

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PABLO SOMERA & FAUSTINO BARNACHEA, DEFENDANTS AND APPELLANTS.

G.R. No. L-1674. May 09, 1949

Ponente: PARAS, J.

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PARAS, J.:

This is an, appeal from a judgment of the Court of First Instance of Ilocos Sur finding the appellants, Pablo Somera and Faustino Barnachea, guilty of murder and sentencing them to reclusion perpetua, to indemnify jointly and severally the heirs of Felix Somera in the sum of P2,000, and to pay the costs.

In the evening of March 11, 1945, Felix Somera, his children Moises and Redempta, and his houseboy Luis Somera, while proceeding towards their evacuation place in the barrio of Rucab, mimicipality of Tagudin, Ilocos Sur, were overtaken by the appellants who wore both riding on a horse. Pablo Somera thereupon shouted at the group of Felix Somera, "* * * of your mother, puñeta get out of our way," to which Felix meekly replied, "Please, Pablo speak in a nicer way." After Pablo had in turn remarked, "Oh! so, you are the one," the two appellants, who had alighted from their horse, began to attack Felix, Faustino Barnachea locking his arms around Felix, and Pablo repeatedly striking Felix with a stone, as a result of which Felix fell to the ground unconscious. Moises Somera attempted to help his father, but he was prevented by Pablo who hit him with a bolo. Moises accordingly had to leave, seeking police help and medical attention for the bolo wound on his hand which he received from Pablo. The appellants also left. After being revived, Felix Somera, with the aid of his two children, managed to ride on his horse; and the trio proceeded on their way to the poblacion. They had not covered a long distance, however, when the children noticed the return of the appellants. Coming from behind, and each taking one side, the appellants suddenly boloed and pulled Felix Somera from his horse, the attack being continued even after Felix fell. The latter was thereupon dragged to the bushes where Felix, then held by Faustino Barnachea, was given a bolo thrust by Pablo Somera, whereupon the two appellants left. These facts have been proved by the testimony of Redempta, Moises and Luis Somera. An examination of the dead body by the Sanitary Inspector revealed that Felix received no less than nineteen wounds, three of which were fatal.

Pablo Somera admits that he alone had killed Felix Somera, but he claims that he did it in self-defense, his version being as follow: Felix Somera threw a stone which hit and caused appellants' horse to cavort; after the appellants fell, Felix held and boxed Pablo Somera; Faustino Barnachea was able to pull Felix and thereby to release Pablo; although the latter tried to flee, Felix grabbed his shirt, choked him again and, after saying, "I am going to kill you," swang his bolo at Pablo; avoiding the blow, Pablo returned the attack by boloing Felix on the temple and the hands and thereafter giving many more blows. Consistently with Pablo Somera's theory, Faustino Barnachea maintains that he had no criminal participation in the fight between Felix and Pablo as he withdrew after seeing the shining boloes of the combatants.

The record fails to show that the principal witnesses for the prosecution had any special reason for imputing

falsely to the appellants the crime of murder. They are two young boys and a young girl who were with Felix Somera on the occasion in question, although Moises Somera saw the occurrence only until that point when he had to leave to seek police and medical help. They had narrated the main features of the appellants' attack with such persuasive effect as to leave no room in our mind for any reasonable doubt as to appellants' guilt.

It is hardly believable that Felix Somera, an old man of sixty-five, would have started a fight against two men of much younger age, one of whom was admittedly armed. The theory of self-defense on the part of Pablo is clearly negated by the numerous (19) wounds inflicted upon Felix. Upon the other hand, such wounds are indicative of aggression and of the participation therein of appellant Faustino Barnachea, as plainly testified to by the witnesses for the prosecution, especially when account is taken of the obvious fact that neither Pablo Somera nor Faustino Barnachea received any injury.

The guilty connection of Faustino Barnachea is further demonstrated by the circumstance that he surrendered with Pablo Somera. It is highly incredible that the former, if he had nothing to do with the crime, would have allowed himself to be thus dragged into the case merely upon invitation or insistence of Pablo.

We have no doubt that, judging by the way in which they carried out the fatal assault, the two appellants acted from and cooperated in a common criminal design, and treachery has elevated the killing to the category of murder. The appellants came from behind, covered the two sides of Felix Somera, and suddenly attacked him with bolo blows, at a time when Felix was undoubtedly still too weak to offer any defense. It should be repeated that Felix, after the initial assault by the appellants, was able to mount his horse only after being helped by his young companions. There was also present in the commission of the offense the aggravating circumstance of insult or disregard of the respect due the offended party on account of his age, but this, is offset by the mitigating circumstance of voluntary surrender.

The appealed judgment, being in conformity with the facts and the law, is affirmed with costs. So ordered.

Moran, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

Except that we believe that the indemnity should be increased to P6,000, in accordance with the decision in *People vs. Amansec*, L-927, we concur in the above decision.

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