

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AORECIO LUMAYAG, DEFENDANT AND APPELLANT.

G. R. No. L-19142. March 31, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

At about seven o'clock in the evening of April 12, 1959, in the barrio of Gumagamof, municipality of Lala, Lanao del Norte, Pedro Lumayag was up in a coconut tree gathering tuba while his wife, Luzviminda Pampilo, was on the ground lighting him with the beam of a flashlight. Suddenly he heard a thud and a shout for help. Recognizing the shout to be that of Jose Pampilo, his father-in-law, he hurriedly went down from the coconut tree, snatched the flashlight and, together with his wife, ran towards the place where the shout came from. They heard the sound of hard beating and the groaning of man. Pedro Lumayag then directed his flashlight towards and saw Agrecio Lumayag, wearing a red shirt and maong pants, straddled over a person by the road with his hands around the person's neck. Agrecio thereupon jumped and ran away towards his house about 300 meters from the scene.

Pedro Lumayag and his wife approached the person lying face down and recognized him as Jose Pampilo, who sustained injuries in the nape and bruises in the right cheek, and was bleeding. One meter away from him was his hat and nearby were two empty bottles of liquor.

The spouses, upon verifying that Jose Pampilo was already dead, forthwith reported the incident to the barrio lieutenant who, in turn, sent a rural policeman to notify the chief of police. Pedro Lumayag and his wife, accompanied by the barrio lieutenant, returned to the scene of the crime. They found the body of Jose Pampilo lying on its back with the hat on. The chief of police, several policemen and the municipal health officer arrived later.

Acting upon the account given by Pedro Lumayag, the chief of Police dispatched some policemen to summon Agrecio Lumayag. The policeman found only Agrecio Lumayag's wife in his house but, upon further search, found him hiding in a nearby shack armed with a bolo and a cane.

The policemen brought Agrecio Lumayag to the chief of police. Asked by the chief of police whether or not he killed Jose Pampilo, Agrecio stated that he would answer the question in the municipal building. Further asked what attire he had that afternoon, he answered that he wore a red shirt and maong pants. The red shirt and maong pants were later taken by the chief of police from Agrecio Lumayag's house and brought to the municipal building.

The municipal health officer, in a postmortem examination of the deceased, found a fracture and contused wounds at the base of the skull, which may have been indicted by a blunt instrument, and swelling on the right side of the face, lower jaw and the neck.

In the municipal building that same evening the chief of police interrogated Agrecio Lumayag but the latter refused to make a statement and instead promised to do so the following morning. No investigation, however, was

conducted" next morning inasmuch as the chief of police left for Iligan City at about one o'clock in the morning and came back only at 5:30 in the afternoon. Agrecio Lumayag, upon being again investigated by the chief of police, eventually confessed that he killed Jose Pampilo with a cane called "bahi". He also indicated the place where he threw the cane when somebody focused at him a flashlight. A policeman scoured the area indicated by Agrecio Lumayag and there found the cane.

Subsequently, the provincial fiscal filed an information in the Court of First Instance charging Agrecio Lumayag with the crime of murder.

After entering a plea of not guilty and standing trial, Agrecio Lumayag was found guilty by the trial court in its judgment of February 24, 1961, the dispositive portion of which states:

"WHEREFORE, the Court declares, as is hereby declared, accused Agrecio Lumayag Guilty beyond reasonable doubt of Murder as charged, penalized under Art. 248 with the aggravating circumstance of treachery and nocturnity, with the mitigating circumstance of vindication of a wrong he having been boxed and physically injured by the deceased, which fact, although not immediate, is considered by the Court as attenuating. He is, therefore, sentenced to suffer an imprisonment of Thirty Years of reclusion perpetua and to pay the costs of this present suit. He is further sentenced to indemnity the heirs of the deceased SIX THOUSAND PESOS (P6,000), and in case of insolvency, no further subsidiary imprisonment shall be imposed."

Accordingly, the accused has appealed to this court.

