100 Phil. 419

[G.R. No. L-6584. November 29, 1956]

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GUIALIL KAMAD ALIAS MOFTO JOSE, DEFENDANT AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Cotabajo, finding Guialil Kamad, *alias* Moro Jose, accused-appellant, guilty of robbery with homicide, and sentencing him to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of Quintin Semilla in the sum of P3,000, and in the sum of P2,905.00, the latter representing the value of personal property robbed from the said deceased, and to pay the costs.

The evidence introduced at the trial shows that at about 1:00 o'clock in the afternoon of May 24, 1951, Quintin Semilla left the house of his son, Eugenio Semilla, in Kidapawan, Cotabato, bound for the old town site of Kidapawan. He was carrying with him in a portfolio jewelries, watches for women, ammunition and P500.00, consisting of 25 20-peso bills. He also had tucked in his waist a duly licensed revolver. He was an agent of firearms, and at the same time a seller of jewelries. As in the evening of that day he did not return to his son's house, his son and the latter's wife became apprehensive. The following day, at about 5:00 o'clock in the afternoon, the spouses were informed that Quintin Semilla had been murdered, so the son went to the place where his corpse was, accompanied by policemen. When they reached the place where the dead body was found, the deceased was lying prone on a barrio trail. The portfolio that he was carrying when he left the house of his son was gone and so was the revolver tucked in his waist, although the holster was still there. His wallet was found in his back pocket with P200. The clothes that he had when he left was still on him, namely, a pair of white sharkskin pants and a white polo shirt with green strips.

The doctor who examined the body found it to be in a moderately advanced *rigor mortis,* but without signs of putrefaction. Some bloodstains were found on the ground directly below

the face. An elongated abrasion, more prominent at the back of the neck, extending from the right cheek to behind the left ear, was also found. Upon examination the physician found that death was caused by axphyxia secondary to strangulation.

The Philippine Constabulary immediately began the investigation, questioning people in the neighborhood, but without success. It was only in the month of June, 1951, after Capt. Generoso Mendoza of the Constabulary had taken personal charge of the investigation after his detail to Kidapawan, that progress was made. Success of the investigation began when one day, in the month of June, Gutierrez Sugcawan, the owner of a fiber stripping machine where the accused-appellant worked on and after the day of the murder, informed Capt. Mendoza that in the evening of May 24, 1951, when appellant returned for work, he appeared to be very nervous and excited and so worried that he could not talk. With this information, Capt. Mendoza sent a patrol to Davao to pick up the appellant who had gone

there a few days after the murder. After the arrest of appellant and his subsequent confinement in the Constabulary barracks at Kidapawan, he called the witnesses again for questioning and among those called were Guiamad Silong and Dimasidsing Cabasalan. Guiamad at first testified that he could not recognize the two persons who were seen near the dead body in the afternoon of May 24, 1951, but later on he came back to Capt. Mendoza, accompanied by another Moro named Dimasidsing Cabasalan, saying that they wanted to talk to him. When given the opportunity to talk to the captain, they readily confided to him that they had recognized the accused-appellant as one of the two men who were found near the dead body of the deceased in the afternoon of May 24, 1951. It was upon these testimonies that the officer filed the criminal complaint in this case. This was on July 13,1951. At trial Guiamad and Dimasidsing testified: that they are residents of a place known as Upper Singaw, Municipality of Cabacan, Province of Cotabato; that in the afternoon of May 24, 1951, they, in company with Kalib Masulot and Abdula Masulot, went to the old town site of Kidapawan, to sell hemp and to buy provisions with the proceeds of the sale; that it was about 5:00 o'clock in the afternoon when they left the old town site of Kidapawan; that they went home walking, following a small trail leading to the barrio; that as they reached a curve of the trail, they saw a man standing on the trail;

that Guiamad was ahead of the other three and after passing the curve he happened to step on something like dried abaca leaves, and this produced some sort of noise; that thereupon the man whom they had seen beside the trail turned his face around to them, to the place where the noise came from, while another fellow who was beside him ran away; that the

