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[G.R. No. L-45123. August 26, 1985]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **MANGGAYANAN SINAW-AY, GAPAW MAMPINANTAW, *alias* GAPAW LIGUNAY, ONE *alias* JUNIOR ILONGGO, JOHN DOE and PETER DOE**, *accused-appellants*, **GAPAW MAMPINANTAW, alias GAPAW LIGUNAY**, *defendant-appellant*.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; IDENTITY OF THE ACCUSED; WHEN THE ACCUSED WAS POSITIVELY IDENTIFIED BY THE WITNESSES, HIS REAL NAME IS OF LITTLE IMPORT.**— The claim of the accused that he is Gapaw Ligunay and not Gapaw Mampinantaw is not a valid defense since the accused was positively identified as the culprit. Besides, it appears that before he was arraigned, a reinvestigation was conducted to determine the true identity of the accused and it was ascertained that Gapaw Ligunay and Gapaw Mampinantaw are one and the same person. As a result thereof, the information was amended to charge one "Gapaw Mampinantaw *alias* Gapaw Ligunay" with the commission of the crime. Whether or not the accused is Gapaw Mampinantaw or Gapaw Ligunay is therefore of little import.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHEN THE VICTIM WAS SUDDENLY AND UNEXPECTEDLY FIRED UPON BY THE ACCUSED.**— While evident premeditation may not have been established, however, treachery, which qualifies the killing to murder, has been amply proven. The record shows that the deceased Datu Agtalan Lasia was suddenly and unexpectedly fired upon by the accused-appellant and his companions as the said deceased was examining a shotgun shown to him by one of the accused, one named Junior Ilonggo, giving the deceased no opportunity to offer any defense.

3. **ID.; CONSPIRACY; PRESENT WHEN THE CIRCUMSTANCES SHOW A CONCERT OF DESIGN AND ONENESS OF PURPOSE AMONG THE ACCUSED.**— Counsel further claims

Supreme Court E-Library

that conspiracy has not been established. Conspiracy, however, may be inferred from the fact that the appellant and his co-accused were together when they went to the house of Datu Agtalan Lasia on the pretext of selling guns to him. Then, at the command of the appellant, the deceased was shot. Thereafter, the appellant and his companions continued to fire at the slain datu as he ran towards his house. After shooting the deceased, the appellant and his companions left together. Two days later, they went together to the wife and daughter of the deceased at their evacuation hut in the forest to warn them not to report the incident to the authorities. These circumstances show a concert of design and oneness of purpose.

D E C I S I O N

CONCEPCION JR., *J.*:

Manggayanan Sinaw-ay, Gapaw Mampinantaw, *alias* Gapaw Ligunay, one *alias* Junior Ilonggo, John Doe and Peter Doe were charged with the crime of murder before the Court of First Instance of Davao in an information which reads as follows:

"The undersigned accuses MANGGAYANAN SINAW-AY, GAPAW MAMPINANTAW, *alias* GAPAW LIGUNAY, one *alias* JUNIOR ILONGGO, JOHN DOE and PETER DOE of the crime of MURDER, under Art. 248 of the Revised Penal Code, committed as follows:

That on or about August 25, 1972, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the abovementioned accused, conspiring and confederating together and helping one another, armed with shotguns, wilfully, unlawfully and feloniously and with intent to kill and with treachery and evident premeditation, attacked, assaulted and shot with the shotgun one Datu Agtalan Lasia, inflicting him injuries which caused his death."[1]

Of the above-named accused, only Gapaw Mampinantaw *alias* Gapaw Ligunay was tried as he was the only one brought to the jurisdiction of the trial court.

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[1] *Rollo*, p. 4.

Supreme Court E-Library

After trial, the court *a quo* found the accused Gapaw Mampinantaw alias Gapaw Ligunay guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua*, to indemnify jointly and severally the heirs of the deceased Datu Agtalan Lasia in the sum of ₱12,000.00 and to pay his one-fifth share of the costs. From this judgment, the accused appealed to this Court.

The People's version of the case is as follows:

"At about five o'clock in the afternoon of August 25, 1972 while Teodulo Dajones was in the house of one Mansarawan in Gumitan, Davao City, he heard one Manggayanan Sinaw-ay a few meters away call his uncle Datu Agtalan Lasia, to come down because somebody was there offering to sell guns. (*pp. 7, 8, 6, tsn, March 10, 1976*). Datu Lasia was then inside his house with his wife Cundag Uminloy (*p. 20, tsn, May 6, 1976*). As Dajones went outside Mansarawan's house, he saw Gapaw Mampinantaw *alias* Gapaw Ligunay, one Junior Ilonggo and two others at the yard of Datu Lasia's house, all armed with guns. Datu Lasia came out from his house and greeted the group. Junior Ilonggo handed a gun he was carrying to Datu Lasia for him to inspect. While Datu Lasia was holding and examining the gun. Gapaw Mampinantaw without warning fired at him. Though mortally wounded Datu Lasia struggled to get inside his house and fell down. Thereafter, Gapaw Mampinantaw and his companions fired their guns at the victim's house (*p. 3, tsn, Ibid.; pp. 18-25, tsn, Ibid.*). As the shots were fired, Dajones sought cover by lying flat on the ground.

