

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SIMPLICIO SABANAL, DIONISIO SABANAL, BENIDO SABANAL, PERFECTO SABANAL, ALEJANDRO ARCOY, AND FRANCISCO SABANAL, ACCUSED, BIENVE...

G.R. Nos. 73486-87. April 18, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

The accused-appellant was convicted of murder and sentenced to reclusion perpetua. He asks us to reverse the trial court on the ground that he was not at the scene of the crime when it was committed. If we do not choose to believe his alibi, he says he should at least be found guilty of homicide and not murder. His reason is that the offense was not attended with treachery.

The killing occurred at about six-thirty o'clock in the evening of 5 January 1977, at Pamplona, Negros Oriental. As found by the trial court, seven men, including Bienvenido Sabanal, the herein accused-appellant, went to the house of Benito Salas, a 70-year old man, who was then in his yard. Approaching him, Bienvenido said, "Tio, where is your son? Because an officer of the law is here looking for him." Benito coldly replied, "He is not here" and then turned his back in dismissal to go into his house. As he did, Bienvenido suddenly drew his bolo and hacked the old man from behind, hitting him in the back of the neck. Benito died instantly.[1]

(Another crime was committed immediately thereafter, to wit, the attack on Jesusa Salas, Benito's daughter, who was hacked by Benido Sabanal, Bienvenido's brother, and was hospitalized for twenty-three days. That case is not involved in this decision. Although it was tried jointly with the case at bar, it does not appear from the records that Benido has appealed his conviction.)

Despite his denials, there is definitely no question that Bienvenido Sabanal was the person who boloed Benito Salas to death. He was positively identified by Jesusa Salas, Macario Salas, and Purita Acedo Salas as their father's killer.[2] More impressively, two of his co-accused, Francisco Sabanal and Alejandro Arcoy, also testified that they actually saw Bienvenido kill Benito with a bolo.[3] Significantly, Francisco Sabanal is a cousin of Bienvenido.[4] No evidence has been offered by the defense to impeach the testimony of this witness or to show why he should lie on the stand against his close relative.

It is unnecessary to prove motive where the culprit has been positively identified, as in the present case. Nonetheless, it is also worth considering that there was bad blood between the Sabanals and the family of the deceased because of a boundary dispute between them. The record shows that only five days before the killing, Bienvenido and his brothers had pursued Macario Salas into his house and threatened to kill him, prompting the latter to shoot Bienvenido in the chest with an air rifle.[5] Bienvenido then filed a complaint for physical injuries against Macario, who retaliated by suing Bienvenido for grave threats.[6] It was Macario Salas whom Bienvenido Sabanal was looking for when Benito Salas was killed on that tragic night.

The only way to deal with Bienvenido's alibi is to reject it. It is ridiculous. He is in effect telling the court that on the date and time in question he was not actually killing Benito Salas but praying seven hundred meters away! For corroboration, he invokes the testimony only of Dionisio Sabanal, his own brother and one of his co-accused.

There is much to say though about the accused-appellant's contention that no treachery attended the commission of the offense, (assuming, he says, that he committed it). The trial court held that there was treachery because Bienvenido suddenly and unexpectedly attacked the defenseless old man from behind. By this finding, the judge concluded, following the language of the law, that the accused-appellant had employed a method which tended directly to insure the accomplishment of his objective without risk to himself from any defense that the victim might have been able to make. This Court does not think so.

It is important to remember that Bienvenido and his companions had gone to the victim's house in search not of Benito but of his son Macario. By some unfortunate twist of fate, it was Benito and not Macario they found. The trial court correctly held that as far as the killing of Benito Salas was concerned, no evident premeditation could be imputed to Bienvenido and his group. Benito was an old man. The real and direct object of Bienvenido's ire was not Benito but Macario, who had shot him five days earlier. There is no evidence that Bienvenido had intended to kill Benito or that he had taken steps to insure the accomplishment of his purpose without risk to himself.

It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.[7] Indeed, it could have been done on impulse, as a reaction to an actual or imagined provocation offered by the victim. In the case before us, there was already an open hostility between the Salas and Sabanal families when Bienvenido inquired from Benito as to the whereabouts of Macario. Benito's curt answer and his turning away in dismissal of Bienvenido must have so infuriated Bienvenido that he drew his bolo and impulsively hacked in anger. As we held in the earlier case of *People v. Manlapaz*, [8] provocation of the accused by the victim negates the presence of treachery even if the attack may have been sudden and unexpected.

In the present case, however, we find that although there was indeed provocation, it was not grave enough to constitute a mitigating circumstance.

The trial court [9] finding only the qualifying circumstance of treachery and no generic aggravating or mitigating circumstance, imposed the sentence of reclusion perpetua as the applicable penalty. But as the offense committed is not murder but homicide, and there being no modifying circumstances, the penalty prescribed under the Revised Penal Code is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, we hereby sentence the accused-appellant to suffer the penalty of 12 years of prision mayor, as minimum, to 17 years and 4 months of reclusion temporal, as maximum. All the monetary awards are sustained except the civil indemnity which is increased to P30,000.00.

WHEREFORE, the challenged judgment is modified and the accused-appellant is declared guilty of homicide, with corresponding adjustment of his penalty as determined in the immediately preceding paragraph. Costs against the accused-appellant.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, pp. 75-77.

[2] Ibid., pp. 82-83.

[3] Id., p. 83; TSN, August 24, 1981, p. 34; TSN, May 9, 1983; pp. 61, 63.

[4] Id.

[5] Id., p. 84.

[6] TSN, March 16, 1984; pp. 31-33; Appellee's Brief, p. 7.

[7] People v. Malazzab, 160 SCRA 123; People v. Aniñon, 158 SCRA 701; People v. Macaso, 64 SCRA 659; People v. Ardiza, 55 SCRA 245; People v. Macalisang, 22 SCRA 699; People v. Tumaob, 83 Phil. 738.

[8] 55 SCRA 598.

[9] Decision penned by RTC Judge Eleuterio E. Chiu, 7[th] Judicial Region, Branch XXXII, Dumaguete City.

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