

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUBEN RODRIGUEZ Y JOVEN, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 11498. May 30, 1958

Ponente: FELIX, J.

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FELIX, J.:

Ruben Rodriguez, Leonardo Alvarez, Ernesto Desiderio and Felipe Tan alias Peping were charged in the Court of First Instance of Manila with the crime of murder. Felipe Tan not having been arrested, trial proceeded only with respect to the other 3 accused. But in the course of the hearing, Ernesto Desiderio was discharged as a defendant, on motion of the Fiscal, and used as Government witness. After trial, the Court found Ruben Rodriguez and Leonardo Alvarez guilty of the crime charged and sentenced each of them to suffer the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Eulogio Tagle in the sum of P6,000.00, and each to pay 1/4 of the costs. From this judgment of conviction, Ruben Rodriguez and Leonardo Alvarez appealed and in this instance their counsel maintains that the lower Court erred:

- In giving full faith and credence to the testimony of Ernesto Desiderio y Malonzo coming as it was from a polluted source;
- In disregarding the defense of appellants which was supported by documentary and oral evidence; and
- In convicting the defendants.

On January 30, 1957, counsel for the defendants submitted a motion for new trial based on newly discovered evidence consisting of an affidavit of Ernesto Desiderio retracting from the testimony he had given in the lower Court, action on which motion was deferred by resolution of this Court of January 31, 1957, until the case be considered on the merits.

The facts of the case as well as the findings and conclusions of the trial Judge after weighing and considering the evidence produced at the hearings, are clearly and correctly stated in the decision appealed from. We copy from said decision the following:

"Felipe Tan and Leonila Tan are brother and sister. Eulogio Tagle was Leonila's husband, while Rodriguez is the son of Isabel Joven, a cousin of Felipe and Leonila. Rodriguez and Alvarez are brothers-in-law, Rodriguez' wife being Alvarez' sister. Eduvigis Rodriguez, nicknamed Edeng, is a sister of Ruben Rodriguez and lives at No. 1667 Sande Street, Tondo, Manila.

Eulogio Tagle and Leonila Tan lived in Lucena, Quezon, after liberation, but prior to March, 1953, Tagle left Lucena and went to live, first in Baliuag, Bulacan, and later in Manila. He sometimes stayed at No. 1481 Franco Street in this city occupied by his wife's relatives and sometimes at No. 733 Constancia Street occupied by Florentine) Malihan, his mother's brother.

Tagle, obviously the victim of foul play, was found dying in a room on the second floor of house No. 1481

Franco on the morning of March. 28, 1953. Patrolman Villanueva of Precinct 3, Manila Police Department, had taken him to the North General Hospital. The records of the hospital show that he was admitted there at 5:30 o'clock that morning. (See Exhibit B.)

Detective Urbano Walker arrived at the house on Franco Street after the injured man was taken to the hospital and found a mat still spread on the floor, a pillow and a mosquito net, all stained with blood. Also in the room were an army kitchen knife and two galvanized iron pipes. The knife and one of the pipes were verified in the Criminal Investigation Laboratory of the Manila Police Department to be stained with human blood. There could be no doubt that they were the lethal weapons.

Tagle died in the North General Hospital a few minutes after 6 o'clock on the same morning of March 28. Dr. Mariano B. Lara, chief medical examiner of the Manila Police Department, who examined and performed an autopsy of his dead body, found one stab wound on the neck, another stab wound on the lower border of the left jaw, and four lacerated wounds on the head. For convenience, Dr. Lara at the trial identified the stab wounds as Nos. 1 and 2 and the lacerated wounds as Nos. 3, 4, 5, and 6. The following are the pertinent portions of Dr. Lara's report, marked Exhibit B:

"MISCELLANEOUS EXTERNAL WOUNDS:

- (1) Stab wound, antero-lateral upper neck, left, piercing thru skin and neck muscles and lateral left portion of oro-pharynx (2 cm. x 12 cm. deep).
- (2) Stab wound, lower border, left lower jaw, piercing skin and subcutaneous tissues. (2.2 cm. x 0.5 cm.).
- (3) Lacerated wound, right lateral region, eyebrow, with periorbital tissue hematoma. (Size of lacerated wound, 2 cm. X 0.6 cm.).
- (4) Lacerated wound, left eyebrow region, with left pciorbital tissue hematoma. (Size of lacerated wound, 3.5 cm. x 1 cm.).
- (5) Lacerated wound, scalp, mastoid region of head, right. (Size of lacerated wound, 2 cm. X 0.9 cm.).
- (6) Lacerated contusion, upper and lower lips.

