

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NOEL JOVELLANO Y RICAFRENTE, ET AL., DEFENDANTS, ARTURO SANTOS Y CLEOFAS AND GIL JOVELLANO Y RICAFRENTE, DEFENDANTS AND AP...

G.R. NO. L-32421. March 27, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Appeal by defendants Arturo Santos and Gil Jovellano from the judgment of the Court of First Instance of Rizal, Quezon City, Branch XVIII, in Criminal Case No. Q-9636, the dispositive portion of which reads:

"WHEREFORE, the Court finds the defendants Arturo Santos and Gil Jovellano, guilty beyond reasonable doubt, as principals, of the crime of Murder, and there being no aggravating nor mitigating circumstances, hereby sentences each of them to a penalty of life imprisonment.

The Court further finds the defendant Ramon Luz, as an accomplice, of the crime of murder, and there being no aggravating nor mitigating circumstances, hereby sentences him to a penalty of SIX (6) years of prision correccional, as minimum, to THIRTEEN (13) years of reclusion temporal, as maximum.

The Court further sentences each of the 3 defendants to pay, jointly and severally, to the surviving heirs, namely, Jose Sebanes and Consolacion Meldon, the following damages, namely:

- P12,000.00 for the death of Nolasco Sebanes;
- P600.00 as actual damages; and
- P6,000.00 as moral damages.

Finally, the Court orders the defendants to suffer the accessory penalties of the law, and to pay the costs.

IT IS SO ORDERED."

We affirm with modification the appealed judgment.

The issue is one of credibility of witnesses. It is a rule well established in this jurisdiction that, in the absence of any fact or circumstance of weight and influence which has been overlooked or the significance of which has been misconstrued as to impeach the findings of the trial court, the appellate courts will not interfere with the trial court's findings on the credibility of witnesses, or set aside its judgment, considering that it is in a better position to decide the question, having heard the witnesses themselves during the trial. We find no cogent reason on the basis of the record of the case at bar to depart from this settled rule.

It is not disputed that Nolasco Sebanes was stabbed to death on the evening of July 25, 1969. The nature and character of the wounds sustained by the deceased are stated in the necropsy report of Dr. Jesus Crisostomo, who performed the autopsy on July 26, 1969, thus:

"Abrasion; right flank, 2.5 x 0.3 cms. Stab wounds:

I. Forehead, 3 x 0.5 cms. with tailing 2 cms. long, non-penetrating.

II. Left supraclavicular region, 1.7 x 1 cms. directed downward, medially and posteriorly, hitting the left common carotid artery, with a depth of 8 cms.

III. Left infraclavicular region, 1.3 x 0.2 cms. directed down and medially involving the arch of the aorta and with a depth of 12 cms.

IV. Left mammary region, 1.5 x 0.7 cms. at left 1st rib level; directed down and medially, involving the upper lobe of the left lung and 13 cms. deep.

xxx xxx xxx

"Cause of death — Stab wounds, chest, left upper region."

Appellants, however, insist in this appeal that Noel Jovellano, a minor 14 years of age whose case was earlier dismissed by the trial court on January 19, 1970, was the only person responsible for the fatal stabbing of Nolasco Sebanes but he did so in defense of his brother Gil Jovellano, who was then being clubbed by the deceased. This theory of appellants collides with the testimony of the prosecution witness, Salome Lansangan, to the effect that the deceased was almost simultaneously stabbed mortally by appellants Arturo Santos, Gil Jovellano, and Noel Jovellano, the first with the use of a fork, and the latter two using knives.

I

The facts of the case, as recounted by the prosecution lone eyewitness, Salome Lansangan, are as follows: On July 25, 1969, at 7:00 o'clock in the evening, while she was in her "karinderia" at the Kamuning Market, Quezon City, Gil Jovellano, Noel Jovellano, Roger Luz, Ramon Luz and Fernando Prado arrived. While they were eating in her "karinderia", Nolasco Sebanes came in and began teasing them by telling them they should pay for what they ate. Upon hearing this joking remark, Arturo Santos got angry immediately and left his food. He returned shortly thereafter and put P1.00 on the table saying: "Here, Nolasco, eat this. I do not like to eat anymore." Nolasco replied: "Why should I eat that, that is yours." Gil Jovellano stood up and threw a plate at Nolasco Sebanes. Thereupon, Gil Jovellano and Noel Jovellano opened up their knives and pursued Nolasco Sebanes, who ran to an open space outside of the market. At that place about a meter from the "karinderia," she saw Gil Jovellano, Noel Jovellano, Ramos Luz, Arturo Santos and Roger Luz overtake Nolasco, and there they attacked him almost simultaneously, by stabbing and clubbing him, Gil Jovellano and Noel Jovellano using knives, and Arturo Santos employing a fork in stabbing the victim, while Ramon Luz hit him with a piece of wood. Although injured, Nolasco was still able to run until he collapsed 20 meters away from the "karinderia."

