

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VALERIANO PAGKALIWAGAN AND VICTORIANO PAGKALIWAGAN, DEFENDANTS AND APPELLANTS.

G.R. No. L-110. April 03, 1946

Ponente: PARAS, J.

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PARAS, J.:

The defendants, Valeriano Pagkaliwagan and Victoriano Pagkaliwagan, have appealed from a judgment of the Court of First Instance of Batangas, finding them guilty of homicide and sentencing them to undergo imprisonment for an indeterminate period of from six (6) years and one (1) day, prison mayor, to twelve (12) years and one (1) day, reclusion temporal, to indemnify jointly and severally the heirs of the deceased Teodoro Eborá in the sum of P2,000, and to pay the costs.

In spite of the forceful presentation of appellants' case by their counsel, we are unable to state that any prejudicial error was committed by the trial court; for the fact remains that their guilt is duly established by the direct testimony of two eyewitnesses, Leon Rayos and Delfin Garcia, who had no reason for making a false imputation. Thus, we deduce from the evidence for the prosecution, whose side has also been well expounded in the brief for the Government, that appellant Valeriano Pagkaliwagan, after embracing Teodoro Eborá—perhaps more as a strategic move than as a gesture of conciliation—abruptly took hold of his bolo and struck Teodoro Eborá on the chest, thereby inflicting a gaping wound that extended to the abdomen. This was followed by a bolo attack on the part of appellant Victoriano Pagkaliwagan who hit the rear side of Teodoro's head after the latter had inflicted a chest to cheek wound on Valeriano's face as Teodoro Eborá unsheathed and swung his bolo in an attempt to make a counter offensive; and the aid of Victoriano Pagkaliwagan was ministered when he heard Valeriano's appealing complaint "Que dolor, hermano." Unfortunately for Valeriano Pagkaliwagan, however, he was accidentally wounded on the head by the blow of Victoriano Pagkaliwagan. Teodoro Eborá died as a consequence of the wounds successively inflicted by the appellants.

Such fatal episode was immediately preceded by a verbal altercation between Valeriano Pagkaliwagan and Teodoro Eborá that occurred at about 7 in the evening of March 16, 1945, in the barrio of San Agapito, Verde Island, Batangas, Batangas, in front of the house of the barrio lieutenant, Severo Escarez, where a group of men, all armed with bolos, were gathered for instructions on the matter of guarding their place against possible penetration by Japanese stragglers. On this occasion Teodoro Eborá (an old man) happened to ironically remark that those who merely displayed superficial bravery and would run upon sighting a Japanese, should better desist from becoming a guard. Valeriano Pagkaliwagan, one of the young men present, sharply answered that their courage might be tried by those who would not run. After further exchange of words between the two, and in an effort to pacify them, Victoriano Pagkaliwagan intervened, whereupon Valeriano Pagkaliwagan embraced Teodoro Eborá, with Teodoro's right arm being placed over Valeriano's right shoulder and the former's left arm being held by the latter's left hand which was passed behind Teodoro Eborá. At this juncture the latter called Valeriano Pagkaliwagan "hijo de p."

We have no doubt that Valeriano Pagkaliwagan was sufficiently incensed by said words, which he counteracted by the aggression already referred to above. The antagonistic attitude of Valeriano Pagkaliwagan is easily traceable to his grievance against Teodoro Eborá originating from a prior land dispute, borne out not only by his signed statement (Exhibit C), but by the fact that, although the criticism of Teodoro Eborá regarding the bravery of some young men was not particularly directed to Valeriano Pagkaliwagan, the latter was the first to take offense. Indeed, being a nephew-in-law of Teodoro Eborá, appellant Valeriano Pagkaliwagan should have kept silent and allowed someone else to oppose his uncle. The failure of the prosecution to put on the witness stand the persons who investigated Valeriano Pagkaliwagan and actually prepared Exhibit C does not weaken its probative value or make it inadmissible, since it had been identified by the barrio lieutenant and Delfin Garcia who saw its preparation, and Valeriano Pagkaliwagan himself admitted his signature thereon. Neither is there validity in the pretense that said appellant stamped his signature without reading or knowing the contents of the document, because of his weakened condition and of his haste in leaving for Calapan, Mindoro. If Valeriano Pagkaliwagan was in fact weak, why was he able, immediately after affixing his signature, to make the trip to Calapan and, upon arrival, to still go to the municipal building, thence to the provincial fiscal, thence to the mayor, and lastly to the provincial hospital? If Valeriano Pagkaliwagan (who was then with him), to read the statement aloud?

Said appellant wants the court to believe that he alone fought the deceased Teodoro Eborá. The positive testimony of Leon Rayos and Delfin Garcia to the contrary, however, is more in consonance with the natural and instinctive reaction of a man to come to the aid of his brother. Appellant Victoriano Pagkaliwagan must have felt likewise, for at the time he struck the deceased he was not yet sure that his brother did not run the risk of being licked by his adversary.

The rule against hearsay evidence had merely been given application by the trial court in refusing to admit Exhibits 2 and 3 which are respectively an affidavit of the Director of the Mindoro Provincial Hospital to the effect that Valeriano Pagkaliwagan was confined and treated for wounds on his face and head, and an affidavit of the Provincial Fiscal of Mindoro to the effect that said appellant voluntarily reported to his office for investigation with respect to the incident in question. Indeed, in order to always preserve the right of parties to cross-examine, Rule of Court 123, section 77, provides that "the testimony of witnesses shall be given orally in open court and under oath or affirmation." Said affidavits are not, as contended by counsel for the appellants, in the nature of public documents contemplated in Rule of Court 123, section 39.

The penalty meted out by the lower court is in accordance with law, appellant Valeriano Pagkaliwagan being entitled to the mitigating circumstances of provocation and voluntary surrender, as against only one aggravating circumstance (treachery) in that his attack was sudden and accomplished while his victim was in his embrace. Upon the other hand, appellant Victoriano Pagkaliwagan has in his favor the mitigating circumstance of obfuscation.

The appealed judgment is affirmed, with costs against the appellants. So ordered.

Moran, C.J., Jaranilla, Feria, Pablo, and Briones, JJ., concur.

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