

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TOMAS ESTACIO, FEDERICO ESTOESTA AND MAXIMINO ROMERO, DEFENDANTS AND APPELLANTS.

G.R. No. 11430. January 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of La Union finding the three defendants herein guilty of the crime of murder, frustrated murder, and attempted murder, and sentencing them to suffer life imprisonment for the offense, to an indeterminate penalty of from 6 years and 1 day of prision mayor to 12 years and 1 day of reclusion temporal for the second offense, to another indeterminate penalty of from 6 months and 1 day of prision mayor, for the third offense, and to pay jointly and severally the sum of P3,000.00 to the heirs of Rosita Ogoy, the sum of P500.00 to Teofilo Orille, the sum of P200.00 to Mercedes Oribello, and the sum of P100.00 to Natalia Orille.

In the early morning of July 27, 1953, while Antonio Orille was sleeping in one of the rooms of their house at barrio Ambangonan, Pugo, La Union, his mother Mercedes Oribello and his older sister Natalia Orille in another room, and his older brother Teofilo Orille and the latter's wife Rosita Ogoy in the sala of the house, Antonio was awakened by some outcries and when he got up and peeped through the door he saw three men in the sala of the house one of whom he recognized as Maximino Romero, while the other two he did not know but recognized their faces because of the light of a lamp placed on top of a drawer. At this moment, Romero approached Teofilo Orille whom he hacked with a bolo in the head when he was about to stand up causing him to fall down. Teofilo tried to stand up again but Romero slashed him a second time at his right eye causing him to fall unconscious. When his wife Rosita was about to stand up, one of the intruders, who happened to be the tallest and was later identified as Tomas Estacio, attacked her with a bolo killing her instantly. Then Estacio and the other intruder, who was later identified as Federico Estoesta, entered the room where Mercedes Oribello and Natalia Orille were sleeping at which moment Antonio Orille, who got scared of what he saw, jumped out of the window shouting for help and went to the neighboring house of Catalino Morales where they drummed a can. Natalia Orille, who was awakened by the shouts of Antonio, saw Federico Estoesta and Tomas Estacio advancing towards her and all of a sudden Estoesta hacked her on the top and back of her head causing her to fall unconscious. Mercedes Oribello, on the other hand, who was also awakened by the noise, likewise saw the three intruders one of whom hit her with a bolo on her left cheek and on the right side of her head causing her also to fall unconscious.

In the early hours of the same morning, Ignacio Millanes, a farmer living in the same barrio, left his house to fetch the carabao he left to graze in the field, and upon reaching a road nearby he saw from a distance of seven meters three men walking hurriedly all armed with bolos, and as they remarked that they were going to bypass the nearby houses, he stopped to look and noticed that they had their pants wet. He identified the three men as the three defendants in this case.

Almost at the same early hour, one Antonio Asuncion, whose house was twenty-five meters from that of Millanes, also saw three men "walking very fast in a somewhat running manner" wearing wet colored pants and carrying bolos on their waist, whom later he identified as the three defendants herein. Asuncion was at the time on his way to his ricefield which he had irrigated.

Mayor Faustino Madriaga of Pugo, La Union, upon being informed of the tragedy, went the same morning to Orille's house to conduct an investigation, but desisted from doing so when he saw that Rosita Ogoy was dead and her companions lying on the floor unconscious. However, Antonio Orille lost no time in reporting to him the occurrence telling them that one of those who perpetrated the gruesome act was Maximino Romero whom he personally knew and that while he did not know the other two, he could however recognize their faces if he could see them again.

In the morning of the tragedy, a post mortem examination of the body of Rosita Ogoy was performed by Dr. Clemente M. Vergara, while the three wounded were taken to the La Union Provincial Hospital for treatment. They remained there from July 27, 1953 to August 7, 1953, or for a period of twelve days, although in the opinion of Dr. Vergara it would take two or more weeks before the three could fully recover and resume their work.

Sometime prior to the date of the occurrence, a prayer ceremony for a dead child was held in the house of Teofilo Orille which Maximino Romero and Federico Estoesta attended. On said occasion, Romero got drunk and while dancing with the niece of Teofilo, he attempted to abuse her, whereupon, Esteban Mabutas, brother-in-law of Teofilo, intervened giving rise to a fracas. On one hand, Romero and Estoesta, helping one another, tried to hit Mabutas with a "black jack" which the latter was able to dodge. Then Estoesta started boxing the people around forcing Teofilo Orille to hold his hands to pacify him. This attitude enraged Romero who instructed Estoesta to proclaim that they will not stop until they have drawn blood.

Sometime in 1953, Teofilo Orille went to Rosario, La Union, to attend the town fiesta but upon arriving at the parking place for buses, his cousin Ceferino Oribello persuaded him to desist from going because Romero and Estoesta threatened to kill him if they should have a chance to see him. This is in substance what Teofilo Orille stated in the affidavit he thumbmarked when he was investigated after the occurrence wherein he said that those two who were involved in the incident that happened at the death anniversary of his child "came up our house and boloed us."

The defense set up an alibi for the three defendants. Federico Estoesta claims that in the evening of July 26, 1953, he and a companion were at the house of one Valentin Refuerzo in barrio Amallapay, Tubao, La Union, because sometime earlier on that date they had purchased some tobacco leaves in Agoo, La Union and because it rained that night they decided to sleep in the house of Valentin Refuerzo which they did not leave until three o'clock in the afternoon of July 27, 1953 because they helped in spreading and bundling the tobacco leaves. Maximino Romero, in turn, claims that in the evening of July 26, 1953, he and two other companions helped Jose Estoesta carry some lumber for the repair of the latter's house at barrio Amallapay, Tubao, La Union, and they were not able to return to their respective houses because it started to rain at eight o'clock, that same evening, and so they spent the night in the house of Estoesta where they remained up to five o'clock in the afternoon of July 27, 1953. Tomas Estacio, on his part, claims that from July 24, 1953 to July 27, 1953, he was in San Fabian, Pangasinan, because he performed some carpentry work in the house of Alejandro B. Caballero, the mayor of the town, where he took supper and slept in the evening of July 26, 1953, and stayed until the afternoon of the next day, July 27, 1953, when he returned to Agoo, La Union.