When all became quiet, Dajones went to Datu Lasia's house. He found Datu Lasia already dead with a wound on the left side of his upper abdomen (*pp. 3-4, tsn, Ibid.; p. 18, tsn, Ibid.*). Cundag Uminloy, Datu Lasia's wife, requested Dajones to inform their daughter Linda Paundag, who was at Upian, of the incident. Upon their return to Gumitan, Davao City, Datu Lasia was laid under their house in an open grave in accordance with the tribe's custom of burying one who dies not by natural causes (*p. 5, tsn, Ibid., p. 19, tsn, Ibid.; p. 17, tsn, March 11, 1976*).

After the burial of Datu Lasia, Linda and her mother evacuated to their hut in the forest in upper Gumitan for fear of their safety. They had just been two (2) days in their hut when Gapaw Mampinantaw told Cundag Uminloy and Linda Paundag Lasia not to stop them from getting the things they wanted, or else they (Linda

Supreme Court E-Library

and her mother) would be killed in the same way he (Gapaw Mampinantaw) shot Datu Lasia. The robbers took from Linda and her mother a pig, a sack of palay and two guns (*pp. 17, 18, tsn, March 11, 1976*). It appears that Gapaw Mampinantaw is a nephew of Datu Lasia, the former being the son of the latter's brother Mampinantaw Lasia (*p. 14, tsn, May 6, 1976*).

The Davao City Police Department, having been notified of the shooting, dispatched a team led by Pfc. Pepito Balangawan to the scene of the crime at about 2:40 o'clock in the afternoon of September 1, 1972. They found the cadaver of the deceased under his house with one gunshot wound, the entrance of which was on the lower part of the body and the exit on the other side (*pp. 11-12, tsn, March 11, 1976*)."[2]

The accused-appellant does not question the fact that the deceased Datu Agtalan Lasia was slain by five (5) armed persons, including one named Gapaw Mampinantaw at about 5:00 o'clock in the afternoon of August 25, 1972, in Gumitan, Davao City, and interred in an open grave under the deceased's house. However, he denied participation in the said killing. He claimed that he is Gapaw Ligunay, a farmer and resident of Kilamac, Davao City, and not the Gapaw Mampinantaw, his namesake and nephew of the slain datu and resident of Gumitan, Davao City who is charged with the killing of the said datu. He further claimed that he was at Kilamac, Davao City, a place very far from Gumitan, when the crime was committed and came to know of the death of Datu Agtalan Lasia when he was informed of it by one Josema from Kalangagan.

The denial of the accused, as well as his alibi, cannot prevail over the positive testimonies of Teodulo Dajones (Dahines) and Cundag Uminloy that the appellant and his co-accused were responsible for the death of Datu Agtalan Lasia. We have examined their testimonies and find no reason to disbelieve them.

The claim of the accused that he is Gapaw Ligunay and not Gapaw Mampinantaw is not a valid defense since the accused

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[2] Appellee's Brief, pp. 2-4.

Supreme Court E-Library

was positively identified as the culprit. Besides, it appears that before he was arraigned, a reinvestigation was conducted to determine the true identity of the accused and it was ascertained that Gapaw Ligunay and Gapaw Mampinantaw are one and the same person. As a result thereof, the information was amended to charge one "Gapaw Mampinantaw *alias* Gapaw Ligunay" with the commission of the crime. Whether or not the accused is Gapaw Mampinantaw or Gapaw Ligunay is therefore of little import.

Counsel contends that the trial court erred in finding the accused guilty of murder in the absence of evident premeditation and treachery that would qualify the killing to murder, as charged in the information.

The contention is without merit. While evident premeditation may not have been established, however, treachery, which qualifies the killing to murder, has been amply proven. The record shows that the deceased Datu Agtalan Lasia was suddenly and unexpectedly fired upon by the accused-appellant and his companions as the said deceased was examining a shotgun shown to him by one of the accused, one named Junior Ilonggo, giving the deceased no opportunity to offer any defense.

Counsel further claims that conspiracy has not been established. Conspiracy, however, may be inferred from the fact that the appellant and his co-accused were together when they went to the house of Datu Agtalan Lasia on the pretext of selling guns to him. Then, at the command of the appellant, the deceased was shot. Thereafter, the appellant and his companions continued to fire at the slain datu as he ran towards his house. After shooting the deceased, the appellant and his companions left together. Two days later, they went together to the wife and daughter of the deceased at their evacuation hut in the forest to warn them not to report the incident to the authorities. These circumstances show a concert of design and oneness of purpose.

The crime committed is murder, qualified by treachery and attended by the aggravating circumstance of dwelling and by a band, with no mitigating circumstance to offset it. Pursuant

Supreme Court E-Library

to Art. 248 of the Revised Penal Code, the imposable penalty is death. However, for lack of the required number of votes, the penalty is reduced to *reclusion perpetua*.

WHEREFORE, the judgment appealed from should be, as it is hereby AFFIRMED, with the modification that the indemnity to be paid to the heirs of the victim is increased to ₱30,000.00. With costs against the appellant.

SO ORDERED.

Makasiar, C.J., Teehankee, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, and *Alampay, JJ.*, concur.

Aquino and *Abad Santos, JJ.*, are on leave.

FIRST DIVISION

[G.R. Nos. L-49607-13. August 26, 1985]

BENJAMIN LU HAYCO, *petitioner-appellant, vs.* **THE HONORABLE COURT OF APPEALS**, *respondents-appellees.*

[G.R. Nos. L-55775-86. August 26, 1985]

BENJAMIN LU HAYCO, *petitioner-appellant, vs.* **HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES**, *respondents-appellees.*

SYLLABUS

1. **CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST DOUBLE JEOPARDY; ELEMENTS.** — The petitioner's contentions have no merit. In *People v. Militante* (117 SCRA 910), we laid down the following requisites for the protection