CAUSE OF DEATH:

Severe shock and profuse external hemorrhage due to head and neck stab and blunt combined injuries, fracturing the skull, piercing the left oro-pharynx and causing extensive subdural and subarachnoid hemorrhages in the brain'.

Dr. Lara testified that the wounds described as Nos. 1, 3, 4 and 5 were necessarily fatal.

The police made no progress towards the identification of Tagle's killer or killers until more than one year after his death. "Whether the team of Manila detectives headed by Lieut. Baldomero Tiamsec went to Baliuag, Bulacan, on April 17, 1954, on a tip that Ernesto Desiderio was one of the killers, or whether they were called after Desiderio surrendered is not clear. What the record clearly discloses is that Desiderio surrendered to his uncle, Sgt. Moises Desiderio of the Baliuag police force, who turned him over in Baliuag to Lieut. Tiamsec and his men.

Desiderio immediately gave a verbal confession to Lieut. Tiamsec and implicated Kuben Rodriguez, Leonardo Alvarez and Felipe Tan. Rodriguez and Alvarez were promptly arrested upon the strength of Desiderio's identification. Tan had disappeared.

Desiderio's version of the killing of Eulogio Tagle and the events leading to it is as follows: Upon Rodriguez' invitation, he and Rodriguez came to Manila on March 24, 1953, in the morning, and went directly to the house of

Rodriguez' sister Edeng on Sande street. Tan arrived at Edeng's house shortly after their arrival and told Rodriguez that he could find no one to liquidate Eloy -'titira kay Eloy'. He proposed that Rodriguez undertake the job- 'Mabuti pa kayo na ang tumira,' and Rodriguez replied, 'I will think it over. You will know my answer within a week.' Desiderio and Rodriguez went back to Baliuag the same morning.

Desiderio and Rodriguez, accompanied by Alvarez, returned to Manila on March 27, 1953, in the afternoon. As the three sat at the rear of the bus during the trip, Rodriguez proposed that Desiderio and Alvarez do the job-'Kayo na ang tumira kay Eloy.' Alvarez readily agreed.

The three got off the bus at Divisoria, then went to No. 1481 Franco street in Tondo. Rodriguez conversed with an old man in the street in front of the house, then with his two companions took a taxi to No. 733 Constancia street in Sampaloc. Tagle was there. He invited them in and served them beer and soft drinks.

Night had descended upon the city when Rodriguez, Alvarez, and Desiderio left Constancia with Tagle and returned in a taxi to the house at No. 1481 Franco street. Tagle spread a mat in a room on the second floor and lay down. But Rodriguez, Alvarez and Desiderio did not go to bed; instead they left and went to a store about 100 meters from the house. There Rodriguez, Alvarez and Desiderio whiled away their time eating¹ and drinking.

They returned to the house on Franco at about midnight. Rodriguez told Desiderio to occupy a rocking chair in the outer room, saying, 'Magbantay ka dian sa pinto.' Then he and Alvarez went into the room where Tagle had earlier spread a mat.

Desiderio was awakened at about 4:30 o'clock in the morning, March 28, by a noise and a groan and heard Tagle say, 'Ruben, bakit mo ako ginanito?' Rodriguez and Alvarez ran out of the room, their clothes stained with blood, as Desiderio was to observe later. Rodriguez pulled Desiderio as he ran out saying, 'Let us go.' They went directly to Tan's house a short distance away, where Rodriguez and Alvarez changed their blood-stained clothes. The three returned to Baliuag the same morning.

Florentino Malihan corroborated Desiderio's testimony on material points. He testified that Rodriguez, Alvarez and Desiderio arrived at his residence at No. 753 Constancia late in the afternoon of March 27, 1953; that Tagle served them beer, soft drinks; that it was night when they left in a taxi with Tagle. He added that he learned of Tagle's death from his wife the next day.

