

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELPEDIO SURIO AND FLORENTINO SURIO, DEFENDANTS, ELPEDIO SURIO, DEFENDANT AND APPELLANT.

G.R. NO. L-30249. April 30, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of defendant Elpedio Surio from the decision of the Court of First Instance of Samar, convicting him of murder, sentencing him to "life imprisonment" and ordering him to indemnify the heirs of Restituto Morales in the sum of four thousand pesos and to pay the costs. His brother and co-accused, Florentino Surio, was acquitted (Criminal Case No. 3110).

There is no controversy as to the fact that Restituto Morales, a forty-two year old farmer, was feloniously assaulted and mortally wounded in the abdomen at around eleven o'clock in the evening of May 19, 1963 in Barrio Canjumadal, Pambujan, Northern Samar. The injury was described as "a stab wound, two and a half inches in length horizontally disposed just three-fourths of an inch above the umbilicus, epigastric region". The victim sustained a cut on the dorsal surface of his left forearm and another cut at the "medial aspect of his right forearm". (Exh. A). He died on the following day at the Gregorio B. Tan Memorial Hospital in Laoang. Death was due to "severe hemorrhage and shock secondary to stab wound" (Exh. A, A-1). So, the corpus delicti or the fact of the crime was indisputably established in this case.

Through its sole witness, Gregorio Sosing, the prosecution endeavored to prove that Morales was stabbed by Elpedio Surio on the occasion when a mahjong game was being played in Sosing's house. The attack was apparently sudden and unprovoked. The trial judge convicted Surio of murder on the basis of that testimony.

On May 20, 1963 or on the day following the stabbing, Elpedio Surio executed a statement before the chief of police of Pambujan wherein he admitted that he alone stabbed Morales. His statement, which shows the motive for, and the manner of, the stabbing, was sworn to before the justice of the peace (Exh. 2). Its English translation reads as follows (Exh. 2-A):

"I, Elpidio Surio, 40 years of age, married and a resident of Barrio Canjumadal, municipality of Pambujan, Province of Samar, after having been duly sworn to on oath, declare the following:

That on the 19th of May, 1963, at about 11:00 o'clock in the evening, Restituto Morales and Juan Morales serenaded in my house.

When my daughter opened, she received immediately bad words saying, why did you open when you are not the one whom we are interested?' My daughter, Aurora Surio, immediately received bad words telling her to let her father go down who is a liar, and when I stood up these two persons ran away immediately and I went down to our yard and I heard their voices saying, 'You are a liar Pedio, come'; so I went to them because I wanted to give them advice not to talk bad words because they were not single and at the time that I was nearing to them, I saw Resto Morales draw his small bolo (depang).

So I ran to my house and got a bolo and when I returned Restituto Morales said, 'Are you here again?'

Simultaneously, he was poised to stab me with his small bolo (depang) and I immediately slashed him hitting him at his abdomen and I slashed him again but I did not know where was he hit, because he stabbed me also with his depang, small bolo, wounding me at my left thumb.

When I saw that he fell down, I ran immediately to my house without going out anymore and the following morning I went to the poblacion and surrendered to the Chief of Police in the municipal building.

IN TRUTH (of) my declaration, I have affixed my signature at Pambujan, Samar this 20th day of May, 1963, without somebody to teach me or threaten me but my own will."

In this appeal, the defense assails Sosing's testimony by pointing out that it is at variance with his affidavit wherein it is stated that Elpedio Surio and Florentino Surio collaborated in killing Morales (Exh. 4, 4-A). Appellant's counsel also stresses that Sosing was convicted of theft of large cattle in three cases. Sosing is the nephew of Morales' wife.

As already stated, the trial court rested the judgment of conviction on Sosing's testimony. The Solicitor General in his brief cites that testimony but at the same time adverts to appellant Elpedio Surio's aforementioned statement (Exh. 2).

