

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN NECESITO AND JUSTINO NECESITO, DEFENDANTS AND APPELLANTS.

G.R. No. L-13467. September 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Quezon, Hon. M. M. Mejia, presiding, finding appellants Juan Necesito and Justmo Necesito guilty of the crime of murder and sentencing each of them to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the late Filemon de los Santos in the sum of P4,000.00, and to pay one-half of the costs.

On and before December 30, 1956, Filemon de los Santos and Crisanta Marigmen, husband and wife respectively, were living in their house in the barrio of Bagto, Baler, Quezon. In the evening of that day the spouses, their daughters, Fely de los Santos, who lived with them, and Maria Donato, who had come for a visit, and Juanito Rogayan and his wife, Filomena, slept in their house. De los Santos and his wife slept in the hall, and their daughters slept in a bedroom adjacent thereto on the northeast corner of the hall, while Juanito Rogayan and his wife Filomena slept on a table in the kitchen-dining room of the house. This kitchen is connected with the sala of the house by means of a door.

Crisanta Marigmen testified at the trial that at about 11:30 that evening, while she and her husband were still awake, sitting in their bed in one corner of the sala, they heard voices near the house. Her husband stood up and listened and so did she. They heard that some persons were already in their kitchen. Thereupon her husband went towards the door looking through it at the persons in the kitchen. Just then Crisanta saw appellant Juan Necesito in the act of shooting her husband, using a long gun. Juan fired three shots at her husband and at the third shot her husband fell down on the floor. Juan then focused his flashlight on the body of her fallen husband and stared in anger at her, and walked back and forth in the hall. There was a kerosene lamp on the top of a cabinet near the door connecting the sala and the kitchen and by the light coming from it she was able to recognize Juan Necesito. As he walked back and forth, he uttered many words at her and the other inmates in an angry manner, but she could not understand these; and fearing for her life she went into the adjacent room where her daughters slept.

Juanito Rogayan declared that while he was sleeping on the table in the dining room that evening, he was awakened by someone who was trying to tie both his hands together. He was afraid to do anything, but he recognized that the one tying both his hands was the accused-appellant Justino Necesito. When he heard the shots he slid down from the table and hid himself under it. After a while he saw both Justino Necesito and Juan Necesito go away by the door and stairs of the kitchen. Juanito further declared that what was used in tying his hands was a form of twine known as "lapnit" and this was presented in the course of the trial as an exhibit.

About 3:00 o'clock early the following morning, the Chief of Police of Baler received report of the incident from the barrio lieutenant. So he with the acting mayor, a sergeant of the police, and two policemen proceeded to the

barrio of Bagto where they arrived at 3:00 o'clock in the morning. The Chief of Police immediately was informed by Juanito Rogayan and Crisanta Marigmen that the persons who had gone up the house and shot her husband were Juan Necesito and Justino Necesito. Because of this information, he called for Justino Necesito and subjected him to questioning, writing down the questions and answers. The statement of Justino Necesito was submitted at the trial as Exhibit "E". It is signed by Justino Necesito, attested by two witnesses, and sworn to before acting municipal mayor Juan de los Santos. In this statement Justino declares that he and Juan Necesito, his uncle, went up the house of the deceased, with a carbine carried by Juan Necesito; that once in the house Juan Necesito ordered him to tie the hands of Juanito Rogayan; that they got the twine with which they tied Rogayan's hands near the house, and after he had tied the hands of Rogayan, Juan Necesito fired shots three times at Filemon de los Santos; and that in going up they brought with them a flashlight. This statement is dated January 1, 1957.

The Chief of Police testified that this statement was given voluntarily by Justino Necesito. The Chief of Police also testified that when they conducted an investigation in the morning of December 31, 1956, he saw three blank carbine cartridges in the house, and he also found the twine with which Juanito Rogayan had been tied in the house.

The prosecution also submitted a finding of the medical officer who examined the body of the deceased. His findings are as follows:

AUTOPSY FINDINGS

"1. Deceased; Filemon de los Santos, sitio Bagto, barrio Calabuanan, Baler, Quezon, 45 years, married.

