

EN BANC

[G.R. No. 130010, May 26, 1999]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE RABANILLO Y MAGALONG, ACCUSED-APPELLANT.**

DECISION

DAVIDE, JR., C.J.,

Accused-appellant Vicente Rabanillo (hereafter RABANILLO) was charged before the Regional Trial Court of Dagupan City, Branch 43, with the crime of murder in an information^[1] whose accusatory portion reads:

That on or about August 9, 1996, at 5:00 o'clock in the afternoon at barangay Amansabina, municipality of Mangaldan, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed samurai, with intent to kill, with treachery and evident premeditation, did, then and there, wilfully, unlawfully and feloniously hack RAUL MORALES y Visperas, thereby causing his death thereafter due to:

INTRA THORA-ABDOMINAL HEMORRHAGE, sec. to open wound of the back

THORA HEPATIC HEMORRHAGE, sec. to incised wounds

as per Medico-Legal Report issued by Dr. Reynaldo C. Gabriel, M.D., RHU of Mapandan [*sic*], Pangasinan, to the damage and prejudice of the heirs of Raul Morales y Visperas.

CONTRARY to Art 248 of the Revised Penal Code, as amended by R.A. [No.] 7659.

Later, RABANILLO filed a motion denominated "Plea Bargaining Offer"^[2] stating his willingness to enter a plea of "guilty" to the crime of homicide. This motion was met with vehement objection^[3] from the prosecution and was eventually denied^[4] by the trial court. Upon arraignment, the appellate entered a plea of "not guilty"^[5] to the charge of murder.

The undisputed facts^[6] are as follows:

In the afternoon of 9 August 1996, appellant RABANILLO; the victim Raul Morales (hereafter MORALES); prosecution witnesses Perfecto Suarez, Samuel Magalong, and Ramil Morales; and several other persons were having a drinking spree at the store of Narcisa Morales, mother of MORALES, at Barangay Amansabina, Mangaldan, Pangasinan. At about 5:00 p.m., a certain Willy Vito, one of the participants in the

drinking session, took a bath at the artesian well nearby and jokingly doused Suarez with water. The latter tried to retaliate but failed; he thus ran after the others and splashed them with water.

RABANILLO joined the game. He filled with water and tried to pour its content at someone, but drenched MORALES instead. The latter reprimanded the former because water got into his ear. A heated argument between the two ensued and culminated into a fistfight. The two were eventually pacified by cooler heads and were ushered to their respective houses, which were just about 15 meters apart. The others milled around by the road.

As to what transpired next, the prosecution and the defense had different versions.

The evidence for the prosecution reveals that half an hour after the fistfight while MORALES, Suarez, and one Mauro Pascua were having a conversation in the terrace of the house of MORALES, RABANILLO went out of his house wielding a one-meter samurai. RABANILLO went straight to MORALES and hacked him. Instinctively, the latter parried the blow, but he was hit on his right hand. When he attempted to run away, he tripped and fell down to the ground. At this point, RABANILLO hacked him two times more, hitting at his back and left shoulder. That same day, MORALES drew his last breath.^[7]

On the other hand, the defense presented the following version:

A while later appellant heard Raul Morales, then in the terrace of their house that is beside appellant's house, shouting and challenging him to come out. Forthwith, appellant, irked by the challenge, emerged from his house with a bolo on hand and attacked Raul Morales and killed him in the process. Thereafter, accompanied by the barangay captain, he went to the Town hall of Mangaldan, Pangasinan, and surrendered.^[8]

In its decision^[9] of 14 July 1997, the trial Court noted that when RABANILLO took the witness stand, he offered his testimony to prove the mitigating circumstances of passion and obfuscation, drunkenness, and voluntary surrender and that he was not, therefore, denying having killed MORALES. It then limited the issues to the presence of such mitigating circumstances, as well as of the aggravating circumstances of treachery, evident premeditation, and abuse of superior strength.

