

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIEGO ESTRADA, JUANITO ESTRADA AND LUIS ESTRADA, DEFENDANTS, DIEGO ESTRADA, DEFENDANT-APPELLANT.

G.R. No. L-34036. November 29, 1983

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Municipal Court of Gubat, Sorsogon, a complaint for Murder was filed against DIEGO ESTRADA, JUANITO ESTRADA and LUIS ESTRADA. After a preliminary examination of the witnesses, the Municipal Court ordered their arrest and fixed bail at P20,000.00 each. They were arrested on August 17, 1967; they did not post bail.

On August 25, 1967, the accused waived their right to a pre-liminary investigation for which reason the case was elevated to the Court of First Instance of Sorsogon where it was docketed as Criminal Case No. 3865.

On September 15, 1967, an assistant provincial fiscal of Sorsogon filed a motion for the provisional dismissal of Criminal Case No. 3865 on the ground "[t]hat upon a diligent perusal of the evidence and statements of the witnesses attached to the record of this case, the undersigned is of the belief that no sufficient evidence to warrant a conviction could be had in this case." (Expediente, p. 41.) At that time no information had been filed in court. The motion was granted and the accused were released.

On May 23, 1968, the case was revived by the filing of an information for Murder against the three ESTRADAS. The information which now bears Criminal Case No. 400 alleges:

"That on or about the 9th day of August, 1967 in the Municipality of Gubat, Province of Sorsogon and within the jurisdiction of this Honorable Court, the above named accused conspiring, confederating, and helping one another, with intent to kill and armed with a club and lead pipe, did then and there wilfully, unlawfully, and feloniously, with treachery and evident premeditation and use of superior strength, ganged up and delivered fist and club blows (using bali and pipe) on the different parts of the body of Romeo Escurel from behind and in front resulting to Multiple physical injuries, and thereafter dumping the body of Romeo Escurel into a well to conceal the crime and as a result thereof Romeo Escurel died instantly." (Expediente, p. 45.)

Diego Estrada was tried but Luis and Juanito were not tried because they had left Sorsogon. An alias order of arrest failed to bring them to court.

On March 5, 1971, the trial court promulgated its decision which contains the following judgment:

"WHEREFORE, the Court finds the accused Diego Estrada guilty beyond reasonable doubt of the crime of Murder with which he is charged, and hereby sentences him: [1] to suffer reclusion perpetua; [2] to indemnify the legal heirs of the deceased Romeo Escurel in the amount of Twelve Thousand (P12,000.00) Pesos; and [3] to pay one-third of the costs." (Expediente, p. 308.)

The case is now before this Court on appeal.

The People's version of the facts is as follows:

"At about 7:00-8:00 o'clock in the evening of August 9, 1967, two friends, Romeo Escurel and Romulo Endaya, took a walk to the market place of their hometown, Gubat, Sorsogon. After a while, they entered the store of one Lilia located at the market place. They bought a small flat bottle of Tanduay Rhum and drank the same at a table inside the store (pp. 3-4, 6, 12, Tsn, Feb. 24, 1969; p. 273, Records). They noticed inside the store Luis Estrada nicknamed "Oyet" with 5 companions who were already drunk. Estrada called to the newcomers, Escurel and Endaya, asking the latter to drink with him but the two friends did not answer and just continued to drink at their table. After drinking, Escurel and Endaya went out of the store (pp. 4-7, Tsn, Ibid; p. 273, Records).

As they left the store at about 9:00 o'clock that evening, Escurel and Endaya were followed by Estrada and his companions who provoked a fist fight. Estrada first hit Escurel and they fought. A companion of Estrada hit Endaya on the mouth and the latter fell un-conscious on the ground. For about 10 minutes Endaya was stunned and when he recovered his senses, Escurel was no longer around. Neither was Estrada and his companions (pp. 7-8, 12-13, Tsn, Ibid.) He looked for Escurel but when he could not locate the latter, he went home. The following morning, he learned that Escurel was dead. He went to the public dispensary of Gubat, Sorsogon and there saw the lifeless body of Escurel (pp. 8a, 15, Tsn, Ibid.).

