

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO CANANOWA, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW EN CONSULTA.

G.R. No. L-30617. August 06, 1979

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. In the evening of Saturday, December 21, 1968, Emilio Royo, a thirty-three-year-old married man, a "helper" by occupation, was stabbed inside a residence on Maximo Street, near the church of Iglesia ni Cristo, squatter's area, Pasig Line, Barrio Olympia, Makati, Rizal. He died at the Philippine General Hospital at nine-fifty on that same night.

He sustained fifteen stab wounds located on the chest, shoulder, back, head, and left arm, some of which injured his lungs, diaphragm and stomach. He also suffered a contusion on the forehead and abrasions on the head and on the infraclavicular and infrascapular regions.

From the fact that nine wounds could have been caused by a double-bladed weapon and that the other six wounds were oval-shaped, the medico-legal officer concluded that they were caused by two weapons, a double-edged knife and an ice pick, and that there was more than one assailant.

The prosecution presented only one eyewitness, Rogelio Dineros, a twenty-four-year-old driver, to prove that Francisco Cananowa stabbed Royo. Dineros testified briefly that in the evening in question, while he and Martin Geroda were drinking in the kitchen of his residence on Maximo Street, he heard Royo shouting the name "Emerita". The shout came from the house which was the second from the house of Dineros. On hearing that shout, Dineros climbed the wall and he saw his neighbor, Royo, held by two persons and being stabbed by Francisco Cananowa who was facing Dineros. The place was near a lighted electric post. Dineros knows Francisco because they were both drivers and they often met at the Caltex gas station. He did not know Francisco's companions because their backs were turned to him.

Dineros' testimony was a confirmation of his sworn statement to the police which reads:

"Samantalang kami ng aking pinsan ay nagiinuman ay nakarinig ako ng sigaw sa may kabila ng pader at nang madinig ko ang sigaw ay umakyat ako sa may pader upang tingnan (kung) sino at ano yaong sigaw na iyon.

"Nang ako ay nasa itaas na ng pader ay nakita ko si Emilio Royo na hawak ng dalawang tao at sinasaksak naman ni Francing (Francisco Cananowa). Ngayon na makita kong ganoon ay bumalik na ako sa aming bahay dahil (sa) natakot ako baka ako ay madamay.

"Nakita ko po at nakilala ko po si Francing (Francisco Cananowa) sapagkat maliwanag po ang mga ilaw sa paligid at isa pa dati ko pong kakilala sila." (Nos. 5 and 6 of Statement, p. 6, Record).

Emerita Royo testified that her brother Emilio resided with her but his wife, Gorgonia Castillo, was staying in the

house of Francisco Cananowa with her friend, the sister of Francisco. That arrangement was resorted to because Emilio and his wife had not been able to rent a house after they were evicted from the house where they resided (No. 11, page 4, Record).

Emerita further testified that Rosario Robles, the wife of Francisco, suspected Emilio of having thrown a stone at Francisco's house and that the two men who held Royo were Zosimo Palacio and Jesus Cananowa, the nephew of Francisco who later went to Samar (18 tsn Marsh 10, 1969).

Francisco Cananowa, a twenty-seven-year-old driver, relied on an alibi. He testified that at the time the stabbing occurred he was working in Infanta Street, Makati, driving a truck and delivering ice. He went home at ten o'clock or after the stabbing had been consummated and he found his nephew, Jesus, in the house with a wound in his abdomen. Jesus told Francisco that he was stabbed by Royo.

Francisco allegedly instructed his sister, Sinforosa, to bring Jesus to the hospital. He (Francisco) remained at home. He did not know anything about Royo's death.

The police blotter and the police report (Exh. 1 and 2) offered in evidence by the defense disclose different motives for the killing of Royo supposedly by Jesus Cananowa.

