

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BRUNO ANTONIO, ET AL., DEFENDANTS, BRUNO ANTONIO AND
ALFONSO DASALLA, DEFENDANTS-APPELLANTS.**

G.R. No. L-25845. August 25, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal taken by defendants Bruno Antonio and Alfonso Dasalla from a decision of the Court of First Instance of Nueva Ecija convicting them of the crime of murder, with which they are charged, and sentencing them to life imprisonment, and to jointly and severally indemnify the heirs of Benjamin Semana in the sum of P6, 000, as well as to pay the costs.

In the morning of December 5, 1962, between 8:00 and 9:00 a.m., Eugenio Angellano, chief of the barrio police of Tibag, municipality of Talugtug, Nueva Ecija, learned about a hogtied man west of said barrio, who was wounded. Together with Ponciano Antonio, Ignacio Antonio and Simplicio Tolentino, he, thereupon, repaired to the indicated place, where, between 9:00 and 10:00 a. m., they found a man seated at the foot of a tree and reclining thereon, with his hands tied behind. His face was swollen and his clothes were soaked with blood. He had several wounds in the head, the neck and the buttocks. Upon inquiry from Angellano, the injured man said that he was Benjamin Semana; that, while he was in the house of one Felix Dalit, with a woman, early the previous night, several men suddenly entered the premises, in view of which he got panicky and tried to escape by jumping out through the window; that, as he hit the ground, a gunshot rang and he was wounded in the buttocks; that unable to run away, several men, who presumably accompanied those who entered the house, held him and, together with the latter, tied him and brought him to the hut of one Endring Enrico, in the barrio of Baloy, municipality of Cuyapo, where he was maltreated; that, thereafter, they placed him on a sledge, stating that he would be brought to a hospital in Cuyapo; that, noticing, later, that they were going in the opposite direction, he rolled out of the sledge and then moved away, soon thereafter, as he noticed his former captors walking about, nearby, with flashlights switched on, evidently look-ing for him; and that he recognized only two (2) of the six or seven persons who had beaten him up, and they were Bruno Antonio and Pon-yong (or Alfonso) Dasalla, both from the barrio of Baloy.

While Angellano was causing this statement of Semana to be written on a sheet of paper, they noticed a group of seven persons approaching the place. Led by appellant Bruno Antonio, the barrio captain of Baloy, municipality of Cuyapo, Nueva Ecija, they were drinking wine. His companions were Alberto Agpalo, Tomas de la Cruz, Marcos Anselmo, Gregorio Ronquillo and Idong or Pedro Dasalla, a brother of appellant Alfonso Dasalla. Upon seeing Angellano, Bruno asked him, in a commanding voice, what he (Angellano) was doing there. Angellano answered that he intended to bring Semana to Talugtug for treatment, whereupon Bruno said that he and his men would take Semana, inasmuch as he (Bruno) had jurisdiction over the place where Semana was. Angellano replied that the same formed part of the barrio of Tibag, municipality of Talugtug, but Bruno angrily insisted that the place was subject to his authority. After a brief exchange of words, with a tone of animosity, Bruno forcibly took

Semana, had him placed on a sledge, and then departed with him and the other members of his group. It was then about 11:00 a.m.

At about 3:00 p.m., that same day, Semana's mother, Juanita Madronio, was informed that her son had died. She found his body at the junction of the roads from Paitan and Baloy, where she saw Bruno Antonio, together with Cornelio Sumangil, Alberto Agpalo, "Gondo"(?) Dasalla and others whom she did not know. Soon later, Dr. Pio Alberto, the health officer of Cuyapo, came and performed an autopsy. He found the following:

"1. A well developed body measuring about 5 feet 4 inches brown with rigor mortis and blood serum oozing from the nose and mouth. The clothes are soaked in dried blood. The pants have holes corresponding to upper left buttock and thorn on both knees.

"2. An irregular circular wound about 1 inch in diameter on the left fronto-parietal region exposing the skull.

