

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SILVERIO BERMUDEZ ALIAS BOTONG, VIRGILIO CAPINDING ALIAS BOY, FERDINAND BERMUDEZ ALIAS DANTE, DEFENDANTS-APPELLANTS.

G.R. No. L-30931. June 28, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Silverio Bermudez alias "Botong", Ferdinand Bermudez alias "Dante", Virgilio Capinding alias "Boy" and Gregorio Asanion were charged with murder in the Court of First Instance of Tarlac under an information filed on March 25, 1969, by the Acting Provincial Fiscal of Tarlac, which reads as follows:

"That on or about January 15 and 16, 1969, at night time, at the Poblacion, Municipality of Gerona, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the said Silverio Bermudez alias Botong, Virgilio Capinding alias Boy, Ferdinand Bermudez alias Dante and Gregorio Asanion, who is a member of the Police Force of the aforesaid municipality, armed with a carbine and a baton (pangor), conspiring, confederating and helping one another, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously and with the intent of taking the life of Maximino Anis, attack, strike, kick, jump on and hit the said Maximino Anis with the said carbine, baton, feet and fist-blows thereby inflicting upon the latter physical injuries, wounds and fractures on different parts of his body which directly caused the death of said Maximino Anis.

"That in the commission of the above stated crime, the aggravating circumstances of night time and taking advantage of superior strength are present.

"Contrary to law."

The four accused pleaded "not guilty" and went to trial, after which the Circuit Criminal Court, Fourth Judicial District found the accused, Silverio Bermudez, Ferdinand Bermudez and Virgilio Capinding, -

"x x x guilty beyond reasonable doubt of the crime of Murder, as charged in the information, qualified by the circumstance of abuse of use of superior strength which is included in treachery, and, in the absence of any aggravating or mitigating circumstance in favor of accused Ferdinand Bermudez and Virgilio Capinding, hereby sentences them to suffer the penalty of reclusion perpetua; and, considering the mitigating circumstance of voluntary surrender in favor of accused Silverio Bermudez, this Court hereby sentences him to suffer an indeterminate penalty of ten (10) years and one (1) day of prision mayor to seventeen (17) years four (4) months and one (1) day of reclusion temporal, to indemnify, jointly and severally, the heirs of the deceased offended party in the sum of Twelve Thousand Pesos (P12,000.00) plus the sum of P1,950.00, representing funeral expenses and other miscellaneous expenses expended in the internment of the deceased, without subsidiary imprisonment in case of insolvency, and, each of the accused to pay proportionately the costs. It is likewise ordered that said accused be credited with one-half (1/2) of the time of preventive imprisonment they have undergone, in the service of their sentence.

"In connection with accused Gregorio Asanion, the prosecution having failed to prove the guilt of the accused

Gregorio A. Asanion beyond reasonable doubt, this Court hereby orders his acquittal, with costs de oficio. It is likewise ordered that said accused be released immediately from custody, unless he is being held for some other offense."

The accused, Silverio Bermudez, Ferdinand Bermudez and Virgilio Capinding appealed from the decision.

The evidence for the prosecution shows that on January 15, 1969, after five o'clock in the afternoon, Celerino Ibar-ra and the victim Maximino Anis after receiving their pay envelopes from Gerona Institute in Gerona, Tarlac, where they were employed as teachers, proceeded to the billiard hall at Gerona, and stayed therein for about two hours. Later they went to Nool's Canteen, had drinks with Alan Bermudez, Rolly Abellar and others and stayed in for the next four to five hours after which they (Ibarra and Anis) repaired to Simeon's place for supper. On their way to the latter's canteen, they saw accused-appellants Virgilio Capinding, Ferdinand and Silverio Bermudez sitting on the pavement at Sonya's Place. At about eleven or past twelve, they parted ways (t.s.n. June 20, 1969 pp. 29-31). The aforementioned can-teens are all located in the public market of Gerona, Tarlac. It was further established by prosecution witnesses that the three appellants had earlier been at the Plaza Canteen drinking wine. Rosalina Novenario, cousin of the owner of Plaza Canteen and who was employed thereat on January 15, 1969, testified that the three (Silverio and Ferdinand Bermudez and Virgilio Capinding) arrived at their place shortly after the church bells, announcing the Angelus, had rung; that they stayed and drank wine with Arthur Balingit and one Isaias; that they left but came back and finally left the canteen at about nine p. m. (t. s. n. June 27, 1969 pp. 26-28). This statement was corroborated by none other than Silverio Bermudez (t.s.n. June 28, 1969, pp. 192--194). The drinking bout was likewise confirmed by the testimony of Bernardo Pagaduan, a student who, at about 8:00 p.m. of January 15, 1969, was then playing basketball with the rest of the boys in the plaza and who at that precise time was requested by Arthur Balingit (companion of the 3 accused in the drinking spree) to buy Ginebra San Miguel, which bottle of wine he took to Plaza Canteen where he saw Arthur Balingit, Isaias and the three accused who were grouped and seated together (t.s.n. June 27, 1969 pp. 10-12).

