

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SENCIO GUTIERREZ, JOSE QUIRINO AND DONDO CABRAL,
DEFENDANTS-APPELLANTS.***G.R. No. L-25372. November 29, 1968*

Ponente: CONCEPCION, C.J.

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This is an appeal taken by defendants Sencio Gutierrez, Jose Quirino and Dondo Cabral, from a decision of the Court of First Instance of Samar, finding them guilty of the crime of murder, with which they are charged, and sentencing each of them to life imprisonment, with the accessory penalties provided by law, to indemnify, jointly and severally, the heirs of Liberato Tabuena in the sum of P6,000, and to pay the costs proportionately.

It is not disputed that on December 29, 1963, at about 10:00 p.m., Liberato Tabuena sustained, in the barrio of Himay, Municipality of Gandara, Province of Samar, multiple wounds which produced his death that same evening, in consequence of the resulting internal hemorrhage. The only issue in this case is the identity of his killers.

It is not disputed that earlier that evening, Liberato had taken his dinner in his house, in said barrio, together with his children, and Natividad Dequito, Tito Julaton and Prudencio Mañoso. The first to finish his meal was Tito Julaton, who presently left the house. No sooner had he done so, however, than he met Ely Colili, alias Elias Colili. Thereupon, a fight ensued between them, in the course of which both were wounded, although the injuries sustained by Ely were so serious that he was left prostrate on an embankment near said house.

It turns out that that evening, it about 8 o'clock, Ely, together with herein defendants, Sencio Gutierrez, Jose Quirino and Dondo Cabral - all of them residents of the barrio of Buenavista, Gandara, Samar - had gone to the house of Ildefonso Versoza, about 80 meters away from that of Liberato. After drinking wine in Ilde-fonso's house, Ely departed from the same, whereupon he seemingly met Tito, with the result already adverted to. Soon, news about their fight reached Ely's companions, defendants herein. There is a conflict between the version of the prosecution and that of the defense as to what transpired thereafter.

The evidence for the government at is to the effect that, immediately after the encounter between Tito and Ely, the defendants, armed with bolos, came to the place where Ely was. Dondo Cabral then held, as a torch, a small bottle with a lighted wick. Defendants asked Liberato to help borrow a hammock, so that Ely could be placed thereon and thus be brought to Buenavista. After Liberato had gotten the hammock, he helped the defendants pick up Ely from the aforementioned embankment and brought him to the yard of Liberato's residence. Then Liberato proceeded to tie both ends of said hammock to a bamboo pole, but, then, Sencio Gutierrez stabbed him on the back, followed by Quirino who hacked him on the shoulder. As Liberato ran away, defendants pursued and overtook him. Thereupon, they attacked Liberato with their respective bolos, thereby inflicting upon him the following injuries:

"1. Penetrating wound thru and thru on the center of the chest vertically to the right side of the back 9-1/2

inches depth; 1-1/2 inches length; 1 inch width affecting the right pectorales major muscle, lower lobe of the right lung and the right auricle of the heart.

"2. Two penetrating wounds of the same dimensions in the abdomen in the epigastric region 5-1/2 inches length; 4-1/2 inches width with transverse colon of the large intestine protruding out of the wounds.

"3. Penetrating wound at the back 7-1/2 inches length; 3-1/2 inches width; 2 inches depth.

"4. Penetrating wound at the back 7-1/2 inches length; 1/2 inch width; 1 inch depth.

"5. Penetrating wound on the left shoulder 5-1/2 inches length; 2-1/2 inches width; 2-1/2 inches depth.

"6. Penetrating wound on the right arm 1/2 inch width; 1 inch length; 1 inch depth.

"7. Penetrating wound in the left thigh 3 inches depth; 1-1/2 inches length; 1/2 inch depth.

"8. Penetrating wound in the frontal region 3 inches length; 1/2 inch width; 1/2 inch depth.

"9. Penetrating wound in the parietal region 2 inches length; 1 inch width; 1/4 inch depth.

"10. Wound in the left forefinger 1 inch length; 1/4 inch width; 1/2 inch depth.

"11. Wound in the left hand 1-1/2 inches length; 1/2 inch width.

"12. Wound in the left arm 2-1/2 inches length; 1 inch width; 1 inch depth."

Upon the other hand, the defense would have us believe that, instead of leaving Versoza's house, upon hearing that Ely had been wounded, and trying to look for him, in order to find out what they could do for him, Versoza closed his house, possessed by fear, and the defendants remained therein for three (3) hours, after which they returned to their respective homes. The defense, likewise, intimated that Liberato and Ely were wounded in the course of a free-for-all fight between them and Tito Julaton.

The lower court rejected this version of the defense and accepted that of the prosecution, and the record before us does not justify our disturbing the conclusion thus reached by His Honor, the Trial Judge, who, having observed the behavior of the witnesses, was in a far better position than we are to pass upon their credibility.[1]

Moreover, the theory of the defense - based upon defendants' testimony, that of their host, Ildefonso Versoza, and one Paterno Villaescosa - is inherently incredible. Since Ely was, not only the defendants' barrio mate, but, also, with them when they went to Himay, shortly before the occurrence, it is only natural that they should instinctively try to go to him, upon learning that he had been wounded, in order to extend such assistance as was necessary and possible, to save his life. Thus, the story given by the witnesses for the prosecution is more in consonance with human nature and the ordinary course of events.

