

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
BIENVENIDO BERGANIO AND ERNESTO BERGANIO, DEFENDANTS
AND APPELLANTS.**

G.R. No. L-10121. December 29, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

Bienvenido Berganio and his brother Ernesto Berganio were charged in the Court of First Instance of Iloilo (in Crim. Case No. 5007) with the crime of murder, for the killing of Arsenio Sante. Upon a plea of not guilty, they were duly tried and, after trial, the court found them guilty as charged, and sentenced each of them to suffer the penalty of reclusion perpetua, and to pay indemnity in the amount of P6.000.00 and costs. Not satisfied with this judgment of conviction, they interposed the present appeal.

It is undisputed that the victim Arsenio Sante died of 2 penetrating stab wounds, both mortal, described by the examining physician as follows:

"Head and Neck: One penetrating stab wound (1-1/4 inches long) located at the right ear and penetrating into the internal portion of the same.

Thorax and abdomen: One penetrating stab wound (1-1/4 inches long) located at the left portion of the back and on the level of the armpit and close to the vertebral column, penetrating and wounding the left lungs, causing internal hemorrhage.

* * * * *

"Cause of death: Hemorrhage (external and internal) due to stab wounds." (Exh. A.)

How and by whom the above-mentioned wounds were inflicted on said victim is the question.

The testimony of the witnesses for the prosecution, established the following facts: On the night of May 12, 1955, between 6:30 and 7:00 o'clock, Arsenio Sante, his wife Beatriz Villareal, his brother Desiderio Sante and Honorato Nacor, all coming from the public market place of La Paz, Iloilo City, passed by the Serantes gasoline station, located at General Luna Street, in the same city, where Desiderio and Honorato were working as "shovelers". Upon nearing the said station, they happened to pass by where appellants Ernesto and Bienvenido Berganio were apparently arguing. Desiderio presumably stopped out of curiosity. Thereupon, Ernesto asked him who he was and what he wanted, and Desiderio answered, "Nothing." Irked by Desiderio's laconic reply, Ernesto boxed him. As Arsenio (Desiderio's brother) tried to intervene, Ernesto also confronted and boxed him. A fight among the three ensued. Bienvenido Berganio, seeing the fight, approached the group and unsheathed his bolo, prompting the Sante brothers to desist from the fight and to flee. Beatriz Villareal (wife of Arsenio Sante) and Honorato Nacor remained at the gasoline station. Later, Arsenio returned, but before he could reach the gasoline station, he was suddenly and unexpectedly grabbed by Ernesto Berganio, who had been apparently shadowing him all along. Ernesto embraced Arsenio face to face and placed his arras around the latter's waist, holding

down Arsenio's arms, pressing them tightly, with his (Ernesto's) fingers crossed and interwoven, around Arsenio's back, rendering the latter immobile. At this instant, Ernesto shouted to his, brother Bienvenido saying, "Here he (referring to Arsenio) is now. Come and liquidate him," to which Bienvenido answered, "Do not release him, as I am coming." Bienvenido then rushed towards Arsenio and plunged his bolo (Exh. B.) at Arsenio's back. The push behind the thrust was so strong that Arsenio and Ernesto, the latter still embracing the former, fell to the ground, with Arsenio on top of Ernesto, with the bolo sticking on the back of Arsenio. Ernesto then pushed Arsenio aside and immediately got up. Seeing the bolo still sticking at Arsenio's back, Ernesto pulled it out and with it instantly stabbed the victim on the right ear.

The victim's wife, Beatriz Villareal, who had seen the entire tragic occurrence, shouted for the police. Her outcries were, however, cut short by Ernesto, who chased her with the bolo. Appellants, thereafter, fled from the scene and hid in an uninhabited house belonging to one Severino Acot. Returning to the place half an hour later, Beatriz Villareal found her husband Arsenio already dead.

The Iloilo City police, having been apprised of the incident, hastened to the scene and inquired from the people who were gathered thereat as to the identity of the culprits. Upon being informed that they were appellants and that they had hidden at Severino Acot's house, Police Captain Hormillosa immediately went to the place and called for Ernesto. Responding to the call, Ernesto came out and surrendered to the police. He also surrendered a butcher's knife in his possession. Asked where his brother Bienvenido was, Ernesto readily told the police that he was hiding in his house. Police Lieutenant Patriarca then went to arrest Bienvenido. The latter also surrendered to the police the bolo (Exh. B) used in the killing of Arsenio.