Pedro Ramirez, an elderly man of 57 who owned a hut at the plaza, likewise declared that at about twelve midnight the three accused arrived, woke him up and asked for food; that while they were eating, all of them heard sounds from the out-side. Silverio then said: "Our gang is in danger, I think there is something wrong with our gang." But they continued to eat. A little later, Silverio and Ferdinand went out, followed by Virgilio a few minutes after. His hut was about 50 meters away from the scene of the crime, but he did not immediately follow them and only did so when he saw a policeman go to the scene of the crime; on reaching the same, he saw Silverio Bermudez and Ferdinand Bermudez in the act of maltreating the victim; that he saw Asanion seated on the bench holding a carbine; that Pat. Gapal witnessed the maltreatment received by the victim from the accused; that Pat. Gapal even tried to pacify them; that Pat. Gapal was ordered by Pat. Asanion to fetch Sgt. Sapin; that when Pat. Gapal left, he (Pedro Ramirez) left with him and only returned to the scene of the crime when he saw the two policemen going thereto; that Sgt. Sapin ordered the victim brought to the municipal building; that the victim was laid on the pavement of the municipal building but was not given medical assistance.

Next to testify for the prosecution was Augusto Bartolome, a tricycle driver. He declared that while his tricycle was parked in Gerona, Tarlac, waiting for passengers, Pat. Gapal boarded it. Then they went to fetch Sgt. Sapin. Later he drove them to the scene of the crime, at which place he saw the three accused beating and kicking the victim who was lying with his back on the ground; that he was only about two meters away from the victim and he saw Ferdinand beating the victim with a baton or "pangor", with Silverio and Virgilio kicking the unconscious man; that Anis, the victim was brought to the municipal building while Pat. Asanion was accompanied by Sgt. Sapin to the place of Dra. Balbas-Joves for treatment.

Secundino Fausto, the physician who attended to the mauled victim, now deceased Maximino Anis, at the Tarlac

Provincial Hospital where he was head of the Surgery Department, testified that at about 3:08 a.m. of January 16, 1969, victim Anis who was still alive was brought into the hospital; that he conducted a physical examination and noted lesions on the body, linear reddish spots on the chest and abdomen, a lump on the head and hematoma on the left eye; that he ordered the victim x-rayed and observed; that the latter expired at 4:15 a.m. after which an autopsy was performed, in which the findings were as follows:

Head . . . Internal

-

massive intracranial hemorrhage - depressed fracture left temporal bone - lacerated wound with hemorrhage left temporal lobe - depressed fracture left orbital bone

Chest . . . Left

-

Fracture ribs left, 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 puncturing of the left lung - Atelectasis, left lungs - Hemothorax, massive

Right

-

Fracture ribs 5, 6, 7, 8, 9, - Hemothorax massive - Contusions hematoma chest wall

Abdomen

Contusions hematoma, anterior and lateral abdominal wall - Massive intraperitoneal hemorrhage - Contusions, hematoma, anterior and lateral abdominal wall - Massive intraperitoneal hemorrhage - Contusions hematoma, ascending colon, - Contusions hematoma, root of mesentery - Ruptured spleen - Massive retroperitoneal hemorrhage

Cause of Death . . .

Shock Secondary to Massive Hemorrhage.

On the autopsy findings, Dr. Fausto declared that the depressed fracture of the left orbital bone and intracranial hemorrhage as well as punctured lungs of victim Anis could have been caused by heavy blows with hard objects as a piece of wood or butt of a gun, as well as the kicking against and jumping on, the body (t.s.n. June 30, 1969, pp. 62-68).

