

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ISIDORO ESCALONA AND EPIFANIO ESCALONA, DEFENDANTS AND APPELLANTS.

G.R. No. 13294. March 29, 1961

Ponente: PADILLA, J.

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PADILLA, J.:

Isidoro Escalona and Epifanio Escalona appeal from a judgment of the Court of First Instance of Leyte finding them guilty of the crime of murder for the death of Protacio Eval and sentencing them to the supreme penalty of death, to indemnify the heirs of the victim in the amount of P6,000 and to pay the costs proportionately (crim. case No. 7097).

At about 7:00 o'clock in the evening of 6 April 1957, while Protacio Eval alias Fruto Eval, his mother Felicidad and sister Patricia were on their way home walking in the order mentioned from the barangay prayer meeting held at the house of Gregoria Homeres in sitio Apitong, barrio Otap, city of Tacloban, they passed by a group of four men composed of Isidoro Escalona, Epifanio Escalona, one Piling and another unidentified man. After passing by, and walking a distance of about 18 meters away from, the group of men and while they were at the junction of the road which leads to their house and opposite the parcel of land owned by Luz Quintero, Isidoro, Escalona, coming from behind, embraced Protacio and stabbed him on the left forearm with a hunting knife, Exhibit A. Protacio's mother, who was barely a foot away from him, tried to stop Isidoro by grasping the handle of the hunting knife, Exhibit A, and cried for help. While trying to stop Isidoro, Felicidad was wounded on the left index finger. Isidoro tightly held Protacio with his right hand and Epifanio approached Protacio and stabbed him in the back. After stabbing Protacio, Epifanio withdrew.

Hearing Felicidad's cry for help Antonio Encomio, assistant barrio lieutenant of sitio Apitong, who was in the house of Julian Aguirre across that of Luz Quintero, rushed to the scene. Focusing his flashlight on the scene he saw four persons grappling with each other and Epifanio holding a hunting knife, Exhibit B, about two meters away from the persons grappling. Antonio identified himself to Epifanio as a peace officer and handed his flashlight to him to focus on the quarreling persons as he tried to separate them. The latter were Felicidad, Isidoro and Protacio, the last mentioned person wounded and bleeding. Antonio then asked somebody to telephone the police and took the knife, Exhibit A, from Isidoro who held its handle with his right hand and Felicidad who held its blade with her left hand while clasping the upper part of the handle with her right hand. After separating them Protacio fell down, Isidoro ran away and Epifanio ran across the road. Antonio took from Protacio his bolo which was in its scabbard hanging on his belt.

Upon receipt of the report on the incident from barrio lieutenant Genaro Aguirre, who called up, sergeant Vicente Aujero, accompanied by corporal Quiben and patrolman Portillo of the police force of Tacloban City, went to the house of Aguirre. There he met Epifanio Escalona who handed to him a knife which, according to him (Epifanio), was the one used by Isidoro to stab the victim. From Aguirre's house, sergeant Aujero and his men repaired to the

scene of the incident, two kilometers away from the house of Aguirre, and brought the victim to the provincial hospital of Tacloban City. The following Wednesday, 10 April 1957, or four days after the incident, the victim died. According to Dr. Vicente Ramo, resident physician of the Leyte Provincial Hospital, who attended to the victim, the cause of death was severe hemorrhage and peritonitis due to two stab wounds, namely: "one on the right chest at the level of the 9th intercostal along the posterior line, penetrating and perforating the liver; the other wound is on the left arm; it is equally divided into three parts on the lateral aspect because it is a through and through wound, that is, there is a point of entrance and a point of exit." (Exhibit C.) According to the same doctor, the wound on the chest was fatal and the wound on the left arm was fatal but being 2 cms. long, through and through, would have taken three weeks to heal.

