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SECOND DIVISION

[G.R. No. L-30924. September 30, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNULFO BANGSAL, *alias* Arnul, and SATURNINO DE LOS REYES, *alias* Catot,** *accused.* **SATURNINO DE LOS REYES,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ABSORBED BY ABUSE OF SUPERIOR STRENGTH.** — Where the two assailants took advantage of their superiority in order to overpower the victim and consummate the killing, abuse of superior strength is the proper qualifying circumstance. If treachery is appreciated, it would be absorbed by the qualifying circumstance of prior strength.

2. **ID.; CONSPIRACY; PROOF OF.** — There is conspiracy when the manner in which the assailants assaulted the victim shown that they had community of design and that they cooperated and helped each other in order to encompass the victim's death, as when two accused, one at the back and the other in front of the victim simultaneously hit the latter, giving him no chance to evade their blows.

3. **REMEDIAL LAW; EVIDENCE; *RES IPSA LOQUITUR;* APPLICATION.**— The fact that the victim had stab wounds in the back and incised wounds in the frontal part of his body, a case of *res ipsa loquitur*, signifies that two weapons were employed in assaulting him and that there were two assailants.

APPEARANCES OF COUNSEL

Solicitor General Felix Q. Antonio, Assistant Solicitor General Conrado T. Limcaoco and *Solicitor Regino M. Monte* for plaintiff-appellee.

Anastacio E. Caoayan for accused-appellant.

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DECISION

AQUINO, *J.*:

This is a murder case. The prosecution's version is that about three o'clock in the afternoon of March 3, 1969, Adelina Zarate, a thirty-four-year old housewife, while resting in her residence located at Barrio Caloocan Sur, Binmaley, Pangasinan, heard Rizalino Victorio calling for help while in the yard of her house. She heard Rizalino saying: "Please stop. I do (will) not fight" ("*Ay, tondaan yoac la. Agac onlaban*"). Adelina, on looking out of the window, saw Arnulfo Bangsal and Saturnino de los Reyes stabbing Rizalino.

According to Adelina, Rizalino was in a kneeling and bending position, with both hands raised, Bangsal, who was armed with a kitchen knife, was at Rizalino's back, while De los Reyes, who was armed with a small bolo, was partly in front of the victim. When Adelina saw blood dripping from the victim's body, she exclaimed "*Hay*" and then she fainted. She witnessed the stabbing at a distance of five to six meters.

Eugenio Victorio testified that, on that same occasion, while he was taking merienda at his residence about eighty meters away from Adelina's house, he heard a loud cry. Acting on impulse, he repaired to the yard of Adelina's house where the cry of pain had originated. He found his brother, Rizalino, prostrate on the ground, mortally wounded but still alive. He asked Rizalino who had injured him. Rizalino said that he was assaulted by Arnul and Catot. Those are the respective nicknames of Bangsal and De los Reyes.

Rizalino requested Eugenio to get his wallet inside his (Rizalino's) pocket because, according to him, that would be the last time they would see each other. After uttering those words, Rizalino died. Eugenio cried and placed Rizalino's body on his lap. He said that the motive for the killing was that Bangsal tried to extort from Rizalino money with which to buy wine but the latter refused to give him the amount.

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At four o'clock or about an hour after the assault, the municipal health officer conducted an autopsy. He found that the thirty-one-year old victim sustained eleven wounds, to wit: four stab wounds on the left side of his back; a stab wound on the chest below the left nipple two stab wounds on the shoulder (left axillary line and above the axilla); an incised wound on the head; an incised wound on the left jaw near the mouth, and two incised wounds on the right and left arms. The doctor said that the chest wound, which penetrated the heart, was fatal.

At around five o'clock in that same afternoon, Bangsal, twenty years old, single, a student, surrendered to the desk sergeant of the police department of Dagupan City. He admitted to that peace officer that he had killed Rizalino (Roger) Victorio, He delivered to the sergeant the kitchen knife which he had used in the killing (Exh. B). The surrender was entered in the police blotter.

