

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUGENIO PASILAN, DEFENDANT AND APPELLANT.

G.R. No. L-18770. July 30, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The administration of justice under constitutional safeguards is at times a slow process which nonetheless ceaselessly moves on. In the end, it catches up with the guilty.

In the morning of December 14, 1944 Justina Miguel was in her house in barrio Dibuluan, municipality of Jones, province of Isabela, when a long-haired guerrilla, whose name she later knew to be Eugenio Pasilan, came to her house and asked for oil. After giving him some, the guerrilla proceeded to dismantle and clean his gun. About ten minutes later, or at approximately nine o'clock, Ciriaco Abarra passed by. Justina Miguel and Abarra greeted each other. At that instant, Eugenio Pasilan called out to Ciriaco Abarra and requested the latter to wait for him, Pasilan then told Justina, Miguel that he would make an exhibition. He approached Abarra and immediately ordered him to unbuckle the belt holding his bolo and throw it away. The latter complied with the order. Pasilan asked Abarra why he surrendered to the Japanese his rifle which was kept in Abarra's house. Before Abarra could answer, Pasilan slapped him and immediately thereafter stabbed his left breast with a pointed knife. The knife stuck, Pasilan drew another knife and again stabbed Abarra, at the right breast, after which Abarra ran away towards the river. Pasilan resumed cleaning and assembling his gun in the ground floor of Justina Miguel's house. When he was through, he fired three shots into the air and left.

Anicia Uao, another witness, saw Ciriaco Abarra, her townmate, running along the road at about ten o'clock in the morning of December 14, 1944. Abarra, according to her was bleeding. She was then in the house of Faustino Sebastian in barrio Dibuluan where she and her husband lived.

Sometime in the later part of 1944 Eugenio Miguel reported to Juan Luis, the barrio lieutenant of Dibuluan, that he found a corpse in his homestead. Whereupon Juan Luis sounded the barrio horn to summon the residents. Minutes later, Juan Luis accompanied by the barrio people, among them Angel Miguel, Bruno Ballesteros, Valeriano Sebano, Modesto Salvador, Eulogio Ligsay, Emilio Sebastian, Isabelo Ballesteros, Petronilo Lampitoc, and Eusebio Daguo, proceeded to the homestead where the dead body lay, in a state of decomposition. The barrio people identified it as that of Ciriaco Abarra. They buried him in the same spot.

World War II ended. Eugenio Pasilan married Eufrocina Salvador of Dibuluan and settled in said barrio. Justina Miguel, a blood relative of the bride, was one of the wedding sponsors.

Almost ten years later, Sgt. Diego Morales of the Philippine Constabulary arrived in Dibuluan to investigate crimes committed during the Japanese occupation. First, he interviewed Perpetua Andaya, Ciriaco Abarra's widow. Then he interrogated, Eugenio Pasilan, formerly a corporal of the Special Company, 1st Battalion, 14th Infantry, AUS, a guerrilla unit assigned in Dibuluan. In an affidavit Pasilan deposed that on December 14, 1944 he and Pvt. Miguel Padayao were sent by Captain Leon Galina, their commanding officer, to get the latter's

clothing in barrio Linumot. Passing through Dibuluan, they met Ciriaco Abarra between the house of Justina Miguel and the camarin of Faustino Sebastian. Pasilan confronted Abarra on whether he was with the Japanese who raided their guerrilla camp in Bimaribar forest where one Filipino soldier was killed. Abarra said yes, and while he was explaining why, Pvt. Miguel Padayao stabbed him at the back with a bolo. Abarra fell down. As he could no longer talk, they left him there (Exhibit K).

Next, Sgt. Morales took the affidavits of Justina Miguel, Anicia Uao and Juan Luis. All the affidavits were sworn to before the justice of the peace of Jones, Isabela (Exhibits J, L, M and N).