Isidoro Escalona claims self-defense. He swore that between 6:00 o'clock and 7:00 o'clock in the evening of 6 April 1957, he and Piling Rosillo were at the palay plantation of his uncle in barrio Otap; that on their way home, they met Protacio Eval who invited them to come to his house for a drink but he (Isidoro) declined his invitation because he was tired; that when he declined Protacio's invitation, the latter boxed him, unsheathed his bolo and struck him with it; that he dodged the stroke and he (Isidoro) in turn unsheathed his own and struck Protacio with it hitting him on the right side of the breast; that Protacio struck him again but Isidoro returned the stroke hitting him (Protacio) on the left forearm; that at that juncture barrio lieutenant Antonio Encomio arrived at the scene and separated them; that after separating them he seized their respective weapons; that upon seeing Epifanio Escalona standing on the road; he (Antonio) asked him (Epifanio) to take Isidoro to Genaro Aguirre, the barrio lieutenant; that as requested by Antonio, Epifanio brought Isidoro to the said barrio lieutenant; and that the knife, Exhibit A, was the one with which he wounded the victim and the knife, Exhibit B, was given to him by Piling Rosillo on their way home which was taken from him by Epifanio.

Epifanio Escalona denies complicity in the commission of the crime. He claims that at about 6:00 o'clock in the evening of 6 April 1957, he was at his farm; that on his way home, he passed by the house of the barrio lieutenant of Otap and resumed his way home together with Constancio Abella, the latter's wife and daughter; that on the way he heard a woman's voice shouting for help and about three brazas away, he again heard the same voice crying for help; that he asked the woman whom he did not recognize why she was shouting for help and she answered that there was a fight; that seeing a lighted house, he shouted for help; that thereafter a person, who he later on came to know was Antonio Encomio, came with a flashlight and asked him to hold and focus it on the persons quarrelling and then proceeded to separate them; that the persons quarreling were Isidoro Escalona and Protacio Eval; that after Antonio had succeeded in separating them, Isidoro remained in a belligerent mood; that Antonio called him to help him disarm Isidoro; that he disarmed Isidoro and stuck to the ground the knife he took from him; that Antonio took the weapon of Protacio; that afterwards, Antonio ordered him to take Isidoro to Genaro Aguirre, the barrio lieutenant, and to report by telephone on the incident to the police authorities; that he did as requested; that when the police authorities arrived at the house of the barrio lieutenant, he gave them the weapons taken from Isidoro and Protacio, Exhibits A and B; that when he was asked by the policemen where Isidoro was and he turned his face to look for him, he was already gone; that after conducting the victim to the hospital, the policemen returned to the barrio lieutenant's house and asked him to help them locate Isidoro; and that when they failed to locate Isidoro, the policemen took him (Epifanio) to the municipal building.

The appellants' respective claims and defenses cannot be believed in the face of the clear, direct and positive evidence for the prosecution. The incident happened on a starry night and it was not raining so that it was easy to recognize a person from a distance of two or three meters away. Felicidad Eval, mother of the victim, testified that while she was barely a foot away from her son Protacio, Isidoro came from behind, embraced and stabbed Protacio and while in that position Epifanio stabbed him (Protacio) in the back. The testimony of Felicidad that on their way home on the night in question, they passed by the group composed of the appellants, one Piling and

another unidentified man, is confirmed by the appellants themselves and Constancio Abella, one of their witnesses. Testifying on direct examination, Isidoro said that he was with Piling Rosillo visiting his uncle's palay plantation; and that on their way home they passed by a store. On cross-examination, he testified that when he left barrio Otap he was with Piling Rosillo; that on their way they met Epifanio and Constancio Abella; and that from their meeting place Epifanio, Constancio, the latter's wife and Piling went ahead of him. On cross-examination, Epifanio testified that at about 5:00 o'clock in the afternoon of 6 April 1957, after coming from his farm, he passed by the house of Isio Martinez, and there saw Piling Rosillo, Isidoro, Constancio, one Antonio and Isio drinking; that the drinkers offered him a drink but he refused; that from 5:00 o'clock in the afternoon to 7:00 o'clock in the evening of that day, he was with the group of men in the house of Isio Martinez because Constancio would not allow him to leave despite his request to be allowed to depart to look up his carabaos; that when they left the house of Isio he, Constancio, the latter's wife and daughter, Isidoro, Piling and Antonio were together; and that after drinking the group of drinkers started to sing. Constancio Abella testified that after a little drink that evening he went home together with Epifanio, Isidoro, Piling Rosillo and Antonio Abella. From these statements of the appellants and their witness, and that of Felicidad Eval, the victim's mother, it may be concluded that the appellant Epifanio Escalona took an active part with his co-appellant in the commission of the crime.

