

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOSIMO TULALE, DEFENDANT-APPELLANT.

G.R. No. L-7233. May 18, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Zosimo Tulale was accused of kidnapping with murder before the Court of First Instance of Iloilo where, after trial, he was found guilty and sentenced to reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P5,000,00, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this decision, the accused appealed directly to this Court.

About midnight of May 26, 1951, while Dorotea Gentolea was resting at her house in barrio Canangahan, Guimbal, Iloilo, Zosimo Tulale came calling, "Manang, Manang." Tulale had been known to her long before. She got up and tried to light a lamp but Tulale warned her not to do it. When she went out into the porch Tulale, with a revolver aimed at her, admonished her not to shout if she did not want to die. He asked her if there was a man in the house and Dorotea answered that her father was there. When Pedro Gentolea, the father, came out, Tulale dragged him downstairs and struck him with the barrel of his revolver. Tulale asked Pedro if there was any other man in the house. Pedro answered, "Yes, my son," Tulale ordered him to go up and fetch his son. When Quirico, the son, appeared, Tulale struck him with his revolver and asked him if there were soldiers around. Quirico answered that he did not know, but for this answer he received several fist blows from Tulale. And when Quirico told him that he knew the house of the barrio lieutenant, Tulale told him to take him to his house.

That same evening, Vicente Gayas, who lived in the same house with his brother-in-law Martin Genova, the barrio lieutenant, was awakened by a voice calling him from outside. Melecio Gayas, his father, got up to find out who was calling and when Quirico Gentolea said that it was he, Melecio told him to come up passing through the door of the kitchen. Melecio lighted a lamp and allowed Quirico to enter the house. When Vicente Gayas went to the kitchen to answer a call of nature, he noticed that there were four men down below armed with rifles and revolver. While Melecio and Quirico were talking, Tulale came up, revolver in hand, and asked Melecio if he was the Barrio lieutenant. Before Melecio could answer, Martin Genova appeared. Then Tulale dragged Martin downstairs and slapped him. He asked Martin if he had a carabao and when he answered in the affirmative, Tulale asked Vicente Gayas to get the carabao. Vicente did as bidden accompanied, by two of Tulale's men.

When Vicente returned with the carabao, he saw Martin kneeling down with hands tied behind his back imploring for mercy. But Tulale said, "I will kill you because if we do not kill the barrio lieutenant, the people in the barrio will not obey us." Then he ordered two of his men to take the carabao across the river, and turning to Martin he asked him if he had a cow. When Martin replied in the affirmative, Tulale ordered Vicente to fetch it. When Vicente showed up with the cow, he was told to bring it down the river with the warning that if he would fail to do so he would kill all of them. Vicente obeyed the command but in doing so he passed by his house and asked Quirico Gentolea to go with him. When the two arrived near the river, they found two men at the opposite bank who turned out to be the same men who accompanied Vicente when he got Martin's carabao. Both armed and one

of then got the cow. While they were there waiting, one of the men said, "Last August your small barrio lieutenant when we passed by here he caused the PC soldiers to run after us. And one of the offenses of your barrio lieutenant is that he never give us supply. Furthermore, they are proud of having killed one of the robbers." Soon after, Tulale and his companions arrived, with Martin, the barrio lieutenant, walking ahead. After telling them to stop, Tulale walked two brazas ahead, drew his revolver and fired at Martin. Upon hearing the shot Vicente and Quirico ran away and while running they heard two more shots. When Vicente reached home he informed his parents that Martin had been killed. His father immediately reported the matter to the PC headquarters at Guimbal. The next morning the dead body of Martin Genova was retrieved from the river bank, with a bullet wound below the right eye, another in the left arm and still another in the waist.