"3. An irregular almost circular lacerated wound about 1 inch in diameter behind the lower third of the right sterno-cleido mastoid muscle going inwards to about 2 inches deep.

"4. Echimoses of upper and lower conjunctiva of the left eye.

"5. Skin abrasions denuding almost half the thickness of the skin on the base of the head and back of the neck and is about 2 inches long by 1 inch wide.

"6. Gunshot wounds five small ones and five bigger ones on the upper and middle portion of the left buttock, the wounds penetrating the skin and muscles from back forwards and downwards.

"7. Skin abrasions on the left knee."

and concluded that Semana's death had been due to hemorrhage and shock.

Appellant Bruno Antonio maintains that, when the members of his group decided to rest under the shade of a tree, in the barrio of Baloy, about two kilometers from the place where Semana had been, in effect, wrested from Angellano's custody, they noticed that Semana was dead already; that, thereupon, Bruno and his companions took their lunch; that, thereafter, they brought the body of Semana to the aforementioned junction, for the purpose of going to Cuyapo, 14 to 16 kilometers away; that, upon reaching the junction, Bruno Antonio and Cornelio Sumangil boarded a jeep and proceeded to Cuyapo in order to report to the authorities and find a truck that could pick up the body of Semana; that about two hours later, Bruno and Sumangil came back, together with some policemen and Dr. Alberto, who performed the autopsy; and that Semana must have died merely of shock in consequence of the loss of blood due to the injuries he had when they forcibly took him at the place above referred to.

Upon the other hand, Alfonso Dasalla would have the Court believe that he was in his house, in the barrio of Baloy, up to about 3:00 o'clock p.m. of December 5, 1962, when Sumangil allegedly went to his (Alfonso Dasalla's) place and asked him to help carry the body of Semana; that, accordingly, he joined, in Baloy, the group headed by Bruno Antonio, and assisted its members in bringing said body to the aforementioned junction; and that he had had no participation whatsoever in the infliction of Semana's injuries or in his death.

The lower court, presided over by Honorable Judge Placido Ramos, accepted, however, the version of the prosecution, as well as gave no credence to the evidence for the defense, and, accordingly, rendered judgment, not only convicting and sentencing appellants herein, as pointed out at the beginning of this decision, but, likewise, directing the Provincial Fiscal of Nueva Ecija to conduct an investigation of the participation of Alberto Agpalo, Tomas de la Cruz, Cornelio Sumangil, Marcos Anselmo and Pedro Dasalla, and to file the corresponding information against them, for the death of Benjamin Semana, should the evidence so warrant.

The first question raised by appellants herein refers to the admissibility in evidence of the statement made by Semana to Eugenio Angellano concerning the circumstances under which the former had been injured. Appellants maintain that the trial court has erred in considering said statement as a dying declaration, for, upon being asked how he felt, Semana answered that he would not die if treated and was then still "strong", according to some witnesses. Said answer of Semana indicated, however, an awareness of the danger of death on his part, should he not be seasonably given the necessary medical treatment. Moreover, the records show that he was so weak that several people had to help him, in order that he could ride the sledge that brought him to Baloy. Again, testifying for the defense, Cornelio Sumangil explained that Semana was strong, because he was "still breathing" and could answer some questions, apart from asking for, and drinking, some water. Neither singly nor collectively do these circumstances show that Semana was "strong" at the time. Said factors may indicate that he was then neither dead nor unconscious. Upon the other hand, Bruno's failure to ask Semana about the cause of his injuries suggests that the former did not feel he (Semana) was strong enough to undergo an interrogation. Indeed, Bruno stated that Semana's injuries were "serious". In fact, he had been bleeding profusely, from at least midnight of December 4, or for over 8 hours. One can imagine, therefore, the considerable amount of blood lost and the weakness resulting therefrom. This explains, also, why Semana was unable to take the food given to him and had been groaning - perhaps in a state of coma, coupled by stertorous breathing, which may have been mis-taken for groans - since the group of appellant Bruno Antonio had taken him. The fact that he expired one hour later strongly indicates the seriousness of his condition when Angellano took his statement.

