

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NARCISO DE GRACIA AND RAYMUNDO SORIMA, DEFENDANTS AND APPELLANTS.

G.R. No. L-21419. September 29, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal from a decision of the Court of First Instance of Lanao del Norte, in its Criminal Case No. 598, finding accused Narciso de Gracia and Raymundo Sorima both guilty of the crime of murder as charged and sentencing each of them to suffer imprisonment of reclusion perpetua, with all the accessories of the law, to indemnify the heirs of the deceased, Ernesto Flores, in the amount of P6,000.00, and to pay the proportionate costs.

On 31 May 1961, the Provincial Fiscal of Lanao del Norte filed in the above-stated court an information charging accused Alfredo Salva, Narciso de Gracia, and Raymundo Sorima with the crime of murder for the killing of one Ernesto Flores. Said information reads:

"That on or about the 13th day of May, 1961, in the Barrio of Tacub, Municipality of Kauswagan, Province of Lanao del Norte, Philippines, and within the jurisdiction of this Court, the said accused, conspiring and confederating together and mutually helping one another, conveniently armed with bladed weapons, did then and there willfully, unlawfully and feloniously, with intent to kill, treachery, evident premeditation and taking advantage of the darkness of the night, attacked, stab and wound therewith one Ernesto Flores, inflicting upon him one mortal wound on the abdomen, penetrating with eleven (11) perforation of the Gastro-Intestinal Tract, and as a direct result thereof the said Ernesto Flores died few hours thereafter.

"Contrary to and in violation of Article 248 of the Revised Penal Code with the qualifying circumstance of alevosia and the following generic aggravating circumstances, to wit: (a) uninhabited place; (b) night time; (c) superior strength; and (d) evident premeditation."

On 16 June 1961, accused Alfredo Salva, assisted by a counsel de oficio, was arraigned, and he entered a plea of guilty. Accordingly, the trial court separately sentenced him to suffer life imprisonment (reclusion perpetua), to indemnify the heirs of the deceased in the amount of P6,000.00, with no subsidiary imprisonment in case of insolvency, and to pay the costs.

For reasons not appearing on record, the other two accused, Narciso de Gracia and Raymundo Sorima, were not simultaneously arraigned with Alfredo Salva; however, on 3 January 1963, these two accused were finally arraigned, and pleaded not guilty. Hence, trial proceeded against them.

At the hearing, the prosecution established that: on 13 May 1961, Paterno Silma and Esperidion Gac-ang, together with accused Alfredo Salva and Raymundo Sorima, were working in the farm of one Pedro Lacida which is situated in the mountain of Barrio Tacub, municipality of Kauswagan, Province of Lanao del Norte. That afternoon, this group of four men went down the mountain to Barrio Tacub proper where they reside, arriving at

around 2 o'clock of the same day.

At around 5 o'clock p.m., 13 May 1961, the same group of men met and were joined by accused Narciso de Gracia in the store of one Peling Landi in Barrio Tacub where Salva treated his companions to beer and tuba. After rounds of drinks, the five men left and proceeded to the store of Pedro Lacida where Sorima tried to secure rice on credit. Lacida's wife, however, refused. Seemingly resenting Mrs. Lacida's refusal, Sorima said that he will go on "paregla" (meaning he will kill somebody). To avoid trouble, Silma and Gac-ang repaired to Gac-ang's house, leaving the three accused at the store.

Between the hours of nine and ten o'clock in the evening of the same day, 13 May 1961, while Silma and Gac-ang were conversing in the balcony of the latter's house, they saw Salva, Sorima, and de Gracia seated by a tree near the road a short distance away.

