

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. DOMINADOR CRISTOBAL, DEFENDANT AND APPELLANT.

G.R. No. 13062. January 28, 1961

Ponente: PAREDES, J.

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PAREDES, J.:

Accused Dominador Cristobal was found guilty of the crime of murder and sentenced to an indeterminate penalty of from ten (10) years of prision mayor, to twenty (20) years of reclusion temporal, and to indemnify the heirs of the deceased Crisanto Tugbo in the sum of P3,000.00, with costs. Upon appeal to the Court of Appeals, said court certified the case to Us, stating that the penalty imposable upon the appellant was that of reclusion perpetua in the absence of any mitigating circumstance.

In a nutshell, the evidence for the People tends to prove that at about 3 o'clock in the afternoon of March 21, 1954, one Pepito Valler was at the cockpit in barrio Batuhan, municipality of Masbate, Masbate. He placed a bet with a person whose name he did not know, and having won, went to collect the bet. As he was going out of the ring, the deceased Crisanto Tugbo met him near the gate and boxed him, hitting him on the right side of the face. As Valler was being held by some persons, the accused Dominador Cristobal who was outside the ring, boxed Crisanto who was able to evade the blow. The accused then went around behind Crisanto and stabbed the latter on the back with a bayonet Exhibit A. The accused afterwards sat on a bench near the gate and placed the bayonet Exhibit A, on his waist. When Valler ran outside the cockpit, the accused gave the bayonet to him which was later on taken away from him (Valler) by Jose Zurbito. When Valler reached his grandmother's house, the accused followed him there and threatened him with the same fate of Crisanto Tugbo, unless he (Valler) should own the crime, reasoning out that he was the cause of the trouble. Early on the following morning, Valler went to the municipal building, where he sought refuge, staying there for one day and one night, and reported to Sgt. Jose Esquillo, then acting Chief of Police, the threat made by the accused.

It also appears that earlier in the afternoon of the same day, Valler and Manuel Zurbito went to the cockpit apparently drunk and because they were making trouble, Crisanto sent them home. After an hour, the two returned, this time accompanied by the accused Dominador Cristobal. They were accosted by Joseph Amante, but they assured him that they were already sober and promised not to make any trouble.

Dr. Manuel Juan, Jr. physician in the Masbate Provincial Hospital, found on the back of the victim, a stab wound, point of entrance 1½ inches in length lumbar region left, and point of exit one inch, in length at the third interspace (Exhibit B), produced by a sharp pointed instrument, the direction of the wound being from down going upwards.

On the other hand, the defense claims that Pepito Valler was boxed by deceased Crisanto Tugbo, causing the former's mouth to bleed; that Manuel Zurbito, uncle of Valler, angered by the attack on his nephew, coming from the rear, stabbed Crisanto with a bolo, 13 inches long which is still in the possession of Manuel Zurbito, and not with the bayonet Exhibit A, which belonged to Valler. These facts were testified to by the appellant, who averred he had no personal grudge against Crisanto. Generoso Anday testified that the bayonet Exhibit A was in the

possession of Valler during the fight, having grabbed it from the accused. Antonio Tugbo, 60, father of the deceased, declared that after his son and Valler had fought over a dishonored bet, his son was stabbed by Manuel Zurbito with a long dagger and not with Exhibit A; that he did not see appellant that afternoon in the cockpit; and that after the incident, he went to inform the barrio lieutenant, Jesus Valladores, of what he saw.

The whole case hinges on the question of credibility. At the threshold of this opinion, it may be well to note the remarks of the trial judge that "due to the seriousness of the case, the Court had taken a keen interest in observing the conduct and demeanor of the witnesses when they were testifying and had weighed very carefully the credibility of their testimonies; and after a most careful consideration it had been compelled to conclude that the evidence in this case sufficiently proves the guilt of the accused Dominador Cristobal, beyond reasonable doubt."

His Honor's findings and conclusions on the case, are supported by the evidence of record. No less than three witnesses testified about the actual killing. Manuel Zurbito positively stated that after the appellant had gone around the deceased Crisanto Tugbo, he drew the bayonet Exhibit A from his waist inside his clothes and thrust the same at the deceased. Pepito Valler asserted that as he was being held by some persons, the appellant who was outside the ring, boxed the deceased; but as the deceased was able to evade the blow, the appellant went around behind him (deceased) and stabbed him on the back with the bayonet Exhibit A. Joseph Amante, the operator of the cockpit, declared that at the time the deceased was stabbed, the appellant was immediately behind the deceased, while Manuel Zurbito was in front. Valler could not have done the stabbing because he was then being held by several persons. Neither could Manuel Zurbito have delivered the thrust at the back of the deceased because, according to Amante, the said Manuel Zurbito was in front of the deceased. The positive, direct and straight forward manner with which the three prosecution witnesses have testified, inspire credence in their testimonies.

