

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELPIDIO BELCHEZ, DEFENDANT AND APPELLANT.

G.R. No. L-21196. March 28, 1968

Ponente: DIZON, J.

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DIZON, J.:

Charged with murder and tried therefore upon a plea of not guilty in the Court of First Instance o Catanduanes, Elpidio Belchez was found guilty as charged and correspondingly sentenced to suffer the penalty of reclusion perpetua, to in-demnify the heirs of Gregorio Subion in the sum of P6,000.00, Philippine currency, without subsidiary imprisonment in case of insolvency in view of the nature of the penalty, and to pay the costs.

The prosecution evidence shows that at about 10:30 o'clock in the evening of April 10, 1960, while Raymundo Samodio, Gil Vargas, Norberta Subion and Gregorio Subion were fishing along the seashore of Asgad, barrio Codon, Municipality of Calolbon, Catanduanes, they were stoned. They did not mind it at first, but when the third stone hit Raymundo Samodio on the left shoulder, Gregorio Subion flashed his petromax lamp towards the direction where the stones came from and saw appellant emerging from the clusters of rock near the shore and approaching Gregorio Subion. As the latter stooped down to place his lamp on the ground, appellant struck him on the face with a stone and, as the victim fell to the ground, appellant rode on his back, and holding Subion's left shoulder he continued pounding upon his head and face with the stone in his hand.

Seeing her helpless brother, Norberta asked appellant why he was killing her brother, but appellant paid no attention to her and continued hitting Gregorio until the latter fell un-conscious. Appellant then left the place. Thereafter, Nor-berta shouted for help, but her companions ran away. She then walked along the shore holding the petromax lamp. Upon reach-ing the road, she met Nazario Belchez, appellant's father, whom she informed that her brother Gregorio had been killed by a person whom she knew. Thereafter, Nazario, his son Alejandro, Raymundo Samodio and Gil Vargas carried Gregorio first, to the house of the latter and later tried to take him to a hospital, but he died on the way.

An autopsy performed on the body of the deceased on April 12, 1960 by Dr. Ramon J. Bañas, municipal health officer of Calolbon, showed that he suffered the following injuries:

“1. Wound, lacerated, about 2 inches long, 1 inch deep, middle 3rd., superior 3rd., occi-pital region, head.

“2. Wound, lacerated, about 2 1/2 inches long, 1 inch deep, S-shape, latero-medial, su-perior 3rd., right side, occipital region, head. Beneath the wound is the site of fracture skull.

“3. Wound, lacerated, about 1 inch long, 1 inch deep, lateral 3rd., superior 3rd., occipital region, right side, head.

“4. Wound, lacerated, about 3/4 inch long, 1 inch deep, latero-medial 3rd., superior 3rd., occipital region, left side, head.

“5. Wound, lacerated, about 3/4 inch long, 1 inch deep temporal region, middle 3rd., left side, head.

"6. Wound, lacerated, right cheek, about 1 inch long, 1 inch deep, with ecchymosis, up-per face. Site of fracture skull.

"7. Wound, crushed, lower 3rd., mid-bridge, nose.

"8. Wound, lacerated, about 3/4 inch long, about 1/2 inch deep below the lower eyelid, medial portion, left, eye, face.

"9. Wound, lacerated, about 3/4 inch deep, 1 inch long, latero-medial 3rd., su-perior 4th., forehead, right side, head.

"10. Wound, crushed, anterior 4th., temporal region, left side, head." (Exh. "L")

In this appeal appellant contends that the trial court erred in convicting him of murder; that even granting that the prosecution evidence has established his guilt, the crime proven was only that of homicide; and finally, that the trial court erred in admitting Exh. "1" (polo shirt) (p. 38; tsn Lisud) over the objection of his counsel.

Appellant relies mainly upon an alibi, claiming that he spent the whole day of April 10, 1960 with his brother and father in Balonganon and Caramoran, returning to Asgad only at about 6:00 o'clock in the evening; that from then up to late 10:00 o'clock he was at home slicing and salting the fish they brought home for sale the following day; that at about 10:00 o'clock he went to sleep in the room adjacent to the table where his father slept; that he was charged for the death of Subion because a few months before the killing, Samodio and Norberta Subion had a misunderstanding with him regarding the death by poisoning of his chickens, geese, ducks and pigs upon entering the ricefields of the Subions; that the Belchez family is the only clan not re-lated to the other residents of barrio Asgad. His testimony in support of these contentions was corroborated by that of his father, who asserted that he was sure his son, Elpidio, was asleep in the room of the house when he, his other son and daughter and others went to the seashore upon being informed of the incident by Norberta Subion.

The prosecution evidence, however, clearly identified appellant as the one who killed Gregorio Subion. The latter's Sister, Norberta, and Raymundo Samodio testified categorically that it was appellant, their neighbor, whom they recognized by the light of the moon and the petromax lamp that Gregorio had placed on the ground, as the one who stoned them and ultimately assaulted the deceased with a stone. Moreover, the testimony of Apolonio Sumalde, to whom appellant had confided his intention to kill "someone" and whom he had forced to join him at the seashore, clears any possible doubt regarding the identity of the person who assaulted and killed Gregorio Subion. Sumalde - a young man of twenty at the time - could not have possibly concocted the details of the incident freely related by him to the authorities shortly after its occurrence in the presence of other people. Besides he was a friend and neighbor of appellant and there is absolute lack of evidence showing that; in giving testimony against him as he did, he was moved by some improper motive.

Furthermore, the house of appellant where, according to him, he was asleep at the time of the commission of the crime, was located at a short distance from the place of the killing. Thus, it was not physically impossible for him to have returned home immediately after committing the crime.

It is true that most of the prosecution witnesses were related to the deceased, one way or the other, but this circum-stance alone is not sufficient to destroy their credibility. The inconsistencies and contradictions in their testimony pointed out by counsel for appellant - even if true - are not sufficient to detract from, much less destroy, their credi-bility; to the contrary, they might be taken as indicating lack of agreement or conspiracy among the witnesses to tes-tify in the same manner (People vs. Pascual, G. R. No. L-4801, June 30, 1953).

In view of what has been stated above, We find it unne-cessary to discuss the question of whether or not the lower court erred in admitting the shirt Exhibit 1 as part of the prosecution evidence.

The evidence of record, however, does not prove beyond reasonable doubt neither premeditation or alevosia. What appellant had confided to Apolonio Sumalde - about his intention to kill "a person" - did not have any particular reference to the deceased Gregorio Subion. As this is the main evidence that could be relied upon to prove premeditation, We are forced to conclude that this particular circumstance has not been established beyond reasonable doubt.

As to treachery, We have reached the same conclusion; the evidence of record is insufficient to show that appellant assaulted the deceased under such circumstances as to be sure to take the latter by surprise while avoiding danger for himself at the same time. As a matter of fact he first threw stones at Gregorio and his companions - this obviously having served to put them on guard; the weapon used was but a stone, and the attack upon Gregorio was made in the immediate presence of the latter's companions.

WHEREFORE, We find appellant guilty only of homicide, without any modifying circumstance attending the commission of the crime. Therefore, the imposable penalty is reclusion temporal in its medium period. Applying the Indeterminate Sentence Law, he is hereby sentenced to suffer the penalty of six (6) years and one (1) day of prision mayor, as a minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, plus the accessories of the law, as maximum.

Thus modified, the judgment appealed from is affirmed in all other respects.

Reyes, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Castro, J., did not take part.

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