

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINGO RAFALLO AND VENANCIO MILLARE, DEFENDANTS AND APPELLANTS.

G.R. No. L-2265. April 01, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

For the death of Faustino Rañada, Domingo Rafallo and Venancio Millare were charged with the crime of murder, were found guilty by the Court of First Instance of Albay and sentenced each to reclusion perpetua with the accessories of the law, to indemnify the heirs of the deceased Faustino Rañada in the sum of P2,000, and to pay costs. To reverse that judgment, Rafallo and Millare have brought the case here on appeal.

The theory of the prosecution may be briefly stated as follows. About 9 o'clock at night on April 28, 1943, Faustino Rañada, Adriano Salomon and Faustino Estrada were in the market place of the town of Oas, province of Albay. Estrada left the market place for his home in a barrio but before leaving, he invited Faustino Rañada to come with him but the latter was still drinking some liquor and so could not come. Shortly after Estrada's departure, Adriano Salomon and Faustino Rañada left the market place for their homes in the barrio. According to Salomon, as they reached the end of the dike near the provincial road, he and his companion Rañada were overtaken by five men, two of whom he recognized as the two appellants herein Rafallo and Millare. These two men immediately took hold of Rañada while two of their companions also held Salomon and conducted him ahead about eight meters away where they stopped. From that place Salomon saw Millare and one of his companions strike Rañada with their wooden clubs until their victim fell to the ground. In the meantime, Rafallo stood by, watching. After the beating the two men who accompanied and guarded Salomon told him that he could go on his way which he did. After walking a distance of about 20 meters and before reaching Cagmara bridge he overtook Faustino Estrada sitting on his haunches. He immediately told Estrada that his companion Rañada has been apprehended and beaten up by Rafallo and Millare, and the two men in order to satisfy their curiosity and also to find out the fate of Rañada, stealthily retraced their steps below the provincial road. Upon approaching the scene of the beating they saw three men carrying the body of Rañada across the provincial road to a rice field. Soon thereafter another man arrived on a carabao. Millare in a loud voice ordered: "tie him by the neck." One of the men immediately placed a rope around the neck of Rañada who at that time was motionless, either unconscious or dead; and in this way he was dragged by the carabao across the field to the municipal cemetery of Oas where the next morning his body was dug up and identified by his son Geminiano Rañada. According to Geminiano, early in the morning following the killing of his father, he looked for him and was able to trace his body by means of the smears of blood and parts of clothing he found in the fields where the body was dragged up to the cemetery where he with the aid of companions dug up the body and found it to be that of his father. He said the body bore wounds under the left eye, on the left temple, on the right occipital region and scratches on the back. According to him, his father still had a rope tied around his neck and his two hands were tied behind his back. What he did was to extend the hole or grave so that his father's legs could be stretched out and then he again

buried his father in said hole.

According to the defense however, the two appellants had no participation whatsoever in the alleged killing of Faustino Rañada, not even knowledge of it until after the story thereof had spread in the community. Rafallo claims that all that evening he was in his store never having left it until he retired and went to bed at about 10 o'clock. In this he was corroborated by several witnesses who were near or in his store while on guard as required by the Japanese institution of neighborhood association night guarding. Appellant Millare claims that since April 17 until May 18, 1943, he together with about a hundred men who were in the guerrilla forces, had been disarmed and detained by one Capt. Hernandez in Lubigan, Bato, Camarines Sur, very far from the scene of the killing. In this, he was corroborated by two of his fellow prisoners.

The alleged killing took place in April, 1943. The complaint for murder before the Justice of the Peace Court against the two appellants and against three others named, Juan Paraiso, Irineo Ronan and John Doe was not filed until December 23, 1946. In the Court of First Instance the Provincial Fiscal renewed the complaint for murder against the same five accused. On July 18, 1947, however, the Provincial Fiscal and a private prosecutor filed a motion to dismiss the case with regard to Juan Paraiso because after a thorough investigation it was found that he had no participation in the commission of the crime. Acting upon this motion, the court released Juan Paraiso after he had been detained for about six months. At that time, only Rafallo and Millare had been arrested. The Court of First Instance of Albay in an order dated July 26, 1947, denied the petition of the private prosecutor for the arrest of accused Irineo Ronan on the ground of lack of prima facie case against him. So, only Rafallo and Millare were tried.

Counsel for the two appellants, assigning six errors forcefully assails the decision of conviction.

The determination of this case depends in great measure upon the credibility of witnesses, particularly those for the prosecution. We have carefully read and scrutinized the testimonies of the witnesses, specially those of the two principal witnesses for the Government, Adriano Salomon who claims to have witnessed the assault upon and beating of the deceased Rañada, and Faustino Estrada who says that he saw and recognized the appellants as among those who carried the body across the road and later had it dragged by a carabao across the fields. We are convinced that the testimonies of Salomon and Estrada identifying those who allegedly killed Faustino Rañada, deserve no credit whatsoever. They have not only incurred material contradictions but they had openly and brazenly lied to the court. Faustino Estrada at the beginning of his testimony said that he recognized Rafallo and Millare by their silhouettes at a distance of several meters. Later, when pressed for a more convincing identification and presumably to render his opportunity for observation and Identification more certain, he said that he was as near to the five men as two meters while one of them was tying a rope around the neck of the deceased. How Estrada could be at this short distance from the five men without being seen by them is quite improbable if not impossible. Later, he said that he recognized Rafallo and Millare even before the beating, as he passed them on the road. But in another part of his testimony he said that when Salomon overtook him near the bridge of Cagmara he had to ask who he was because he could not recognize him, evidently because it was dark. If it was really dark, It is hard to see how he could so readily identify Rafallo and Millare as he claims to have been able to do when he passed them on the highway. Lastly, when asked by defense counsel if it was not true that he had been previously convicted of theft of large cattle, he emphatically denied it. However, Exhibit 4 of the prosecution, the record of the insular penitentiary, shows that Estrada had served a sentence for theft of large cattle. He was convicted of theft of large cattle on July 27, 1936, was received in Bilibid Prison on September 22, 1936 and then released therefrom on July 27, 1938.

