

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EDISON SUDOY, ALIAS EDDIE, ALIAS ELIASER, ACCUSED AND APPELLANT.

G.R. No. L-33572. October 10, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the ruthless assassination of Saturnino Quiambao by a Huk liquidation squad.

The prosecution's evidence shows that at about six-thirty in the evening of January 30, 1970 more than ten armed men, reputed to be Huks, entered Barrio San Vicente (Paitan), Magalang, Pampanga. There, they met Juan Guintu, a fifty-two-year old farmer who had come from the town. They asked him whether there were "army people" in the places where he had passed. He replied in the negative. They ordered him to accompany them to the house of Saturnino Quiambao.

On arriving at the yard of Quiambao's house, some of the men peeped through the hole in the wall of the house. A member of the group directed Guintu to call Quiambao. When Quiambao came out of the bedroom, one of the men told him: "Cong Atong, don't be afraid. I am Fidel." Quiambao returned to the bedroom. His wife, Nieves Garcia, went to the sala. Fidel told her: "Ate, do not be afraid. We are with you." Fidel asked her to open the door. When Nieves Garcia opened the door, three armed men rushed inside the sala and called Quiambao. Guintu also went inside the house.

The three men identified themselves as Commanders Berting, Fidel and Eddie (Edison Sudoy). Marina Quiambao, a seventeen-year-old daughter of Quiambao (who had finished the sixth grade), was also in the sala of the house. She saw and heard the three men telling her mother their identities. Quiambao was near the cupboard lighting a cigarette. One of the men tapped him on the shoulder. After some conversation, which was punctuated with laughter, one of the men requested Quiambao to help them look for Policarpio Gonzales, the barrio captain. The three commanders, accompanied by Quiambao and Guintu, left the house. Sudoy's arm was around Quiambao's shoulder.

On the street they met Emitterio Gonzales, a forty-four-year old resident of the barrio, who was on his way to return a piece of rope (guyod) to the house of the barrio captain, who is his uncle (his father's brother). One of the armed men collared Emitterio and asked him to lead them to the barrio captain's house. The men also told him to go with them to the mountains. He was frightened. He knew that the men were killers.

When they reached the barrio captain's house, the men deployed near the kitchen and in front of the house. Emitterio called his uncle. A son of the barrio captain opened the door and informed the men that the barrio captain was not at home. When the door was opened, the light from the house illumined the face of Edison Sudoy who was standing on Emitterio's right, next to the man who was holding Emitterio by his shirt collar. Sudoy's features were stamped in Emitterio's memory.

The armed men directed Emitterio to lead them to the house of Eulogio Gonzales which was about forty meters away. Eulogio is the nephew of Emitterio. He called for Eulogio. The latter was not in his house. Then, the armed men, with Guintu, Emitterio and Quiambao, proceeded to the school. On the street, in front of the school, Sudoy and his companions shot Quiambao who was only five meters away from Emitterio Gonzales. About thirty shots were fired. When the shooting was perpetrated, it was as if a streak of lightning flashed upon the scene.

After shooting Quiambao, the armed men set fire to the barracks which were being constructed as quarters for the soldiers to be stationed in the barrio. They left Emitterio in the shed where his carabao was tethered. They told him that if he squealed he would be killed. They went to the brook and headed for the mountains.

Quiambao was killed because he had joined the Barrio Self-Defense Unit (BSDU), an anti-Huk organization. Emitterio Gonzales was well-acquainted with Quiambao because they lived in the same barrio.

Doctor Rosauro Alejandrino, the municipal health officer, conducted an autopsy of the victim's body. He found that the thirty-nine-year old Quiambao sustained twenty-two wounds. He noted that eight hundred and three hundred cubic centimeters of blood had accumulated in the victim's chest and abdominal cavities, respectively. Death was attributable to "shock, internal hemorrhage, secondary to the" twenty-two wounds. He found three bullets in the victim's body. (Exh. A). There were about twenty entrance wounds and fifteen wounds of exit.

On March 30, 1970 Sudoy, while on board an El Transit bus, was arrested by Magalang policemen and BSDU members. Perto Valenzuela, the bus driver, with whom Sudoy used to work as a conductor, who happened to be a passenger in the same bus, informed a policeman that Sudoy was the brother of a Hukbo.

On April 1, 1970 the Magalang chief of police filed a complaint for murder against Sudoy, Commander Berting, "HMB Fidel" and some unknown persons designated as Does. The complaint was based on the sworn statements of Marina G. Quiambao and Emitterio Gonzales.*

Sudoy waived the second stage of the preliminary investigation. The case was remanded to the Court of First Instance. A district state prosecutor filed in the Circuit Criminal Court at San Fernando, Pampanga an information for murder against Sudoy. After trial, the lower court found him guilty of murder, sentenced him to reclusion perpetua and ordered him to pay the heirs of Saturnino Quiambao the sum of twelve thousand pesos and an additional amount of twenty thousand pesos as moral and exemplary damages (Criminal Case No. CCC--V-113 (70)).