On the other hand, the testimonies of the accused ran as follows: Silverio Bermudez alias "Botong" declared that at about 5:00 o'clock in the afternoon of January 15, 1969, he left his house at Gerona, Tarlac, for the Plaza Canteen where he, together with Ferdinand Bermudez, Virgilio Capinding, Isaias and Arthur Balingit drank wine; that they stayed therein for the next four hours and proceeded thereafter to Sonya's place, then to Pepe Cortez store where they again stayed for forty minutes; then they went back to Plaza Canteen and then to the railroad crossing. From the crossing they (the three accused) went to the hut of Pedro Ramirez situated at the public plaza where they took their supper. While taking supper, they heard sounds coming from the northern part of the plaza where the Rizal monument stands. They continued eating and afterwards left for the place from where the sounds came. Virgilio Capinding was left in the hut to wash the dishes. On reaching the place, they saw a man lying flat on his back groaning, and about three meters away was Pat. Asanion, seated on a park bench with a carbine on hand; that he (Silverio Bermudez) asked Pat. Asanion what happened and the latter replied: "I beat him,

my gun was broken"; that he sent Ferdinand Bermudez to call a policeman; that Virgilio arrived and likewise asked Pat. Asanion what happened; that Pat. Asanion said: "Boy, he nearly killed me."; that Pat. Gapal whom Ferdinand called came but was ordered by Pat. Asanion to fetch Sgt. Sapin; that Sgt. Sapin arrived with Pat. Gapal on a tricycle driven by Augusto Bartolome; that Sgt. Sapin talked with Pat. Asanion but their conversation was not heard by anyone of them; that Sgt. Sapin ordered the man brought to the municipal building; that the latter was laid on the cement fronting the municipal building without benefit of medical assistance for about 40 minutes; that later they brought the victim to the Tarlac Provincial Hospital (t. s. n. June 28, 1969 pp. 176-210). The above declaration was corroborated by the other two accused Ferdinand Bermudez and Virgilio Capinding, the former testifying (Ibid pp. 211-215) that he was in Gerona, Tarlac, on the 15th of January 1969, as he was sent by his sister, Melinda, a teacher, to get her dividend check; that he arrived at Gerona at past five o'clock; that he proceeded to Plaza Canteen for refreshment and there found Virgilio Capinding and Silverio Bermudez (all the other points testified to by Silverio were corroborated by Ferdinand).

Virgilio Capinding on the other hand alleged that he was at Gerona, Tarlac on January 15, 1969, on vacation; that he arrived at Gerona two weeks before the incident; that they saw each other at Plaza Canteen on the 15th of January, 1969; that when he reached the place Silverio was already there and a little after Ferdinand arrived. (As with Ferdinand, Virgilio on other points corroborated Silverio's testimony). Their defense mainly consisted of denials as to their participation in the maltreatment and death of victim Anis, and pointed to Asanion as the culprit.

Pat Asanion for his part testified that on January 16, 1969, at about 1:00 of clock in the morning, while he was patrolling the public plaza of Gerona, he heard a person moaning. Upon investigation, he saw the moaning person lying on a papag. He then approached him, informed him that he was a policeman and asked him what he was doing there at the time of the day; that Anis who smelled of liquor retorted in an angry manner: "Why?", and Anis quipped: "I am also a policeman" and at the same time he (Anis) stood up and grabbed the carbine from Asanion, kicking the latter on his right knee; that they grappled for the possession of the carbine for at least ten minutes; that in their fight for the possession of the carbine, there were times when Anis was on top of him (Asanion) but there were also times when Asanion was on top; that they were of the same built or stature and when they were wrestling, they fell to the ground and the carbine hit the pavement which resulted in the breaking of its butt; that it was at this precise moment that the three accused arrived. Thereafter, Silverio Bermudez, upon recognizing Anis said to Asanion: "Tata, allow us to be the one to kill him." Asanion then managed to get away from Anis' hold and as his right knee was badly hit and aching, he seated himself on a cement bench about three meters away from Anis. The three accused then started kicking, beating and boxing Anis. They used a baton (pangor) in beating him (t.s.n. June 30, 1969 pp. 76-80) with Silverio Bermudez jumping on the now sprawled body of Anis; that he shouted at them to stop but they did not heed his pleas whereupon he sounded his whistle for help and incidentally, a teenage boy passed by so he asked the boy to call for a policeman at the municipal building; that it was not Ferdinand Bermudez who called for the policeman as earlier declared by Ferdinand; that Pat. Gapal came and he observed Pat. Gapal was followed by Pedro Ramirez; that he asked him to fetch Sgt. Sapin, then Acting Chief of Police; that when Pat. Gapal left, Pedro Ramirez again followed and when the two policemen came, Ramirez was close on their heels; that Sgt. Sapin ordered the body of Anis brought to the municipal building where he came to know the identity of Anis for the first time.