The defense cites the testimony of Dr. Alberto to the effect that none of the wounds of Semana was fatal. No matter how true this may have been when the injuries were inflicted, it is not necessarily so over 8 hours later, during his interrogation by Angellano. In fact, Dr. Alberto qualified his aforementioned testimony by adding that said injuries could cause bleeding and produce a shock. Hence, the circumstances pointed out by the defense do not sufficiently show that the lower court had no reasonable ground to conclude that Semana's statement was made under the belief that he was in imminent danger of death in consequence of said injuries - as he died soon thereafter - unless the same were treated soon enough.

In any event, that statement was made in the course of the unfortunate odyssey of Semana that started on December 4, 1962 at about 7:00 p.m., and ended with his death on December 5, around noon time. The aforesaid statement formed part, therefore, of the *res gestae* and is competent evidence in this case.[1]

The next and most important question for determination is the sufficiency of the proof of appellants' guilt. In this connection, the following circumstances deserve special attention:

1. The witnesses for the prosecution testified that, in answer to questions propounded by Eugenio Angellano, Semana said that he had recognized only two of his assailants, namely, appellants Bruno Antonio and Ponyong or Alfonso Dasalla; and that, when Bruno's party showed up soon thereafter, Semana asked Angellano not to deliver him to them, because they might kill him. These facts were established by the testimony of Ignacio Antonio and Simplicio Tolentino, who were corroborated substantially by Eugenio Angellano, although the latter affirmed that Semana had merely named Bruno and Ponyong - the nick-name of Alfonso Dasalla - without mentioning their respective sur-names. Such affirmation was, however, contradicted by Angellano's statement, Exhibit "C" - subscribed and sworn to by him, on December 7, 1962, or two (2) days after the occurrence, before the Justice of the Peace of Guimba, Nueva Ecija - in which he said that Semana had named, among his aggressors, appellants herein, not only with their respective surnames, but, also, adding that Bruno Antonio is the barrio captain of Baloy, and that Ponyong Dasalla, likewise, hails from the same barrio.

The defense would have us believe that, upon reaching the place where Semana was found by Angellano, Bruno Antonio inquired from the latter whether or not he had investigated Semana, and that Angellano answered in the

affirmative and allegedly revealed that Semana had not recognized any of his assailants. Suffice it to say that his Honor, the trial Judge, found the testimony thereon of the witnesses for the defense unworthy of credence, and that the records before Us do not justify our disturbing such finding.

2. It is not disputed that Angellano was unwilling to yield the person of Semana to Bruno Antonio, who insisted on being entitled to take Semana, alleging that he was in a territory subject to his (Bruno's) jurisdiction as Barrio Captain of Baloy. Said reluctance of Angellano and this insistence of Bruno are, to be sure, quite significant. Indeed, Bruno had announced his intention to take Semana to a hospital in Cuyapo, and both Bruno and Angellano must have known that the most urgent matter at the moment was to provide medical treatment for Semana. Moreover, in order to bring Semana to the clinic in Talugtog, as Angellano wanted to, he and his men would have had to carry him afoot 5 or 6 kilometers away, using therefor a footpath, since there was no road to Talugtog from the place where Semana had been found by Angellano. One would, therefore, expect him to welcome the opportunity to avoid the trouble and the responsibility that went with it. Angellano's willingness to take said trouble and to assume this responsibility bear out his testimony, and that of Ignacio Antonio and Simplicio Tolentino, to the effect that Semana had previously mentioned Bruno Antonio as one of his assailants and had pleaded to Angellano not to let Bruno Antonio and his men take him (Semana), because they may kill him.