The appellant should not be believed. He declared that Valler was not his friend and did not even know him and was not accompanied by him to the cockpit that afternoon. Amante, however, asserted that when Valler and Manuel Zurbito returned to the cockpit, they were accompanied by the appellant and that the latter participated in the fight against the deceased. And Generoso Andaya, a defense witness, told the court that Valler took the bayonet, Exhibit A, from the appellant while the latter was resting on a bench after the stabbing.

Of course, the defense makes capital of the testimony of Antonio Tugbo, father of the deceased, and a witness for the defense, who exonerated the appellant and inculpated Manuel Zurbito. Normally, a father would not testify against his son. We should not, however, over-estimate the value of the father's testimony in the instant case. On this point, we quote hereunder what the trial judge has aptly said:

"* * * To support this theory, Antonio Tugbo, the father of the deceased, was presented as a witness who averred that he was present when his son was stabbed and it was Manuel Zurbito who approached his son at the back while fighting with Pepito Valler. This piece of evidence presented by the defense could not convince the court. The witness is an ignorant old man who could be swaged to testify as instructed. Were he really present when his son was stabbed by Manuel Zurbito as he alleged, there is no reason for him why since that afternoon of March 21st, 1954 he had not taken the interest of presenting a complaint against the person whom he saw murdered his son, knowing fully well that the Chief of Police who had investigated this case, filed a complaint against Dominador Cristobal who he alleged was not present when his son was murdered. When this witness testified that Dominador Cristobal, whom he knows very well, was not present at the cockpit during all that afternoon of March 21st, 1954 and everybody including the accused testified that the accused was there present, makes the Court to conclude that this old man was persuaded to testify, as he had testified before us, to save the accused from the present charge. Generoso Andaya, a young man who alleged to have seen the fight between Crisanto Tugbo and Pepito Valler tried to corroborate the testimony of Dominador Cristobal that it was Manuel Zurbito who gave the thrust on the back of Crisanto Tugbo with a locally made bolo, 12 inches

long, and not "the bayonet which was presented as Exhibit "A", for the prosecution. He admitted, however, that Exhibit "A", the bayonet recovered by the Police Department from Zurbito, belonged to Dominador Cristobal, but Dominador Cristobal on the other hand, contradicted this testimony and claimed that Exhibit "A" was the property of Pepito Valler and not his. This witness who claim to be an eyewitness of this incident never, before the filing of the complaint against the accused Dominador Cristobal, presented to the authorities and testify, as he had testified before the Court, nor does it appear on record that he was subpoenaed to appear as a witness for the defense." (*Italics supplied*).

Little need be added to the above observations except the fact that with respect to the credibility of witnesses, the trial court's findings and conclusions, command great respect and weight. We have no reason at all, as far as the record is concerned, to disagree with the trial court's opinion regarding the unreliability of Antonio Tugbo's testimony. Moreover, it should particularly be noted that Antonio Tugbo failed to report what he had allegedly and vividly seen to the Chief of Police and the other local authorities, not even to the policeman who went to the barrio to investigate the incident.

It is alleged that the trial court erred in not finding that the prosecution wilfully suppressed the testimonies of Narciso Martin and Jesus Valladores, whose names appear Hated as witnesses for the prosecution in the information. According to the defense, said testimonies could have shown that the appellant did not stab the deceased. The non-presentation of these persons to testify does not necessarily give rise to an adverse presumption. If the defense believed that these persons could help its cause, why did it not present them, inasmuch as they were equally at its disposal? Will the failure of the defense to do so create, likewise, an adverse presumption against it?

We are fully convinced that the guilt of appellant Dominador Cristobal of the crime of murder, qualified by treachery (*alevosia*) has been established beyond reasonable doubt. And there being no modifying circumstances to consider, he is hereby sentenced to suffer reclusion perpetua. As thus modified, the decision appealed from is affirmed in all other respects, with costs.

Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, and Dizon, JJ., concur.

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