

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS CLEMENTE, PASCUAL CLEMENTE, AND ROSALIO CLEMENTE, DEFENDANTS-APPELLANTS.

G.R. No. L-23463. September 28, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the decision of the Court of First Instance of Samar (in Crim. Case No. C-778), convicting Carlos Clemente and Pascual Clemente of the crime of murder, and Rosalio Clemente, of homicide, and sentencing them accordingly, for the death of one Reyes Matnog.

At about 3 o'clock in the afternoon of February 5, 1962, at the corner of the national highway and the barrio road in front of the house of a certain Hospicio Tan in barrio San Miguel, municipality of Lave-zares, province of Samar, Reyes Matnog, barrio lieutenant of barrio MacArthur, same municipality, died of multiple wounds. Reyes Matnog had just come from a party (blow-out) given by Pedro Baniega in celebration of the latter's election as barrio lieutenant of San Miguel. The autopsy-report of the Rural Health Officer of Lavezares (Exh. A) shows the deceased sustained the following injuries:

"EXTERNAL FINDINGS

"x x x x

"2. Stab wound on the left lower part of the upper third of the arm, lateral side about one inch in length penetrating thru the other side and entering the chest cavity.

"3. Stab wound on the posterior part right side of the umbilical region penetrating the abdominal cavity.

"4. Stab wound on the upper part of the back above the right scapular region. The wound measures about one inch in length and 1 1/2 inch in depthness.

"6. Lacerated wound on the upper part of the back, scapular region, left side measuring about 4 1/2 inches in length in a horizontal manner and fracturing the supra-scapular bone.

"INTERNAL FINDINGS

"1. The lower third of the left humeral bone is fractured.

"2. The third left medial part of the rib is also fractured.

"3. Blood about one liter was taken from the left chest cavity.

"4. Left side of the heart was injured resulting to profuse hemorrhage.

"5. Wound penetrating the abdominal cavity did not involve any abdominal organ but there are some blood clot found due to some vessels that were cut."

Cause of death was reported to be due to profuse internal hemorrhage resulting to shock.

Informed of the incident, the Chief of Police of Lavezares, Victorino F. de Leon, immediately repaired to barrio San Miguel to investigate, and based on the statements of Basilio Pornelos and Isabel Medala, he prepared a sketch of the crime-scene (Exh. D). On February 6, 1962 and February 8, 1962, respectively, Pornelos and Medala executed affidavits to the effect that Pascual Clemente, Rosalio Clemente and Carlos Clemente took part in the slaying of Reyes Matnog. On February 7, 1962, the Chief of Police of Lavezares filed the necessary complaint against Pascual, Carlos and Rosalio Clemente.[1]

On March 15, 1962, the three Clemente brothers were formally charged before the Court of First Instance of Samar (Crim. Case No. C-778) of the crime of murder allegedly committed as follows:

"That on or about the 5th day of February, 1962, in the afternoon, in Bo. San Miguel, Lavezares, Samar Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bolo and knives locally known as 'kinogon', conspiring, confederating together and mutually helping one another, with intent to kill, evident premeditation and treachery and taking advantage of their superior strength and number, and without any justifiable motive at all, did, then and there wilfully, unlawfully and feloniously attack, assault, chase, stab and wound one Reyes Matnog, a barrio lieutenant of Bo. MacArthur, Lavezares, Samar, with said weapons, which the herein accused had then at hand, thereby inflicting upon said Reyes Matnog several grave wounds on the different parts of his body, which wounds directly caused the death of the latter.

"Contrary to law."

On arraignment, the three accused pleaded not guilty.

The prosecution tried to establish its case with the testimonies of Dr. Antonio Ofiana, Rural Health Officer of Lavezares, who testified on the fact and cause of death of Reyes Matnog; of Chief of Police Victoriano F. de Leon, who identified the sketch of the crime-scene (Exh. D), which he prepared according to the declarations of Basilio Pornelos and Isabel Medala,[2] indicating the supposed spots where Reyes was first attacked by Rosalio, and then by Pascual and Carlos Clemente, and the path taken by the deceased up to the doorsteps of the house of his (Reyes') father-in-law where he expired; and of Pablito Seriguini, an alleged eyewitness. Of the supposed eye-witnesses to the incident who had executed affidavits, naming the three Clemente brothers as the assailants of Reyes Matnog, only Pablito Seriguini was able to testify in court. Basilio Pornelos was then already dead, having been killed allegedly by Seriguini, while Isabel Medala was too ill to appear at the trial.

