

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE SABADO, ESTEBAN SUMAGIT, HERMOGENES ORDONO ALIAS
QUINES, PROCOPIO ESCRITOR ALIAS PIO AND ESPERIDION LOPEZ
ALIAS E...**

G. R. Nos. L-3267 and L-3268. May 28, 1951

Ponente: TUASON, J.

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TUASON, J.:

The appellants were prosecuted for kidnapping and frustrated murder upon two separate informations which were jointly tried and decided. In the first case, all the accused were found guilty as charged and sentenced to reclusion perpetua and costs, but in the other case, the court ruled that the crime committed was lesiones graves and found only Procopio Escritor and Hermogenes Ordono responsible therefor. These two were condemned for the latter crime to eleven months of prision correccional, to idemnify the offended party jointly and severally in the amount of P149, and each to pay a proportionate share of the costs.

The five defendants appealed but Hermogenes Ordono died during the pendency of the appeal and his appeal was withdrawn, in a motion which has not been acted upon.

It appears that Felipe Sabado, a municipal policeman and first cousin to defendant Jose Sabado, was snatched from his home in the barrio of Cabaritan, municipality of San Manuel, province of Pangasinan, between 7:00 and 7:30 p.m. on October 6, 1948, and has not been seen or heard of since. Even as Felipe was being taken away, Roberto Sabado, Felipe's older brother who lived next door, came out of his house to succour his brother or find out the trouble. Going down the stairs, he was seized by two men and savagely mauled, this mauling being the subject of the accusation for physical injuries.

Details of the two crimes and of the alleged participation of the appellants therein were related by Francisca Diaz (Felipe's widow), Roberto Sabado, Carmen Morla (Roberto's wife), and Zenaida Sabado (the three Sabados' aunt).

Substantially, Francisca Diaz testified that Esteban Sumagit came ostensibly to ask her husband if he had seen Sumagit's carabao. When Felipe answered no, Sumagit turned away, and less than a minute later Jose Sabado and Procopio Escritor, both carrying firearms, came up the house and addressed her husband, "Are you coming down or not?" Thereafter they led Felipe to a place south of the house where other men swooped down upon and surrounded the victim. When Jose Sabado and Escritor were still in the house she was told to put out the light, which she refused to do until her husband himself counselled her to obey lest they would kill him.

Later she saw her brother-in-law, Roberto, whose house was very close by, being manhandled and heard him cry, "I will die." She was able to see what took place outside because there was moonlight.

Roberto Sabado said he heard the conversation between Felipe and Esteban Sumagit and saw Esteban leave. Besides, he declared, he asked his brother who his visitor had been and Felipe replied that Eban was looking for his carabao.

Shortly afterward, according to Roberto, his brother called for him to come down because "there is something bad happening." On the stairway he was accosted by eight men of whom he recognized five, namely: Esteban Sumagit, Hermogenes Ordoño, Procopio Escritor, Esperidion Lopez and Jose Sabado. He testified that Pio Escritor grabbed him by the left hand and another, whom he did not recognize, by the right hand and both pulled him down from the third step. Still keeping his feet, he was bashed by Ordoño with a piece of wood about two inches in diameter and one and one-half meters long, first on the right side of the neck and twice on the left shoulder. After those blows, he heard Jose Sabado give the command, "Go ahead," whereupon Ordoño struck him again, this time on the left ribs. Then he grappled with his assailants, in the course of which his wife held a light at the window which enabled him to recognize Ordoño very well; succeeded in extricating himself from the holds of his aggressors and made a dash for an underbrush or shrubbery south of his house where he lay low. One of the person with whom he came to grips was Jose Sabado, he also said.

From his hiding place he heard three gunshots and noticed the bullets whizz close to his ears. Forthwith he heard women in Lucas Rolloda's house scream, "He was shot." (Rolloda was killed by a stray shell.) Then he ran off again until he reached the barrio of San Juan, where he stopped in the house of Juan Nolasco and sent for a rural policeman who, with other persons, arrived at about 8:30. From San Juan, at nine o'clock, he sent for a rig and rode to his sister's house where he stayed all night. About 11:00 a.m. the next day he was taken to the hospital in Dagupan by Natalia Sabado, his sister.

Carmen Morla, Roberto's wife, pointed to Esteban Sumagit as the man who came to inquire of her brother-in-law Felipe about a carabao. She knew it was Sumagit[^] she declared, because her husband asked Felipe who had dropped in to see him and she heard Felipe's answer. She went on to say that it was Jose Sabado and Procopio Escritor who met her husband on the stairway when Roberto was going down. She said Roberto was beaten and she heard him moan, "I am going to die." Then she sat crying and heard Jose Sabado say, "Why did you set him free? Catch him and kill him." Soon after, she heard three gunshots. She further said that among Escritor's and Jose Sabado's companions she saw Hermogenes Ordoño, Esperidion Lopez and Esteban Sumagit. There were about ten men in all, according to her, and she could see them because she peered through the window. And they had firearms, Jose Sabado's being about one foot long and Escritor's about one yard.

