

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROMEO PAZ ALIAS COMMANDER ROMY AND SULPICIO TICA, DEFENDANTS AND APPELLANTS.

G. R. No. L-17320. May 31, 1965

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

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

In an information filed with the Court of First Instance of Rizal and docketed as its Criminal Case No. 6814, Romeo Paz, alias Commander Romy, Sulpicio Tica, and Marcos Castalone, together with seven others who are still unidentified, were charged with the crime of murder, as follows:

"That on or about the 7th day of December, 1956, in the municipality of Tanay, province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping one another, with evident premeditation and treachery did, then and there wilfully, unlawfully kill one Tranquilino Dayrit by then and there tying his hands and while the victim was in this position, the accused hit him with the butt of their gun, and one after the other the same accused struck and thrashed with a balisong on the body of the said Tranquilino Dayrit until the latter died.

"That the following aggravating circumstances were present to insure the commission of the crime:

"(1) Taking advantage of superior strength;

"(2) That crime was committed by armed band;

"(3) That means was employed which add ignominy to the natural effects of act. "Contrary to Law."

Arrest having been effected on Sulpicio Tica and Marcos Castalone only, while the other accused remained at large or unidentified, these two accused were arraigned; and they entered a plea of not guilty, and trial proceeded against them.

After due hearing, the trial proceeded against them. Gustavo Victoriano, Judge, rendered his decision dated 16 November 1957, the dispositive portion of which reads:

"In view of the foregoing considerations, the Court finds the accused Sulpicio Tica guilty beyond reasonable doubt of the crime of murder, as charged in the information* and sentences him to life imprisonment, with the accessories of the law, to indemnify the heirs of the deceased Tranquilino Dayrit in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency due to the nature of the principal penalty imposed upon him, and to pay one-half of the costs of this action.

"It appearing that the guilt of the accused Marcos Castalone has not been established beyond reasonable doubt by the prosecution, the Court acquits him of the charges, with 1/2 of the costs de oficio.

"It is so ordered."

Counsel for accused Tica presented a motion to reconsider the above decision; but while said motion was pending

resolution, said accused personally filed his notice of appeal. The trial court denied the motion and gave due course to his appeal.

Subsequent to the promulgation of the aforestated decision, Accused Romeo Paz alias Commander Romy, was apprehended. He was immediately arraigned, and he pleaded not guilty.

On 8 April 1958 counsel for accused Paz presented a motion to quash the information on the ground that the offense charged therein was allegedly committed by said accused in the course of his rebellious activities as a Huk; hence, said accused should be prosecuted for the crime of rebellion only, and not of murder. This motion was opposed by the Fiscal.

The trial court denied said motion. Paz moved to reconsider said order of denial, but the same was likewise denied; hence, trial against said accused was commenced and terminated.

The trial court, presided by Hon. Cecilia Muñoz Palma, Judge, rendered a judgment dated 27 October 1959, the dispositive part of which is quoted below, to wit

"In view of the above considerations, this Court finds the accused Romeo Paz Guilty beyond reasonable doubt of the crime of Murder as charged with no mitigating or aggravating circumstance to modify his criminal liability, and pursuant to the provisions of Article 248 of the Revised Penal Code, hereby imposes upon said accused the penalty of Life Imprisonment with the corresponding accessory penalties provided for by law, and orders him to indemnify the heirs of the deceased Tranquilino Dayrit in the amount of P6,000.00 without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Accused shall be credited with one-half of such preventive imprisonment as he may have suffered by reason of this case.

"So ordered."

A motion to reconsider the above decision having been denied, accused Paz also appealed.

At the separate trial of accused Tica and Castalone, the evidence for the prosecution showed that sometime in the year 1953 Tranquilino Dayrit and his wife, Narcisa Tadong, stayed in the house of accused Sulpicio Tica situated in the mountains of Sitio Pinagsibiran, Tanay, Rizal; that in the same year and place the spouses met Huk Commanders Romy and Garcia when their land was surveyed and often met the Huk Commanders whenever they asked food from Dayrit; that sometime in the months of March and April, 1956, while the Dayrits were staying in Tica's house, accused Tica proposed to the Huk Commanders and their Huk companions to liquidate suspected army informers, among whom were the Dayrits, which conversation was Reported to the army authorities; that sometime in July, 1956 Dayrit denounced accused Tica as a Huk and his Huk activities to the 19th BCT in Sta. Maria, Lacuna; that about a week before 7 December 1956 accused Tica's carabao ate the rice plants of Dayrit; that Dayrit got angry with Tica; that accused Tica, his father and brother went to Dayrit's place carrying boloos and challenging Dayrit to go out of his house; and that because of this quarrel Dayrit lodged a complaint against the Ticas in the Fiscal's office in Pasig, Rizal, the investigation of which was scheduled for 19 December 1956.