* * * * *

"Upon removal of the polo shirt and under shirt a gun shot wound was revealed which has an entrance with a diameter of 0.6 cm. and located at a point 4-½% inches from the left shoulder and 4-½% inches from the median line. Exit wound about 1-½% cm. in diameter with a serrated border was found located at a point 4-½% inches from the right shoulder and 5-½% inches from the midline of the right back. Upon passing the probe the wound was found to penetrate the upper lobe of the left lung, the aorta, the upper lobe of the right lung, scapula and the skin, muscles and subcutaneous tissue of the left chest and right back respectively.

"3. From the necropsy findings it can be deduced that the fatal instrument used was a gun.

"4. Cause of death, Shock and hemorrhage secondary to gun shot wound.

"5. Examination was done at 11:30 a.m., 31 December, 1956 and from the condition of the cadaver, death must have occurred between 11 to 13 hours earlier."

(Sgd.) MELENCIO A. BAUTISTA JR.

Municipal Health Officer

The prosecution also called Marcelino Paiigilinan to the witness stand. He declared that on December 19, 1956,, his companion, a tenant also of Gervasio Suaverdes, lost copra; that this copra was found in a bush near the bank of a river; that upon the advice of his brother-in-law, Filemon de los Santos, he reported the fact of his finding the copra to the barrio lieutenant; that he and the barrio lieutenant went to the place where the copra was found and near the copra they saw two carabaos belonging to Juan Necesito and Andres Necesito. Also presented was one Santos Feria, who declared that about a few days after the finding of the lost copra, or on December 22, 1956, while he was having his palay milled, Justino Necesito happened to be also in the same mill; that they talked about the copra that had been lost and Justino told him that Filemon de los Santos and his brother-in-law should beware because Juan and his companions were angry at them.

Justino Necesito denied the charges imputed to them, saying that he does not know of the charge that he and Juan Necesito had gone up the house of the deceased and that he had tied the hands of Juanito Rogayan while the latter was sleeping on the table. With respect to his confession, he testified that in the afternoon of January 1, he was taken to a coconut grove and asked about something he did not know, as he did not know how to speak Tagalog; that the policemen boxed him; that he was brought by the Chief of Police and by the policemen,, and while on the way he was again boxed by the Chief of Police; that he felt dizzy and was forced to sign the statement, Exhibit "E".

But to refute this claim that the confession was forced from him, the prosecution presented the testimony of Nicolas Mercado, who declared that he acted as interpreter in the taking down of the declaration of Justino Necesito; that Justino declared in Ilocano and he translated Justino's statements into Tagalog; that his statements were taken down in a typewriter by the Chief of Police; that after the statement was typewritten the Chief of Police asked Justino to sign it which he did. After the statement was taken down and after it was signed by Justino in the office of the Chief of Police, it was brought with Justino to the acting municipal mayor and there Justino swore to it. The Chief of Police was also called as a witness and he declared that the alleged maltreatment was never done, and that he did not see any mark of violence in the person of appellant; that a constabulary soldier named Novicio never intervened in the investigation; and that he never allowed the constabulary soldiers to intervene in the cases that he investigated.

Juan Necesito, for his part, denied the imputation made by the witnesses for the prosecution against him, explaining that on the night of December 30, he was at home; that on December 29, he invited Mariano Imperial and Pedro de la Torre to his house to help him to make "suman"; that the whole evening of December 30, they had been cooking the "suman" and that it was cooked only at about 11:00 at night; that after the "suman" was cooked they put the same in a winnowing basket and helped themselves to it; that when he happened to see the time it was already 12:00 midnight, so he and his companions went to bed. He also declared that on January 1, he was taken to the municipal jail, and on the following day, in the afternoon, a soldier by the name of Novicio started beating him, trying to make him admit and confess to the crime, but that he did not yield.

The trial court in a very lengthy discussion found that the supposed defense of Juan Necesito, which is an alibi, is highly improbable, because it is unbelievable for him to walk 10 kilometers just to get help to cook "suman", and that these persons who supposedly helped him traveled the same distance for that purpose, when help could very well be given by his wife. The court also noticed that Juan Necesito admitted there was no ill-will between him and the deceased, and concluded that if there is no grudge harbored by him there would be no reason for the wife of the deceased to impute the offense to him if the fact is not true.