In this appeal Edison Sudoy contends that the trial court erred in not giving credence to his alibi, in believing the testimonies of Marina Quiambao and Emitterio Gonzales and in finding him guilty of murder.

Sudoy, a twenty-two-year old unmarried laborer, a resident of Barrio San Antonio, Arayat, Pampanga, testified that he worked as a helper in the Dycayo Grocery at Angeles City from September 12, 1969 to March 30, 1970, when he got sick (that was also the date when he was arrested). Prior to his grocery job or from February, 1968 to September, 1969 he worked as a conductor of El Transit in its route covering Angeles City, Magalang, Arayat and other places in Pampanga.

On January 30, 1970, when Quiambao was liquidated, Sudoy was allegedly in the grocery where he worked from six o'clock in the morning to nine o'clock in the evening. He slept in the grocery. Florencio Dycayo, the owner of the grocery, Carlito Bautista and Icasiano Garcia, the coworkers of Sudoy in the grocery, corroborated his alibi. However, Dycayo admitted that he did not keep any record of his employees. He did not have any payroll. He did not make any Social Security contributions.

Bautista, who, like Sudoy, was twenty-two years old and hailed from Barrio San Antonio, Arayat, cockily

testified that Sudoy started working in the grocery on September 12, 1969. He could not tell when he himself started working in the grocery. He declared that he had been working in the grocery "for almost a year" prior to August 5, 1970, when he testified. But he could not "really remember" the exact date when he commenced to work in the grocery. A moment later, he declared that he started working on May 15, 1969. That would mean that he had already worked in the grocery for over a year at the time when he testified. He could not explain why he remembered that on January 30, 1970 Sudoy worked in the grocery but he could not remember the more recent date when Sudoy was arrested.

Bautista said that Sudoy was a cane-gatherer before working in the grocery. The truth is that he was a bus conductor. Bautista said that when he talked with Sudoy in jail after his arrest, it did not occur to him (Bautista) to tell the police that Sudoy was in Angeles City on January 30, 1970.

Florencio Dycayo testified that on January 30, 1970 he had in his grocery an employee named Rudy who, according to him was Sudoy. He admitted that he did not know the full name of his employees. Icasiano Garcia declared that Sudoy was known in the grocery as Eddie.

After Sudoy's arrest on March 30th, he was allegedly boxed by policemen and BSDU members on the second floor of the municipal building of Magalang. He was maltreated on five occasions. He had to secure medical treatment for his injuries. The policemen and BSDU members kept on asking him about the whereabouts of his brother, Cornelio, who was a Huk ("No carin ya ing capatad?"). He told his tormentors that he did not know the whereabouts of his older brother.

He was brought to Barrio Paitan (San Vicente). At the confrontation between him and Marina Quiambao, the latter allegedly said that "he was not the one" ("aliwa ya yan"). Emitterio Gonzales told Marina to point to Sudoy as the one who killed her father. Marina again said that Sudoy "was not the one".

On the return trip to the poblacion of Magalang, his guards told him to jump from the jeep. He replied: "If you want to kill me, kill me here." He surmised that if he would jump out of the jeep, he would be killed and then the BSDU members would make it appear that he was killed while trying to escape.

Sudoy admitted that he did not know any reason why Marina Quiambao and Emitterio Gonzales implicated him in the killing of Quiambao.

We agree with the trial court that Sudoy's alibi cannot be sustained. He was positively identified by Marina Quiambao as the Huk commander who was sitting near the kerosene lamp in her parent's house sometime before her father left the house and was killed near the school. Emitterio Gonzales fingered him as the armed person standing on his right when the son of Policarpio Gonzales opened the door of his father's house and the light from the kerosene lamp revealed Sudoy's physiognomy to Emitterio. He was certain that Sudoy was among the armed men who pitilessly snuffed out Quiambao's life by means of a fusillade.

Appellant's counsel assails the credibility of Emitterio because he failed to identify Sudoy's companions. Emitterio declared that because of the darkness of the night, he could not see the faces of the other armed men. Some of their faces were covered. They were not natives of Barrio San Vicente. Marina Quiambao remembered Sudoy's face because he sat near the kerosene lamp while he was in her parent's house.

The charge against Sudoy is murder qualified by evident premeditation and treachery. Evident premeditation was not proven. Treachery (alevosia) attended the killing. Sudoy and his confederates resorted to a mode of execution which insured the consummation of the killing without any risk to themselves arising from any defense which Quiambao could have made. The unarmed victim was in no position to have made any defense. He was summarily executed by gunfire. (U.S. vs. Vitug, 17 Phil. 1; People vs. Manabat, 82 Phil. 471; People vs. Sawit,

100 Phil. 507).

Treachery absorbed nocturnity, abuse of superiority, band and aid of armed men. While there may be instances where any of these circumstances may be treated independently of treachery, yet, under the facts of the instant case, they formed part of the treacherous mode of attack (U.S. vs. Abeline, 1 Phil. 568; U.S. vs. Larion, 2 Phil. 476; People vs. Magsilang, 82 Phil. 271; People vs. Umali, 96 Phil. 185).

