

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO FRAGA, JULIAN MARTINEZ AND ESTEBAN MULLOT, DEFENDANTS AND APPELLANTS.

G.R. No. L-12005. August 31, 1960

Ponente: REYES, J. B. L., J.

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REYES, J. B. L., J.:

Appeal from a decision of the Court of First Instance of Surigao (Crim. Case No. 1957) convicting appellants Francisco Fraga, Julian Martinez and Esteban Mullot, as co-principals in the crime of robbery with homicide; sentencing them to life imprisonment, to indemnify the heirs of the victim Delfin de Jesus in the sum of P50 stolen from him and P6,000.00 damages and to bear the costs.

At about 6:00 o'clock in the morning of August 14, 1954, the deceased Delfin de Jesus left his house in barrio San Juan, Hinatuan, Surigao, bound for Maliksi of the same municipality, carrying with him P50 with which to pay some laborers for cleaning a piece of land. He never returned alive, for next day, his cadaver was found lying beside the Provincial Road at a point about 1½ kilometers from the municipality of Hinatuan.

Dr. Rudolfo Borromeo, Municipal Health Officer of Hinatuan, Surigao, examined the body at about 2:30 p.m. of August 15, 1954. He found two (2) contused wounds, one at the back of the head (mid-portion of the occipital region) reaching the skull, the other, at the back of the right ear reaching the right mastoid bone (pars. 5 & 6, Exhibit "A"); dried blood blocking the right auditory canal and both nostrils (pars. 3 & 4, Exhibit "A"); whole body in rigor mortis (Par. 1). The cause of death was internal hemorrhage and it had supervened about 12-14 hours before his examination. The doctor also testified that the two (2) contused wounds at the back of the head were caused by only a single blow.

An investigation was conducted by the then Chief of Police of Hinatuan, Benedicto Martinez. Among the persons he investigated was Renato Gonzales, who, in his first investigation sometime about the end of August, 1954, was not able to say anything about the killing. However, sometime in October, 1954, Gonzales informed the same Chief of Police about a conversation he had heard on September 20, 1954 while Francisco Fraga, Esteban Mullot, Luciano Serra and others were allegedly working on a fish corral under his house. Renato Gonzales reported that while thus working, he heard the accused Francisco Fraga say to the other accused Esteban Mullot: "You, compadre Teban, you struck Delfin de Jesus who died on the road"; to which Esteban Mullot replied; "Do not impute to me what you have done"; Francisco Fraga answered back: "No, compadre, it was Julian Martinez who struck him, and seven P7 was found in his pocket". Chief of Police Martinez concluded that there was no sufficient evidence and no further steps were taken in the case.

Benedicto Martinez was replaced as Chief of Police of Hinatuan on January 3, 1956 by Magno S. Kuino who, on February 9, 1956, received a report from Renato Gonzales about the same conversation between Francisco Fraga and Esteban Mullot which had been earlier reported to chief Martinez. The next day, February 10, Renato Gonzales went back to the office of Chief of Police Magno S. Kuino, this time accompanied by Esteban Mullot.

After investigating these two, as well as witnesses Eulogio Jabagat and Eleuterio Pontillo, the Chief of Police, on February 14, 1956, filed with the Justice of the Peace a complaint for robbery with homicide against Francisco Fraga and Julian Martinez (Exhibit 6). In this complaint, Esteban Mullot was listed as one of the prosecution witnesses. At some stage of the proceedings which the record does not disclose, Esteban Mullot was made a co-accused, but the Court dismissed the case as against him by an order entered in the docket on March 27, 1956 (Exhibit 5). However, in the information filed by the Provincial Fiscal in the Court of First Instance of Surigao, Esteban Mullot was again included in the information.

The appealed decision of the court below is based on the following circumstances which it considered established:

- The accused Francisco Fraga and Julian Martinez were allegedly seen walking together with the deceased Delfin de Jesus along the national road in the direction from Hinatuan to Lianga, and the next day, the cadaver of Delfin de Jesus was found on the same national road, 2 kilometers toward the direction where the deceased and the said two accused were seen going the previous night;
- The conversation between Francisco Fraga and Esteban Mullot on September 20 1954, in the presence of Renato Gonzales, Luciano Serra and others who were working on a fish corral under the house of said Renato Gonzales;
- The respective affidavits of the three accused, wherein they were supposed to have mutually implicated each other and partially corroborated the testimonies of the prosecution witnesses;
- As to Esteban Mullot, the court below considered his previous conviction for homicide as showing "what character of a man he is" (sic), that is, "one criminally inclined" ; and as to Julian Martinez, although his having left for Cateel, Davao, was not considered flight by the lower court, it was of the opinion that his stay in Hinatuan for a year after the incident might have been due to his desire to make sure that this co-accused would not squeal;
- The allegedly, unsatisfactory and unconvincing accounts the three accused gave of their whereabouts that night of the incident.