Although, at the trial, appellant Surio did not impugn the voluntariness of his statement, he however gave a different version. His story was that it was his brother, Florentino, who stabbed Morales and that Florentino confessed the crime to him (Elpedio). According to Elpedio's second version, Florentino asked him to assume responsibility for the crime because he (Elpedio) was a rural policeman (Exh. 1). He was allegedly cajoled into admitting the crime because he was illiterate, whereas, his brother had finished the elementary course. He agreed to be the scapegoat or fall guy.

So, according to Elpedio, in compliance with his brother's desire, he surrendered on the day following the incident to the chief of police, who interrogated him and took down his statement in the dialect (Exh. 2). He affixed his thumbmark to the statement typed by the chief of police. Then, he was brought before the justice of the peace who asked him if the statement was his testimony. "I told him that it was my testimony", Elpedio said. He assured the judge that he was telling the truth.

There is no question that the statement wherein he admitted that he stabbed Morales (Exh. 2 or 2-A) was voluntary. Appellant's counsel de oficio, Marcial P Lichauco, did not assail its voluntariness. He concedes that the statement supports the prosecution's theory that Elpedio Surio alone was responsible for killing Morales.

Now, it may be asked: why did appellant Surio, after admitting on May 20, 1963, or one day after the killing, that he stabbed Morales, testify more than five years later, or on November 12, 1968, that it was his brother Florentino who stabbed Morales? That question is adequately answered in the record.

As pointed out by the trial judge and by the Solicitor General, there was a significant change in the circumstances. On January 10, 1964, the prosecution's only witness, Gregorio Sosing, testified. He claimed to be an eyewitness. As already stated, he declared that Morales was stabbed by Elpedio Surio inside his (Sosing's) house. He said that Florentino Surio did not take part in the stabbing. The prosecution rested its case with that testimony. So, on that date, January 10, 1964, after the prosecution had concluded its evidence, Judge Felix E. Marfori, upon motion of the defense, acquitted Florentino Surio. Thereafter, no trial was held in the case for four years. The next hearing, for the presentation of the evidence for the defense, was held on November 12, 1968.

During that long period, between January 10, 1964 and November 12, 1968, the defense had ample time to study

its course of action. Knowing that Florentino Surio had already been acquitted and was no longer subject to prosecution because of the rule against double jeopardy, the defense deviated from Elpedio Surio's admission that he stabbed Morales (Exh. 2-A) and made it appear that it was Florentino Surio who had wounded the victim. That explains appellant's repudiation of his admission.

After a painstaking review of the record, the Court is of the opinion that Elpedio Surio's statement (Exh. 2) should be given effect. He is bound by it as a declaration against his penal interest. It sustains the main thrust of the prosecution's evidence that Elpedio Surio alone killed Morales. No credence can be given to his unusual and suspicious version during the trial that he was prevailed upon to assume his brother's alleged responsibility for the killing of Morales. "Evidence introduced without objection becomes part of the record of the case and all the parties are amenable to any favorable or unfavorable effects resulting from it" (Beam vs. Yatco, 82 Phil. 30; 6 Moran's Comments on the Rules of Court, 1970 Ed. 126). That rule applies to Surio's admission.

The circumstances recited in his statement do not make out a case for self-defense. According to that candid statement, Elpedio Surio came down from his house, not to defend himself but to accept the challenge of Morales and to castigate him for his insolent conduct. Morales had grossly insulted him and his daughter in public. "When an aggression is in retaliation for an insult, injury or threat, it cannot be considered as a defense but as a punishment inflicted on the author of the provocation" (U.S. vs. Carrero, 9 Phil. 544).

Severo Jazmin's testimony that he was told by Elpedio Surio that it was Florentino Surio who stabbed Morales is devoid of probative value. There was no motive for Florentino to kill Morales.