Alvarez denied that he knows Felipe Tan. He denied that he knew Eulogio Tagle or that he was ever at 1481 Franco or 733 Constancia street. He denied taking part in the killing. He testified that he was at home in Batohan, San Miguel, Bulacan, on March 26, 27, 28 and 29, 1953. Desiderio was also in Batohan according to him, because he eloped with Rosalinda Dimaapi on March 26, and stayed in his (Alvarez') father's house. About noon of March 27 he, his father David Alvarez, Desiderio and Rosalinda attended a pabasa in the house of Aurelio Tagalo, his father-in-law, in Barrio Santa Inez, San Miguel, about two or three kilometers from his house in Batohan. They returned to Batohan about midnight. On March 28, at the request of his father who feared that Desiderio's elopement might cause him trouble because Rosalinda was a minor, he asked Desiderio to leave Batohan. Desiderio left Batohan with Rosalinda on March 29, and Alvarez claims that Desiderio testified against him because he harbors ill feeling towards him for sending him and Rosalinda away.

Rosalinda and Aurelio Tagalo corroborated Alvarez on the elopement, her continuous presence with Alvarez and Desiderio in Batohan from March 26 to 29, and the pabasa on March, 27, 1953.

Rodriguez, too, denied any participation in the killing. He denied coming to Manila with Desiderio and meeting Tan in Edeng's house on Sancte street on March 24, 1953, and his denial was corroborated by Eduvijes Rodriguez, nicknamed Edeng. He denied coming to Manila with Alvarez and Desiderio on March 27, 1953, or

being with Alvarez, Desiderio and Tagle either at Constancia or at Franco on that day. Corroborated by Antolin Torres, he testified that he and Torres worked during the entire month of March, 1953, hauling rice for Fernando Miranda from Bahay Pare to the town of Baliuag.

Rodriguez and Alvarez thus deny any part in the killing of Eulogio Tagle or in the events leading to it and rely on the defense of alibi to establish their innocence. But their denial avails them nothing in the face of the clear and positive testimony of Ernesto Desiderio and Florentino Malihan which points to them as the persons who killed Tagle (U.S. vs. Bueno, 41 Phil., 447; People vs. Borbano, 76 Phil., 702; People vs. Macalindong, 76 Phil., 719, and in the absence of any showing that in giving their testimony Desiderio and Malihan were actuated by improper motive. (People vs. Niem, et al., 75 Phil., 668, 670.) No such motive has been shown. True, Desiderio gave his testimony only after he was discharged from the information, but in judging his credibility it should be remembered that immediately after his arrest and long before he knew that he would one day become a witness for the prosecution, he gave a verbal confession, which, was later reduced to writing (Exhibit J), naming his co-accused as his companions in crime. His testimony on the witness stand is in substance a repetition of his written extrajudicial statement. With the testimony of Malihan, it is entitled to full faith and credit. (U. S. vs. Pajarillo, 19 Phil., 288; People vs. De Otero, 51 Phil., 202; People vs. Borbano, supra).

Coming to their defense of alibi, it should be stated that alibi is at best a weak defense and cannot prevail over the testimony of truthful witnesses. The reason is that alibi is easy of fabrication (People vs. Badiilla, 48 Phil., 718), especially between parents and children, between relatives and friends, and even between those who are not so related. (People vs. De Asis, 61 Phil., 384; People vs. Japitana, 77 Phil., 175). Indeed, even in those cases where proof of the alibi is well supported by the testimony of witnesses, the alibi would not be credited when the identity of the accused, as in this case, as the persons who committed the crime is fully established by clear, explicit and positive testimony. (U. S. vs. Pascua, 1 Phil., 31; U. S. vs. Hudieres, 27 Phil., 4-5). All the witnesses through whose testimony the accused in the present case would establish their alibi are their close relatives and friends, except Rosalinda Dimaapi who has a reason to so testify as to contradict Desiderio who, she admitted on the witness stand, abandoned her and their child and shifted his interest to another woman. (T.s.n., pp. 321-322.)

The accused were not without a powerful motive to kill Tagle. As the husband of Leonila Tan and the father of her five living children, Tagle was neglectful. He was shiftless; he did not live with her and their children or support them. From the lips of his wife, she gave him P2,000.00 with which to go to business, but he squandered the money in two months, then returned and asked for more. And when he finally left Lucena to live in Baliuag, then in Manila, he continued to ask support from her. (t.s.n. pp. 334- & 342.) As if to emphasize his misconduct, he maltreated her, according to Felipe Tan when first asked Rodriguez to do away with him.

