

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PORFERIO SOSING, ACCUSED-APPELLANT.

G.R. No. L-42791. January 30, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

A review of the death sentence imposed by the Court of First Instance of Leyte upon Porferio Sosing for the crime of robbery with homicide.

Between the hours of 1:00 and 2:00 in the morning of August 28, 1974, Emilia Tinaya, a 64-year old widow, was slain in her house at the poblacion of Julita, Leyte, a victim of multiple stab wounds, to wit: five [5] stab wounds on the neck, one on the right shoulder, and another at the deltoid region, left arm. According to Dr. Severo Cunanan, medico-legal officer of the NBI, the injuries sustained by the victim on the neck were fatal.[1]

The motive for the killing has been ascribed by the prosecution to robbery, the deceased having been allegedly robbed of the amount of P5,000.00.

On December 18, 1974, an information was filed in the Court of First Instance of Leyte, charging Porferio Sosing, Alfredo Sosing, Alberto Tenebro and Cresencio Culaban with the crime of robbery with homicide; and after due trial, Porferio Sosing was found guilty as charged and sentenced to death; Alfredo Sosing and Alberto Tenebro were acquitted; while Cresencio Culaban was found guilty of robbery. The latter did not appeal his conviction.

The court a quo found Porferio Sosing guilty of the crime charged on the basis of the testimonies of Filomena Maurillo and Romeo Javier, as well as the extrajudicial statement allegedly executed by accused Cresencio Culaban, Exhibit "L", implicating Porferio Sosing.

Filomena Maurillo, a 14-year old ward of the victim and her lone companion in the house at the time of the incident, testified that at about 8:00 o'clock of the preceding night, she slept at the sala under the table near the door of the room of her Lola Emilia. At about 1:00 or 2:00 in the morning, she was awakened by a noise coming from her Lola's room. She was lying motionless on her right side facing the door of the room when a man, with a hat on, whom she identified as the accused Porferio Sosing, suddenly burst forth from the room of her Lola and ran towards the kitchen, holding in his left hand a 'pisao' [small bolo] dripping with blood, and a pouch hanging from his right hand. Soon after, her Lola staggered out of the room and slumped on the floor. Upon noticing that her Lola was bathed in blood, she shouted for help.

According to this witness, she recognized Porferio Sosing by the light of a lamp on the table, the brightness of which she likened to that of a 5-centavo candle.[2]

Romeo Javier, the son-in-law of the deceased, declared that about 1:30 in the morning of August 28, 1974, he was awakened by Pompeyo Gregorio, the victim's neighbor, who informed him of the incident. He went to his Mama's house and upon reaching the gate, he heard a woman's voice calling for help.[3] However, instead of proceeding directly to his mother-in-law's house, he went to Sansonella St., located at the back thereof, and there he saw

Porferio Sosing jump from inside the victim's yard over the steel-matting fence, holding a bolo in his left hand and a bag in his right hand. The accused sped across Sansonella St. towards the bushes where he vanished from sight. This witness claimed that he recognized Porferio Sosing by the beam of his flashlight, as the latter was only ten [10] meters away from him when he jumped over the fence.[4]

The court a quo found the above testimonies of said witnesses deserving of full weight and credence. Our own review of the record, however, reveals certain significant circumstances that seriously impair their credibility.

It appears that the tragic incident was immediately reported to Ramon Advincula, son-in-law of the victim who was then a resident of Tacloban City. That same morning of August 28, 1974, the chief of the NBI office in Tacloban City, upon request of Ramon Advincula, sent one of his men, Vicente Colas, to the scene of the crime "to lift latent fingerprints and conduct searches at the scene of the robbery with homicide x x x." [5] Colas was accompanied by Ramon Advincula and his brother-in-law, PC Sgt. Superable. Later that morning, NBI Agent Arnaldo Bacabac together with the NBI medico-legal team also proceeded to the town of Julita.

Vicente Colas testified that upon arriving in the house of the deceased at about 9:00 or 10:00 in the morning of August 28, 1974, he asked Filomena Maurillo if she recognized the assailant, and the latter answered that she saw only the feet of the man who ran out of her Lola's room.[6]

NBI Agent Bacabac also investigated Filomena Maurillo and Romeo Javier, among others, and his account of these interviews is reflected on the record as follows:

"Q Do you recall the name of this girl companion of Emilia Tinaya?