That in December, 1956 the Dayrits used to stay in Sitio Pinagsibiran, Tanay, Rizal, where they had a house neighboring that of accused Tica's; that at about 3:00 o'clock in the afternoon of 6 December 1956, Huk Commanders Romy and Garcia, some other Huks, and the accused Tica and Castalone went to their house and asked for Dayrit from Narcisa Tadong; that upon being told that he (Dayrit) was not at home, for he was then in Manila, they inquired what time he will arrive, to which Tadong replied that he might come that day or the following day; that the group left and retired for the night at accused Tica's house.

That at about 9:00 o'clock in the morning of the next day, 7 December 1956, the same group of men came back to Dayrit's place; that when the group arrived Dayrit was in front of their house cutting grass; that accused Tica and

Castalone stationed themselves outside the fence along the road while the Huks approached Tadong from whom they again inquired as to the whereabouts of her husband; that as Dayrit was already seen by the Huks she pointed him (Dayrit) out to them and told Dayrit that there were persons looking for him; that Dayrit instructed his wife to allow the men to enter; that Dayrit went up to his house, followed by Huk Commander Romy and some Huk companions, while four other Huks remained in the ground; that once they were inside the house the Huks told Dayrit that Tica is calling for him and he (Dayrit) will have to accompany them to the headquarters of the BCT in Sampaloc to settle the matter; that Tadong confirmed the presence of Tica as he was waiting in the road; that Dayrit was seemingly unwilling to go with the Huks for he seated himself, removed his eye-glasses, and got a towel.

At this juncture, the Huks hogtied Dayrit with a piece of big rattan, dragged him out of the house, and brought him to the road where accused Tica and Castalone were waiting; that before leaving the house, the Huks took rice, clothings and shoes, and even warned Tadong and her son, Teodoro Dayrit, not to leave the house, otherwise they will be killed; that Tadong and her son followed the Huks to see what they will do with Dayrit; that upon reaching the road the Huks surrounded Dayrit, then pulled him to a grassy place along the road and hit him with the butts of their guns; that Commander Romy pulled out his knife and began stabbing Dayrit on his neck, after which he handed the same knife to accused Tica who also stabbed Dayrit's neck, followed by the other Huks who took turns in stabbing Dayrit until the latter fell down; that the group repeated the stabbings on the different sides of Dayrit's body; that accused Tica removed the right eye of Dayrit by means of a "balisong", and then Dayrit's lips were pierced and tied together with a rattan; that after seeing Dayrit was already dead, the group looked around and left the place; that Tadong and her son also left the place, took another way, and went to Baras, Rizal, to report the incident to the army authorities; and that the soldiers took the corpse of Tranquilino Dayrit.

The above narration was established through the testimony of Narcisa Tadong, widow of the late Tranquilino Dayrit. The killing of Dayrit was also corroborated by Teodoro Dayrit, 7-year old son of Narcisa Tadong, who declared that his father was stabbed and killed by Sulping (pointing to accused Sulpicio Tica) in the presence of Commander Romy; that the Huks took his father and brought him to a grassy place along the road where he was killed; that Commander Romy and Commander Garcia also stabbed his father; and that he was with his mother when his father was killed.

The fact of death of said Tranquilino Dayrit was testified to by Clemente E. Diaz, Medical Officer of the 8th BCT, who conducted, on 8 December 1956, an examination of the cadaver of said deceased and found that Dayrit died of shock secondary to hemorrhage caused by the stab wounds inflicted by means of a sharp-pointed instrument for which he issued the following medical certificate (Exh. "A"):

- "1. Multiple stabbed wounds on the right and left sides of the neck;
2. Multiple stabbed wounds between the scapular regions;
3. Multiple stabbed wounds on the left lower part of the scapular region;
4. Stabbed wound on the upper left nipple;
5. Cut wound on the anterior surface of the left forearm."

And, as additional proof of the corpus delicti, the prosecution submitted the death certificate of said Tranquilino Dayrit (Exhibit "C").

