

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIONISIO RAFANAN AND BENJAMIN RAFANAN, DEFENDANTS AND APPELLANTS.

G.R. No. L-13289. September 29, 1962

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PER CURIAM:

The information filed in the Court of First Instance of Ilocos Sur charged five persons with the crime of robbery in band with double homicide, committed on January 11, 1955 in the municipality of Lapog of the same province. Of the five, three were brought to trial, namely, Dionisio Rafanan, Benjamin Rafanan and Cresenciano Agatep. The fourth, Concordio Leonardo, has so far not been apprehended; and the last, Crispin Vite, escaped from the provincial jail on May 1, 1956 and until now remains at large. After the prosecution had presented its case Cresenciano Agatep was discharged for insufficiency of the evidence against him. The trial proceeded with respect to Dionisio Rafanan and Benjamin Rafanan, both of whom were thereafter found guilty by the court a quo and sentenced to suffer the extreme penalty of death; to indemnify jointly and severally the heirs of each of the two deceased in the sum of P6,000.00; to indemnify further the spouses Juan Santella and Josefina Peralta in the sum of P57.00; and to pay the costs. From the said judgment the present appeal has been taken in due course.

The evidence of the prosecution consists principally of the testimony of Juan Santella, Josefina Peralta, Avelina Seguban and Lt. Eulogio Mencias Jr. of the Philippine Constabulary detachment stationed in Ilocos Sur. The two victims of the killing were Venancio Santella and Alfredo Santella, Juan Santella's father and brother, respectively. All of them were residents of barrio Cacandongan, municipality of Lapog.

At about 10 o'clock in the night of January 11, 1955 the Santellas had just retired, Venancio in his house together with his wife, his son Alfredo and the latter's wife Avelina Seguban; and Juan in another house some five meters away, together with his wife Josefina Peralta. The first unusual thing they noticed was the barking of their dogs. A voice from the yard was then heard, calling the name of Alfredo. When his father went to the door to look out the voice ordered him to come down. In a little while Alfredo was called to join him and when he did so he was met by three men dressed in maong pants and fatigue shirts, each carrying a firearm.

One of them asked Alfredo to produce his gun, but he protested that he did not have any. The three then tied father and son together by their hands, after which one of them proceeded to the house of Juan Santella and also told him to come down. According to Juan Santella the one who met him at his door was Concordio Leonardo, who thereupon took him where his father and brother were tied together. Dionisio Rafanan joined Juan to them by means of the same rope and then the captives were herded away in marching formation leaving their womanfolk behind. After walking some distance, Juan Santella, who had succeeded in untying his hands in the meantime, looked back and saw the three men following close behind, with their guns pointed forward and aimed at the victims. Juan jumped sideways to the left—none too soon, it turned out, for immediately a fusillade followed. Venancio and Alfredo fell, while Juan Santella sought refuge in a depression on the ground. As soon as he sensed that the gunmen had left, he hurried to the house of the barrio lieutenant, Osmundo Villalon, about a hundred meters away, and reported the matter to him.

The shots had been heard by Josefina Peralta and Avelina Seguhan. After a while Dionisio Rafanan came back to Venancio's house and told Josefina to come with him to her own place. Avelina tagged along and once inside Dionisio told Josefina to light a lamp, which she did, and later on to open the trunk containing her personal belongings. The trunk yielded three blankets worth P31.00, a gold ring worth P10.00 and cash in the amount of P16.00, all of which Dionisio appropriated and took with him. When he had left Juan Santella arrived with the barrio lieutenant. Together with the three women they proceeded to the scene of the shooting and there came upon Venancio already lifeless and Alfredo in dying condition. He was rushed to a hospital but nothing would be done to save him. The autopsy report (Exh. 1) shows that Venancio sustained four gunshot wounds in different parts of the body and that Alfredo sustained one which penetrated the right lung.

