

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANASTASIO ESCARRO AND WILFREDO ESCARRO, DEFENDANTS AND APPELLANTS.

G. R. No. L-3647. July 26, 1951

Ponente: JUGO, J.

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JUGO, J.:

Anastasio Escarro and Wilfredo Escarro were accused of murder before the Court of First Instance of Cebu. After trial Anastasio Escarro was found guilty as principal and sentenced to an indeterminate penalty of from fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years, four (4) months, and one (1) day of reclusion temporal. Wilfredo Escarro was found guilty as accomplice and sentenced to from four (4) years, two (2) months, and one (1) day of prision correctional to ten (10) years and one (1) day of prision mayor. Both were ordered to indemnify jointly and severally the heirs of the deceased Primo Tecaro in the amount of P2,000, with the accessory penalties of the law, and to pay the costs. Both appealed.

It has been established that at about seven o'clock in the evening of September 21, 1947, after Primo Tecaro and Jovito Villaceran had drunk tuba in the store of Lolita Revilla, near the public market of Bantayan, Cebu, facing the wharf of said municipality, Primo left said store and went to the wharf to take fresh air. After walking a distance of about seven brazas from said store, Primo paused and unbuttoned his polo shirt to refresh himself. Coming stealthily from near a pile of nipa shingles, Anastasio approached Primo from behind and suddenly applied an armlock on him by placing his left arm under the left armpit of the latter, with the hand pressing forward the nape of Primo. Simultaneously, with his right arm, Anastasio encircled the deceased's waist and right arm and stabbed the latter in the stomach with a dagger that he had in his right hand, causing the fatal wound. Although Primo tried to free himself he could not do so on account of the armlock, and fell in a sitting position, shouting for help. Thereupon Anastasio called Wilfredo Escarro, his brother, telling him to get the revolver of Primo which was tucked in a holster at the right waist of the latter. Wilfredo approached the deceased, held the left arm of the latter and tried in vain to get the revolver of the deceased. Jovito Villaceran, upon hearing the call for help of Primo, rushed to the scene and as Anastasio was about to stab Primo again, Jovito parried the blow and the dagger touched the ground, still held by the hand of Anastasio. In the struggle for the possession of the dagger, Jovito's right thumb was wounded by the dagger and fearing that he would receive further injury, he fled. When Alfredo Baspi, a bystander not far from the scene, who at first thought that the scuffle was only a joke, heard the cry of the deceased for help, he approached and tried to help wrest the dagger from Anastasio's grip. In so doing he was also wounded. To avoid receiving further injury he also fled, thus leaving Primo at the mercy of the Escarro brothers. As many people were rushing to the scene of the incident, the accused escaped.

Early the following morning, Anastasio proceeded to his father-in-law's house, but on his way stopped at the house of Braulio Besamparado to whom he revealed his participation in the crime committed the previous night, stating that he threw the dagger used therein as he was running away.

That same evening Primo Tecaro was treated by the President of the Sanitary Division of Bantayan. During the treatment a statement was taken from Tecaro by the Chief of Police of said municipality. The following morning, on advice of said medical officer, Primo was taken to the Southern Islands Hospital at Cebu City where he died from the wound at half past one o'clock of the same day.

The defense consists of alibi for Wilfredo Escarro and self-defense for Anastasio Escarro.

Wilfredo testified that at the time of the incident he was in the public market with his wife and went home after hearing a gun shot, noting that people were scurrying away. He only knew of the scuffle between his brother Anastasio and Primo when his sister-in-law arrived home that evening and told him about it. He did not, however, do anything to verify it, which was unnatural for a brother under such circumstances. This assertion is belied by the testimony of Lolita Revilla, a disinterested witness, who, at the time of the incident was just about eight meters from the scene of the scuffle and saw Wilfredo holding the left arm of Primo. Lolita could not have been mistaken, for it was a moonlight night. There was no reason for Lolita to testify falsely against the accused nor to favor the prosecution. Wilfredo's credibility is further weakened when he positively stated that he was not arrested that same evening, for Filomeno Escarro, uncle of both accused and a witness for the defense, stated that at about eleven o'clock of said evening he learned of the incident while Wilfredo was being arrested by the police authorities. Furthermore Anastasio himself admitted that he called for his brother during the affray.