There being no mitigating circumstances, the penalty for murder was correctly imposed by the trial court in its medium period, which is reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

The trial court's judgment is affirmed with costs against the appellant. So ordered.

Fernando, Chairman, Barredo, Antonio and Fernandez, JJ., concur.

* "Statement of Marina Quiambao taken by Cpl. Justino G. Gomez in the Office of the Chief of Police in the presence of Pat. Nicanor Guzman, this 1st day of April, 1970 at 1200 hours. . . .

1.

Question –

After you have been informed of your Constitutional rights, are you willing to tell the truth, nothing but the truth in this investigation?

Answer –

Yes, sir.

2.

Q –

If so, please state your name and other personal circumstances?

A –

MARINA QUIAMBAO y GARCIA, 17 years of age, single and a resident of San Vicente, Magalang, Pampanga.

3.

Q –

What made you appear before the office of the Chief of Police of Magalang, Pampanga?

A –

To give a voluntary statement regarding a suspected person that was apprehended by the Police Force alleged member of the HMB's

4.

Q –

What can you say about these person (Investigator pointing the suspect to the affiant), do you recognize him?

A – Yes, sir.

5. Q – Who is he?

A – He was one of the armed men when my father was shot to death last January 30, 1970 in our barrio San Vicente, Magalang, Pampanga.

6. Q – How do you recognize him to be member of the HMB's when your father was killed?

A – That prior to the killing of my father, armed men went inside our house in said barrio San Vicente, Magalang, Pampanga and identified themselves to my father that they are BERTING, FIDEL and EDDIE, and said EDDIE told my father that he is a resident of San Antonio, Arayat, Pampanga.

7. Q – You mean to say that ALIAS EDDIE is the same person now you are pinpointing?

A – Yes, sir.

8. Q – Are you not mistaken in your identity?

A – No, sir, because when they entered our house, prior to the killing of my father, I was only about one (1) meter away from said EDDIE and our kerosene lamp was placed on top a chair in front of said armed men.

9. Q – Do you have more something to say or erase in this investigation?

A – No more, sir.

10. Q – Can you sign this statement of yours voluntarily?

A – Yes, sir.

END OF STATEMENT:

(Sgd.)

Marina Quiambao

MARINA G. QUIAMBAO

SUBSCRIBED AND SWORN to before me this 1st day of April, 1970 at Magalang, Pampanga.

(Sgd.)

Abelardo H. Ramos

ABELARDO H. RAMOS

Municipal Judge"

"Statement of Emitterio Gonzales taken by Cpl. Justino G. Gomez in the Office of the Chief of Police, Magalang, Pampanga in the Presence of Pat. Orlando Garcia, this 1st day of April, 1970 at 1300 hours

1.

Question –

After you have been informed of your Constitutional rights, are you willing to tell the truth, nothing but the truth in this investigation?

Answer –

Yes, sir.

2.

Q –

If so, please state your name and other personal circumstances?

A –

EMITERIO GONZALES y SAGUN, 44 years of age, married, Farmer by occupation and a resident of San Vicente, Magalang, Pampanga.

3.

Q –

What made you appeared before the office of the Chief of Police of Magalang, Pampanga?

A –

To give a voluntary statement regarding a person that was apprehended by the Police Force, suspected being a member of the HMB's.

4.

Q –

Pointing to you these suspected person, do you identified him?

A –

Yes, sir.

5.

Q –

Who is he?

A –

He was one of the armed men that killed Saturnino Quiambao on the night of January 30, 1970 in barrio San Vicente, Magalang, Pampanga.

6.

Q –

How do you recognize him?

A –

I identified him with his standing, height, voice, haircut and his maong uniform.

7. Q – You mean to say that, prior to the killing of Saturnino Quiambao, you were grouped with these armed men?

A – Yes, sir, because they utilized me as guide in locating Eulogio Gonzales in Our barrio San Vicente, Magalang, Pampanga.

8. Q – In what place in your barrio when you came nearer with these suspect person?

A – In front of the house of our barrio Captain, Mr. Policarpio Gonzales.

9. Q – Aside to the identities you had described on your answer No. 6, there any other recognition you can state?

A – No more, sir.

10. Q – Do you think you are not mistaken in your identification?

A – No, sir,

11. Q – Are you present when they killed Saturnino Quiambao?

A – Yes, sir, I was only about 5 meters away from the victim.

12. Q – What about these suspected person, was .he also with you in the time when they 'shot to death Saturnino

Quiambao?

A – Yes, sir, he was with us.

13. Q – Do you have more something to say or erase in this investigation?

A – No more, sir.

14. Q – Can you sign this statement of yours voluntarily?

A – Yes, sir.

END OF STATEMENT.

(Sgd.)

Emiterio Gonzales

EMITERIO S. GONZALES

SUBSCRIBED AND SWORN to before me this 1st day of April, 1970 at Magalang, Pampanga.

(Sgd.)

Abelardo H. Ramos

ABELARDO H. RAMOS

Municipal Judge”

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