Then, again, although sought to be given the semblance of an alibi, the theory of the defense cannot properly be so characterized, for the house of Versoza - where defendants claimed to be when Liberato was mortally wounded and remained up to three (3) hours later - was only a few meters away from the scene of the occurrence. In other words, it was not impossible for the defendants to have been physically in the place where Liberato was wounded and at the time when his injuries were inflicted.[2] As a matter of fact, Versoza's testimony, seeking to bolster up defendants' contention, was discredited by defendant Dondo Cabral, who, furthermore, confirmed the version of the prosecution witnesses to the effect that, holding a torch, he went to the embankment where Ely was, seriously wounded, and then brought him home to the barrio of Buenavista.

Needless to say, the semi-alibi set up by the defense cannot prevail over the testimony of Prudencio Mañoso and Benjamin Tabuena, who positively identified the defendants herein as the persons who inflicted the wounds

sustained by Liberato, the number, location and nature of which wounds fully corroborated the testimony of said witnesses for the prosecution.[3] Besides, the latter had every opportunity to recognize Liberato's assailants, his injuries having been inflicted in their (Liberato, Benjamin and Prudencio's) yard, where they were, during a moonlit night. Again, Dondo Cabral carried a torch, thus making it easier for Benjamin and Prudencio to recognize him and his co-defendants, who were admittedly with him that evening.[4]

The fact that Prudencio Mañoso and Benjamin Tabuena were a housemate and son, respectively, of the deceased does not suffice to discredit them. On the contrary, their natural interest in securing the conviction of his killers would deter them from implicating persons other than the culprits, for, otherwise, the latter would thereby gain immunity.[5]

Upon rendition of the decision appealed from, defendants filed a motion to reopen the case for the purpose of introducing the testimony of Ely Colili, which the lower court denied. This is now pointed out as an error to justify a reversal of said decision; but said motion was and is clearly untenable, for Ely's testimony is concededly corroborative[6] and not newly discovered.[7] In fact, counsel for the defense in the lower court expressly waived the introduction of said testimony upon the ground that it is merely cumulative in nature. At any rate, the granting of a new trial is addressed to the sound discretion of the lower court, which does not appear to have abused it.[8]

Considering that Liberato sustained several wounds, some of which were inflicted from behind and that he was, in effect, attacked simultaneously by the defendants herein, all of them armed with bolos, whereas Liberato had none, we agree with the lower court that the defendants had acted with, at least, abuse of superior strength, if not treachery-which, under the circumstances, would absorb the abuse of superior strength - and that, accordingly, the crime committed is that of murder.[9] No modifying circumstance having attended its perpetration, the lower court correctly imposed the prescribed penalty in its medium period. In line, however, with *People vs. Pantoja*,[10] the indemnity imposable upon the defendants should be increased from P6,000 to P12,000.

With this modification as to the indemnity, the decision appealed from should, therefore, be, as it is hereby affirmed in all other respects, with costs against the defendants-appellants, Sencio Gutierrez, Jose Quirino and Dondo Cabral.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] *People vs. K. Akiran*, L-18760, September 29, 1966; *People vs. Inguito*, L-20183, June 30, 1966; *People vs. Secapuri*, L-17518-19, February 28, 1966; *People vs. A. Dayday*, L- 20806-07, August 14, 1965.

[2] *People vs. Ricaplaza*, L-25856, April 29, 1968.

[3] *People vs. Marasigan*, 85 Phil. 427; *People vs. Tansianco*, L-19448, February 28, 1964.

[4] *People vs. Nava*, L-4907, June 29, 1963; *People vs. P. Pelagio*, L-16177, May 24, 1967; *People vs. Fontillas*, L-25298, April 16, 1968; *People vs. Ricaplaza*, L-25856, April 29, 1968; *People vs. Garcellano*, L-25345, May 13, 1968; *People vs. Aniel*, L-22426, May 29, 1968.

[5] *People vs. Libed*, L-20431, June 23, 1965; *People vs. Tagaro*, L-18518, January 31, 1963; *People vs. Guillermo*, 86 Phil. 395.

[6] *States Marine Corp. vs. Cebu Seamen's Association, Inc.*, L-12444, February 28, 1963; *People vs. F. Evaristo*, L-14520, February 26, 1965; *Tan vs. People*, 88 Phil. 609; *People vs. Samaniego*, 95 Phil. 218.

[7] Sy Ha vs. Galang, L-18513, April 27, 1963; Phil. Banking Corporation vs. Lui She, L-17587, Dec. 18, 1967; Bank of P.I. vs. De Coster, 49 Phil. 574; Manila Railroad Co. vs. Mitchel, 49 Phil. 801.

[8] PAL vs. Salcedo, L-22119, September 29, 1967; People vs. Halasan, L-21495, July 21, 1967.

[9] People vs. Verzo, L-22517, December 26, 1967; People vs. Bersamin, 88 Phil. 292; People vs. Olgado, L-4406, March 31, 1952.

[10] L-18973, October 11, 1968.

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