

[G.R. No. 1289. January 03, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ANASTASIO BOSITO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TORRES, J.:

On

November 10, 1902, certain individuals, namely, Eleno Bueno, Macario Aquino, Arcadio Soriano, and Luis Bailen, residents of the town of Santa, Ilocos Sur, went to Bangued, Province of Abra, for the purpose of purchasing hogs. On the following day Arcadio and Luis went to the town of Dolores, Eleno and Macario remaining in Bangued ; the latter two also left on the 12th of the said month to return to their town, as they said at the time. On the 18th of the same month of November the said Luis and Arcadio returned to Bangued and, after being informed of the departure of their companions, immediately left in search of them accompanied by Alipio Bernal, the owner of the house where they had been staying, who was acquainted with the roads, and upon their arrival at the barrio of Pugaro they came upon a place where were signs of hogs having been tied and also a cloth belt cut to pieces, and they noticed a strong, fetid odor, and, suspecting that an accident might have occurred to their said companions, they reported the case to the municipal president, by whose order they returned to the place, accompanied by the headman of the barrio and four members of police, and in the place from which the fetid odor emanated they found human remains, destroyed clothes, a pair of blood-stained linen drawers, and a bamboo helmet, all of which garments, according to the said Soriano and Bailen, belonged to their companions Eleno Bueno and Macario Aquino, and as they did not also find the money which they had with

them for the purchase of hogs they concluded that the said Eleno and Macario had been murdered.

In view of this on November 25 of that year a complaint was filed by the provincial fiscal charging the parties, Anastasio Bosito, Emiliano Berido, Lorenzo Berido, and the so-called Peru Princena, with the crime of murder and robbery, in that with bolos they slew the said Bueno and Aquino, the crime having been committed on the road leading to the barrio of Pugaro of the township of Bangued, and also for having feloniously seized and taken the money and hogs of the deceased contrary to law.

The defendants, when arraigned, pleaded not guilty, and the case being for trial Lorenzo Berido was excluded there-from to be tried separately; Peru Princena was acquitted during the trial (p.43); and Emiliano Berido was acquitted on final judgment, the proceedings having been continued against Anastasio Bosito only, who, on final judgment, was sentenced (p. 70) to imprisonment at hard labor for twelve years and to pay the costs, etc. From this judgment the defendant Bosito appealed.

The facts proven by the testimony of the witnesses Arcadio Soriano and Luis Bailen, who, in the presence of some police officers, identified the clothes which were found together with the human remains in the place called Pugaro, tend to show the existence of the crimes of murder and robbery owing to the fact that neither the money carried by the victims (about one hundred pesos, according to the said witnesses) nor the hogs which the victims had purchased were found with the remains; and owing also to the fact that since then the two men had disappeared and had not returned to their residence; the conclusion drawn from the fact that the clothes, belt, and bamboo helmet were found destroyed and one of the garments stained with the blood of the deceased in the place where their remains were found is that the killing was done for the purpose of robbing them, and in the act of perpetrating this offense against property, and for this reason, it is to be considered that the two men who disappeared died violently and upon the occasion of the

robbery of which they were the victims and that the remains found with the garments were their remains.

As to the participation of the defendant Bosito in the commission of the crimes mentioned, the case offers no evidence whatever that he (Bosito) took any part in it or that he is responsible as one of the principals of said crimes of murder and robbery.

In the conclusions stated in the judgment appealed, from Anastasio Bosito is considered a simple accessory after the fact in these crimes, which conclusion is accepted by the Attorney-General.

The charge made against the accused is based upon the fact that two small bags containing money were found in possession of the wife of the accused, Marta Barbosa. One of the bags was made of striped cloth, had fresh blood stains, which the wife of the accused at once tried to blot-out after having endeavored to prevent its examination, and thereupon dropped the other bag (the one made of white cloth), which was identified by the witnesses Soriano and Bailen as one of those belonging to the deceased Eleno Bueno.

The three witnesses, Juan Villamor, governor of Abra Province, Inspector Frank Knoll, and the municipal president of Bangued, Juan Ferraren, affirm that as a result of the search made by them in the house of the accused they found the said bags in possession of his wife, without the accused himself being able to explain either the origin of the blood stains on one of the bags or the source from whence came the bags and the money which they contained.

These statements made by the officers who made the arrest tend to prove the responsibility of the accused Anastasio Bosito, if not as the principal at least as an accessory after the fact in the commission of the crime, but they can not prevail against the evidence adduced in favor of the innocence of the defendant, who was able to establish that on the

evening of November 12, the date on which the said crimes are supposed to have been committed, he was in the house of Marcos Caballero with two witnesses who accompanied him and remained in the same house; and in another part of the evidence he proved by the testimony of his wife and that of other witnesses, some of them not his relatives, that the money contained in the bags found was the proceeds of tobacco and a hog sold by them; and that if the stains of blood were really of the deceased they should not be fresh, but totally dry at the time the bag was found, owing to the number of days which had intervened since the date of the attempt.

The evidence adduced by the prosecution trying to show Anastasio Bosito as an accessory after the fact in the commission of the crime, without being sufficient by itself, is besides counterbalanced and completely weakened by the proofs of his exculpation; and if the evidence of the prosecution is not nearly sufficient to find the defendant guilty and to impose upon him the penalty provided by law, certainly upon the result of the proofs of the defense he can by no means be considered guilty nor can his innocence be doubted. He must therefore be acquitted, with the costs *de officio*.

The other accused, Princena and Berido, having been acquitted, there is no reason in law why they should be considered in this decision. (Articles 403, 502, and 503 of the Penal Code noted.)

By virtue, then, of the considerations herein set forth, we are of the opinion that the judgment below should be reversed and Anastasio Bosito must be acquitted of the crimes with which he has been charged, with the costs *de officio*; the money taken from the possession of his wife and the two bags to be delivered to him, and he shall immediately be released. This case to be returned to the court of its origin, together with a certified copy of this decision and of the sentence which shall be duly rendered., So ordered.

Arellano, C. J. Mapa, Johnson, and Carson, JJ. concur.

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