Another defense witness, Procesa Lucban, the widow of Morales, testified that Florentino Surio killed Morales and that Elpedio Surio only assumed the liability of Florentino. That testimony was based on the rumors circulating in the barrio. Procesa Lucban was not an eyewitness of the stabbing. She had no personal knowledge of it. Because of her erratic behavior on the witness stand, the trial court in exasperation doubted her sanity (16 tsn Delim).

Appellant Surio's guilt was proven beyond reasonable doubt by the evidence of the corpus delicti (Exh. A, A-1) and by Sosing's testimony. His statement (Exh. 2, 2-A) mitigates his liability.

As contended by appellant's counsel and as recommended by the Solicitor General, the offense committed by appellant Surio was simple homicide (Art. 249, Revised Penal Code). The qualifying circumstances of treachery and premeditation, which were alleged in the information were not proven.

The circumstances alleged in the statement as to the manner in which appellant Surio assaulted Morales show that he did not employ a treacherous mode of attack. Nor can it be asseverated that he acted with evident premeditation. The stabbing of Morales was impelled by a momentary impulse and was immediately provoked by the insults hurled by the victim at appellant Surio and his daughter.

The accused is entitled to the mitigating circumstances of provocation, immediate vindication of a grave offense to himself and to his daughter, and obfuscation. Those circumstances may be inferred from his statement which should be given effect in its entirety (U.S. vs. Alano, 32 Phil. 381; U.S. vs. Gavarlan, 18 Phil. 510). Obfuscation may be merged with provocation (People vs. Luna, 76 Phil. 101).

According to appellant's statement, Morales insulted Surio by publicly denouncing him as a liar. A defense witness testified that he heard Morales saying: "You are a liar, Elpidio, if you are really a policeman, you are a liar". Morales challenged Surio to come down from his house and insulted his daughter, Aurora, by saying: "Why did you open (the door) when you are not the one whom we are interested" (in serenading)? The serenade was in itself an insult to Surio's family because the serenaders were married men.

The behavior of Morales constituted a sufficient provocation and naturally obfuscated appellant Surio. It is manifest that in administering to Morales his comeuppance, Surio acted in the immediate vindication of a grave offense to himself and his daughter.

The record shows that a warrant of arrest was issued for the apprehension of the appellant and his brother Florentino Surio. However, his statement shows that he voluntarily surrendered to the chief of police on the day following the incident. The record proves that a bolo and a scythe were surrendered to the chief of police. They were not presented in evidence. Inasmuch as appellant's statement must be accepted as a whole, there is no alternative but to appreciate in his favor the mitigating circumstance of voluntary surrender to the authorities. His testimony on that point was not rebutted by the prosecution.

Since there are at least three mitigating circumstances in his favor and there are no aggravating circumstances, he is entitled to a one-degree reduction of the penalty for homicide (Arts. 64(5) and 249, Revised Penal Code).

ACCORDINGLY, the trial court's judgment should be modified. Appellant Elpedio Surio is convicted of homicide with three mitigating circumstances and no aggravating circumstances. He is sentenced to an indeterminate penalty of five (5) years of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, to indemnify the heirs of Restituto Morales in the sum of twelve thousand pesos and to pay the costs.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Antonio, and Fernandez, JJ., concur.

CONCURRING OPINION

BARREDO, J.:

I concur in the judgment affirming the conviction of the appellant by the lower court, with the modification that the offense should be homicide and appellant should be credited with the mitigating circumstances of immediate vindication of a grave offense, obfuscation and voluntary surrender, thereby resulting in the reduction of the penalty of "life imprisonment" imposed by the court a quo to that of five (5) years of prision correccional, as minimum, to eight (8) years of prision mayor, as maximum, although, on the other hand, the indemnity to the heirs of Restituto Morales is increased to twelve thousand pesos.

