

## SECOND DIVISION

[ G.R. No. 130637, August 19, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DAVID ANDALES Y MALOBAGO ALIAS "ABIE," ACCUSED-APPELLANT.**

### D E C I S I O N

**BELLOSILLO, J.:**

This is a review of the decision of the Court of Appeals in CA-G.R. No. 16408 declaring David Andales y Malobago and Jellie Andales y Malobago guilty of murder qualified by treachery.<sup>[1]</sup> The appellate court applied Art. 248 of the Revised Penal Code, prior to its amendment by RA 7659 which took effect 31 December 1993, and there being neither aggravating nor mitigating circumstance, imposed upon David Andales the penalty of *reclusion perpetua*, but meted a lower penalty on Jellie Andales on account of his voluntary surrender.<sup>[2]</sup> However, in view of its recommended penalty for David Andales, the Court of Appeals refrained from entering judgment with regard to him but entered judgment against Jellie Andales. Conformably with *People v. Traya*<sup>[3]</sup> and pursuant to Sec. 13, Rule 124, of the Rules of Court, the instant case of David Andales was thereafter certified to this Court and the records elevated for review. The case of Jellie Andales could also have been subject of a similar review but for his failure to appeal so that judgment as to him became final. Hence, we are here concerned only with the case of accused David Andales y Malobago.

On 10 November 1993 the brothers David Andales y Malobago alias "*Abie*" and Jellie Andales y Malobago alias "*Elic*" were charged by the Provincial Prosecutor of Northern Samar with the crime of murder, qualified by treachery and evident premeditation, before the RTC-Br. 19, Catarman, Northern Samar.<sup>[4]</sup> David Andales pleaded not guilty to the charge, while Jellie Andales pleaded guilty to homicide, instead of murder, which the trial court did not accept in view of the objection of the offended party.<sup>[5]</sup>

The evidence shows that on 4 September 1993, at around 6 a.m., in Sitio Banica, Brgy. Bugko, Mondragon, Northern Samar, the spouses Sonia Malobago and Rodolfo Malobago were at their coconut plantation about thirty (30) yards away from their house. Sonia was looking for some fallen nuts while Rodolfo was on top of a coconut tree tapping "*tuba*." Suddenly, from among the reeds appeared the brothers David Andales and Jellie Andales. Jellie rushed towards the tree where Rodolfo was straddled and without compunction fired several shots at him with a handgun. Stunned by the attack, Rodolfo slid down from the tree trunk with a bleeding nose, and upon reaching the ground, ran with his wife Sonia towards the highway. Anacorita de Guia, who was then waiting for Rodolfo and Sonia at their residence, saw David and Jellie pursuing the couple, still firing at them whenever they could. Sonia was able to run towards a nearby uninhabited house, while Rodolfo fled

towards the highway. Weak and wounded, Rodolfo collapsed and fell face down on the ground. David then turned Rodolfo over and with the use of a bolo savagely hacked him repeatedly, ending Rodolfo's life with a vicious cut on his throat. After David and Jellie left, Sonia went over to her husband's lifeless body and, upon confirming that he was dead frantically ran towards their house. There, she met Anacorita de Guia to whom she recounted the atrocity suffered by her husband in the hands of David and Jellie.

Sonia Malobago intimated during the trial that a boundary dispute concerning land situated in Sitio Bangon could have precipitated the attack. The lands of the Malobagos and Andaleses were adjoining each other and demarcated by a pili tree which the Andaleses cut. So that since then the Andaleses claimed as theirs the land of the Malobagos, then occupied by Rodolfo as caretaker.<sup>[6]</sup> Genaro Malobago, father of Rodolfo, testified that he had already gratuitously given a portion of the land, a half hectare of riceland, to the Andaleses to resolve the conflict.<sup>[7]</sup> However, he surmised that the latter might have continued to harbor ill feelings towards his son Rodolfo.<sup>[8]</sup> As proof of this, he revealed that David and Jellie had on three previous occasions made attempts on the life of Rodolfo Malobago for which two criminal charges were filed against them although they were acquitted.<sup>[9]</sup>

David Andales denied any participation in the crime. He testified that he was in his sister's house at Brgy. Imelda, Mondragon, Northern Samar, repairing beams and had been staying there since 1 September 1993. In the morning of 4 September 1993 he and laborer Nonoy Roncales were quietly working on the beams when his brother Jellie Andales suddenly arrived and reported that he had slashed Rodolfo Malobago. Thereafter, upon the request of Jellie Andales, their sister Nellie Palacio accompanied Jellie to the municipal building to voluntarily surrender himself.

