

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO MANALO ET AL., DEFENDANTS. SANTIAGO SILANG, ISABELO MENDOZA AND ANTOLIN GENEROSO, APPELLANTS.

G.R. No. 29036. December 22, 1928

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Tayabas, finding the appellants, Santiago Silang, Isabelo Mendoza and Antolin Generoso, with two others, guilty of the offense of murder, and sentencing the five of them to undergo imprisonment for twenty years, cadena temporal, with the accessories prescribed by law, and requiring them, jointly and severally, to indemnify the heirs of the deceased in the amount of P1,000, and requiring each to pay his proportional part of the costs of prosecution. Of the five who were convicted Gregorio Manalo and Anselmo Generoso have withdrawn their appeals, and the case is submitted with respect to Santiago Silang, Isabelo Mendoza and Antolin Generoso only.

A careful examination of the lengthy transcript leads us to the conclusion that the story told by the witnesses for the prosecution concerning the manner in which this murder was committed is true in its substantial features, which may briefly be recounted as follows:

On May 15, 1927, a fiesta took place in the barrio of Sintonisan, in the municipality of Dolores, Province of Tayabas, upon which occasion a number of men took part in a game known as the "juego de anillo." Among those present were the deceased, Pastor Dizon, and the five accused in this case, namely, Gregorio Manalo, Anselmo Generoso, Antolin Generoso, Santiago Silang and Isabelo Mendoza. At about 6 in the afternoon Antolin Generoso stepped up behind Pastor Dizon and struck him in the back of the head with a piece of wood about 18 inches long and 1 inch in diameter. Dizon reeled under the blow and turned partly around, inclining backwards. While in this attitude he was struck on the upper lip with a whip formed of rattan, in the hands of Isabelo Mendoza. The witnesses say that when Antolin Generoso struck Dizon in the back of the head Mendoza came very rapidly from behind Dizon and struck him on the lip from the side or front. At this moment Anselmo Generoso seized Dizon by the left hand and Santiago Silang seized him by the right. Almost instantly, and while Dizon was still inclining backwards, with his hands fast in those of the two mentioned, Gregorio Manalo ran up from in front with a knife and plunged it into the body of Dizon. The weapon entered the lower part of the sternum, somewhat to the right of the center of the body. Under the impact of this blow Dizon gave down, and about the time his body reached the ground, with face up, Anselmo Generoso released Dizon's left hand. Santiago Silang also released Dizon's right hand from his own left, at about the same moment, but as he did so, or even just before, he gave Dizon a second stab with a knife in his right hand, in nearly the same spot where Dizon had already been struck by Manalo.

Gregorio Manalo fled as soon as he had delivered the first blow with his knife; and the other assailants scattered as soon as the work had been finished and Dizon's body was stretched upon the ground. The injury inflicted by

Manalo was almost instantly fatal, Dizon dying immediately without speaking a word.

Soon after the tragedy occurred, the hat of Santiago Silang was found on the ground near the body of the dead man. A knife, which was identified at the hearing as the instrument with which the fatal blow was inflicted by Gregorio Manalo, was in the possession of Gregorio when he was first arrested later in the evening; and while passing along the street in the custody of the policeman, Manalo dropped said knife to the ground,—a movement which was detected by the policeman from the fact that the falling of the knife to the cement pavement made an audible sound.

By way of defense, at the hearing, Antolin Generoso attempted to prove an absolute alibi, and Gregorio Manalo pretended that, although he had been present at the fiesta until about 4:30 p.m. of the day in question, he left the place at about that hour and was not present when the homicide occurred. Anselmo Generoso admitted that he was present when the killing occurred, and attempted to parry the effect of the testimony exhibiting him as one of the persons holding the hand of the deceased at the time the fatal blow was struck, by saying that he had been shaking the hands of the deceased in a friendly way, but that he had withdrawn a few yards away at the time Manalo put the dagger into Dizon. Santiago Silang testified that he was present at the time of the disturbance in which the killing occurred, but he said that he ran away out of fright and dropped his hat as he jumped over the canal. Isabelo Mendoza, apparently the most intelligent and resourceful of the accused explains his intervention in the affair by saying that, when the disturbance arose, he rushed in for the purpose of pacifying the crowd. A number of witnesses were introduced by the defense tending to show that the whip with which the deceased was struck on the lip had been brought to the place by the deceased himself; but this testimony is, in our opinion, unworthy of credit. The same may be said of the testimony tending to show an alibi on the part of the two above-mentioned.

A careful perusal of the appealed decision, in relation with the transcript of the evidence and the assignments of error interposed by the three appellants who are now before us, is convincing to our mind that his Honor, the trial judge, attentively considered the proof that was adduced before him; and we have no doubt that he weighed the testimony for the prosecution and defense with proper discernment.

