

100 Phil. 507

[G.R. No. L-8871. December 18, 1956]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELISEO SAWIT, DEFENDANT AND APPELLANT.

D E C I S I O N

LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Nueva Ecija, Hon. Jose N. Leuterio, presiding, finding accused-appellant Eliseo Sawit guilty of murder and sentencing him to *reclusion perpetua*, to indemnify the heirs of the deceased Atty. Mariano Garcia in the sum of P6,000 and to pay the costs.

The evidence for the prosecution shows, and it is not disputed by the defense, that on August 19, 1951 Atty. Mariano Garcia, special counsel for the City of Cabanatuan, had his birthday, and in celebration thereof he arranged for an evening party at the house of Felino Mariano in Licab, Nueva Ecija, where dog meat was to be served. Members of the party came at sunset, some from a neighboring store of one Matias Velasquez. Among them were, Zosimo Garcia, Carlos Garcia, Leopoldo Dimaliwat, Felino Mariano, the celebrant Atty. Mariano E. Garcia, and others. Enrique Perez, driver of the jeep of Zosimo Garcia, joined the party at the house of Mariano at around seven o'clock, when it was already dark.

Soon after his arrival, Atty. Garcia asked Perez to call for his (Garcia) driver, one by the name of Eladio Lopez, so Perez went down. But just as he was going away from the house, he was met by three persons, one of whom was armed with a pistol, another with a Thompson, and the third with a carbine. The person who was armed with a pistol (whom he identified as the accused-appellant Eliseo Sawit) asked him where he was going, and after being told that it was to call for Eladio Lopez, searched his person for arms and found that he had a pistol, which the person took away. Perez told him that the pistol belonged to Zosimo Garcia. Thereupon Perez was asked to call for Zosimo Garcia. It so happened that the latter was at that time beside a window, so Perez called him to come down, but as

Garcia (Zosimo) did not notice Perez, the latter went up the stairs and signalled Zosimo to come down, and the latter did so. As Zosimo Garcia went down, he asked Perez for his gun, but Perez answered that it had been taken by his "Tio Seong" (appellant), who was downstairs. As soon as Garcia was down and near the three persons, Zosimo talked with the leader, (the one with a pistol), calling the latter "Tio Seong", but the latter did not answer but just brushed Garcia aside. Soon afterwards, Carlos Garcia was also asked to go down, which he did, and once down he was also searched for arms by the three armed persons.

By the time the food was ready, Felino Mariano went inside from the kitchen, but he found that there were no more people in the sala. He went to the stairs, but he met thereat Nicasio Ventura, who informed him that the persons in the house had been asked to go down. He also wanted to go down, but Ventura told him he was not sure who those persons downstairs were. So he went to the kitchen, and there went down to a camarin. It was while there that he afterwards heard shots, and after ten minutes a person came with a lamp. The next person to go down after Zosimo was Carlos Garcia. Carlos went to the kitchen and as he was about to go down, he saw two soldiers carrying guns. It was then that Mariano Garcia was also called down. Carlos went back to the sala and then to the balcony, and while there he was also called down. As soon as he reached the ground, one of the soldiers also searched him for arms. He saw a few meters away from him his uncle Mariano being searched by two of the armed persons, one of whom was the one who carried the pistol and the other a Thompson. As they pointed the pistol and the Thompson at him, Mariano Garcia pushed their gun aside and said, "Don't please", and thereupon he ran away. As Mariano ran away four shots were fired at him. Carlos Garcia promptly laid himself flat on the ground. After firing the shots the three armed persons ran away.

Soon thereafter, a person came with a lamp, and he and Felino Mariano found Mariano Garcia already dead, under the floor of the kitchen, his face flat on the ground. The medical officer that examined his body a day afterwards, found that the victim had at least three gunshot wounds, one of the mandible, another at the left lumbar region, and a third at the right hypochondriac region. He declared that the wounds in the body were necessarily mortal and that he actually died therefrom.

