

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO ADOLFO, ALFONSO SIABAL, AND GARTERIO RONCALES,
DEFENDANTS-APPELLANTS.**

G.R. No. L-2794. May 10, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

In the night of July 16, 1947, Eugenio Lobenaria met a violent death in Barrio San Antonio, municipality of Bobon, Samar. His cadaver, examined by Dr. Andres P. Corpus, President of the Sanitary Division, exhibited eleven stab wounds on the fore-arm, chest, head, nape, back and shoulder, and one bullet wound on the left thigh. It is admitted that he expired on account thereof.

The herein three appellants, Francisco Adolfo, Alfonso Siabal and Garterio Roncales, were charged in the court of first instance with the murder of the person above mentioned. They were tried and were found guilty. Hence this appeal.

The witnesses for the prosecution, besides Dr. Corpus, were Luciano Rodrigo, Araador Lobenaria and Paula Guardo. Amador saw the killing. Paula almost witnessed it and heard the dying statement of Eugenio. Their separate narratives add up to the following story of his decease:

That night, while Eugenio and his wife Paula Guardo were drinking tuba as guests of their neighbor Luciano Rodrigo and wife in the aforesaid locality, the dwelling-house was stoned three times. As barrio lieutenant, Eugenio felt it his duty to investigate and stop the mischief. So he went down to his residence nearby, picked his whistle and returned to the street followed by his nine-year-old son Amador. He whistled for rural policemen, but as none appeared he proceeded to another street to look for them, his son still behind him. Upon reaching the front of the residence of Fausto Noget, a pistol shot punctured his left thigh. Immediately thereafter Francisco Adolfo, Alfonso Siabal and Garterio Roncales rushed from under the house of Noget and started stabbing and slashing Eugenio. Roncales and Adolfo brandished bolos, whereas Siabal, who was seen pocketing a pistol, drew a hunting knife. Horrified and afraid, Amador be held the unprovoked attack and hurried to call his mother, who had also left Rodrigo's house after her husband to retire to her own. Meanwhile the assailants dragged the body of Eugenio to the front of Siabal's house and left him prostrate on the ground. When Paula arrived, her husband was already being carried to their house by three rural policemen and her mother-in-law. She was just in time to hear from the lips of the dying man the names of his murderers: the herein appellants.

Motive for the crime was not lacking. There is proof that before marrying Paula, Eugenio Lobenaria had jilted the daughter of Adolfo, with whom he subsequently had one personal encounter, and a dispute over possession of land. Roncales is Adolfo's brother-in-law, and Siabal's wife is the daughter of Adolfo who lived in their house. If, as the defense tried to prove (by the testimony of Pedro Cardeno), Eugenio was brave and abusive, there is reason to believe that Adolfo did not wish to settle accounts with him alone, and invited and received the cooperation of his co-defendants.

In exculpation Adolfo admitted having inflicted the wounds, but alleged he had acted in self-defense. Siabal denied having laid hands on Eugenio. Roncales set up an alibi.

According to Adolfo, that night Siabal's house was stoned. Going down to investigate, Siabal had a conversation with his neighbor Fausto Noget, and while engaged therein he was approached by Eugenio, who, gun in hand belligerently asked Siabal, "what do you want?". Siabal quickly pushed Eugenio and ran away pursued by the latter. Frustrated and angry Eugenio returned to the house threatening the inmates. He was then accompanied by a certain Senubio. Adolfo who had seen the previous encounter with Siabal and who had grabbed a bolo "just in case", jumped from the house, pursued and overtaken by Eugenio. They had a struggle in the course of which he wounded Eugenio several times and heard a shot. According to Fausto Noget, the shot had been fired by Felix Senubio.

This account was rejected by the trial court. After a review of the expediente we find no reason to act otherwise. It is rather improbable that Adolfo could inflict so many wounds (eleven) in a hand-to-hand fight without suffering a single scratch. True there was a slight contusion on his head; but he must have bumped against the floor of Noget's house under which he and his confederates lay in waiting for Eugenio. (The house was low). Besides, the nature and position of some of the wounds are such that they could not have been inflicted in a struggle face to face. They must have been inflicted by one attacking from behind. For instance, the wound that cut Eugenio's ear, described in Exh. A, as follows:

"d) HEAD WOUNDS-

"1) Wound, incised (deep), right side, head, 3 1/2' long x 1' wide x 1 1/2' deep, cutting the right ear in half horizontally with the direction from the posterior to the anterior aspect of the head; mastoid process cut and detached by force and sharpness of instrument; direction of depth of wound is oblique down to the base of the skull, x x x ".

This must have been caused by a person hacking Eugenio from the rear while Eugenio was grappling with another.

Furthermore, the defense presented Narciso Giray who said he saw Eugenio pursuing Siabal, and that shortly thereafter he heard a gun report and somebody crying aloud "I am wounded". This is not consistent, "with, the self-defense account of Adolfo. First, because according to it, the shooting occurred before Eugenio returned to fight Adolfo. And second, the cry could not have been uttered by a man wounded in the course of a fight which he himself had provoked. Not by a brave man, indeed, as the deceased had been pictured by the defense.

Once the self-defense theory is discredited, the whole defense of the three appellants collapses, this being a joint trial. The alibi of the other two (Siabal and Roncales) necessarily fades in contrast with the convincing testimony of the witnesses for the prosecution, especially of the eyewitness Amador Lobenaria who made a very favorable impression on His Honor, the trial judge.

Needless to add that the apparent mendacity of Fausto Noget, a witness for the defense, has considerably weakened the position of herein appellants. As the record shows, this witness, affirming that the shot had been fired by Felix Senubio, went to the extent of asserting with a straight face that he saw the pistol in the hands of Senubio, even the rusty spot on the barrel thereof. He even affirmed having seen Senubio squeezing the trigger. Yet it was four o'clock in the morning.

One more point. If it is true that Eugenio Lobenaria started the fight, gun in hand, where is that weapon? Did the accused Francisco Adolfo present it to the authorities? What happened to it? What efforts were made to locate it? The defense skipped over this important detail, probably because there was no such pistol. Under the law the burden rested on the accused to offer a completely credible explanation of the demise, which they (or at least Adolfo) had caused.

Appellants' explanation being incredible and unsatisfactory, the positive and direct testimony of the complaining witnesses must prevail. Therefore, the accused must be declared guilty of murder, qualified by treachery.

Consequently the appealed judgment sentencing them to life imprisonment with the accessories, to pay the heirs of Eugenio Lobenario the sum of P4,000.00, and to pay costs is hereby

AFFIRMED, WITH COSTS. SO ORDERED.

Moran, C.J., Ozaeta, Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

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