The prosecution also established, through the testimony of Capt. Claudio P. Sugay, former Intelligence Officer of the 19th BCT, that on 18 July 1956 Tranquilino Dayrit reported and denounced accused Tica as a Huk supply officer, for which he executed a sworn statement Exhibit "B").

Accused Sulpicio Tica premised his defense on alibi by flatly denying that he took part in the killing of Tranquilino Dayrit for his non-presence in the scene of the crime in the afternoon and evening of 6 December and the whole morning of 7 December 1956. Thus, he claims that after lunchtime in the afternoon of 6 December 1956 he left his house in sitio Pinagsibiran, bound for the town proper of Tanay, Rizal, to attend to the celebration of the death anniversary of his grandmother, which was scheduled for the next day, 7 December 1956; that upon reaching his house in Aldea, within the town proper, at around 5:00 o'clock of the same afternoon, he dressed up and went to the barber shop for a haircut, but he was unable to have it because there were many people waiting to have their haircut so he went back to his house where he met and saw many guests attending the anniversary celebration, such as Pat. Ponso (Inagan) with whom he had a brief conversation at around 8:00 p.m., Dr. Anihin, whom he saw at around 11:00 p.m.; and Pat. Ponso again at about 3:00 o'clock in the dawn of 7 December 1956; that after this second meeting with Pat. Ponso he went to sleep and woke up before 7:00 o'clock in the morning of 7 December 1956, ate, dressed up, and proceeded to the barbershop at about 8:00 a.m.; that while on his way there, he happened to walk along with Dr. Anihin until they reached the barbershop where they parted ways as Dr. Anihin was going to his office; that as the barbershop was still closed he walked around the place where he was approached by the Chief of Police of Tanay telling him to go with his father to the municipal building to get their subpoena, to which request he gave an affirmative reply; that after this brief meeting he proceeded to the barbershop where he met Pat. Ponso again; that at around 9:00 o'clock a.m., while having his haircut, he was again approached by the Chief of Police reminding him not to forget to go to the municipal building; that after his haircut he fetched his father and went to the municipal building where they met Guillermo (Memong) Melendres, a policeman, from whom they asked for the Chief of Police; but as the latter had not yet arrived, they waited for him (Chief of Police) in vain until noon time, and, as they were already hungry, they went home to eat and returned at about 2:00 o'clock p.m. to the municipal building; that upon arrival there they were informed by Melendres that the Chief of Police had already arrived but was in the second floor; that they waited for the Chief of Police in his office, located in the ground floor of the municipal building; that after a short while the Chief of Police came, but was not able to attend to them, and told them to wait; that at around 4:00 o'clock p.m. the Chief of Police attended to them and let them sign the subpoena (Exhibit "I"), after which they went home to Aldea; that before midnight of 7 December 1956 he, together with his father and Castalone, were taken by army soldiers to the 8th BCT camp in Baras, Rizal, where they were questioned in connection with the killing of Tranquilino Dayrit upon complaint of Narcisa Tadong; that in the investigation they denied participation in said killing, and after the investigation they were released and brought to their homes; that Narcisa Tadong implicated him (Tica) in the killing of Tranquilino Dayrit because he reported to Dayrit during his lifetime about her illicit relations with a certain Mr. Cruz.

Accused-appellant Tica produced several witnesses to support his alibi: Reynaldo Vera, who testified that after lunch on 6 December 1956 the appellant left his house in Pinagsibiran for Tanay proper to attend an anniversary celebration; policeman Ildefonso Inagan of Tanay, who claimed to have seen this accused three times, at eight in the evening of 6 December, in barrio Aldea, Tanay, and again at 3:00 and 8:00 a.m. of 7 December; municipal health officer Mamerto Anihin, who asserted having seen Tica in the night of December sixth and conversed briefly with the appellant on his way to the barbershop in Tanay before 8:00 a.m. of 7 December 1956 and again shortly past noon of the same day in the Tanay plaza; barber Vitaliano Viray, who testified having seen Tica at about 8:00 a.m. of 7 December in front of his barbershop in Tanay proper; later told Tica to wait for his haircut because of other customers ahead of him; cut his hair at around 9:30 a.m., and during the process saw Chief of Police Cautivo tell Tica to go to his office. Edilberto Cautivo, Chief of Police, affirmed in court having met Tica around 8:00 a.m. in Tanay and told him that there was a subpoena for him, his father and brother, and again, at around 10:30 a.m., he told Tica at the barbershop not to forget to drop at his office; that Tica and the latter's father came at around 2:30 p.m. and were finally attended to at 4:00 p.m., when they were made to sign the subpoena,

Exhibit "1", wherein the witness noted "12-7-56 at 4:10 p.m.". Policeman Guillermo Melendres, guard at the office of the Chief of Police, testified to Tica's having called at said office several times, at 11:00 a.m., 2:00 and 3:00 p.m. of 7 December, looking for Chief Cautivo, and that accused stayed at said office until after 4:00 p.m.