For his defense of alibi the accused testified to the following: At about four o'clock in the afternoon of April 12, 1959 he and his wife left Gufnagamof by truck for Baroy. From there they crossed Pangil Bay by banca to Tangub arriving at about six o'clock in the evening. From the time of their arrival, they stayed in Tangub, particularly in the house of a quack doctor, Tranquilino Melbar, until six o'clock in the morning of April 14, 1959, during which time appellant was treated by Melbar. They returned to Gumagamof only on April 14, arriving there at about eight o'clock in the morning, accompanied by Melbar, to whom the accused promised to give a rooster. Shortly thereafter, a policeman arrived and arrested the accused for the murder of Jose Pampilo.

The trial court did not give credence to appellant's alibi, observing that it was improbable for appellant to have been able to travel to Tangub if he was really sick. It also found the testimony of the quack doctor, in support of appellant's alibi, unreliable.

Appellant's afore-stated alibi cannot prevail in the face of the positive testimonies of Pedro Lumayag and Luzviminda Pampilo definitely identifying him as the very person whom they saw on top of Jose Pampilo's prostrate body (People v. Ramos, L-17402-03, August 31, 1963). Furthermore, the chief of police of Lala testified that on the night of the incident he caused the accused to be apprehended and detained him in the municipal building for investigation; that in the afternoon of April 13 the accused, still under detention, confessed to having killed Jose Pampilo with a cane called "bahi" which he threw away about a hundred yards from the scene of the crime. As stated, the cane was later found in the very place indicated by the accused.

Appellant further questions the credibility of the testimonies of Pedro Lumayag, Luzviminda Pampilo and the chief of police of Lala. He lays emphasis on the testimony of barrio lieutenant Luis Ecat, who stated that Pedro Lumayag and Luzviminda Pampilo, in reporting, to him, could not identify the killer. The record of this case discloses no sufficient motive on the part of Pedro Lumayag, Luzviminda Pampilo and the chief of police to testify falsely against the accused. On the other hand, it has been shown by the defense that the deceased was hated in the community, so that a feeling of hatred may have influenced Luis Ecat. The trial court, at any rate, did not believe him. Appellate courts as a rule desist from disturbing the findings of the trial court on the credibility of

witnesses, for the latter is in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial. We find no reason to depart from this settled practice, since it has not been shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case (People vs. Curiano, L-15256-57, October 31, 1963).

Finally, appellant contends that the trial court erred in finding him guilty of murder in spite of the failure of the prosecution to establish treachery and nocturnity as qualifying circumstances. For the same reason, the Solicitor General recommends a judgment for homicide instead of murder. The information cites as qualifying circumstances "treachery, evident premeditation and taking advantage of nocturnity to better insure the commission of the offense". As appellant points out, however, these aggravating circumstances were not proved. While there is sufficient evidence to establish the killing of Jose Pampilo by the accused, there is none, however, to show that he acted with treachery or evident premeditation or that he specially sought the advantage of night time to facilitate the crime. We may therefore apply the doctrine laid down in *U.S. v. Banagale*, 24 Phil. 69, to the effect that when the details and circumstances surrounding the commission of the crime are unknown, and there appears no evidence in the case that may indicate the situation of the victim when he was killed, or when it is not conclusively shown that the violent death of a person attended by any of the qualifying circumstances specified in Article 248, the crime must be classified as homicide, and not murder.

The record shows that on July 8, 1958, the deceased boxed the accused several times in the face, for which the deceased was subsequently convicted of less serious physical injuries by the justice of the peace court of Lala. The deceased appealed to the Court of First Instance of Lanao and at the time the accused killed the deceased the case was still pending therein. In view of the length of time, approximately nine months, between the boxing incident and the killing of Jose Pampilo, it cannot be said that the second incident was an immediate or a proximate vindication of the first. Accordingly, the court a quo should not have considered it as a mitigating circumstances under paragraph 5, Article 13 of the Revised Penal Code.

PREMISES CONSIDERED, appellant is hereby found guilty beyond reasonable doubt of the crime of homicide without any mitigating or aggravating circumstances, and condemned to suffer an indeterminate sentence of six (6) years and one (1) day of prision mayor as minimum to fourteen (14) years, and eight (8) months and one (1) day of reclusion temporal as maximum, to indemnify the heirs of the deceased in the amount of P6,000.00, and to pay the cost. It is so ordered.

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

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