The trial court ruled out treachery, reasoning that the victim had been forewarned of the evil intention of RABANILLO when the latter went out of his house armed with a samurai bolo; besides, the initial attack was frontal. It, however, appreciated evident premeditation as a qualifying circumstance because the period of 45 minutes which elapsed between the time the fight was broken up and the time RABANILLO decided to kill MORALES was "sufficient period of time to ponder with cold neutrality on what to do in the premises, whether to do a righteous act or to pursue a criminal overt act despite knowledge of its evil consequences." After the lapse of that period, RABANILLO still clung to his evil intention and hacked MORALES to death. The trial court also appreciated the aggravating circumstance of abuse of superior strength because, aside from the fact that RABANILLO had a "bulkier and strong[er] body physique... as compared to victim's slimmer/thinner body," he still armed himself with a samurai bolo to insure the preparation of his evil intention.

RABANILLO's claim of the attenuating circumstance of passion and obfuscation was not considered. The trial court was not convinced that MORALES had inflicted bodily injury against RABANILLO; if ever the latter sustained injuries, they were incurred when MORALES and RABANILLO were engaged in a fisticuff. It noted that the fight was ignited by RABANILLO when he poured water into the ear of MORALES. The trial court also debunked RABANILLO's claim of intoxication for lack of evidence. It likewise refused to give the benefit of the mitigating circumstance of voluntary surrender, holding that RABANILLO's own testimony that it was the barangay captain who went to RABANILLO's house and brought him to the police station belied his claim that he voluntarily surrendered.

Accordingly, the trial court convicted RABANILLO for the crime of murder and decreed as follows:

WHEREFORE, the Court finds accused Vicente Rabanillo y Magalong GUILTY beyond reasonable doubt of the felony of MURDER defined and penalized under Article 248 of the Revised Penal Code as amended by R.A. 7659, attended by the qualifying aggravating circumstance of evident premeditation and generic aggravating circumstance of taking advantage of superior strength and conformably to law, the Court sentences him to suffer the capital penalty of reclusion perpetua to DEATH.

Further, the COURT orders the accused to pay Narcisa Morales (mother of Raul Morales) the following, to wit:

- 1) P50,000.00 as indemnity;
- 2) P30,000.00 as moral damages;
- 3) P20,000.00 as exemplary damages;
- 4) P41,024.70 representing actual and compensatory damages;
- 5) P10,000.00 as attorney's fees;
- 6) And costs.

The Provincial Warden of Pangasinan is ordered to commit the person of accused VICENTE M. RABANILLO to the National Penitentiary in Muntinlupa, Metro Manila, immediately without any unnecessary delay.

SO ORDERED.

Hence, RABANILLO appealed the decision to this Court contending that the trial court erred (1) in finding that the killing of MORALES was qualified by evident premeditation; and (2) in not finding that he is entitled to the mitigating circumstance of passion and obfuscation, intoxication, and voluntary surrender.

Anent the first assigned error, RABANILLO maintains that it was only when MORALES and his friends started taunting him, "*You come out, Tanod Commander*," that he, in a fit of anger, emerged from his house and attacked MORALES. The killing was not planned, and there was no sufficient time for meditation and reflection on the nature and consequence of his act.

As to the second assigned error, RABANILLO asseverates that he should be given the benefit of the mitigating circumstances of passion and obfuscation, drunkenness,

and voluntary surrender. The words "*You come out, Tanod Commander*" are "enough to make one, especially a barangay folk who is characteristically sensitive, blinded by passion." Moreover, having imbibed liquor from 2:00 to 5:00 p.m., he must have been surely drunk to be so sensitive to accept the victim's challenge. After killing the victim, he voluntarily went with the Barangay Captain to the police station to surrender and willingly obliged to be committed in jail even without a warrant of arrest or an information against him.

In its Brief, the Office of the Solicitor General (OSG) recommends that RABANILLO be convicted to homicide only, not murder, in that the qualifying circumstance of evident premeditation was not present and that the aggravating circumstance of abuse of superior strength, which was correctly appreciated by the trial court, was not alleged in the information. It agrees with the trial court in all other respects.

We agree with the trial court in ruling out treachery. The evidence shows that MORALES was facing towards the direction where RABANILLO came from.^[10] He must then have caught sight of the latter, who was approaching him with a samurai in his hands. Considering that a fight between them had just taken place. MORALES knew or must have known that he would be the target of RABANILLO's attack. Since he was still about 10 meters^[11] away from RABANILLO, he had an opportunity to escape or avoid the assault. Hence, it cannot be said that treachery attended the commission of the crime.