At about 9:00 o'clock that same evening of August 9, 1967, Patrolman Wilfredo Esguerra of the Gubat Police Force was pinch-hitting for Patrolman Ramon Eva as guard in the office of the Chief of Police (pp. 17-19, Tsn, Ibid.) Presently, Escurel whom he knew for a long time already, came asking for help because there was a fight. Escurel did not enter the office but left in a hurry. Pat. Esguerra followed immediately at a distance of about 5 meters behind Escurel. As Escurel reached Zulueta Street he was met by Luis Estrada and Antonio Estropia who immediately pummelled Escurel with fists. Pat. Esguerra tried to pacify them and fired his gun to make them stop. Thereafter, he took Estrada and Estropia into custody as the aggressors. Meanwhile, Escurel backed up and left (pp. 19-20, 23-30, Tsn, Ibid.).

Pat. Esguerra delivered the two men to Pat. Eva who had already arrived at the office of the Chief of Police. Estrada had some wounds on the face and elbows while Estropia had none. Thereafter, Pat. Esguerra, accompanied this time by Pat. Esquivias went back to the scene of the fight to look for Escurel. However, although they scoured the scene of the fight and the premises of the market, they did not find Escurel. Hence, the two policemen returned to the office of the Chief of Police (pp. 20-21, 30-33, Tsn, Ibid.). Before reaching the office of the Chief of Police, they found Estrada and Estropia outside on the street. Upon Pat. Esguerra's inquiry, Estrada and Estropia told him they were already sent home by Pat. Eva. At the office of the Chief of Police, Pat. Eva informed Pat. Esguerra that he allowed the two detention prisoners to leave because they wanted to secure a medical certificate on Estrada's injuries (p. 12, Tsn, Ibid.).

That same evening of August 9, 1967, at about past 9:00 o'clock, Espiridion Policarpio was on his way to fetch a midwife to assist his wife who was about to give birth. While he was at Manook Street, Gubat, Sorsogon, he saw persons fighting at the corner of Manook and Herrera Streets. He stopped some 10 meters away from them. The corner was lighted by an electric lamp post. He recognized Diego Estrada, Luis Estrada and Juanito Estrada holding clubs, boxing and beating Romeo Escurel until the latter ran away in zigzag manner towards Herrera Street (pp. 3-5, 19, Tsn, Feb. 25, 1969). The Estradas chased Escurel. After witnessing what happened, Policarpio went home because he was afraid. At home he waited for the delivery by his wife and boiled some water. While doing so, he noticed some persons passing beside his house. He peeped through the window and saw Juanito Estrada and Diego Estrada pass by going towards Manook Street (pp. 6-8, Tsn, Ibid.). The following morning, he noticed an unusual event in the neighborhood and saw Escurel dead and being placed inside a car (p. 9, Tsn, Ibid.). Policarpio knew Diego Estrada for the latter had a store in the public market. He also knew Juanito Estrada because the latter worked for him as a mechanic helper (pp. 10-11, Tsn, Ibid.).

That same evening also, at about 9:30 o'clock, Marianito Estocado, tricycle driver, was on Manook Street,

about to pass Herrera Street. Upon reaching Herrera Street, he saw Escurel half-naked, running towards Herrera Street, chased by three persons, one of whom he recognized as Diego Estrada (pp. 38-42, Tsn, Feb. 26, 1969). Escurel passed in front of him by 2 arms length. He turned right at Herrera Street and overtook the three persons chasing Escurel. He saw Escurel running in a staggering manner and then suddenly turn right in front of him, near the house of one Dado, a butcher (pp. 40-44, 61, Tsn, Ibid.). He first recognized Escurel and Estrada when they came under an electric lamp post (pp. 42, 65, Tsn, Ibid.). He knew Escurel since 1966 for Escurel also used to ride his tricycle (p. 48, Tsn, Ibid.). He also knew Diego Estrada who he used to see tending a store at the public market (p. 51, Tsn, Ibid.). After Estocado had brought his passenger to his destination, he went home without passing by Herrera Street anymore (p. 45, Tsn, Ibid.). The following day, he saw the lifeless body of Escurel at the muni-cipal building (p. 46, Tsn, Ibid.).

