

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO MARBASA, DEFENDANT AND APPELLANT.

G. R. No. 36394. October 11, 1932

Ponente: HULL, J.

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HULL, J.:

Pedro Marbasa was accused by the provincial fiscal of Occidental Negros of the crime of homicide under an information alleging:

"That on or about the 8th day of August, 1931, in the municipality of San Carlos, Province of Occidental Negros, Philippine Islands, the accused herein, did then and there wilfully, unlawfully and criminally and with intent to kill, stab with a knife one Santigao Teguelo, thereby inflicting upon said Santiago Teguelo a wound in the stomach which was necessarily mortal and which caused his death few hours thereafter. Contrary to law." The accused pleaded not guilty and was duly tried:

The evidence introduced by the prosecution discloses: That at about 4 o'clock in the afternoon of August 12, 1931, prosecution witness Sisenando Inanoria, while passing in front of the house of Santiago Teguelo, the deceased, in the barrio of Malindong, municipality of San Carlos, Occidental Negros, came across various dogs coming out of the house, quarreling and wrangling over something. Inanoria peeped into the house and saw the corpse of a dead man. He reported the matter to the authorities. The next day a so called investigation was had. Those present were the justice of the peace, the chief of police, the sergeant and several other policemen, the municipal medical officer, Dr. Rafael Gomez, and some soldiers of the Constabulary. Dr. Gomez found that the corpse was putrefied from the neck to the left umbilical region; there was a clot of blood as large as a saucer on the mat where the corpse was lying, situated a little below the chest or heart; there were also clots of blood below the mat. The doctor testified that it was impossible to make an autopsy because there was no more flesh or muscle from the neck to the abdominal cavity. Likewise, it was impossible to identify the deceased because there was no more flesh on the face. The doctor further testified that the blood he found indicated hemorrhage from a wound. According to him, if the deceased was of a strong constitution and had been stabbed, it would have been possible for him to walk a distance of five hundred meters if there was no external hemorrhage.

On cross-examination, the doctor stated that it was hard to tell if there were wounds on the body, and he did not find any; several parts of the body had already been separated and scattered about; the face could not be recognized and there was no trace of blood from the mouth or nose. The deceased wore no clothes except short pantaloons.

Inasmuch as, according to the physician the coagulated blood found on the floor indicated hemorrhage from a wound, the authorities proceeded to investigate. Eduardo Paragua, the sergeant of police, testified that they gathered all the neighbors in the vicinity and they made inquiries. They were told that on the afternoon of August 8th there was a clandestine cockfight held in the market place of Malindong. The old man, Santiago Teguelo, was there. There was only one match. The winning rooster was owned by Santiago Teguelo, the deceased, and the losing one belonged to the accused (sic). The accused was the one who tied the knife blades on the legs of the

roosters. After the match, while the accused was detaching the knife blade from the losing rooster, the deceased told him not to kill the rooster because he wanted to revive it. The accused resented this statement and stuck a penknife into the body of the rooster and immediately afterwards stabbed the deceased on the left side of the abdomen.

There were two eye-witnesses to the stabbing who testified, Pastor Onavea and Teodulo Lavandero. They in turn confirmed the sergeant's story. Other eye-witnesses were ready to testify, but the trial judge ruled that, there was already a "superabundance of proof" of the stabbing,

After the deceased was stabbed, he went home, his left hand holding that part of his body where he had been wounded.

No quarrel preceded the stabbing, nor did the old man fight back. There were about fifty people present at the time. They all fled to their houses after the stabbing. Nobody dared report the matter to the authorities because the accused threatened to kill them if they did, and he had been watching all of them.

The evidence introduced by the defense was a sweeping denial. It purported to show that nothing unusual happened in the cockfight of August 8th; that the old man's rooster won and he went home immediately thereafter; that there was no quarrel between him and the accused; that the accused could not have possibly killed the losing rooster because it was already dead as a result of the wound it received in the fight; and that the accused did not stab the old man.

Testifying in his own behalf, the accused stated that the losing rooster belonged to Julian Sillote and not to him; that he did not put up any bet; that he had no penknife with him on that afternoon; that he went home before the old man did; and that he had no cause for stabbing the old man.

The accused further claims that what really happened was that prosecution witnesses Pastor Onavea, Teodulo Lavandero and the accused, together with one Sillote, were arrested by the authorities for having engaged in illegal cockfighting. When they were in the municipal jail, however, they were investigated as to the cause of the death of the deceased. Two of them were handcuffed and another one was tied to the iron railings of the jail; they were promised their liberty if they would squeal on the assailant; and in the depth of the night they decided to point to the accused.

Jose Villatema corroborated the story about the methods used by the police to obtain information, but the trial judge stated in open court that his testimony was incredible.

On the evidence thus introduced, the lower court found the accused guilty of the crime of homicide and, there being no modifying circumstance, sentenced him to fourteen years, eight months and one day of reclusion temporal, to indemnify the heirs of the deceased in the sum of P1,000, with the accessory penalties prescribed by law, and to pay the costs. The accused has appealed from the foregoing decision and assigns the following errors:

"1. The court a quo grossly erred in taking arbitrarily for granted that the unidentified cadaver found in the alleged house of Santiago Teguelo was the corpse of Santiago Teguelo in spite of the fact that no identification was ever made.

