

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO PANCHO, ET AL., ACCUSED-APPELLANTS.

G.R. No. L-32507. November 04, 1986

Ponente: YAP, J.

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YAP, J.:

This is an appeal from the decision of the then Circuit Criminal Court, 12th Judicial District, in Criminal Case No. XII-107 (SC-779), convicting the accused, Francisco Pancho and Teodoro Pabalate, of the crime of Murder, and sentencing them to life imprisonment and to indemnify, jointly and severally, the heirs of the deceased victim, Jaime Pabalate, the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs. Three of the accused, namely, Florentina Carion de Pancho (wife of the accused, Francisco Pancho), Dionisio Jepolan and Valeriano Pabalate, alias "Valid", were acquitted on the ground of reasonable doubt.

The accused, Francisco Pancho, died during the pendency of this appeal while he was under detention at the New Bilibid Prisons in Muntinlupa, Rizal. In a Resolution dated June 29, 1972, this Court dismissed his appeal, but only as to his criminal liability.

Hence, the instant appeal concerns mainly the other appellant Teodoro ("Dorong") Pabalate, who is the son-in-law of Francisco Pancho, and presently a detention prisoner at the New Bilibid Prisons.

The prosecution's version of the killing of the deceased victim is as follows:[1] At about 2:30 o' clock in the afternoon of April 30, 1969, Jaime Pabalate, together with his son Hilario Pabalate and some other companions, was proceeding to his fishpond at Sitio Dawis, Barrio Ugtongan, Escalante, Negros Occidental. On the way to the fishpond, they had to pass near the house of Francisco Pancho, and as they were passing by, Pancho called Jaime Pabalate. Upon Jaime's approach, Pancho embraced Jaime, placing his arms around the latter and wrestled with him. As the two struggled together, both fell to the ground, and while they were on the ground, Teodoro Pabalate, coming from Pancho's house, appeared at the scene. Jaime was able to stand up but Teodoro Pabalate seized him and held him. While Jaime was being held by Teodoro, Pancho hit him on the forehead with a piece of wood. With this blow, Jaime fell to the ground and lost consciousness. Thereupon, Dionisio Jepolan and Valeriano Pabalate arrived at the scene. Then, Pancho, Teodoro Pabalate, Dionisio Jepolan and Valeriano Pabalate carried the unconscious Jaime to a nearby pile of stones, after which, the four (4) took turns in stabbing him and cutting up his stomach. Hilario, upon seeing what was being done to his father, ran home to his mother to inform her about what happened to his father. The mother was prevailed upon by their neighbors not to go to the place where the body of her husband was. Later in the evening of April 30, 1969, the dead body of Jaime was brought to his house by the policemen of Escalante, Negros Occidental.

The autopsy report of Dr. Edillon Isidto, Muni-cipal Health Officer of Escalante, Negros Occidental, who performed the medical examination and autopsy of the deceased, revealed the following injuries:[2]

"1. Lacerated wound one cm. in length one mm in depth just above the left eyebrow;

- "2. Lacerated wound 1 1/2 inches in length 1/2 cm in depth center of the chest;
- "3. Incised wound 4 inches in length 1/2 inch in depth, forearm, upper third, lateral aspect, left;
- "4. Incised wound 2 inches in length 1/2 inch in depth, forearm, upper third, medial aspect, right; and
5. Incised wound, 14 inches in length, starting from the left lumbar area extending up to the right iliac area thus cutting the small intestines, and its blood supply exposing the abdominal contents.
- Cause of death - Hemorrhage, severe, secondary to a cut small intestine and the blood supply (Exh. A, p. 8, Rollo.)"

According to Dr. Isidto, when he testified at the trial, the first four wounds above-mentioned were not fatal; it was the fifth wound that caused the death of the victim.[3]

The version of the defense, on the other hand, of the fatal incident, is as follows:[4] The deceased, Jaime Pabalate, together with his other armed companions, Melecio Ruiz, Carlito Pabalate and Pesiong Nuyad, went to the house of the appellant, Francisco Pancho, to get copra, which he claimed as his, since he had won Civil Case No. 1(10-4902) at the Court of First Instance of San Carlos City, which case, however, was then still pending appeal. The deceased challenged accused-appellant Pancho several times to a fight; and, together with Pesiong Nuyad, the deceased placed the copra inside the sacks which they had brought with them, thus forcing Pancho to come down his house. An argument ensued between the deceased and Pancho about the ownership of the copra; the deceased then pulled out his revolver and pointed it at Pancho, ordering the latter to turn his back, after which, a shot was fired from the revolver of the deceased, and Pancho immediately swung his cane behind him, hitting the deceased on the forehead. The deceased fell unconscious, whereupon, Pancho immediately struck the deceased with his bolo, inflicting wounds, which resulted in the death of the latter.