That same evening also, at about 10:30 o'clock Policarpio Tapia, tricycle driver, was conducting his passengers to Herrera Street. While along Manook Street and about 100 meters from the junction of Manook Street and Herrera Street, he was stopped by Diego Estrada and Juanito Estrada who were shirtless and wanted to ride in his tricycle. However, when informed that he had passengers already, the Estradas did not insist anymore. He recognized the two persons because they were lighted by the lamp from his tricycle and a nearby electric lamp post (pp. 80-82, Tsn, Ibid. and p. 31A, Appellee's Brief. Note: There is no transcript of stenographic notes on the direct examination of Policarpio Tapia).

Early the following morning of August 10, 1967, Patrolman Teofilo Domasian of the Gubat Police force was informed by a certain Mrs. Espadilla that she found a person inside a well. Pat. Domasian went to the well to verify the report and found a man inside the well with his head down in the water and his feet up. Because curious persons started to come, Pat. Domasian cordoned off the area. Some thirty minutes later, the Chief of Police, Pats. Domingo Acuña, Carlos Escurel and Dr. Marciano Ra Hermo, Jr. arrived. The body was removed from the well and they recognized it to be that of Romeo Escurel who was already dead. Escurel's fists were clenched and raised to face level. He was half-naked and barefoot (pp. 3-5, 15, Tsn, March 18, 1969; p. 4, Tsn, June 2, 1969). Pictures were taken of the body after it was retrieved from the well (pp. 2-3, Tsn, July 14, 1969). Pat. Escurel made a sketch of the scene of the crime (pp. 19-20, Tsn, March 18, 1969; Exhibits A, B, pp. 183-186, Records).

The body of Escurel was brought to the public dispensary where an autopsy was conducted by Dr. Hermo, Jr. His findings were as follows:

"EXTERNALLY:

The body is that of a fairly nourished, well developed individual which was found inside a well in the upside position. The said body was already in the state of 'rigor mortis' with half of the torso (upper half and upper extremities) submerged in the water. The skin presented a dark discoloration more prominent in the regions of the head and neck. The epidermis of the hands were swollen, bleached and wrinkled.

HEAD AND NECK:

Presence of multiple abrasions mid-frontal supra-orbital area, right; alae nasae, right and left; fronto-temporal border, left.

Hematoma, right half, upper lip.

Hematoma with abrasion, mid-mental area and floor of mouth.

Wound punctured, 3mm. width, buccal surface involving the mucosal and subcutaneous layer, right half, upper lip.

CHEST AND THORAX:

Hematoma with abrasion on the midscapular area, left.

Hematoma, more or less 2 cm. in width and about 13 cm. long, extending from the interior border on the scapula on the right, directed interiorly, medially and laterally up to the level of the 7th intercostal space on the posterior axillary line on the left.

ABDOMEN:

Apparently normal.

UPPER EXTREMITIES:

Hematoma, multiple; upper third, posterior surface, forearm, right; medial surface, middle third, forearm, right; middle third posterior surface, forearm, right.

Forearm, right and left, flexed.

Hands, semi-clenched.

LOWER EXTREMITIES:

Hematoma, with abrasion, upper third, anterior surface, left.

INTERNALLY:

RESPIRATORY:

Presence of about 400 sero-sanguinous fluid in the chest cavity.

Lungs was pale in color and foamy in consistency.

