

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MAGONDACAN BURANSING, DEFENDANT AND APPELLANT.

G. R. No. L-2543. March 19, 1951

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal by the defendant, Magondacan Buransing, from a judgment of the Court of First Instance of Lanao, finding him guilty of murder and sentencing him to reclusion perpetua, with legal accessory penalties, to indemnify the heirs of the deceased, Rudi Gorodatu, in the sum of P2,000, and to pay the costs.

According to Panotolan Kabasaran, an eyewitness and wife of Rudi Gorodatu, the latter was asleep in his house in Bayang, Lanao, at midnight of January 3, 1948, when the appellant shot him from the window with a rifle. Rudi Gorodatu was hit at the back and the bullet penetrated his body, emerging through his abdomen and hitting also the right knee. Makarungon Diwan, a neighbor of Rudi Gorodatu, testified that immediately after hearing the shot, he went down his house with a flashlight, and saw the appellant carrying a rifle and running from the place of Rudi Gorodatu towards Binidayan. Makarungon Diwan found Rudi Gorodatu in his house already dead.

The evidence for the prosecution tends to show that the appellant was prompted to commit the crime by resentment resulting from the refusal of Rudi Gorodatu to compel his daughter Binakaran (wife of appellant) to return to the marital home after a quarrel that caused Binakaran to go to her father's house, in addition to the fact that Rudi Gorodatu bawled out the appellant for having punished his wife.

The appellant testified that he and his three-year old child slept on the night in question in the house of Toroganan Saikaman. The latter, corroborating appellant's testimony, alleged that the appellant was collecting a debt from Toroganan Saikaman; that he invited the appellant to sleep in the house of Toroganan Saikaman because it was then raining and the appellant had his three-year old child with him, and Toroganan Saikaman moreover promised to pay his debt to the appellant the next morning; that the appellant did not leave said house.

We have examined the record carefully and come to the conclusion that the judgment of conviction is correct. Appellant's counsel de oficio contends that the testimony of Panotolan Kabasaran and Makarungon Diwan is not entitled to credence. With reference to the testimony of Panotolan Kabasaran, wife of Rudi Gorodatu, it is pointed out that said testimony contains material inconsistencies, weaknesses and improbabilities in that (1) contrary to the testimony of Panotolan Kabasaran, there was no lamp in the room wherein her husband was shot and the house was completely dark; (2) if, as testified by Panotolan Kabasaran, she saw the appellant aim with his rifle, resting the barrel tip of the rifle on the window sill, and fire the rifle, the bullet would harmlessly go through the house without hitting the occupants admittedly sleeping on the floor; (3) if Panotolan Kabasaran really saw the shooting of her husband by appellant, why did she have to tell her husband, after the latter was shot, "Probably you are dreaming," to which her husband answered, "I am not dreaming"; (4) if Panotolan Kabasaran was in fact an eyewitness, why was she not investigated by the police who came the next morning and why was the appellant not arrested until two days afterwards, and the complaint filed ten or eleven days after appellant's arrest.

The testimony of Makarungon Diwan is assailed principally because he had a motive for incriminating the appellant, namely, that he did not receive his share of the dowry, said witness being charged with being the mastermind of the whole plot to send the appellant to jail.

Appellant's criticisms are mainly supported by the testimony of Datu Umbag, who lived in the same house occupied by Rudi Gorodatu, and the question merely hinges on credibility of witnesses, as to which we hasten to accept the findings of the trial judge who saw and heard the witnesses testify and accordingly was in a position to gauge their veracity. Moreover, it is significant that defense witness Datu Umbag contradicted the appellant on important details. While Datu Umbag testified, corroborating Panotolan Kabasaran, that appellant had a quarrel with his wife and was living separately from her, the appellant claimed that he never lived apart from his wife. While Datu Umbag testified that the deceased Rudi Gorodatu had asked P10 more for dowry, the appellant declared that he had paid to the deceased all the necessary dowry and nothing more was demanded or expected from him. While Datu Umbag testified that appellant's wife was in Massiu, about twenty kilometers from appellant's residence on the night in question, the appellant alleged that his wife was sleeping with her father (Rudi Gorodatu) in the latter's house. Besides, the truthfulness of Datu Umbag as a defense witness becomes more doubtful when he testified that the complaint was filed long after the commission of the crime, contrary to what the record shows and contrary even to the testimony of other defense witnesses that appellant's prosecution was commenced after two days, and when it is borne in mind that Datu Umbag did not bother about informing the authorities of what he had testified, if true, notwithstanding the fact that he was a special agent of the Governor.

It is true that, in a part of the testimony of Panotolan Kabasaran, she described the position of appellant's rifle in the manner hereinbefore set forth, but in the course of her testimony she made the clarification that appellant's rifle was on the same level with the floor when the shot was fired, and in the latter position it was of course not impossible for Rudi Gorodatu to be hit.

The defense of alibi set up by the appellant cannot prevail over the positive testimony of Panotolan Kabasaran, who has not been shown to have had any motive for testifying falsely against the appellant. Indeed, appellant insinuates that the mastermind of his prosecution is Makarungon Diwan; but the latter has not been proven to have had any power whatsoever sufficient to force or cause Panotolan Kabasaran to testify in the way she did in this case.

Upon the other hand, the flaws attributed to the testimony of Makarungon Diwan are more apparent than real. His statement that appellant was seen running over a distance of two hundred meters within the range of the flashlight of Makarungon Diwan, might be merely due to a miscalculation of distance, just as said witness mistakenly believed that one minute is equivalent to one breath. The statement of Makarungon Diwan that the appellant was arrested immediately after the shooting, contrary to what the record shows (that appellant was arrested after two days), is of little or no moment, because Makarungon Diwan saw the appellant with the authorities passing by his house on the same night, and he might have thought that appellant had then been arrested.

It is improbable that the appellant would have slept in the house of Toroganan Saikaman merely because of the rain, because the appellant's house was only one-half kilometer distant and the rain had admittedly stopped at about nine o'clock on the night in question. At any rate, the allegation does not constitute an airtight alibi, since said house was only four kilometers away from the scene of the crime, and it was therefore not impossible for the appellant to leave it and commit the crime and thereafter return thereto.

We are of the opinion that the refusal of Rudi Gorodatu to intervene in the quarrel between the appellant and his wife with a view to compelling or causing the latter to return to the marital home, with the result—as the appellant most likely thought—that he would lose the care and company of his wife, was the real motive that prompted the

appellant to take away the life of his father-in law and said motive is certainly greater as compared to the alleged failure of prosecution witness Makarungon Diwan to receive his share of the dowry, as a reason for scheming against the appellant.

The crime committed is murder, with the aggravating circumstance of dwelling, but in view of the provisions of section 106 of the Administrative Code for the defunct Department of Mindanao and Sulu, the penalty imposed by the trial court is within legal limits¹. With the sole modification that the indemnity to be paid by the appellant to the heirs of the deceased is increased to six thousand pesos, the appealed judgment is affirmed, with costs. So ordered.

Moran, C. J., Feria, Pablo, Bengzon, Padilla,, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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