Appellants' version of the incident, is as follows: On the evening of May 12, 1955, Ernesto Bergamo and his sister Celedonia Berganio, were discussing near Uya's store at La Paz, Iloilo City, about a pair of shoes which Ernesto, allegedly, bought on credit from Celedonia's husband. Seeing that they were discussing, their brother Bienvenido Berganio who was nearby, advised them not to do so in said place; he then proceeded to the Serantes gasoline station. Shortly thereafter, Arsenio Sante and his brother Desiderio Sante, approached Ernesto and Celedonia and asked in a loud voice what they were arguing about, to which, Ernesto replied that Desiderio had no business asking him, as the matter simply involved a discussion between a brother and sister. Offended by Ernesto's reply, Desiderio told him that he (Ernesto) was acting "as if he was somebody" and immediately boxed him. They exchanged blows and. Arsenio noticing the fight, came to the aid of his brother Desiderio. At this juncture, Bienvenido, who was then at the Serantes gasoline station just a few meters away, having seen the fight, rushed to the scene and helped his brother Ernesto fight the Sante brothers. Francisco Serantes, owner of the Serantes gasoline station, seeing the fight, intervened, and succeeded in separating the combatants.

Thereafter, the Sante brothers left the place running towards the public market. Arsenio shouted to appellants to wait for them (he and Desiderio), as they would surely return to the place. Ernesto then conducted his sister Celedonia to a bus bound for Jaro, after which, he went back to the Serantes gasoline station. Before reaching the said station, however, he saw the Sante brothers coming, each armed with a butcher's knife. Arsenio was shouting thus, "Where are you (referring to appellants) now, this is money already", (which means the time of appellants to die had come). Seeing Jesus Reyes and Cesar Arcana near a "stop" sign on the street and thinking that they were appellants, Arsenio chased them. While doing so, he saw Ernesto, and immediately pursued the latter. When Arsenio was about to overtake him, Ernesto shouted, "Nong Bien (referring to his brother Bienvenido), help," and turned about, with upraised hands. Instead of pitying Ernesto, Arsenio thrust his butcher's knife at him. Luckily, Ernesto was able to evade the thrust, and the knife merely pierced Ernesto's shirt under his left armpit. Instantly, Ernesto embraced Arsenio at the same time Dressing the latter's hand which held the knife as a result of which both of them fell on the lower elevation of the street. Ernesto then rolled on his stomach, with the intention of

running away, but Arsenio placed himself on Ernesto's back and raised his knife in the act of stabbing Ernesto saying, "Now this is your end." Seeing his brother Ernesto in this situation, Bienvenido rushed to the scene and stabbed Arsenio on the right ear. When Arsenio was about to fall to the ground, Bienvenido stabbed him again on the back. Ernesto then grabbed the knife and he and Bienvenido ran towards the plaza, intending to surrender to the police. However, noticing some people on the way and thinking they were the relatives of the Sante brothers, they went to the house of Severino Acot which was then unoccupied. Shortly thereafter, the police arrived, headed by Captain Hormillosa. Appellants surrendered to him, including the bolo (Exh. B) used in the killing of Arsenio Sante.

The appeal presents no issues of law, but merely involves the credibility of the various witnesses. In this connection, the rule is well-settled that where the issue is one of the credibility of witnesses, appellate courts will not generally disturb the findings of the court a quo, considering: that it is in a better position, to decide the question, -having seen and heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it is shown that it has overlooked certain facts of substance and value that, if considered, might affect the result of the case. (People vs. Binsol, WW Phil., 713; 53 Off. Gaz. [10] 3045.)[1]

After a careful and thorough examination of the evidence on record, we agree with the trial court that appellants' version of the incident is inherently improbable and; consequently not worthy of credence; and that appellants did, in fact commit the crime as charged.

Appellants declared that after fighting the Sante brothers on the night in question, the latter immediately returned to the scene of the fight looking for appellants; that before Arsenio Sante reached the place, he saw Jesus Reyes and Cesar Arcana on the way and, mistaking them for appellants, chased them. It is difficult to believe that Arsenio was mistaken as to the identity of appellants, considering that a few minutes before that, Arsenio had fought with them. Besides, the incident took place within the immediate vicinity of 2 gasoline stations and Chinese store which, ordinarily, are well-lighted during the early part of the evening and, therefore, makes identification of appellants easy.

Appellant Ernesto Berganio stated that when he saw Arsenio Sante pursuing Reyes and Arcana, he immediately ran away and hid, but upon turning his head, he saw Arsenio Sante pursuing him. It is unbelievable that Arsenio was still able to overtake Ernesto, considering that the latter must have been already quite a distance from him, after chasing Reyes and Arcana.

