

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LEOPOLDO ZABALA AND BENJAMIN LUSANTA, DEFENDANTS AND APPELLANTS.

G.R. No. L-2279. April 26, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Leopoldo Zabala and his son-in-law Benjamin Lusanta were convicted by the Court of First Instance of Capiz of homicide and were sentenced each to an indeterminate penalty of from 8 years and 1 day of prision mayor to 14 years, 8 months and 1 day of reclusion temporal; to jointly and severally indemnify the heirs of the deceased, Serafin Narce, in the amount of P2,000; and to pay the costs. They appealed to the Court of Appeals, which tribunal, after conducting a hearing where representatives of the prosecution and defense appeared, and after studying the case, arrived at the conclusion that the penalty imposable on the appellants was beyond its jurisdiction, pursuant to paragraph 4, Sec. 138 of the Revised Administrative Code, as amended by Sec. 3 of Commonwealth Act No. 259, and so elevated the case to us for determination.

From a review of the record of this case, particularly the evidence presented during the trial, we find the following facts to have been duly established: In the month of May 1946, and prior thereto, Primo Narce and his younger brother Serafin Narce were both living in the same house built on a parcel of land situated in the barrio of Medina, Libacao, Capiz. They claimed the land as an inheritance from their parents. Appellants, however, equally claimed the parcel as part of the 29 hectares bought by them from one Teresa Rimon in the year 1944. Because of these conflicting claims there seems to have developed a grudge or feud between the two appellants on one side and the brothers Primo and Serafin on the other, culminating in the drastic steps taken by the former to drive away the two brothers from the land, on May 15, 1946.

On that day, Leopoldo and his son-in-law Benjamin, accompanied by Federico Lusanta (a brother of Benjamin) and one named Bienvenido Ortega, went to the land and presumably tried to eject Primo Narce. His brother Serafin happened to be absent. When Primo refused to leave the land, the four intruders with their bolos cut down all the posts of the house of the two brothers until it tumbled down. Then they, particularly the two appellants herein, proceeded to manhandle and ill-treat Primo who had to abandon his house and retreat to and find refuge in the house of his uncle Isidoro Ventura who lived about a kilometer away. Both Primo and Serafin reported the outrage to the authorities, including the Chief of Police and the Justice of the Peace, but it seems that they found no redress to their grievance, for, according to Primo, the Justice of the Peace told him that the Chief of Police would settle their case and the Chief of Police in his turn advised Primo that they should try to settle their trouble amicably with the two appellants.

When Primo had sufficiently recovered from the effects of his ill-treatment on the part of the appellants and their two companions, because of fear, he left barrio Medina and went to live in the barrio of Panibiasan. His younger brother Serafin, however, decided to remain in the house of his uncle Ventura in order to look after their plants

around their destroyed dwelling. At the same time, in defiance of the threats made by the appellants, he began to reconstruct his ruined dwelling. His attitude and conduct obviously did not please the two defendants herein.

On May 28th of the same year 1946, said two appellants Leopoldo and Benjamin, accompanied by the latter's brother Federico Lusanta, went to the house of Ventura where Serafin was then staying. They came, ostensibly, on a peaceful mission, informing Serafin that they should all go to the house of the barrio lieutenant for a definite and satisfactory settlement of their conflicting claims over the aforementioned parcel of land. They sent for one named Mariano Zaquita, a son-in-law of Ventura who lived a few meters away from Ventura's house, to accompany them. So, the whole party of five—Leopoldo Zabala, Benjamin Lusanta, Federico Lusanta, Serafin Narce, and Mariano Zaquita took the road or trail in the direction of the barrio lieutenant's house.