Seriguini, who was apparently in hiding, was located by the police authorities only after some time, and upon prodding of the police by the Court. He testified that at about 3 o'clock in the afternoon of February 5, 1962, while standing by the street, he saw Reyes Matnog and Rosalio Clemente fighting; that Rosalio stabbed Reyes with a double-bladed hunting knife; that upon being hit by Rosalio on the upper part of the left arm, Reyes ran away; chased and overtaken by Rosalio, Reyes fell to the ground; that while thus lying prostrate, he was stabbed by Rosalio on the right side of the hip and again at the back; that Reyes was still able to run away, but Rosalio did not follow him anymore.[3] Still on direct examination by the provincial fiscal, this witness affirmed the contents of the affidavit that he executed on March 5, 1962[4] to the effect that while Reyes was lying flat on the ground, Pascual and Carlos Clemente also attacked and slashed him with their weapons.

The defense, on the other hand, presented several witnesses, including the three accused.

Carlos Clemente testified that he left his house in the morning of February 5, 1962, with Gerardo Panes, to gather firewood in San Agustin, a barrio about 3 1/2 kilometers from San Miguel, and returned only at about 7 o'clock in the evening of the same day. Pascual Clemente declared that in the afternoon of February 5, 1962, he was in their

house holding his child when he heard that Reyes Matnog and his brother Rosalio were quarreling; that he left the child with his niece and went out. In front of the house of Hospicio Tan, he found Rosalio holding a bolo called "kinogon"; that he advised Rosalio to go hom, which the latter heeded. He denied participation in the slaying of Reyes Matnog.

Rosalio Clemente's version of the incident is as follows: He was on his way to the farm when he met Reyes Matnog in front of the house of Hospicio Tan. After saying that he (Reyes) was going to kill him (Rosalio) and his family, Reyes lunged at him with a hunting knife, hitting him on the right arm.[5] Rosalio then pulled the bolo tucked to his waist and stabbed Reyes, hitting the latter at the left upper arm. He delivered a second blow finding its mark at the right side of Reyes' abdomen. Then, when Reyes lunged at him again, he slashed him twice, both blows landing at the back. When Reyes walked away to the direction of the house of his parents-in-law, Rosalio started to leave. At that moment, his brother Pascual came and advised him to go home which he did.

Chief of Police Victorino F. de Leon, testifying for the defense, declared that Rosalio Clemente surrendered to him on the same day, February 5, 1962, which fact was duly entered in the police blotter. Gerardo Panes corroborated the testimony of Carlos about their trip to San Agustin to gather firewood and their having returned to San Miguel only at about 7 o'clock of the same day, February 5, 1962. Roman Esplana and Bartolome Unay testified to having witnessed the incident and declared that it was Rosalio alone who had inflicted all the wounds received by Reyes Matnog, following a quarrel between the two.

In its decision of June 8, 1964, the trial court ruled:

"The Court is morally and legally convinced that the three accused killed Reyes Matnog.

"The fatal wounds were inflicted by the accused, Pascual Clemente and Carlos Clemente while Reyes Matnog was prostrate on the ground, unarmed and apparently stunned by the attack(ed) made upon him by Rosalio Clemente. No fight between Pascual Clemente and Carlos Clemente preceded the stabbing. Reyes Matnog knew that his only assailant, and from whom he ran away, was Rosalio Clemente who chased him. H was never aware that Pascual Clemente and Carlos Clemente would attack him. Since the attack made by Pascual Clemente and Carlos Clemente was sudden and unexpected and the deceased was then flat on the ground and in a defenseless position, the crime committed is murder, qualified by treachery."

In disregarding the alibi of Carlos Clemente, corroborated by witness Gerardo Panes, the court found it strange that these two would be in another barrio gathering firewood at a time when their barrio lieutenant was celebrating his election; that Gerardo would leave Carlos in the banca, upon their arrival at about 7 o'clock in the evening; that Carlos' wife should be in the house of Gerardo at that time, but Gerardo did not inform Carlos who went to look for her. The trial Court also concluded that from the way these two witnesses testified and from the expressions of their faces while testifying, they could not be telling the truth. As regards Pascual Clemente, the trial court found material the identification of Pascual as among the killers of Reyes Matnog, by witness Pablito Seriguini, and which identification was allegedly corroborated by the documen-tary evidence, Exhibit D, prepared by the Chief of Police after the incident.