On November 4, 1954, Sgt. Morales, accompanied by Juan Luis, Chief of Police Juan Bareng, the sanitary inspector of Jones, Barrio Lieutenant Emilio Sebastian and some policemen, proceeded to exhume the remains of the dead man (identified as Ciriaco Abarra) who was buried by Juan Luis and the people of Barrio Dibuluan in 1944. Acting upon a tip, however, Sgt. Morales and his companions first scoured river about 200 meters away from the grave, and found a skull and some bones submerged in the water one meter deep. From there they went to the homestead of Eugenio Miguel where they found that Abarra's grave showed signs of having been recently dug. They also exhumed some bones therefrom.

Perpetua Andaya identified the skull to be that of her husband, Ciriaco Abarra, by the abnormal tooth outside the line of growth of the teeth on the lower mandible, inner left side, which her late husband used to show her. The municipal health officer examined the bones and certified them to be human bones. An osteologist examined the skull and bones retrieved from the river and declared that they were submerged in water for not more than one month.

On November 15, 1954 a complaint for murder was filed in the justice of the peace court of Jones, Isabela against Eugenio Pasilan. Preliminary investigation was conducted, after which the accused was ordered arrested. An information for murder was filed before the Court of First Instance of Isabela.

Having been convicted, the accused has appealed to this Court from the following judgment:

"Wherefore, the Court hereby finds the accused guilty beyond any reasonable doubt of the crime of murder punished under Article 248 of the Revised Penal Code, and sentences him to suffer the the penalty of life imprisonment, or reclusion perpetua, to pay the heirs of Ciriaco Abarra the amount of P3,000.00, as indemnity, and to pay the costs. He shall be credited with one-half of his preventive imprisonment, if any."

Appellant maintains that the trial court erred in finding him the assailant of Ciriaco Abarra despite the fact that the only eyewitness (Justina Miguel) presented to identify him declared under cross-examination that she was not so sure it was Eugenio Pasilan who stabbed Ciriaco Abarra. Appellant's theory is that Justina Miguel could not have identified the guerrilla who stabbed Ciriaco Abarra because there were many guerrillas stationed in Dibuluan who had long hair, long beard and similar builds. Furthermore, it was the first time that she saw him.

A close scrutiny of the evidence on hand confirms the finding of the trial court as to the identification of Eugenio Pasilan. Justina Miguel positively testified that Ciriaco Abarra was stabbed by a long-haired and bearded guerrilla who dismantled and cleaned his gun inside her house. Certainly, in the process, said guerrilla must have stayed long enough for Justina Miguel to observe his face and features. Although at that time she might not have known his name, she soon learned from residents of Dibuluan that the guerrilla whom she saw stab Ciriaco Abarra was named Eugenio Pasilan.

They met again in 1946 under different circumstances: He, as bridegroom of Eufrocina Salvador and she, as one of the wedding sponsors. It was therefore not surprising, despite her relationship with Pasilan and his wife, that in 1954 upon being interrogated about the stabbing of Ciriaco Abarra, she unhesitatingly named Eugenio Pasilan as

the culprit

Truth is difficult to contain unexpressed for long within the confines of one's being. Women by nature feel uneasy and even suffer when they hold back the truth. So, with a relief Justina Miguel finally spilled out the truth which had burdened her memory for a long time, only to realize later, perhaps after some introspection, that the family of a relative would suffer on account of her testimony. She avoided appearing in court to continue her testimony, obviously to repair whatever damage her statement had caused. The trial court had to order her arrest to secure her continued attendance. Upon cross-examination, she modified her former pronouncements and testified that she was not sure it was Eugenio Pasilan who stabbed Ciriaco Abarra.

Any uncertainty brought about by Justina Miguel's apparent recantation is dispelled by appellant's own affidavit executed before the Philippine Constabulary investigator. Therein he admitted: (1) having been in Dibuluan in the morning of December 14, 1944, (2) having met Ciriaco Abarra between the house of Justina Miguel and the camarin of Faustino Sebastian, (3) having questioned Ciriaco Abarra why he accompanied the Japanese who raided the guerrilla camp in Bimaribar forest, and (4) having been present in the stabbing of Ciriaco Abarra.

During the trial, appellant repudiated his affidavit, on the ground that he did not understand its contents when he signed it and interposed the defense of alibi stating that during the whole month of December 1944 he never went to Dibuluan.