man who turned his face around to the place where the witnesses were was recognized by Guiamad and Dimasidsing as Guialil Kamad, alias Moro Jose, the accused-appellant herein; that the appellant was at that time wearing short pants, a red sweater with long sleeves, and a green, spotted white cap, and was holding a piece of wood about a meter long and 3 inches in diameter; that the accused-appellant upon seeing the two witnesses immediately ran away; that as they approached the place where the appellant had been seen standing they found a man lying flat on the ground face down, already dead; that they passed by the corpse without touching it and went to their barrio quietly, without telling anyone what they had seen; that that same night the accused-appellant came to the place where they lived and they saw him wearing the same short pants, red sweater with long sleeves and cap, green, spotted and white, and that nothing was said by them about the incident.

Another witness for the prosecution is Gutierrez Sugcawan, the owner of the fiber stripping machine where the accused-appellant worked on and after the day of the murder. He testified that on that day the accused-appellant began working at 8:00 o'clock in the morning of May 24, 1951, and went home for lunch at about 12:00 o'clock at noon; that in the afternoon the accused did not work anymore, but between 5 and 6 o'clock he came back, carrying a piece of wood, which he later threw away; and that witness saw the appellant that afternoon and observed him to be very pale and sweating. Wahab Embang, witness for the appellant, also testified that appellant had slept that evening in his house, and that the following morning he went back to work and continued until the following Sunday. After that he did not come back to work anymore.

The accused-appellant declared that he knew nothing about the murder, , He states that on the day in question he went home for lunch, and that he went back in the afternoon to the fiber stripping machine where he was working. But he said he did not go at noon to Singaw but stayed at the house of Embang. When he was asked to comment on the testimonies of the witnesses who had stated that he was seen near the corpse, he also said that he knew nothing about the same because he was not there on the day of the murder. When asked if he had any misunderstanding with the two witnesses who had recognized him, he declared he never had any trouble or misunderstanding with them or with any one of them, but that Guiamad Silong wanted to marry the same girl whom he also had wanted to marry, and this, he claims, may be the reason why Guiamad testified against him.

It is indeed worthy to note that while he testified that at noon he went to the house of Wahab Embang to take his lunch going down therefrom at 3:00 o'clock in the afternoon when he went to the stripping machine, Wahab Embang, appellant's own witness,

contradicted him in said respect, because according to Embang appellant went home to Upper Singaw to take his lunch on May 24, 1951, and did not come back to work until 6:00 o'clock in the evening. Wahab Embang's testimonies tallies with that of a witness for the prosecution, Gutierrez Sugcawan, the owner of the stripping machine, who also declared that appellant arrived at around 6:00 o'clock in the afternoon of May 24, 1951, at the stripping machine.

We have no reason or ground to doubt the veracity of the testimonies of the two witnesses for the prosecution who saw the accused-appellant beside the dead body at about 5:00 o'clock in the afternoon of May 24. We have carefully read their testimonies, and we find them to be coherent and logical. That the two eyewitnesses were able to approach the appellant and his companion at the scene of the murder to a distance of about 6 meters, without being noticed by appellant, is explained by the fact that the place was near a curve of the trail, so while the witnesses approached the place, the appellant and his companion could not have seen them. The conduct of appellant and his companion, as testified to by the witnesses, is also very logical. The presence of the witnesses came to the knowledge of the appellant and his companion upon hearing the noise produced by Guiamad's stepping on dried abaca leaves. The immediate reaction of appellant and his companion to the noise was also natural and logical. One of them immediately ran away, while the appellant unconsciously turned his fa6ed around to see what caused the noise, and then ran away into the abaca field. That the portfolio where the deceased kept the valuables and the money should disappear, just as the revolver he had tucked in the waist, is also natural. They were the first things that could have attracted attention and interest. As to the wallet found in the back pocket of the pants of the deceased, the accused-appellant and his companion did not have enough time to search the body because of the sudden appearance of the two witnesses and their companions.

