

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO LINCUNA AND BORNEO LINCUNA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1914. April 29, 1950

Ponente: REYES, J.

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REYES, J.:

At about 10 o'clock in the evening of April 9, 1947, while Sgt. Luis Salino and another policeman were on patrol in the poblacion of Wainit, Surigao, they came upon Borneo Lincuna and a companion who were serenading in front of the house of Felina Chua, and finding that the two did not have a license for that purpose as required by an ordinance of that municipality, the sergeant ordered them to go home. Borneo tried to remonstrate and begged to be allowed to continue singing. But as his request was denied, he started to leave, uttering derogatory remarks offensive to the peace officers. Provoked, the sergeant grabbed him by the arms and shook him and then turned him over to his policeman companion and had him locked up in jail until the following morning.

At about 7:30 o'clock the following evening, while the sergeant and another policeman named Honorato Moselina were passing in front of the house of Borneo's uncle, Agustin Lincuna, where the latter's brother, Rosario Lincuna, also lived, they were invited to come up, and once they were on the porch Agustin began to reproach the sergeant for what he had done to Borneo the night before. The sergeant tried to explain that Borneo was violating a municipal ordinance, but Agustin, seconded by Rosario, countered that if that was the way the policemen were going to enforce the law he would have no respect for the law. Sensing trouble, for the Lincuna brothers were already getting mad, Moselina invited the sergeant to leave and took hold of his arm to lead him down the stairs. But Rosario intervened and struck Moselina with a bolo, hitting him in the right arm, and then with the same bolo struck the sergeant in the chest and on the left side of the body while he was being held by the shoulder by Agustin, with the result that the latter was also wounded in the arm. While the sergeant was thus being attacked by Rosario, Borneo came but of the sala and stabbed him from behind with a trench knife, hitting him on the right side of the body and causing him to fall down the stairs with Moselina. On hitting the ground, the sergeant and Moselina got up and ran away in different directions, but the sergeant was pursued and stabbed in the back by Borneo's father, Pedro Lincima, and fell and died on the roadside before he could run much farther. There he was found by Pedro Mondano, who came down his house when he heard a wounded man's call for help, Mondano also saw Pedro Lincuna standing there, bolo in hand, about three brazas from the deceased sergeant, as did also Ambrosio Maylon, who from the house of Agustin had gone home hurriedly after witnessing the first stages of the assault.

Rosario Lincuna gave himself up to the authorities, while Agustin Lincuna, Pedro Lincuna, and Borneo Lincuna had to be rounded up and put under arrest.. Submitted to questioning, the four, except Agustin, gave each a statement admitting participation in the perpetration of the crime. The statements -were reduced to writing and signed and later ratified under oath before the justice of the peace.

Prosecuted for murder for the killing of the deceased and for frustrated murder for the wounding of Honorato Moselina, Rosario Lincuna, Pedro Lincuna, and Borneo Lincuna entered a plea of guilty in both cases in the preliminary investigation held by the justice of the peace, but pleaded not guilty in the Court of First instance. Agustin Lincuna, who was also accused in both cases, refused to make a confession and maintained his innocence throughout, declaring that he was wounded in the arm by the bolo of his brother when he put himself between the latter and the deceased in order to stop the fight.

At the trial in the Court of First Instance, Rosario Lincuna assumed sole responsibility for the two crimes charged, while Pedro Lincuna and Borneo Lincuna repudiated their confession and tried to establish an alibi. They claimed that on the night of the crime they were in Surigao (the capital of the province) to look for a lawyer to help them file a complaint against the deceased for the maltreatment of Borneo the preceding night, and that they were not able to leave Surigao until the following day when they were arrested.

After trial, the lower court, in the case for frustrated murder, acquitted Agustin Lincuna, Pedro Lincuna, and Borneo Lincuna and convicted Rosario Lincuna of lesiones graves only; while in the case for murder, it acquitted Agustin Lincuna but convicted Rosario Lincuna of homicide and Pedro Lincuna and Borneo Lincuna of murder. Only the latter two have appealed.

These appellants were convicted not only on the strength of their own confession, which was ratified by them under oath before the justice of the peace and later honored by their own plea of guilty when they were arraigned in the preliminary investigation, but also upon the word of ocular witnesses whose testimony coincides with or corroborates the salient portions of said confession. It is claimed that the confession was wrung from appellants through force and torture. But this is denied by the chief of police to whom the confession was made and who had it reduced to writing in the form of questions and answers, and any doubt as to the voluntariness of the confession is dispelled by the fact that when it was read to the appellants by the justice of the peace the same was ratified by them in the presence of many people as true and willingly made, as well as by their plea of guilty at the preliminary investigation.

Counsel de oficio tries to discredit the testimony of the government witnesses by pointing out some alleged contradictions and inconsistencies in their testimony. But as the Solicitor General points out, such contradictions and inconsistencies are more apparent than real and refer to minor and unimportant details which do not detract from their credibility.

The alibi set up by appellants is belied by their confession as well as by the testimony of persons who saw them at the scene of the crime. And without necessarily denying that they really made a trip to Surigao to contact a lawyer, there is also the possibility that the trip was made, not before, but after the crime, when they had real need for legal advice as to what to do before or after their arrest.

It is therefore our conclusion that the appellants Pedro Lincuna and Borneo Lincuna did take part in the crime as admitted by them in their respective confessions and as testified to by the witnesses for the prosecution. We, however, find that they can not be held guilty of murder. The deceased received three penetrating or stab wounds—one in the chest, one on the right side, and one in the back—aside from a small wound on the left arm. It is true that the evidence points to Pedro Lincuna as the one who inflicted the wound in the back and to Borneo Lincuna as the author of the wound on the right side, and that both of those wounds, like that inflicted by Rosario Lincuna in the chest of the deceased, were fatal according to the doctor who made the post mortem examination. Both appellants may thus be held responsible for the death of the deceased. The evidence, however, does not clearly show treachery, so that this circumstance may not be taken into account in order to qualify the crime as murder as the trial court erroneously did. In our opinion the crime committed by the appellants is homicide

without any aggravating or mitigating circumstance.

Wherefore, the judgment below is modified and the appellants hereby declared guilty of homicide and sentenced to an indeterminate penalty of from 3 years and 1 day of prision mayor to 17 years and 6 months of reclusion temporal, to the indemnity adjudged below and to proportionate costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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