

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO TILOS, DEFENDANT-APPELLANT.*G.R. No. L-28596. February 21, 1968*

Ponente: BENGZON, J.P., J.

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Rolando Banhao[1] and Santiago Tilos were detention prisoners in the Negros Occidental provincial jail situated in Bacolod City. On January 6, 1965, they were removed from their cells and taken to the yard, also within the jail, by and under the custody of Francisco Castillo, one of the provincial guards.

It was the practice of the Guards to take out from the cells some prisoners and assign them some work in their households inside the jail or at the yard therein. In such cases, the guard who takes the prisoners signs for their custody.

At around eleven o'clock that evening, Rolando Cas-tillo, son of provincial guard Francisco Castillo, who lived with his father inside the jail, came from the dance hall about 100 meters in front of the jail, where there was a dance, and went inside the jail. And there he in-vided detention prisoners Santiago Tilos and Rolando Ban-hao to go with him to the dance. At first Banhao said that he did not want to go without the permission of Ro-lando Castillo's father, their custodian. Rolando Castillo, however, told him not to worry as he, Rolando Cas-tillo, will answer for the consequences. And, thereupon, the three went out through the prison's rear gate and proceeded towards the dance hall.

At the dance hall's entrance, Rolando Castillo and Santiago Tilos bought tickets. Rolando Banhao preferred to stay outside, saying that he did not know how to dance. Rolando Castillo and Santiago Tilos entered the dance hall. Rolando Banhao stood near the dance hall by the side of its gate; his two companions were able to dance.

After a while, there was a shower. Rolando Castillo and Santiago Tilos were standing near Banhao, after hav-ing brought the girls they were dancing with to their res-pective places. Since there was a shower, the people in the dance hall went out of said hall. At this point, while people were going out, Rolando Banhao saw Santiago Tilos stab a man in white shirt, hitting the latter in front. Said man who was stabbed went back to the dance hall. Shouts of stabbing followed. Santiago Tilos and Rolando Castillo ran back to the provincial jail. Rolan-do Banhao followed them. And there, inside the jail, Banhao overheard his two companions talk about the stab-bing.

The person stabbed, identified as Gaudencio Olivas, died the next day in the provincial hospital of Negros Occidental, due to a stab wound, two inches long, which penetrated and cut through his abdominal cavity, causing severe internal hemorrhage.

The foregoing is the substance of the prosecution's evidence against defendant Santiago Tilos in support of the information for murder filed against him on September 9, 1965 in the Court of First Instance of Negros Occidental. Rolando Castillo also included in said information, was at large and thus not included in the trial.

The defense sought to establish, on the other hand, that Santiago Tilos never left the jail that day. Aside from his

own testimony to this effect, defendant through counsel presented the prison's "Custodians Report of Prisoners for January 6, 1965" (Exh. 1)[2] which shows Rolando Banhao in the list of those under protective custody (taken out of the cell) that day, but does not include defendant's name. Francisco Castillo, the provincial guard, was also presented by the defense to prove that defendant never got out of the jail on the date in question.

After trial, defendant was found guilty, as charged, of murder and sentenced to suffer reclusion perpetua, to indemnify the deceased's heirs in the amount of P6,000.00 and to, pay the costs. Appeal was taken by defendant to the Court of Appeals which properly certified the same to this Court, in view of the penalty imposed.

The present case turns on the credibility of prosecution eyewitness Rolando Banhao. Appellant contends that said witness merely "invented" the story against him because they had previously quarrelled, and almost came to blows, over the rationing of food in the jail. Such an incident, though capable of producing some bad feelings between the two, cannot suffice to cause Rolando Banhao to testify falsely against the defendant and impute on him the grave offense of murder. The friction engendered by such quarrel, therefore, does not impair Rolando Banhao's credibility, as found and sustained by the court a quo. The rule to follow here is that the finding of the trial court in regard to credibility of a witness shall not be disturbed in the absence of serious, forceful and cogent reasons that render the testimony unacceptable. And in this case, We found none.

The so-called list of persons taken out from the cells in the "Custodian's Report" for the day is not conclusive evidence that defendant was not so taken out. For, his own witness, provincial guard Francisco Castillo, testified that he took defendant that day out of his cell and into his custody (TSN, Akot, p. 34), and that, on January 6, 1965, he was the guard in custody of Rolando Banhao and the defendant (TSN, Akot, p. 42).

As well observed by the court a quo, the trio could have easily passed through the rear gate, considering that Rolando Castillo was the son of one of the provincial guards. Neither was said rear gate heavily guarded. Francisco Castillo testified that it had only "a guard" (TSN, Akot, p. 40).

The Solicitor General in his brief recommends that defendant be found guilty only of homicide, stating that, in his view, treachery is not borne out by the evidence. Our consideration, however, of the facts shown in the record, particularly Rolando Banhao's testimony, convinces Us that treachery has been adequately established. As recounted by said witness, defendant stabbed the deceased at the time when, on account of the shower, people were going out of the dance hall to seek for cover. Advantage was therefore taken by defendant of the relative confusion created by the shower on the crowd, so that his act and identity would not be detected by the people in the dance hall, and so that his escape would be facilitated. The record, therefore, fully supports defendant's conviction for murder. The sentence imposed is correct.

WHEREFORE, the appealed judgment is affirmed, without costs. Let a copy of this decision be sent to the Honorable Secretary of Justice, for proper action with reference to the continuation of the prosecution of Rolando Castillo.

SO ORDERED.

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

[1] Alias Rolando Fortaleza.

[2] This Exhibit is not in the record, the same having been "withdrawn" as stated in the minutes of July 16, 1966, Rollo, p. 16.

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