

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROSALINO PEÑA, PABLO DEGRACIA, FELIX DOMINGO AND MANUEL BRIONES, DEFENDANTS AND APPELLANTS.*G.R. No. L-3569. December 29, 1951*

Ponente: TUASON, J.

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This is an appeal from the Court of First Instance of Ilocos Sur, which found the appellants guilty of murder and sentenced them to reclusion perpetua and to indemnify jointly and severally the heirs of the deceased in the sum of P6,000.00. With the four appellants were charged as co-principals Guillermo Doña, Felix Dace and Benjamin Caliboso, but these three, not having been arrested, were not put on trial.

There is no question that Pedro Florendo was brutally tortured and slain on the date and in the manner depicted by the witnesses. But two of the appellants denied any part in the ghastly crime and the other two only admitted participation in the apprehension of the deceased.

Two eye-witnesses, Pedro Racca and Cesareo Velasco, and the deceased's son, Francisco Florendo, furnished the chief evidence for the prosecution. As summarized in the brief for the Government, their testimony runs as follows :

"It about four or five o'clock on the afternoon of October 22, 1944, in barrio San Ignacio, Sta. Maria, Ilocos Sur, acting upon orders of appellant Manuel Briones, a combined group of guerrilla bolomen from the barrios of Tinaan and San Ignacio, halted and surrounded a northward bound jitney on which Pedro Florendo, the municipal mayor of Sta. Maria, was a passenger. The appellant Felix Domingo, being then armed with a bolo, aided by ascertain individual Benjamin Caliboso, made appellant disembark from said vehicle. Florendo was then brought away to a place eastward, followed by the group of bolomen, towards the barrio of Tinaan. Upon arriving at said place, Briones who was already waiting for them, after a whispered conversation with appellant Pablo Degracia, ordered Florendo to be tied up. Briones then ordered appellant Felix Domingo to bring word of the capture of Florendo to appellant Rosalino Peña at the barrio of Butir. Sometime later, having decided not to wait for Peña, Briones ordered the whole party to proceed with their captive to Butir. At a certain part of their journey, Briones took for himself Florendo's wallet. At the juncture of the river between barrios Tinaan and Butir, they met up with Peña who, after gloating over Florendo's capture, attempted to hit Florendo with his bolo. Briones, Domingo, Degracia, Caliboso and a certain Felix Pace, however, restrained Peña - Briones, Degracia and Pace advising him to wait until they reached barrio Butir and that it would be preferable to put Florendo to a slow, death. Peña then struck Florendo, breaking his eye-glasses and causing his face to bleed. Upon orders of Peña, the whole party again proceeded on their journey to a certain place called Botak. Upon their arrival thereat, Florendo was beaten, kicked and otherwise brutally treated by Peña, Briones, Degracia, Domingo, a certain Guillermo Doña and several others until he fell. It was then agreed to bring Florendo farther east, to the barrio of Manogak, and after Peña ordered that spades and iron bars be brought, the group again proceeded on its way, Florendo being forcibly dragged by a rope, his hands and feet being tied. At said barrio, upon the suggestion of Peña, Pace and Caliboso, Florendo was stripped bare of his clothes, At this

point, Peña approached Florendo, and, cutting off one of Florendo's ears, ordered him to eat it. Doña, in his turn, severed Florendo's penis and forced it into their victim's mouth. Pace then also stepped over to Florendo, who was then suffering terribly, and ripped open the latter's belly with his bolo. Pena then finally inserted his hand inside Florendo's bloody entrails and wrenched out his liver.

"It also appears from the evidence that Peña and Florendo have been long-time bitter political enemies and, in fact, an incident had occurred between them wherein Peña had almost shot Florendo. Likewise, shortly after the start of the Japanese Occupation, Peña with several companions looted a certain Chinese store, which robbery Florendo tried to prevent, as he had then been entrusted with the safekeeping of said store, but had been threatened by Peña with a gun. Said matter having been reported to the Japanese Garrison by the owner, Florendo was called for and questioned at the Japanese Garrison, in the course of which investigation he pointed to Peña and other appellants herein as the instigators of said looting. As a result of this, Peña was maltreated by the Japanese."

Following is the evidence for the defense as condensed in the appellants' brief:

"After Pedro Florendo was brought to the headquarters of Manuel Briones, said Briones after sending a report to Rosalino Peña, through Felix Domingo of Florendo's capture, in company with some bolomen, proceeded eastward with said Pedro Florendo. Halfway from the headquarters of Briones to the headquarters of the said Rosalino Peña, they met Peña and his men and delivered the person of Florendo to said Rosalino Peña. Briones then and there returned with Felix Domingo to the guardhouse of Tinaan, Rosalino Pena, upon meeting Pedro Florendo, uttered the words 'So, the spy is here now.'

