

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANTONIO GONGORA, ET AL., DEFENDANTS, ESTANISLAO LLURCA,
DEFENDANT-APPELLANT.**

G.R. Nos. L-14030-31. July 31, 1963

Ponente: REGALA, J.

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REGALA, J.:

On August 29, 1957, two separate informations were filed with the Court of First Instance of Leyte against Antonio Gongora and Estanislao Llorca, the first for the murder of Isabel Cortez alias Merolina Fuentes alias Nene (Criminal Case No. R-1542), and the second for frustrated murder against the person of Epifanio Boncag (Criminal Case No. R-1543).

During the arraignment and first day of trial on November 6, 1957, the accused pleaded not guilty to both cases. Inasmuch as both cases arose from the same incident, trial thereof was consolidated upon motion of the prosecuting fiscal. The same fiscal moved for the discharge of accused Antonio Gongora in order to be used as State Witness. Over the objection of the counsel for Llorca, the motion was granted and Gongora was ordered discharged and released from jail.

Trial thus proceeded with respect to accused Estanislao Llorca. He was found guilty of murder, as charged in Criminal Case No. R-1542, and sentenced to suffer the penalty of life imprisonment with the accessories of the law; to indemnify the heir of the late Isabel Cortez in the amount of P6,000.00 without subsidiary imprisonment and to pay costs. He was likewise found guilty of frustrated murder as charged in Criminal Case No. R-1543, and sentenced to undergo an indeterminate prison term ranging from 4 years, 9 months and 1 day of prison correccional to 8 years and 1 day of prison mayor, with the accessories of the law; to indemnify Epifanio Boncag in the sum of P300.00, and to pay the costs. Hence this appeal.

After going over the record, We found that the evidence for the prosecution has brought out the following: On June 24, 1957, Epifanio Boncag, a lad of 21 years and a resident of St. Bernard, Leyte, was in the neighboring town of Cabalian, same province, for the fiesta. At about 7 o'clock in the evening in the said town of Cabalian, he met his sweetheart, Isabel Cortez, a lass of 16 years, and the two of them repaired to a school building where they indulged in sexual intercourse. From the school building, the lovers went to the town plaza to watch the coronation ball. At about 10 o'clock, Isabel asked Boncag to conduct her home to St. Bernard. The two rode on Boncag's bicycle, and on the way, they agreed to have another carnal intercourse. They stopped by the roadside, near the cemetery of St. Bernard past the bridge of Malbago which connects the provincial road between St. Bernard and Cabalian. Boncag dragged along his bicycle up to the foot of a coconut tree surrounded by grasses. The lovers took off their shoes, while Boncag also took off his trousers, and had intercourse. When Boncag stood up and was still buttoning his trousers, a man gave him a thrust "with a bolo perhaps" and he ran away. He did not recognize his attacker, as it was dark, but he noticed that his said attacker was short in height. Boncag was able to arrive at his house at Magbagakay where he fell unconscious.; He was still prostrate on the floor covered with

blood from the waist down, when Ambrosio Cuaton, chief of police and Filemon Galdo, justice of the peace, both of St. Bernard, arrived at his house to investigate.

The next morning, the lifeless body of Isabel Cortez was found by Cuaton and his men in a brook about 800 meters away from the cemetery and some 200 meters away from the old house of Llurca where an undershirt of the "Johnny Best Quality" make was found hanging on a corner with bloodstains in front and rust stains on the belly part.

Antonio Gongora, the accused turned State witness, pinned down Llurca as the attacker. That evening of the incident, Gongora met Llurca riding a bicycle at the bridge along the provincial road. Llurca had a flashlight by which he identified Antonio. Llurca greeted him, "Nong, I would like to borrow your bolo." Antonio's bolo was then tied around his waist. Without much ado, Llurca untied the string around Gongora's waist and took the bolo from its scabbard, saying that the place where he was going was haunted. Llurca and Antonio Gongora proceeded towards the Malbago bridge. Near a coconut tree, Llurca left his bicycle and proceeded towards the cemetery, with Gongora trailing behind. Llurca, using his flashlight, went to a spot amidst growing bamboos and where a bicycle was seen at a short distance. He detoured to the left and then crawled to a place where there were nipa palms. Not long (thereafter, Gongora heard a man cry, "Aroy!"; Then appealed a woman running out of the place towards the provincial road. Llurca, pursued this woman and was able to overtake her, Llurca placed his arm on her shoulder and the pair proceeded towards the Malbago bridge, walked along the river side, and finally entered the abandoned house of Llurca on a hill. Antonio Gongora, who was then in the yard, heard the woman pleading to Llurca, "Tan, if you pity me, please conduct me to my home," and Llurca merely answered, "And so you know me. Why did you show to me what you have done?" After thirty minutes, Llurca and the woman came out of the house and resumed their walk toward the mountain. At this juncture, witness Gongora testified that while Llurca and the woman proceeded on their way, the woman was heard crying: "What a pity, Tan. You are going to include me." And after the woman had uttered these words, she expired.