Mariano Zaquita, lone witness for the prosecution, in his testimony related to the court what happened afterwards, thus: When the party neared Agbatuan brook and before reaching the house of the barrio lieutenant, the two appellants asked Mariano Zaquita to return home and not to tell anyone that Serafin Narce was with them. Mariano, however, suspecting that the appellants had some evil intention or design against Serafin who was all alone, after separating from the party, instead of returning home, ascended a hill on one side of the trail and from its top, through the bushes and unknown to the appellants and Federico, he observed the progress of the party down below. Upon arriving at the Nalihug brook, Serafin was suddenly surrounded by his three companions. Benjamin Lusanta struck Serafin with his wooden cane commonly called "taratara", hitting him on the head and causing him to stagger. After that, Leopoldo and Federico struck at him with their wooden canes on different parts of the body until Serafin crumpled to the ground apparently dead. The three assailants then threw his body into the Nalihug brook. Soon thereafter, however, and evidently after some reflection, they recovered his body from the creek and then, carrying it some distance, they dumped it into the Dumalaylay river of which the Nalihug brook is only a branch or tributary. Thereafter, they left the scene.

Due to fear, Mariano made no attempt to intercede for and help Serafin while he was being attacked by his companions. When he felt sure that the assailants were already far from the place, he returned home and reported what he had seen to his father-in-law Isidore Ventura. The following morning the two reported the killing to the barrio lieutenant who, in the company of his informers, went to the Dumalaylay river and after following its course in search of the body, finally found it washed up and ashore on a shallow part in the middle of the river. The barrio lieutenant then sent for Primo, the brother of the deceased and, after some delay, the town authorities were finally notified. It was only after four or five days that said authorities, represented by a policeman and a sanitary inspector, went to the Dumalaylay river to view the body which in the meantime had been left undisturbed on the very spot where it had originally been found by the barrio lieutenant and the two informers. The sanitary inspector after examining the body issued a death certificate which reads as follows:

The skull was broken at the right side of the forehead. The ribs at the right side of the back also broken. Contusion at the left forearm. Contusion at the left arm above the elbow. The said injury caused the death of Serafin Narce. He died of hemorrhage.

Jaime Inocencio, the Sergeant of Police who conducted the investigation at the scene of the killing, told the court that Nalihug brook, where the body was first thrown, was visible from the top of the hill from which Mariano claims to have witnessed the killing and the dumping of the body.

The trial court gave full credit to the testimony of Mariano Zaquita and held the two appellants responsible for the death of Serafin Narce, although it convicted them only of simple homicide. After scrutinizing the testimony of Mariano Zaquita, we agree with the trial court that the story told by him should be accepted. Appellants claim that about the month of April, 1945, Mariano Zaquita and the Narce brothers went to them asking for a loan of four cavanases of palay and forty pesos, at the same time making known their desire to work on the former's land in

Medina, which request was refused by Leopoldo and Benjamin. This story was calculated and intended to show resentment on the part of Primo Narce and Mariano Zaquita which impelled them to testify as they did during the trial against appellants. This claim was apparently not believed by the trial court. Besides, even if true, it is not enough to make Primo and Mariano falsely impute the crime of murder to the two defendants.

We believe that the deceased Serafin Narce was attacked and killed by the appellants in the manner described by Mariano. This witness was found by the lower court to be a simple man, ignorant and untutored; and that he testified with sincerity. His conduct after actually seeing the killing amply supports his story. After witnessing the tragedy, he immediately informed his father-in-law Ventura. The following day Ventura and Mariano reported the killing to the barrio lieutenant. Furthermore, in the course of the investigation of the death of Serafin by the authorities, Mariano thumb marked an affidavit dated June 3, 1946, which in substance corroborates his testimony in court.

It is true that there was only one witness to the attack and killing of the deceased by the appellants; but, if said lone witness merits the credulity, of the court and his testimony appears reasonable, the same is sufficient to convict. There is a long line of cases decided by this Court to the effect that the testimony of a single witness which satisfies the court in a given case is sufficient on which to base a conviction. (People vs. Sope and Cruz, 42 Off. Gaz., 1811, and many cases cited therein.)

Counsel for the appellants contends that his clients were denied speedy trial and that, because of the delay, the case should have been quashed. We have examined the record on this point and we have found that the delay in the trial was due mainly to the fact that, at first, the star witness for the prosecution could not be found, he, at one time, being in Manila. Moreover, even after the witnesses for the prosecution had been located, it was hard for them to come to court to testify because of the difficulty of transportation as well as their financial inability to make the trip from their distant town and barrio to the capital. Because of the bad weather and swollen rivers, even the Military Police had difficulty in making the trip to bring said witnesses to the capital. At one time, even counsel for the defendants had to ask for postponement of the trial because of the non-appearance of his own witnesses due to the bad weather and impassable streams. Another reason was the change in judges, or rather the transfer from Capiz of the judge who was to try the case. It is also a fact that the Court, at the time, was trying cases sometimes in the town of Calivo and at other times in Capiz, the capital.