However, we are of one mind with the OSG and RABANILLO that evident premeditation was wanting in the commission of the crime. For evident premeditation to be considered, the following elements must be established: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender has clung to his determination; and (3) sufficient lapse of time between the determination to commit the crime and the execution thereof to allow the offender time to reflect upon the consequences of his act.^[12] The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a span of time sufficient to arrive at a calm judgment.^[13]

In the present case, there is no showing as to the time RABANILLO decided to commit the crime. Even assuming that it was right after he was escorted to his house that he conceived the idea of killing the victim, evident premeditation cannot be appreciated. Only 30 minutes^[14] intervened between that time and the time he went out of his house to attack MORALES. It has been held that the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act.^[15] Additionally, as aptly observed by the OSG, the attending circumstances of the killing and the external acts of the appellant negate the existence of evident premeditation; thus:

When accused-appellant rushed out from his house, it was just 5:30 in the afternoon. (TSN, April 11, 1997, p. 10) Following Philippine norm, it would still be daylight or at least there would still be sufficient light to easily see people or happenings. The persons who were previously drinking were just milling around by the road. (TSN, November 7, 1996, p. 21) Accused-appellant did not even wait until Raul Morales was alone; he came out of his house with the samurai parallel to his head and

directly went straight to the victim at the time when the latter was conversing with two of his friends. Also, accused-appellant did not even attempt to disguise his intention by camouflaging his weapon. He raised it high for all to see. Cool thought and calm judgment, there was none in this case.^[16]

Since the qualifying circumstances of treachery and evident premeditation are not present in this case, RABANILLO can be convicted of homicide only.

We do not agree with the trial court on its finding of the aggravating circumstance of abuse of superior strength. It appreciated such circumstance because RABANILLO had a "bulkier and strong[er] body physique ... as compared to victim's slimmer/thinner body," and despite thereof he armed himself with a samurai bolo.

There is abuse of superior strength if, as expressly provided by law, the assailant take advantage of his superior strength. It must then be established that not only did the assailant enjoy superior strength over the victim, but that he took advantage thereof in the commission of the crime. That MORALES was "slimmer/thinner" while Rabanillo was "bulkier and strong[er]" was not enough proof that the latter superior strength. There should have been proof that, indeed, RABANILLO's bulkier physique provided him physical strength to that of MORALES. It may further be stressed that a man of "slimmer/thinner body" need not necessarily be physically weak; he could even be physically stronger than a bulkier person. Moreover, even granting for the sake of argument that RABANILLO was physically stronger than MORALES, the circumstances in this case fail to convince us that RABANILLO took advantage of his superior strength.

Now on the mitigating circumstances invoked by RABANILLO.

To prove passion and obfuscation, RABANILLO testified that the group of MORALES shouted at him: "*You come out, Tanod Commander.*" Thereupon, one Meljhones Soriano approached him and held his hands. At this point, MORALES boxed him on different parts of his body and threw bottles at him. Not contented, the group resumed shouting at him. He was so "blinded by their shoutings" that he did not know anymore what happened next.^[17]

In his Brief, however, RABANILLO abandoned these allegations that MORALES boxed him and threw bottles at him. He merely stated that the obfuscation on his part was generated by the victim's words, "*You come out, Tanod Commander,*" which he considered a challenge against his person and honor as the chief *tanod* of the Barangay.

We are not persuaded. Prosecution witnesses Perfecto Suarez and Samuel Magalong were one in saying that MORALES was just having a conversation with his friends when RABANILLO came out of his house ready to attack. It is significant to note that RABANILLO himself testified that Samuel Magalong is the son of RABANILLO's first cousin,^[18] and he did not deny Suarez's testimony that he, RABANILLO, is Suarez's grandfather.^[19] Since Magalona and Suarez are RABANILLO's nephew and grandson, respectively, they would unlikely omit anything in their testimony that would mitigate the liability of RABANILLO. But, despite their relationship with RABANILLO, they agreed to tell nothing but the truth and helped in giving justice to