This version of the witnesses for the prosecution is further borne out by Bruno's attitude on that occasion. As a private citizen, and in the official capacity in which he claimed to act, Bruno had no reason either to be angry at Angellano for trying to take Semana to the health clinic in Talugtog or to engage in an altercation with. Angellano and forcibly take possession of the person of Semana. He was, according to the very evidence for the defense, 1-1/2 to 2 kilometers or one-hour walk from Baloy. In other words, the place was not part of Baloy or within Bruno's jurisdiction. Appellants' own witness, Cornelio Sumangil, confirmed Angellano's assertion to the effect that said place is within the barrio of Tibag, which is part of the municipality of Talugtog. Why, then, was Bruno so anxious to take Semana, to the point of asserting falsely that he (Bruno) had jurisdiction over the place where Semana was? And why was Bruno Antonio so eager to undertake the inconvenient and difficult task of carrying Semana along a footpath from said place to Baloy, about 2 kilometers or one-hour walk away, thence to the junction, requiring another one-hour walk, and thereafter to Cuyapo, 14 to 16 kilometers away? Considering that Talugtog was less than half that distance from the scene of the occurrence; and that - having reminded Angellano of the responsibility that he would bear should Semana remain and die in his (Angellano's) custody - he (Bruno) assumed that responsibility, in taking Semana with him, why was the former so keen about having the latter under his custody, as to resort not only to threats, but, also, to force, in order to attain his purpose? In short, Bruno's afore-mentioned behavior dovetails with the theory of the prosecution and reveals the artificiality of the theory of the defense.

3. It appears from the testimony of Ignacio Antonio that, when Bruno forcibly took Semana, he had the following injuries: two wounds at the left rear portion of the neck, two at the left front portion of the neck, and one on the upper left portion of the buttocks. Simplicio Tolentino testified that Semana had a wound about one (1) centimeter below the left ear, another on the left side of the neck, near the left jaw, two wounds at the lower left portion of the neck, and still another on the upper part of the left thigh. Dr. Alberto, however, found in the body of Semana an additional wound, namely, an irregular circular wound, about 1 inch in diameter, on the left fronto-parietal region, exposing the skull, probably caused with a semi-bladed instrument. Evidently Semana sustained this injury after he had been forcibly taken by Bruno and when the former was under the latter's control. Considering that it was midway between the forehead and the temple, and, hence, more visible than the injuries in the neck, said witnesses for the prosecution could not have failed to notice said fronto-parietal wound, were the theory of the defense true.

4. We have not overlooked that Semana had, according to Angellano, a wound on the left portion of the head two inches above the left ear. This witness had, however, turned hostile to the prosecution, thereby compelling the latter to produce his aforementioned affidavit, Exhibit "C", and make him admit that he had informed the Provincial Fiscal that he (Angellano) had transferred his residence from the barrio of Tibag to the town of Talugtug, "because I was afraid of the threats of (to) my life," were he to give evidence for the prosecution; and that many people - including Ignacio (Antonio) and Simplicio (Tolentino) - had informed him about said threats. It is, likewise, interesting to note that said reference to the alleged wound above the left ear was made, on cross-examination by counsel for the defense, upon the latter's request that the injuries of Semana be described, a request made without anything to suggest its relevance to the questions preceding the same. In other words, the surrounding circumstances suggest that the one making the request knew beforehand what Angellano would do or say in connection therewith. At any rate, Semana did not have the injury described by Angellano, two inches above the ear. This goes to show that he never saw either such injury or the one found by Dr. Alberto at the fronto-parietal region; that Semana had neither, when Angellano conferred with him; and that, having heard later about said additional injury found by Dr. Alberto in the body of the deceased, Angellano merely imagined the one - the first - he described on the witness stand, apparently to help the defense. Indeed, in the affidavit (Exhibit "C") made before the justice of the peace of Guimba on December 7, 1962, he claimed to have seen no such injury.

In an evident effort to offset the implications of the foregoing circumstances, appellants intimated that there had been, between Angellano and Bruno, a previous misunderstanding concerning a parcel of land - as if to imply that the testimony of the former, insofar as unfavorable to the latter, had been prompted by ill-feeling or bad blood between them. Of all the testimonial evidence for the prosecution, that of Angellano was, however, the least adverse to Bruno. In fact, most of the incriminating testimony of Angellano was given after the prosecution had exposed his change of heart and the fear under which he was laboring. In fact, Angellano's behavior on the witness stand was characterized by his reluctance to reveal details or answer questions pregnant with implications against him or the accused, and by his frequent lapses of memory as regards the facts pertinent thereto.

