

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE VS. TEOFILO CABILTES, ET AL., DEFENDANTS-APPELLANTS.

G.R. No. L-18010. September 25, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal interposed by Teofilo Cabiltes and Gonzalo Cabiltes from the decision of the Court of First Instance of Leyte (Ormoc City) in its criminal case 847-O, finding them guilty of the crime of murder. The dispositive portion thereof reads as follows:

"The Court finds the accused Teofilo Cabiltes and Gonzalo Cabiltes guilty beyond reasonable doubt of the crime of murder and hereby sentences each of said accused Teofilo Cabiltes and Gonzalo Cabiltes to suffer the penalty of reclusion perpetua and to joint-ly and severally indemnify the heirs of Esteban Me-sias in the sum of six thousand pesos (P6,000.00) and to pay 2/3 of the costs. x x x

"The weapons used in the commission of the crime are hereby confiscated."

In an amended complaint filed with the justice of the peace court of Kananga, Leyte, seven persons, namely, Teofilo Cabiltes, Domingo Cabiltes, Gonzalo Cabiltes, Diego Cabiltes, Arturo Allego, Carlito Moriles and Berto Nadera, were charged with the murder of Esteban Mesias. Domingo Cabiltes, Carlito Moriles and Arturo Alego were later excluded from the complaint because the prosecution entertained grave doubt as to their participation in the commission of the crime. Only Teofilo Cabilte, Gonzalo Cabiltes, and Diego Cabiltes were thereafter indicted in an information filed with the Court of first Instance of Leyte (Ormoc City), which recites that on or about May 31, 1960, the three accused, conspir-ing and confederating, and mutually helping one another, and with treachery, feloniously assaulted, attacked, and wounded Esteban Mesias with a bolo, knives and stones, inflicting injuries on him, to wit: "(1) incised wound on the chin 2-1/2 inches long, deepness reaches the bone; (2) incised wound 3 inches below the left clavicle 1-1/2 inches long and 1/4 inch deep; (3) stab wound right side epi-gastric region 1 inch long 10 inches deepness diagonal; (4) stab wound 1 inch above sternum left side 1 inch long 8 inches deepness diagonal; and (5) stab wound back left side 1 inch long by 10 inches deepness diagonal," which injuries caused his death.

The version of the prosecution, as unfolded by witnesses Faustino Alapan, Ceferino Moriles, Demetrio Sarit and Joaquin and the documentary evidence on record, is substantially as follows: During a barrio fiesta in Natubgan, Kananga, Leyte, while Teofilo Cabiltes was standing on the roadside (where a native drama was to be staged) at around six o'clock in the evening of May 31, 1960, he was informed by his uncle Gregorio that his father Do-mingo Cabiltes had been assaulted by Esteban Mesias. Teofilo Cabiltes proposed to take revenge. And this proposal to kill Mesias was communicated to Gonzalo Cabiltes, Domingo Cabiltes, Diego Cabiltes, Carlito Moriles, Arturo Allego and Gualberto Nedera, all of whom gave their assent. Teofilo Cabiltes then went home, changed his clothes, and armed himself with a hunting knife. Upon his return, Gonzalo Cabiltes, Diego Cabiltes, Domingo Cabiltes, Arturo Allego and Carlito Moriles and he, as one group, left for the poblacion of Kananga, accompanied by Faustino Alapan. At about half a kilometer from the house of Domingo Cabiltes, they overtook

Mesias. Teofilo Cabiltes walked abreast and side by side with Mesias for a while, and then stabbed him in the back with his hunting knife. Gonzalo Cabiltes then stabbed him in the breast with a small bolo. When the victim slumped to the ground, the three accused carried him to a canal filled with water, after which Teofilo Cabiltes hacked him on the chin and other parts of the body. Diego Cabiltes then hurried home, while Gonzalo Cabiltes ran away to the house of his aunt where he was later arrested.

The three accused, after their arrest, as well as Faustino Alapan, executed affidavits which were sworn to before Demetrio D. Sarit, justice of the peace of Kananga, Leyte.