The testimony of Ananias Gloria, chief of police of Cabalian who joined the investigation, reveals that the undershirt which was found in the house of Llurca fitted the latter, who, at the time of the fitting, was wearing another undershirt of the same "Johnny Best Quality" brand. This shirt also had an identical rust stain at the same place where the rust stain was discovered on that found in the house. According to Filemon Galdo, justice of the peace of St. Bernard and Chief of Police Cuaton, Llurca admitted to them that he (Llurca) had three undershirts of the same make.

When the accused was brought in for investigation, a red stain was discovered underneath his thumbnail, by Chief of Police Gloria. Llurca was asked if he had butchered a pig or touched anything bloody, and he answered in the negative. Judge Galdo called Dr. Eudaldo Samaco, Municipal Health Officer of St. Bernard, to extract and examine the stain. After the doctor had removed the stain, Llurca told his investigators thus—"I butchered a pig within this week and I went fishing and I caught a fish called patikan which I cut." Dr. Samaco testified that the specimen which he had extracted from the thumbnail of Llurca was a human bloodstain.

Dr. Samaco examined the injuries of Boncag and performed; an autopsy on the cadaver of Isabel Cortez. He declared that Boncag sustained (1) an incised wound on the right thumb, (2) a through and through stab wound on the left hand, and (3) another stab wound on the left lumbar area which exposed the abdominal covering of the intestinal organ. He said that these injuries could have been inflicted by a sharp pointed bolo, and it was possible that only one "fast and strong" thrust had inflicted them. On his autopsy, Dr. Samaco declared that the major injury sustained by the deceased was a stab wound on the left breast which penetrated the heart, diaphragm and left lobe of the liver. He opined that the weapon used was a sharp bladed instrument, with the same size and kind used to assault Boncag, because, according to him, the sizes of the wounds of Boncag and those on the body of Isabel

were the same. Dr. Samaco further rendered the opinion that the other wounds on the body of the dead victim must have been sustained after the girl had died.

The defense presented ten witnesses, besides appellant, to prove two major exculpatory points: the real culprit is Antonio Gongora, and appellant Llurca was at home at the time of the incident.

Estanislao Llurca, then 22 years old, denied that he was a suitor, much less, a former lover of the late Isabel Cortez. He and Boncag are third cousins. He knew that Boncag and Isabel were sweethearts, because Boncag told him so, and it was Boncag who introduced him to Isabel. Obviously, the purpose of this testimony is to show lack of motive on the part of the accused appellant.

Llurca affirmed that he attended the Cabalian fiesta on the day of the incident, but said that Antonio Gongora was not one of his companions, as he did not even know said Antonio, and that he left Cabalian for home at about 1:30 p.m. This contradicts the stories of Gongora, Priacilla Villamor and Gaudencio Alfaro, which tend to indicate that Llurca and Gongora are friends and were together in Cabalian at least up to 4:00 p.m. when the two parted ways.

Through the testimonies of Mercedes Gumpay, Margarito Reyes and Quirino Limbo, the defense tried to corroborate appellant's claim that he was already at home during the incident. Mercedes Gumpay is appellant's mother. Margarito Reyes, a neighbor of the Llurcas testified that he stayed in the house of the Llurcas and had a drinking spree with the father of appellant between 9 o'clock in the evening of June 24 and 1 o'clock the following morning, and saw appellant lying and sleeping in his room during that time. Quirino Limbo is the first cousin and partner of appellant in the peddling business. He declared that he had a drinking spree at the house of the Llurcas, with the father of appellant and witness Margarito Reyes, from 10:00 in the evening of June 24 up to 5:00 the following morning, and during all that time he lay down beside appellant who was then sleeping in his room.