Some time later, Ernesto Flores passed by on his way to the nearby seashore, and upon reaching the place where the accused were seated, he greeted them "Good evening". Without returning the salutation, de Gracia suddenly held Flores' left arm and Sorima the latter's right arm, Sorima ordering Salva to stab the passerby. Apparently recognizing that Flores is not their intended victim, Salva said to his companions: "He is not the one." But Sorima replied: "Never mind. You said it is "paregla"." Salva then thrust his hunting knife, Exhibit "A", into Flores' abdomen. Flores shouted for help, causing all three accused to scamper away. Out of fear, Silma and Gac-ang went inside the latter's house and locked themselves in. [1]

Ernesto Flores rushed away in the direction of his father's (Santiago Flores) house, shouting for help ("tabang"). Kauswagan Vice-Mayor Nemesio Agawin, who was then reading a newspaper in his house, was attracted by these shouts. He immediately got his rifle, went down and followed Flores, finally overtaking him in the back stairs of his father's house, sitting by the stairs but supported by his two brothers, and with his intestines protruding out of his abdomen. Upon Agawin's inquiry as to what happened, Ernesto Flores spontaneously declared that Alfredo Salva stabbed him while "Naring" (de Gracia) and "Mundo" (Sorima) were holding his arms. Agawin ordered his own brother to get his jeep and rush Ernesto to the hospital in Iligan City, about 20 kilometers away. In the hospital, Dr. Felixberto Abellanosa treated Ernesto's wounds, but he died due to loss of blood three hours after admission in the hospital (Exhibit "B").

That very same night, Vice-Mayor Agawin reported the incident to Tacub Barrio Lieutenant Lumipao Abanto. Both officials fetched accused de Gracia and Sorima from their respective houses and brought them to the municipal building of Kauswagan for investigation, during which both accused executed their respective affidavits (Exhibits "C", "C-1", "C-2", and "D", "D-1"). They also invited Paterno Silma and Esperidion Gac-ang to go with them to the municipal hall to shed light in this stabbing incident, and the duo executed affidavits in their turn (Exhibits "2" and "3"). Alfredo Salva was not found that night, and he was not immediately apprehended.

The day following, 14 May 1961, Vice-Mayor Agawin received the information from a certain policeman named Santos that a man, who might probably be the assailant of Ernesto Flores because his clothes were stained with blood, had slept the previous night in the house of Santos in Barrio Samburon of the neighboring municipality, Linamon, Lanao del Norte. Agawin, together with Faustino Amodia (who first received the information from Santos) and with other companions, immediately proceeded to Santos' place, where they apprehended Alfredo Salva. Alfredo Salva admitted, upon Agawin's questioning, that he stabbed Ernesto Flores, and he even pointed to the roof of the nipa house where he hid the hunting knife, Exhibit "A", which he used in the stabbing. Accused Salva pleaded to the arresting party not to maltreat him. He also asked if de Gracia and Sorima were already arrested, to which question Amodia answered that they are already in jail. Salva was then brought to the municipal

building of Kauswagan.

There is no substantial conflict between the evidence of the prosecution and defense that, at around 5 o'clock in the afternoon of 13 May 1961, the five men, namely, accused Alfredo Salva, Narciso de Gracia and Raymundo Sorima, witnesses Paterno Silma and Esperidion Gac-ang, met and drank liquor in a store in Barrio Tacub.

The defense tried, however, to establish that: after drinking for about an hour, accused Salva paid for the drinks and, alone, left his four companions in the store. Later, the four men, who remained, also left the store and, upon reaching the national road, accused de Gracia and Sorima separated from Silma and Gac-ang and both accused proceeded together to Lacida's store where Sorima tried to obtain rice on credit but Mrs. Lacida refused. Thereafter, they went to their respective houses and slept. The accused further claimed that at around 11 o'clock of the same evening, 13 May 1961, accused de Gracia and Sorima were each awakened by Vice-Mayor Nemesio Agawin, who informed them that Ernesto Flores was stabbed, and were invited to come along to the municipal building of Kauswagan, to which request they readily agreed. There, they executed their respective affidavits (Exhibits "C", "C-1", "C-2", and "D", "D-1").

Accused de Gracia and Sorima denied having known where their co-accused Alfredo Salva went after leaving them in the store. They also denied having conspired, gone or participated with Salva in stabbing Ernesto Flores or having been at all in the scene of the stabbing.

Accused de Gracia claimed that he was implicated in the stabbing of Ernesto Flores upon the prodding of the victim's parents who erroneously suspected him of stealing coconuts in their plantation; and that Faustino Amodia testified against him and Raymundo Sorima because Amodia's wife and Ernesto's mother are relatives.

