

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMULO GARCELLANO, ET AL., DEFENDANTS, ROMULO
GARCELLANO AND OSCAR SEDANO, DEFENDANTS-APPELLANTS.**

G.R. No. L-25345. May 13, 1968

Ponente: DIZON, J.

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DIZON, J.:

In the Court of First Instance of Cagayan Romulo Garcellano, Genaro Garcellano, Oscar Sedano, Manuel Sedano and Pedro Sedano were charged with the crime of murder, to which they all pleaded not guilty. During the trial Pedro Sedano, and, after him, Manuel Sedano died. Thereafter, the trial proceeded with respect to the other three de-fendants, and upon its conclusion the court found Romulo Garcellano and Oscar Sedano guilty as charged and sen-tenced each of them to suffer the penalty of reclusion perpetua, with all the accessories of the law; to indemnify, jointly and severally, the heirs of Basilio Rey in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. The court, however, acquitted Genaro Garcellano for insufficiency of evidence. Romulo Garcellano and Oscar Sedano appealed.

The prosecution evidence shows that Basilio Rey, a former Philippine army soldier, had for years lived in the town of Iguig, Cagayan, with his common-law wife, Raymunda Garcellano, with whom he had several children. For undisclosed reasons, he later abandoned them, went to Manila and there married another woman.

On November 8, 1960, he returned to Iguig on vacation and stayed in the house of his brother, Esteban. While visiting a certain Carmen Navarro in barrio Santa Rosa of the same town, he met Raymunda's brothers, Romulo and Genaro, and a heated discussion ensued between him and Romulo concerning the sale by him of a parcel of land belonging to Raymunda. The barrio lieutenant and a municipal councilor, however, intervened and pacified them.

On November 13, 1960, upon invitation of Manuel Sedano, Basilio attended a party held in the latter's house in honor of his son, Aniceto, who had returned home with his family after a six-year service in the Army. Among those present at the affair were Romulo Garcellano and Pedro Sedano. While the party was in progress, the matter of the sale by Basilio of the property of his former common-law wife cropped up again, leading to another heated discussion between Basilio and Manuel Sedano. In the course thereof Romulo Garcellano took hold of Basilio, while Manuel Sedano clubbed him with a piece of bamboo, and later, although he was able to free himself from Romulo's grasp, Basilio was stabbed by Oscar Sedano. Thereafter, Basilio rushed to the backdoor to escape from his aggressors, but he was chased by Romulo, Manuel and Oscar, and then, Pedro Sedano not only blocked his way but also stabbed him.

About midnight of the same evening, Romulo Garcellano surrendered to the authorities, to whom he surrendered a long-pointed bolo. Later on, the Chief of Police of Iguig, the Municipal Health Officer and several policemen pro-ceeded to the house of Manuel Sedano. Upon arrival thereat, the Chief of Police asked the latter for the whereabouts of the body of Basilio and, as the latter remained silent, said officer ordered the place searched. With

the aid of flashlights, they found Basilio's body under the house.

Constabulary soldiers who conducted an on-the-spot investigation found a bolo tucked at the wall of the house and the broken arm of a chair with blood stains, thrown in the stocks of wood below. Because of a statement made by Romulo Garcellano that he had accidentally wounded Oscar during the fight, they proceeded to the house of the latter where they found him really suffering from a wound in the abdomen. A bolo was also found hanging on the wall of his house, and in the "batalan" they found a "batia" (basin) containing clothes with bloodstains, soaked in water.

The post-mortem examination of the cadaver, made by Dr. Unite, the Health Officer, showed that the deceased had suffered eight (8) wounds in different parts of his body, most of which were gaping stab wounds which caused his death (Exh. A).

Romulo Garcellano admitted having killed Basilio Rey but claimed to have done so both in self-defense and in defense of the honor of his sister, Florfina, who in the middle of the night screamed when she was allegedly criminally assaulted. In this connection he claimed that when he was awakened and he stood up to help his sister, a struggle ensued between him and the latter's attacker for the possession of the bolo he (Romulo) was holding and that in the course thereof he was able to stab his opponent, who turned out to be Basilio Rey. In view of this admission it was incumbent upon him to establish his defense by clear and convincing evidence (People vs. Borbano 76 Phil. 702; People vs. Ansoyon 75 Phil. 772). In this, We believe, he utterly failed.