The claim of self-defense of Rosalio Clemente was also over-ruled for lack of sufficient proof, the court not giving credence to the testimonies of Rosalio and witness Bartolome Unay because, from their voice and facial expressions, it was convinced that said witnesses were not sincere.

Consequently, Pascual and Carlos Clemente, found guilty of murder, qualified by treachery, were sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties of the law; while Rosalio Clemente was found guilty of homicide and was sen-tenced to imprisonment for not less than 12 years of prision mayor, as minimum, to not more than 17 years, 4 months and 1 day of reclusion temporal, as maximum, with the accessory

penalties of the law. The fact that Rosalio gave himself up to the police immediately after the incident was not considered in his favor, because during the trial, he declared that he did so out of fear of retaliatory action from the relatives of the deceased. This, according to the trial Judge, is not the kind of surrender that entitles the accused to the benefit of voluntary surrender. The three accused, jointly and severally, were ordered to indemnify the heirs Reyes Matnog in the sum of P 6,000.00, and to pay them the sum of P7,200.00 for loss of earning capacity of the deceased and P3,000.00, as moral damages, and costs.

All three accused appealed to this Court and assail the credibility of the eye-witness, Seriguini, claiming that it is full of inconsistencies and contradictions. The transcript does not substantiate these charges. The version of Seriguini (that the Court below declared to be "clear, positive and devoid of signs of artificiality") is that when Rosalio Clemente stabbed the deceased Reyes Matnog, the former's brothers, Carlos and Pascual Clemente, were not yet there; but that after Rosalio and Matnog separated, the witness saw Pascual with a weapon; that Carlos Clemente also showed up with a hunting knife; and that all three chased Matnog as the latter was running away toward the school house; and that when Reyes Matnog stumbled and fell, Rosalio, Pascual and Carlos slashed and stabbed the prostrate man. The witness, however, candidly admitted that he did not see if Reyes was hit by Carlos Clemente nor whether he was hit by the slash of Pascual Clemente. This version not only tallies with Seriguini's own affidavit, executed before the Clerk of Court only one month after the killing, when the facts were still fresh in his mind, but is supported by the necropsy findings (Exh. A) that attest to three stab wounds (two of them from behind) and one lacerated wound in the body of Reyes Matnog.

While there is no showing that the wounds inflicted resulted in cut arteries, such effect is implied in the medical finding that death resulted from "profuse internal hemorrhage" that led to shock.

The criminal responsibility of appellant Rosalio Clemente is beyond doubt. He admitted stabbing the deceased as a result of quarrel, and his pretense that he only did so in self-defense is contradicted by the autopsy, that revealed that two of the stab wounds were inflicted from behind. Necessarily, these mute but eloquent facts also contradict that of Rosalio's witness, Bartolome Unay, who endeavored to confirm that Rosalio stabbed the deceased Reyes Matnog in a frontal conflict. This witness is further discredited by his assertion that the deceased wounded Rosalio in the left forearm, when Rosalio's scar appeared on the right arm. To cap it all, the Court was convinced by Unay's manner of testifying that he was not telling the truth. The burden of proving self-defense is on the accused^{5a} and we are satisfied that here it was not met.

The attack on the character of the deceased, as a man prone to violence, has no weight, because it was not shown that the accusations levelled against him resulted in conviction. We must perforce be wary of such charges against a man who is no longer in a position to offer explanations; and, moreover, Reyes' election as barrio captain indicates that he had not lost popular esteem, and negates the defense picture of him as a bully.

However, we agree with the Solicitor General that Rosalio's liability was mitigated by his voluntary surrender to the authorities; and that the trial court erred in not so holding. That the surrender was induced by his fear of retaliation by the victim's relatives does not gainsay the spontaneity of the surrender, nor alter the fact that by giving himself up, this accused saved the State the time and trouble of searching for him until arrested.

Appellant Pascual Clemente and his witness, Roman Esplana, asserted that Pascual, upon hearing the commotion of the quarrel, came down from his house, met his brother Rosalio carrying a bolo, held him by the shoulder and told him to go home. It does not strike us as cogent or natural, that seeing his brother with a bloody bolo (for Rosalio admits having stabbed Reyes Matnog), Pascual Clemente should not have even inquired into any detail of what had happened. We can not say, therefore, that the trial Court erred in denying them credence.