The brief for the government repeats substantially the same arguments contained in the decision appealed from, but recommends the acquittal of the accused Esteban Mullot on the ground that prosecution witnesses Eulogio Jabagat and Eleuterio Pontillo saw only Fraga and Martinez with the deceased, the night before the body was found.

We find that the evidence on record is not sufficient to establish the guilt of the accused-appellants beyond reasonable doubt, as required by law.

With regard to the presence of the accused Fraga and Martinez, in the company of the deceased de Jesus on the night of the murder, their identification by the government witnesses Eulogio Jabagat and Eleuterio Pontillo is far from being satisfactory. Eulogio Jabagat at first stated that around 8:00 p.m. on August 14, 1954, he heard the two accused (Fraga and Martinez) and the late De Jesus, engaged in loud conversation while walking along the road from Hinatuan to Lianga; the three stopped a while by the house of the witness, who heard De Jesus proclaim that he was going home, to which the accused replied, "it is up to you if you will go home"; that thereafter, they proceeded past the house, and the witness knew not where they went. In the latter part of his testimony, however, this same witness stated that he did not recognize the companion of Francisco Fraga and Julian Martinez. On further questioning by the fiscal, he reversed himself on many points on which he had earlier testified. Thus, where earlier he said that Francisco Fraga and Julian Martinez were at a distance of 10 meters away from his house when they stopped, later he said it was 4 meters; where he said he did not recognize the third man, on further questioning by the fiscal, he changed his testimony and said that he recognized the third man to be Delfin de Jesus; where before, he said that he recognized Francisco Fraga and Julian Martinez only by their voices, on

prodding by the fiscal, he later said he recognized them also by their faces. The danger of relying on such unreliable testimony needs no stressing.

As to Eleuterio Pontillo, while he stated that he passed Francisco Fraga, Julian Martinez, and Delfin de Jesus on the road at a distance of about 5½ meters, his testimony the next day, he recognized the dead man to be Delfin de Jesus, while admitting that he did not see who it was because the corpse was wrapped with a mat, casts a doubt as to whether he really recognized Delfin de Jesus or whether his knowledge proceeds from hearsay. It must also be remembered that it was nighttime; that he did not pay any particular attention to these people as he noticed nothing wrong, so that even after he learned that Delfin de Jesus was killed, this witness admitted that it never occurred to him to think that only the previous night, he saw him on the road, allegedly with Fraga and Martinez. We also note that this witness admitted that the first time he was investigated about the incident was on February 11, 1956, when he signed his affidavit (Exhibit 4) one and a half years after the crime, a lapse of time from the incident more than sufficient for the details thereof to have gained public circulation. All these facts are pertinent to the inquiry how this witness, without actually seeing the body of the dead man after the incident, could categorically state that it was the man whom he allegedly casually saw on a certain night about 1½ years ago, a man with whom the record does not show he was acquainted previously well enough. Testimonies must not be taken on their bare assertions, but considered in relation to other circumstances on record.

But even conceding that the accused Fraga and Martinez had been seen with the deceased De Jesus at 8:00 p.m. of the date of the crime, the incriminating value of that circumstance is destroyed by the interval that elapsed between this encounter and the death of De Jesus. The examining physician, taking into account the medical data, placed the hour of death at some 12 to 14 hours prior to the autopsy made at 2:30 p.m. of August 15; i.e., around midnight of August 14. No one saw the accused after 8:00 p.m. of that night, and the evidence therefore leaves a gap of four hours during which the whereabouts of the appellants or of the deceased are not known. This interval is wide enough to admit the possibility of the accused having separated from the deceased and of the latter having died at the hands of persons unknown. Witness Jabagat admitted that many persons passed by the same road on the night in question; and no reasons are shown why the accused had to remain with the deceased from 8:00 p.m. to midnight, specially since Jabagat heard De Jesus proclaim that he was going home.

Turning now to the second circumstance held to be incriminatory by the Court below, as to be expected, there are differing versions of the conversation that took place between Francisco Fraga and Esteban Mullot on September 20, 1954. According to Renato Gonzales, Francisco Fraga accused Esteban Mullot of having killed Delfin de Jesus, and when Mullot retorted that Fraga should not impute something which the latter himself did, Fraga pointed to Julian Martinez, and added that Ft was found in the pocket of the victim. In the version given by the witness Luciano Serra, it would seem that Julian Martinez was not at all implicated by Francisco Fraga; also, Esteban Mullot allegedly admonished Fraga not to say such things because "that is bad". To cap it all, Serra testified that Fraga and Mullot were laughing during the conversation, and had been previously drinking, both being apparently tipsy.