We have no ground to doubt, therefore, that on the occasion in question the witnesses for the prosecution saw the accused-appellant beside the body of the deceased with a piece of wood in his hand, and that upon seeing the witnesses coming, he immediately ran away to the abaca plantation nearby and was lost therein.

The important question to decide, however, is whether the mere presence of the accused-appellant at the scene of the murder, under the circumstances mentioned, constitutes proof beyond reasonable doubt that he was guilty of, or had participated in the commission of, the robbery with homicide. Counsel for the appellant argues that as none of the stolen articles were found in the possession of the appellant and that as he was not actually caught in the

act of committing the agression, which produced the death of the deceased, there is no logical ground to hold him responsible for the robbery as well as for the death of the deceased. The argument is not without any weight, for it is true that mere presence of a party beside a murdered person does not in any way prove ^that he had committed, or had taken direct part in the commission of the crime. But it is the circumstances under which the party was found and his conduct, which taken together can produce moral conviction that the accused must have participated in the commission of the offense

In the first place, the abrasion found near the back of the neck, which was produced by a blunt instrument, must have been caused by the piece of wood, 3 inches in diameter, which appellant was holding in his hand at the time he was discovered near the dead body. In the second place, the conduct of the accused in running away from the scene, upon being seen by the witnesses, is positive and convincing evidence of consciousness of guilt.

> "Flight from justice, and its analogous conduct, have always been deemed indicative of a consciousness of guilt. 'The wicked flee, even when no man pursueth; but the righteous are bold as a lion. In our primitive system of law, the accused who fled, whether innocent or guilty, suffered forfeiture and escheat; though this was rather a mode of deterring him from refusing to appear for judgment than an evidential rule.
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> "It is today universally conceded that the fact of an accused's flight, escape from custody, resistance to arrest, concealment,
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> assumption of a false name, and related conduct, are admissible as evidence of consciousness of guilty, and thus of guilt itself:" (II Wigmore on Evidence, Sec. 276, p. 111.)
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> "Flight, in criminal law, is the evading of the course of justice by voluntarily withdrawing oneself in order to avoid arrest or detention or the institution or continuance of criminal proceedings.
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> "The unexplained flight of an accused person may as a general rule be taken into consideration as evidence having a tendency to establish his guilty." (U.S. *vs*. Alegado, 25 Phil. 510.)

If the appellant had merely passed by discovering the body of the deceased, he would not

have fled upon being seen beside the corpse. In the third place, about 6:00 o'clock that afternoon, just after he was seen beside the dead person, the owner of the stripping machine in which he worked, saw that he was pale, sweating and restless. These also point to a consciousness of guilt. The fact also that 3 or 4 days after the incident he disappeared from the place where he was working for no cause or reason worthy of mention for escaping to a nearby province, also indicates possibility that he must have committed the offense, and that he was trying to avoid being discovered. All the above circumstances constituting evidences of guilt, taken together, jointly produce a reasonable belief that appellant must have committed the offense, or took part therein.

The above circumstances constitute *prima facie* evidence, at least of appellant's guilt. Add to this the fact that he has not been able to give any positive credible evidence of his innocence. The, defense of alibi which he set up, that he was in the house of Wahab Embang in the afternoon of the incident until the time he went to the stripping machine, is discredited by his own witness. Neither has he been able to furnish any valid reason for suddenly going to a nearby province, nor his conduct in running away from the place of the corpse, when he was discovered beside it. The whole evidence pointly considered satisfies Us of defendant-appellant's guilt. The law does not require absolute certainty /in order that a person accused of a crime may be convicted of an offense. While there is no absolute certainty in the case at bar, the various circumstances positively point to no reasonable conclusion but the guilt of appellant. The circumstances given above are no less than five, and each and very one of them is inconsistent with his innocence and compatible only with his guilt. Under the law (Sec. 98, Rule 123, Rules of Court) the evidence submitted is sufficient to prove guilt beyond reasonable doubt.

Finding no error in the finding of guilt by the trial court and in the sentence imposed, the judgment is hereby affirmed *in toto*, with costs against appellant. So ordered.

Padilla, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and *Felix, JJ.*, concur.

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