Presence of multiple red patches of various sizes scattered over the lung field. Sizes of said patches vary from that of a pea size to about a five-centavo piece.

Increase of the volume and size of the lungs and also the presence of fluid.

Blood vessels engorged.

Lung pits on pressure.

HEART:

Presence of blood in the right and left cavities of the heart.

STOMACH:

Stomach is apparently normal and on cutting it revealed the absence of stomach contents. There was no fluid content.

INTESTINES-LIVER AND KIDNEYS-PANCREAS:

Intestines, liver, kidneys and the pancreas are all apparently normal.

BRAIN:

Engorgements of the blood vessels.

URINARY BLADDER:

Presence of about 60 cc urine.

CAUSE OF DEATH: Asphyxia due to drowning secondary to shock.

ESTIMATED TIME OF DEATH: 10:00 P.M. August 9, 1967.'

(Exhibit C, pp. 3-5, Records).

The abrasions and hematoma were caused by blows on the body with a blunt instrument. The punctured lips were caused by fist blows. Escurel was still alive when placed inside the well although unconscious. The well was small enough to admit a person but if such person was thrown inside it in a prone position, such person would not be able to stand up. These were the findings of Dr. Hermo, Jr. (pp. 6, 8, 9-10, 12-13, 24, Tsn, June 2, 1969).

On August 16, 1967, Diego Estrada and his sons, Juanito and Luis were investigated by Philippine Constabulary operatives headed by Sgt. Silvestre Espedido at the PC headquarters at Sorsogon, Sorsogon. The statement of Diego Estrada was taken in writing but he refused to sign the same (pp. 12-17, Tsn, July 14, 1969; pp. 2-5, Tsn, Aug. 22, 1969; Exhibits E, E-7, pp. 196-204, Records)." (Brief, pp. 3-12.)

The trial court stated the following in its decision:

"Although there are three accused persons in the case at bar, only Diego Estrada, the father of the family, had his day in court as his two sons, Luis and Juanito, both surnamed Estrada, precipitately left the province of Sorsogon immediately after the dismissal of the first case filed against them. The trial of the instant case commenced some two years after the two brothers had left the town of Gubat. It is rather strange that Diego Estrada and his wife maintained that up to the present they do not know the whereabouts of Luis and Juanito who have never written to them since their departure. It is said, however, that flight is an indication of a troubled conscience." (Expediente, p. 308.)

The appellant complains that the trial court erred "in finding that the accused Luis Estrada and his brother, Juanito, both sons and co-accused of appellant Diego Estrada, had fled from the jurisdiction of the court." It should be noted, however, that when the court spoke of "a troubled conscience" it was referring to Luis and Juanito not to the appellant. Hence, if there is reason to complain, the brothers, not the father, should do so. It should also be noted that the statement is but a passing remark and was not made to support the finding of the court that the appellant had a hand in the death of Romeo Escurel.

The other assignments of error deal with the credibility of witnesses and will be taken up seriatim.

The appellant claims that "the trial court erred in finding that the accused Luis Estrada and his companions provoked Romeo Escurel and his companion, Romulo Endaya to a fist fight." The trial court did not err in its finding because of the un rebutted testimony of Romulo Endaya as follows:

[FISCAL PERALTA]

"q- After you have consumed that wine which you have bought, what else did you and Romeo Escurel do, if you did anything?

a- We went home.

q- Did you go out of the store?

a- Yes, sir.

q- What about Luis Estrada and his companions did they also leave the store or they remain thereat?

a- They followed us.

q- When you were thus going out of the store and Luis Estrada and his companions were following you, what happened next?

a- We had a fist fight.

q- Who started the fight?

a- Luis Estrada and his companions.

q- How did it begin?

a- It just happened that we had a fist fight.

q- Do you recall as to who was the first one to box who and who?

a- Yes, sir.

q- Please tell the Court.

a- Luis Estrada gave a blow to Romeo Escurel.

q- Who is this Bebot?

a- Romeo Escurel.

q- Is that the nickname of Romeo Escurel?

a- Yes, sir.

q- Did they exchange fistic blows?

a- Yes, sir.

q- What about you were you also boxed?

a- Yes, sir.

q- Who hit you?

a- I do not know the name.

q- Did you fight back?

a- When I was hit I got unconscious." (TSN, pp. 6-8.)

