

SECOND DIVISION

[G.R. No. 110100-02, December 11, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. ISIDORO PEREZ Y GAYETA ALIAS "OROY", FELICISIMO PEREZ Y PEREZ ALIAS "SIMO", CLARITO PEREZ Y PEREZ, JUANITO PEREZ Y GAYETA ALIAS "JUAN", ROLANDO PEREZ Y PEREZ ALIAS "LANDO", DEFENDANTS.

D E C I S I O N

TORRES, JR., J.:

Internechine (*internecinus*) is not an idle word. "Internechine strife" conveys a fight among the same kin or group. Thus, the historian Tacitus observed that "the bitterest hatreds are those of next of kin," *acerrima proximorum odia*. This is the case before us, a brother with bolo hacking to death a sister allegedly caused by land boundary dispute.

Accused-appellant Isidro Perez, Felicisimo Perez, Juanito Perez, Rolando Perez, and Pablo de Guzman, were charged with the crime of murder in three separate informations all dated January 11, 1991 and filed with Branch 7, Regional Trial Court, Batangas City. The accusatory portions of aforesaid informations reads as follows:

Criminal Case No. 5033

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Arcadio Montalbo y Perez, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of his body which directly caused his death.

Contrary to law."

Criminal Case No. 5034

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring

and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Arsenia Montalbo y Ortega, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of her body which directly caused her death.

Contrary to law."

Criminal Case No. 5035

"That on or about the 19th day of November, 1990, at 7:00 o'clock in the evening, at Barangay Dagatan, Municipality of Taysan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with firearms and bolos, conspiring and confederating together, acting in common accord and mutually helping one another, with intent to kill, with treachery and evident premeditation, with abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, shot and hack with the said weapons one Aurelia Montalbo Y Perez, suddenly and without warning, thereby hitting and inflicting upon the latter multiple gunshot and hack wounds on the different parts of her body which directly caused her death.

Contrary to law."

The cases against accused Pablo de Guzman was before arraignment dismissed upon motion of the public prosecutor by reason of insufficiency of evidence. At arraignment all the accused-appellants pleaded "not guilty" to the charges.

After trial on the merits, the trial court on March 15, 1993 found all the accused-appellants guilty beyond reasonable doubt of the crime of murder, the pertinent portion of which reads as follows;

"IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court finds the accused ISIDRO PEREZ, FELICISIMO PEREZ (alias Maximo Perez), CLARITO PEREZ, JUANITO PEREZ, and ROLANDO PEREZ guilty beyond reasonable (doubt) of the crime of murder in respect of the death of ARCADIO MONTALBO and ARSENIA MONTALBO and of homicide for the death of AURELIA MONTALBO.

The penalty for murder is reclusion temporal in its maximum period to death, and for homicide, reclusion temporal. Since the murders were committed with the aforementioned qualifying and generic aggravating circumstances without any mitigating circumstance, the penalty imposable is death. However, in view of Article III, Section 19, Subsection (1) of the Cory Constitution of 1987 as interpreted in the cases of People v. Munoz, et al., 170 SCRA 107 (1989), People v. Badilla, 185 SCRA 554 (1990), and more recently in People v. Saulo, G.R. No. 94547, July 29, 1992, prohibiting the imposition of the death penalty, the

Court hereby imposes upon the said accused the following penalties:

In Criminal Case No. 5033 in respect to the death of Arcadio Montalbo, reclusion perpetua.

In Criminal case No. 5034 in respect of the death of Arsenia Montalbo, reclusion perpetua.

In Criminal Case No. 5035 in respect of the death of Aurelia Montalbo, an indeterminate penalty of imprisonment of 12 years of prision mayor as minimum to 20 years of reclusion temporal as maximum.

Each of the accused shall indemnify the heirs of each deceased namely, Arcadio Montalbo, Arsenia Montalbo, and Aurelia Montalbo, the sum of P50,000.00. With costs against the accused."^[1]

The antecedent facts are as follows:

On November 19, 1990, Arcadio Montalbo, Arsenia Montalbo, and Aurelia Montalbo were found dead in their house at Barangay Dagatan, Municipality of Taysan, Batangas province. One of the victims, Arsenia Montalbo, was 28 weeks pregnant.

