

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MODESTO ANTONIO AND BONIFACIO TOLETE, DEFENDANTS AND APPELLANTS.

G.R. No. L-16547. May 30, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This case is before us on appeal from the decision of the Court of First Instance of Isabela finding appellants Modesto Antonio and Bonifacio Tolete guilty of the offense of murder, the first as principal and the second as accessory after the fact, and sentencing them, respectively, to reclusion perpetua and to an indeterminate penalty ranging from four (4) months of arresto mayor to four (4) years and two (2) months of prision correccional, and to indemnify jointly and severally the heirs of the deceased Porfirio Gabiran in the amount of P6,000.00, with costs.

In 1955 Porfirio Gabiran was a laborer of the Ilagan Waterworks System in Isabela, assigned as watchman in barrio Puyot, where water pipes were then being laid. His residence was in barrio Marana 3, of the same municipality of Ilagan, a few kilometers from Puyot. In the morning of April 12 he went to work as usual, leaving his wife and children in the house. He never came back, nor was heard from again.

In barrio Marana 2 there was a sawmill operated by appellant Modesto Antonio. Among those employed at the sawmill were appellant Bonifacio Tolete, the owner and driver of a truck utilized in hauling round logs from the forest concession to the sawmill; Prudencio Pascua, Francisco Sulio, and Ignacio Nastor, who were working as log-cutters (hacheros); one Totoy, who operated the bulldozer. On August 2, 1956, over a year after Porfirio Gabiran disappeared, his brother Lucas Gabiran, who had a small store at barrio Marana 2, about half a kilometer from the sawmill, was informed by Prudencio Pascua that Porfirio had been killed by Modesto Antonio in the evening of April 13, 1955. After Prudencio related the circumstances of the killing, Lucas took him to the Constabulary detachment in Ilagan and reported the matter to the officer in charge, Captain Eufemio Corea. Proper investigation was conducted and the statements of three eyewitnesses, namely, Prudencio Pascua, Francisco Sulio and Ignacio Nastor, were taken down in writing. In the information for murder that was filed as a result of that investigation these three were included as defendants, together with Modesto Antonio and Bonifacio Tolete, but were later on discharged on motion of the prosecution under Section 9 of Rule 115. Only two of the discharged defendants- Pascua and Sulio - were utilized as government witnesses at the trial.

Their testimony in substance is as follows: Late in the afternoon of August 13, 1955 Bonifacio Tolete was driving his truck from the forest concession to the sawmill, with a load of four (4) logs laid side by side. It was an open truck, without roof, and the logs were held in place by means of steel cables. Beside Tolete at the driver's seat was Modesto Antonio. Squatting on the logs immediately behind Antonio were Ignacio Nastor and Totoy, in that order; and behind Tolete were Prudencio Pascua and Francisco Sulio, also in that order. When they reached barrio Victoria at about 7:30 or 8:00 o'clock in the evening, they came upon Porfirio Gabiran walking along the road on his way home in barrio Marana 3. His wife, Cirila Cabalonga, had just been delivered of a child. When Porfirio

saw the headlights of the approaching truck, he flagged it down and asked for a lift. Tolete braked to a stop and Porfirio clambered up and sat on a log, between and a little to the rear of Totoy and Francisco Sulio. Shortly after the vehicle resumed its way, while it was passing on a more or less level stretch of road, Modesto Antonio suddenly turned around in his seat beside Tolete, aimed a .22 caliber rifle at Gabiran and fired. The distance between the two was only a little over two meters. Visibility was sufficient by the light of the stars. Hit on the right side of his head, Gabiran slumped dead on his seat without uttering a word. Those who were near him tried to help but were told by Modesto Antonio not to do so if they did not wish to be shot. The truck proceeded to Marana 2. Upon arrival at the sawmill compound Modesto Antonio, with the rifle still in his hands, ordered Francisco Sulio and Ignacio Nastor to dig a grave, which they did with a crowbar and a spade they fetched from the mill. Prudencio Pascua was made to stand as guard, while Tolete and Totoy remained in the truck. The grave took about an hour to dig, after which Antonio ordered Totoy and Tolete to put the dead man inside and then to cover it with earth with the help of the others. Modesto Antonio then warned them not to reveal the crime to anybody, or else he would kill them and all the members of their families. The group then dispersed, each going to his hut inside the sawmill premises. Early the next morning Modesto Antonio met Francisco Sulio and again threatened him if he should squeal.

The day after the incident Modesto Antonio left the sawmill and never came back. Its operation was taken over by Bonifacio Tolete. Francisco Sulio himself left during the first days of March 1956.

