

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANASTACIO BOLIVAR, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-12450. December 29, 1960*

Ponente: DIZON, J.

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It is not disputed that on the night of December 29, 1953, several persons assaulted Edilberto Galan in Barrio Sagrada, Nabua, Camarines Sur, and inflicted upon him the physical injuries described by Dr. Henrico M. Uvero, president of the sanitary division of Nabua, in his report Exhibit G, that caused his death. The issue to be determined in this case is whether appellants were sufficiently identified as his assailants, among others.

The prosecution evidence shows that at about 11:00 o'clock in the evening of December 29, 1953, Perfecto Garbiles and Anastacio Bolivar approached Juan Bel-monte in front of the barrio chapel of Sagrada, and asked him if he had seen Edilberto Galan, Hilarion Rivera and others from barrio La Opinion. Upon receiving a negative answer the duo left and joined Benjamin Tonnes and Vicente Ollosca. After a short conversation amongst themselves they walked around the chapel and then proceeded towards the national road. Sometime afterwards Manuel Yorobe, with a lighted Petromax lamp, left the chapel with Juan Belmonte and several men and women on their way home. While they were walking along the national road towards barrio La Opinion they were followed by Edilberto Galan and other persons. As they all neared a bridge, Garbiles, Bolivar, Tormes and Ollosca, armed with pieces of iron, wood and bamboo, suddenly emerged from the left side of the road and attacked Galan from behind felling him to the ground. When Yorobe noticed the commotion he looked backwards directing the Petromax lamp towards the place where it came from and afterwards he and several companions fled from the place. Belmonte, however, shouted at the assailants to stop beating Galan, this having prompted the latter to run away. After that Belmonte and Mariano Gastelo approached the victim and helped him return to his house. Early the following morning he was taken to the hospital of Dr. Belmonte in Nabua where he expired in the evening of the same day.

In the morning of December 30, 1953, by order of the chief of police of Nabua—to whom the incident had been reported—patrolmen Filomeno Lomeda and Andres Tormes arrested Bolivar and Garbiles in their respective houses in barrio Sagrada. On their way to the municipal building Lomeda asked them if it was true that they beat Galan, to which they answered in the affirmative. When further asked why they beat the deceased, they replied that Galan wanted to harm them sometime before during a dance held in barrio San Ramon. When patrolman Lomeda asked them who were their other companions, they gave the names of Tormes and Ollosca. These two were later arrested by Lomeda, and when they were asked if they were in the group that assaulted Galan, they readily answered in the affirmative. In the municipal building Garbiles and Ollosca were questioned by the chief of police, the result being the execution of the statements now marked as Exhibits E and F. These statements were subsequently sworn to before the Justice of the Peace of Nabua, Juan Ballecer. Thereafter the four were charged with murder in the Court of First Instance of Camarines Sur where, after due trial, they were found guilty and sentenced as follows:

"In view of all the foregoing considerations, the Court declares Perfecto Garbiles, Anastacio Bolivar, Vicente Ollosca and Benjamin Tonnes, guilty of the crime of murder beyond reasonable doubt, defined and punished under Article 248 of the Revised Penal Code, as amended, with the aggravating circumstance of superior strength, and therefore, sentences each one of them to suffer the penalty of 'reclusion perpetua', to indemnify the heirs of the deceased in the amount of ₱8,000.00 as actual and moral damages, and to pay the costs."

From the above decision all of them appealed to this Court, but on July 26, 1957 Garbiles withdrew his appeal.

The remaining appellants deny having participated in the commission of the crime.

Ollosca admits having been at barrio Sagrada on the evening in question to attend the novena held in the barrio chapel, but denies having seen, Juan Belmonte there; he admits having seen Garbiles and Bolivar near the chapel, but denies having joined them that evening in beating Galan to death; he claims that he and Tonnes went home at 3:00 a.m. the following morning, and denies that, after being arrested by patrolman Lomeda, he admitted to the latter that he was one of those who beat Galan to death; he admits having been investigated by the chief of police, but claims that he signed the affidavit Exhibit F without knowing its contents, the same not having been translated to him into the Bicol dialect.

For his part Bolivar admits that he attended the novena on the evening in question together with his brother Tito and others but denies having seen the deceased—who was a first-degree cousin of his mother—and denies all knowledge about the killing; he also denies having asked Juan Belmonte for the whereabouts of Galan, and claims, lastly, that his inclusion in the criminal charge was due to the fact that when his grandfather, Pablo Galan, asked him why he did not stop his companions from killing the deceased, he answered him that he was not present when the latter was assaulted.

