

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSCORO CASTROVERDE, DEFENDANT-APPELLANT.*G.R. No. L-8733. September 30, 1957*

Ponente: PARAS, C.J.

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"On April 17, 1954, the appellant was charged as follows:

"That on or about the 14th day of April, 1954, in the barrio of Tabucan, Municipality of Calinog, Province of Iloilo, Philippines and within, the jurisdiction, of this Honorable Court, the herein accused with the use of a piece of bamboo (Bugsok) and with evident premeditation did then and there, wilfully, unlawfully and criminally struck the person of Ricaredo Loquing, hitting the latter on the occipital region of the head causing contusion with laceration which contusion and laceration caused the instantaneous death of said Ricaredo Loquing shortly thereafter."

After trial, the Court of First Instance of Iloilo convicted the appellant of the crime of murder and sentenced him to undergo life imprisonment, with legal accessories, to pay P4,000.00 to the heirs of the deceased Ricaredo Loquing, without subsidiary imprisonment in case of insolvency, and to pay the costs.

From the appealed decision it appears that at about seven o'clock in the evening of April 14, 1954, Porfirio Penalver and Ricaredo Loquing who had been drinking tuba in another place, went to the house of Crispin Plenago in barrio Tabucan, Calinog, Iloilo, to drink some more. A discussion ensued between Penalver and the appellant who was also in the place. The discussion — in which Loquing participated — developed into a physical encounter between Penalver and the appellant. The house owner, Crispin Plenago, intervened and told the protagonists to stop and out. The appellant went down first followed shortly by Penalver and Loquing. No sooner had these two gone out of the house than the appellant appeared and struck Loquing from behind, causing the latter to fall on the ground face downward. Scared, Penalver ran to the bank of the creek to hide, but unfortunately fell down and lost consciousness for sometime. When he regained his senses, he proceeded home to notify Loquing's wife, Josefina Valencia, accordingly. Josefina, however, had already gone to the place of the incident, after having been attracted by the commotion, preceded by Dioscoro Caballero whom she had sent ahead to investigate whether her husband was involved. As they walked along, Caballero's attention was caught by something and, upon inquiry from Josefina, he said that he saw a man being brought down the creek by three men. Thereupon, Josefina approached and shouted "who is that?" Then two men left, taking an opposite direction, while the third man momentarily stood by; but even the latter — whom Josefina identified as the appellant — left and did not bother to answer. Upon reaching the creek, Josefina found her husband with a wound in the occipital region of his head. She washed the injury and gave him some water from the creek. Loquing then told Josefina that his assailant was the appellant. She called and asked Caballero to look for a hammock as she intended to bring Loquing to town; but they had not gone far when he died. The body was brought to the house of an elder sister of Josefina. Meanwhile, after Penalver had failed to find Josefina in her house, he returned to the place of Plenago. On the way he met Josefina who asked him to notify the town authorities. Accordingly, he brought the

investigating police officers on the following day, April 17, 1954.

The appellant contends that he has established nor his defense the following facts: When Loquing and Penalver went to the house of Plenago, the appellant was there playing "paris-paris" with the children. Amused, Penalver wanted to join the game and to borrow appellant's five centavos. Penalver was irritated by appellant's refusal and thereupon provoked a quarrel. In the meanwhile Loquing was in the kitchen drinking tuba. Plenago stopped the quarrel and sent them all away. Penalver immediately challenged the appellant to a fight, the former holding a piece of wood. Noticing the aggressive moods of the two, the appellant went to his house (which was very near that of Plenago) and, taking an old bolo from the wall, brandished it before Penalver and Loquing. As these two retreated towards the bank of the cliff, appellants sister, Carmelina Castroverde, and their cousin Ernesto Gastroverde, tried to stop the appellant from chasing Penalver and Loquing. The latter two, however, fell from the cliff to the bottom of the creek, a height of from 11-1/2 to 13 brazas. While the fall proved fatal to Loquing, Penalver (who was on top of Loquing) only hurt his thumb.

On the other hand, the prosecution points out that Penalver and Josefina positively testified having seen the appellant and two men dumping the body of Loquing on the bed of the creek; that although Dioscoro Caballero who, with Josefina, saw Loquing being brought down, was not presented as witness, the prosecution had nevertheless explained to the court that he would merely corroborate the testimony of Josefina Valencia; that there is nothing in the nature and location of the wound that would rule out the possibility that it was inflicted by a piece of wood, as asserted by the star witness for the prosecution; that the fact that the policeman did not see blood in the vicinity of Plenago's house, does not disprove the theory that the appellant hit Loquing with a piece of wood, because it is likely that the appellant flight have washed out all signs of blood drops in said vicinity considering that the policeman arrived at the scene of the crime one day after its commission; that the side of the bank of the creek has a slant sufficient to soften the fall from the edge to the bottom of the creek, so that if Loquing head really fallen, he would have slid over the slopping side the bank and sustained only slight scratches on account of the rough surface of said edge; that if there had really been a fall, there would at least have been traces thereof, and the investigating officer denied having seen any.

A careful perusal of the evidence presented in the case at bar leads this Court to suspect that the witnesses for both sides drew liberally from their imaginations. Except in the testimonies of Antonio Laloma, sanitary inspector of Calinog, and Ernesto Carbolico, policeman, who investigated the scene of the crime, both prosecution witnesses, glaring improbabilities, inconsistencies and contradictions are conspicuous in the testimony of the other witnesses.

Prosecution witnesses Penalver and Josefina Valencia thus statements at war with each other and with the other evidence for the Government. As pointed out in the appellants brief, whereas in his affidavit drawn on April 17, 1954, Penalver said that he saw the appellant running with a bamboo pole towards him and Loquing, finally striking the latter, he testified during the trial that the appellant came running from behind, evidently to justify the presence of a wound struck from the back. On the other hand, while Josefina testified about a dying declaration having been made by the deceased, she never mentioned the same in her affidavit executed only a few days after the incident, the prosecution should have called to the witness stand Dioscoro Caballero, supposed companion of Josefina, to shed light on and clarify doubts arising from the inconsistencies in its evidence.

We are inclined to sustain appellant's contention that the nature, description and position of the fatal wound, negative appellee's theory. The testimony of Antonio Laloma, sanitary inspector, as to the description of the wound is clear, namely, that it was open, bow-like, curved, two inches long, 1/4 inch wide and 1/3 inch deep with contusions around as big as half of a "sunkist orange" and with a diameter of about two inches. This description and the fact that, as testified to by the investigating policeman, there was much blood on the stones in one creek,

some of which had the size of a coconut shell, and that, on the other hand, no traces of blood were found from the house of Penalver to the place where the body of Loquing was found (a distance of about forty six meters), all tend to warrant the conclusion that the wound might have been caused by the fall of Loquing on the creek. No evidence was presented to show that the appellant pushed Loquing to the bank of the cliff; and the evidence for the prosecution even discards the theory that Loquing might have been forced to retreat to the cliff to avoid appellant's advance. At any rate, the guilt of the appellant has, in the opinion of the Court, not been established beyond a reasonable doubt.

Wherefore, the appealed decision is reversed and appellant acquitted with costs de officio. So ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Endencia,. and Felix, JJ., concur.

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