

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GERONIMO SOLIMAN Y BUENAVENTOKA ALIAS EMONG AND
SOFRONIO PALIN X PAZ ALIAS POLONIO, DEFENDANTS AND
APPELLANTS.**

G. R. No. L-9723. June 28, 1957

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Appellants were charged with murder before the Court of First Instance of Manila and were sentenced each to suffer the extreme penalty of death, to indemnify the heirs of the deceased in the sum of P6,000, and to pay the costs. By operation of law, the case was brought before this Court for review.

In the morning of April 29, 1955, at about 2 o'clock, while Ernesto Basa was sleeping in a pushcart placed along the sidewalk of Sto. Cristo Street near the southeast corner of that street and Azcarraga, Manila, and Ernesto Balaktaw was also sleeping on a box situated near the pushcart, with their heads opposite each other, Balaktaw was awakened when someone kicked his hand. Upon awakening, Balaktaw saw Sofronio Palin proceed toward the head of Ernesto Basa and hold the latter by the shoulder at which moment his companion Geronimo, Soliman approached Ernesto Basa and stabbed him many times with a balisong. Thereafter, the assailants ran away.

Balaktaw took Basa to a calesa and proceeded to a police outpost at the corner of Azcarraga and Elcano Streets and reported the incident to Patrolman Tolentino. The patrolman boarded the calesa and directed the driver to proceed to Mary Johnston Hospital. From there, the three transferred to an ambulance and proceeded to the North General Hospital where Basa was treated, but he expired in the morning of the same day. At 4 o'clock in the afternoon, Dr. Mariano Lara, Chief Medical Examiner of the Manila Police Department, made an autopsy of the deceased and found that the cause of death is !as follows: "Profuse exsanguinating hemorrhage (only 850 cc. recovered) and shock due to multiple (7) stab wounds, two (2) being fatal, piercing the pyloric portion of the stomach, duodenum, jejunum, hepatic flexure of colon and right kidney."

Appellant Soliman testified that prior to the present incident, or on April 21, 1955, the deceased tried to borrow his pushcart and, as he was not able to lend it to him, the deceased boxed him and as a consequence, he suffered physical injuries; that that incident was settled amicably on the same day by the companions of the deceased ; that on another occasion the deceased beat up Soliman with an iron pipe and the latter had to undergo medical treatment; that in the night of April 29, 1955, after he had eaten in Folgueras St., he proceeded to a truck of the United Bus Line of which he was a watchman; that while he was passing Sto. Cristo Street, the deceased called him and asked for a drink; that he told the deceased he had no money, but the deceased forced him to give him money and even boxed him; that because the deceased had three companions, he pulled out his knife and upon seeing this, the three companions ran away; that he and the deceased fought in the course of which he stabbed him; that while they were fighting, one Sofronio Palin came and separated them; and that when they were separated Palin advised him to surrender to the police, so he went home and asked his brothers to accompany him

to the Meisic Station.

Appellant Palin merely corroborated the testimony of his co-accused by declaring that while he was eating at a restaurant at the corner of Sto. Cristo and Azcarraga Streets in the morning in question, he saw Soliman and the deceased grappling with each other; that he tried to separate them and succeeded in doing so; that after the two were separated, he asked Soliman to surrender and the latter heeded his advice. The two appellants are charged with a very serious crime as in fact they were sentenced to the extreme penalty of death. It is therefore important that we scrutinize carefully the evidence on which the conviction is made to depend. In this case, we notice that the conviction is mainly predicated on the testimony of one eyewitness supported by some circumstantial evidence. This witness is Ernesto Balaktaw. Whether this witness has told the truth or not in narrating the aggression which led to the death of the victim, much depends upon the degree of his credibility. As usual, this is the function of the trial court. Because of its opportunity to observe the conduct, demeanor and manner of testifying of the witness, the trial court is in a better position to pass upon and gauge their credibility.

