

FIRST DIVISION

[G.R. No. 105668, October 16, 1997]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE,
VS. HERNANDO DALABAJAN, DOMINADOR DALABAJAN AND
FERNANDO DALABAJAN, DEFENDANTS AND APPELLANTS.
D E C I S I O N**

HERMOSISIMA, JR., J.:

This is an appeal interpose by Hernando, Dominador, and Fernando, all surnamed Dalabajan.

On May 21, 1986, an information^[1] accusing Hernando Dalabajan, Dominador Dalabajan, Fernando Dalabajan, Napoleon dela Torre, Charlie Paduga and Megdonio Sabinet of the crime of murder was filed before the Regional Trial Court of Palawan and Puerto Princesa City, stating:

"That on or about the 1st day of January 1986, at Barangay Cayapas, Municipality of Dumarán, Province of Palawan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to kill, with evident premeditation and treachery, and taking advantage of superior strength, did then and there wilfully, unlawfully, and feloniously attack, assault and stab with a bladed weapon, strike with a banca paddle and piece of wood one Amado Zabalo Jr., hitting him various vital parts of his body and inflicting upon him injuries which were the direct and immediate cause of his instantaneous death.

CONTRARY TO LAW and committed with aggravating circumstances of treachery, evident premeditation and taking advantage of superior strength."

Upon arraignment on separate dates, the aforesaid accused, duly assisted by counsel, voluntarily entered separate pleas of "not guilty" to the offense charged in the information.

In the course of trial, the charges against Megdonio Sabinet, Napoleon dela Torre and Charlie Paduga were dismissed for insufficiency of evidence upon recommendation of the provincial prosecutor.

The facts of the case, as found by the trial court, are as follows:

Sometime on January 1, 1986 at around 1:00 o'clock in the morning and while the people of Barangay Cayapas, Dumarán, Palawan were celebrating the New Year's eve with a dance at their Barangay Hall located near the seashore, Melencio dela Cruz saw Hernando Dalabajan kick and stab one Amado Zabalo, Jr. as the latter was coming out of the said Barangay Hall. Amado was kicked on his right thigh and stabbed on his right abdomen. Other residents, mostly relatives of the Dalabajans, then joined Hernando in mauling Amado. Amado tried to escape by running towards the nearby seashore and wading into the water. Hernando Dalabajan, together with co-accused Dominador and Fernando Dalabajan and the rest of their relatives, pursued Amado. Upon the reaching the seashore only the three accused-appellants took a banca and chased the latter. The rest of their relatives stayed by the seashore. When the accused-appellants were finally able to overtake Amado about 30-40 meters away from the shore, they helped one another in hitting him with bladed instruments, wooden clubs and a boat paddle on different parts of his body. Thereafter, the three accused left the already unmoving body of the victim which was face down in the water and proceeded back towards the seashore. At this juncture, Melencio dela Cruz, who was hiding behind the bushes by the seashore from where he watched the incident happen, then went to the house of the victim and reported the incident to the latter's relatives.

Melencio dela Cruz also testified that he was able to witness the incident at the sea thirty meters from his hiding place and saw it clearly since it was full moon on that fateful night. There were many people who went to the shore and witnessed the incident in question, but most of these people belonged to the Dalabajan clan. This was the reason why he hid in the bushes, for fear of being discovered by any member of the Dalabajan clan, a clan reputed in their community for their clannishness. He also feared for his life because most of the Barangay Tanods were related to the Dalabajans. He was able to follow the whole incident from the time Amado Zabalo, Jr. was attacked in front of the Barangay Hall to the time the latter was chased and killed at sea.^[2]

Amado Zabalo, Sr., the father of the victim, testified that, shortly after the incident, he was informed about it by some residents of their barangay. He immediately proceeded to the place of the incident and saw the already dead body of his son. The cadaver of the victim was then brought to the Barangay Hall. When the policemen arrived at 10:00 o'clock that night, they conducted an investigation and made a sketch showing the wounds sustained by the victim. No autopsy was conducted on the victim's cadaver since there was no doctor available.^[3] The prosecution however submitted a death certificate in this connection signed by the victim's father and the Local Civil Registrar.