Through the testimonies of Lolita Boctot and Bernardino Gongora, the defense attempted to switch criminal responsibility from Llurca upon Gongora. Lolita Boctot, a minor of ten years, testified that Antonio Gongora confessed to her father: "I am hiding, Ingko Meli, because I killed a woman whom I caught doing some bad acts, I killed this woman with a dagger and also wounded a man with a bolo." Bernardino Gongora bared that in the afternoon of the preliminary investigation he talked with and asked Antonio: "Cousin, why are you doing this?" "My goodness, I lost my senses. I did not know why I killed that woman."

On rebuttal, Matiide Ordiz and Basilisa de Pagado, aunt and cousin, respectively, of Isabel Cortez, provided a possible motive for the bloody affair, in the face of Llurca's declaration that he never courted his deceased victim. Ordiz and Pagado disclosed that Llurca and Isabel were engaged until Epifanio Boncag came along and alienated Isabel's affections from Llurca.

Melecio Boctot was also presented who disclaimed the statement of his daughter, Lolita, that Antonio Gongora had confessed to him that he (Antonio Gongora) was the one who killed Isabel and wounded Boncag.

After a thorough review of the record, We have arrived at the conclusion that the guilt of appellant Estanislao Llurca of the offenses charged herein has been established beyond the scintilla of doubt.

Three vital considerations, unexplained by the defense, have fingered appellant as the perpetrator of the offenses. The first is the undershirt with bloodstains on its front part found by Cuaton's men the following morning of the tragedy at the abandoned house of the Llurcas where appellant had taken Isabel on her last night. The ownership of this undershirt was traced to appellant who gave the feeble excuse that in the early morning of June 25, his father went to the farm and nobody was there.

It is important to note that while the defense enlisted as many friends and relatives to testify, it did not put

appellant's father on the witness stand to affirm that he had really gone to the abandoned house and to explain his purpose in going there that early morning immediately following the incident.

The second circumstance is the bloodstain found underneath appellant's thumbnail. His reaction on two occasions upon this piece of incriminating evidence tends to betray a guilty conscience. Before the bloodstain was extracted for analysis, Chief of Police Gloria asked appellant if the latter butchered a pig or touched anything bloody within the week and appellant simply retorted "No." When Dr. Samaco had removed the stain, appellant finally told Gloria that he butchered a pig within that week and furthermore cut a fish which he had caught while fishing.

The third is the lack of motive on the part of Antonio Gongora, and its presence in the case of appellant. The aunt and cousin of the dead girl, with whom she had lived, gave testimony tending to show that appellant and the dead girl were lovers until Boncag came along and won over Isabel. Boncag disclosed that appellant went one time to visit the dead girl but did not enter the house, perhaps because he saw said Boncag already there. Llorca admitted it was Boncag who introduced him to Isabel some five or seven months before the incident. While it was shown that appellant and Boncag are friends and appellant had been one of Isabel's suitors, evidence is wanting to show that Antonio Gongora knew the victims.

Parenthetically, We have to state that in accepting the testimony of Antonio Gongora, originally an accused but later discharged in order to be utilized as prosecution witness, the Court is not unmindful of the repeated principle that in such a case the testimony of the witness should be received with great caution and should be carefully scrutinized. (U.S. vs. Remigio et al. 37 Phil. 599; People vs. Marcos, et al., 70 Phil. 468; Enage vs. Warden of Davao, 82 Phil. 23.)

We must reject, as did the lower court, the declarations of Lolita Boctot and Bernardino Gongora. Lolita denied having conferred with the defense counsel prior to the hearing, testifying thus—

"Q. Now, did you talk to anyone about this case before you came here in order to testify?

"A. No.

"Q. In other words you did not talk to anyone about what you have known about this case?

"A. No.

"Q. Not to anyone?

"A. No.

"Q. Not even to Atty. Rosal?

"ROSAL: She must be told who he is.

"COURT: Do you know Atty. Rosal?

A. I know him.

Q. Where is he?

"A. (Indicating Atty. Rosal) There. ,

"Q. Today or yesterday before you sat there on your chair did you ever talk to Atty. Rosal about the nature of your testimony today? .

"A. No, Sir.

"Q. Did he not ask you about the nature of your testimony in case you are called to testify?

"A. No, Sir.

"Q. You did not tell anybody either to the mother of the accused or to the accused himself that you were going to declare such story you are now telling us?

"A. No, Sir.

"Q. Was there anybody who asked you any question about this case before you were called to testify?