Appellants assail the findings of the court a quo, which relied on the testimony of said witness in spite of (1) alleged inconsistency between her affidavit (Exhibit "1") and her testimony in court, in that while she failed to recount the details of the stabbing incident, yet she was able to give a full account thereof in open court; and (2) the improbability that the deceased would only have sustained four stab wounds, if it were true that he was attacked by four assailants. On the paucity of details of the affidavit, it must be noted that the extrajudicial statement of this witness (Exhibit "1") is brief, and no effort at clarification or elaboration seems to have been made by the investigator. It appears to have been hurriedly prepared and, therefore, it cannot be expected to contain all the details of the incident as testified to by her in court. As We said in *People vs. Mori (Bilaan)* and *Oto (Bilaan)*,^[1] an affidavit, "being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestion and sometimes from want of suggestion and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the first correct suggestion of

his memory and for his accurate recollection of the subject."[2]

The presence of four stab wounds on the body of the deceased does not necessarily render as improbable Salome Lansangan's testimony that the victim was attacked by four assailants. It must be noted that after he was stabbed by Arturo Santos, Gil Jovellano and Noel Jovellano, and clubbed by Ramon Luz, the deceased was able to run away until he fell mortally wounded 20 meters away. Under such circumstances it is highly probable that each of the said assailants were able to stab or club him only once. What is more important is the fact that Salome Lansangan, an admittedly disinterested witness, was present at the time and place of the incident, and was able to see the four assailants inflict those injuries on the person of the deceased, because she was near them and the whole area was well illuminated by electric lights.

Upon the other hand, We find appellants' disclaimer of any participation in the stabbing of the deceased unpersuasive. Thus, both appellants testified that while they and their companions, Noel Jovellano and Ramon Luz, were eating in the restaurant of Salome Lansangan inside the Kamuning Market on the evening of July 25, 1969, Nolasco Sebanes arrived and uttered the following remarks: "If you are going to eat, you have to pay. You balasubas;" that Arturo, apparently piqued by the remarks, stood up, took money from his pocket, and placed it on the table, saying, "If we eat, we have something to pay," then sat down; Nolasco then kicked the bench on which the four was sitting, causing appellants and their companions to fall to the ground and thereafter took hold of a piece of wood; and that upon seeing this, the four (Arturo Santos, Gil Jovellano, Ramon Luz, and Noel Jovellano) ran away but Gil slipped and fell, enabling Nolasco to hit him with a club. Noel Jovellano then pleaded with Nolasco not to kill his brother Gil, but his pleas went unheeded. Consequently, Noel opened his automatic knife and stabbed Nolasco, and the latter immediately ran away. Arturo and Noel then assisted Gil Jovellano in getting up and took him away with them.

The version of these two appellants appears, however, to be at variance with the extrajudicial declaration of Arturo Santos (Exhibit "F") before the police authorities on July 27, 1969, where he admitted that he stabbed Nolasco with a fork, as the latter was looking for a piece of wood, prompting Nolasco to run away. As Gil Jovellano was chasing Nolasco, the former slipped and fell to the ground, thus enabling Nolasco to hit him with the club. But at this juncture, Ramon Luz succeeded in hitting Nolasco on the head with a piece of wood, after which Noel Jovellano stabbed Nolasco, and thereafter Nolasco ran away. While it is true that Arturo Santos claimed later that he signed this extrajudicial statement without reading its contents because of his fear of possible maltreatment by the police, such claim was, however, debunked by a police reporter of the Philippines Herald, Orlando Ortiz, who testified that the declarant freely and voluntarily made the declaration in his presence.

