

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VIRGILIO DIVINAGRACIA, DEFENDANT AND APPELLANT.

G.R. No. L-10611. March 13, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Virgilio Divinagracia was accused of murder before the Court of First Instance of Iloilo and having been found guilty was sentenced to suffer reclusion perpetua, with the accessory penalties of the law, to indemnify the heirs of the deceased in the amount of P4,000, and to pay the costs. He appealed from this decision.

In the evening of December 5, 1953, at about 7:00 o'clock, Ernesto Cartel went to buy bread in a store situated in barrio Malitbog, municipality of Calinog, province of Iloilo, which was ten meters away from his house. On his way home, he met Virgilio Divinagracia who was then armed with a carbine and was accompanied by a man whom Cartel did not recognize. When Cartel arrived in his house, he gave the bread to his child and went to the balcony from where he saw Divinagracia going up the neighboring house of Marina Gicole. Not long thereafter, Cartel saw Divinagracia and his companion go to one side of Gicole's house and after a while he also saw Santos Combong, a municipal policeman, walking on the road in front of the same house. While Santos Combong was exactly in front of the house, Divinagracia, who was hiding behind a fence, fired at Santos, who, after being hit, fell to the ground. He died instantly. Soon thereafter, Divinagracia and his companion ran away passing by the house of Leonardo Caro situated nearby.

At this juncture, Cartel, who saw the firing from the balcony of his house, betook himself to the house of Caro to inquire if he heard the firing of the shot and Caro answered in the affirmative. Caro further stated that Divinagracia and his companion passed by his house in a hurry. Because at that time armed men known as dissidents were roaming the vicinity threatening and terrorizing the residents, Cartel and Caro, out of fear, refrained from reporting to the authorities the bloody incident.

The next morning, Domingo Cachuela, a local policeman, went to the place to investigate the shooting of Santos Combong. He found his dead body sprawled on the road about ten meters distant from the house of Marina Gicole. He also found an empty carbine shell somewhere on the ground. He and Justino Lanaria, a sanitary inspector who accompanied the policeman, examined the body of the victim and found that it had one bullet wound on the breast which ran through his body and came out at the back. After being satisfied that Combong died as a result of the wound, they asked the family of the deceased to take the body to their house and give it burial. Cachuela investigated Marina Gicole and Leonardo Caro but because they were then under the influence of fear they professed ignorance of how the shooting took place. Cachuela nonetheless made a sketch of his findings indicating therein the position of the body of the victim in relation to the road and the houses of Gicole, Cartel and Combong.

The police force of Calinog continued to investigate the death of Combong but the people in the vicinity refused to give any further information about his death. Sometime in May, 1955, however, Divinagracia was arrested and

confined in jail for robbery in band committed in the nearby province of Capiz. When Ernesto Cartel and Leonardo Caro learned that Divinagracia was confined in jail in Capiz, they gathered courage and revealed for the first time to the chief of police of Calinog what they knew of the shooting of the deceased. Their statements were taken down in writing which culminated in the arrest and prosecution of Divinagracia.

The accused set up an alibi. He claims that in May, 1952, he left barrio Malitbog and transferred his residence to Bacolod City where he engaged in the occupation of selling fish; that in December, 1953, when the shooting occurred, he was in said city living in the house of one Casiano Geron; that in May, 1954, he left Bacolod City and went to live again in Calinog; that sometime in 1955 he was accused of robbery in band in the Court of First Instance of Capiz, and as a consequence he was lodged in jail in Capiz; that on May 14, 1955, he was released from jail and returned to barrio Malitbog which was the natal place of his wife; that he did not know that Combong had died and it was only on June 8, 1955 when he was arrested that he came to know of his death.