"A. No, Sir.. (t.s.n. pp. 257-258)

It is difficult to see how an important, illiterate and young witness like Lolita—she was barely ten years old—could be placed on the witness stand without conferring with her lawyer. On further questioning, Lolita admitted that her mother is related to appellant's mother and that the latter gave her money for meals and dresses, including the dress she wore during the trial. Finally, Lolita's revelation was flatly disowned by her own father, Melecio Boctot. Except for the sake of truth, We find no other reason why Melecio Boctot should give testimony directly opposed to his daughter.

Antonio Gongora also allegedly confessed to Bernardino Gongora in the afternoon of July 24, 1957, while the preliminary investigation was going on. Bernardino admitted that he is related to Llurca. He revealed that he did not report his supposed conference with Antonio to the proper authorities and did not volunteer to testify in the preliminary investigation. When the prosecuting Fiscal moved for the discharge of Antonio Gongora, the defense objected and, as one ground for its opposition, mentioned the affidavit of Lolita Boctot and said nothing about the alleged conference between Bernardino and Antonio. Lolita testified in the morning, while Bernardino testified in the afternoon. It is probable that Bernardino Gongora was prevailed upon to testify in the afternoon in an endeavor to provide corroboration to the testimony of Lolita Boctot who, the trial court observed, was "incredible and insincere" and whose testimony "are conflicting on fundamental and material points."

The three significant circumstances pointed above substantially strengthen the eyewitness account of Antonio Gongora. His testimony is materially the same as those contained in the affidavits he had sworn and signed on two occasions before the preliminary inquiry.

As to appellant's claim he did not know Antonio Gongora, this is belied by the testimonies of Priscilla Villamor and Gaudencio Alfaro who said they saw appellant and Gongora together in the afternoon of the Cabalian fiesta. Gongora's spontaneous implication of appellant before the investigators, which led to the apprehension of said appellant, is a circumstance indicative of the fact that Antonio Gongora and Llurca are acquaintances.

Appellant's alibi must fail. Mercedes Gumpay is the mother and Quirino Limbo is the first cousin of appellant. These two, as well as Margarito Reyes, did not testify during the preliminary investigation. Margarito Reyes subscribed to an affidavit before the Justice of the Peace of St. Bernard on June 26, 1957. In that affidavit, he disclosed on that day he already knew that appellant was suspected as the murderer. Oddly enough, he has no statement therein to the effect that it was impossible for appellant to commit the crimes because he was in the house of the Llurcas between 9 o'clock in the evening and 1 o'clock the following morning of the tragedy and during all that time he saw appellant lying and sleeping in his room.

In Criminal Case No. R-1542, the murder of Isabel Cortez was qualified by the circumstance of superior strength (People vs. Quesada, 62 Phil. 446; People vs. Samaralin, G. R. No. L-2257, February 19, 1951). The existence of the qualifying circumstances of treachery and evident premeditation are not borne out by the facts. As to the modifying circumstances, We find present the aggravating circumstance of night time and the mitigating circumstance of intoxication. The court below said that appellant was under the influence of liquor in the afternoon immediately preceding the incident and there is no evidence indicating that he is a habitual drunkard.

The appellant should suffer a penalty of life imprisonment as imposed by the court below.

In Criminal Case No. R-1543, the lower court was correct in appreciating the qualifying circumstance of treachery and the mitigating circumstances of intoxication and passion or obfuscation. The attack was sudden and unexpected. The aggravating circumstance of night time, which we appreciated in the murder case, cannot be considered here for purposes of increasing the penalty as same is absorbed in treachery (*People vs. Magsilang*, 46 Off. Gaz., 1557; *People vs. Young*, 46 Off. Gaz., Supp., p. 154). However, the lower court erred in the computation of the penalty. For frustrated murder, the prescribed penalty is prision mayor in its maximum period to reclusion temporal in its medium period. (Article 50, Revised Penal Code). Considering the presence of two mitigating circumstances without aggravating circumstances to offset them, and further considering the provisions of the Indeterminate Sentence Law, as amended, the appellant should be sentenced to undergo an indeterminate prison term of from 4 months and 1 day of arresto mayor to 4 years, 2 months and 1 day of prision correctional with subsidiary imprisonment in case of insolvency.

Modified with respect to the imprisonment, the appealed judgment is hereby affirmed in all other respects. With costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Dizon and Makalintal, JJ., concur.

Reyes, J.B.L., J., concurs except as to passion and obfuscation.

Paredes, J., reserve his vote.

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