

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SANTOS RAMOS, PEDRO ALEMANIA, LUCILO ESMA AND ALFONZO ESMA, DEFENDANTS AND APPELLANTS.

G.R. No. L-19143. November 29, 1968

Ponente: DIZON, J.

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DIZON, J.:

Appeal from a decision of the Court of First Instance of Surigao the dispositive portion of which is as follows:

"WHEREFORE, the Court hereby finds the accused, SANTOS RAMOS, LUCILO ESMA, PEDRO ALEMANIA and ALFONSO ESMA, guilty, beyond reasonable doubt, of the crime of Murder, defined and penalized under Art. 248 of the Revised Penal Code, with the accused Santos Ramos as principal, and the accused Lucilo Esma, Pedro Alemania and Alfonso Esma as accomplices, and there being no mitigating nor aggravating circumstances to consider for or against said accused, and applying the provisions of the Indeterminate Sentence Law as regards the accomplices, imposes upon the accused Santos Ramos the penalty of RECLUSION PERPETUA, and upon Lucilo Esma, Pedro Alemania and Alfonso Esma, the penalty of not less than TEN (10) YEARS of prison mayor, as minimum; to not more than SEVENTEEN (17) YEARS and FOUR (4) MONTHS, of RECLUSION TEMPORAL; both with the accessory penalties provided by law; to indemnify jointly and severally the heirs of the victim in the sum of P6,000.00; plus the costs. All the accused are to be credited with one-half of the detention period."

The evidence shows that appellant Alfonso Esma was a resident of Barrio Magpayang, Mainit, Surigao del Norte, where he owned and operated a restaurant. Living with him in the house where such business was conducted were his cousin, appellant Lucilo Esma, and their co-appellants Santos Ramos and Pedro Alemania, the three being Alfonso's helpers.

Early in the evening of January 24, 1960, a man known as Feling entered the restaurant in a drunken condition. Probably to avoid untoward incidents in his eating place, Alfonso pushed him outside with such violence that Feling fell to the ground. It was soon thereafter that Agapito Montaner, Jr. also entered the restaurant. Thinking probably that the new arrival was the same person ousted some time before or that he was also in a drunken condition, Lucilo Esma approached him and put his right arm over his left shoulder. Apparently Agapito did not like this for he tried to free himself, but while Lucilo still had his right arm over Agapito's shoulder, appellant Santos Ramos approached him from behind and thrust a double-bladed dagger into the left side of his body. Immediately thereafter, appellant Pedro Alemania also attacked Agapito with fist blows on the face, while Alfonso Esma pushed him toward outside the restaurant, this also causing the victim to fall on the pavement face upward and shouting for help.

Agapito was then taken by some passersby to the house of the Barrio Lieutenant and later to a hospital where he died fifteen minutes after arrival due to hemorrhage as a result of the wound inflicted upon him. He also showed a contusion on the left lower jaw (Exhibits A and B, Medical Certificate and Certificate of Death, respectively).

As against the foregoing, tree defense' version of the incident runs as follows:

That on the evening in question a drunkard known as Feling entered Alfonso Esma's restaurant asking the people therein: "Who is tough here?"; that Pedro Alemania answered him saying that nobody in the place was tough, but that he should get out because he was drunk, at the same time giving him a violent push which caused him to stumble; that Alfonso Esma then appeared and also told Feling to go home; that Lucilo Esma then came and he led Feling outside; that at that juncture Agapito Montaner, Jr. arrived also asking "Who is tough here among you?", and as nobody answered, he hit Santos Ramos on the stomach and attempted to pick up a big stone; that as he was in the act of picking up the stone, Santos Ramos stabbed him on the left side of the body.

Even in accordance with the defense version, therefore, it is a fact that Santos Ramos stabbed the deceased Agapito Montaner, Jr. on the left side of the body - the wound thus inflicted having caused his death soon thereafter.

The other aspects of the story given by appellants and their witnesses, however, can not stand against, much less overcome the findings invade by the judge a quo who, after a careful consideration of the evidence of record, stated them briefly as follows:

"It has been proven to the full satisfaction of the Court that in the fatal day in question Agapito Montañer, Jr., suspected to be drunk, was held around the neck by the accused Lucilo Esma and as he was struggling to extricate himself, he was given a blow from behind with a dagger by the accused Santos Ramos hitting the deceased on the left side piercing his lung end causing his death less than an hour later. After he had been wounded, the accused Pedro Alemania gave the victim a fistic blow on his face. And, as if not satisfied with the injury that had already been inflicted on the deceased, the owner of the restaurant, the accused Alfonso Esma, pushed Montañer, Jr. out of the restaurant and Agapito Montañer, Jr. fell on his back to the ground."

The first and third assignments of error made in appellants' brief deal exclusively with the alleged insufficiency of the prosecution evidence and of the evidence as a whole to support the above findings and the judgment of conviction. After a careful consideration of the evidence of record We find no justification at all to reverse nor even modify both or either.

Another question raised by appellants in their brief is that Santos Ramos, if at all, should have been convicted of homicide only. This is also untenable in the light of the evidence clearly showing that he stabbed Agapito Montaner, Jr. from behind and while the latter was, to a certain degree, helpless because Lucilo Esma had his right arm over his left shoulder. Thus it is clear that he was attacked treacherously.

WHEREFORE, the appealed decision being in accordance with law and the evidence, the same is hereby affirmed, with costs, except as to the indemnity which hereby increased to P12, 000.00.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

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