The trial court convicted appellant Tica on the strength of the concordant testimony of Narcisa Tadong and her young son, Teodoro Dayrit. The conviction is assailed on the ground that the testimonies were improbable and contradictory, and were negated by the alibi of the witnesses" of this appellant.

We have gone over the record and see no error in the conviction. The discrepancies and alleged improbabilities of the testimony of both prosecution witnesses were in matters of detail and, in fact, coupled with their lack of education, heighten their credibility rather than otherwise, and show that the testimony was neither coached nor rehearsed. (People vs. Selfaison, L-14732, Jan. 28, 1961). This court has noted that such differences are due to individual variations in observation and memory, and do not necessarily indicate falsehood (People vs. Tuason, 86 Phil. 278; People vs. Calleha, L-2264, 27 December 1950). The fact is that the late Tranquilino Dayrit was killed in broad daylight, and that Tica was well-known to Narcisa and her son, being their neighbor, so that the possibility of error in identification at the scene of the crime is remote (cf. People vs. Quiatchon, L-11109, 30 June 1958).

Appellant stresses that Tadong testified that after stabbing Tranquilino Dayrit, his assailants removed one of his eyes and sewed his lips, but the certificate of post mortem examination showed no such lesions. In the first place, the post mortem does not appear to have been very thorough: no autopsy was made. Secondly, it is common experience, and writers and students of Psychology and criminal investigation, like Gross and Munsterberg, have so remarked, that in the excitement and confusion that attend the witnessing of startling occurrences, particularly when coupled with heightened emotions, it is not rare for excitable witnesses to actually suffer illusions that lead them to believe having seen things that actually did not happen (cf. People vs. Layos, 60 Phil. 761). The cruel and bloody murder of Dayrit by an armed band was an event of the type described. Such illusion, however, could not have existed with respect to the actual presence of appellant Sulpicio Tica at the locus of the crime, for he was seen even before Dayrit was seized and killed, and, therefore, before the emotions of the prosecution witnesses were much aroused. Certainly if, as hinted for appellant, these witnesses had been coached by the army combat team officers, in revenge for Tica's denunciation of their excesses, the officers would not have allowed such gross errors to creep into the testimony for the prosecution. It is noteworthy that the stories of Narcisa Tadong and her son were scrutinized and believed by two different judges, who separately tried accused-appellants Tica and Paz. Their belief must be accorded great weight, and, under the circumstances, the faults stressed by the defense do not justify total discarding of the incriminating testimony.

This Court has repeatedly ruled that oral evidence of alibi can not prevail over positive identification of the accused by witnesses who saw them at the scene of the crime and who could not be mistaken because the accused was well-known to them (People vs. Quiatchon, supra; People vs. Sabuero, 108 Phil. 74; People vs. Divinagracia, 13 April 1959. In the case at bar, there are details to support the trial court's rejection of Tica's alibi. With the sole exception of Reynaldo Vera, who saw Tica once at noon of 6 December (the day preceding that of the killing), it is an incredible coincidence that each and all of the other alibi witnesses should have met appellant Tica, not once or twice, as might be expected, but three times in less than twenty-four hours, from the night of 6 December to the afternoon of 7 December. One of them, Ildefonso Inagan, even insisted on the plainly ridiculous story that he met Tica three times, and that every time Tica reported that the rooster of the witness, that was in flea's care, had died, and that Inagan in each instance gave the same reply, "what can we do?" Then again, Chief of Police Cautivo, while carefully noting the time when Tica received the subpoena, Exhibit "I", could not show or recall any other instance of subpoena service in which he had noted the time in writing. Withal, there are hiatuses as to the

whereabouts of Tica on the fatal morning, so that it can not be safely asserted that it was materially impossible for him to be at the scene of the crime, which was only 23 kilometers away. All in all, the trial court had reasons to observe that the alibi witnesses might have seen appellant Sulpicio Tica, but not on the date and hour they specified. The court below had special opportunity to observe closely the demeanor of the individual witnesses that is not available to us, and our review of the evidence does not afford any adequate basis for discarding its appreciation of their credibility.