Isidoro Escalona's claim of self-defense cannot be believed in the face of the positive testimony of Felicidad Eval to the effect that without provocation from her and her children, Isidoro came from behind and stabbed the victim on the left forearm and as he held him tightly his co-appellant Epifanio Escalona stabbed him in the back, and of Antonio Encomio to the effect that when he took Protacio's bolo from him it was sheathed or it was inside the scabbard hanging on his belt.

The record does not disclose any motive why Felicidad Eval and Antonio Encomio would falsely testify against the appellants. The appellants themselves claim that they and the victim were friends. Epifanio added that he knew the victim since boyhood and that they were acquaintances. He also said that he and the victim's mother had no grudge against each other. However, he surmised that the reason why she implicated him for the death of her son was that she wanted to be sure that somebody would answer for his death. Another is because after the incident he rushed to the house of barrio lieutenant Genaro Aguilar to get from Piling Rosillo the weapon used by Isidoro in wounding the victim. These reasons besides being too flimsy are unbelievable in the face of the evidence against them. The fact that Antonio Encomio is a second degree cousin of the victim (Exhibit 2) is not a compelling motive for him to testify in the manner he did if what he said were not true. If a similar relation be taken into consideration, the appellants being second degree cousins, it is Isidoro who had reason to shield Epifanio.

The fact that Patricia Eval, a sister of the victim, who was with him and his mother Felicidad when the incident took place and Mercedes Eval, another witness listed in the information, were not presented as witnesses by the prosecution does not detract from the probative value of the evidence already at hand and does not warrant an inference that the prosecution had suppressed their respective testimonies because they were false. The record shows that Patricia's testimony was dispensed with because it was merely corroborative. As regards Mercedes, it appears that she was not with the victim and his mother at the time of the incident and could not have testified on anything concerning it.

As regards the inconsistencies in the testimony of the witnesses for the prosecution pointed out by counsel for the appellants in his brief, rather than weaken, they strengthen the probative value of their testimonies. The testimony of the witnesses that jibes in all the details indicates coaching and rehearsing of witnesses. The nature of the wounds sustained by the victim, two penetrating wounds, belies Isidoro's claim of self-defense when he said that he used a bolo in defending himself. He used the knife, Exhibit A.

On the other hand, it has been established that before the fateful incident, the appellants, Constancio Abella and Piling Rosillo were together at the house of Isio Martinez drinking and that they left together. This tallies with the testimony of Felicidad Eval, the victim's mother, that on the way home she and her children passed by the group of the appellants, one Piling (who must be Piling Rosillo) and another unidentified man (who must be Constancio Abella).

Although no motive has been shown why the appellants would kill the victim, nevertheless the fact that before the incident they had been drinking in the house of Isio Martinez, together with Constancio Abella, Piling Rosillo and Isio himself, and they had been singing, shows that they already had lost their sense of sobriety and must have inflicted the wounds upon the victim while in that condition, as most irresponsible young men of the appellants' age (Isidoro is 20 years old while Epifanio is 27 years old) are wont to do even for no reason at all.

The crime committed by the appellants is murder—the qualifying circumstance of treachery having attended the commission thereof, in that the victim was suddenly and unexpectedly assaulted and stabbed by Isidoro from behind and stabbed by Epifanio while he was being held by Isidoro. Pursuant to article 248 of the Revised Penal Code, the penalty is reclusion temporal in its maximum period to death. Since in this case advantage of superior strength forms part of treachery, the qualifying circumstance, neither one can be considered as aggravating, nor should the aggravating circumstance of nighttime be taken into account for it was not purposely sought by the appellants to commit the crime. No mitigating circumstance may be appreciated in favor of the appellants, as they have not proved that intoxication, if they were intoxicated, was not habitual. Their implied pretense was that they were not even tipsy because they had not drunk any intoxicating liquid or alcoholic beverage. The penalty, therefore, should be imposed in its medium period, which is reclusion perpetua.

The judgment appealed from is modified only as to the penalty to be imposed which is reclusion perpetua. The rest of the judgment appealed from is affirmed, with costs against the appellants.

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

Bengzon, Acting C. J., concurs in the result.

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