharp pointed instrument, wound No. 1 & 2 might have been inflicted at the same time, possibly by different instrument (p. 44, id.)." (Brief, pp. 3-5.)

The defendants gave a different version as follows:

"From the testimonies of Tranquilino Abejuela, Dr. Jose Cabrasawan, Vedasto Mabansag, Inocencio Ellano and Fortunato Brazil, the evidence established by the defense in exculpation is substantially as follows:

"Residents of Brgy. Sta. Cruz, San Sebastian, Samar, last April 24, 1980 at about 7:00 o'clock in the evening, Tranquilino Abejuela and Vedasto Mabansag went to Brgy. Dolores to attend the dance. They bought ribbons for the dance at P2.00 each. At about 12:00 o'clock midnight, Vedasto requested a girl to dance with him, but, was refused. When picked by another man, that girl danced with him. Disgusted, Vedasto Mabansag pulled his bolo and caused a trouble at the dance hall which is at the same time a basketball court. Vedasto boxed somebody which he did not recognized. The barangay captain Zoilo Mendaño approached and demanded from Vedasto his small bolo (sipol). After that bolo was handed to him, Zoilo Mendaño went up to their house. During that time Marcelino Tabios was not there. A little later, Arcadio Mendaño arrived and struck Vedasto Mabansag with a piece of wood hitting his forehead. When Tranquilino Abejuela saw Vedasto Mabansag already fallen to the ground, he approached and stabbed Arcadio Mendaño with his knife commonly known as kutsillo, hitting him on his left side near the left armpit. That time, Arcadio Mendaño was about to strike again Vedasto. The latter is the cousin of Tranquilino.

"After Tranquilino Abejuela stabbed Arcadio Mendaño; while Vedasto Mabansag was still on the ground lying, Bandy Mabansag beamed his flashlight at Tranquilino and, at that instance, Vicente Mabansag Mendaño stabbed Tranquilino with a bolo hitting his right breast. (Witness shows his wound with a bandage about one (1) inch below the right nipple). Then, after Tranquilino walked to the yard of Sabina Mabini about 3 1/2 meters to that dance hall, he became unconscious.

"When Tranquilino Abejuela regained consciousness at about 3:00 o'clock that morning, Marcelino Tabios arrived, prepared for him his dying declaration and was made to thumbprint on it. This was prepared in the presence of his father, Gaudencio Abejuela and his uncle Leoncio Abejuela. After that statement was prepared, Tranquilino was placed on a hammock and was brought to the hospital in Catbalogan for treatment.

"Before this incident, Pedro Mabansag, Vicente A. Mabansag and Avelino Abejuela had already gone home.

"At past 1:00 o'clock that morning, when Vedasto Mabansag regained consciousness on the spot where he fell, upon noticing that there were no more persons around, he got up, ran for home to barrio Sta. Cruz. Three days after, he was treated by the Municipal Health Officer of Calbiga, Samar of his lacerated wound on his left eyebrow, Exhibits 4 & 4-a.

"On May 10, 1980, when informed that a per-son was wounded and which has a bearing on the death of Arcadio Mendaño, Patrolman Fortunato Brazil of the San Sebastian Police Department went to the Samar Provincial Hospital to verify. When told by Tranquilino Abejuela that he wants to file a case, he prepared for

the latter a statement in writing, Exhibits 5 & 5-a. The printed name of Tranquilino Abejuela in single stroke was caused by Pat. Brazil because he does not know how to sign and there was not stamping pad available. On May 12, 1980, Pat. Brazil wrote the chief of the Samar Provincial Hospital that a medical certificate be issued for Tranquilino Abejuela as his basis for a filing of a case in court, Exhibits 6 & 6-a.

"Tranquilino Abejuela was admitted by Dr. Dominga Perez at the Samar Provincial Hospital on April 25, 1980, suffering a stab wound below the right nipple. He was discharged on May 23, 1980. Exhibits 2, 2-a, 3, 3-a. The assailant was in front when this wound was inflicted." (Expediente, CC No. 1856, pp. 75-78; Brief, pp. 2-4.)

The appellants now claim that their version is the one which is congruent with the facts but after examining the record We are persuaded that insofar as the murder charge is concerned, the trial court correctly appreciated the evidence. This conclusion is bolstered by the following circumstances:

a) The ante mortem statement of Arcadio Mendaño (Exhibit C, p. 11 of the Expediente in CC No. 1856) named his assailants which include the three appellants.

b) The witnesses for the prosecution had no reason to testify falsely except perhaps Zoilo Mendaño, brother of the deceased.

It should be noted that five men armed with bolos pursued Arcadio Mendaño but not all of them were able to touch him. However, the trial court held all three appellants liable for the death of Arcadio on the ground that it "was attended by the element of conspiracy."