As correctly observed by the trial court, the number, nature and location of the wounds sustained by the deceased corroborate the testimony of Salome Lansangan and are incompatible with the theory of the appellants. The presence of an abrasion on the right flank of the victim and four wounds: one non-penetrating wound on his forehead and three stab wounds (a) on his left supraclavicular region, penetrating his body downward, medially and posteriorly, hitting the left carotid artery, with a depth of 8 cms.; (b) on his left infraclavicular region, penetrating the body downwards, medially involving the arch of the aorta and with a length of 12 cms.; and (c) on the left mammary region, also with a downward penetration, injuring the upper lobe of the left lung and 13 cms. deep — clearly shows that the victim was hit on the head with a blunt instrument and stabbed on the body three times by sharp pointed instruments. Certainly, if, as the defense claims, Noel Jovellano stabbed the victim alone, and, after stabbing the victim once, the latter immediately ran away, there would be no rational explanation for the presence of these various wounds on the body of the victim. Consider also that the victim was 27 years of age, much taller and of more robust build than the 14-year old Noel Jovellano, and if it were true that the former was armed with a club, the improbability that the latter could have inflicted those numerous wounds alone, without the

assistance of his companions and escaped unscathed from such an encounter, would appear too evident. Finally, on the claim that there was no showing in the evidence that any of the fatal wounds could have been caused by a fork, suffice it to state that the fact that the said victim was stabbed on the breast by appellant Arturo Santos with a fork was established not only by the testimony of Salome Lansangan but by the extrajudicial admission of said appellant, and, according to Dr. Crisostomo, all of the stab wounds on the breast of the victim were fatal because they involved "very big blood vessels" and the "upper left lobe of the lung".[3]

II

We hold however that in the circumstances of the case, the crime committed by the appellants, Arturo Santos and Gil Jovellano, is homicide and not murder.

As correctly observed by the Solicitor General, the qualifying circumstances of abuse of superior strength and with the aid of armed men, with which the trial court elevated the crime from homicide to murder, were not specifically alleged in the information. We have previously held that if any of these circumstances is not alleged in the information but proven at the trial, the same may only be considered as a generic aggravating circumstance, but not as a qualifying circumstance which affects not only the penalty but the nature of the crime.[4]

In order that the commission of the crime may be deemed aggravated by the circumstance that the attackers took advantage of their superior strength, it must be clearly shown that they cooperated in such a way as to secure advantage from their superiority of strength.[5]

As Cuello-Calon explained, in this circumstance one should expect to find a notable inequality of strength between the aggrieved and the aggressor which presupposes a strong situation highly advantageous for the selected agent, or taken advantage of for the commission of the crime. In order to appreciate the same, it is not only necessary to evaluate the physical conditions of the men involved and the weapons and objects utilized by both the victim and his aggressors, but it is also imperative to analyze the details and circumstances which constitute the total development of the incident. This does not require any previous agreement among the aggressors.[6]

In the case at bar, the existence of the aggravating circumstance of abuse of superior strength is evident from the notorious disparity between the relative strength of the victim and the four armed assailants, and in the manner in which the fatal stab wounds were inflicted, showing that they cooperated in such a way as to secure advantage of their physical superiority.

The penalty imposed by Article 249 of the Revised Penal Code for the crime of homicide is reclusion temporal, with penalty ranging from 12 years and 1 day to 20 years. Considering that there is one aggravating without any mitigating circumstance that attended the commission of said crime by the appellants, the penalty provided by law for the offense is reclusion temporal in its maximum period, or from 17 years, 4 months and 1 day to 20 years. Applying the Indeterminate Sentence Law, as amended, appellants are hereby sentenced to an indeterminate penalty, ranging from EIGHT (8) YEARS and ONE (1) DAY of prision mayor, as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS and ONE (1) DAY of reclusion temporal, as maximum.

Modified as above indicated, the appealed judgment is, accordingly, affirmed in all respects, with costs against the appellants.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] G.R. Nos. L-23511-12, January 31, 1974.

[2] People vs. Alcantara, L-26867, June 30, 1970, 33 SCRA 812.

[3] T.s.n. November 26, 1969, p. 5.

[4] People vs. Bautista, L-23303, May 20, 1969, 28 SCRA 184.

[5] People vs. Trumata, et al., 49 Phil., 192; People vs. Bello, L-18792, February 28, 1964, 10 SCRA 298.

[6] "x x x Esta circunstancia debe estimarse siempre que exista notoria desigualdad de fuerzas entre agredido y agresor, supone una situacion de fuerza notoriamente ventajosa por el agente elegida o aprovechada para la comision del delito. Para apreciarla no solo es necesario valorar las condiciones fisicas de los protagonistas y las armas y objetos esgrimidos por ambos, sino tambien analizar los accidentes y episodios que constituyen el desarrollo total de suceso. No requiere el concierto previo entre los agresores." (I Eugenio Cuello-Calzon, Derecho Penal 548-549, 1960 Ed.)

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