The incident was duly reported to the constabulary detachment in Ilocos Sur and Lt. Eulogio Mencias, Jr. was assigned to go after the culprits. It was not until January 16, or five days after the crime, that the patrol led by Mencias got its first break in the case when a young boy was intercepted with a letter signed by Dionisio Rafanan and addressed to the barrio Lieutenant of Caronoan. Upon interrogation the boy revealed the hideout of Dionisio and his companions, which was in the hills of Tapao, another barrio in the municipality of Lapog. The patrol proceeded to the place at noon of that day and made contact with the fugitives. A pitched battle ensued, during which Mencias recognized Dionisio Rafanan as one of the seven or so persons in the group at the top of the hill. When the firing subsided and the patrol rushed to the place it was already deserted, but in their haste the outlaws left a number of firearms and other articles, among which were the three blankets that had been taken from the house of Juan Santella the previous January 11.

The identity of Dionisio Rafanan as one of the three persons who shot and killed Venancio Santella and Alfredo Santella has been established beyond doubt by the evidence for the prosecution. He was recognized by Juan Santella, by his wife Josefina Peralta, and by Alfredo's widow Avelina Seguban, to all of whom he was known even before that time. They all pointed to him unequivocally at the trial as having participated in the commission of the crime. They had sight of him that fatal night not for a fleeting moment but for a considerable length of time. It was he who tied the victims together and then followed close behind them when they were taken to the place of execution. He came back immediately after the shooting, fetched Josefina Peralta to her house and in her presence as well as in the presence of Avelina Seguban ransacked the contents of a trunk, from which he got three blankets, a gold ring and cash in the sum of P16.00.

The defense of Dionisio Rafanan is alibi. He testified that in the evening of January 11 (he was then already being hunted by the authorities) he and a companion, Cresenciano Agatep, left their hideout in order to see the mother of Benjamin Rafanan to find out if the latter had already arrived from Pampanga. On the way they came upon Arcadio Ventura and Prospero Villaspil preparing to gather cogon grass. They joined the two and help them gather cogon until early dawn the next morning, when they proceeded on their way. The place, according to Dionisio Rafanan, was not far from the scene of the shooting; in fact he heard the shots that were fired, but decided that they were not near enough to pose any danger to him if they should happen to come from constabulary soldiers. It is the settled rule that the defense of alibi cannot prevail in the face of the positive identification of the accused by witnesses who had no motive to testify falsely against him. Such positive identification is present in this case.

Alibi is also the defense of Benjamin Rafanan. He was not, he said, in Ilocos Sur at all on the date of the commission of the crime; he was in barrio Sta. Monica, Lubao, Pampanga, where he had gone with his wife to work as a fishpond laborer the previous month of October. He left Pampanga only on January 14, 1955, stayed with his mother in barrio Caronoan, Ilocos Sur, for sometime until he left for Cagayan province. The alibi, to be sure, is without corroborating evidence, although it appears that the lawyer for this defendant, on the date of the

last hearing, asked for further postponement so that a subpoena could be issued to the person who employed him in Pampanga to work in a fishpond, which request for postponement was denied. But it is not upon the defense of alibi that the case against Benjamin Rafanan must be decided. The only one who identified him at the trial is Juan Santella, whose testimony is to the effect that when he came out of his house that night of the killing he saw Dionisio Rafanan and Benjamin Rafanan guarding his father and his brother, who were tied together, and that he likewise saw Benjamin walking behind the three of them just before the shooting started. Neither Josefina Peralta nor Avelina Seguban identified this defendant. The question, therefore, is whether or not his identification by Juan Santella is such as to engender in the mind of this Court a moral certainty of guilt.

Two previous sworn statements made by Juan Santella, both before the Justice of the Peace of Lapog, Ilocos Sur, emasculate his testimony on this particular point. In the first, dated January 12, 1955, the day after the occurrence, he was asked who shot his father and his brother and his answer was, "Dionisio Rafanan and his companions." There were three of them, he said, he did not know the names of the other two. On January 24, 1955, after the encounter between the Rafanan group and the constabulary patrol in the hills of Tapao, Juan Santella made his second statement as follows (Exh. 2, Exh. 1-A);

"Q

—
Why are you now in Court?