The appellant also claims that "the trial court erred in giving credence and probative value to the testimonies of prosecution witnesses, namely, Espiridion Policarpio, Marianito Estocado and Policarpio Tapia." The testimony of these witnesses has been summarized in the People's statement of the facts. There is no dispute on what they said. What is questioned is their credibility. On this score, the finding of the trial court must be sustained for there is no fact or circumstance of weight or influence in the record which was overlooked or the significance of which was misinterpreted. The fact that their testimony contained inconsistencies is of no moment for they refer to minor matters which are not easy to remember. With regard to Esperidion Policarpio in particular, the fact that he was a friend of the deceased but failed to notify the police promptly does not impair his credibility. Friendship in itself does not disqualify a person to be a witness albeit it is a factor in determining the truth of his testimony. As to the delay in reporting the matter, the acceptable explanation is that he was initially afraid.

It should be recalled that when the appellant was investigated by the Philippine Constabulary, he was asked questions and he answered them. The questions and answers in the Bicol dialect were recorded in long hand by Sgt. Amador Loberes. (Exh. E; English translation E-4, and E-5.) However, the appellant refused to sign the document which reads as follows:

“1. Q - Will you please give your name and other personal circumstances?

A - DIEGO ESTRADA Y ESCOBEDO, 57 years old, married, laborer, of Gubat, Sorsogon.

2. Q - In what street in Gubat, Sorsogon, do you live?

A - In Quezon Street, Gubat, Sorsogon.

3. Q - At about 9:30 in the evening of August 9, 1967, where were you?

A - I was at home.

4. Q - While thus at home, do you remember of any incident that happened?

A - Nothing happened at home. My son, Luis, arrived and said, 'Father, you help me because I was stabbed'.

5. Q - What did you do upon hearing what Luis said?

A - I looked at Luis to see if he was really stabbed; upon finding out that he was not, I told him, 'Where is that stab wound of yours?' But Luis really had severe injuries. So I asked him what happened. He said that they had a fist fight with Bebot Escurel, Romulo Endaya, Tony Estropia, and Monding Esquijo. The police arrested him (Luis and Tony Estropia).

6. Q - Now, what did you do after learning of what happened to your son, Luis?

A - I let him eat.

7. Q - Who were the other persons who came to the aid of Luis when he gave the alarm that he was stabbed?

A - My son, Juanito, also arrived.

8. Q - How did you feel after learning of what happened to Luis and upon seeing his condition with such severe injuries?

A - I was hurt; he was too much the underdog; he was the one boxed, and was the one arrested by the police, while these who gave the blows were left alone.

9. Q - Because your son was oppressed, what did you do?

A - What else would I do, if my son died, will they pay because they are rich?

10. Q - What I want to say is, what did you do, if you did anything?

A - Retaliated.

11. Q - What did you do when you retaliated?

A - If you will allow me, before I tell what happened, I would like to confer with my son; what I would like is that we are not all imprisoned because nobody will be left to take care of our family. If you will allow it, we will let Luis confess because it is better that way because he is not married.

(Investigators allow Diego Estrada to talk with his sons, Luis and Juanito.)

Diego Estrada then told Luis and Juanito: 'What else . . . I have already said so . . . you Luis, because you are

not married, admit it, had it not been for you, this should not have happened.'

At this instance, Luis and Juanito start crying and Luis uttered the following: 'Why did you tell . . . We are not guilty.'

