

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CARMELO VALERA (ALIAS) MILING, DEFENDANT AND APPELLANT.***G.R. No. L-15662. August 30, 1962*

Ponente: MAKALINTAL, J.

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This case is before us on appeal from the decision of the Court of First Instance of Abra finding appellant Carmelo Valera guilty of the murder of Guillermo Millare and sentencing him to suffer the penalty of reclusion perpetua and the accessory penalties provided by law, to indemnify the heirs of the deceased the sum of P6,000 and to pay the costs.

On March 28, 1958 Carmelo Valera and Virgilio Navarro were charged by the Provincial Fiscal of Abra with the crime of murder. At the arraignment both accused pleaded not guilty. Trial of the case proceeded and after the prosecution had rested Navarro moved for dismissal in open court for insufficiency of the evidence against him. The trial court denied the motion on the ground that while the prosecution had failed to establish that he had any direct participation in the killing, or that there was any conspiracy between him and his co-accused, he nevertheless could be found guilty of physical injuries or maltreatment, which was included in the information for murder under which he was being tried. In view of this ruling Navarro offered to plead guilty to the offense of slight physical injuries, to which offer the prosecution acceded. After having pleaded guilty to that offense the said accused, in a separate decision, was accordingly sentenced. The trial proceeded with respect to appellant.

The essential facts as established by the prosecution are: On the morning of December 9, 1957 Guillermo Millare, 62 years old, and his son Julio were in barrio Sinapangan, Bangued, Abra, to attend the funeral of a relative. At about 10:00 o'clock, the funeral being then over, they went to a store near the house of the deceased. There were a number of other persons present, among them Virgilio Navarro and Carmelo Valera. These two—both comparatively young men—demanded money from Guillermo Millare with which to buy "San Miguel" gin. The latter excused himself, saying he had no money. While Guillermo was walking away Navarro went after him and, holding him by the neck with his right arm, hit him with the left fist four times—twice on the face and twice on the belly. Navarro then released his victim, who thereupon fell to the ground. Without warning, Carmelo Valera darted to the fallen man and stabbed him once with a short bolo near the left nipple and, seeing Julio Millare nearby, chased him for a distance of about thirty to forty meters.

Guillermo Millare was immediately taken to the Abra Emergency Hospital, where he died a few minutes after arrival. According to Dr. Rosita Dominado, who performed the autopsy on the victim, there was "a clear cut wound at the anterior chest wall, left side, 3 1/2 inches long at the level of the 6th intercostal space, 1/4 inch below the left nipple and 2 1/4 inches away from the sternal line; directed downwards and medially extending to the lower border of the left costal arch," and the cause of death was "shock, severe, secondary to external and internal hemorrhage."

Appellant contends that it was not he but Navarro who inflicted the fatal wound. In support of this contention he

presented two witnesses, Regino Valeros and Ernesto Ambuyat, who both testified that on the morning in question the deceased was drunk and had an altercation with Virgilio Navarro; that the two men grappled with each other; that Navarro locked his right arm around the neck of the deceased, who drew his bolo from its scabbard; that Navarro grabbed the bolo from the deceased and with it stabbed him; and that during all that time appellant, who was holding a rooster, was merely looking on about six meters away from the two antagonists. Appellant also testified to the same effect.

The errors assigned by appellant are directed against the findings of fact made by the trial court and hence refer to the credibility of the witnesses. The testimonies of prosecution witnesses Julio Millare and Vicente Millare, son and brother, respectively, of the deceased, are impugned on the ground that their relationship with the latter created a compelling interest, bias and prejudice against appellant. This Court has held in another case that although the witnesses for the prosecution, by reason of their relationship to the victim, were naturally interested in having the killer punished, it did not appear that they had a personal grudge against the appellant and had, therefore, no motive to testify falsely against him. *People vs. Quiatchon*, G. R. No. L-11109, June 30, 1958. The absence of any evidence as to the existence of an improper motive actuating the principal witnesses for the prosecution strongly tends to sustain the conclusion that no such improper motive existed, and that their testimony is worthy of full faith and credit. *U.S. vs. Pajarillo*, 19 Phil., 288; *People vs. De Otero*, 51 Phil., 201; *People vs. Imam Sawah, et al.*, G. R. No. L-15333, June 29, 1962.