"Pablo Degracia, on the other hand, while sitting on the ladder of his brother-in-law's house, on October 22, 1944, saw that suddenly, a group of bolomen together with Pedro Florendo passed by the house. Pedro Florendo asked for a drink of water, which Degracia's sister-in-law gave to him. From there the bolomen and Pedro Florendo proceeded towards Butir passing first the garreta of Tinaan. Degracia did not go with the group but remained in the house of his brother-in-law. After about 30 minutes he also proceeded eastward fearing that the Japanese might come. He reached the garreta of Tinaan and there he again saw the Bolomen with Pedro Florendo who, after some minutes of staying, proceeded to the barrio of Butir. Degracia remained in Tinaan.

"Rosalino Peña on October 22, 1944, was in the Hoko Guardhouse at Butir, receiving rations for the guerrillas which were brought by Teodosia Dalit a leader of the Women's Auxiliary Service of the bolomen unit, when Felix Domingo arrived bringing the letter of Manuel Briones informing him of the capture of Pedro Florendo. After the letter was delivered, Felix Domingo returned for home, Rosalino Peña with his bolomen went to meet Pedro Florendo who, at the time, was being brought to the east. While in the intersection of the rivers between Cabaroan and Butir, he met Pedro Florendo accompanied by Manuel Briones and his bolomen. Manuel Briones delivered said Pedro Florendo and returned to his guardhouse. Pena brought Florendo back east to his barrio of Butir. When they have arrived there, Pena delivered the person of Florendo to Nemesio Arreola who was higher in rank, being then the Chief of the Military Government of the guerrillas in Sta. Maria, Ilocos Sur. Nemesio Arreola brought Florendo further east to the place called Manogak, the headquarters of the military government. Rosalino Pena on the other hand remained in the guardhouse at Butir to dispose of the rations brought by members of the Women's Auxiliary Service (WAS).

"Nemesio Arreola arrived with Pedro Florendo in barrio Manogak. While there Nemesio Arreola told the persons present to go and witness what is to be done with the spy No. 1. in the presence of the people Arreola shouted 'now tell all the truth of what you have done during the past month because you are the one for whom the town was prejudiced.' 'Do you know me?' 'Do you know Laureano Ayson?' 'Do you know Joaquin Escobar?' 'Do you know what happened to them for the last month for having gone to report to the Japanese that we have been collecting weapons and foodstuffs for the guerrillas', to which Pedro Florendo said 'yes' and asked for pardon for he did not then know what he was doing. Arreola showed Florendo the lesions and bruises

caused to him by the Japanese and blamed Florendo saying those bruises were the result of his (Florendo's) reports to the Japanese. He accused Florendo before the people that Ayson and Escobar were dead because of him (Florendo). All the time, Florendo was begging for pardon. Then Arreola clubbed him with a piece of wood hitting the nape of his neck and causing him to fall face downward. He was raised by Nemesio Arreola who said 'now call your masters, the Japanese, and let them defend your life.' After this he clubbed him again and Florendo again fell face downward. At this instance, one of the guerrilla soldiers unsheathed his bolo with the intention of killing Florendo but Arreola stopped him, claiming the right to kill Florendo as that the latter can expiate for his faults. So, Arreola unsheathed his bolo and stabbed Florendo at the left side of the abdomen killing him,"

The court placed full faith and credit on the evidence of the prosecution witnesses while it spoke of the defendants and their witnesses as insincere.

It is well established that, "as a general rule, the Supreme Court will not interfere with the judgment of the trial court in passing upon the weight and credibility that should be attached to the testimony of the witnesses * * *, (unless) there is some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted," (People vs. Marcos et al., G.R. No. 7388.)

No reason has been adduced for the plea to reverse the lower court's findings beyond that the prosecution eye-witnesses' extra judicial statements, Exhibits and influence which are widely at variance with their statements at the trial.

Comparison of the two sets of statements reveals no irreconcilable conflict between them; that is to say, there is nothing in the affidavits which contradicts the eye-witnesses' testimony in court, that the appellants did commit the acts imputed to them. Racca's naming in Exhibit "1", his affidavit, Nemesio Rayola, Guillermo Dona, Dionisio Juan and Vicente Martinez as having beaten Pedro Florendo, did not preclude the idea that Rosalino Peña, Manuel Briones, Felix Domingo, Pablo Degracia, and others were coauthors of the crime. And Cesareo Velasco's mention of 33 supposed perpetrators besides the four appellants might denote an intent to implicate more people but not that the accused were not involved. (Racca could have withheld some of the defendants' names for reason best known to himself; and Velasco could have in mind all the persons who, besides the accused, had a hand in the punishments of the deceased in one form or another, directly or indirectly.

It is important to keep in view, in the consideration of the witnesses' affidavits, that these are brief; that save for some preliminary questions, the statements, which are said to be in disagreement with the witnesses' statements at the trial, were given in loose, general and haphazard fashion; that no effort at clarification or elaboration seems to have been made by the examiner or investigator; that Florendo, as some of the defendants are said to have suggested, was condemned and tortured to a slow death; that the tortures were committed by stages and in several places on the route to his destination, and a large horde of bolomen followed the accused and the prisoner throughout the long trek.

