

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELIPE ELUMBA, ET AL., DEFENDANTS. ROQUE ELMEDULAN, DEFENDANT AND APPELLANT.*G.R. No. 11165. November 28, 1959*

Ponente: GUTIERREZ DAVID, J.

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For the violent death of Ladislao Olarte, three men, namely Roque "Elmedulan, Felipe Elumba. and Cruz Alvarico, were charged with murder in the Court of First Instance of Misamis Occidental. Upon motion, Cruz Alvarico was granted separate trial. In a separate decision he was found guilty as charged and sentenced to suffer the penalty of reclusion perpetua. After trial of the two other accused, the court below also found them guilty of murder and sentenced each of them to suffer the penalty of reclusion perpetua, and to indemnify jointly and severally, with Cruz Alvarico, the heirs of the deceased Ladislao Olarte in the amount of P3,000.00.

Only Roque Elmedulan appealed.

The incriminatory facts as disclosed by the evidence for the prosecution are as follows: Between 11 a.m. and 12 noon, February 21, 1955, in Barrio Colambutan Bajo, Tudela, Misamis Occidental, Ladislao Olarte was sitting on a pile of coconut husks, while tending his grazing cows. Suddenly from behind him stealthily came Felipe Elumba, followed by Cruz Alvarico and Roque Elmedulan, Probably sensing danger, Olarte turned his head. At that very moment Elumba bludgeoned him on the head. The blow landed on his right eyebrow, felled him and rendered him unconscious. Then appellant and Alvarico joined in mauling him. Thereafter, the three brought their unconscious victim to the foot of the stairs of Alvarico's house nearby. Appellant took the bolo from the victim's waist and gave him two parallel slashes on the face, resulting in death. Then, with his own bolo, Elumba hacked the posts and stairs of Alvarico's house, while appellant smeared the floor and walls of the room and the stairs with blood. Appellant instructed Alvarico to report to the police that he killed the deceased when the latter tried to invade his house and attack him. Appellant promised him to shoulder all expenses for lawyers and to give him money. Accordingly, Alvarico, carrying the victim's bloody bolo, surrendered to the police authorities at the municipal building of Tudela, alleging that he had killed Olarte in self-defense. The chief of police filed a complaint for homicide against Alvarico. Later the charge was changed to murder and included appellant and Felipe Elumba as accused.

The above facts were established by the testimony of Cruz Alvarico, Jorge Sericos and Roel Olarte. Background for the crime was the quarrel between Elumba and Olarte over a piece of land.

Appellant and Alvarico were Elumba's bosom friends. On one occasion, appellant joined Elumba in threatening Olarte when the latter attempted to gather coconuts from the land. Also, whenever the three passed by Olarte's house, they challenged Olarte to come down and fight them to death. Appellant set up the defense of alibi which Bernardino Taylaran attempted to corroborate. Appellant testified that from about 10:30 a.m. to noon of the day in question he was in Taylaran's house. But his alibi does not completely establish the impossibility of his having

participated in the crime which was committed between 11 a.m. and 12 noon. According to Taylaran, appellant reached his house and stayed there for less than half an hour. Taylaran's house is but half an hour's walk from Alvarico's house. In view of these facts, appellant's alibi becomes practically worthless, more so considering that prosecution witnesses Jorge Sericos and Roel Olarte have positively testified that they saw him at the scene of the crime near Alvarico's house.

In the main, appellant assails the credibility of the prosecution witnesses.

Cruz Alvarico, who testified for the prosecution during Elumba and appellant's trial, made three separate statements, one dated January 22, 1955 (Exhibit C) wherein he admitted having killed Olarte because the latter attacked him in his own house; and two others, dated January 27, 1955 and February 7, 1955 (Exhibits D and H) wherein he completely disowned participation in the crime. At the trial he testified in accordance with the last two affidavits. He declared that as he was returning home at about noon of the fatal day, appellant called him to the house of Felipe Infelis where he saw Olarte's corpse atop a pile of coconut husks; that Elumba intimidated him into owning the crime after which the two carried the corpse to Alvarico's house; that appellant then took Olarte's bolo and hacked the deceased twice on the face; that Elumba struck with his bolo the stairs and walls of the house, while appellant smeared with blood the walls, floor and stairs; and that appellant instructed him to confess to the crime, after promising him to shoulder all expenses for lawyers and to give him money.