In the first place, his story about the struggle for the possession of his bolo stands uncorroborated, and the fact that he came out of it completely unscathed makes it highly suspicious. In the second place, the different locations of the eight (8) wounds suffered by the deceased - one on the back, another on the left leg and other parts of the body (Exh. K) - tally with the prosecution's version that Romulo Garcellano was not the only one who attacked the deceased. In the third place, it is improbable, if not downright incredible, that Basilio Rey would try to criminally assault Florfina Garcellano while the latter was asleep in a small room with several other persons, including Romulo himself, his wife and his child. Moreover, this part of Romulo's story is rendered more incredible by the established fact that there was a lighted kerosene lamp in the room. Lastly, his testimony is completely destroyed by that of his own sister, Florfina, the alleged victim of the mid-night criminal assault, who denied that Basilio had ever made any attempt against her honor; she said too, that she was awakened that evening not because Basilio, as claimed by her brother, had attempted to abuse her but by the discussion between Basilio and Manuel Sedano. Other parts of her testimony described fully how appellants and other persons had ganged up on Basilio Rey that night. As the record discloses nothing that would make Florfina's testimony against her own brother incredible, we must assume that she told the truth.

It is true, of course, that she had signed the sworn statement Exh. 1 the day after Basilio Rey was killed but, according to her testimony, she did so upon instigation and instruction of Manuel Sedano.

The other appellant, Oscar Sedano, relies merely upon an alibi claiming that after taking supper at his father's house on the night of November 13, 1960, he went home to sleep. This defense cannot stand in the face of evidence positively identifying him as one of several persons who attacked Basilio Rey under the circumstances established by the prosecution evidence. Thus, Florfina Garcellano positively identified him as one of those who stabbed Basilio, and this witness could not have been mistaken about this because she knew him very well personally.

Premises considered we find that both appellants are guilty of having attacked and wounded Basilio Rey on the evening of November 13, 1960, in the house of Manuel Sedano in barrio Santa Rosa, municipality of Iguig, pro-vince of Cagayan. We find, however, that the crime committed was not murder but only homicide, because

while it is true that Manuel Sedano, one of the two defendants who died while the case was pending below, attacked Basilio Rey treacherously with a piece of bamboo while the latter was held defenseless by Romulo Garcellano, there is no sufficient evidence to establish conspiracy between them nor to prove that Romulo took hold of Basilio Rey precisely for the purpose of giving Manuel Sedano an opportunity to club him with a piece of bamboo. While it is also true that, later on, Basilio rushed to the back door to escape his attackers chased by Romulo Garcellano, Manuel Sedano and Oscar Sedano, the evidence fails to disclose that herein appellants were in conspiracy with the now deceased Pedro Sedano when the latter blocked the escape route and then stabbed Basilio with a knife. From the evidence it would seem that the initial attack as well as the sub-sequent ones were not premeditated but were due mainly, if not exclusively, to the heat generated by the discussion between the deceased and Manuel Sedano.

Furthermore, in the imposition of the penalty pro-vided by law - reclusion temporal - (Article 249, Revised Penal Code) the mitigating circumstance of voluntary surrender should be considered in favor of appellant Romulo Garcellano, this requiring the imposition there-of in its minimum degree. Applying to him the benefits of the Indeterminate Sentence Law, he is, therefore, sentenced to suffer eight (8) years and one (1) day of prision mayor, as minimum, and twelve (12) years and one (1) day of reclusion temporal, as maximum.

In the case of the other appellant, Oscar Sedano, the penalty provided by law should be imposed in its medium degree, in the absence of any modifying cir-cumstance to consider. Consequently, applying to him likewise the benefits of the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate penalty of ten (10) years of prision mayor, as minimum, and fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, as maximum.

IN ALL OTHER RESPECTS, the decision appealed from is affirmed. With costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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