

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AGUEDO SARDOMA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-673. November 28, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal from the decision of the Court of First Instance of Cebu convicting the accused-appellants of the complex crime of robbery with homicide. The dispositive part of said decision is as follows:

"For the foregoing considerations, Aguedo Sardoma, Honorato Gesoro, Daniel Gesoro and Bonifacio Samarana are found guilty, beyond reasonable doubt, of the crime charged against them in the information of the Fiscal, and, therefore, each and everyone of them, except Daniel Gesoro, is sentenced to reclusion perpetua and to pay jointly and severally the heirs of the deceased an indemnity of P2,000 to return to their owners the money they carried away amounting to P3,071 and to pay each and everyone of the accused one-fourth of the costs.

"Daniel Gesoro is under 18 years, he having been born on July 21, 1929 and, in accordance with article 80 of the Penal Code, these proceedings are hereby ordered suspended with respect to him until further order of this Court. In the meantime, he is placed under the custody of the Director of Public Welfare, Manila, to be confined in any establishment under the control of said Director."

From the evidence of the prosecution, principally from the testimony of Paula Embalsado and the dying declaration of the murdered man, Manuel Lanticse, it appears that in the evening of October 12, 1945, in barrio Bug-ot, Argao, Cebu, while Manuel Lanticse and his common-law wife, Paula Embalsado, were preparing their supper, three gunshots were fired through a hole in the wall of their kitchen, hitting Manuel Lanticse, and immediately thereafter Aguedo Sardoma and Bonifacio Samarana broke through an opening on top of the kitchen wall while Honorato Gesoro and Daniel Gesoro climbed the stairs. Aguedo Sardoma pointed his pistol at Manuel Lanticse who was lying on the floor seriously wounded, and asked his companions, "Do I have to finish him?" Lanticse begged to be spared and offered the money (P71) which he had tucked beneath his belt. Paula Embalsado, who became nervous upon hearing the gunshots and seeing her husband wounded, ran to the living room and shouted for help. Honorato Gesoro and Daniel Gesoro found her there and at the point of a pistol, she was told to disclose where she kept the money. She did reveal the place, and while Honorato Gesoro got the money (P3,000), Daniel Gesoro stood guard over her. After they had accomplished their purpose appellants left the house.

Shortly thereafter, Fortunato Lanticse, Paula's brother-in-law, who had heard the gunshots and the cries of Paula for help, arrived at the house with corporal Armando Alfoja of the MPC detachment and several enlisted men. First aid was immediately given to Manuel Lanticse who was then lying on the floor in a dying condition. Corporal Alfoja asked him how he was feeling, and the wounded man said: "I would not live any more." He was asked further as to the identity of his assailants, and he made statements in Visayan dialect which were written in English by Corporal Alfoja, and they appear now in Exhibit E which is as follows: "I was there at the side of the

stove when they shot me. I wanted to run when I heard the shot, but then I was already paralyzed. The shooting continued even though I was already lying down on the floor. Then Aguedo and Bonifacio entered through the top opening of the kitchen wall. Aguedo, on approaching me, said, 'Do I have to finish him?', with his weapon pointed towards me. He even took P71 from my waist" Fortunato Lanticse who was present when this dying declaration was made corroborates the testimony of Corporal Alfoja on such declaration.

Manuel Lanticse was then brought to the hospital where he died shortly thereafter. Doctor Vidal Montayre, the physician who attended him, testified that Manuel Lanticse was in a dying condition, "with very weak pulse, and very pale" when brought for medical treatment, and that the wounds were the cause of death.

Honorato Gesoro, Bonifacio Samarana and Daniel Gesoro upon being arrested, signed their written statements, Exhibits A, B and C, respectively, admitting their participation in the commission of the crime, which statements were sworn to before Jose L. Kintanar, municipal mayor of Argao. Honorato Gesoro impliedly reiterated his guilt in Exhibit D which was made and sworn to before Celedonio S. Salvador, acting justice of the peace of said municipality. At the trial, however, they disowned those statements and testified having signed them because they had been intimidated and forced.