The version of the defense, on the other hand, unravelled by the declarations of Diego Cabiltes, Teofilo Cabiltes, Gonzalo Cabiltes, Benjamin Pore, Eufracio Zarcon and Buenaventura Tali-bao, consists partly in a disavowal that the written statements secured from Teofilo, Diego and Gonzalo Cabiltes were voluntarily made. Atty. Benjamin Pore declared that he was informed by the three accused of their maltreatment at the hands of the police authorities, and because of this, he advised them to submit to medical treatment, which they did.

The appellant Gonzalo Cabiltes, while admitting that he was with Teofilo Cabiltes on the way to the poblacion of Kananga on the day of the killing, disclaimed knowledge of the plot to kill Mesias. He declared that on their way to the poblacion, they met Mesias, who thereupon asked Teofilo Cabiltes if he was the son of Domingo Cabiltes, and when Teofilo answered that he was, Mesias forthwith boxed him on the right forehead. Surprised at what he saw, he fled to the house of his aunt, leaving Cabiltes he was later apprehended and brought to the municipal jail together with Teofilo Cabiltes, Diego Cabiltes and Domingo Cabiltes. He claims that all of them were manhandled by the police, for which reason they sought medical treatment at the Ormoc Public Dispensary.

Upon its evaluation of the evidence on record, the trial court rendered the judgment^[1] heretofore adverted to. Teofilo Cabiltes has withdrawn his appeal, so we are here concerned only with Gonzalo Cabiltes' appeal.^[2]

Gonzalo Cabiltes puts squarely in issue the credibility of Faustino Alapan, the only eyewitness for the prosecution, averring that this witness has enmeshed himself in irretrievable inconsistencies and grave contradictions. Specifically, it is averred that while in his affidavit (exhs. 1, 1-A). Alapan stated that when the killing took place at around six o'clock in the evening of May 31, 1960, he was in the house of Domingo Cabiltes, pounding rice, after which he was told to go to the poblacion of Kananga, in his direct testimony he declared that at the time the killing took place, he was in Diego Cabiltes' house in barrio Tubgan, Kananga, pounding rice, and, on cross-examination, he stated that he started to live in the house of Javier Porras at three o'clock in the afternoon of the same date. The appellant's submission, on the basis of the above-stated contradictions, is that Alapan was not present at the scene of the killing as it was impossible for him to be in two places at the same time.

Our own perceptive examination of Alapan's oral testimony vis-a-vis his affidavit reveals no material contradiction of consequence. Although in his affidavit he did state that he was in the house of Domingo Cabiltes at about six o'clock in the evening of May 31, 1960, his oral testimony that he was in the house of Diego Cabiltes in the afternoon of the same date makes no mention of the exact time of his presence in the house of the latter. We are therefore not prepared to accept the appellant's thesis that Alapan's being in Diego's house earlier precluded him from being present at six o'clock of the same afternoon in the house of Domingo Cabiltes, especially if we take into account that the barrios where the houses of Domingo and Diego are located? Natubgan and Tubgan, respectively, are in the same municipality of Kananga. There is no evidence whatsoever that would suggest that if Alapan was initially in the barrio of Tubgan, it was impossible for him to be in the house of Domingo Cabiltes in barrio Natubgan in the afternoon of the same day.

The appellant lays stress on the import of the testimony of Alapan on cross-examination that he started to live in the house of Javier Porras at three o'clock in the afternoon of May 31, 1960, that he did not leave the house of

Porras except at 4:00 p. m. when he went out to fetch water, and that he had never gone to barrio Natubgan. The pertinent testimony reads:

"Q. On that date when you started living with Mr. Porras, what time of day did you go to the house of Mr. Porras to start living with him?

"A. I went to the house of Mr. Porras in the afternoon of that day.

"Q. Approximately what time in the afternoon?

"A. I went to the house of Mr. Porras on May 31, 1960, at about 3:00 o'clock.

"Q. And you did not leave the house of Mr. Porras from that time on, did you?

"A. I left the house of Mr. Porras,

"Q. When, what time did you go out from the house of Mr. Porras on May 31, 1960?

"A. At about 4:00 o'clock

"Q. Where did you go at 4:00 o'clock in the afternoon of May 31, 1960?