The defense also tried to show that after leaving the drinking party accused Salva alone went around Barrio Tacub and, on his way to Barrio Samburon where he intended to spend the night, he met Ernesto Flores along the seashore; that without provocation whatsoever, he was suddenly and continuously boxed by Flores; whereupon, he was forced to use his hunting knife in stabbing the latter to defend himself. After stabbing Flores, he proceeded to Barrio Samburon where Vice-Mayor Agawin and his companions approached him the next day, 14 May 1961, and invited him to go to the municipal building in Kauswagan. He voluntarily went with the vice-mayor and there readily admitted that he alone stabbed Ernesto Flores.

Giving credence to the testimony of prosecution's eye-witnesses on the stabbing of Ernesto Flores, as well as to Vice-Mayor Agawin's repetition in open court of the victim's ante mortem statement; rejecting accused Salva's admission that he alone, without the participation or presence of his co-accused, stabbed the deceased, and not believing the alibi of accused de Gracia and Sorima, the trial court, in a separate decision, convicted both accused of the crime of murder as charged. Both accused appealed directly to this Court.

Counsel de oficio for accused-appellants Narciso de Gracia and Raymundo Sorima assigns five alleged errors of the trial court, which boil down to one issue: the credibility of the witnesses.

Appellants contend that the testimonies of prosecution's eye-witnesses to the stabbing of deceased Ernesto Flores are highly incredible, inherently improbable, absurd and inconsistent. Thus, they claim that it is contrary to common sense and Filipino custom for these witnesses and the three accused, who are common friends and whose position between them immediately prior to the stabbing incident was merely a few fathoms apart, not to have greeted and talked to one another; that it is inexplicable for the accused to have chosen for the stabbing a place where there were potential witnesses who could easily identify them; that it is unnatural for said accused to have left their victim still alive; that it is strange that the victim should have sought assistance and refuge in his father's house which is more distant than Gac-ang's house; that it is also improbable for these witnesses to have allowed

Flores, who was their friend, to proceed to the seashore without even warning him of the imminent danger to his life; and that these witnesses were inconsistent, not being sure who among the two accused ordered their co-accused Salva to stab Flores or whether it was Flores' arms or hands which de Gracia and Sorima held, and that these witnesses testified differently from what they stated in their affidavits. Hence, it is insisted that the testimonies of Silma and Gac-ang should not be given credence.

These alleged improbabilities strike us as more apparent than real, and were duly explained in the record. Witnesses Silma and Gac-ang testified that they became afraid of the appellants, who were reputed to be killers and were facing charges for homicide in the local court and also in Davao; so much so that when Sorima became angry at not being given credit at Lacida's store, and threatened to make "paregla" (i.e., to kill someone), Silma and Gac-ang left the accused and went home. This fear evidently motivated the latter's subsequent passivity during the stabbing, as well as their evasive affidavits on the day after the killing.

The averred inconsistency in the testimonies of Silma and Gac-ang appears only in minor details, and reinforces rather than weakens their credibility, for it is usual that witnesses to a stirring event should see differently some details of a startling occurrence. This has been judicially taken notice of by the courts (*Peo. vs. Limbo*, 49 Phil. 94, *Peo. vs. De Otero*, 51 Phil. 201; *U. S. vs. Go Foo Suy*, 25 Phil. 187).

Anent the conduct of the appellants on the fateful night, as described by both eyewitnesses, it must be remembered that appellants were under the influence of liquor, and thus their behavior and reactions can not be measured by normal standards of conduct. Nor is there anything unusual in the deceased's rushing home upon being stabbed, since his father's house was not very far away, and it is not shown that he was intimate enough with Silma and Gac-ang to seek refuge in their house.

We find, therefore, no ground for altering the trial court's appreciation of the credibility of the eyewitnesses, Silma and Gac-ang, specially since no improper motive on their part has been proved.

Appellants also contend that the testimony of Vice-Mayor Nemesio Agawin regarding Ernesto Flores' dying declaration had not satisfied the requirements of an ante mortem statement since the declarant had not made it under the consciousness of an impending death, nor had the statement fulfilled the requirements of *res gestae*, because said declaration was neither natural nor spontaneous, or unreflective and instinctive, but rather it was made in reply to a question asked from the declarant; and the prosecution not having specified the purpose for which Agawin's testimony was offered, the same is inadmissible in evidence for being hearsay.