After the three accused had been found guilty and sentenced, Cruz Alvarico, while in the New Bilibid Prison in Muntinlupa, made a deposition wherein he admits sole responsibility for Olarte's death. Appellant made this deposition as the ground for his motion for new trial filed in this Court. However, we find that it cannot be the basis of a new trial because it is not newly discovered evidence. Its contents are a mere reiteration of Alvarico's first affidavit.

Appellant asks us to accept Alvarico's allegation of self-defense as narrated in said first affidavit and to reject his subsequent affidavit as well as his testimony in court. This we cannot do because the evidence of record clearly shows that Olarte was not killed in self-defense by just one man but had been murdered by three men, among them appellant herein.

Physical facts obtaining in the record negative the alleged self-defense on the part of Alvarico. The victim suffered a contused wound, 1.5 cm. long and extending to the bone, on the right supraorbital ridge, which wound could have been produced by a blunt instrument only. No mention of this was ever made by Alvarico. All he said was that after he succeeded in wresting the bolo from Olarte, he "struck him and was hit twice on his face and then he ran away towards our yard and he fell down and died in our yard" (Exhibit C). According to Dr. Ibe, who performed the necropsy, Olarte's two facial wounds were inflicted when the victim was lying prone on his back and when he was already in a state of shock, produced by the blow on the right eyebrow. In fact, the front part of Olarte's body was clean of blood. Blood from the two facial wounds had clotted on the left upper portion of his back. This would not have been the case if said injuries were sustained while Olarte was still on his feet struggling with Alvarico.

Of course not the whole of Alvarico's testimony merits credence. However, his statement regarding appellant's participation is supported by the nature of Olarte's wounds on the face. Also, the bolo marks on the posts and stairs and the bloodstains (which appear to have been deliberately bedaubed with lingers rather than accidentally spattered in the course of a fight) on the floor and walls of Alvarico's house reveal the truth of his statement that appellant and Elumba had made the necessary preparations in his house to make it appear that Olarte had been, killed there in legitimate self-defense.

Furthermore, appellant's presence at the scene of the crime during the crucial moment was established by Roel

Olarte and Jorge Sericos. Roel, ten year old grandson of the deceased, was washing his shoes at the well near Alvarico's house, when he saw appellant and Elumba conversing with Alvarico who was carrying the deceased's gory bolo. We need not discard Roel's testimony just because he was related to the victim, as appellant would want us to do. His relationship to the deceased did not necessarily make him a biased witness. If he had really been rehearsed by his mother, as claimed by appellant, then he would not have merely stated that he saw appellant at the scene of the crime, but would have declared outright that he actually saw appellant, Elumba and Alvarico committing the crime.

The attack on Olarte took place near the Timus river. At the time the three assailants, were approaching, to attack Olarte, Jorge Sericos was in a place just across the river. He testified that he saw Elumba Olarte a heavy blow on the right side of a head; that when Olarte fell, Afararico; and appellant helped Elumba in hitting him; and that the-three carried Olarte to Alvarico's house.

Appellant argues that Sericos could not have seen the commission of the crime because Olarte was allegedly at the downward slope on the farther side of a hill and was beyond Serico's line of sight. This argument is supported by sketches attached to appellant's brief. But these sketches are based purely on assumptions as to the relative positions of Sericos and Olarte, and are therefore worthless. On the other hand the commissioner's report states that from the place where Sericos was (indicated as point C in the sketch attached to the report), could be seen the place where Olarte was sitting on a pile of coconut husks (point B). Sericos was positive that he saw the beginning of the attack on Olarte. With such an exciting scene being enacted before his very eyes, it is only to be expected that Sericos' would have sought a vantage point from where he could see better the crime being committed by the three assailants.

We are convinced beyond reasonable doubt that appellant fully participated and cooperated in the execution of the plot to kill Ladislao Olarte and should therefore be penalized accordingly.

Wherefore, being supported by the evidence of record and in accordance with law, the appealed judgment is hereby affirmed at appellant's costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Barrera, JJ., concur.

[1] People vs. Elumba, it al.

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