There is enough evidence to show that Santos Combong died as a result of a bullet wound he sustained in the evening of December 5, 1953 caused by a shot fired at him by appellant. The shooting was witnessed by Ernesto Cartel who actually saw from his balcony how appellant, who was then hiding behind a fence, fired at his victim with a carbine and who thereafter ran away, accompanied by a companion whom Cartel did not recognize, passing by the house of Leonardo Caro. Cartel could not have been mistaken in his identification of appellant because he met the latter a moment before and even asked him where he was going. While Caro did not actually witness the shooting, he however heard the firing of a shot and immediately thereafter saw appellant passed by his house in a hurry. The testimony of Caro can therefore be considered as corroborative of that of Cartel. The evidence also shows that Cartel had known appellant for a long time previous to the incident since during the Japanese occupation both had resided in barrio Malitbog. The testimony of Cartel finds further corroboration ten meters away from that of Marina Gicole in front of which the shooting occurred and there was nothing that could obstruct his view from the balcony of his house to the place where the accused fired the shot. Caro, on the other hand, testified that minutes before he heard the firing of a carbine, he saw appellant, his face covered by a handkerchief, carrying a carbine, and immediately thereafter, appellant and his companion ran away and passed near his house. It is true that Cartel and Caro were nephews of the victim, but such relationship alone cannot discredit their testimony if they are otherwise credible, and here the lower court found them to be worthy of credence.

The rule is well-settled that an alibi cannot prosper unless clear and satisfactory evidence is presented that the accused was present at some other place at the time the crime was allegedly committed and that from that place it was physically impossible for him to have been at the place where the crime was committed either before or after the time he was at such other place (U. S. vs. Oxiles, 29 Phil., 587; People vs. Palamos, 49 Phil., 601). Much less can it prevail when there is clear evidence regarding the identification of the accused. (People vs. Masani, G. R. No. L-3973, Sept. 18, 1952; People vs. Binsol, 100 Phil., 713; People vs. Umali, G. R. Nos. L-886670, January 23, 1957; People vs. Villaroya, 101 Phil., 1061; People vs. Alcaraz, 103 Phil., 533.) As already said, there is enough evidence identifying appellant as the one who fired the shot that snuffed out the life of the deceased.

We wish to commend the efforts made by counsel de oficio in pointing out flaws in the evidence for the prosecution in an effort to get appellant's acquittal, but such efforts notwithstanding, we are persuaded to affirm his conviction because the laws, if any, are not convincing enough to justify a contrary conclusion. Thus, his claim that the witnesses for the prosecution, Cartel and Caro, should not be given credence because they waited for about one year and a half to report to the authorities what they allegedly know of the shooting, appears sufficiently explained in the brief of the Solicitor General. We quote: "Cartel and Caro, however, successfully explained the reason of their silence for more than a year. According to them, they did not reveal earlier than

May, 1955, the identity of the appellant as the murderer, because at the time that Combong was murdered, the appellant and his companions used to roam around the barrios; and with impunity, terrorized the residents of the barrios who cowered with fear * * *. The temerity with which appellant and his companions committed crimes here and there is demonstrated by the fact that even the deceased, Santos Combong, who was then a town policeman, was killed by appellant and his companions * * *. If a then policeman could be killed by these dissidents, a few meters away from the house of the policeman * * *, it is not hard to imagine the amount of fear that Ernesto Cartel and Leonardo Caro, both of whom were simple-minded residents of the barrio, had entertained towards the appellant who in open defiance with the law, had been carrying a carbine around the barrio." (See *People vs. Umali*, G. R. Nos. L-8866-70, January 23, 1957).

We take note of counsel de oficio's claim that there is no proof of the motive that may have impelled appellant to commit the crime, but such proof is not indispensable if his guilt or participation is otherwise established by sufficient evidence as in this case. (*U. S. vs. Mc Mann*) 4 Phil., 561; *U. S. vs. Carlos*, 15 Phil., 47; *People vs. Javier*, G. R. No. L-7841, Dec. 14, 1956; *People vs. Bugagao*, G. R. No. L-11328, April 16, 1958).

The decision appealed from being in accordance with law and the evidence, the same is hereby affirmed, with costs against appellant.

Paras C. J., Bengzon, Padilla, Montemayor, Reyes A., Labrador, Concepcion, and Endencia, JJ., concur.

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