

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JORGE GOLFO, DEFENDANT-APPELLANT.*G.R. No. L-43720. December 27, 1982*

Ponente: AQUINO, J.

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Jorge Golfo, Ricardo Golfo and Melencio Baybay appealed from the decision of the Court of First Instance of Cavite, Tagaytay City Branch IV, finding them guilty of murder, sentencing them to reclusion perpetua and ordering them to pay solidarily to the heirs of Mauricio Glorioso an indemnity of P12,000 (Criminal Case No. TG-181-73).

The withdrawal of the appeal of Ricardo and Melencio was allowed in this Court's resolution of March 4, 1981.

The prosecution's evidence shows that Mayor Rafael Dalusag of the municipality of General Aguinaldo (Bailen), Cavite wanted to liquidate his political enemy, Mauricio Glorioso, 55, whom he suspected of having fed armed men or lawless elements during the 1969 election. The mayor allegedly instructed Jorge Golfo, a policeman functioning as a security guard in his residence, to kill Mauricio. The same order was given to his other security guards, Patrolman Melencio Baybay, Ricardo Golfo and Rodolfo Aquino.

Rodolfo Glorioso, 26, a farmer and a nephew of Mauricio, testified that late in the afternoon of December 9, 1970, when the sun was about to set and while he was near his hut located at Barrio Batas Dao, General Aguinaldo, he saw his uncle Mauricio (Kakang Uri) with his hands tied behind his back (gapos) being led away by Ricardo Golfo, followed by Sergeant Jorge Golfo, Baybay and Aquino. They were going southward. They were all armed.

Rodolfo followed the group at a discreet distance. He saw that his uncle Mauricio was taken to the land of a man named Pio. There, Baybay hacked Mauricio on the back and neck (to decapitate him), causing him to collapse on the ground, bleeding profusely.

Baybay then handed the bolo to Ricardo Golfo who gave Mauricio the coup de grace (Exh. E). The four malefactors left Mauricio's body on Pio's land and returned to Mauricio's hut where they took his horse, two carabaos and two cows. They fled northward.

Witness Rodolfo was so unnerved and horrified by the gruesome tragedy that when he reached his hut he slumped on the floor ("nalugmok sa sahig ng kubo"). He fell asleep until morning without having eaten supper.

Dominador Hermosura, another alleged security guard of Mayor Dalusag, corroborated Rodolfo's testimony. He (Hermosura) declared that he was an unwilling witness to Mauricio's assassination. Although Jorge Golfo warned Hermosura to keep silent about the killing, he (Hermosura), nevertheless, apprised Mauricio's relatives about the circumstances surrounding the cold-blooded liquidation of Mauricio.

Rodolfo's testimony is further confirmed by the postmortem examination which revealed that Mauricio had two

hack wounds, one twelve-centimeter long wound in the scalp or occipital region, running horizontally on the mastoid bone, and a thirteen-centimeter long wound on the neck, injuring the esophagus and the thyroid cartilage. He had also incised wounds on the shoulder and chest (Exh. A).

Mayor Dalusag, his brother Privado (the chief of police), Ricardo Golfo, Jorge Golfo and Baybay were charged with murder qualified by treachery and evident premeditation.

At the trial, Jorge Golfo, 35, interposed an alibi. He testified that when the alleged killing took place he was on duty as desk sergeant in the municipal building as shown on page 75 of the police blotter (Exh. 3) and as testified by Constabulary Sergeants Vicente Alcaraz and Gumersindo Rojas. That defense was disbelieved by the trial court which, however, acquitted the Dalusag brothers for insufficiency of evidence.

Jorge Golfo contends that the trial court erred in finding that there was conspiracy to kill Glorioso, a contention which is based on the acquittal of Mayor Dalusag who, according to the prosecution's version, instigated the killing.

That argument cannot be upheld because the trial court's exoneration of the Dalusag brothers is not binding and conclusive on this Court. What is controlling is the probative value of the prosecution's evidence. The eyewitness-testimony of Rodolfo Glorioso that his uncle was ruthlessly killed by Ricardo Golfo and Baybay in the presence of Jorge Golfo is the crux of the prosecution's evidence.

Jorge was no mere kibitzer. It was he who was primarily entrusted with the mission to kill Glorioso. His presence at the scene of the crime could only mean that he wanted to make sure that the mayor's order was carried out. Obviously, he had community of design with Ricardo Golfo and Baybay. His actions disclosed that he acted in concert with his co-accused to encompass Glorioso's death. Hence, it is incontrovertible that he was a co-conspirator.

His counsel also contends that the trial court overlooked certain circumstances which negative his criminal liability and that his guilt was not proven beyond reasonable doubt. One such circumstance is the entry in the police blotter that Jorge was the sargento de mesa at the police station at the time the killing was perpetrated. The certifications of Constabulary Lieutenant Angeles Opena and Sergeant Alcaraz that Jorge was physically present in the municipal building at that time (Exh. 1 and 2) are likewise relied upon to cast doubt on his guilt.

We hold that the trial court did not err in regarding as untrustworthy those pieces of evidence supporting Jorge's alibi. The entry in the police blotter was made by Jorge's co-accused, Privado Dalusag, the chief of police. Opena's certification is hearsay because he did not testify and he was not, therefore, cross-examined. Alcaraz's certification was based on the police blotter. His testimony appears to be unreliable.

The contention that the trial court erred in not giving weight to the statements of Sofronio Glorioso, Vicente Glorioso, Lorenzo Glorioso and Melania Encognito (Exh. 6, 7, 8-A and 8-B) which did not identify Jorge Golfo as a particeps criminis in the killing of Mauricio Glorioso has no merit.

It is unmeritorious because those statements were taken by the frequently mentioned Chief of Police Privado Dalusag (Exh. X and 8), one of the accused in this case. As aptly observed by the Solicitor General, Dalusag had an ulterior motive in getting those statements. He would use, as he in fact used, those statements to exculpate himself and his co-accused.

Appellant assails the probative value of the testimonies of Jacinto Mendoza and Hermosura with respect to Mayor Dalusag's criminal liability as a co-principal by inducement. They testified on collateral matters. Since Mayor Dalusag was acquitted, any discussion of his criminal liability in this appeal is uncalled for. The vital and decisive

testimony is that of Rodolfo Glorioso whose credibility is well-nigh indisputable. He categorically identified the Golfos and Baybay as Mauricio's assassins.

Appellant regards it as unbelievable that Rodolfo should remember the circumstances surrounding the killing considering that he testified more than five years after its commission. It is not a strain on one's credulity that Rodolfo should recollect an extraordinary episode after the lapse of five years.

The horrible killing of his uncle was unerasably stamped in his memory. When he testified, he was still in full possession of his mental faculties. Hence, his recollection of that event, which he must have recounted many times to his relatives and acquaintances, remained vivid and clear.

A painstaking perusal of the record convinces us that Jorge Golfo's guilt was established beyond shadow of doubt. The crime committed is murder since the hap-less victim was first bound and then mercilessly hacked to death while in that helpless state. That circumstance constitutes treachery. The penalty of reclusion perpetua was properly imposed by the trial court.

WHEREFORE, the trial court's judgment is affirmed. Costs against appellant Jorge Golfo.

SO ORDERED.

Makasiar, (Chairman), Abad Santos, De Castro, and Escolin, JJ., concur.
Concepcion, Jr. and Guerrero, JJ., no part.

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