I would like to add a few lines to the main opinion, only to emphasize that in convicting appellant, the Court has not relied on the weakness of the evidence of the defense but mainly on the strength of the evidence for the prosecution. For a moment, during the deliberations, I was afraid that if the appellant were to be convicted on the basis of an admission he has himself presented, but which he repudiated and explained during the trial, in an attempt to prove that the offense charged was committed by somebody else, such a procedure would be violative of the fundamental rule of law and of fairness that an accused should be convicted not because he has not ably defended himself but because the People has proven his guilt by proof the weak evidence of the defense has failed to overthrow or sufficiently dent to warrant reasonable doubt about its veracity.

A careful appraisal of the testimony of prosecution witness Gregorio Sosing should convince anyone that appellant was in fact the one who stabbed the deceased Morales. The attempt to impeach him with his extrajudicial affidavit wherein he appears to have stated that the assault on Morales was committed jointly by appellant and his brother Florentino fizzled out because the defense failed to lay the predicate for such impeachment. The witness was never confronted with his supposed extra-judicial affidavit.

In his defense, appellant tried to sustain the theory that it was actually his brother, Florentino, (who was actually originally charged with him but was precisely acquitted by the trial court because the lone witness Sosing failed to mention him at the trial) who was the real assailant. And to bolster said theory, he presented in evidence the extra-judicial statement given by him to the Chief of Police and sworn to by him before the justice of the peace in which he appears to have admitted having stabbed the deceased in the course of an angry altercation resulting from an incident that took place in front of the house of the latter when appellant, with some companions, were serenading a lady visitor in the said house, explaining that he made said admission, even tho' it was not true, only at the instigation of his brother, who made him believe that since he, appellant, was a rural policeman, it would be easier for him to be defended successfully. In other words, anticipating that his defense imputing the crime to his brother might be punctured by his statement just referred to, he did not wait for the prosecution to reveal the same. Instead, he presented it himself as part of his evidence, without realizing that by so doing, he was himself making the prosecution's evidence of his guilt more credible, because in addition to Sosing's testimony, there was his own admission, the evidentiary value of which he must be considered to have submitted to the court's appraisal in the light of all the other evidence in the record. Thus, he took the risk of not being able to convince the court with his defense, and at the same time, he furnished the People, with the fragments of his shattered theory, valuable material to strengthen what already appeared to be a strong *prima facie* case against him.

To be sure, however, appellant is being convicted, not because of his admission, but on the strength of Sosing's testimony which is more believable than that of appellant and his witnesses, the latter being not only not sufficiently concrete but, what is worse, they tend to support a theory that goes against the grain of ordinary human experience, hence incredible. But this is not to say that appellant's extrajudicial statement should be disregarded altogether. We find in it a spontaneous and reasonable explanation of the assault upon Morales, on which point the prosecution is silent. And since said explanation is unrebutted, it is but fair, and consistent with settled jurisprudential practice as well as with the basic principle in criminal procedure of giving the accused the benefit of the doubt, to take into account as true the explanation thus given by appellant, by reason of which he is entitled to be credited with the mitigating circumstances already explained in the main opinion. It might be pertinent to add here that the discrepancy as to the place of the killing between the two versions of Sosing, on the one hand, and the appellant in his confession, on the other, is more apparent than real, the clear indication of the evidence being that it must have happened really within the premises of Sosing's house.

Before closing, I cannot help lamenting here that the handling by the Fiscal of the People's evidence in this case leaves very much to be desired. A more careful study of said evidence before the trial would have undoubtedly revealed to the Fiscal the futility of his having prosecuted at all Florentino Surio, the brother of appellant. This may be gleaned from Sosing's refusal to implicate him at the trial, and there is nothing to show, since no questions were asked on the point, that the prosecution was caught by surprise. Judging from the manner Sosing testified, even if there had been a prior statement of his different from his testimony in open court and indicating Florentino's participation, (and the evidence on record does not reveal that there was any such statement) the flimsiness of such a theory connecting Florentino with the case would have been readily apparent after even the most routinary dialogue or check up with the witness before he was called to testify.

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