"A

—
Now that I am in my full consciousness I come to declare that I am fully convinced that the persons with whom Dionisio Rafanan killed my father Venancio Santella and my brother Alfredo Santella were Crispin Vite, Concordio Leonardo, Benjamin Rafanan, Cresenciano Agatep and Simeon Ventura.

"Q

—
Were you able to identify or recognize those who killed your father and brother?

"A

—

Those whom I recognized were Dionisio Rafanan, Concordio Leonardo and Crispin Vite.

"Q

—

Why do you include Benjamin Rafanan, Cresenciano Agatep and Simeon Ventura since you could not identify them?

"A

—

Yes, because the PC soldiers have seized from the possession of all those whom I mentioned the three blankets which were robbed by Dionisio Rafanan, Concordio Leonardo, Crispin Vite, Benjamin Rafanan, Cresenciano Agatep and Simeon Ventura on the very night when they killed my father and my brother.

"Q

—

Have you now recovered those blankets mentioned by you?

"A

—

Yes, they were delivered to me and my husband by Major Artemio Babia in the PC Headquarters at Tamag, Vigan, Ilocos Sur.

"Q

—

According to your previous declaration, only three men came to your place on the night when your father and brother were shot, what do you say about this?

"A

—

The three, Dionisio Rafanan, Concordio Leonardo and Crispin Vite were the ones who came to our yard and the other three whom I could not recognize stayed in the fields where my father and my brother fell.

"Q

—

And the money and finger ring taken by the persons mentioned by you, have you now recovered them?

"A

—

Not yet, sir.

"Q

—

Do you want to have your present declaration as an additional to, or a clarification of, your previous declaration taken on January 12, 1955?

"A

—
Yes, sir."

It thus appears that the three whom he recognized, the three who killed his father and his brother, were Dionisio Rafanan, Concordio Leonardo and Crispin Vite, and that if he linked Benjamin Rafanan and several others to the crime it was only because according to the constabulary they were with the group from which the three blankets taken from his house had been recovered. When confronted with the sworn statements at the trial, Juan Santella gave the barefaced explanation that it was the name of Benjamin Rafanan and not that of Crispin Vite which he mentioned to the Justice of the Peace when he was questioned. The explanation, obviously enough, is unacceptable. The two names could hardly have been mistaken for each other, for there is no similarity between them; and it is to be presumed that Juan Santella read the statement or that it was read to him before he signed the same. It is true that Benjamin Rafanan was among those with whom the constabulary patrol had an exchange of fire on January 16, but this does not mean that he was with the group that perpetrated the armed robbery and killing on January 11. The evidence for the defense shows that Benjamin joined Dionisio only thereafter, the latter being then engaged in recruiting adherents to the Huk movement in Ilocos Sur. We are therefore of the opinion that the guilt of Benjamin Rafanan has not been proven beyond reasonable doubt.

The offense was committed with the aggravating circumstances, alleged in the information and established by the evidence, of evident premeditation, abuse of superior strength and nocturnity. The mitigating circumstance of voluntary surrender is claimed, it appearing that Dionisio Rafanan gave himself up first to a certain Captain Laurentino Villamar of the Philippine Army sometime in January 1956, and that he was then taken to Camp Crame, PC headquarters, where the formal surrender was made to General Manuel Cabal. The surrender, however, was not in connection with the crime herein charged but in connection with the activities of Dionisio Rafanan in the Huk movement. In the case of *People vs. Felix Semañada*, alias *Semanada*, alias *Commander Dante*, 103 Phil., 790, this Court held: "Anent the circumstance of voluntary surrender or of a similar or analogous circumstance. We hold that defendant cannot claim it in his favor in the case at bar, because he did not surrender to the authority or its agents by reason of the commission of the crime for which he is herein prosecuted, but for being a Huk who wanted to come within the pale of the law."

Wherefore, the judgment appealed from is affirmed with respect to appellant Dionisio Rafanan, with, one half of the costs, and reversed with respect to appellant Benjamin Rafanan, who is hereby acquitted, with the other half of the costs de oficio. The indemnities imposed by the lower court shall be paid by Dionisio Rafanan alone.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, and Makalintal, JJ., concur.

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