

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FEDERICO AGARIN ALIAS COMMANDER SMITH, DEFENDANT AND APPELLANT.

G.R. No. L-12298. September 29, 1960

Ponente: PAREDES, J.

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PAREDES, J.:

Federico Agarín alias Commander Smith was indicted under the following information:

"That on or about November 26, 1952, in the barrio of Victory Village, Legaspi Fort, Legaspi, Albay, Philippines, and within the jurisdiction of this Honorable Court, the above named accused conspiring with Fernando Principe alias "Commander Manding", and Commander Vida now both deceased and helping one another for a common purpose, with evident premeditation and with intent to kill, did then and there, wilfully, unlawfully and feloniously, shoot one Sofronio Santiago with a .45 caliber pistol, hitting him in several vital parts of his body and causing him the following injuries?

(1) Thru and a thru gun-shot wound, entering the upper left lumbar region passing thru the abdomen, perforating the intestines and exiting in the region of the right Hypochondrium;

(2) Gun-shot wound entering the left lower chest, passing thru the whole thickness of the chest, lodging superficially on the right anterior chest below the nipple;

(3) Gun-shot wound, entering the left posterior chest; which injuries caused the death of the said Sofronio Santiago shortly thereafter.

That in the commission of the crime, the following aggravating circumstance were present to wit: evident premeditation, night-time, and abuse of superior number."

Found guilty as charged, he was sentenced to (suffer) reclusion perpetua and to indemnify the heirs of Sofronio Santiago in the sum of P6,000.00, and to pay the costs. In this appeal, Again alleges that the lower court erred: (1) in finding that he voluntarily confessed to the crime; (2) in failing to appreciate certain facts and circumstances indicating his innocence.

We glean from the evidence adduced by the People, the following facts:

Between 6 and 7 o'clock in the evening of November 26, 1952, Sofronio Santiago, 75, was found lying dead on the floor of his house in Victory Village, town of Legaspi, Albay, (Exhibits B, B-3). He had three bullet wounds. An empty cartridge from a .45 caliber pistol was recovered near a sewing machine inside the house (Exhibit B-2). On November 27, 1952, the dead body was autopsied by Dr. Moises Cruz, then Chief of the Provincial Hospital of Albay, in the presence of his assistant Dr. Antolin Letivio. The autopsy revealed that Sofronio Santiago sustained the injuries described in the information and according to Dr. Letivio, the deceased must have been shot at the back and that wounds Nos. 1 and 2 were the immediate cause of Sofronio's death.

On July 14, 1954, accused Federico Agarin, a member of the Hukbalahap (a dissident organization), then armed with a .45 caliber pistol and Francisco Baltazar alias "Bal" and the latter's mistress Isabel Alzada, were captured by Constabulary soldiers headed by Sgt. Cirilo Lasin in Legaspi, and were brought for confinement at the P.C. stockade of Legaspi (Exhibit C). While under confinement, the accused confided to one Modesto Austria, a fellow-detention prisoner in the said stockade that he (accused) was one of the group that boarded his (Modesto's) sailboat and proceeded to Victory Village at the time Sofronio was killed.

In effect, Modesto Austria testified in court that at 4:00 o'clock in the afternoon, about the end of November, 1952, accused Agarin, with Commander Manding and Commander Vida, who carried short firearms on their hips, approached him while he was fixing his sailboat on the seashore of Malumbalay, Manito, Albay, and requested that they be transported to Malagnog, Legaspi, for which Commander Vida promised to pay him (Modesto). He transported the three to Malagnog first and then to Manito where he was told to wait for them. He fell asleep while waiting for them until 10:00 o'clock in the evening, when the three returned, after which Commander Vida paid him (Modesto) the sum of P2.50 and the three headed for the mountains.

On August 14, 1954, the accused executed an affidavit Exhibit C before Jose G. Balin, Clerk of the Court of First Instance of Albay. In this Exhibit C, the accused confessed that prior to his capture on July 14, 1954, he was a member of a Huk organization as Field Commander 55 (PC 55), with the rank of sergeant under Commander Manding; that he was also known as "Smith" among his men; that sometime in November, 1952, he, Commander Manding and Vice Commander Vida, left their camp at Anopol, Puchan, Manito, Albay, for an important mission somewhere, and riding on a sailboat manned by Modesto Austria, they proceeded to Malagnog, reaching the same at about five o'clock in the afternoon; that from here they hiked and arrived at Victory Village at about 6:30 in the evening; that they surrounded the house of Sofronio Santiago (deceased), whom they wanted to take for investigation because they suspected him to be the person who informed the BCT regarding the presence of the Huks in Manito, which resulted in a raid on their camp by government troops; that Commander Manding instructed him (accused) to guard near the window of Sofronio's house, while Commander Vida was posted at the window near the stairs of the house; that Commander Manding called Sofronio to come downstairs for a talk but Sofronio moved towards the stairs and finding Commander Manding there, he (Sofronio) retreated as if to escape through the window where Vice Commander Vida was guarding; that at this juncture, Commander Manding gave the order to fire, and Vice-Commander Vida fired and he (accused) also fired at Sofronio; followed by another shot by the same Commander Vida, after which Commander Manding gave the order to stop firing and the three escaped towards Malagnog from where they sailed back to Manito (Exhibit C). The accused and a policeman, later reconstructed the killing of Sofronio, in the presence of Det. Sgt. Alfredo Mulo, police Lt. Binas and Sgt. Cirilo Lasin of the P.C. and several other policemen of Legaspi.

