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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. L-31961. January 9, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FLORENCIO ODENCIO and GUIAMELON MAMA**, *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; CONSPIRACY; WHEN ESTABLISHED.** — Where it was shown that the accused were seen pacing back and forth near one of the victims' house on the day of the incident, that they shot the two victims in the same place and almost simultaneously, and on leaving the scene of the crime, they proceeded in the same direction, and that they were animated by the same motive, which was to liquidate the victims because the latter allegedly stole the carabaos of the relatives of the accused, these circumstances show a coordination of efforts and community of design.

2. **ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED.** — Where the shooting was not the product of momentary impulse, and the malefactors, taking advantage of the cover of the night, stationed themselves in a place where they could shot the victims with impunity without risk to themselves or without exposing themselves to any retaliation since the victims did not expect to be assaulted at the time and place, the perpetration of the crime was attended with *alevosia.*

3. **REMEDIAL LAW; EVIDENCE; HEARSAY RULE; DYING DECLARATION; WHEN ADMISSIBLE.** — A dying declaration

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may be oral or written. If oral, the witness, who heard it, may testify thereto without the necessity, of course, of reproducing exactly the words of the decedent, if he is able to give the substance thereof. An unsigned dying declaration may be used as a memorandum by the witness who took it down.

4. **CRIMINAL LAW; CONSPIRACY; LIABILITY OF CO-CONSPIRATORS.** — Where the two accused acted in conspiracy in killing their two victims, they are each liable for the two murders. In the absence of modifying circumstances concommitant with the commission of the two assassinations, the proper penalty is *reclusion perpetua* for each murder (Art. 64 (1) and 248, Revised Penal Code). The two accused should be held solidarily liable for the two indemnities of ₱12,000. In the Service of the two *reclusion perpetuas*, the forty-year limit fixed in Article 70 of the Revised Penal Code should be observed.

APPEARANCES OF COUNSEL

Manuel P. Calanog for appellants.
Office of the Solicitor General for appellee.

D E C I S I O N

AQUINO, *J.*:

Florencio Odencio and Guiamelon Mama appealed from the decision of the Court of First Instance of North Cotabato, finding them guilty of two separate crimes of murder, sentencing each of them to two *reclusion perpetuas*, and ordering them to pay ₱12,000 to the heirs of Prowa Talib and ₱12,000 to the heirs of Kadir Oranen (Criminal Case No. 5276).

According to the prosecution, at about seven o'clock in the evening of June 29, 1968, while Prowa Talib (Palua Talib), a forty-year old farmer, was in the yard of his house located at Barrio Simsiman, Pigcawayan, North Cotabato, handing a pot of rice to his wife, Setie Mamalintao, who was near the stairs, was felled down by a volley of shots.

Setie rushed to the aid of her husband. When she looked in the direction where the gunshots emanated, she saw Guiamelon

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Mama holding a gun near a coconut tree around six *brazas* away. Then, she heard another volley of shots. She saw Florencio Odencio (Poren), also holding a gun near another coconut tree around ten meters away in the yard of the house of her neighbor, Daongan Karaing. She noticed that Kadir Oranen, who was nearby, had fallen to the ground around three arms' length from Daongan's house, Kadir died instantly.

Setie had known for a long time Florencio and Guiamelon who were friends and neighbors also residing in Barrio Simsiman. Setie and Guiamelon had cultivated adjacent farmlands.

While Setie was comforting her husband, he allegedly told her that he was going to die. He directed her to remember what had happened to him and that they had seen Guiamelon Mama and Poren armed with guns. Prior to that shooting incident, Prowa Talib had reported to the *barrio* captain that Florencio Odencio had stolen his lumber.

The two assailants fled westward. At the time the incident occurred, Japal Rongot was on his way to Talib's house. He encountered Guiamelon and Joseph Odencio with both of whom he was well acquainted. He asked Guiamelon why there were gunshots but the latter did not make any reply. Upon reaching Talib's house, Rongot saw Setie crying and holding Talib on her lap. Setie told him that Talib was shot by Guiamelon and she pointed to him Oranen's corpse which was about two arms' length from Talib.

Ngelam Towa (Nilan Tuwa), another neighbor and the uncle of Setie, heard the gunshots on the occasion in question. He hastened to Talib's house. Setie told him that Guiamelon Mama had shot Talib. She advised her uncle not to use his flashlight because Guiamelon was still in the vicinity. Setie also told Towa that Florencio Odencio had shot Oranen. Towa left Talib's house in order to get assistance from his father-in-law. While crossing the trail, his flashlight focused on Florencio Odencio with two companions leaving the scene of the crime.

Policemen arrived at Talib's house. Setie informed them that Guiamelon was the gunwielder. They brought Talib to a medical

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clinic where he was interrogated by Patrolman Joaquin Sañada. Talib told Sañada that his assailants were Guiamelon, Florencio Odencio and Florencio's father, Joseph Odencio. Due to the critical condition of Talib (*nagaagonto*) he was not able to sign his dying declaration (Exh. B) as taken down by Patrolman Sañada. Talib was brought to the hospital. He died on the following day.

In that unsigned antemortem declaration, Talib revealed that Florencio Odencio suspected that he and Oranen had masterminded the theft of Joseph Odencio's two carabaos, and that, on the other hand, Guiamelon suspected Talib of having stolen the carabao of Damiog, the father-in-law of Guiamelon. It was stated further in the same dying declaration that Talib had told Patrolman Sañada that he wanted to sign it but that he could not do so because of the wound in his arm. Talib also articulated his belief that he was going to die because he could hardly breathe and his wound was painful.