Appellant cannot pretend ignorance of the contents of his affidavit, for the justice of the peace before whom he swore thereto testified that he first translated and fully explained to appellant said contents, and affixed his signature thereon only after satisfying himself that appellant understood the affidavit.

It therefore appears that the alibi was an afterthought presented to avoid the damaging effect of the affidavit. Alibi, as a rule, is a weak defense since it is easy to concoct. For this reason, courts view it with caution and accept it only if proved by positive, clear and satisfactory evidence.^[1] Where such defense is uncorroborated as well as contradicted by accused's own affidavit, the same cannot be deemed satisfactorily established. We therefore see no reason to disagree with the lower court's finding of fact that the appellant was sufficiently identified as the real assailant.

Appellant further cites as error the trial court's finding that Ciriaco Abarra died as a result of the stabbing by Eugenio Pasilan. The evidence is clear that after Pasilan stabbed Abarra on both sides of his chest, the latter was seen by Anicia Uao running along the road, bleeding. A few days later his body was found by Eugenio Miguel, identified and buried by the companions of Juan Luia in Eugenio Miguel's homestead. No evidence was presented either by appellant or the prosecution that Abarra died from any cause other than the supervening stab wounds inflicted by Pasilan.

With respect to the proof of corpus delicti, suffice it to state that aside from the identification of the deceased by those who buried him, the skull (Exhibit A) which was retrieved by the Philippine Constabulary investigator from the river was identified by Perpetua Andaya to be that of her husband by a defective tooth in the lower mandible. At any rate, the evidence adduced by the prosecution sufficiently proved Ciriaco Abarra's death and manner of death.

The information filed by the provincial fiscal of Isabela alleged the qualifying aggravating circumstances of pre meditation and treachery.

Pasilan, before stabbing Abarra, had first told Justina Miguel that he would make an exhibition and had first secured the disarming of his intended victim. Such facts indicate the state of mind of Pasilan who had plainly been on the look out for Abarra. For, well known to Pasilan, Abarra accompanied the Japanese who raided the guerrilla

camp in the Bimaribar forest in which a companion of Pasilan was killed. Abarra likewise surrendered to the Japanese the riffle which Pasilan asked Abarra to be kept in his house. Pasilan had evidently been meditating upon liquidating Abarra even prior to December 14, 1944.

Furthermore, as stated, before Pasilan attacked Abarra he required the latter to throw away his bolo, thereby adopting a measure tending to assure commission of the offense without any risk arising from any defense which Abarra might make. Accordingly, there was treachery.

On July 29, 1964, appellant moved for a new trial on the ground of newly discovered evidence which allegedly would reverse the decision of the lower court. Alleged as newly discovered evidence are sworn statement attesting to Justina Miguel's recantation. Appellant likewise seeks to avail of Proclamation No. 8 of President Roxas granting amnesty to persons who during the war committed any act penalized under the Revised Penal Code in furtherance of the resistance against the enemy or against person aiding in the war efforts of the enemy. The Solicitor General opposed the motion.

Not every recantation of a witness entitles the accused to a new trial. Otherwise, the power to grant a new trial would rest not in the courts but in the witnesses who have testified against the accused.[2] Recanting testimony, furthermore, is exceedingly unreliable.[3] Since Justina Miguel's alleged recantation has already been passed upon by the trial court, new trial is uncalled for.

Neither can the additional ground of amnesty entitle appellant to a new trial. In the first place, Proclamation No. 8 of President Roxas is not a newly discovered evidence, for it was already known when the case was tried. Secondly, availing of the benefits granted by the amnesty proclamation would be inconsistent with the plea of not guilty which appellant entered upon his arraignment. Amnesty presupposes the commission of a crime, and when the accused maintains that he has not committed a crime, he cannot avail of amnesty.[4]

Wherefore, the motion for new trial is hereby denied and the decision appeal from affirmed with the only modification that the indemnity be increased to P6,000.00. Costs against appellant. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

[1] *Peo. vs. Asmawil*, 121 Phil. 469.

[2] *Peo. vs. Chu Unjieng*, 61 Phil. 906, 927.

[3] *Peo. vs. Follantes*, 64 Phil. 515, 586.

[4] *Peo. vs. Guillermo*, 86 Phil. 395, 399.

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