The case of the prosecution hinges mainly on the testimony of two eyewitnesses, namely: (1) Hilario (also called Dario) Pabalate, the 14-year old son of the deceased; and (2) Emilio Cantones, an 11-year old third-grade pupil. In evaluating the testimonies of these two witnesses, the trial court said:" x x x These eyewitnesses testified that after the accused Francisco Pancho placed his arms around the deceased Jaime Pabalate and wrestled and finally fell to the ground, and, when Jaime Pabalate tried to free himself and was able to stand, he (Jaime), was hit by Francisco Pancho with a cane on the forehead and later Dorong came out from the house and also hit him with a piece of wood, and later all the other accused, took turns in hacking the deceased, hitting him on the abdomen. It would appear, therefore, if these were true, that the deceased would have received more than five (5) wounds on the abdomen. But in the medical certificate, Exhibit "A", it appears that the deceased had but one wound on the abdomen, fourteen (14) inches in length, the other four (4) wounds, one lacerated found on the left eyebrow, another lacerated wound on the chest, another incised wound on the forearm upper third, left, and another incised wound on the forearm, upper third medial aspect right. From this Medical Certificate, it appears that only one big wound was inflicted on the abdomen of the deceased. If we are to believe the testimony of the witnesses for the prosecution, then this medical certificate is not correct. But, on the other hand, if the medical certificate is correct, then, the testimony of the eyewitnesses regarding the stabbing in the abdomen of the deceased by all five (5) accused, including the woman, must be false." [5] The court then concluded that the testimony of the prosecution's witnesses was incredible and unbelievable, considering that the deceased had only one wound in the abdomen, and acquitted three of the accused, namely, Dionisio Jepolan, Valeriano Pabalate and Florentina Carion de Pancho.

Notwithstanding the inherent improbability of the testimonies of Hilario Pabalate and Emilio Cantones regarding the manner the five accused supposedly participated in the killing of the deceased victim, which prompted the acquittal of the three accused, the trial court nevertheless convicted Francisco Pancho and Teodoro Pabalate based

on the very same testimony of the two eyewitnesses.

The trial court made the finding that "the inevitable fact which appears to be duly established is that, when the deceased Jaime Pabalate came near the house of the accused Francisco Pancho at Barrio Ugtongan, he was called and was wrestled by the accused, and while wrestling, and as the deceased tried to struggle to free himself, he was hit by the cane of the accused Francisco Pancho and thus, while the struggle was going on, the accused Teodoro Pabalate came from the house of Francisco Pancho and helped in stabbing the deceased. This is borne out by the testimonies of the eyewitnesses of the government." [6]

Upon careful review of the evidence, we are not convinced that the guilt of the accused-appellant Teodoro Pabalate has been established beyond reason-able doubt. The declarations of the eyewitnesses relied upon by the prosecution contained material inconsistencies and discrepancies which leave their trustworthiness open to serious doubt. This kind of evidence does not produce that degree of moral certainty required to sustain the conviction of the accused. As we held in *People vs. Dramayo*, [7] "Their (the accused's) freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence. Their guilt must be shown beyond reasonable doubt. To such standard, this Court has always been committed. There is need, therefore, for the most careful scrutiny of the testimony of the state, both oral and documentary, independently of whatever defense is offered by the accused."

The two principal witnesses presented by the government, Hilario ("Dario") Pabalate and Emilio Cantones, 14 and 11 years old, respectively, gave different versions of the killing.

Apart from the inherent improbability of some vital portions of the testimonies of the two principal witnesses for the prosecution, which the trial court noted and which led it to acquit three of the accused, the declarations of these witnesses are at variance with one another.

According to Hilario Pabalate, the 14-year old son of the victim, in his testimony in court, as the group of Jaime Pabalate (the deceased) passed near the house of the accused Francisco Pancho, the latter called Jaime and, without uttering any word, wrestled with him and both fell to the ground; and when they stood up, the accused Teodoro Pabalate who came out from Pancho's house, held Jaime's hands. The accused Francisco Pancho then picked up a piece of wood and hit Jaime on the head, causing him to fall down and lose consciousness. At this point, the other accused Dionisio Jepolan and Valeriano Pabalate emerged from the house and helped carry Jaime to a pile of stones nearby. Afterwards, all of the five accused took turns in stabbing Jaime in the stomach. The witness threw stones at the accused who were then stabbing his father, while his other companions ran away. [8]

In his affidavit, however, which he executed before the Municipal Judge on May 1, 1969, or a day after the killing of his father, Hilario Pabalate gave the following version: [9]

"While on the way to the fishpond at about 3:30 P.M., in Ugtongan, Escalante, Negros Occidental, upon passing the house of Francisco Pancho alias Kekong, my father was called by Kikong to have a talk with him. My father approached Kekong and all of a sudden he was embraced by Kekong and they wrestled and when they fall to the ground, Dorong Pabalate, Dionisio Jepolan and Valid Pabalate coming from the house of Kikong and Dorong pulled my father away from Kikong and then Kikong stood up and hit my father with a cane on the forehead. And my father fall to the ground again and then Dionisio Jepolan struck my father with a bolo on the abdomen followed by Tina wife of Kikong who also struck my father with a bolo on the forearm then Valid Pabalate hit my father with a bolo on the breast."