Then Diego Estrada answered: 'My sons do not like because what happened was not their fault. This is the fault of the police - had they arrested that son of Nando nothing should have happened. Why was it that inspite of his serious injuries, my son was the one arrested. Had my son died, will they pay?' The investigator again brought Luis Estrada to the Guardhouse and Juan Estrada to the Office while Diego Estrada remained in the Investigation Section. Then another question was asked by the Investigator.

12. Q - What I would like to know, when you retaliated, who was the object of your retaliation?

A - It was that person who died because Luis did not have any other enemy.

13. Q - I want you to name the victim of your retaliation and to tell what happened to him after your retaliation.

A - What happened . . . he died.

14. Q - Who died?

A - That person with whom Luis fought.

15. Q - What is the name of that person with whom Luis fought, as you said?

A - I do not know the name.

16. Q - How did you kill him?

A - My sons do not want to tell, we would rather die than tell how it was done because they do not want (to tell).

17. Q - What you want to say is that you three. Luis Estrada, Juan Estrada, and you, helped one another in killing Romeo Escurel?

A - We did not help each other.

18. Q - You have already stated that you retaliated, that is why I want to find out how, or in what way, did you retaliate?

A - I will not tell - that should be up to the Courts.

19. Q - How could it be up to the Courts when your case has not been filed, you are only being investigated?

A - The aggrieved party may file the case in Court. I have already stated that this (incident) could have been avoided had the police arrested the two.

20. Q - Who are the two persons you mean?

A - Luis and that person with whom he fought.

21. Q - But the police arrested Luis and Antonio Estropia?

A - Those were the persons who were boxed . . . they were arrested, but the one who boxed them was not arrested.

22. Q - Now, do you really want to be accused . . . that you do not want to tell what really happened?

A - That is all . . . what I have said . . . my sons do not like because they have no fault.

23. Q - Are you willing to sign this statement of yours?

A - No, not yet."

The trial court considered the above "statement in the nature of an oral confession given to the peace officer who testified about it in open Court." The appellant now claims that "the trial court erred in giving probative value to the alleged extra-judicial confession." The basis of his claim is not altogether clearly perceived but it seems the statement is impugned on the ground that it does not expressly admit guilt.

A reading of the statement will not clearly yield an expressed admission of guilt. It can, however, be considered as containing admissions relevant to the death of the victim which, taken with other evidence, point to the appellant's guilt.

The appellant's defense is alibi which he attempted to prove by his testimony and that of other witnesses. He now claims that the trial court erred in rejecting the alibi. We do not agree for the same reasons which the trial court gave, namely:

"It was established that the house of Diego Estrada is located inside the poblacion of Gubat, Sorsogon, particularly at the southern end of Quezon street. The distance between his house and the places where he was seen by no less than three different persons near the vicinity of the scene of the crime, is less than a kilometer - a distance which he could have easily negotiated that evening with or without the knowledge of his spouse. Indeed, Diego's defense of alibi is too weak to be favorably entertained, taking into account the strong circumstantial evidence obtaining in the case at bar. Furthermore, Diego Estrada was identified by positive, clear and explicit testimony of several witnesses to the effect that he was seen in the premises of the scene of the felony participating in the inception of the fight against Romeo Escurel. His alibi, therefore, can not be credited nor given any weight or value." (Expediente, pp. 300-301.)

The information alleges the following qualifying circumstances: treachery, evident premeditation and use of superior strength. The trial court rejected treachery but found superiority and evident pre-meditation to have been present. We agree that superiority was present for it was a case of three armed men against a helpless victim. We cannot accept the presence of evident premeditation for there is no affirmative showing that the appellant coolly and reflectively resolved to commit the crime. On the contrary, it appears to have been committed on impulse when Luis Estrada complained to his father about the injuries he received. The crime committed by the appellant is murder with no mitigating or aggravating circumstance for which reclusion perpetua is the appropriate penalty.

WHEREFORE, finding no substantial error to have been committed by the trial court, its judgment is affirmed in its entirety. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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