There is no question that Rosita Ogoy and the other members of the Orille family were assaulted and attacked in the early morning of July 27, 1953 resulting in the instant death of Rosita and in the infliction of serious injuries

to others which almost caused their death were it not for the opportune medical treatment accorded them at the Provincial Hospital of La Union. The tragedy that has befallen the Orille family is admitted. The only question in dispute refers to the identity of their assailants who the defense contends are not the herein appellants. The prosecution, however, claims that the evidence it has presented sufficiently establishes that the assailants are the herein appellants because their identity and participation have been proven by competent witnesses.

After a careful examination of the evidence on record, we are persuaded to agree to this claim of the prosecution. In the first place, we have the testimony of Antonio Orille who, because of the commotion and outcries coming from the sala of their house, peeped through the door and saw three men who intruded into the house among whom he immediately recognized Maximino Romero although he was frank enough to state that he did not know the other two even if he could recognize their faces if he could see them again. This in effect he did when upon the request of some constabulary soldiers he was asked to identify the three defendants among the several persons shown to him for identification where then and there he picked up the three herein defendants. Again, in the course of the investigation conducted before Judge Madarang of Agoo, La Union, Orille was also able to identify the three defendants when they were made to sit in different places with other persons by pointing to them immediately, which show that he was indeed able to recognize them in the morning of the occurrence. It is true that Antonio Orille was not able to state the color of the pants the appellants were then wearing, but this is of no importance, for experience shows that in meeting people one does not generally pay attention to their clothes especially when he meets them in an unusual situation such as what actually happened to the victims. In fact, this is what happened. Antonio Orille frankly stated that while he recognized the culprits he did not however pay any attention to their clothing,

Aside from Antonio Orille, we have other witnesses who testified as to the identification of appellants, namely, the victims who survived the dastardly attack—Teofilo Orille, Natalia Orille and Mercedes Oribello—who each testified as to the particular happening concerning their respective fate, and who deserved full credence from the trial court. In fact, the trial court stated that "notwithstanding the long cross examination made by the defense attorneys to the prosecution witnesses, the living victims, Teofilo Orille, Natalia Orille and Mercedes Oribello, had positively and consistently reiterated their identification of the herein accused who attacked them in that early dawn of July 27, 1953." We may mention in addition the testimony of Ignacio Millanes and Antonio Asuncion, two humble farmers who were living in the neighborhood of the fatal occurrence and surprised the three defendants walking hurriedly immediately after committing the dastardly act wearing colored pants and carrying bolos on their waist. These two farmers, who had no motive whatsoever to prejudice the defendants, were positive in their assertion that they were the ones they saw walking hurriedly in that early morning in a suspicious manner as though they were trying to prevent detection or apprehension.

As regards the motive why defendants attacked their victims, the record also furnishes sufficient proof. It arose at the prayer ceremony carried out in the house of Teofilo Orille sometime prior to the commission of the crime which was attended by Maximino Romero and Federico Estoesta. On that occasion, Romero got drunk and tried to abuse a niece of Teofilo for which reason one Esteban Mabutas, his brother-in-law, intervened. This enraged the two defendants who started the fracas involving the people around which forced Teofilo to intervene to pacify them. As a result, defendants got mad and threatened to kill him. While the defense attempted to discredit this proof by pointing out some flaws in the testimony of Teofilo Orille, the court is satisfied that the fracas actually took place which must have been the root cause of the aggression even if in the opinion of the court proof of such motive is of no moment considering that the guilt of the defendants has been established by sufficient and satisfactory evidence.

The defense of alibi set up by the defense does not appear to have any legal value not only because of the

sufficient identification of the defendants as the ones who actually committed the act which led to the killing and wounding of the victims but because of the inherent improbability of the story given by them in support of their alibi. We don't need to go into detail to show the sufficiency of this averment for we are satisfied with the explanation or refutation made by the Solicitor General in his brief. This refutation convinces us that this defense of alibi is but a mere scheme designed to exonerate the defendants from liability. Considering that the defense of alibi is the weakest that can be put up by an accused because of the easiness with which it can be concocted, it must be supported by strong and convincing evidence to be of some avail, though the rule is always to discredit it if there is direct and positive evidence establishing the identity of the accused. Such is the situation in the present case.

We agree with the trial court that the crimes committed are murder, frustrated murder, and attempted murder, with the aggravating circumstances of dwelling, and that in the commission of said crimes conspiracy on the part of the accused has existed and hence they can be held responsible as principals for all the consequences of their individual acts. While the proper penalty for murder is death and for the other crimes is imprisonment within the limits pointed out in the brief of the Solicitor General, however, for lack of the requisite number of votes, we are affirming the penalty of reclusion perpetua imposed by the trial court with regard to the crime of murder. As regards the crime of frustrated murder, the defendants should be sentenced to an indeterminate penalty of 8 years and 1 day of prision mayor to 17 years and 4 months of reclusion temporal, and for the crime of attempted murder, they should be sentenced to an indeterminate penalty of 2 years 4 months and 1 day of prision correccional to 10 years of prision mayor, and with this modification, we affirm the decision appealed from, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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