

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SALIK MAGONAWAL AND MINTIR MAGONAWAL, DEFENDANTS-APPELLANTS.

G.R. No. L-35783. March 12, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

This is a prosecution for double murder. The evidence shows that in the morning of March 5, 1970 a young married woman named Sarbaya (Sarbeya) Sarilama and a young farmer named Saavedra Bayao were killed at Sitio Kaindangan, Parang, Cotabato without any struggle or resistance. No autopsy was performed on their cadavers. So, some doubt has arisen as to whether they died of gunshot or bolo wounds.

The prosecution's theory is that they were killed by the brothers, Salik Magonawal and Mintir Magonawal (of the Ilanon or Iranon tribe), allegedly because Sarbaya used to give information to a Parang policeman regarding Salik Magonawal, an alleged killer and cattle rustler.

The defense's version is that Mintir Magonawal was the killer of the victims. He allegedly killed them with his bolo because he caught them in flagrante delicto having sexual intercourse. Sarbaya was Mintir's wife and second cousin (she was also Saavedra's cousin and Saavedra was also Mintir's cousin).

The trial court accepted the prosecution's theory. It convicted the Magonawal brothers of double murder (parricide was not charged), sentenced them to reclusion perpetua and ordered them to pay the victims' heirs an indemnity of P24,000 [(Criminal Case No. CCC-XVI-4-CC (86))]. The Magonawal brothers appealed.

The trial court's summary of the prosecution's evidence is quoted below:

"Early in the morning of Thursday, March 5, 1970, the accused Mintir Magonawal and his wife Sarbeya Sarilama, together with their neighbor Saavedra Bayao whom they have invited, went to plant or sow palay seeds in Sitio Kaindangan, Parang, Cotabato.

"Also that morning, Sarilama Magaled, the father of Sarbeya, intended to go and help his daughter and son-in-law in sowing seeds at the said place but before proceeding, between 8:00 and 8:30 o'clock, he heard two gun reports coming from the direction of the place where Sarbeya, Mintir and Saavedra were working.

"Bayao Lumondaya, the father of Saavedra, who was doing some farm work 300 meters away from said place also heard the shots. Alarmed and fearful that something untoward has happened, Magaled and Lumondaya ran toward the place where the three were working but before reaching it they saw the accused Salik Magonawal holding a shotgun and his brother Mintir Magonawal holding a panabas (Muslim bolo) running away. Magaled sensed that Salik and Mintir were also going after him as they were running towards his direction, and so Magaled tried to avoid them by changing route until the latter were already far from the scene.

"When Magaled and Lumondaya finally arrived at the place where Sarbeya and Saavedra were working, they saw Sarbeya with a big hack wound at the right side of her body above the waist and Saavedra with gunshot

wounds at his back and also a hack wound at his nape and almost beheaded, both lying on the ground profusely bleeding and already dead about six meters away from each other.

"Magaled then rushed to Sitio Cabuan, where they were living, to inform his relatives about the tragedy and also to send someone to the police authorities in Parang to report the matter. About an hour later, Magaled went back to the scene together with some relatives and carried the bodies of Sarbaya and Saavedra to Cabuan where they were buried according to Moslem tradition.

"The next day, March 6th, Magaled and Lumondaya proceeded to the poblacion of Parang for investigation and both gave their written statements which are attached to the records."

From the foregoing story, it is at once manifest that the prosecution's evidence, which was not based on eyewitness testimony, is weak and inconclusive. It is based on circumstantial evidence. The prosecution's two witnesses were the fathers of the victims. They did not see the actual killing. They deduced that the Magonawal brothers were the killers from the two gunshots, which they allegedly heard, and from the circumstance that the Magonawal brothers were allegedly fleeing from the scene of the killing, one carrying a gun and the other a bolo. How the killing was actually perpetrated was not known to the prosecution.

The trial court did not bother to analyze the probative value of the prosecution's evidence. It merely concluded that there was treachery, "judging from the position of the gunshot wounds and hack wounds inflicted" on the victims' bodies. It considered as significant the fact that a shotgun was recovered from Salik Magonawal at the time that he was arrested. It gave credence to the theory that Sarbaya was killed because she was a police informer against Salik Magonawal but it did not explain why Saavedra was killed. The prosecution failed to prove any motive for the killing of Saavedra.

The defense's version of the tragic occurrence is as follows:

Mintir and his wife Sarbaya were living in her father's house located at Sitio Cabuan, Parang, which is about a kilometer away from their farm at Sitio Kaindangan. Saavedra's house is about ten meters away from the house of Sarilama Magaled, the father-in-law of Mintir.

Early in the morning of that fateful day, March 5, 1970, Mintir and Sarbaya went together to their farm in Sitio Kaindangan to plant palay. Upon his arrival at the farm, Mintir discovered that he had forgotten to bring his bolo (panabas) because he had brought along palay and other things.

He informed Sarbaya that he was going back to Sitio Cabuan to get his bolo. He instructed her to stay on the farm while he was away. She was alone when he left her.

When Mintir returned to the farm, Sarbaya was not there anymore. He explored the bushes and noticed that some shrubs were "moving or swinging". He peered into the dense vegetation and was shocked to see his friend, Saavedra, on top of his wife, Sarbaya.

He hacked Saavedra on the nape, inflicting on him a big wound which almost beheaded him. Saavedra, who was naked, disengaged himself from Sarbaya and tried to stand. He fell on the spot where he was copulating with Sarbaya.