Lolito Carceller, a member of the police force of Dumarán, Palawan testified that he was a member of the police team that investigated the incident in question. He was also the one who prepared the sketch of the victim's body showing the stab wounds and injuries sustained by the

victim. Upon his examination, he saw that the cadaver of Amado Zabalo, Jr. bore the following wounds, to wit: one on the upper portion of the head, a stab wound on the left eye, a stab wound on the left ear, a stab wound on the left portion of the mouth, a stab wound on the right cheek and a stab wound on the stomach. In addition, the two fingers on the left hand of the victim were dislocated.^[4]

On the other hand, one of the herein accused-appellants, Hernando Dalabajan, gave a different version of the incident. He contends that at around midnight on December 31, 1985, he was at the barangay hall of Bgy. Cayapas, Dumaran, Palawan. There were many people then at the said hall celebrating the New Year's eve as there was a dance to be held therein. Amado Zabalo, Jr., who was drunk at the time, went inside the Barangay Hall and began to look for a dance partner. Hernando accosted Amado and told him not to start dancing since the ladies were not yet in the dancing hall. Without saying a word, Amado left. After a while, the dance started and Hernando joined the other residents in dancing. Not long after, he went downstairs to answer the call of nature. From out of nowhere Amado suddenly appeared and hacked him with a bolo hitting him on his right elbow. Hernando ran away but Amado chased him. When Hernando stumbled to the ground Amado hacked him again hitting him this time at the left portion of his head. At this juncture, Hernando was able to get hold of a piece of wood with which he clubbed Amado. Thereafter, the people around ganged up on the latter as Hernando ran back to the Barangay Hall to seek the help of their Barangay Captain. He however lost consciousness upon reaching the Barangay Hall because of loss of blood which was oozing from his head. When he learned of Amado Zabalo, Jr.'s death the next day, he felt responsible for the victim's death and, thus, he went to the police and voluntarily surrendered, saying that he had clubbed the victim the night before.

Hernando Dalabajan further testified that he never saw prosecution witness Melencio dela Cruz at any time during that fateful night.^[5]

Barangay Tanod Dominador Dalabajan, testified that he was also at the said Barangay Hall together with five other Barangay Tanods in the evening of December 31, 1985. They were requested by their Barangay Captain Eulogio Sabinet, to maintain peace and order there in view of the dance to be held as part of the New Year's eve celebration. The said dance started at around 12:00 midnight. It was only the following day that he learned of Amado's death in the sea. He denies any participation in the killing of the deceased.^[6]

For his part, Fernando Dalabajan did not even present any evidence, nor did he testify in order to controvert the prosecution's assertion linking him to the killing.

On February 26, 1990, after the case had been submitted for decision but prior to the promulgation thereof by the trial court, Amado Zabalo, Sr., the victim's father, executed an Affidavit of Desistance, which stated:

"SINUMPAANG SALAYSAY SA PAG-UURONG NG DEMANDA

AKO, si Amado Zabalo, Sr., nasa hustong gulang, may asawa at naninirahan sa Barangay Cayapas, Dumaran, Palawan, pagkatapos manumpa alinsunod sa batas, ay nagsasaad ng sumusunod:

1. Na ako ang ama ni Amado Zabalo, Jr. na namatay sa Cayapas, Dumaran, noong ika-1 ng Inero, 1986;
2. Na dahil sa pagkamatay ng aking anak, ako ay dumulog ng hablang 'murder' sa hukuman laban kina Dominador Dalabajan, Hernando Dalabajan at Fernando Dalabajan, at ang nasabing habla ay kasalukuyang nililitis sa sangay bilang 50 ng RTC-Palawan at may numerong criminal case No. 6315;
3. Na nitong mga huling araw pagkatapos kong magsagawa ng sariling pagsisiyasat ay napag-alaman ko sa aking boung kasiyahan na ang mag-amang si Dominador at Fernando Dalabajan ay wala palang mga kasalanan at anumang kaugnayan sa pagkamatay ng anak kong si Amado Zabalo Jr., at si Hernando Dalabajan naman ay napilitang magtanggol na lamang ng kanyang sarili sapagkat siya ay pinagtulungan nina Amado Zabalo Jr., at ng kanyang mga kasamahan;
4. Na hindi na ako interesado pang ipagpatuloy ang demanda ko laban sa nasabing mag-aama kaya't iniuurong ko na ang nasabing demanda laban sa kanila;
5. Na aking isigawa ang sinumpaang salaysay na ito ng kusang loob at buong laya, at ako'y hindi tinakot at inalok ng anumang pabuya o pangako at ginawa ko ang salaysay na ito upang patutuhan ang lahat ng aking mga isinasaad sa itaas.