We are in accord with the trial court in admitting the testimony of Vice-Mayor Agawin regarding Flores' dying declaration, wherein he identified appellants as his assailants. We believe that the circumstances under which the victim made such identification have fulfilled the requirements of either an ante mortem statement or as part of the *res gestae*. Judged by the nature and extent of the injury inflicted (deep stab wound on the abdomen, causing his intestines to protrude), Flores could not ignore the seriousness of his condition, and it is safe to infer that the deceased made the declaration under the consciousness of impending death. The same identification may also be considered as part of the *res gestae*, since it was made immediately after the stabbing incident and appears to be natural and spontaneous, and made before the deceased, who had no enmity toward appellants, could contrive or devise a plan to incriminate them.

There was no necessity for the prosecution to specify the purpose for which it offered Agawin's testimony, for said purpose was self-evident. Besides, the defense failed to object on time to its presentation in the trial court. Hence, the trial court correctly admitted said testimony.

Appellants urge that their co-accused Alfredo Salva's voluntary confession of guilt in which he acknowledged that

he alone, without the presence or participation of appellants, stabbed Ernesto Flores, and their own sworn declarations in open court vehemently denying any direct participation in the stabbing of deceased Ernesto Flores are reliable, worthy of credence and belief. They finally contend that, taking into consideration all circumstances, the prosecution had not proved their guilt beyond reasonable doubt; hence, they are entitled to judgment of acquittal.

We have carefully reviewed the records of this case and find no sufficient reason to warrant the disturbance of the factual findings and conclusions of the trial court in convicting accused-appellants Narciso de Gracia and Raymundo Sorima.

Salva's attempts to exonerate his co-accused Sorima and de Gracia appear fatally infirmed by his own unreliability, as demonstrated by the record. His spontaneous question, when arrested by Vice-Mayor Agawin, whether the two appellants herein had been detained contradicts his assertions of sole authorship, for he had no reason for making such a query if he had acted alone in killing Flores. Furthermore, Salva's testimony at the trial of Sorima and de Gracia, that Flores assaulted him without provocation, is inconsistent with his conduct in pleading guilty to the charge of murder as described in the information, without any attempt to show extenuating circumstances in his favor.

As to the testimony of the appellants herein on their whereabouts at the time their victim met his untimely end, the same is totally uncorroborated by any one else, and can not prevail over the version of disinterested eyewitnesses Silma and Gac-ang, which was, in turn, confirmed by the statements of their victim to Vice-Mayor Agawin.

We concur, therefore, with the trial court in finding both appellants guilty of the murder of Ernesto Flores, the crime being qualified by alevosia or treachery. The immobilization of Flores by these appellants while Salva stabbed him and the suddenness of the attack on their unprepared victim, who had met them with a friendly greeting just before being assaulted, leave no doubt that the culprits took measures to forestall any danger to themselves.

However, treachery absorbs superior strength and nocturnity (U. S. vs. Estopia, 28 Phil. 97; U. S. vs. Macalinao, 4 Phil. 407); evident premeditation was not proved; while commission of the offense in an uninhabited place is contradicted by the house of Silma and Gac-ang being only a few fathoms away from the place of the attack. Thus, none of the aggravating circumstances alleged in the information can be appreciated. Upon the other hand, the record clearly shows that both appellants were under the influence of liquor, and no habituality being established, appellants appear entitled to the benefit of one mitigating circumstance that would result in the application of the minimum penalty for murder, i.e., reclusion temporal in its maximum degree.

WHEREFORE, the conviction of the accused, Raymundo Sorima and Narciso de Gracia, for the crime of murder is upheld; but the penalty is reduced, pursuant to the Indeterminate Sentence Law, to not less than twelve (12) years of prision mayor and not more than eighteen (18) years of reclusion temporal. In all other respects, the judgment under appeal is affirmed. Costs against appellants.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur. Barrera, J., no part.

[1] The foregoing facts were elicited from the testimony of Paterno Silma, who was presented by the prosecution as its witness, and Esperidion Gac-ang, who was presented by the defense as a hostile witness, but whose testimony had been dispensed with by the prosecution for being merely corroborative of Silma's testimony.

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