

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LORENZO PORTUGUEZA @ ENSOY, ET AL., DEFENDANTS, LORENZO
PORTUGUEZA @ ENSOY, DEFENDANT-APPELLANT.**

G.R. No. L-22604. July 31, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

Indicted for murder in the Court of First Instance of Samar, with an allegation of conspiracy, evident pre-meditation, treachery and abuse of superior strength in the information, accused Florentino Gapole alias Floren, duly assisted by counsel, pleaded guilty to the charge. On October 31, 1963, a decision was rendered finding him guilty of the crime charged and sentencing him to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor, as minimum, to twelve (12) years and one (1) day of reclusion temporal, as maximum, to indemnify the heirs of the deceased in the amount of P3,000.00, and to pay one-half of the costs. His co-accused, Lorenzo Portugueza alias Ensoy, entered a plea of not guilty and trial proceeded against him. In a decision rendered on December 27, 1963, he was found guilty of murder, with the aggravating circumstance of having taken advantage of the defendants' superiority in number and of the fact that the victim was 70 years of age while accused was only 20 years old, and sentenced to suffer the penalty of reclusion perpetua, to indemnify jointly and severally with his co-defendant the heirs of the victim, Francisco Balicuas, in the amount of P5,000.00, and to pay the costs. One-half of the preventive imprisonment undergone by him was ordered credited in his favor. Lorenzo Portugueza appealed. In view of the gravity of the penalty imposed upon him, his appeal was elevated directly to this Court.

The evidence of the prosecution tends to show that at about 4:00 o'clock in the afternoon of July 27, 1963, while Ana Taringting was taking in fresh air, after a day's work at the farm, at the yard of her house on the slope of a hill in barrio Cabatuan, Pala-pag, Samar, she saw the victim, Francisco Balicuas, on the trail at the foot of the hill being hacked with bolos by the two accused. Florentino Gapole delivered the first blow, hitting the deceased on the left arm. Appellant Lorenzo Portugueza followed with a blow on the left flank just below the armpit. We quote from the testimony of prosecution witness, Ana Taringting: "Q.- Since you said that Lorenzo Portugueza also hacked Francisco Balicuas, will you please tell the court where Francisco was hit by Lorenzo Portugueza?" "A.- Witness indicating the left side of her body below the armpit." (t.s.n. p. 8, Delim.)

Forthwith, Ana Taringting ran to the barrio pro-per where the daughters of the deceased lived, and having reported the incident, the latter went back to the scene of the crime. The deceased was bathed in blood, lying down in a twisted position on the trail with his face upwards. His left arm was almost severed from his body. He told his daughters that his assailants were Florentino Gapole and Lorenzo Portugueza.

At the G. B. Tan Memorial Hospital where the deceased was brought, Dr. Leocadio C. Mendoza who ministered to him, found on his person the following injuries:

"1. Left arm almost amputated completely at its upper 3rd. Note: Only a portion of the skin and subcutaneous

tissue were left to hold the left forearm.

" 2. One incised wound 1-1/2 inch in length diagonally disposed at left flank, mid axillary line at the level of 7-8 rib. Very superficial involving only the subcutaneous tissue.

"3. One incised wound 1-1/4 inch in length diagonally disposed at dorsal surface of right hand." (Exhibit A)

The first wound was fatal, the second and the third were superficial and would heal in ten days barring complications. Such was the opinion of the doctor. In the early morning of the next day, the victim died. Before his death, he gave a written statement to the barrio lieutenant of Cabatuan naming the two accused as his assailants. (Exhibits C, C-1)

Appellant testified on his behalf that on the after-noon in question, he was on his way home to their farm at the upstream portion of barrio Cabatuan, having gone to visit his uncle at the barrio proper that morning. On the trail leading to their farm, Florentino Gapole, whom he encountered there, and he met the deceased. Gapole suddenly stabbed the victim, the blow landing on the left arm. The deceased failed to retaliate, although he was about to draw his bolo, because Gapole delivered two more blows in succession, hitting the deceased on the left side of his body and at the back of his hand.

The first question to be resolved is whether or not appellant participated in the commission of the crime. He claims that his version should be accepted as the more credible because it was not shown that he had any motive to take part in the crime; that the only reason for his implication was because he refused to testify as a prosecution witness as requested by the daughters of the deceased.