"Where there is a conflict in the testimony of witnesses in a criminal action, these of the defense giving evidence directly contradicting that given by those of the prosecution, the appellate court, on appeal, will not interfere with the conclusions of the trial court concerning the credibility of such witnesses in view of the act that the trial court saw them in the act of testifying and observed their manner and demeanor as witnesses, unless it is satisfactorily shown that the trial court overlooked, misunderstood or misapplied some fact or circumstance of weight and influence sufficient to induce belief that, if the error had not been committed, the decision on the question would probably have been different." (Francisco, Evidence, 1964 Ed., p. 1132)

The judgment of conviction against accused Sulpicio should, therefore, be affirmed.

With regard to the appellant, Romeo Paz, Commander Romy, who was separately tried and convicted on the same prosecution evidence, we have the added circumstance that said Paz admitted in the sworn statement (Exhibit "B") that he was with the group of men who took Tranquilino Dayrit from his house in Tanay, Rizal, but it was his companion by the name of "Hira" who actually stabbed Dayrit while he (Paz) and his companions were surrounding and guarding him (Dayrit). In another sworn statement (Exhibit "C"), Paz admitted that he was a member of the Hukbalahap organization, and that he was with "Hira" when Tranquilino Dayrit was killed with a bayonet in the mountains of Tanay, Rizal.

For his defense, accused Romeo Paz declared that since 1950 he was a member of the Hukbalahap organization; that he was with the group of Huks who killed Tranquilino Dayrit; that Dayrit was killed because he was suspected by the Huks to be an army informant or spy; that when Dayrit was killed he merely stood as guard to give warning to his companions if any army men approached. Paz also admitted having signed the sworn statements Exhibit "B" and "C".

As rebuttal evidence, the prosecution presented Fiscal Amable Vicencio, who declared that he issued a subpoena dated 23 November 1956 (Exhibit "E") in the case of Tranquilino Dayrit against Sulpicio Tica, et al., for Grave Threats; that this subpoena, as per return, was received by Sulpicio Tica on or before 7 December 1956, but that this case was dismissed because before any preliminary investigation could be conducted on 19 December 1956 complainant Dayrit was killed.

In the instant appeal, accused Romeo Paz contends the killing of Tranquilino Dayrit was done in connection with, or in the furtherance of, the subversive movement of the Hukbalahaps or HMB; hence, he should be held liable only for the crime of simple rebellion under Article 1" and/or article 135 of the Revised Penal Code, and the information against him be dismissed.

This contention has no merit. The prosecution established that the killing of Tranquilino Dayrit was motivated by the personal or private quarrel which accused Sulpicio Tica had with Dayrit during his lifetime, for Dayrit was asked by the band to "come with us to the PC so that your case with Sulping (Tica) would be fixed" (t.s.n., pp. 2-3, March 9, 1959). Apparently, Tica utilized the Huks as the instrument in pursuing his design of killing Dayrit because of his grudge against him for filing a complaint in the Fiscal's office.

That the killing was in pursuance of the Huk rebellion is a matter of mitigation or defense that the accused has the burden of proving clearly and satisfactorily; The lone and uncorroborated assertion of appellant Paz that his

superiors told him of Dayrit being an informer, and his suspicion that he was one such, is neither sufficient or adequate to establish that the motivation for the killing was political, considering appellant's obvious interest in testifying to that effect.

This Court has already held that—

"While this Court ruled in *People v. Hernandez*, 52 O. G., 5506 that there is no complex crime of rebellion with murder because the latter offense is absorbed by the former, however, distinction was made in the case of *People vs. Geronimo*, 53 O. G., 68 where this Court held that if the killing is inspired by personal motive such killing is not absorbed by the rebellion but may be the subject of separate prosecution." (*People vs. Rogado*, G. R. No. L-13025, December 29, 1959).

The guilt of this accused is clear even upon his own version that he merely stood guard while his companions stabbed and killed Dayrit. His avowed conduct in going with the band to the house of the deceased, and standing while Dayrit was seized, abducted from his house, killed, is adequate proof of his participation as conspirator, and of his responsibility as co-principal in the murder.

Wherefore, the two (2) decisions, convicting appellants Tica and Paz of the crime of murder should be, as they are hereby affirmed. Costs against appellants.

Bengzon, C. J., Bautista Angelo, Barrera, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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