A I cannot exactly remember the name, but she is a teenager.

Q You said you interviewed the girl companion of Emilia Tinaya. What were the questions you asked her?

A I asked her whether she was in the house when the incident occurred and she admitted that she was. I also asked her what she was doing at the time when the alleged robbery took place and she said she was asleep. And then I followed up the question as to whether she was awakened when there was a commotion and she said she was. I asked her if she can identify the person who got inside. That she could not answer anymore.

x x x x

"COURT:

What happened after you asked those questions?

A I also asked her if she had seen anyone aside from the old woman and she answered that she recalled only having seen the lower portion of the man.

"COURT:

Please proceed, Atty. Cuares.

"ATTY. CUARES:

Q Did you ask her specifically what part of the lower portion of the man she saw?

A That part like his pants down to his feet.

Q Did you ask her if she recognized the person she saw?

x x x x

Q You also said that you investigated one Romeo Javier, the son-in-law of Emilia Tinaya de Opiniano. What statement did he give you, if any?

A Well, we were not able to get any substantial information from him. In fact, we started by asking him if he can do us the favor of employing anyone of their trusted men to conduct a background surveillance on suspects and on their families and to give us all the information on whatever development there may be on this matter.

"Q The said Romeo Javier testified before this Honorable Court that that evening of the incident, August 28, 1974, at between 1 and 2 o'clock in the morning, he saw Porferio Sosing, one of the accused herein, jumping from the concrete fence from Emilia's house towards the street.

A He did not give us that information. Otherwise, we would have taken his statement on that date if he had given us that information." [pp. 89, 92, TSN, April 22, 1975]

The foregoing testimonies of the NBI officers, which were admitted without objection on the part of the prosecution, doubtless deserve more weight and credit than those of the witnesses for the prosecution. They were officers of the law whose assistance was solicited by Ramon Advincula, the son-in-law of the deceased, and their only interest in the case was to pinpoint the identity of the malefactors.

The unexplained failure of prosecution witnesses Filomena Maurillo and Romeo Javier to point to the accused Sosing when they were investigated by the NBI officers a few hours after the incident casts grave doubts as to the veracity of their statements in open court. And this doubt is heightened by a number of inherent improbabilities attending their testimonies. If, according to Filomena Maurillo, she was lying motionless on her right side facing the door of her Lola's room when the accused, with a hat on, sallied forth from the door and ran towards the kitchen, she certainly could have caught only a brief, fleeting glimpse of the man's features. The fact that the sala was faintly lighted by a lamp, whose illumination approximated that of a mere 5-centavo candle, further enhances the likelihood of mistake in her identification of the accused. The witness further stated that she was under the table when that man passed by. Such assertion lends plausibility to the statement she gave to the NBI officers that she had seen only the lower portion of the man's body. Given these circumstances, it is difficult to believe that she saw the man's face or, if she really did, that she was able to recognize him with absolute certainty.

The declarations of Romeo Javier should also be scrutinized. He stated that upon being informed by Pompeyo Gregorio, the victim's neighbor, that his Mama had been wounded and robbed, he immediately ran to the victim's house, and upon reaching the gate he heard a woman's cry for help coming from the house. However, despite the cry for help, he did not proceed to the victim's house to ascertain the condition of his mother-in-law, as any person under the circumstances would have done. Instead, he went directly to Sansonella St., located at the back of the victim's house, where he allegedly saw the accused jump over the wall. Indeed, this actuation clearly runs counter to the ordinary pattern of human reactions; and his failure to reveal the motive for his unnatural demeanor renders his testimony highly suspect.

The evidence shows that NBI Colas searched the victim's room for fingerprints and, when he found none inside the room, he proceeded to the yard to look for tell-tale clues that might lead to the discovery of the assailant. In the course of his search, he came upon a bamboo pole smeared with blood, leaning against the wall along Sansonella Street. Examining this bamboo pole, he found bloodstained fingerprints thereon. Colas lifted these impressions and sent them to the Manila NBI office, together with the fingerprints of the suspect Porferio Sosing. The Didactyloscopic Report issued by NBI[7] shows no similarity whatsoever between the fingerprints lifted from the bamboo pole and those of the accused.