It was also proved by the prosecution that Atty. Mariano Garcia was the leader of the civilian volunteers, an organization of civilians armed by the Army to help fight the Huks, and that the organization to which Mariano Garcia had belonged had encounters with the Huks.

The defense set up by the accused-appellant is that of an alibi. So the most important issue is the identification of the three persons who went to the house of Felino Mariano on the evening in question, called down the persons in the party, searched their persons for arms, and later fired the shots at the deceased Mariano Garcia. Three of the witnesses positively identified the accused-appellant as one of the three armed men, more particularly the one who was armed with a pistol. The first is Enrique Perez. He declared that it was the appellant whom he met as he went down to call for Garcia's driver, and that he asked him where he was going, and searched for and took away the pistol he was carrying. Perez had known appellant long before, and could not possibly have been mistaken, taking into account his nearness to appellant and the fact that they talked to each other.

The second witness is Zosimo Garcia, who is a nephew of appellant himself and had known the latter from childhood. He testified that as he went down the stairs, his driver Enrique Perez told him that it was appellant who had taken his gun; that he met appellant and his two companions near the house of Felino Mariano and talked to him, pleading with him; that appellant even asked him for Atty. Garcia. The third is Carlos Garcia. At least the first two could not have made a mistake as to appellant's identity, having met the latter at close range and talked to him. There was a strong light (Petromax) in the sala of the house where the party was, and as the floor of the house was only more than a meter high, and there was a balcony towards the street from which the three armed persons had come, the place where appellant was met and was seen by the two witnesses must have been sufficiently illuminated indirectly by the Petromax lamp in the sala to have allowed Perez and Zosimo Garcia, old acquaintances, to have positively identified appellant. Zosimo would not have implicated an uncle had he not identified him on the night in question. Besides, the defense of alibi presented is not satisfactory. Appellant said that during the period from April, 1951 to April, 1952 he was in the Caraballo Mountains. That fact does not exclude the possibility of his having gone down to Licab in the month of August, 1951, the month when the incident took place. Then he has not offered any witness to corroborate his defense, or any circumstance that may convince us of his absence from the neighborhood, and that it was impossible for him to have been one of the three men who appeared in Licab on the night in question.

The second important defense relied upon by appellant's counsel is the fact that it was not shown that the bullets that wounded the deceased had come from the pistol of the appellant. As a matter of fact upon exhumation of the body of the deceased before the trial, it was found out that a .30 cal. pellet was lodged in the sternum. This must have come

from the carbine of one of the companions of the appellant and not from the pistol of the latter, which was a cal. .45. The Thompson used by the the third was also a cal. .45. None of the lead pellets found in the other parts of the body of the deceased could be determined as to their caliber. On the above facts counsel for appellant argues that the guilt of the appellant (in inflicting any of the wounds) has not been proved beyond reasonable doubt. And as to conspiracy, he further argues that the same is based on mere inference and there is also no satisfactory proof thereof.

That the shots must have been fired by at least two of the three armed men who came that night to the house where the party was being held is evident, as found by the trial court, from the fact that the wounds were inflicted from different directions. We may add that the acts of the three assailants conclusively prove conspiracy. In the first place, one of them, the one with the pistol, the appellant herein was always the one who searched for weapons and directed the questions. The other two merely co-operated with him. In the second place, the almost simultaneous firing of the shots (four of them), evidently all fired at the deceased alone, and not at the others, shows a previous concert to kill the deceased. In the third place, the assailants ran away after the deceased had fallen down, and this fact shows only one common purpose, that of liquidating the deceased. In view of these circumstances, we find that the claim that there was no conspiracy or proof thereof is without merit.

The judgment finding the accused-appellant guilty of murder, with the qualifying circumstance of treachery, is fully sustained by the evidence. Said judgment, as well as the sentence imposed, are hereby affirmed. With costs against the accused-appellant. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angela, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.