KUSANG loob kong nilagdaan ang salaysay na ito nitong ika-26 ng Pebrero, 1990, dito sa lungsod ng Puerto Princesa.

Sgd.

AMADO ZABALO SR.

May-Salaysay"

On July 31, 1990, Melencio Dela Cruz, the sole eyewitness for the prosecution, executed an affidavit^[7] recanting his testimony and instead stating that he did not witness the incident, viz.:

"AFFIDAVIT OF RECANTATION

I, MELENCIO DE LA CRUZ, Filipino, of legal age, married, and residing at Calero, Puerto Princesa City, under oath allege:

1. That I was presented in court as one of prosecution witnesses in Criminal Case No. 6315 entitled "People of the Philippines versus HERNANDO DALABAJAN et al."- for "Murder" now pending in Branch 50 of the Regional Trial Court of Palawan and Puerto Princesa City.

2. That the truth of the matter is that I arrived at the scene of the incident only after AMADO ZABALO, JR., the victim, was brought to the shore and already dead. Hence, I was not able to witness the actual happenings which led to his death.

3. That there being no witness at the time the investigation was being conducted by the police concerning the death of AMADO ZABALO, JR., I was prevailed upon by the victim's father, AMADO ZABALO, SR., to testify for the prosecution and when I refused to cooperate he threatened to kill me. Thus, I was forced to sign an affidavit to attest that I saw the actual killing of AMADO ZABALO, JR., by the accused DOMINADOR DALABAJAN while accused MEGDONIO SABINET, CHARLIE PADUGA and NAPOLEON DELA TORRE were in the shore holding pieces of wood and waiting for AMADO ZABALO, JR. to come ashore so that they could block him.

4. That I am recanting my aforesaid affidavit as well as my testimonies in court because I am being bothered by my conscience for having testified against the accused without witnessing the whole incident.

FURTHER AFFIANT SAYETH NAUGHT.

Sgd.,

MELENCIO DELA CRUZ

Affiant"

In addition, the accused-appellants also submitted, along with their Appellant's Brief, a copy of a sinumpaang Salaysay executed by one Manuela Gabinete-Dacuan, a Barangay Kagawad, on August 3, 1991, wherein she stated that everything Melencio dela Cruz said during his testimony is false since the latter was not present at the crime scene at the time of the incident. However, Gabinete-Dacuan was never presented as a witness for the defense during the trial proper. These three documents were presented to the trial court as annexes in an Urgent Motion for Release on Bail^[8] filed by the Dalabajans only after the promulgation of the decision convicting them.

The trial court did not find the accused-appellants' defense plausible and accordingly found them guilty beyond reasonable doubt of murdering Amado Zabalo, Jr. It thus stated in the dispositive portion of its Decision:^[9]

"WHEREFORE, and in view of the foregoing consideration, judgment is hereby rendered finding the 3 accused in the above-entitled case guilty beyond reasonable doubt of the crime of murder as the same is defined and penalized of reclusion perpetua as well as to pay the costs. The 3 accused furthermore are hereby ordered jointly and solidarily to indemnify the heirs of the deceased the sum of P50,000.00 as and for the death of the deceased. They are furthermore ordered to indemnify jointly and severally the heirs of the deceased the sum of P1,000.00 and for actual damages.

SO ORDERED."