According to Exhibit 1, at nine-thirty on that night of December 21, 1968, the stabbing was reported to the police and entered in the police blotter. It was recorded therein that Jesus Cananowa, a twenty-seven-year-old married man, a laborer, residing at the squatter's area, Pasig Line, Barrio Olympia, Makati, was stabbed by Emilio Royo and was brought to the Philippine General Hospital (p. 147, Record).

On the other hand, the police report made at ten-forty-five on that same night shows that Jesus Cananowa was brought to the emergency room of the hospital. Although wounded in the abdomen, Jesus managed to tell a policeman that he, Royo and one Iso had a contract to install a pump for P250; that Royo received that amount and pocketed it; that Royo's concubine, Gorgonia Castillo, separated from him and lived with Jesus; that Royo and one Avelino Basas (Basa) went to the house of Jesus and challenged him to a fight and that it was only when he (Jesus) could not endure Royo's taunts anymore that he went down from his house and fought Royo (Exh. 2, page 148, Record).

In the same report, it was stated that "the fatal weapon and the weapon used by Jesus" Cananowa, were recovered by the police from his aunt, Sinforosa Cananowa, the sister of Francisco. (They were not presented in evidence).

The trial court did not give credence to the alibi of Francisco Cananowa. It convicted him of murder, sentenced him to death and ordered him to pay an indemnity of twelve thousand pesos to the heirs of Royo (Criminal Case No. 126). Francisco did not appeal from that decision. The case was elevated to this Court for review of the death sentence.

Francisco's counsel assails the finding of the trial court that he admitted in his testimony that he stabbed and killed Royo. The Solicitor General concedes that that conclusion of the trial court is erroneous. The truth is that Francisco did not make any such admission.

What may be gleaned from his testimony and the testimony of his sister, Sinforosa, is that their nephew, Jesus, had a fight with Royo and in the course of the fight Royo sustained the stab wounds which caused his death.

But that error of the trial court does not warrant the reversal of the judgment of conviction. The testimony of Dineros is sufficient proof as to the complicity of Francisco Cananowa in the killing of Royo.

Francisco's counsel contends that the trial court erred in appreciating the aggravating circumstances of treachery and abuse of superiority and in not convicting him of homicide only. Treachery was the only aggravating

circumstance alleged in the information. In the complaint for murder filed by the police in the municipal court, treachery was not alleged. What was alleged was employment of means to weaken the defense.

Inasmuch as abuse of superiority was not alleged in the information, it cannot be regarded as qualifying in this case. It may be appreciated as a generic aggravating circumstance since there were three assailants.

Treachery cannot likewise be considered as aggravating because the sole prosecution eyewitness did not see the commencement of the assault on the victim. There is no evidence in the record as to how the stabbing started.

The Solicitor General cites the ruling in *U. S. vs. Valdez and Gamit*, 40 Phil. 876 that there was treachery in a case where the appellant held the victim from behind while the other accused assaulted him. That case is different from the instant case.

In the Valdez case, two witnesses testified as to the inception of the assault on the victim. They declared that the two assailants followed the victim and that one assailant, without saying a word, held the victim from behind and, while in that position, the other assailant stabbed the victim.

In the instant case, the record does not show how the assault on Royo began. In fact, one of the supposed assailants, Jesus Cananowa, claimed that he was wounded by Royo, the victim. That circumstance may signify that there was no surprise attack on Royo.

Hence, the killing of Royo should be regarded as homicide only. The trial court did not err in disbelieving the alibi of Francisco Cananowa. He was sufficiently identified by Dineros. His counsel was not able to impeach the credibility of Dineros, his neighbor and acquaintance.

WHEREFORE, the judgment of conviction is affirmed but the death sentence is set aside. Francisco Cananowa is convicted of homicide with the aggravating circumstance of abuse of superiority and without any mitigating circumstance. He is sentenced to an indeterminate penalty of twelve (12) years of prision mayor, as minimum, to eighteen (18) years of reclusion temporal, as maximum. The indemnity of twelve thousand pesos is affirmed. Costs de oficio.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Antonio, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Makasiar and Abad Santos, JJ., no part.

Santos, J., is abroad.

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