Conceding for argument's sake that the two statements of either witness are in hopeless conflict, it does not necessarily follow that their testimony at the trial was perjured. The important factors that should weigh in the appreciation of a witness' veracity are the reasonableness and cogency of his testimony and the manner in which he answers the questions. The fact that he lied on another occasion must give way to those considerations.

The trial court was convinced that Racca and Velasco were truthful witnesses. For our part, we have detected no indication of falsehood in their evidence enough to warrant reversal of the learned trial Judge's conclusions. We are especially impressed by the fact that, unaccustomed to the ways of court, Racca and Velasco came with flying colors out of the rigid and lengthy cross-examinations to which they were subjected by the various counsel for the defense. The latter's laborious effort failed to make a breach in the witnesses' story.

The appellants claim to have been genuine guerrillas and that Pedro Florendo was a spy for the Japanese. They therefore contend that they are entitled to the benefits of the Guerrilla Amnesty Proclamation, although two of them pretended to have nothing to do with the crime other than having seen the deceased being carried off toward the east, while Briones asserted that he did nothing more than turn Florendo over to Peña, who on his part said he merely delivered the person of Florendo to Nemesio Arreola, now dead, "Chief of the (Guerrilla) Military Government in Sta. Maria."

To come within the purview of the proclamation, it is essential to establish that the offended party was a collaborationist or was believed to be one, and that the crime was effected for the purpose of promoting the cause of the resistance movement or punishing past treasonable acts. Other than the defendants' testimony and the supposed orders from superior guerrilla officers to catch Florendo, there is no proof that the latter was a spy or collaborator, unless serving as municipal mayor be considered collaboration with the enemy. The great preponderance of evidence in fact is that he was not. As the court said:

"Sobre la memoria del interJtecto Pedro Florendo la defensa quiso todavia extender sombras denigrantes.

* * * * *

"Solo los mismos enjuiciados trataron de establecer hechos pro-japoneses por parte de Pedro Florendo, sin haberse asegurado por los mismos y por imparciales testigos que hayan visto a Pedro Florendo en la comision de tales hechos. Es mass el Sr. Maximino Bello, abogado, 'intelligence officer' que fue segundo al Sr. Macario Peralta Jr. en el comando de los guerrillas en Iloeos Sur, con jurisdiecion desde Vigan hasta Tagudin, declaro de un modo digno de credito que, en o antes del 22 de Octubre de 1944, ningun report recibio acerca de actividades de espionaje pro-japones (inclusa la alegado participacion en la ejecucion de los guerillas Antonio y Atendido) por parte de Pedro Florendo sino que, antes al contrario, dicho Florendo, actuando aun de Mayor de Santa Maria, y su hijo estaban en contacto con el (Atty. Bello) hasta el extremo de que, dicho Alcalde le dio por prestado un revolver, no obstante saber que Bello formaba parte del movimiento de resistencia.

* * * * *

"E1 mero hecho de que, a despecho de las pruebas evidentes de la acusacion en cuanto a su participacion directa en el asesinato de Pedro Florendo en Manogac, los cuatro acusados no hayan tenido el valor de admitir dicha participacion y confiar en la eficacia de la Proclama Presidencial No. 8, denota falta de fe en la virtualidad de su teoria de que no estaban movidos por el odio vengativo."

In a small community like Sta. Maria, collaborators could not hide their relations with the invaders and what they did. Hated, collaborators' acts were magnified, rarely minimized. When the highest guerrilla intelligence officer on the area, who ought to have seen or heard of the deceased's performances if he had been a traitor, affirmed under oath that Florendo was a peaceful citizen, loyal to his country, helpful to the guerrillas, the court rightly felt certain that the offended party was not a spy or collaborator and that the defendants knew it.

It is queer that if the deceased had been a collaborator throughout the Japanese occupation spy No. 1, at that—as the defendants alleged, no disinterested inhabitants of the town were called to testify, and the earliest order to arrest him was issued only on June 16, 1944, and the last on September 8, The court's veiled insinuation that these orders were fake was not farfetched. Their wording and tone and the general appearance of the paper on which they are written greatly add to the skepticism of their authenticity.

We are with the trial Judge that none but vindictiveness born of bitter personal hatreds and previous political rivalry could have been the motives behind the fiendish and ignominious killing. The defendants did not bring their prisoner before the superior officers who, they claim, had decreed his capture. They did not even let him have a merciful death. He was literally butchered, and while was still alive, they gloated over his fate and were not

to be cheated of the spectacle of their victim's painful, long-drawn-out sufferings deliberately contrived. They hungered for his living flesh and thirsted for his blood, and were not to be satisfied until final collapse intervened to put an end to one of the most horrible and beastly exhibitions of man's inhumanity ever recorded in the annals of criminality.

We find the appellants guilty of murder as charged, with the aggravating circumstance of cruelty, and for lack of sufficient votes for the imposition of a higher penalty, the appealed decision is affirmed, with costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, and Jugo, JJ., concur.

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