The accused denied having shot Sofronio or having participated in any manner in the killing of Sofronio. He claimed that while he was under confinement in the stockade of the P.C. in Albay, Sgt. Lasin maltreated him in the bathroom by boxing him on the head and other parts of his body; that Sgt. Lasin told him that if he did not admit the contents of the affidavit, he would be shot on the pretext that he was trying to escape; and that he signed said affidavit for the protection of his life.

Appellant declared that in the evening of November 26, 1952, at about 6:30 o'clock, he was in Daraga, Albay, delivering a letter to Julian Iiorera, another Huk Commander to whom he had been assigned as courier; that after he had delivered the letter, he and Llorera saw a movie until 10:00 o'clock that evening after which he returned to Malagnog to meet Commanders Manding and Vida whom he had left there in the afternoon. Julian Llorera, himself a fellow detention prisoner of the appellant, testified to the same effect.

In other words, the primordial question put in issue by the defense is the voluntariness of the confession Exhibit

C, and the sufficiency of the evidence to warrant the conviction of the appellant for the crime charged.

We have given the case the attention it deserves, having in mind the seriousness of the offense, and we are fully convinced that the appellant is guilty. Anent the execution of Exhibit C, the appellant signed and swore to the truth of the contents of Exhibit C before the Clerk of Court, Jose G. Balm, in his office on August 14, 1954, after the contents thereof had been read and translated to him into the Bicol dialect. The appellant himself corroborated this fact, when he declared that it was the Clerk of Court who made him sign the document in his presence which was in questions and answers; that the Clerk of Court read to him and translated the document to him into the Bicol dialect, before he signed it; that he understood each and everything that the document contained; that during his confinement at the P.C. barracks, Sgt. Lasin was not with him; and that it was Sgt. Mulo who accompanied him to the Clerk of Court. Sgt. Lasin, therefore, could not, under this circumstance, have forced or intimidated him to execute his confession. There was absolutely no motive shown why Balin, an officer of the court, and Sgt. Lasin would have implicated an otherwise innocent man. It is almost trite to be repeating herein the rule that as far as the credibility and veracity of witnesses are concerned, great respect and reliance are placed upon the findings and conclusions of the trial court, and we find nothing in the record which would warrant us in disbelieving the testimonies of the witnesses for the People. Counsel's contention that Exhibit C must have been merely a composite of the statements of Modesto Austria and Roger Dolar, and of what the P.C. men and officers had already known, did not pass beyond a mere conjecture. Exhibit C having been executed on August 14, 1954, could not have been based on the affidavit of Austria which was then unexisting, as the same was executed only on September 20, 1954. Exhibit C contained details and matters which could have been supplied only by the appellant. There are matters therein which the appellant himself confirmed on the witness stand, such as the fact that he was captured with Francisco Baltazar, that he was then in possession of a .45 caliber pistol, that he carried the name of "Smith" and that he joined the Huk organization in November 1952. The physical finding of the medical expert corroborates the appellant's confession that he shot Sofronio Santiago at the back.

In the face, therefore, of the strong and convincing evidence adduced by the prosecution, the alibi interposed by the appellant, although supported by the testimony of a number of the dissident organization, becomes untenable. The prosecution, in our opinion, has established sufficient live on the part of the appellant for the killing.

The offense perpetrated by appellant is murder, qualified by abuse of superior strength. Considering, however, the fact that the killing was committed as a means to or in the furtherance of the subversive ends of the Hukbalahaps (HUKS), because the said appellant and his companions, Commander Manding and Commander Vida suspected the deceased to have acted as a spy and had informed the BCT and Government agencies regarding the presence of the Huks in that region, we find the said Federico Agarín alias Commander 'Smith' guilty of the crime of simple rebellion only (People vs. Hernandez, et al., 99 Phil., 515; 52 Off. Gaz. [12] 5506; Sees. 4 and 5, Rule 116; People vs. Melecio Aquino, et al., 108 Phil., 814; 57 Off. Gaz. [51] 9180).

There being no modifying circumstance to appreciate, the appellant is, therefore, sentenced to suffer eight (8) years and one (1) day of prison mayor, and to pay a fine in the sum of P10,000.00, without subsidiary imprisonment, pursuant to article 38 of the Revised Penal Code and to indemnify the heirs of Sofronio Santiago in the sum of P6,000.00 (Art. 107, Revised Penal Code; People vs. Geronimo, 100 Phil., 90; 53 Off. Gaz., 6S; People vs. Romagosa, 103 Phil., 20; 56 Off. Gaz. [14] 2946).

Modified in the manner just indicated, the decision appealed from is hereby affirmed in all other respects, with costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B., L., Barrera, Gutierrez David, and Dizon, JJ., concur.

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