Saturnino de los Reyes, twenty years old, single, a fisherman, denied any complicity in the killing. He testified that in the afternoon of March 3, 1969, his attention was aroused by the report that somebody was killed. He went to the scene of the stabbing which was inside the yard of the spouses Gregorio Zarate and Adelina Zarate. He saw Bangsal holding a dagger and Rizalino Victorio sprawled on the ground already dead.

De los Reyes said that he tried to stop Bangsal from further stabbing Rizalino. He theorized that Adelina testified against him because a week before the stabbing, he heard his cock crowing inside Adelina's yard, and, when he inquired from her about the cock, she resented his inquiry. This was denied by Adelina.

The testimony of De los Reyes is inconsistent with his statement to the police on March 4, 1969. In that statement, he said that after two o'clock in the afternoon of March 3, 1969, he never left his residence although he "heard shoutings of several people" (Exh. D).

The trial court convicted Bangsal and De los Reyes of murder. It sentenced De los Reyes to *reclusion perpetua*. Appreciating

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in favor of Bangsal the mitigating circumstance of voluntary surrender to the authorities, it sentenced the latter to an indeterminate penalty of twelve years of *prision mayor*, as minimum, to twenty years of *reclusion temporal*, as maximum. The two accused were ordered to indemnify the heirs of Rizalino Victorio in the sum of ₱12,000 (Criminal Case No. 23293, Court of First Instance of Pangasinan).

Both defendants appealed. Bangsal withdrew his appeal. The withdrawal was granted in this Court's resolution of January 8, 1971.

De los Reyes contends in this appeal that the trial court erred in giving credence to the testimonies of the prosecution witnesses, in holding that the killing was qualified by treachery and in convicting him of murder. De los Reyes argues that only Bangsal perpetrated the killing. That version cannot be sustained in the face of Adelina Zarate's testimony that with her own eyes she saw Bangsal and De los Reyes hitting Rizalino Victorio with their weapons for no other purpose than to snuff out his life. That horrendous sight shocked her so much that she fainted.

Adelina's testimony is substantially the same as her declaration at the preliminary examination and in her sworn statement before the municipal judge. It is confirmed by the victim's antemortem declaration to his twenty-year-old brother, Eugenio, that he was wounded by Bangsal and De los Reyes.

The fact that the victim had *stab wounds* in the *back* and *incised wounds* in the *frontal part* of his body, a case of *res ipsa loquitur,* signifies that two weapons were employed in assaulting him and that there were two assailants.

The manner in which Bangsal and De los Reyes assaulted Rizalino Victorio shows that they had community of design and that they cooperated and helped each other in order to encompass his death. With Bangsal at the back of Rizalino De los Reyes in front and with the two simultaneously hitting him, the latter had no chance to evade their blows. The two accused,

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friends since childhood (33 tsn July 16, 1969), were veritable co-conspirators.

The trial court did not err in holding appellant De los Reyes responsible for the killing of Rizalino Victorio. His guilt was proven to a moral certainty.

Treachery, abuse of superiority, evident premeditation and cruelty were alleged in the information as having qualified the killing. The trial court appreciated treachery. Appellant De los Reyes argues that there was no treachery because it was not proven that there was a sudden and unexpected attack upon the victim.

We hold that abuse of superior strength is the proper qualifying circumstance. The two assailants took advantage of their superiority in order to overpower the victim and consummate the killing (Art. 14[15], Revised Penal Code). (As to cases where treachery was appreciated when the victim was shot after he had raised his hands in an attitude of surrender, see *People vs. Barba*, 97 Phil. 991; *People vs. Dagundong*, 108; Phil. 682; *People vs. Guhiting*, 88 Phil. 672, and *People vs. Ricohermoso*, L-30527-28, March 29, 1974, 56 SCRA 431, 437.) If treachery were appreciated in his case, it would be absorbed by abuse of superiority.

Evident premeditation and cruelty were not proven in this case. So, the penalty of *reclusion perpetua* imposed by the trial court, is in conformity with articles 64[1] and 248 of the Revised Penal Code.

WHEREFORE, the trial court's decision with respect to appellant De los Reyes is affirmed. He is liable for one-half of the costs.

SO ORDERED.

Fernando (Chairman), Barredo, Concepcion Jr., and *Santos, JJ.*, concur.