On July 1, 1968 or within forty-eight hours after taking Talib's unsigned antemortem statement, Sañada executed an affidavit reciting the circumstances surrounding the taking thereof. Sañada testified in court on Talib's dying declaration.

The autopsy disclosed that Talib sustained eight gunshot wounds in the back or posterior chest wall. No autopsy was performed on the body of Oranen who, as noted above, died at the scene of the crime.

On July 1, 1968, a complaint for double murder was filed in the municipal court against Guiamelon, Florencio Odencio, Joseph Odencio and Angelico Aposaga, Poren's father-in-law. They waived the second stage of the preliminary investigation. On September 19, 1968, an information was filed in the Court of First Instance against Guiamelon, Florencio Odencio and Joseph Odencio. The trial court acquitted Joseph and convicted only Florencio and Guiamelon.

In his defense, Florencio, a thirty-two year old farmer, denied that he shot Talib and that he had a misunderstanding with Oranen and Talib with both of whom he was acquainted.

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Florencio testified that he was in his house when the shooting occurred. He was arrested on the following day, June 30, 1968. He surmised that he was implicated in the case because he did not support Mayor Doruelo, the incumbent mayor, and, instead, he voted for Estañol, the candidate of the Liberal Party. Florencio's alibi was corroborated by his wife and his brother-in-law, Antonio Cesar.

The other accused, Guiamelon Mama, a thirty-year-old farmer, adopted the same line of defense. He declared that he was also in his house when Talib was shot; that he had no misunderstanding with Talib, who is his father's brother-in-law, being the brother of his stepmother, his father's second wife; that he was arrested while he was attending Talib's funeral, and that he came to know his co-accused Florencio Odencio only in jail.

The accused presented Samuel Jubilan, a Constabulary sergeant, who testified that he was present when Patrolman Sañada interrogated Talib and that the latter declared that he was not able to recognize his assailant because it was dark. Sañada said he did not know of that interrogation made by Jubilan.

In disbelieving the alibis of Florencio and Guiamelon, the trial court observed that the accused were indubitably identified as the assailants in Talib's dying declarations to his wife and Patrolman Sañada. Setie Mamalintao in her statement to the police declared that she was able to recognize Florencio and Guiamelon because there was a "big torch" in front of her house and Karaing's house (No. 19, Exh. 1, p. 11, Record).

The trial court noted that there "was a good amount of lighting in the yard of Prowa Talib because he was preparing supper" when he was shot and that Setie was able to recognize the accused because she had been acquainted with them for a long time. As stated above, two witnesses saw the accused in the vicinity of Talib's house shortly after the shooting. Therefore, the contention of appellants' counsel *de oficio* that they had not been sufficiently identified as the killers cannot be sustained.

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Another contention of counsel *de oficio* is that the trial court erred in finding that Guiamelon and Odencio conspired to kill Talib and Oranen. That contention is belied by the evidence. Guiamelon and Odencio were seen pacing back and forth near Talib's house on the day of the incident (No. 27, Exh. 1). They shot the two victims in the same place and almost simultaneously, thus showing a coordination of efforts and community of design.

On leaving the scene of the crime, they proceeded in the same direction (westward). They were animated by the same motive, which was to liquidate the victims because the latter allegedly stole the carabaos of the relatives of the accused. The record does not disclose any reason why Setie Mamalintao and Patrolman Sañada would frame up the appellants.

The manner in which they shot the victims shows treachery. The shooting was not the product of momentary impulse. There was *alevosia* because the two malefactors, taking advantage of the cover of night, stationed themselves in a place where they could shoot the victims with impunity without any risk to themselves or without exposing themselves to any retaliation since the victims did not expect to be assaulted at that time and place.

Appellants' counsel further contends that they were convicted on the basis of the wife's uncorroborated testimony "which is open to suspicion due to inherent improbabilities" and "motives to falsify the truth." That contention is not correct. Talib's antemortem statement fortifies the testimony of his widow, an eyewitness. We have stressed that two other witnesses saw the appellants leaving the scene of the crime.

Moreover, Talib's dying declaration was sufficiently proven. The rule is that a dying declaration may be oral or written. If oral, the witness, who heard it, may testify thereto without the necessity, of course, of reproducing exactly the words of the decedent, if he is able to give the substance thereof. An unsigned dying declaration may be used as a memorandum by the witness who took it down. (See 5 Moran's *Comments on the Rules of Court*, 1970 Ed., pp. 315-316.).

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We are satisfied that the guilt of the appellants was proven beyond reasonable doubt. As they were co-conspirators, they are each liable for the two murders. There being no modifying circumstances concomitant with the commission of the two assassinations, the trial court properly penalized each murder with *reclusion perpetua* (Arts. 64[1] and 248, Revised Penal Code).

The trial court's judgment is affirmed with the sole modification that the two appellants should be held *solidarily* liable for the two indemnities of ₱12,000 each. In the service of the two *reclusion perpetuas*, the forty-year limit filed in Article 70 of the Revised Penal Code should be observed. Costs against the appellants.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. L-37401. January 9, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **DANILO LLANTO, BENJAMIN PAULINO and COSME ERISPE**, *accused.* **COSME ERISPE**, *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; LOCATION AND NATURE OF WOUNDS MAY INDICATE THE NUMBER OF ASSAILANTS. — The circumstance that the victim sustained four stab wounds which penetrated his lung and liver: one on the left side of the