The appellants now insist that the trial court erred in holding that there was a conspiracy to murder Arcadio because concerted or united action of several persons against a victim does not necessarily prove conspiracy. The appellants' proposition is true generally but in this case We agree with the trial court that the conspiracy was manifested by the following circumstances:

"(a) that early morning after the people scampered from the dance hall, Vedasto Mabansag requested Arcadio Mendaño to accompany him to the house of Sabina Mabini located just near the dance hall; (b) upon reaching the yard of that house, Pedro Mabansag appeared from the dark and struck Arcadio Mendaño with a piece of wood but, the latter escaped, Vedasto Mabansag instead was hit on his forehead; (c) a little later, Tranquilino Abejuela, Vicente Mabansag, Avelino Abejuela armed with their bolos arrived and, also with the help of Pedro Mabansag and Vedasto Mabansag, they chased Arcadio Mendaño who was overtaken by them at the middle of the basketball court which was still then lighted; (d) with their bolos, Tranquilino Abejuela delivered a stab blow hitting the deceased on his left arm, followed by a stab blow by Avelino Abejuela hitting the deceased on the left side of his body and by Vicente Mabansag hitting the left knee as a consequence the deceased fell. Pedro Mabansag also delivered a stab blow but could not hit; (e) after the deceased fell, all of them left the spot and proceeded to the same direction." (Expediente in CC No. 1856, pp. 87-88.)

The information for murder alleges treachery and evident premeditation as qualifying circumstances. These are disputed by the appellants and We agree. The record is bereft of evidence to prove evident premeditation; there is no showing when the plan to attack Arcadio was conceived. It could be that the plan was conceived on the spur of the moment because there was no previous incident between the protagonists. Treachery was not present because the attack was made frontally. Notwithstanding the fact that five armed men chased the deceased, the aggravating circumstance of superiority cannot be appreciated because the evidence does not show that they cooperated in such a way as to secure advantage from their superiority in number. In fact, as stated, not all of them laid hands on Arcadio. It thus results that the appellants are guilty of simple homicide only.

Vedasto Mabansag questions his conviction for direct assault for the following reasons:

"The testimony of Zoilo Mendaño was evidently polluted, he being the brother of the deceased Arcadio Mendaño. His testimony was against ordinary human experience and was evidently lying when he testified as follows:

a) Zoilo Mendaño testified that when he tried to pacify Vedasto Mabansag, the latter hit him with a bolo, but was able to evade the blow and wrest the bolo from him; Vedasto Mabansag had no reason to hit Zoilo Mendaño whom he knows to be the barrio captain of the place. Vedasto Mabansag was mad at the girl who refused him in the dance and the man who danced with her. Vedasto Mabansag was being pacified by Zoilo Mendaño and Marcelino Tabios, a member of the Sanguniang Bayan, and indeed, Vedasto Mabansag's testimony that he voluntarily surrendered his bolo to the barrio captain is more believable and more in accord with human experience than the prosecution's version that Vedasto Mabansag tried to hit him, but Zoilo Mendaño was able to evade the blow and was able to wrest the bolo from him;

b) If Vedasto Mabansag tried to hit the barrio captain and was therefore guilty of direct assault, why was he allowed to go his way after the alleged assault? Why did not the barrio captain also demand the other weapon of Vedasto Mabansag which he testified was still in his possession? Zoilo Mendaño did not testify of any other weapon of Vedasto Mabansag in the direct examination, but when he was asked in the cross-examination why he did not take him into custody, he testified as follows:

'Q

Mr. Mendaño, you stated in the direct examination that after the bolo was taken from the person of Vedasto Mabansag, you notice that the dance stopped, is it not?

A

Yes, sir.

Q

And the dance stopped because Vedasto Mabansag was still making trouble?

A

Yes, sir.

Q

And despite the fact that Vedasto Mabansag was still making trouble, you did not take him into custody as barangay chairman in your barrio?

A

I gave him advice.

Q

But you did not take him into custody?

A

I did not take him into custody. He had with him a bolo.

Q

And he has a bolo which you had taken it from him?

A

He had with him two weapons.

Q

And you knew this fact even at the time you took the first weapon from him because he had two weapons with him?

A

Yes, sir.

Q

And you did not make any effort to take also the other weapon in his possession?

A

No, sir. (TSN of November 19, 1980, p. 6.)'

This testimony of Zoilo Mendaño is incredulous and should not be given credence." (Brief, pp. 12-14.)

The People's brief does not refute Vedasto's claim which We find to be worthy of acceptance.

WHEREFORE, in Criminal Case No. 1855, the conviction of Vedasto Mabansag is set aside for lack of proof beyond reasonable doubt; in Criminal Case No. 1856, the appellants are found guilty of homicide and each is sentenced to suffer the penalty of six (6) years and one (1) day of prision mayor as minimum to fifteen (15) years of reclusion temporal as maximum and to indemnify solidarily the heirs of Arcadio Mendaño the sum of P30,000.00. Costs against the appellants.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Escolin, and Cuevas, JJ., concur.
Aquino, J., dissents.

DISSENTING OPINION

AQUINO, J.:

I dissent. Vedasto Mabansag is guilty beyond reasonable doubt of direct assault on the barangay captain, Zoilo Mendaño, under article 148 of the Revised Penal Code, or at least of resistance to a person in authority under Article 151 of the same code.

The three accused are guilty of homicide with the generic aggravating circumstance of abuse of superiority.

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