Attention is directed by appellant to what he considers unbelievable, namely, that a son and a brother of the deceased would merely stand by as spectators to the commission of the crime. But it appears that the attack was sudden and unexpected and did not give them a chance to come to the defense of the victim. Moreover, the fact that appellant was armed and they were not must have prevented them from intervening. Julio Millare himself had to escape from the appellant when the latter chased him.

In an attempt to discredit the credibility of Julio Millare and Vicente Millare, appellant points out the discrepancy between their testimony in court and the affidavits they previously signed as to the number of fist blows Navarro gave the deceased and the parts of the body on which the blows landed. This discrepancy, however, not only has been sufficiently explained but also does not constitute sufficient ground to impeach the credibility of the witnesses, considering that on the material and important points their declarations are consistent. *People vs. Jureidini*, 76 Phil., 219, 42 Off. Gaz., 2432; *Abutan vs. Fernandez*, 44 Off. Gaz., 1849; *People vs. Formiran*, 44 Phil., 27; *People vs. Recca, et al.*, 113 Phil., 802. Honest eyewitnesses at times do not coincide in the narration of events swiftly occurring before them, especially with respect to trifling details. *People vs. Moises, et al.*, G.R. No. L-10876, September 23, 1958.

On the other hand the evidence for the defense deserves scant consideration. No plausible reason is given by appellant for remaining silent when Virgilio Navarro pleaded guilty to the offenses of slight physical injuries alone when according to him he knew that it was the latter who killed Guillermo Millare. And as far as appellant and his witnesses are concerned, they did not present themselves to the authorities to reveal what they knew about the incident. Ambuyat admitted that he talked only to the defense counsel a week before he testified in court. He likewise stated that appellant, who is his first cousin, saw him at the scene of the crime, but that it was only during the trial or more than a year after the incident that he revealed to appellant what he had seen, notwithstanding the fact that they were close neighbors and had met each other many times. Defense witness Regino Valeros, on his part, said that one week after the occurrence he told appellant's lawyer what he knew, yet he was never presented to the authorities to give his information. These circumstances convince us that the trial court did not err in concluding that the evidence for the defense is unworthy of credence.

The fatal wound was inflicted while the deceased was prostrate on the ground, unarmed and apparently stunned

by the blows delivered by Virgilio Navarro. No fight between appellant and the deceased preceded the stabbing. Since the attack was sudden and unexpected and the deceased was then in a defenseless position, the crime committed is murder, qualified by treachery. *People vs. Casas*, G. R. No. L-5873, March 31, 1953.

We agree with counsel and with the Solicitor General that appellant is entitled to the mitigating circumstance of voluntary surrender. It appears that he posted the bond for his provisional liberty eighteen days after the commission of the crime and fourteen and sixteen days, respectively, after the first and second warrants for his arrest were issued. The fact that the warrants had already been issued is no bar to the consideration of this mitigating circumstance, because the law does not require that the surrender be prior to the order of arrest. *People vs. Yecla*, 68 Phil., 740. On the other hand, there is the aggravating circumstance that the crime was committed in disregard of the respect due the victim because of his age, for he was a sexagenarian while appellant was only 27 years old. *People vs. Alupay*, 85 Phil., 688; 47 Off. Gaz.; 4575; *People vs. Caminero, et al.*, G. R. No. L-8705, May 28, 1958. These two circumstances, therefore, offset and neutralize each other.

The penalty imposed by the court being in accordance with law, the decision appealed from is affirmed, with costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Regala, JJ., concur.

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