Each of the herein appellants has interposed an alibi. Daniel Gesoro declared that on the night of October 12, he was with his father in the latter's camarín, and denied having had any participation in, or knowledge of, the crime. He said that he was investigated by the military police on October 13 and then and there refused to acknowledge any participation in the crime; that upon being called a "bandit" and upon being maltreated, he was forced to sign Exhibit C, which was prepared by the chief of police; that when he was brought before the mayor (before whom the statement was sworn to), he informed the mayor that he was forced to sign the statement and that everything said was false.

Honorato Gesoro testified that while fetching breakfast to his brother Daniel in the municipal jail (of Argao) on the morning of October 14, he was arrested by the military police and turned over to the chief of police of Argao; that the said chief of police maltreated him and forced him to sign Exhibit A; that like his brother Daniel, he explained to the municipal mayor (before whom the statement was sworn to), that he was forced to sign the same and that everything contained therein was false. He also testified that on October 12 he was in his father's farm.

Bonifacio Samarana, a protégé of the Gesoro family, also alleged that he was in the same farm with Honorato and Daniel Gesoro and gave an explanation similar to that given by the Gesoro brothers in disowning his confession.

The chief of police, Mauricio de la Peña, the municipal mayor, Jose L. Kintanar, and the acting justice of the peace, Celedonio S. Salvador, belied the allegations of force and intimidation made by the three appellants, Honorato Gesoro, Daniel Gesoro and Bonifacio Samarana. The chief of police testified having prepared Exhibits A, B and C according to the answers voluntarily given by said appellants, and that no force or violence has ever been exerted upon them. Mayor Kintanar, before whom said exhibits were sworn to, testified that the three appellants voluntarily and spontaneously ratified their statements, no claim having been made then by these appellants that they had ever been intimidated or ill-treated. And the justice of the peace assured that he prepared Exhibit D according to the statements made voluntarily by Honorato Gesoro.

The other accused, Aguedo Sardoma, has a different story. He said that on the night of October 12, he was at barrio Manga, Alcantara, about forty kilometers away from Manuel Lanticse's house; that while at Manga, he and Marcos Lanticse stayed in the house of the barrio lieutenant; that he learned of the killing of Manuel Lanticse on October 14, upon his return to Bug-ot; that he was arrested the same day, maltreated and accused of the crime. But this accused was seen by Eulogio Cortes early in the morning of October 12, 1945, in the house of Marcos Lanticse, situated in the same barrio where the crime was committed. Furthermore, he was positively identified by

Paula Embalsado and in the dying declaration of the victim as one of the assailants.

We are convinced, after a careful review of the evidence, that the appellants were rightly convicted of the crime charged. The defenses of alibi interposed by each and every one of them deserves no much consideration. Considering that such defenses may easily be manufactured; that no evil motive or bias or prejudice on the part of the mayor, the chief of police and the justice of the peace of Argao was shown to warrant the deduction that they willfully distorted the truth; and that said defenses cannot prevail over the positive, clear and convincing proofs presented by the prosecution as to the identity of the assailants, we believe and so hold that appellants are guilty of the crime charged.

Conspiracy on the part of appellants is proven. From the acts they have performed in the perpetration of the crime, it may clearly be inferred that they were acting under a concerted scheme to accomplish a common purpose.

Finally, the defense counsel contends that "the trial court erred in pronouncing the accused Daniel Gesoro, a minor under 18 years of age, guilty of the crime charged in the information." The suspension of the proceedings and the commitment of the minor to a charitable institution as required by article 80, as amended, of the Revised Penal Code are necessarily predicated upon a finding that the minor is guilty of the crime charged. What is really suspended is the imposition of the penalty.

The judgment of the lower court being in conformity with law, is hereby affirmed, with costs.

Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, and Tuason, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Padilla concurs in this decision.

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