The evidence of the defense that Tagle was killed by the brother of the person Tagle killed deserves no serious thought. Leonila's testimony on the point has all the earmarks of a rehearsed testimony. She came to court with prepared notes of the points on which she was to testify, as shown on Exhibit O which she surrendered to the fiscal in the course of the latter's cross-examination of her. Canuto Masino, a resident of San Pablo City, testified that on a date he could not remember, in a barrio of Tiaong, Quezon, he heard one Piciong- tell fellow Huks that he killed Tagle because Tagle killed his brother. This testimony is fantastic and cannot discredit the evidence of the prosecution on the identities of Tagle's killers. The court is convinced that Tagle was killed for his neglect of his family and his misconduct towards his wife and not because he killed a man in Quezon. The case arising from the killing was settled to the satisfaction of the victim's family. Tagle paying the family P3,000.00 as settlement, (t.s.n. pp. 335-337.)

The information alleges evident premeditation, treachery, the accused taking advantage of their superior strength and employing means to weaken the defense, and consideration of a price, reward or promise as circumstances

attending the killing. But treachery has not been satisfactorily established. No one except the killers witnessed the assault, and Dr. Lara admitted the possibility that the victim and the assailants could have been standing and facing each other at the time of the assault. The noise that awakened Desiderio and Tagle's remarks shortly before Rodriguez and Alvarez ran out of the room could mean that the fatal assault was preceded by an exchange of words.

The same observations apply to the circumstances of the accused allegedly taking advantage of their superior strength and employing means to weaken the defense of the victim. Too, evidence is totally lacking that Alvarez or Rodriguez received any price or reward or was given any promise for killing the deceased. It was Desiderio who received P115.00 from Rodriguez, for what, the record is not clear.

Evident premeditation, however, is satisfactorily established by the evidence. Felipe Tan proposed the killing to Rodriguez on March 24, 1953. Rodriguez promised to consider the proposal and to make his decision within a week. He must have considered the proposal long and seriously and finally made up his mind to kill Tagle, because he came to Manila on March 27 and killed Tagle the next day. On March 27, Alvarez, too, agreed to take part in the killing. When he helped Rodriguez kill Tagle the following day he had had sufficient time for serious reflection and full opportunity to weigh the consequences of his act. The killing was murder, qualified by evident premeditation, with no aggravating or mitigating circumstances to modify the penalty."

The arguments adduced in appellants' brief cannot overcome the conclusions of the trial Judge, with whom We concur, as to the guilt of appellants of the crime charged in the information, although We likewise agree with the Solicitor General that the commission of the crime was attended by the aggravating circumstances of nighttime, to which it may possibly be added the aggravating circumstance of dwelling, because the deceased was murdered in the house at No. 1481 Franco street in Tondo, which was one of the two houses (the other being at No. 733 Constancia, Sampaloc) where the deceased used to live and have as his place of abode during his stay in Manila. Therefore, appellants should be sentenced in this case to the supreme penalty of death there being no mitigating circumstance to offset the aggravating circumstances attending the commission of said crime, but this penalty cannot be imposed upon appellants for lack of the necessary votes required by law to that effect.

Coming now to appellants' motion for new trial, We have to deny the same for the reason that, as observed by the lower Court,

"immediately after his arrest and long before he knew that he would one day become a witness for the prosecution, he gave a verbal confession which was later reduced to writing (Exh. J), naming his co-accused as his companions in the crime. His testimony on the witness stand is in substance a repetition of his written extrajudicial statement. With the testimony of Malihan, it is entitled to full faith and credit (U. S. vs. Pajarillo, 19 Phil., 283; People vs. De Otero, 51 Phil., 202; People vs. Borbano, 76 Phil., 702)."

Affiant Ernesto Desiderio surrendered voluntarily to his uncle, Sgt. Moises Desiderio of the Baliuag Police Force, to whom he admitted his participation in the commission of the crime, and that is why Sgt. Desiderio turned his nephew in Baliuag over to Lt. Tiamsec and his men before whom Ernesto Desiderio again gave the verbal confession above referred to (Exh. J), implicating Ruben Rodriguez, Leonardo Alvarez and Felipe Tan. It is easy to understand that after Desiderio was relieved from responsibility for the murder of Eulogio Tagle, he would now submit and yield to the pressure that appellants or their families may have possibly exerted upon him, but We cannot give to his retraction any value or consideration. Wherefore, the decision appealed from is hereby affirmed, with costs against the appellants. It is so ordered.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, and Reyes, J.B.L., J.J., concur.

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