Anastasio Escarro puts up the plea of self-defense. He testified that in the evening of September 21, 1947, he was at the store of Facundo Villalon drinking tuba. As he was about through, Primo Tecaro, Jovito Villaceran, and Alfredo Baspi arrived. When he rose to go out, Primo also went out and upon seeing him said: "Here you are, 'hambuguero,'" at the same time holding his (Primo's) revolver. Immediately Anastasio grabbed Primo's arms in such a way that the latter's two arms were crossed and the struggle began, with Alfredo Baspi giving blows in the left side of the accused. Just then he saw Jovito coming from behind to stab him, but he held the left ankle of Jovito with his left hand, causing Jovito to lose balance, and with his right caught the right hand of Jovito, jerked it downward so that the latter fell over the prostrate Primo. As he pulled the hand of Jovito holding the dagger, the weapon accidentally hit Primo and caused the fatal wound.

To make his point clear, Anastasio made a graphic demonstration before the court. His Honor, Judge S. C. Moscoso, commented as follows:

"... The court has carefully observed ... and (it) followed, with careful attention and keen observation, the graphic demonstration made by the accused how the alleged struggle occurred between him, on one hand, and the deceased and Jovito and Alfredo, on the other. But the Court found that it was unbelievable that the deceased could not have liberated himself from the accused inasmuch as the latter, in his demonstration, showed that his body was not yet wounded, according to the accused, until Villaceran came to help. On the contrary, his body was forming an arch over the alleged prostrate body of the deceased while he was struggling with Jovito who is also bigger than the accused. It is impossible to believe that the deceased would simply lie down waiting for the accused. The latter was already bending himself over the deceased who was not wounded when Villaceran came, yet the latter with his dagger could do no harm to the accused if the Court were to believe the latter's story. Furthermore, the deceased had a revolver and Villaceran had a dagger, according to the accused, yet neither of them could hit or wound him who was entirely unarmed. There could not be, as the accused has shown and as the Court has found, such an unnatural, unbelievable, and impracticable, if not altogether impossible struggle.

"On the other hand, the Court believes that the demonstration made by Jovito Villaceran how the incident happened, was more natural and in keeping with the ordinary course of events considering the size and strength of the combatants, their relative positions, and their arms, as well as all the other attendant circumstances. ..."
(Pages 187-188, Records.)

We find the above remarks of the trial court correct.

The ante mortem, declaration of Primo is valid as evidence; for it was given when he was in such a condition that he must have been conscious of his impending death which, as a matter of fact, occurred past noon of the following day. In said statement, the deceased pointed to Anastasio as having stabbed him and Wilfredo as helping his brother. But even disregarding the ante mortem statement, there is enough evidence of record to sustain the guilt of both the accused as charged.

Wilfredo was an accomplice, for he cooperated in the execution of the offense by simultaneous acts without taking a necessary and direct part in its execution, by holding one of the hands of Primo and trying to take away the latter's revolver.

The attack made by Anastasio upon Primo was attended with the circumstance of treachery as he approached Primo stealthily from behind and without the latter's being aware of any intended attack, he locked Primo's arms so as to prevent him from making any defense. The crime committed is, therefore, that of murder without any mitigating or aggravating circumstance.

In view of the foregoing, the judgment appealed from is modified by imposing upon Anastasio Escarro the penalty of reclusion perpetua, with the accessory penalties of the law, to indemnify the heirs of the deceased in the amount of P6,000.00, and to pay one-half of the costs; and upon Wilfredo Escarro, as accomplice, the penalty of from six (6) years and one (1) day of prision mayor to twelve (12) years and one (1) day of reclusion temporal, with the accessory penalties of the law, to pay the indemnity above mentioned jointly and severally with Anastasio up to the amount of P2,000.00, without subsidiary imprisonment in case of insolvency, and to pay one-half of the costs. It is so ordered.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes JJ., concur.

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