Mintir then saw his wife Sarbaya lying down on the ground, wearing only a chemise and "somewhat leaning to the left". Blinded with fury, Mintir also hacked her with his panabas.

Then, he fled from the scene of the tragedy and ran to his own house. While running, he encountered Mamaros Mamaco who inquired what had happened. Mintir told Mamaros that he (Mintir) had killed Sarbaya and Saavedra while they were engaged in criminal conversation.

Later, Mintir went to the house of his uncle, Papa Acadan, and left the bolo there. He took refuge in Culodan near the boundary of Lanao del Sur and Cotabato about thirty kilometers from Parang. He was arrested in Culodan in August, 1970. He requested his elder brother, Salik Magonawal, to take steps for the amicable settlement of the case.

Mintir did not surrender to the authorities because he and Salik were implicated in the killing of Patrolman Lidasan Malang. He feared that the Parang policemen might retaliate by killing him.

Mamaros Mamaco, a second cousin of both Sarbaya and Saavedra, who had known the two victims since their childhood, confirmed that while he (Mamaros) was plowing his farm on that morning of March 5, 1970, Mintir passed by and confessed to him that he (Mintir) had killed Sarbaya and Saavedra while they were having sexual intercourse. Mamaros is a first cousin of the Magonawal brothers. He was a co-accused of the Magonawal brothers in connection with the killing of Patrolman Malang.

Mintir's confession to Mamaros was substantially as follows: "I am running because I have killed Sarbaya and Saavedra because I caught them in the act of sexual intercourse" (75 tsn). Mamaros saw the bloodstained bolo used by Mintir in the killing.

Maraguinon Acadan, another first cousin of Mintir, also confirmed that in the morning of March 5, 1970 he saw Mintir running and passing by the house of Maraguinon's father in Sitio Dilingin. Mintir told him that he (Mintir) had killed Sarbaya and Saavedra. Maraguinon went to Mintir's farm to look for the remains of the victims. He found their bodies on a grassy place near the farm. Sarbaya had only a chemise and Saavedra was naked. Maraguinon noticed that Sarbaya was wounded on the right side of her body while Saavedra was wounded in the neck. The wound was a bolo wound, not a gunshot wound (90 tsn).

Sarbaya was Maraguinon's niece and Saavedra was his relative. Maraguinon said that he voluntarily testified "because being a relative of both sides", he wanted "them to settle the case straight so that there will be no more controversy".

Salik Magonawal affirmed that his younger brother, Mintir, arrived in his (Salik's) house at Culodan on the night of March 5, 1970. Mintir informed him that he (Mintir) had killed his wife Sarbaya and Saavedra while they were having sexual intercourse. Salik denied any complicity in the killing of Sarbaya and Saavedra.

Salik said that he was implicated in the killing because Sarilama Magaled, the father of Sarbaya, and Bayao Lumundaya, the father of Saavedra, were angry with Mintir.

If the story of Mintir Magonawal were to be given credence, the killing of Sarbaya and Saavedra would fall under the following provisions of the Revised Penal Code:

"ART. 247. Death or physical injuries inflicted under exceptional circumstances. — Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

xxx xxx xxx."

The Solicitor General notes that Sarilama Magaled testified that he witnessed the killing at "a distance of one hundred meters more or less" whereas in his sworn statement he merely stated that he heard gunshots and that later he saw the victims' dead bodies (Exh. A or 1). He never stated during the preliminary examination that he witnessed the killing.

The Solicitor General also points to a discrepancy in Bayao Lumundaya's testimony. He testified that after hearing

gunshots he saw Salik Magonawal running and carrying a shotgun and Mintir Magonawal carrying a bolo. However, Lumondaya in his sworn statement declared that it was Sarilama Magaled who informed him that he (Magaled) saw the Magonawal brothers fleeing from the scene of the killing.

The counsel for the People concluded that Magaled and Lumondaya were perjured witnesses. We find that the variance between their sworn statements and their testimonies impairs their credibility. The circumstantial evidence for the prosecution does not prove beyond reasonable doubt appellants' culpability for double murder.

There is substantial basis for giving credence to Mintir's admission that he killed Sarbaya and Saavedra because he surprised them in the act of having carnal intercourse. The deliberate admissions of a party charged with a crime may prove his criminal responsibility (See *People vs. Hernane*, 75 Phil. 554; *People vs. Gonzales*, L-33926, July 31, 1974, 58 SCRA 265, 269). It is noteworthy that, in the prosecution's version, the motive for the killing of Sarbaya is not satisfactorily explained. No reason is given as to why Saavedra was killed. Mintir's story supplies the motive for the killing of Sarbaya and Saavedra.

As recommended by the Solicitor General, the trial court's decision is reversed. Appellant Salik Magonawal is acquitted of the charge of double murder. His guilt was not proven to a moral certainty.

Appellant Mintir Magonawal is convicted of the offense of killing his spouse and her paramour under exceptional circumstances as defined in article 247 of the Revised Penal Code. There being no mitigating nor aggravating circumstances the penalty imposable on him is three years of destierro during which period he should not enter Parang, Cotabato within a radius of twenty-five kilometers from its municipal building.

However, as a matter of justice, he need not serve the penalty of destierro, if, having satisfied the conditions laid down in article 29 of the Revised Penal Code, he should be entitled to credit for the preventive imprisonment which he has undergone since August, 1970 (See *Alvarado vs. Director of Prisons*, 87 Phil. 157; *Esteva and De los Reyes vs. Director of Prisons*, 81 Phil. 784). Costs de oficio.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Fernandez, JJ., concur.

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