Benjamin Tormes also admits having been at the chapel of Sagrada on the evening in question upon invitation of Ollosca, but denies knowing Anastacio Bolivar; he further claims that he and Ollosca stuck together that evening going around the feria near the chapel, and that he learned about the killing only when he was arrested by the policeman. He likewise disclaims acquaintance with prosecution witnesses Yorobe, Belmonte and Gastelo.

It is thus obvious that the question involved in this appeal is merely one of credibility of witnesses, especially because in their brief appellants limit their claims to the following: that the trial court erred in holding that the testimony of the prosecution witnesses had sufficiently established their identity as the assailants of the deceased Galan, and in giving probative value to the extrajudicial statements marked Exhibits E and F. Upon these issues the lower court said the following in the appealed decision:

"The Court, after a careful and minute study and consideration of the evidence adduced, both by the prosecution and defense, arrived at the conclusion that the four accused are all guilty of the crime of murder. It was established beyond doubt that all of them took direct part in assaulting and beating Edilberto Galan with pieces of wood, bahi and an iron bar, (Exhibits B, C, D, and A), on his head and different parts of his body. They were seen and recognized by two eyewitnesses, Juan Belmonte, and Mariano Gustilo when they emerged from the left side of the road near the culvert in Sagrada Familia, Nabua and when they attacked Edilberto Galan from behind. The four accused admitted to Policeman Lomeda that they took part in assaulting and beating Edilberto Galan, after they were arrested by the latter, because according to Perfecto Garbiles and Anastacio Bolivar, Edilberto Galan was one of those who wanted to harm them in a dance in San Ramon. Accused, Perfecto Garbiles and Vicente Ollosca also admitted their participation in the beating of Edilberto Galan in their affidavits, Exhibits E and F, respectively.

* * * * *

"As to the defenses of the other accused, Anastacio Bolivar, Vicente Ollosca, and Benjamin Tormes. which are

mere general denials, the Court is of the opinion that said denials cannot prevail over the positive and direct evidence of the prosecution, that they took a direct part in the commission of the crime charged, which they admitted to Policeman Lomeda, after their arrests.

"The Court is convinced that they took part directly in treacherously beating Edilberto Galan with pieces of wood and an iron bar which directly caused his death."

The obviously negative testimony of appellants cannot overcome nor render doubtful that of prosecution witnesses Belmonte and Gastelo positively identifying them as among the assailants of Galan. In this connection the evidence shows that Belmonte was hardly five meters and Gastelo about ten meters away from the place where Galan was attacked; that appellants were personally well known to Belmonte and Gastelo, with the added circumstance that Bolivar was a cousin of the former and a nephew of the latter; that Manuel Yorobe was carrying a lighted Petromax lamp at the time and when he heard the commotion caused by the sudden attack upon Galan, he turned around and directed the Petromax lamp towards the place where the commotion came from, thus enabling Belmonte and Gastelo to see everything clearly. To these circumstances we must add the fact that there is absolutely nothing in the record to show any improper motive on the part of the aforesaid prosecution witnesses to falsely impute to appellants the commission of the serious offense they were charged with. It is therefore evident that the lower court committed no error in holding that the prosecution evidence had conclusively established appellants' guilt.

The assignment of error related to the extrajudicial statements Exhibits E and F is not only without merits but of no consequence, even if it were upheld, in view of the fact that, aside from them, there is sufficient evidence in the record to prove the guilt of appellants beyond reasonable doubt. It must be stated, however, that, like the trial court, we cannot believe appellants' allegation that they signed the aforesaid statements by force and without knowing their contents. In this connection Justice of the Peace Ballecer testified that appellants admitted before him the truth of the contents of their respective written statement; that the contents thereof were translated to them into their own dialect and that they positively affirmed before him that they signed the same voluntarily. This testimony, in our opinion, is sufficient to establish the voluntariness and the regular execution of the statements under consideration.

The Solicitor General submits in his brief that the qualifying circumstance of evident premeditation and treachery has not been clearly established and that, therefore, appellants should only be found guilty of homicide, with the aggravating circumstance—as held by the trial court—of abuse of superior strength. We disagree in view of the fact that from the prosecution evidence it appears that in the evening of December 29, 1953, appellants had been looking for Galan and other residents of barrio La Opinion who had previously attempted to harm them during a dance held in barrio San Ramon, and that they attacked Galan simultaneously and unexpectedly from behind while he was walking along the road to barrio La Opinion. Evidence to this effect not having been rebutted directly, we believe the same to be sufficient to establish the qualifying circumstance referred to.

Wherefore, the appealed decision is hereby affirmed, with costs.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

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