"A. I fetched water to be used for cooking.

"Q. And you never had gone to the barrio of Natubgan?

"A. No, sir."

But as aptly stated by the Solicitor General, when the witness stated that he had never gone to barrio Natubgan, the question that was asked him did not make reference to any particular date or hour. So that his negative answer could refer to any day other than that of the commission of the crime. But whatever doubt may have been engendered by the above interrogation and the answer thereto elicited regarding his presence at the scene of the crime, was dissipated when he made the clarification that the killing had already happened when he went to live in the house of Porras.

It is further argued that there was no sense in the Cabilteses' bringing Alapan along with them to kill Mesias, because as there were already six in the group, Alapan, who was a mere youngster of 15 years of age, could not be of any conceivable help to them. We deem it unnecessary to speculate on the possible reasons or motives that impelled the accused to take Alapan with them in the execution of their mission to liquidate Mesias, but it is pertinent to observe in this regard that Alapan was a former neighbor of Teofilo and Gonzalo Cabiltes in barrio Minuto, Kananga and that for sometime he lived in the house of Teofilo Cabiltes.

Further assailing Alapan's credibility, the appellant not only accords undue emphasis to the statement made by Alapan in his affidavit to the effect that Domingo Cabiltes, Arturo Allego and Carlito Moriles helped in stabbing Mesias, but as well contrasts his declaration in direct examination that Gonzalo, Teofilo and Diego Cabiltes inflicted the wounds sustained by the deceased, with his declaration on cross-examination that Domingo Cabiltes, Teofilo Cabiltes and Gonzalo Cabiltes were the only participants in the stabbing incident. Be that as it may, as regards the participation of Teofilo Cabiltes and Gonzalo Cabiltes in the stabbing, Alapan's testimony was consistent both in the direct and cross-examinations, although this appears to be at variance with the narration in his affidavit. The discrepancy regarding who took part in the stabbing, is of course patent, but such contradiction may justifiably be overlooked because it is not infrequent that a witness may, without design, inaccurately narrate certain facts arising from extraordinary occurrences. As Moore on Facts, 1098, has said, 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 witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestion of his memory and for accurate recollection of all that belongs to the subject." Moreover, Alapan was a lowly laborer, an illiterate barrio lad, 15 years of age, who signed his name by affixing his thumbmark, did know how to write, did not know what a minute or an hour is, or how many days there are in a month, or what a year is, and could not recall the different barrios where he lived.

Although it is neither the function nor the prerogative of a court to conjure up a meaning that is not there or to give to the testimony of a witness a meaning that cannot reasonably be inferred from the entirety of his integrated testimony, we are of the opinion, nevertheless, that this Court is required by the recognized canons of judicial review to determine whether under the environmental circumstances surrounding the declarations of a witness, the said witness can be accorded credence. In the case at bar, we are satisfied after a searching scrutiny of the testimony and the affidavit of eyewitness Alapan, that the contradictions and inconsistencies in his declarations are trivial mistakes which cannot be attributed to a desire to pervert the truth. It is a truism that the most candid witness oftentimes commits mistakes and incurs in inconsistencies in his declarations, but such honest lapses do not necessarily impair his intrinsic credibility. Far from being evidence of falsehood they could justifiably be regarded as a demonstration of good faith and, in this case before us, a confirmation of the fact that Alapan was not a rehearsed witness.

Indeed, we note that Alapan appears to be a person who bore absolutely no ill-feeling against any of the accused; the record does not disclose any untoward motive which could have induced him to perjure himself in a prosecution for a heinous crime. The theory of intentional falsehood which is the central theme of the appellant in his brief must therefore be discounted.

At all events, there is proof beyond reasonable doubt that the appellant, acting in conspiracy, participated in the killing of the deceased.

Firstly, his disclaimer of knowledge of the plot to kill Mesias is negated by the following circumstances: (1) the plan to kill Mesias was discussed before they left for the poblacion; (2) Teofilo Cabiltes personally explained to him the plan to go to the poblacion; (3) he joined the other accused and was with them on the way to Kananga; and (4) he was admittedly present when the stabbing was committed.