Now, we come to the star witness for the Government Adriano Salomon. In his affidavit (Exh. 1) ratified before the Justice of the Peace on March 17, 1946, he mentioned Juan Paraiso as one of the five men who grabbed and

later assaulted Faustino Rafiada. On the strength of said affidavit Paraiso was arrested and included in the information and was under detention for about 6 months until, as already stated, on motion of the Fiscal and the private prosecutor the case against him was dismissed for absolute lack of evidence. During the trial Salomon said that he only recognized Rafallo and Millare, and when asked why he included Paraiso in his affidavit he answered that he did so because Paraiso and Rafallo were "concuños" that is to say, that the two men were married to two sisters, and because Rafallo and Paraiso were dark skinned. This was the only reason why he falsely implicated an innocent man in a crime for murder and had him imprisoned for about 6 months. Evidently, Salomon was not very particular or had no scruples about Implicating a man in the commission of a serious crime just because that man happened to be a "concuños" of one of the accused and because of that relationship, must have helped commit the crime. Then, Salomon told the court that he recognized Rafallo and Millare that evening because it was a moonlight night although it was getting dark. We must bear in mind that this took place between 9 and 10 o'clock in the evening of April 28, 1943. Counsel for the appellants in his brief states that according to the official calendar published by the Government for the year 1943, on April 28th of that year the moon rose at 3 o'clock a.m. We tried to verify and check on this point but no Government calendar for the year 1943 is available either in this Court or at Malacañan because of the destruction of the records during the war. However, the Government Observatory after making the necessary calculation, informs us that on that date the moon rose at 11:43 p.m. On the basis of this fact, there could not have been any moon between 9 and 10 o'clock that evening by whose light Adrlano Salomon claims to have Identified the two appellants, and he evidently did not tell the truth when he said that there was a moon at the time that he witnessed the alleged assault. Again, when asked by counsel for the defense if it was not true that he was related to Geminiano Rañada, son of the deceased Faustino, who was naturally very much interested in the prosecution of the two appellants, Salomon said that he was not related to him in any way. When asked point blank whether it was not true that Geminiano's wife was his (Salomon's) sister, he said it was not true. However, after he had been admonished by the court of the serious consequences of telling lies in court because he might be charged with perjury, he finally admitted that Geminiano's wife was his own sister but only by his father, meaning to say half-sister. Finally, when asked if he had not been previously convicted of theft of large cattle, like witness Faustino Estrada he equally denied that he had ever been convicted of such crime but Exhibit 4, the record of the Insular Penitentiary tells us that he was convicted of theft of large cattle on January 30, 1931, sentenced to 4 years, 2 months and 1 day imprisonment, was received in Bilibid on February 6, 1931 and released from prison on May 21, 1934. A man who under oath claims that he could recognize the accused on the night of the supposed killing by the light of the moon when in fact there was no moon that hour of the night, who can easily and blithely accuse an innocent man of a serious crime on mere suspicion, and who has the nerve and temerity of assuring the court that the wife of the son of the deceased who had Initiated the prosecution was not his sister when in fact she was such a sister according to his own admission, and who later falsely denies a previous conviction for a crime involving moral turpitude, perhaps believing that said conviction may have already been forgotten or that the record thereof may have been destroyed during the war, when as a matter of fact he had been so convicted and had served sentence, that man cannot be relied upon and his testimony made the basis for the conviction of persons of the serious crime of murder. If these two witnesses for the prosecution, Estrada and Salomon, upon whose testimonies conviction will have to be based solely, can under oath, play so loosely with the truth and depart so far from the points so important in their lives that they could not possibly ignore or forget them, said witnesses may also tell or may have told falsehoods in court regarding the alleged participation of persons accused in the commission of a crime. Their testimonies cannot in conscience be accepted. Furthermore, there being no moon that hour of the night, it is unlikely that, even assuming that the two witnesses Salomon and Estrada had been present at the scene of the alleged killing, they could have identified the perpetrators.

Ordinarily, the defense of alibi is weak and unreliable because of its easy fabrication, without much opportunity at

checking or rebutting it. This is true in cases of positive identification of the culprits by reliable witnesses. But as the evidence regarding the presence of the accused at the scene of the crime and their identification as the perpetrators is weakened and rendered unreliable not only because of the lack of opportunity to identify either because of the distance between the observer and the observed or because of darkness, then the defense of alibi is measurably and proportionately strengthened. The defense of alibi becomes still stronger when it is proven that the prosecution witnesses have openly and brazenly lied in court.

Here, the two appellants corroborated by several witnesses assured the court that they were not at the scene of the crime. We have no reason for rejecting said claim. On the other hand, there is evidence consisting of the testimony of Francisco Floranza, the barrio lieutenant of Palapas that on the night of April 28th, 1943, Salomon the star witness for the prosecution was in the barrio of Palapas serving as one of the night guards for the Japanese sponsored barrio neighborhood association, of which guards Floranza was the Chief. If this is true, and there is no reason for doubting it, then at that time Salomon could not have been present at the scene of the alleged killing which was several kilometers away.

Discarding the testimonies of these two witnesses for the prosecution Salomon and Estrada, there is nothing left to connect the appellants with the crime, much less, implicate them in it. The guilt of the appellants has not been established. The decision, appealed from is reversed and the appellants are hereby acquitted.

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

Paras, Feria and Torres, JJ., no part.

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