Appellants testified that when the Sante brothers returned to the scene of the fight, they saw Desiderio Sante following closely his brother Arsenio. Considering the proximity of Desiderio to Arsenio, the allegation of Bienvenido that he intercepted Desiderio and managed to drive him away by brandishing his bolo in front of Desiderio, is inherently improbable. For how could Bienvenido have done so, without Arsenio's knowing it, when the latter was allegedly only a few feet from his brother Desiderio? Furthermore, there seems to be no reason why Bienvenido would still intercept Desiderio when his brother Ernesto was already safe, as Arsenio was allegedly, pursuing Reyes and Arcana. Finally, as found by the trial court, Desiderio's knife appeared to be much bigger and more deadly than that of Bienvenido. It is, therefore, unlikely that the former would be scared of the latter and flee upon seeing him (Bienvenido) brandishing his bolo at him. It is also significant, in this connection, that Reyes and Arcana were not presented by the defense during the trial, to substantiate appellants' claim that they (Reyes and Arcana) were, in fact, chased by, Arsenio Sante.

In respect of appellant Ernesto Bergamo's claim that Arsenio Sante was about to stab him with a butcher's knife, but was prevented from so doing by his brother Bienvenido Berganio, who rushed to his aid and stabbed Arsenio on the right ear and on the back, we concur with the finding of the trial court that the claim is not worthy of

credence. It is hard to believe that having allegedly intercepted Desiderio Sante in the middle of the street, Bienvenido Berganio was still able to catch up with Arsenio Sante in the act of stabbing his brother Ernesto Berganio.

It is also significant that although Arsenio Sante received 2 mortal wounds, appellants came out unscathed after the bloody incident. Furthermore, if it were really true, as appellants claim, that in wounding Arsenio Sante, Bienvenido Berganio did it only in defense of his brother Ernesto who was about to be stabbed by Arsenio, it would not have been necessary for him to wound the latter twice, considering that the first stab wound inflicted at Arsenio's back had already disabled him from doing any further harm on both of them.

The killing of the victim was clearly established by the testimonies of the prosecution witnesses Desidero Sante, Beatriz Villareal, and Honorato Nacor, who were all present at the scene of the crime and who testified in a clear, positive, straightforward, and credible manner. They were able to prove to the satisfaction of the trial court, that Arsenio Sante was stabbed behind his back by appellant Bienvenido Berganio, while being held tightly and securely by appellant Ernesto Berganio; and that the latter thereafter stabbed him on the right ear. In this connection, the City Health Officer of Iloilo City testified that either of the wounds were necessarily fatal.

That the aforementioned witnesses for the State are related to the victim, is not sufficient reason for discrediting their testimonies which were given in court truthfully, in the observation of the trial judge. As pointed out by the Solicitor General, to which we fully agree, it is not likely that said witnesses would perjure themselves and violate their oath to tell the truth, by imputing to appellants the commission of so grave a crime of which they were charged and convicted, if they were in fact innocent.

There can be no doubt that appellants had conspired to commit the crime. The form and manner in which the attack was accomplished, clearly indicates unity of action and purpose. (People vs. Tiam, et al., G.R. No. L-36, prom. August 29, 1946.[2] There was treachery qualifying the killing to murder, inasmuch as the victim was stabbed behind his back, suddenly and unexpectedly, by appellant Bienvenido Berganio, while said victim was being held tightly and securely by appellant Ernesto Berganio, thereby insuring the commission of the offense without risk to appellants from the defense which the offended party might make. (People vs. Bugagao, et al., G. R. No. L-11328, prom. March 30, 1959; People vs. Dacanay, supra; and People vs. Ulita, et al., supra.) Appellants' flight from the scene of the crime after its commission, indicates their guilty minds. (People vs. Kamad, 100 Phil., 419).[3]

Wherefore, we find the decision appealed from to be in conformity with the evidence and the law on the matter, and hereby affirm the same, with costs against the appellants. So ordered.

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

Judgment affirmed.

[1] See also-People vs. Villaroys, et al., 101 Phil., 1061; People vs. Alfiler, 104 Phil. 410; and People vs. Laolao, et al., G.R. Nos. L-12978-80, prom. October 31, 1959.

[2] See also People vs. Moises, et al., G.R. No. L-10876, prom. September 23, 1958; People vs. Dacanay, G.E. No. 1,-11568, prom. Maroh 30, 1959; People vs. Alfiler, supra; and People vs. Ulita, et al., 108 Phil., 730.

[3] See also People vs. Gucor, 86 Phil., 167; 47 Off. Gaz., 6121; People vs. Manalo, et al., (46 Phil., 572; and People vs. Wilson, et al., 52 Phil. 907.

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