Secondly, his declaration that when Teofilo Cabiltes stabbed the deceased he ran away, is of doubtful veracity. For, if as testified to by him, it was Mesias who first hit Teofilo Cabiltes on the right forehead, causing the latter to fall to the ground, then his natural reaction as an uncle would be to rush to the aid of his prostrate nephew. Abandoning his relative in the condition pictured by him is contrary to human instinct: blood is still thicker than water. Indeed, it is more reasonable to believe that Gonzalo Cabiltes is not the type of a man so devoid of courage and so lacking in human feeling as not to give succor or defend his nephew from the alleged assailant whom he described as being twice taller and bigger than Teofilo Cabiltes. Thus it is that we accept as the true version of the appellant's behavior during the incident that testified to by Alapan who affirmed that after Teofilo Cabiltes stabbed Mesias, Gonzalo Cabiltes also stabbed him.

Thirdly, corroboration can be gleaned from the autopsy findings of sanitary inspector Joaquin Demillo. The various stab wounds found in the body of the deceased were obviously caused by more than one weapon and inflicted by more than one person. During the trial, two different weapons were presented in evidence, which supports the thesis that at least two persons participated in the stabbing. Alapan identified the hunting knife (exh. E) as the weapon used by Teofilo Cabiltes, and the small bolo (exh. F) as that wielded by Gonzalo Cabiltes.

Fourthly, the mute but eloquent physical evidence proves beyond peradventure that the mortal "stab wound 1

inch above sternum left side 1 inch long 8 inches deepness diagonal" sustained by Me-sias was caused by the small bolo which measures about eight inches in length and about one inch in width.

Finally, the testimony of Alapan finds indirect corroboration in the extrajudicial confession of Teofilo Cabiltes, Gonzalo's co-accused, which in part states "That when he [Esteban Mesias] was already hit my companions rushed at him namely; x x x Gonzalo Cabiltes, x x x and they helped one another in stabbing Esteban Me-sias and they also stoned him."

True it is that an extrajudicial confession is admissible only against the person who made it; jurisprudence, however, makes it admissible as corroborative evidence of other facts that tend to establish the guilt of his co-defendant(s) (People v. Simbajon, et al., L-18073-75, Sept. 30, 1965). Conspiracy having been established in this case, each of the statements is admissible against all the conspirators (People v. Belen, et al., L-13895, Sept. 30, 1963). The appellant's conduct before, during and after the commission of the crime, conclusively shows that he acted in concert with his co-accused.

Of course, Gonzalo Cabiltes claims with vehemence that their statements were wrenched from them thru force and violence. This claim does not command respect, as no motive on the part of the investigating officer has been proven, and none was in fact given, that could have impelled him to concoct the facts narrated in the extrajudicial confessions in question. Moreover, judging from the nature of the facts stated therein, it is clear that it is only the affiants who could have supplied them. In fact Demetrio Sarit, justice of peace of Kananga, Leyte, before whom the affidavits were sworn to, testified that the contents thereof which are in the Cebu-Visayan dialect were read to the affiants, and that they confirmed the contents thereof as true and correct, after which they voluntarily affixed their signatures. And although they aver that several persons were looking at them when they signed their affidavits at the point of a gun, oddly enough not one of these supposed onlookers testified in their behalf. Regarding Pore's testimony that he was informed by the three accused that they were maltreated by the police, because of which he advised them to secure medical certificates, the accused failed to produce any medical certificate at the trial attesting to the alleged injuries. The trial court, therefore, correctly found that the affidavits in question were freely and voluntarily executed.

In the face of the evidence against the appellant, his avowal of innocence must be rejected.

ACCORDINGLY, the judgment a quo, in so far as the appellant Gonzalo Cabiltes is concerned, is affirmed in toto, at the said appellant's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Angeles, Fernando, and Capistrano, JJ., concur.
Zaldivar, J., on leave.

[1] Teofilo Cabiltes' motion to withdraw appeal was granted by this Court per its resolution of July 16, 1962.

[2] Diego Cabiltes was acquitted by the court a quo "on grounds of reasonable doubt."

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