At about 11:00 o'clock in the night of March 24, 1956 Prudencio Pascua was awakened by the sound of a motor vehicle near the hut where he was living. He stood up and peeped through the kitchen window and saw a pick-up truck stop near the place where Porfirio Gabiran was buried, which was about 18 meters from Prudencio Pascua's hut. He saw Bonifacio Tolete and his assistant driver Baler get out of the vehicle and excavate the grave. He saw them gather the bones and place them in a cardboard box, which they loaded on the truck. The vehicle, according to Pascua, belonged to Victorio Antonio, Modesto's brother, and its driver was a certain Bert. Bert and his two companions drove in the direction of Pinacanauan River at Malalam, Ilagan. The following morning, before the sun was up, Pascua was fetching water outside his house when Tolete met him and said that they should not worry anymore because the bones had been excavated and thrown into the river under the Malalam bridge. A little later, at about 8:00 o'clock, Tolete refilled the excavation by means of a bulldozer. Towards the end of that month of March 1956 he left Marana altogether, after which the sawmill ceased operating.

Prudencio Pascua, accompanied by Lucas Gabiran, made the report to the Constabulary on August 2, 1956. On August 7, upon indication by Pascua that some of the bones of the deceased might have been left at the place where the victim had been buried, an exhumation was conducted in the presence of the Municipal Health Officer of Ilagan, the Justice of the Peace, Captain Corea of the Constabulary, Sergeant Cureg and two other soldiers, and the deceased's widow Cirila Cabalonga. The following items were recovered: fourteen (14) small bones, one of them inserted inside a goldfilled finger ring, some patches of human hair and decayed pieces of blue denim cloth. The ring was identified by Cirila Cabalonga as that which her husband was wearing that last day he left home to go to work. She also said, and testified at the trial, that her husband was wearing blue denim (maong) pants. Lucas testified to the same fact, except that the last time he saw his brother was at four o'clock in the afternoon of April 13, 1955.

The bones were sent to the National Bureau of Investigation and established to be those of a human being not less than 21 years of age. The examination report also certified that the condition of the bones showed that the victim had been buried for a period of about one year. They were presented in evidence (Exhs. B, B-1 to B-13), as was also the ring (Exh. C), although when exhibited it was already broken and a piece of it was missing. The decayed pieces of maong and the strands of hair recovered at the exhumation could not be presented, having been locked

in the constabulary storeroom and, according to Sergeant Cureg, might have been eaten by ants or by house lizards.

Pascua and Sulio testified that they knew the rifle used in the killing to belong to Bonifacio Tolete, although he had no license for it. As far as they could tell, the motive for the crime was an incident which occurred between Modesto Antonio and Porfirio Gabiran on April 11, 1955, two days before it was committed. The truck was going to the logging area and had to cross a portion of the road where Porfirio was digging a canal wherein to lay the water pipes. He asked Antonio to pass by another trail so that the canal would not have to be refilled with earth and then dug anew after the truck had passed, but Antonio refused. An altercation ensued as a result. When he left the place Antonio said that Gabiran "would have his day." On that occasion Tolete did not have his rifle with him.

The defense assails the veracity of Prudencio Pascua and Francisco Sulio, and stresses the fact that they kept silent for more than one year. They explained, however, that they were afraid to reveal what they knew because of the threat uttered by appellants. Besides, they did not wish to be implicated, as indeed they could be on the basis of their version of the incident, and as in fact they were included in the information filed in court. We find nothing in their testimony for us to suspect that they had made a story out of whole cloth. There was no reason for them to do so and cause a false indictment for murder to be lodged against two persons who had given them work and from whom they had admittedly received considerable benefits.

The defense ascribes several motives to these two witnesses for testifying as they did: first, they were reprimanded for getting pieces of lumber from the sawmill without permission; second, they suffered deductions in their wages for some tools they had lost; and third, Bonifacio Tolete refused to give them a lift on his truck when he went in it to Pangasinan. The first two could not have created any serious resentment in them at all, for in spite of what they had done they were permitted to continue working in the sawmill. And the third was much too flimsy and too far removed in time from August 1956, to have moved Prudencio Pascua and Francisco Sulio then to avenge the slight to their request by concocting a tale which, strangely enough, would implicate Tolete less than it would Modesto Antonio.

Appellants' denial of the commission of the offense and of many other matters brought out by the prosecution, and their own versions of their respective activities during the times material to this case cannot, in our judgment, prevail over the testimony of the two witnesses who were not only present at the killing but also by subsequent acts cooperated in hiding the crime. Everything considered, we are convinced that the guilt of appellants, Modesto Antonio as principal and Bonifacio Tolete as accessory after the fact, has been proven beyond reasonable doubt.

The judgment appealed from is affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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