

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUFRACIO IRINCO, DEFENDANT AND APPELLANT.*G. R. No. L-3479. July 30, 1951*

Ponente: PARAS, C.J.

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This is an appeal from the judgment of the Court of First Instance of Samar, convicting the appellant, Eufracio Irinco, of murder and sentencing him to reclusion perpetua and to indemnify the heirs of the deceased, Donato Caparoso, in the sum of two thousand pesos, without subsidiary imprisonment in case of insolvency, plus the costs.

The evidence for the prosecution shows that at about six o'clock in the afternoon of March 10, 1947, the appellant and Donato Caparoso came to the house of Margarita Ponce in sitio Carugyao, barrio of Banzon de Cacorotan, municipality of Palapag, province of Samar, wherein they drank tuba which the appellant brought. Reminded by Donato Caparoso of his promise to repair Donato's house in payment of his debt, the appellant stated that he would pay in cash. Donato Caparoso told the appellant that the latter was saved from hunger, in spite of which he was backing out from his commitment. The appellant thereupon went down and challenged Donato Caparoso to a fight. The latter chose not to fight on the excuse that his nephews and nieces (children of Margarita Ponce) were there and afraid. In view of the menacing attitude of the appellant, the family of Margarita Ponce closed the doors and windows of her house and they made Donato Caparoso spend the evening with them.

At about four o'clock in the morning, Donato Caparoso left for his home accompanied by his nephew Jesus Caparoso. They were still on the trail near the bank of the Palapag river, Jesus following his uncle about three meters behind, when the appellant suddenly showed up from the side and thereupon struck Donato Caparoso with his bolo at the inner side of his right foreleg near the ankle. This was followed by Donato's exclamation, "Agui, you wounded me Eufracio", and by Jesus' plea, "Do not do it Eufracio". The appellant, instead of desisting, turned to and told Jesus that the latter would be the next. Jesus Caparoso started to run towards his house, pursued by the appellant who, however, was not able to overtake Jesus. This immediately closed the house after entering therein. At about six o'clock that same morning, Jesus, his mother (Margarita Ponce), and his sister (Candelaria Caparoso) went to the scene of the incident where they found Donato Caparoso, already dead. Candelaria lost no time in reporting the matter to the police authorities who in the same morning arrested the appellant in the house of Marcos Sales. The police found in the house of the appellant a bolo, with blood stains, hidden in a bamboo tube used as a tuba receptacle. Medical examination showed that the bolo cut on the right limb of Donato Caparoso, about one and a half inches long and one half inch deep, totally severed the principal artery resulting in profuse hemorrhage which caused death.

The appellant admitted that he was in the house of Margarita Ponce in the afternoon of March 10, 1947, and drank tuba with Donato Caparoso; that Donato wanted the appellant to pay the latter's debt in labor, and the appellant was agreeable to Donato's wish. But the appellant testified that Donato was drunk and in an angry mood, in view of which the appellant went home at the suggestion of Margarita Ponce; that after eating supper he and his wife

slept, although he woke up early the next morning and gathered tuba around the house of Margarita Ponce; that he thereafter pastured his carabaos and then went to the house of Gregorio Valenzuela to make copra; that while he and Gregorio Valenzuela were proceeding to the place where they were to work, they met the policemen who then and there arrested the appellant; that the bolo presented in court by the prosecution was his, and that stains on said bolo were caused by the tan bark used for distilling tuba.

We have examined the entire record and are convinced that appellant's guilt is amply substantiated by the evidence. There is no indication in the record of any motive that could have prompted Jesus Caparoso, lone eyewitness presented by the prosecution, to falsely incriminate the appellant. Upon the other hand, appellant's admission that he was in the house of Margarita Ponce in the afternoon of March 10, 1947, that he drank tuba with Donato Caparoso, that the latter in fact wanted the appellant to pay his debt in labor, rather lends support to the theory of the prosecution that the appellant was incensed by Donato's attitude. Appellant's admission that he woke up early in the morning and gathered tuba around the premises of Margarita Ponce, also tends to negative his defense of alibi.

The credibility of Jesus Caparoso is assailed on the ground that, according to defense witness Mayor Felipe Espina, Jesus failed to incriminate the appellant while Jesus was being investigated by the police authorities at the scene of the crime. The point is not well taken, because prosecution witness Pastor Potot, a policeman, testified that the appellant was arrested the same morning in view of the information of the relatives of Donato Caparoso (who of course included Jesus). Another criticism made by counsel for the appellant is that while in his affidavit executed on March 12, 1947, Jesus Caparoso stated that the deceased Donato Caparoso called the appellant by the name "Pansoy", in his testimony during the trial held on August 26, 1949, Jesus alleged that Donato addressed his assailant as "Eufracio". This criticism is of no moment, since it is admitted that both names refer to the appellant, and the difference was undoubtedly due to the lapse of time between the signing of the affidavit and the trial and to the fact that Jesus did not consult his affidavit before taking the witness stand and was not instructed regarding the advisability of testifying uniformly,—a circumstance making Jesus a more credible witness.

Appellant also argues that under the description made by prosecution witness Jesus Caparoso of the positions of the appellant and the deceased Donato Caparoso when the former boloed the latter, it is improbable that Donato could have been wounded at the inner side of his right foreleg near the ankle. This speculation cannot prevail over the positive testimony of Jesus, aside from the fact that Dr. Juan Rivera, after the demonstration of Jesus, testified that the location of the injury was possible.

The crime committed is murder, because the attack was made by the appellant so suddenly and without warning as to enable him to carry out his criminal act successfully, without risk to himself arising from the defense that might be put up by his victim. We are of the opinion, however, that the appellant is entitled to the mitigating circumstance of lack of intention to commit so grave a wrong as that actually done. This is obvious from the fact that, instead of hitting the deceased in the upper part of his body, the usual point of attack, the appellant merely directed the bolo thrust at the right limb. It cannot fairly be supposed that the appellant previously knew or was sure that, by cutting the principal artery of the limb, Donato would certainly be killed. No aggravating circumstance may be considered against the appellant.

Wherefore, with the sole modification that the appellant is hereby sentenced to an indeterminate penalty of from 10 years and 1 day, prison mayor, to 17 years, 4 months and 1 day, reclusion temporal, with legal accessories, the appealed judgment is affirmed with costs against the appellant. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Reyes and Jugo, JJ., concur.

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