As to the defense of appellant Justino Necesito, the court also said that his witness is a close relative of his and his defense of alibi was completely demolished by his own admission, Exhibit "E".

We have carefully read the records and we observe that the conclusion of the trial court are well-founded. It is to be noted furthermore that very early in the morning the day of the crime, when the authorities went to the house of the deceased, both witnesses for the prosecution, the widow and Juanito Rogayan, readily and without doubt declared to the said authorities that the person who killed the deceased was Juan Necesito, while the one who tied the hands of Juanito was Justino Necesito. Had there been any doubt in the mind of the witnesses, as to the persons who committed the offense some doubt should have been entertained by them and delay made in the pointing of the culprits. The widow was asked to draw a sketch of the house, indicating the dining room where the table was, the sala leading to the dining room where the table was, and her testimony articulates with the plan. Thus she said that she recognized Juan Necesito because the light coming from the kerosene lamp on top of the cabinet lighted the face of Juan Necesito when he came in and afterwards as he fired the shot. The widow also

declared that her husband had his side towards Juan Necesito as the latter fired the three shots. This portion of her testimony articulates also with the finding of the medical officer that the direction of the wound was from the left side in front to the right side at the back, which shows that the assailant was at the front left side of the victim when the latter was shot. Lastly, the existence of the "lapnit" twine with which the hands of Rogayan were tied articulates also with the admission of Justino Necesito that they saw the twine near the house. All of the circumstances prove beyond peradventure of any doubt that the widow identified Juan Necesito as the assailant of her husband and that Justino Necesito accompanied him.

Capital is made of the contradictions by the widow in her testimony and of the impossibility of her having seen Juan Necesito in the dining room. The position of the table where Rogayan was is such that it was exactly in front of the door leading from the dining room to the sala. Through that door therefore, as the sketch will show, the widow could see Justino Necesito in the dining room. It is true that there are some discrepancies in her testimony, but these discrepancies were due to the fact that she was tired and this condition of hers is attested by the fact that the taking of her testimony had to be suspended in order to give her time to rest. It is also alleged on behalf of the appellants that no evidence of motive was shown. This is not true. Two witnesses for the prosecution testified that it was the deceased who had suggested that the finding of the lost copra be denounced to the police authorities. As it was shown that the carabaos of Juan Necesito were found in the place where the copra was hidden, this fact points to Juan Necesito as the author of the theft. And as the deceased was the one who suggested denouncing the finding of the copra to the police, this fact was sufficient ground for the Necesitos to take revenge. That the revenge was the motive is proved by the fact that Justino Necesito informed Santos Feria, witness for the prosecution, while in a ricemill, that Filemon de los Santos better take care.

But even if motive were not proved, the fact that the defendants were seen and identified clearly by two witnesses is enough. Motive is useful only if there is no such positive identification by witnesses who actually saw the culprits, which is not true in the case at bar. We are satisfied, therefore, that the appellants are guilty of the crime of murder imputed to them.

The court below found the accused guilty of murder, holding that there was conspiracy between them to commit the crime. It also found that a mitigating circumstance which is lack of instruction, attended the commission, and consequently imposed the penalty in its medium degree, i. e., reclusion perpetua. We do not agree to this finding of a mitigating circumstance. As a matter of fact Justino Necesito knew how to write and both appellants come from Pangasinan, where the rate of literacy is high.

The commission of the crime was, therefore, attended by the qualifying circumstance of treachery because the attack was sudden and unexpected, and by the aggravating Circumstances of nocturnity and dwelling of the offended party. Under the above circumstances, the penalty prescribed for the offense committed should be imposed in the maximum degree. However, there are no sufficient number of votes in favor of imposing the death penalty, so the penalty imposed upon the appellant should be that of reclusion perpetua.

Wherefore, the judgment of conviction and the sentence imposed are hereby affirmed. With costs.

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

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