

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LORENZO ASESOR Y JONES, AND ALEJANDRO POLINTAN, DEFENDANTS AND APPELLANTS.

G. R. Nos. L-2953 and L-4033. July 27, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from the judgment of the Court of First Instance of Manila, finding the appellant (Lorenzo Asesor) guilty as principal and the appellant (Alejandro Polintan) as accomplice of triple murder, and sentencing (1) the first to reclusion perpetua for each of the three murders, with legal accessory penalties, the total of which should not exceed forty years, and to indemnify the heirs of each of the deceased (Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr.) in the sum of two thousand pesos, plus his share of the costs, and (2) the second to the indeterminate penalty of from 8 years and 1 day of prision mayor to 13 years, 9 months and 1 day of reclusion temporal for each of the three murders, with legal accessories, and to indemnify the heirs of each of the deceased in the sum of two thousand pesos in case appellant Lorenzo Asesor should fail to do so, plus his share of the costs. Antonio Socorro was excluded from the information and utilized as a witness for the Government; Ignacio Lopez was not tried; and Alfonso Magluyan was acquitted.

The facts as found by the trial court are substantially as follows: Between ten and eleven o'clock in the evening of March 22, 1945, the U. S. Army exhibited a motion picture in a vacant lot on Sociego Street, City of Manila. Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr. were taken away from the crowd of spectators by the appellant Lorenzo Asesor (a first lieutenant in Marking's Guerrillas) and brought to a place in front of the house of Pedro Polintan on Sociego Street, where they were investigated for being Makapilis. Antonio Socorro recorded the proceedings. Upon denying that they were Makapilis, Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr. were given fist blows by appellant Lorenzo Asesor. Thereafter the latter, aided by Ignacio Lopez, tied the hands of the three subjects who were ordered to proceed towards a nearby field, followed by Lorenzo Asesor, Alejandro Polintan, Ignacio Lopez and Maximo Yumang. Lorenzo Asesor wanted Maximo Yumang (who followed upon order of Lorenzo) to kill Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr., but Maximo Yumang, instead of doing so, hid himself behind tall grasses upon reaching a certain point. After about five minutes and Maximo Yumang failed to show up, Lorenzo Asesor took hold of an iron pipe one yard long and one inch in diameter, and ordered Ignacio Lopez to lead the trio to an excavation on the ground, which Ignacio Lopez did, with the help of Alejandro Polintan. Being on the edge of the excavation, Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr. were hit by Lorenzo Asesor successively on the back of the neck with the iron pipe, falling into the hole by the impact of the blows. Ignacio Lopez and Alejandro Polintan covered the grave with earth upon direction of Lorenzo Asesor, after which they left.

The defense of appellant Lorenzo Asesor is based upon the following allegations: In the evening of March 22, 1945, he and his wife left their residence at 266 Sociego Street, Manila, bound for the house of his wife's parents. Upon reaching their destination, Lorenzo's attention was called by a crowd in front of the house of Pedro Polintan.

Leaving his wife, Lorenzo Asesor found in the group Perfecto Malatbalat and Maximo Yumang (sergeant and private respectively in the guerrilla outfit of Lorenzo) investigating three persons. Making the corresponding inquiry as a superior officer, Lorenzo Asesor was told that the trio were Makapili suspects who, with the Japanese Military Police, apprehended Perfecto's brother and other guerrillas during the Japanese occupation. Asked what he would do with the three men, Perfecto Malatbalat informed Lorenzo Asesor that they would be taken to the C. I. C. At this juncture Antonio Socorro and Alejandro Polintan came. Whereupon Lorenzo ordered Antonio (also member of the guerrilla outfit of Lorenzo) to take note of the names of the trio and of the proceedings, and told the investigators that, after changing clothes, he (Lorenzo) himself would take them to the C. I. C. for further investigation, after which he left for his house. At the same time, Maximo Yumang and Perfecto Malatbalat took the three men out into the street. Upon Lorenzo's return, he was informed by Alejandro Polintan that Sgt. Malatbalat and Maximo Yumang, with the three men, went to the C. I. C. At about eleven or twelve o'clock, Lorenzo Asesor, riding in the carretela of his compadre Jose Torres (also a Marking's guerrilla), proceeded to the office of the Provost Marshal at the Old Bilibid compound. Lorenzo Asesor went home already past midnight.

The trial court found appellant Alejandro Polintan guilty only as accomplice (because the evidence for the prosecution is to the effect that the latter accused was casually passing by when he was called by his superior officer Lorenzo Asesor to help the latter in conducting the victims to their grave and in covering the grave after said persons were hit and put into it."

The testimony of appellant Alejandro Polintan is substantially to the effect that in the evening of March 22, 1945, attracted by a noise near his house, he and Antonio Socorro came down, only to see three men being questioned by Perfecto Malatbalat and Maximo Yumang; that Perfecto Malatbalat propounded the questions, while Antonio Socorro took notes by order of Lorenzo Asesor; that the three men were later taken by Perfecto Malatbalat and Maximo Yumang to a place called "Labasan"; that in the meantime Lorenzo Asesor went home to dress up, with the intention to return and take the three men to the C. I. C, while Alejandro Polintan and Antonio Socorro went back to their house and did not come down that evening; that Alejandro Polintan did not know what became of the three men investigated by Perfecto Malatbalat and Maximo Yumang.