The other eyewitness, Emilio Cantones, an 11-year old grade school pupil, who was following the group of Jaime from a distance of 20-30 meters, testified that he saw Jaime being wrestled by Francisco Pancho and while the two were wrestling, the accused Teodoro Pabalate came out of the house of Pancho and struck Jaime with a

homemade rifle or shotgun, causing the latter to fall down. Then, Dionisio Jepolan came out of the house and hacked Jaime with a sharp bolo. After this, all the accused participated in stabbing Jaime.[10]

In his affidavit which he executed on May 8, 1969, Emilio Cantones declared:[11]

"A:

While we were near the house of Kikong Pancho there at sitio Dawis, Odtongan, Escalante, Neg. Occ. Kikong called Jaime Pabalate and while Jaime was near the house of Kikong Kikong immediately rushed and took a great hold of Jaime and Dorong Pabalate immediately came close and was about to shoot Jaime with his homemade gun with nails as bullet but he only fired it to the air and after that he immediately struck Jaime with his homemade gun hitting the latter on his forehead and Jaime immediately fell down.

Q:

Then, what happened while Jaime Pabalate was on the ground?

A:

Kikong immediately shouted say-ing, "Hala luba-a ninyo" which translated into English means, "You stab him" and, Dionisio Gepolan the son-in-law of Dorong and Valid Pabalate who were all armed with sharp pointed bolo (pinute) and Dionisio and Valid helped stabbed Jaime and Paciencia wife of Dionisio also helped stabbed Jaime."

A third eyewitness, Melicio Ruiz, a 50-year old farmer who was in the group of Jaime Pabalate, was also presented by the prosecution as a rebuttal witness. According to the version of this witness, when Jaime Pabalate approached Francisco Pancho, the latter immediately embraced the former, and at this juncture, Teodoro Pabalate approached both and with a "paltic" gun struck Jaime, hitting him in the forehead above the left eye and causing the latter to fall to the ground. After Jaime fell to the ground, Dionisio Jepolan approached and stabbed him. Thereafter, Valeriano Pabalate and Florentina Carion successively approached and stabbed the deceased.[12]

It is clear from the testimony of this witness that the accused Teodoro Pabalate did not participate in stabbing the deceased victim, Jaime Pabalate.

We also find that, contrary to the lower court's decision, the qualifying circumstance of evident premeditation has not been established by the evidence. The trial court's conclusion that the accused Francisco Pancho and Teodoro Pabalate must have planned to waylay the deceased on the day he was killed is based on mere inference which we find unwarranted. The court alluded to the civil case then pending between Francisco Pancho and Jaime Pabalate involving a land dispute between them. Said the court: "Francisco Pancho, who lost the case in the Court of First Instance of Negros Occidental, naturally must have been enraged and planned the killing of the deceased, who won in the Court of First Instance." The decision alluded to, wherein Francisco Pancho lost to Jaime Pabalate, was rendered on May 11, 1964 - or almost 5 years before the fatal incident. If a deliberate plan to kill the victim was hatched by the accused as a result of the adverse decision, it would be natural to expect the same to be carried out soon after the decision was rendered, not several years later.

In our view, the evidence adduced against appellant Teodoro Pabalate fail to satisfy the quantum of proof needed to overcome the constitutional right to presumption of innocence of the accused. His guilt not having been established beyond reasonable doubt, he is entitled to acquittal.

The other appellant, Francisco Pancho, now deceased, had admitted killing Jaime Pabalate, but sought to exculpate himself by claiming self-defense. The trial court, however, correctly rejected his claim of self-defense. His death during the pendency of the instant appeal extinguished his criminal liability, but not his civil liability.

WHEREFORE, judgment is rendered acquitting the appellant Teodoro Pabalate. With respect to civil liability of the deceased accused Francisco Pancho, the appealed decision is hereby affirmed with the modification that the indemnity is increased to P30,000.00. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Cruz, and Paras, JJ., concur.
Feliciano, J., on leave.

[1] Appellee's Brief, pages 3-4.

[2] Ibid., pages 4-5.

[3] T.S.N., September 3, 1969, pages 8, 27.

[4] Appellants' Brief, page 3.

[5] Rollo, page 8.

[6] Rollo, page 7.

[7] 42 SCRA 59, 64.

[8] T.S.N., September 3, 1969, pages 35-41.

[9] Exhibit "1".

[10] T.S.N., October 8, 1969, pages 5-11.

[11] Exhibit "E-1".

[12] T.S.N., June 19, 1970, pages 152-3.

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