Considering the fact that the provincial fiscal filed the Information in court in July 1946, and that trial was begun on December 10, 1946, and after several hearings was finished on December 20, 1946, and considering further the reasons for the delay, we find that the appellants have not been denied the speedy trial guaranteed to them by the Constitution.

"* * * a speedy trial has been construed to mean one that can be had as soon after indictment as the prosecution can with reasonable diligence prepare for it, a trial conducted according to fixed rules and proceedings of law, free from vexatious, capricious and oppressive delays." (II Moran, Rules of Court, pp. 637-638, citing 16 C.J. pp. 439-440, and Mercado vs. Santos, 37 Off. Gaz., 904; Kalaw vs. Apostol, 64 Phil. 852.)

"The right to speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice. (Mercado vs. Judge of the Court of First Instance of Pampanga et al., G.R. No. 45629, September 22, 1938; V Lawyers' Journal, p. 887).

Appellants also contend that Serafin Narce might have been drowned and they point to his distended and swollen abdomen as seen by some witnesses for the defense. This contention is not supported by the evidence. It will be remembered that the examination of the body by the sanitary inspector showed that the skull was broken, including the ribs on the right side of the back, and that the left arm above the elbow and left forearm bore

contusions. A person who dies by drowning alone does not suffer from these injuries. As to his distended abdomen, it will be remembered that the body was viewed by the witnesses for the defense about four or five days after death and that when putrefaction sets in, the abdomen generally swells because of the gas produced inside..

The appellants also interpose the defense of alibi, claiming that on May 28th when Serafin died, the two of them at 6 o'clock in the morning went from their barrio of Ditana to the barrio of Mamba about ten kilometers away to attend a fiesta in the house of Francisco Madua, brother-in-law of Leopoldo Zabala, and that they stayed in said house all day. The trial court did not give credence to said story. Neither are we inclined to do so. According to the very appellants, the weather that day was extremely bad and the streams which they had to cross to get to Mamba were swollen; so, it was very unlikely that they would make a trip to a distant barrio and according to them make the return trip to their own barrio at 11 o'clock in the evening, all in utter disregard of their safety and, comfort, just to attend a fiesta to which, according to themselves, strangely enough, no one else had been invited.

According to the evidence the killing was attended by the qualifying circumstance of abuse of superior strength. At the time of the attack, Serafin was surrounded by his three assailants who made a sudden and concerted attack with their clubs or canes. The contest was clearly unequal, let alone the fact that Serafin was, presumably, not expecting the assault. He was in no condition to put up any resistance even assuming that he was also provided with a cane.

We cannot agree with the Solicitor General that evident premeditation accompanied the killing. True, when the two appellants and Federico invited or rather took Serafin from his house ostensibly to go to the house of the barrio lieutenant for a peaceful settlement of their case, their action and representations may have merely been a ruse to lure the victim away from his house in order to have him at their mercy once on the road. At the same time, it was also possible, even likely, that the appellants really intended to go to the barrio lieutenant for an investigation and determination of their conflicting claims over the land and that, for this reason, they invited Mariano Zaquita to accompany them and to assure Serafin Narce of their good and peaceful intentions, but that on the way the appellants may have changed their minds or else, a disagreement or misunderstanding may have developed between the parties, resulting in their decision to do away with their adversary, but first taking the precaution of sending Mariano Zaquita home.

In conclusion, we find the appellants guilty of murder, with neither aggravating nor mitigating circumstance. Applying the penalty in its medium degree, the appellants are hereby sentenced to reclusion perpetua. The indemnity to be paid to the heirs of the deceased fixed by the lower court is raised from P2,000 to P6,000. With these modifications, the decision appealed from is hereby affirmed, with costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuazon, and Reyes, JJ., concur.

Mr. Justice Padilla voted for this judgment.

MORAN, C. J.:

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