In this respect, we notice that the trial court has been most careful in taking notice not only of the conduct of the witness during the trial, but of other extraneous matters that may help in reaching a correct conclusion. The Court found the testimony of Balaktaw worthy of credence not only because it is in part corroborated by the testimony of appellant Soliman himself who admitted having inflicted the wounds that caused the death of the victim, (although by way of self-defense) but also because it is supported by the nature of the wounds as found by Dr. Lara in his autopsy. Thus, in brushing aside the defense of appellant Soliman because the same runs counter to the nature and character of the wounds inflicted on the deceased, the court said:

"The contention of the defense that the wounds were inflicted while the deceased Ernesto 'Rasa was struggling or grappling with Geronimo is belied by the testimony of the medical examiner and by the nature and character of the wounds on the body of the deceased, as may be seen in Exhibits D, D-1, D-2 and D-3. An examination of the pictures of the deceased as appears in Exhibits D-1 and D-2, especially the wound that appears a little above the duodenum, shows clearly that the wounds were inflicted when the deceased was in a lying position as testified to by the witness for the prosecution, Ernesto Balaklaw. The wounds that may be seen under the left armpit of the deceased could not have been possibly inflicted if the deceased was in a standing position. This wound under the left armpit is the result of the stab when the deceased was in a lying position with his hand extended upwards in self-defense."

On the other hand, the trial court made also careful observation of the conduct and demeanor of the two accused during the trial and in this respect, made the following observation:

"During the course of the hearing, in order to give every iota of evidence its proper probatory value, the Court had paid special attention to the manner in which the accused and he witnesses testified, as well as their general appearance. The accused Soliman is a well-built man, robust and apparently strong. The accused Palm is a little bigger than the other accused and of stranger physique. The deceased, as it appears from the pictures, while he may be slightly higher in stature than the accused Soliman, has a thinner constitution and much smaller than the accused Palm. Judging these two accused from the manner they testified in court, their apparent indifference to all the court proceedings in spite of the seriousness of the crime charged against them, and the manner of testifying in short, curt and confused manner, convinced this Court that they gave little importance to the case against them and to the proceeding in court."

The defense, however, claims that the testimony of Ernesto Balaktaw should not be given credit because it is self-contradictory and inconsistent with the testimony of Pat. Tolentino and Det. Senen. But, aside from the fact that the alleged contradictions refer to unimportant details or circumstances, they can be explained and reconciled. This was done by the Solicitor General in his brief. After going over the explanation and reconciliation made by this official, we are satisfied that the alleged contradictions or inconsistencies cannot destroy the credibility of the

witness.

An important flaw pointed out by the defense refers to the manner the witness identified the two defendants. It is claimed that when this witness was made to identify accused Soliman he pointed to accused Palin and when he was asked to identify the latter, he pointed to the former. And he also committed a mistake in designating the nick names of the two accused.

While it is true that at the start of his testimony this witness was confused in identifying the accused by their names, however, when he was asked by the court immediately thereafter to put his hands on each of them, he was able to identify them correctly. The court then made the following observation:

"Witness identified both accused- At the time when he pointed to the accused he apparently made a mistake may be due to the fact that the accused were both seated together and when he pointed to the accused he might have been out of his sense of direction." (pp. 2-3, t.s.n., Lloren.)

The defense also claims that the trial court erred in not granting its motion for new trial based on newly discovered evidence which consists of the criminal record of prosecution witness Ernesto Balaktaw. This claim is untenable. In the first place, the criminal record of Balaktaw cannot be considered as newly discovered evidence because the same was available to the defense much prior to the trial of this case. It appears that said record can be obtained from the Criminal Identification Section of the Manila Police Department for, with the exception of one conviction rendered on September 1, 1955, all the other convictions and charges date as far back as January 19, 1955, months prior to the trial of the instant case. In the second place, the fact that a person has been previously convicted of a crime does not necessarily disqualify him as a witness for he may still prove to be a truthful one.

The claim that the trial court also erred in not allowing the defense to prove that the deceased had a violent, quarrelsome or provocative character cannot also deserve consideration. While good or bad moral character may be availed of as an aid to determine the probability or improbability of the commission of an offense (Section 15, Rule 123), such is not necessary in a crime of murder where the killing is committed through treachery or premeditation. The proof of such character may only be allowed in homicide cases to show "that it has produced a reasonable belief of imminent danger in the mind of the accused and a justifiable conviction that a prompt defensive action was necessary." (Moran, Comments on the Rules of Court, 1952 ed., Vol. 3, p. 126. This rule does not apply to cases of murder.

While the Court is of the opinion that the evidence is sufficient to convict both appellants of the crime charged, some members however expressed doubt as to the propriety of imposing the extreme penalty and so, for lack of the necessary number of votes, the Court has resolved to impose upon them the penalty of reclusion perpetua.

Wherefore, the decision appealed from is modified in the sense of imposing upon appellants merely the penalty of reclusion perpetua, affirming the decisions in all other respects, with costs.

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

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