The accused denied any participation in the commission of the crime charged. According to him, he was in the house of one Josefa Caharop from 8:00 to 10:00 o'clock of the preceding night, drinking liquor with his friends,

Braulio Magallanes, Doring Arozado, Alfredo Sosing, Domingo Bueno and Cresencio Culaban; that he proceeded home after their drinking spree[8] ; that at 4:00 o'clock in the morning of August 28, 1974, he was awakened by a policeman, Doring Timonera, who brought him to the police station[9] , where he was interrogated by the Chief of Police, Toting Tinaya, a nephew of the deceased; and that his body, finger nails, as well as his clothes and shoes were closely examined by the police officers for the presence of human blood.[10]

It further appears that the police officers divested the accused of the polo shirt he had been wearing since the previous day, and the same was sent to the NBI laboratory in Cebu for determination of the presence of human blood. The Biology Report on the test conducted by Manuel Emesilla, senior forensic chemist of the NBI office in Cebu, indicates that the shirt was "negative for the presence of blood." [11]

In convicting Porferio Sosing, the court a quo accorded full weight to Cresencio Culaban's alleged extrajudicial confession, Exhibit "L", despite objection interposed by the defense to its admissibility. This statement was allegedly given by Culaban to PC Sgt. Gaudencio Superable on March 10, 1975, i.e., seven [7] months after the incident in question. According to Sgt. Superable, Culaban who was then detained in the provincial jail, was taken to the PC headquarters in Tacloban City, where the said statement was voluntarily given by said accused. It is undisputed, however, that Exhibit "L" does not bear the signature of Culaban, for when he was brought to the office of Asst. Fiscal Oledan, he refused to sign it when asked to do so or to swear to the truth thereof. In fact, in open court Culaban vigorously denied having given the statements contained in Exhibit "L" either to Sgt. Superable or to Fiscal Oledan. Under these circumstances, Exhibit "L" has no probative value.

Even assuming that Exhibit "L" were the true and voluntary declaration of Culaban, as held by the trial court, it is nevertheless inadmissible against Porferio Sosing under the principle of "res inter alios nocere non debet." Well established is the rule that a confession made by an accused is admissible only against him, and not against his co-accused who did not in any manner take part in the said confession, except where there is conspiracy, established by evidence other than the confession itself.[12]

We have painstakingly scrutinized the record, and save for the inculpatory statements embodied in Exhibit "L", there is not a shred of evidence to establish the existence of conspiracy between Cresencio Culaban and Porferio Sosing. While it is true that they were admittedly drinking liquor in the house of one Josefa Caharop in the company of other persons from 8:00 to 10:00 of the preceding night, this circumstance alone does not suffice to prove the existence of a common criminal design. Mere suspicion, speculation, relationship or association and companionship does not establish conspiracy[13] , for proof thereof must be positive and convincing.[14]

Furthermore, this Court had consistently ruled[15] that an extrajudicial declaration of an accused cannot be utilized and considered against his co-accused unless the same is confirmed in open court by the declarant. The evident purpose for this requirement is to afford the accused against whom such evidence is offered the opportunity to confront and cross-examine the declarant. In the case at bar, it seems redundant to repeat that since accused Culaban had repudiated Exhibit "L" at the trial, the statements set forth therein implicating accused Porferio Sosing are inadmissible in evidence.

WHEREFORE, the judgment under review is hereby set aside, and the accused Porferio Sosing acquitted of the crime charged. His immediate release from custody is hereby ordered, unless he is otherwise detained for some other legal cause.

SO ORDERED.

Fernando, C.J., Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Ericta, and Plana, JJ., concur. Teehankee and Aquino, JJ., no part.

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- [1] Exhibit A.
- [2] TSN, p. 81, March 13, 1975.
- [3] p. 46, March 5, 1975.
- [4] pp. 72-73, March 4, 1975.
- [5] Exhibit "2".
- [6] pp. 118-119, April 17, 1975.
- [7] Exhibit "3"
- [8] pp. 107-109, April 22, 1975.
- [9] p. 111, Id.
- [10] p. 112, Id.
- [11] Exhibit "4".
- [12] Section 27, Rule 130 of the Rules of Court; People vs. Alegre, et al., 94 SCRA 109.
- [13] Underhill's Criminal Evidence, p. 1401
- [14] People vs. Tingson, 47 SCRA 243.
- [15] People vs. Fraga, 109 Phil. 241, 244; People vs. Izon, et al., 104 Phil. 690, 696; People vs. Gomez, 101 Phil. 1056; People vs. Serrano, 105 Phil. 531.

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