Prosecution witnesses included the brothers Gilbert Montalbo, 14 years old, and George Montalbo, 13 years old, who claimed to have seen the incident. Both testified that on November 19, 1990, at about 7:00 o'clock in the evening, they were in the house of Leonardo Ortega at Barangay Dagatan, Taysan, Batangas watching television when they heard a group of noisy people pass by. They sensed that something might be wrong so they left for home which was about 10 to 15 meters away from the house of Ortega. Upon reaching their house, they saw Rolando Perez stand by the door and shoot their father Arcadio Montalbo. After shooting Arcadio, Maximo and Clarito Perez entered the house and hacked the fallen Arcadio with a bolo. Isidoro Perez guarded the door leading to the kitchen while Rolando Perez was left at the main door. The boy's mother, Arsenia, who was also inside the house, was next to be killed. Clarito Perez hacked Arsenia on her head and right cheeks, the blow splitting the latter's head into two ("*nabiyak ang ulo*"). Not satisfied, Rolando Perez also shot Arsenia. Then the group left but they returned when the boys' grandmother, Aurelia, arrived carrying a light.

Aurelio Montalbo, who lived nearby, probably heard the commotion and went to the house of the spouses Montalbo. When Aurelia was already inside the house, Isidoro Perez shot her. Rolando Perez guarded the door while Clarito Perez again hacked the wounded Arcadio. Juanito Perez also hacked Aurelia. Thereafter, the group left.

Gilbert Montalbo witnessed the incident while he was hiding under the bed. He was able to see the assailants because the house was illuminated with electric lights. His sisters Geraldine and Jecelyn and brother, Jake had also seen what happened since they were in the veranda and near the stairs going to the second floor. They were shouting and pleading to the accused not to kill their parents. On the other hand, his brother George was outside the house but he saw what was happening inside because he was looking through the window.

After the group left, Gilbert left his hiding place and ran toward the house of

Leonardo Ortega. As he ran, he was seen by Isidoro Perez who fired at him twice. Gilbert was not hit because he stumbled down. He was able to reach the house of Leonardo Ortega who persuaded him to stay and hid him inside an aparador for the group was searching for the boy. George, on his part, went to the house of Mamay Piriong and had stayed there until morning.

The testimonies of the brothers Gilbert and George Montalbo were denied by the accused. All of them alleged that they were at home at that time. Isidoro Perez, whose house was only about 100 arms-length from the house of the Montalbos, alleged that he was with his wife at home and after their supper, he went to sleep at about 7:00 o'clock in the evening. He claimed to have heard gunshots but was not bothered about it so he went back to sleep. He learned about the death of the Montalbos only the following day. The deceased Aurelia was his sister and Arcadio was his nephew and so upon hearing the news, he went to check on them. Later that day, he was taken to town by the policemen and after being told that he was one of the suspects, he was detained. Isidoro's wife, Lucia, corroborated his story.

Clarito Perez, son of Isidoro, lived about three kilometers away from Barangay Dagatan. He also alleged to be at home with his family at the time of the incident. He denied hearing anything unusual and like the other accused, he only learned of the incident the following morning. His wife Valentina Manalo, narrated the same story.

Rolando Perez, another son of Isidoro Perez, was living in Barangay Bacao which was about ten kilometers away from Barangay Dagatan. It takes about four hours to reach Barangay Dagatan from Barangay Bacao. Rolando also maintained that he was at home, then ate his supper, and at 7:00 o'clock that evening, he cleaned his children and then went to bed. His wife, Leticia Gayeta, had just given birth to another child on November 17, 1990. She testified that the days following, her husband's daily routine was cooking, cleaning, taking care of the children, and looking after the cow. She testified that Rolando was at home when the incident happened.

The next accused was Felicisimo Perez, who was also the son of Isidoro Perez. His house was only 50 meters away from his father's and about 200 meters away from the house of the Montalbos. Like the other accused, he also alleged that he was at home and he never went out that night. His wife, Divina Delica, confirmed his story and testified that it was the following morning when she went out to fetch water that she learned of the killings.

The last accused was Juanito Perez, the brother of Aurelia Montalbo and Isidoro Perez, who claimed to have been sick with influenza at the time of the incident and was at home all that time. Juanito was living in Barangay Laurel which was about one kilometer away from Barangay Dagatan. His wife Rufina Tordecilla corroborated his story and even added that she went to see Simon Malaluan, an "herbolario", to consult about her husband's ailment. Both of the spouses learned about the deaths of the Montalbos the day after.

The trial court gave more credence to the testimonies of the prosecution witnesses. The defense of the accused lacked credibility, in fact, they had the same alibis. As the court observed, it was incredibly coincidental that on the evening of November 19, 1990, both Isidoro and Felicisimo Perez went to sleep at 7:00 o'clock while