The defense likewise presented as witnesses Pat. Gapal and Sgt. Sapin, the former testifying thus: That on the night of January 15, 1969, he was called by Ferdinand, alias "Dante" Bermudez to the scene of the crime (in contradiction with his previous sworn statement Exh. "X" p. 6 Criminal Case Record Wrapper where he said he was summoned by a teenager); that he rushed thereto and saw a man lying down on the ground, moaning, with Pat. Asanion seated nearby and the three accused standing also nearby; that he was sent by Pat. Asanion to fetch

Sapin; that he boarded the tricycle of Augusto Bartolome and fetched Sgt. Sapin; that on board the tricycle of Bartolome, they (Gapal and Sapin) went to the place of the crime; that he did not see any of the accused maltreat the victim; that they brought the victim to the municipal building on orders of Sgt. Sapin and that they laid him on the cement without giving medical aid to the victim; that he was asked by Sgt. Sapin to get a transportation to bring the victim to the hospital but he was not able to find one; that Sgt. Sapin was able to talk to Mr. Paculanan, owner of a jeepney in which they loaded the victim and brought him to the Tarlac Provincial Hospital; that he did not go with the group to the hospital (t.s.n. June 27, 1969 pp. 77,116) Sgt. Sapin, however, while declaring in Court that he did not see any of the accused maltreat the victim, wittingly or unwittingly blurted out in one of his testimonies that after Pat. Asanion told him of the incident and pointed to him the place where they grappled, he (Sapin) turned his back and saw the three accused about to hit the man lying on the ground, whereupon he commanded them to stop saying: "Saanyo nga icacasta baka cabagyan yo pay" (Don't do that, lest he is your relative). On other points, Sgt. Sapin's testimony corroborate that of Pat. Gapal.

Dra. Lourdes Balbas-Joves who was the Municipal Health Officer of Gerona, Tarlac, testified that Sgt. Sapin and Pat. Asanion came to her house in the early morning of January 1969 that Pat. Asanion had himself treated and she issued a medical certificate, Exhibit "2-Asanion", which medical certificate (p. 97 of criminal case record wrapper) reads as follows:

"x x x Examinee has the following findings:

1. Slight swelling accompanied by pain on motion of the right knee;
2. Abrasions at the base of the left thumb;
3. Abrasion at the left side of the fore-head;
4. Slight swelling of lower lip right side.

"If not complicated above findings will require medical attendance in 7 to 9 days."

Dra. Balbas-Joves further testified that no information was volunteered to her regarding a man named Anis or the fact that Anis was lying on the cemented pavement of the municipal building unconscious, seriously injured and badly in need of medical aid; on cross examination Dra. Balbas-Joves testified too as to the possibility that the injuries sustained by Pat. Asanion could have been self-inflicted.

Silverio and Ferdinand Bermudez submitted a joint brief while Virgilio Capinding was separately represented. Appellants' assigned errors boil down to the question of credibility of the prosecution witnesses. All three appellants claim that Pat. Asanion who was acquitted by the court a quo was mainly responsible for Maximino Anis' death - a probability which is not Our concern, for what confronts Us is the issue of whether or not the three accused conspired with and are guilty of the murder of Maximino Anis.

Counsel for Capinding questions the veracity of Augusto Bartolome's declaration and contends that the same is "tainted with bias", which bias, he "springs from an age-old enmity between witness Bartolome and appellant Capinding caused by a fistfight between them almost twenty years ago" (p. 21 Rollo). This personal enmity which appellant claims has left Bartolome resentful although it occurred almost two decades ago when both were first year high school students and in their teens, strains belief for experience shows that young boys, be they the best of friends, at times engage themselves in fistcuffs even over trivial matters but their differences are settled not long after and forgotten. Bartolome could not have testified and imputed the serious crime of murder to Capinding had he not actually seen the former maltreat Anis.

Likewise appellants would cast doubt on the declaration of prosecution witness Pedro Ramirez on the ground that

it was four or five days after the incident when Ramirez revealed to the authorities what he saw (p. 12 of their Brief p. 111 Rollo). This is a flimsy argument, for it is not unusual for witnesses at first to refuse to be involved in a criminal proceeding. (*People v. Lumantas*, L-28355, July 17, 1969 28 SCRA 764, 768.). We have also noted the testimony of Ramirez, an elderly man of 57 who declared that even after the accused had gone out of his hut to go to the scene of the crime, he did not immediately follow but only went to the place when he saw Pat. Gapal going to that direction; that he left again when Pat. Gapal left to fetch Sgt. Sapin as ordered by Pat. Asanion, and that he returned when he saw the two policemen again go to the place of the incident. These actuations of Ramirez are indicative of the behavior of a man who entertains a deep fear for involvement and this very well explains his reticence for a few days. Moreover, appellants never questioned the presence of Ramirez at the scene of the crime. Another factor We have considered is the fact that the accused admitted that they have been eating at Ramirez' place on various occasions, an indicia that neither they nor the old man had ill-feelings or grudge against one another as to have induced him (Ramirez) to testify and impute to them so heinous a crime as murder.