The three principal witnesses for the prosecution are Escolastico Avante, Rufo Morada and Enrique Bautista. The attorney for one of the appellants criticizes the relation given by these witnesses as unworthy of credit, from the supposed excessive similarity of details in their statements. We are unable to see the justice of this criticism, since a careful collation of their testimony reveals a sufficient diversity in detail to refute the hypothesis of a prior conspiracy on their part to tell an identical story. We note, for instance, that Escolastico Avante does not pretend to have seen the first outbreak of the trouble when Antolin Generoso struck the deceased in the back of the head with a stick; for Avante says that when his attention was first drawn to the disturbance, he turned his eyes in that direction and saw Mendoza strike the deceased in the face with a whip. But the fact that Antolin Generoso did strike the deceased, as already stated, is, in our opinion, well established by the testimony of Rufo Morada and Enrique Bautista. The other facts testified to by the three accusing witnesses mentioned leave no room for doubt in our mind that all of the accused cooperated together, and with common accord, in the commission of the offense with which they were charged.

The manner of the attack, and the way in which the appellants cooperated with their coaccused indubitably show that the offense was qualified by the circumstance of alevosia, with the result that the crime committed was murder, and it was properly so characterized by the trial court. The trial judge also found that the offense was characterized by the aggravating circumstance of evident premeditation. This finding is based on the testimony of Juan Ventosilla who gave an account of a meeting which took place the day before the killing in which Isabelo Mendoza, Gregorio Manalo, Anselmo Generoso and Santiago Silang took part and in which something obscure

was discussed. It is quite possible that, as the trial judge believed, the killing of Pastor Dizon was effectively planned on that occasion; but the proof, in our opinion, on this point is not sufficient to satisfy us that the case was characterized by the circumstance of evident premeditation.

The testimony of Enrique Bautista concerning a conversation that he had with Antolin Generoso a short while before the killing occurred also indicates that Antolin expected to take part that evening in some event of exceptional importance. But this proof also is insufficient to establish anything like an anterior conspiracy for the commission of the crime. Nevertheless, in our opinion, the manner in which the appellants and their coaccused cooperated in the perpetration of the homicide shows that they were moved by a common motive and that their intention was to accomplish the death of Dizon.

As stated at the outset, the trial court sentenced all of the accused to twenty years, cadena temporal, which would indicate that he gave the accused the benefit of some mitigating circumstance, such, doubtless, as lack of instruction. The Attorney-General recommends that no mitigating circumstance be appreciated and that the appellants be sentenced to cadena perpetua. The majority of the court, however, are of the opinion that the penalty may properly be allowed to rest at the point fixed by the trial judge.

The judgment appealed from is, in our opinion, in conformity with the law and the facts. The same will therefore be affirmed, with proportional costs against the three appellants. So ordered.

Johnson, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

DISSENTING

AVANCEÑA, C. J., WITH WHOM CONCURS ROMUALDEZ, J.:

I dissent. In my opinion each defendant herein should answer only for the acts which he personally committed. They did not conspire to kill the deceased. The mere fact that some of them gathered together on the preceding day, without anyone having overheard the subject of their conversation, is not enough to establish this conspiracy. And it is not reasonable to suppose that at that time they conspired to kill the deceased during a popular feast and in the midst of a large crowd, these being circumstances not favorable to assure its commission and their impunity, which are what criminals usually seek. This too appears to be the impression of the majority when it refused to consider the aggravating circumstance of premeditation. And it cannot be said that they, in fact, had the common purpose to kill the deceased. The only fact indicating such a purpose is the stab given by Manalo, considering its consequences. This is the only act which could have apprised the other defendants of the existence of this purpose with which they could at that moment associate themselves. But when Antolin Generoso gave the deceased the first blow on the nape of the neck with a stick, producing a mere bruise, when Isabelo Mendoza dealt him the second blow on the lip with a whip, producing another slight bruise, when Anselmo Generoso later held the deceased by one arm and Santiago Silang by the other, there was as yet nothing to indicate to them that there was another who sought to do away with the deceased; for it was subsequent to all of this that Manalo, who came behind them all, placed himself in front of the deceased and gave him the mortal blow. None of the other accused did anything more after Manalo had stabbed the victim, except Silang who followed the first dagger-stroke with another almost in the same place, but without producing a serious wound.

If there was no previous conspiracy among the defendants to kill the deceased, nor any act to link them with Manalo in respect to this purpose, then there is no reason for making them liable for an act which they did not commit and whose consequence it does not appear they ever intended. At most, the majority opinion might be justified as to Silang, but on no account as to defendants Isabelo Mendoza, Anselmo Generoso and Antolin

Generoso. And even as regards Silang, I cannot subscribe to the majority opinion, for his act came so close upon the heels of Manalo's that he probably had no time to see that the latter intended to cause the deceased the wound he did, and not simply the kind of wound he, himself, caused him.

Judgment affirmed.

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