Lastly, Angellano's testimony about the information given to him by several persons, including Ignacio Antonio and Simplicio Tolentino, concerning the threat to the life of those who may testify against appellants herein, was, in a way, corroborated by the circumstance that Eugenio Angellano, Ignacio Antonio, Ponciano Antonio and Simplicio Tolentino refused to sign the subpoena requiring them to appear before the lower court, to testify in the case at bar, in November, 1964, and that they had to be arrested to insure their presence at the trial.

Despite the absence of proof of motive - although Semana's panic upon the sudden entry of two (2) men in the house of Felix Dalit, where he was with a woman, followed by his immediate, but unsuccessful, attempt to escape and, later (when he was found by Angellano), his fear of falling into the hands of the people from Baloy, suggest that he and the woman were probably doing, in said house, something wrong, which was offensive to someone in Baloy, and that the beating he got thereafter was due thereto - We are satisfied that the guilt of appellant Bruno Antonio has been established beyond reasonable doubt, and that the crime committed by him is that of murder, qualified by treachery, Semana having been maltreated while his hands were tied.¹ The penalty of life imprisonment meted out to Bruno Antonio is, therefore, in accordance with law, but the amount of the indemnity due to the heirs of the deceased should be increased from P6,000 to P12,000.²

We, however, entertain doubts on the sufficiency of the proof against appellant Alfonso Dasalla. The very evidence for the prosecution shows that he was not among those who accompanied Bruno, when he forcibly took Semana in Tibag. Moreover, there is uncontradicted testimony for the defense to the effect that Alfonso Dasalla did not join the group headed by Bruno until after the death of Semana, when Cornelio Sumangil asked him (Alfonso Dasalla), in Baloy, to help them bring the deceased to the junction, where they expected to find a vehicle

to take his body to Cuyapo. The only evidence against Alfonso Dasalla is, therefore, the statement made by Semana about the former's participation in the beating administered to him. In the absence of any corroboration of said statement, We do not believe that his guilt has been established beyond reasonable doubt. Hence, the judgment of conviction against him should be reversed, and the case dismissed, insofar as he is concerned, with the proportional part of the costs de oficio.

So modified, with respect to the civil liability of Bruno Antonio, and the absolution of Alfonso Dasalla, as well as the dismissal of the case against him, the decision appealed from is, accordingly, affirmed in all other respects, with one-half of the costs de oficio.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., did not take part.

[1] People v. Palamos, 49 Phil. 601, 603 - 604; People v. Reyes, 52 Phil. 538, 540-542; People v. Nartea, 74 Phil. 8, 10; People v. Talledo, 85 Phil. 533, 538-539; People v. Tamiana, 90 Phil. 150, 153-154; People v. Avila, 92 Phil. 805; People v. De Gracia, L-21419, September 29, 1966; People v. Diva, L-22946, April 29, 1968.

1 U.S. v. Cabe, 1 Phil. 265; U.S. v. Colombro, 8 Phil. 391; U.S. v. Indanan, 24 Phil. 203.

2 People v. Pantoja, L-18793, Oct. 11, 1968; People v. Sangaran, L-21757, Nov. 26, 1968; People v. Gutierrez, L-25372, Nov. 29, 1968; People v. Buenbrazo, L-27852, Nov. 29, 1968; People v. Bakang, L-20908, Jan. 31, 1969; People v. Labutin, L-23513, Jan. 31, 1969; People v. Acabado, L-26104, Jan. 31, 1969; People v. Vacal, L-20913, Feb. 27, 1969; People v. Gonzales, L-23303-04, May 20, 1969; People v. Tapeç, L-26491, May 20, 1969; People v. Empeño, L-27610, May 29, 1970.

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