True it is, as alleged in Capinding's brief (pp. 14-15), that Pat. Gapal and Sgt. Sapin testified that when they arrived at the scene of the crime they did not see appellants inflict violence on the victim. But We have combed the records and noted as the trial court likewise observed, that Sgt. Sapin testified that when he arrived at the scene of the crime, he saw the three accused about to hit the victim but were only prevented by him from so doing. Thus the trial court sensed that the policemen have not told the court the whole truth and the court a quo arrived at the conclusion that:

"From this testimony of Sapin, it can be safely concluded that the accused Silverio Bermudez, Ferdinand Bermudez and Virgillo Capinding have earlier used personal violence against the victim herein and only stopped from furthering their violent acts when the said policemen arrived and even then, as testified by Sgt. Sapin, the said accused had even attempted to hit the victim had he not prevented them from doing so." (p. 231 Rollo)

In the light of the foregoing, the denials of the three accused that they touched the victim Anis falls flat and becomes worthless.

The credibility of Asanion' s testimony has likewise been assailed by appellants on the ground that it is self-serving since Asanion himself was a defendant. But against this theory is the corroborative testimony of Augusto Bartolome, the tri-cycle driver, and Pedro Ramirez, both prosecution witnesses whom the trial court observed, viz:

"On the witness stand, Ramirez was able to impress the court of his sincerity as befits a simple and honest man, and his integrity as an unbiased and unprejudiced witness was never at any moment assailed. The same applied with witness Bartolome. This Court, with high regard of the selfless conduct of these two prosecution witnesses, could only heap praises on them for they have shown exemplary civic mindedness in time where the lack of it has frustrated the cause of justice." (Decision p. 225 Rollo)

We have consistently ruled, and for the soundest of reasons, that:

" x x x the matter of assigning value to declarations at the witness stand is best and most competently performed by a trial judge who, unlike appellate magistrates, can weigh such testimony in the light of the declarant's demeanor, conduct and attitude at the trial and is thereby placed in a more competent position to discriminate between the true and the false; and We really find no cogent reason to disturb the conclusion of the court below as far as the credibility and veracity of these witnesses are concerned." (*People v. Jamero*, L-19852, July 29, 1968, 24 SCRA 206, 257)

Still on Asanion' s testimony, appellants argue that his testimony should not have been given any weight as it was a mere afterthought since the very first time that he pointed to the appellants as the assailants of the deceased

was when he gave the sworn statement before the constabulary investigators on January 19, 1969, which was 3 or 4 days after the incident when he had all the opportunities to implicate appellants earlier (p. 15 Capinding's brief). We have noted this fact and We agree with the Solicitor General's view that Pat. Asanion might not have been as innocent as the trial court took him to be. It has been the observation of the Solicitor General that most likely Asanion was in conspiracy with the three accused to kill Anis; that Asanion may have initially attempted to protect appellants but was eventually forced to admit their participation in the killing of Anis to save his own neck. Unfortunate indeed that We can not under the Rules dig up evidence against Asanion who was acquitted by the court a quo. But the stubborn fact remains that Virgilio Capinding, Silverio Bermudez and Ferdinand Bermudez conspired and acted in concert to kill Anis.

Appellants as a last ditch effort to exculpate themselves from the crime contend that no motive has been shown or pro-ven as would compel the appellants to inflict injuries upon the person of the deceased. Proof of motive, however, as We have ruled in numerous cases, is not indispensable if appellants' guilt or participation is otherwise established by sufficient evidence as in this case (U.S. v. Mcmann, L-2229, July 1, 1905, 4 Phil. 561; U. S. v. Carlos, L-5476, Jan. 15, 1910, 15 Phil. 47, 51.)Of particular relevance is what this Court said in *People v. Taneo* (58 Phil. 255, 256-257):

"The apparent lack of motive for committing a criminal act does not necessarily mean that there are none but that simply they are not known to Us, for We cannot probe into the depth of one's conscience where they may be found hidden away and inaccessible to Our observation."

WHEREFORE, the appealed judgment, being in accordance with the law and the evidence of record, is hereby affirmed with costs against the appellants.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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