Carlos Clemente's defense is an alibi. Both he and witness Gerardo Panes testified that they went to a distant

barrio (San Agustin) to gather firewood and returned by banca to barrio San Miguel only in the evening; that after going home, Panes met the wives of Carlos and Rosalio Clemente in his house; that Panes returned to the banca and told Carlos to go home, and the latter did so, but not finding his wife, he looked for her in the neighboring houses.

This alleged conduct of Panes, in sending Carlos home with-out telling him that his wife was at the former's house, is certainly strange and contrary to common experience, as noted by the Court below, for no reason is given why the wife's whereabouts should be kept from her husband, particularly since the latter was returning to his domicile and could have taken his wife along. This incon-sistency, when coupled with the lower Court's express finding that the demeanor of these witnesses in the witness stand left a distinct impression that they were not telling the truth, leaves their testimony powerless to overcome the evidence for the prosecution.

It was also claimed that prosecution witness Seriguini had an ax to grind against the brothers Clemente in that Carlos and Pas-cual had secretly denounced the first as one of those who held up a Gloco company truck the previous December. We find this asser-tion unbelievable in that there is no showing that Seriguini ever learned of the secret denunciation, and that after all, Seriguini was released after investigation and not proceeded against. We note also that while Carlos and Pascual Clemente, each claimed to have been the denouncer, neither mentioned the other as having likewise done so, although they were brothers.

Considering the unparalleled opportunity of the trial Courts to observe the attitude and demeanor of witnesses while testifying and thereby form an opinion about their credibility, as well as the great weight uniformly accorded to their appreciation of the relative weight of the evidence submitted by the prosecution and the defense,[6] and there being no satisfactory showing that any material error was com-mitted therein, this Court can not see its way clear to depart from the conclusions of fact in the appealed decision as to the culpability of accused appellants.

There being neither premeditation nor treachery, inasmuch as the attack by Rosalio Clemente on Reyes Matnog appears to have been the result of a chance encounter and quarrel, and the wound-ing of the victim while lying prone on the ground was merely in-cidental to the ensuing pursuit, not intended to ensure the safety of the attackers themselves, the appellants appear to be merely guilty of homicide, rather than murder.[7] In the case of the prin-cipal culprit, Rosalio Clemente, his liability is even mitigated, as previously discussed, by his voluntary surrender.

In the case of appellants Carlos and Pascual Clemente, while they joined their brother in the pursuit of the fleeing Matnog, and in the attack on him as he fell, yet the prosecution eyewitness was unable to assert positively that the two managed to hit the fallen man. There being no showing of conspiracy, and the extent of their participation in the homicide being uncertain, they should be given the benefit of the doubt, and consequently they are declared to be mere accomplices in the crime.[8]

WHEREFORE, reducing the penalties imposed by the Court below, and applying the Indeterminate Sentence law, Rosalio Clemente is decreed to suffer a minimum of eight (8) years and one (1) day of prision mayor and a maximum of thirteen (13) years of reclusion tem-poral. Carlos and Pascual Clemente shall each undergo imprison-ment for not less than three (3) years of prision correccional and not more than eight (8) years and one (1) day of prision mayor. In all other respects, the decision appealed from is affirmed.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] These brothers appear to be prominent residents of the barrio. Rosalio was the barrio lieutenant of San Miguel

in 1959; Pascual was the barrio vice-lieutenant in 1960; and Carlos was elected barrio councilor, also of San Miguel, in 1964.

[2] t.s.n., Abata, pp. 22-23.

[3] t.s.n., Abata, pp. 5-7.

[4] One month after the incident.

[5] The Rural Health Officer of Lavezares certified that Rosalio Clemente was treated on February 5, 1962, for a stab wound about 1/2 inch in length and 3 centimeters in depth, at the upper lateral third of the right forearm, caused by a sharp, pointed instrument. (Exh. 5).

5a People vs. Ramos, 59 Phil. 7; People vs. Pabellan, 58 Phil. 964; People vs. Baguio, 43 Phil. 683.

[6] People vs. Cabrera, 43 Phil. 64; People vs. Reyes, 47 Phil. 635; People vs. Asis, 64 Phil. 757; People vs. Nate, 63 Phil. 667, 668.

[7] People vs. Cañete, 44 Phil. 478; People vs. Delgado, 77 Phil. 11; People vs. Verga, 46 O.G. 1185.

[8] People vs. Rival, G.R. No. L-14077, March 31, 1964, citing People vs. Tamayo, 44 Phil. 38 and People vs. Bantagan, 54 Phil. 834.

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