Motive is relevant where the identity of the person accused of having committed a crime is in dispute, where there are no eyewitnesses, and where suspicion is likely to fall upon a number of persons. Appellant in the case at bar, was duly identified by an eyewitness to the crime, Ana Taringting, and his participation is shown not only by the testimony of said witness. The ante-mortem statement of the deceased, repeating a verbal statement given to his daughters, also names the appellant as one of those who assaulted him. Hence, motive to commit the crime is not material.

The reason for appellant's alleged implication is likewise of little significance in the determination of his guilt or innocence, for the reason that it was not the daughters of the deceased but Ana Taringting who pointed to him as an assailant. The appellant failed to show in the court below, and he does not argue at this instance, that Ana Taringting testified against him out of evil motive. It is significant that appellant declared that he was at the scene at the time the crime was being committed, and that he saw Ana Taringting atop the hill, which imply that the prosecution witness told the truth when she testified that she saw the appellant. No reason was shown why the witness of the prosecution would foist a crime on appellant if he did not really commit it. Neither does the record indicate any justification for rejecting the finding of the trial court - that the testimony of Ana Taringting is credible. Upon the evidence, we hold that the appellant's bare denial is not enough to overcome the positive evidence adduced by the prosecution showing beyond peradventure of doubt his participation in the commission of the crime.

Appellant contends in the alternative, however, that the allegation of conspiracy was not proved satisfactorily. This contention, the last of the questions for resolution, deserves serious consideration. Aside from the fact that appellant and his co-accused are brothers-in-law, their wives being sisters, no other evidence was presented by the prosecution to show conspiracy, which, according to the settled rule, must be proved as clearly and as convincingly as the commission of the crime itself. Of course, the existence of a previous agreement to commit the crime need not be proved to show conspiracy, as it is sufficient that at the time of the commission of the crime, the accused had the same purpose and were united in its execution, or that they acted in concert pursuant to

the same objective. However, none of the foregoing facts and circumstances indicative of conspiracy was shown. The finding of the trial court as to how the aggression was committed is as follows: "that she (Ana Taringting) saw the victim Francisco Balicuas who was hacked by the accused Floren and Ensoy meaning Florentino Gapole alias Floren and Lorenzo Portueza alias Ensoy, respectively."

Such a finding does not prove conspiracy. The evidence has conclusively shown that while the appellant was on the trail leading to his farm, Florentino Gapole, whom he encountered there, and he met the deceased, and when Gapole got near the deceased, the former hacked with his bolo the latter, landing the bolo blow at the left arm of the victim. The meeting of the accused was purely casual, and equally casual was the meeting with the victim.

Although the appellants are relatives and had acted with some degree of simultaneity in attacking their victim, nevertheless, this fact alone does not prove conspiracy. (People vs. Caayao, 48 Off. Gaz. 637.) On the contrary, from the nature and gravity of the wounds inflicted on the deceased, it can be said that the appellant and the other defendant did not act pursuant to the same objective. Florentino Gapole's purpose was to kill the deceased, as shown by the fact that he inflicted a mortal wound which almost severed the left arm. The injury inflicted by the appellant, merely scratching the subcutaneous tissue, does not indicate a purpose to kill the victim. It is not enough that appellant had participated in the assault made by his co-defendant in order to consider him a co-principal in the crime charged. He must have also made the criminal resolution of his co-accused his own. As this was not proven, appellant's liability is separate and individual - that for less serious physical injuries - considering that the injury inflicted by him would incapacitate the deceased, had he survived, or would have required medical attendance, for only ten days.

WHEREFORE, the decision appealed from is hereby set aside and another one is entered, holding appellant Lorenzo Portueza guilty beyond reasonable doubt of the crime of less serious physical injuries, and sentencing him to suffer an imprisonment of six(6) months of arresto mayor. The preventive imprisonment undergone by him is ordered credited in his favor. It appearing from the records of the case (original record of the CFI and the rollo of this Court) that the appellant has been detained since August 26, 1963, by virtue of a warrant of arrest issued by the court for the offense he is charged with in this case, and taking into account the duration of the penalty hereby imposed on said appellant with the benefit of the application of the preventive imprisonment he has undergone, showing that said appellant has been detained for a period of time, much longer than the duration of the penalty imposed, it is hereby ordered that said appellant be immediately released from incarceration. Let a copy of this decision be served on the Director of the Bureau of Prisons, Muntinlupa. Proportionate costs against the appellant.

Reyes, JBL, Acting C.J., Makalintal, Bengzon, JP, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J., Dizon, J., on official leave of absence.

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