Zenaida Sabado, Jose's, Felipe's and Roberto's aunt who lived with Roberto, also testified that Esteban Sumagit came to Felipe's house inquiring for his carabao and heard Felipe tell Roberto that "Sumagit was looking for his carabao." She corroborated the other witnesses by stating that soon after Sumagit departed Felipe called to Roberto to come down and that after Roberto had started to answer his brother's summon she heard sounds of beatings and Roberto's groans. Roberto's wife, she stated, held a light at the window but she was ordered to put it out.

The central theme of appellant's brief is that the Government's evidence is a deliberate perjury. Ability of the witnesses, except Roberto, to recognize the malefactors does not seem to be denied. For our part, we do not believe that mistaken identity could be successfully urged, what with the bright light in Felipe's house, another light which Carmen Morla juttred out of the window even if she did only for a brief moment, the moonlight, and the witnesses' intimate acquaintance with all the defendants and their familiarity with Jose's voice.

The theory of intentional falsehood is not based on solid ground. If the witnesses' relation with Jose Sabado was strained, there was absolutely no ill-feeling of personal character between them on the one hand and any of the other defendants on the other, nor any other motive which could have induced the witnesses to give perjured testimony in a prosecution for heinous crimes that could send the accused to the electric chair.

Not even against Jose Sabado does the record show sufficient cause for the Government witnesses, or some of

them, to fabricate evidence and leave the guilty unpunished. True, there was a feud between Jose and the two brothers but these in that feud had the upper hand and Jose was at the losing end. It was Jose who had all the reason to be resentful and to seek revenge. Jose testified that he was "severely beaten by my cousin Felipe Sabado on September 20, 1948 over a land litigation" and chased by Roberto with a bolo on May 10, a persecution which had forced him, he said, to move to the poblacion with his family.

Rather than impairing the prosecution witnesses' credibility, by this testimony Jose Sabado has forged a link between himself and Felipe's murder. His maltreatments by his cousins which he thought, to judge from his complaints, were absolutely bereft of justification or excuse, were such as to rankle in his breast and drive him to take extreme measure in retaliation. The record does not reveal any unpleasant incident between Jose and the two brothers after September 20th, but that these did not stop to harass Jose in other ways can not be ruled out as a possibility. Thus, Jose and Felipe were said almost to have come to blows about eight days before October 6, 1948, over Felipe's pig which had entered Jose's land.

But, it may be asked, what about the other defendants? who had nothing against the deceased or Roberto. The answer is that they were Jose's friends and, except Sumagit, members of the same organization to which Jose belonged. Esprit de corps, deep compassion for their comrade, and indignation for the humiliations to which their friend had been subjected could easily be powerful factors to move them to make common cause with the principal accused. Regardless of friendship or family ties people take sides and their sympathy goes invariably with the underdogs.

Little need be said about the defendants' alibis after the preceding discussion of the evidence. This also goes with reference to other arguments advanced to create doubt about the appellants' guilt. It suffices to observe that the purported alibis are rested on oral testimony which is by no means unimpeachable or inconsistent with the defendants' fully established presence in Cabaritan at the hour of the commission of the crimes charged. The veracity of some of the defense witnesses is wide open to doubt, and the testimony of others which might challenge respect by reason of their standing in the community is far from airtight.

Had Sumagit kept silent or said that his co-defendants, or whoever the criminals were, whisked Felipe off immediately after he, Sumagit, had talked with the deceased and that he was in Felipe's and Roberto's yard as an innocent bystander, there might arise a reasonable doubt of his complicity in the crimes; but he denied everything, including the testimony that he had called at Felipe's house and talked with Felipe, and he swore that he was nowhere in the immediate vicinity of the scene of the kidnapping and assault. These falsehoods betray troubled conscience, are incompatible with innocence, and confirm the accusation that he was in league and cooperated with his co-accused.

The discrepancies to be found in the evidence for the prosecution are more natural than serious. They were to be expected from witnesses recounting from different angles their experiences and reactions and what they had seen in an unexpected and tumultuous event full of confusion, fears and horrors. What would have been suspicious was exact agreement between the witnesses' versions to the last detail. This is a psychological truth with which all are familiar and which need not be dwelt upon.

Felipe Sabado's assassination has been fully established. None but violent death at the hands of the defendants can be title explanation for Felipe Sabado's permanent disappearance. No alternative theory has been offered and none can be conceived or imagined.

As to the testimony of Repollo, a rural policeman in San Juan, to the effect that Roberto Sabado told him that he did not know any of his assailants, this offended party denied he had made such statement. The conflict between Repollo's testimony and Roberto's hangs on who was to be believed and the trial court concluded that Roberto

spoke the truth. We have no reason and are not prepared to reverse this finding.

The decision of the lower court will be affirmed, as recommended by the Solicitor General, except that in the case of kidnapping, the defendants shall, in addition to the sentence imposed by the trial court, pay an indemnity of P6,000 to the heirs of the deceased Felipe Sabado, jointly and severally. The appellants will pay one-fifth of the costs each in both cases.

The two cases are ordered dismissed as to Hermogenes Ordono without special finding as to costs.

Paras, C. J., Feria, Pablo, Bengzon, Montemayor and Jugo, JJ., concur.

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