Antonio Socorro, who was excluded from the information and presented as a prosecution witness, gave an exculpatory testimony in that he alleged that, while Perfecto Malatbalat and Maximo Yumang took away the three men under investigation, Alejandro Polintan and Antonio Socorro returned to their house and Lorenzo Asesor proceeded in the direction of his home.

The facts narrated in the appealed decision upon which the trial court based appellants' conviction are borne out, as to essential and vital features, by the testimony of Perfecto Malatbalat, Maximo Yumang and Pablo Miranda. After a careful examination of the record, we have found no cogent reason for concluding that the trial Judge incorrectly weighed the evidence. It is insisted for the appellants that Maximo Yumang and Pablo Miranda were prompted to testify against them by hate and revenge, because Maximo Yumang failed to get any backpay and Pablo Miranda was once hit by Lorenzo Asesor on the head with a pistol, Maximo and Pablo being furthermore cousins. If Maximo Yumang and Pablo Miranda in fact merely wanted to get even with Lorenzo Asesor, they would not have also incriminated others, like Alejandro Polintan and Ignacio Lopez, against whom they have not been shown to have any grudge. Moreover, there is the damaging testimony of Perfecto Malatbalat who is not alleged as having any motive for being biased.

We agree with the court a quo that the testimony of Antonio Socorro, seemingly favorable to the appellants, is not sufficient to negative the persuasive weight of the other evidence for the prosecution. There is reason to believe that Antonio Socorro testified in the way he did for personal safety, there being indications in the record that his former guerrilla superior (Lorenzo Asesor) was feared by his subordinates. At any rate, we are not prepared to

reverse the trial Judge on the question of credibility of the various witnesses that testified before him.

Upon the other hand, the theory of the prosecution is somewhat strengthened by the claim of appellant Lorenzo Asesor that he informed the investigators that he himself would take the three men to the C. I. C, because if this was true, it is improbable that said investigators (alleged by Lorenzo to be Perfecto Malatbalat and Maximo Yumang) would prevent Lorenzo from doing so, being mere subordinates, and especially because there was Antonio Socorro and Alejandro Polintan who would undoubtedly see to it that the three men did not leave the scene. As even Antonio Socorro admitted that appellant Lorenzo Asesor took away from him the record of the investigation, it is but logical and fair to assume that the three men were in fact investigated by or at the instance of said appellant.

It is insisted for the defense that the death of the three victims (Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr.) has not been duly proven. We cannot agree. The evidence for the prosecution clearly established the fact that the three young men together went out to see the movie shown at Sociego Street in the evening of March 22, 1945, and that they were never seen thereafter by their respective families. Perfecto Malatbalat, Maximo Yumang and Pablo Miranda positively identified the trio from their respective pictures, said witnesses having been able to see them at close range on the occasion when they were investigated and killed by appellant Lorenzo Asesor. Indeed, prosecution witness Pablo Miranda previously knew Juanito Cruz. The circumstance that three skulls and other bones were found in the place where Juanito Cruz, Andres Tamayo and Feliciano Sanchez, Jr. were buried, completes the matter of their death and identities. Little or no importance can be attached to the fact that said skulls and bones were found some ten meters away from the spot indicated by Maximo Yumang and Pablo Miranda, who might have miscalculated the exact point due merely to the lapse of a long period of time between the dates of the killing and of the search made by the authorities. Intimation was made that the area where the skulls and bones were found had been used by the Japanese during the war as a cemetery, but counsel for the defense admits that this was not duly proven.

Attorney for appellant Alejandro Polintan calls attention to the affidavit executed by Ignacio Lopez on August 23, 1950, in the New Bilibid Prisons to the effect that Ignacio Lopez was forced by Perfecto Malatbalat, Maximo Yumang and Pablo Miranda to tie Feliciano Sanchez, Jr. and his two companions, and that the latter three were killed by Perfecto Malatbalat, Maximo Yumang and Pablo Miranda. Copy of said affidavit is attached to the memorandum in lieu of oral argument filed by attorney for appellant Alejandro Polintan. Even assuming that said affidavit may be considered as competent evidence at this stage of the case, the same cannot (like the testimony of Antonio Socorro) nullify the probative value of the other evidence for the Government. We agree, however, with the trial court that Alejandro Polintan is only an accomplice, it appearing that his participation was limited to leading the deceased near the excavation which was to become their grave and to filling the same with earth, and that he was casually on the scene when appellant Lorenzo Asesor (his superior officer) asked him to help.

The penalty imposed by the trial court being in conformity with the facts and the law—there being neither mitigating nor aggravating circumstances,—the appealed judgment will be as it is hereby affirmed with proportional costs against the appellants. So ordered.

Feria, Pablo, Padilla, Tirnson, Montemayor, Reyes and Jugo, JJ., concur.

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