Jellie Andales claimed self-defense. He testified that on 4 September 1993 he was on his way to Sitio Banica to get their carabaos when from among the reeds suddenly emerged Rodolfo Malobago. Upon uttering the words "So I finally caught up with you," Rodolfo lunged his bolo at him. Owing to his agility, he was able to evade Rodolfo's attacks and, using his bolo, delivered his own blows instead. As the fight ensued, Jellie heard Rodolfo's brother Rubencio Malobago shout "Manoy!" from a distance, and when he turned, he saw Rubencio running towards them and aiming his gun at them. Jellie then embraced Rodolfo, turned him around and used him as a shield against the shots of Rubencio. As Rodolfo and Jellie fell to the ground, Rubencio scampered away towards his own house. Rodolfo died while Jellie survived the attack unscathed. Jellie thereafter went to the house of his sister in Brgy. Imelda and told her and his brother David, who was then staying with his sister, of the events which had transpired.

With regard to the two (2) criminal cases previously filed against David and Jellie Andales, accused David and Jellie reasoned out that they had already been exonerated of those charges and that the complaints, like the instant case, were only fabricated by the Malobagos to prevent them from tilling the land.<sup>[10]</sup>

The trial court did not believe David and Jellie Andales. On 30 March 1994 it ruled in favor of the prosecution. However, it could only hold David and Jellie guilty of homicide, instead of murder, since the prosecution failed to establish the presence of treachery and evident premeditation.<sup>[11]</sup> On appeal, judgment was modified and

David and Jellie were declared guilty of murder qualified by treachery.<sup>[12]</sup> But since the crime was committed prior to the passage of RA 7659, which took effect 31 December 1993, the applicable penalty was *reclusion temporal* in its maximum period to death.<sup>[13]</sup> Hence, there being no aggravating nor mitigating circumstance in his favor, David Andales was meted the penalty of *reclusion perpetua*, while Jellie Andales was meted a lower penalty taken from *prision mayor* maximum to *reclusion temporal* maximum, on account of his voluntary surrender.<sup>[14]</sup>

Upon certification of the case to this Court for review, accused David Andales was given an opportunity to submit a petition for review but failed twice to do so within the prescribed period. In his "Motion and Manifestation" dated 19 August 1998 he begged the Court that his petition be given due course despite the delay, or in the alternative, that his petition be considered part of the records. In its resolution dated 15 March 1999 the Court denied the motion but allowed him to file an additional appellant's brief within a non-extendible period of twenty (20) days. Despite the accommodation, however, he again failed to file his additional brief. Hence, in reviewing his case, we are constrained to rely on the pertinent arguments presented in his Brief before the Court of Appeals.

We sustain the conviction of David Andales. Findings of fact by the trial court are given great weight and credence and, absent any arbitrary or compelling reason, are not to be disturbed on appeal. We find no reason to deviate from the rule.

The prosecution relied heavily on the testimonies of Sonia Malobago and Anacorita de Guia to establish its case against David and Jellie Andales. The Court has no reason to discredit them as they each gave a clear, straightforward and unequivocal narration of the events that transpired. The fact that Sonia and Anacorita are related to the victim - the former being the widow of Rodolfo Malobago and the latter the mother-in-law of Rodolfo's sister - does not render their clear and positive testimonies less worthy of full credit. No law disqualifies a person from testifying in a criminal case in which his relative is involved if the former was really at the scene of the crime and witnessed the execution of the criminal act.<sup>[15]</sup> Sonia was within the vicinity when Jellie Andales shot her husband Rodolfo. From the coconut plantation to the highway, she not only saw but even experienced the terror of being relentlessly chased and fired at by David and Jellie Andales. Anacorita, for her part, witnessed David and Jellie Andales hotly pursuing the couple from a distance of thirty (30) yards while waiting at the Malobago residence. Each of them gave a convincing and straightforward testimony and no degree of relationship can detract from the veracity of their statement that they each saw David and Jellie, at different stages, attack Rodolfo Malobago.

We are not convinced that Sonia Malobago merely implicated David and Jellie Andales as part of a scheme to displace David and Jellie from their possession of the farm at Sitio Bangon.<sup>[16]</sup> It is inconceivable that Sonia would risk the life of her husband for the sole purpose of laying claim over a piece of farm, least of all, if they are indeed its actual owners. The Malobagos did not seem overly concerned about the issue of ownership and possession of the farm such that Genaro Malobago even gratuitously gave a portion of the farm to the Andaleses just to avoid any conflict.<sup>[17]</sup> On the contrary, it seemed that the Andaleses were very anxious to claim and assert their rights over the farm, staunchly declaring that at no event would they