"2. The court a quo likewise erred in holding without any definite findings by a medical expert that the deceased (whoever he was) died because of a wound inflicted, although the physician made clear that he could not ascertain any wound and furthermore notwithstanding the fact that no autopsy was made by the doctor employed during the investigation and trial.

"3. The court a quo also erred in holding that the accused stabbed with a knife a certain Santiago Teguelo.

"4. Certainly the court a quo flagrantly erred in finding the accused guilty of the crime of homicide and in sentencing him to prison for fourteen years, eight months and one day of reclusion temporal and to indemnify the heirs of the presumed deceased in the sum of P1,000 with the accessories of the law, and to pay the costs."

A study of the evidence of record shows that the record is more remarkable for what it does not contain than for what it actually contains. Not one word is in the record, from the officials that went to the premises to investigate the scene of death, as to the condition of the house, the whereabouts of the deceased's property, the location and condition of his clothes that he must have worn at the time the alleged stabbing took place, nor does it appear that the drawers found on the body were stained with blood, which ordinarily they would have been had the accused been stabbed in the abdomen and walked approximately 600 yards from the scene of the stabbing to his hut.

Although the medical officer testified that the body was too far destroyed to be identified by him, he was not asked directly to say from his examination of the body whether it was that of an elderly man, or not. Not one person who saw the body was asked whether it was the body of Santiago Teguelo, but the officials at the trial simply assumed that it was.

The only two witnesses for the prosecution that claim to have seen the accused stab the deceased, according to their own stories, are sorry specimens of humanity, and neither told the whole truth. Although neighbors of the deceased, and one of them a pariente, they claim that as soon as the stabbing took place, they were afraid and ran home, they claim they stayed at home for four days in fear on account of the threats made by the accused. When and where these threats were made, and of what nature the threats were, no one of the participants of the trial were curious to know. If the witnesses ran home as testified to by them, they arrived home in advance of the deceased and they must have seen him pass their house on his way to his lonely hut. Due to their claims that they ran home at once and remained there until after the body was found, they avoid testifying to any details. Certainly their testimony should not be accepted until after a searching examination in order to test the truth of their statements, especially so when they picture themselves as men without courage, without compassion, and without any sense of public duty.

Where the lives and the liberty of the inhabitants of the Philippine Islands are at stake, in a trial for homicide, such lack of zeal, care, and energy in producing the facts necessary for the proper understanding of the cause, cannot be allowed to pass unnoticed.

The testimony of the accused is not so inherently improbable as the testimony of the witnesses for the prosecution. The prosecution saw fit not to introduce any witness in rebuttal. From a careful examination of the evidence of record, this court must hold that the guilt of the accused has not been established beyond a reasonable doubt.

The judgment appealed from is therefore reversed, and the accused will be set at liberty with costs de oficio.

Malcolm, Villamor, Villa-Real, Abad Santos, and Vickers, JJ., concur.

DISSENTING

IMPERIAL, J., with whom concurs OSTRAND, J.,

I agree with the decision of the majority that the prosecution failed to identify the cadaver found in the afternoon

of August 12, 1931, for the simple reason that it was then putrefied from the neck to the umbilical region; but, in my opinion, the evidence for the prosecution has successfully established that said cadaver was of a man of sixty years old, that no other person lived in the house where said cadaver was found except the deceased offended party and that he was stabbed with a knife in the abdomen by the defendant on August 8, 1931. From these circumstances, which have been clearly proven by the testimonies of Dr. Rafael Gomez and of the eye-witnesses Pastor Onavea and Teodulo Lavandero, I infer the identity of the appellant as being the author of the crime beyond any reasonable doubt.

On the other hand, even assuming the insufficiency of evidence as to the cadaver's identity, due to the fact that the court below erroneously refused to hear the witnesses offered by the prosecution for that purpose, still I believe that instead of acquitting the defendant on the ground of doubt, which is not reasonable in my opinion, the case should be remanded for a new trial on errors of law so committed during the hearing. And in this case the appellant could not successfully invoke "former jeopardy" for through his appeal he voluntarily waived said constitutional right.

"Where a new trial is granted on motion of defendant, and the verdict and conviction are set aside, defendant has thereby waived his right and is estopped to plead the former conviction as a bar to another trial" on the same or a new indictment." (16 C. J., 259.)

"In the absence of statute, it has been held generally that on a new trial being granted a defendant, he cannot be tried again for a higher grade of the same offense of which he was convicted on the first trial. But some courts have held exactly the contrary, and that upon a new trial the whole case is open as if there had been no former trial. In some jurisdictions the question is settled by constitutional or statutory provisions which specify that the granting of a new trial places the party accused in the same position as if no trial had been had." (16 C. J., 260, 261.)

True it is that in the instant case the appellant did not move for a new trial, but there is no sound reason to the contrary to remand the case *motu proprio* by the appellate court on errors of law committed by the trial court for the purpose of doing justice.

I conclude, therefore, that the decision appealed from should be affirmed, or the case remanded to the lower court for new trial. Judgment reversed and defendant acquitted.

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