While the defense does not dispute that Martin Genova, the barrio lieutenant, was killed in the evening of May 26, 1951, however, all its evidence seems to indicate that the killer is not the appellant but a man with a black mole in the cheek, darker in complexion and heavier in built than the appellant. To this effect is the testimony of Narciso Gayas, an older brother of the prosecution witness, Vicente Gayas, who claimed to have been present from the time the group of armed men called at their house inquiring for his brother-in-law Martin Genova up to the time the latter was taken away and killed somewhere near the river, Narciso declared that his brother Vicente never came near the unknown" man and cannot therefore identify him. He practically gave the same version as Vicente with the only difference that he tried to shield the appellant by pointing to a different man as the guilty party.

Another witness, Angel Tuvillara, tried to corroborate the testimony of Narciso. He declared that in the evening in question a group of six armed men woke him up at his home and forced him to accompany them to the house of Martin Genova. He described the leader of the group as shorter but stouter than the appellant, ob black complexion and with a mole on the right cheek.

After a careful examination of the testimony of the witnesses of both parties, we are more inclined to give credence to the witnesses for the prosecution not only because of their impartiality but because their narration appears more impressive and trustworthy. One of them is Dorotea Gentolea who pointed to appellant as the one who I called her up in her house in the middle, of the night and the one who not only dragged downstairs her father but also beat her brother Quirico with his revolver and asked him to do errands for him against his will. Dorotea was positive in her identification of appellant because she had known him long before the incident.

Another witness is Vicente Gayas who gave a full account of the events which led to the killing of Martin Genova. His testimony is replete with details which he could not have just fabricated merely to fasten the crime on appellant. He had no motive to testify against him which may cast bias on his testimony. Although the defense hinted that he testified against appellant because the latter had once forcibly taken a calf from him, this supposed grudge, even if true, cannot furnish enough motive to impute to him such heinous crime if he has not really committed it.

It is indeed intriguing why Narciso Gayas should testify for the defense contrary to what his younger brother Vicente had testified. But the reason is not difficult to see. By his own admission it appears that appellant was a companion of his friend Angel Tuvillara, a witness for the defense, and the brother of his friend one Faustino. This tie of friendship between him and his co-witness Tuvillara must have impelled him to side with the appellant. In his examination-in chief he declared that he and his father are the ones who reported the killing of Martin Genova to the chief of police but that they did not mention any names since, according to him, they were not able to identify any of the armed men who were responsible for the killing. If this is true, how could the prosecution then identify appellant and point to him as the killer ?

The testimony of Angel Tuvillara cannot also deserve much credit it appearing, by his admission, that he is related

by blood to the appellant. He said that the six armed men forced him to accompany them so that he may guide them to the house of the barrio lieutenant, but when they asked him if he knew the place where his house was, he answered that he did not. If this is true, then there is no use taking him along. He would seem to be a witness planted at the eleventh hour.

As to the failure of Quirico Gentolea to testify for the prosecution notwithstanding the important role he played in the events which culminated in the killing of the barrio lieutenant, the records shows that the fiscal made an attempt to postpone the hearing to give him time to produce said witness who was then in Negros and was not served with subpoena because his address was unknown, but the court denied his motion for postponement. The non-presentation of said witness cannot therefore create the presumption that if he were allowed to testify his testimony would be harmful to the prosecution.

Finally, the defense tried to establish that appellant could not have been the killer because at the time of the commission of the crime he was in a remote place, the hideout of the huks, which can only be reached after three-days walk. In other words, the defense tried to prove that appellant was a huk who, at the time the crime was committed, was at their hideout in the interior of the mountains and stayed there until he surrendered to the authorities sometime after the commission of the crime. Its purpose is to establish an alibi. We are afraid that this defense cannot merit much weight considering the stubborn fact that his identity has been duly established by the testimony of at least two eyewitnesses.

All things considered, we are persuaded to conclude that appellant's guilt has been established by sufficient evidence, and, the decision appealed from being in accordance with law and the evidence, we hereby affirm the same, with costs,

Pablo, Bengzon, Padilla, Montemayor, Reyes, Labrador, Concepcion, and J.B.L. Reyes, JJ., concur.

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