There is nothing much, if anything, in said conversation which may be held against any of the accused, who denied its truth. As against Esteban Mullot, the fact that when he retorted against Francisco Fraga, the latter pointed to Julian Martinez, indicates that even to Fraga, Mullot had no participation therein, which was why he considered it yet necessary to inform him (Mullot) about the matter. As against Julian Martinez, said statements may be disregarded, they being extrajudicial declarations of a co-accused not made in his presence. Extrajudicial statements of an accused implicating a co-accused may not be utilized against the latter unless repeated in open court. (See *People vs. Izon*, 104 Phil., 690; 55 Off. Gaz., [10] 2148; *People m Gomez*, 101 Phil., 1056; 54 Off. Gaz., [5] 1368; *People vs. Serrano*, 105 Phil., 531; 56 Off. Gaz., [27] 4414). It may be conceded that the

statements of Fraga may be used as against himself. However, his statements not being a confession, but merely pointing to another as the author of the crime, at best, such statements may be considered only as a fact to be weighed in connection with other circumstances on record.

Another circumstance considered heavily by the lower court was the execution by the three accused of their respective affidavits. The accused Francisco Fraga executed three affidavits, to wit: Exhibit 1, dated October 16, 1954; Exhibit 2, dated February 15, 1956; and, Exhibit C, dated February 23, 1956. Julian Martinez executed Exhibit E, the affidavit dated March 16, 1956. Esteban Mullet executed two affidavits, Exhibit D, dated February 7, 1956, and Exhibit 7, dated February 23, 1956. One salient feature of these affidavits is that not any of them is a confession. Exhibits 1 and 2 by Francisco Fraga merely stated that he met Julian Martinez in the poblacion of Hinatuan, and after going to several stores together, separated at about 8:00 p.m., he going home alone at about that time. It is in Exhibit C that Francisco Fraga pointed to his two co-accused as the authors of the crime, narrating that he heard the two threatening to kill Delfin de Jesus if the latter did not go with them; that he (Fraga) hid and observed their movements; that when the three were near the house of Gerardo Canial, he heard some beatings and the groaning of an old man; that he heard Esteban Mullet say that if anybody spreads the news, he would kill him; that he saw his two co-accused carry the body of Delfin de Jesus to the house of Gerardo Canial.

This Court is not impressed by this Exhibit C. Its very narration would show pieces of evidence too conveniently supplied to give it a ring of truth. The details are of such character as can be concocted with facility. Moreover, as we earlier said, Fraga's extrajudicial statements against his co-accused cannot weigh against the latter unless made in their presence in open court (*People vs. Oliva, et al.*, L-6033-35, September 30, 1964; *People vs. Dacanay, et al.*, 92 Phil, 872; 49 Off. Gaz. [3] 919 and others). True, this rule may be waived, but it appears that in this case, there was timely objection to its admission.

The same principle applies to Exhibit E, the affidavit of Julian Martinez. In his affidavit, Martinez relates that he went home after separating from Francisco Fraga at about 8:00 p.m.; that when he was already at home, Francisco Fraga called or him at about 10:00 p.m. and told him that he (Fraga) met with an accident. Aside from the improbabilities in said affidavit, it cannot be taken as against Francisco Fraga for the same reasons why the latter's affidavit cannot be taken against his co-accused.

On the other hand, Exhibits D and 7, the affidavits of Mullet, deal merely on the conversation between him and Francisco Fraga on September 20, 1954.

Summing up the prosecution's evidence, we have a case where an accused, in a conversation, imputed the crime to one of his co-accused, without the latter's presence and not in open court; where it is at least on record that during said conversation, Fraga and Mullet were a little inebriated from the tuba which they were drinking, and that the words were uttered not without a touch of levity, as they were laughing and joking; where two of such accused were seen together on the night in question, along the road where the crime was committed, allegedly walking with a third man whose identity was not clearly established; where said three accused executed affidavits each denying participation but tending to impute the crime to one or both his co-accused.

For reasons already given, the statements of said accused against each other should not be given weight. Also, the fact that Francisco Fraga and Julian Martinez were seen walking together, allegedly with a third man, without other significant confirmatory circumstances tending to show their guilt, would not be sufficient to overcome the presumption of innocence in their favor. The circumstances under which they were seen leave too much field for speculation and conjecture, on the basis of which the accused should not be convicted.

It is true that not one of the accused, presented any other witness but themselves to corroborate their testimonies on their respective alibis, and in this connection, the lower court stated that the accounts that the accused gave of

their whereabouts on the night in question were "unsatisfactory and unconvincing". We think this would not change the result, for an accused can not be convicted on the basis of evidence which independently of his alibi, is weak, uncorroborated and inconclusive. The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong. Plainly, where the prosecution fail to establish the presence of the accused at a definite time or place, the alibi would have to cover a wider territory and longer space of time in order to negate the possibility of his presence at the locus criminis; while if the prosecution evidence points to a definite occasion and place, the defense has to account only for the whereabouts of the accused at the specified time and locality, which would be much easier.

Wherefore, the decision appealed from is hereby reversed, and the accused are acquitted of the crime charged on the ground that their guilt has not been proved beyond reasonable doubt. Costs de oficio.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur.

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