

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND AP- PELLEE, VS. AMBROSIO BORDADOR AND PEDRO BORDADOR, DEFENDANTS AND APPELLANTS.

G. R. No. 44356. August 15, 1936

Ponente: DIAZ, J.

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DIAZ, J.:

This is an appeal taken by Ambrosio and Pedro Bordador from the judgment sentencing them to cadena perpetua plus indemnity of P1,000 and the costs of the suit, under a charge of murder for the death of Pedro Sinsay, which took place in the barrio of Buenavista of the municipality of General Trias, Province of Cavite, on the night of April 21, 1935. In support of their appeal, they allege that the lower court erred: (1) In accepting their statements Exhibits B and C as evidence against them; (2) in giving credit to the testimony of the witnesses Lieutenant Lamberto T. Javalera, Emilia Topacio de Sinsay and Francisca Sinsay; and (3) in finding them both guilty of the crime of murder and sentencing them to cadena perpetua with the corresponding accessory penalties, to indemnify jointly and severally the heirs of the deceased Pedro Sinsay in the sum of P1,000, and to pay the costs of the suit.

A month prior to his death, Pedro Sinsay desiring to help his sister Francisca Sinsay who had lost a carabao and its young, went to the house of Ambrosio Bordador, who was suspected of being the author of the theft of said animals, to ask the latter for them and demand the return thereof to their owner. If we are to give credit to the hearsay evidence of record, which was not objected to by the defense, Pedro Sinsay and Ambrosio Bordador quarreled during the interview that the former provoked a fight with the latter. Francisca Sinsay's animals were never seen again after their disappearance; and on the night of April 21, 1935 (Sunday), Pedro Sinsay who went to his land situated in the barrio of Buenavista for the purpose of irrigating it did not return home alive as his body, with wounds three of which were necessarily mortal and two more or less serious in character, was found on the following day, the head half-submerged in a ditch. After the necessary investigation by the agents of the authority and on the strength of the suspicions of Francisca Sinsay who believed that Ambrosio Bordador, Amado Villanueva and Pedro Bordador might have been the authors of her brother Pedro's death, said agents arrested the three for questioning. When Amado Villanueva was questioned he stated in plain language that at about 4 o'clock in the afternoon of April 21, 1935, Ambrosio Bordador, his compadre, invited him to help the latter kill Pedro Sinsay for having accused Bordador of stealing Sinsay's carabao. Upon being questioned, Ambrosio Bordador and Pedro Bordador each made the revelations and statements contained in Exhibits B and C, separately, on different occasions and before different officials.

In Exhibit B, Ambrosio Bordador admitted having killed Pedro Sinsay with the help of Amado Villanueva not mentioning his brother Pedro, both having used therefor a firearm called paltic and a bolo, stating furthermore that the bolo was his and that with it he inflicted the incised wounds found on the body of the deceased. Pedro Bordador in turn admitted, as stated in Exhibit C, having participated in the aggression on Pedro Sinsay, saying that Amado Villanueva fired two shots at said deceased with the paltic or firearm which Villanueva carried; that he and his brother Ambrosio later attacked the deceased with their respective bolos until the latter died, and once

dead, the three of them carried his body and threw it into a ditch. When the two brothers were asked whether they could indicate the place where they committed the aggression, each of them independently of the other so did. Ambrosio Bordador, then accompanied by the provincial commander of the constabulary in Cavite, two officers of said force, some municipal policemen and the barrio lieutenant, was the first to indicate the scene of the crime and to reenact it. He indicated the places where they located themselves to commit the crime and where they later threw the body, and in fact a bolo and bloodstains were found there. The place where he said they had thrown the body proved to be the same from which days before said body was picked up by the authorities and their agents. This took place about April 27, 1935.

At a later date, Pedro Bordador, urged to indicate to the authorities the place where, according to his confession, his crime was perpetrated, so did in the same manner as his brother Ambrosio. On this point there are of record the following passages:

"Q.

When you went to the scene of the crime with Ambrosio Bordador, is that place within the municipality of General Trias? (Lieutenant Javalera testifying).—A. Yes, sir.

"Q.

Did Amado Villanueva and Pedro Bordador also go with you?—A. We have made another re-enactment when Pedro Bordador went with us.

"Q.

In the same manner?—A. Yes, sir." (T. s. n., p. 13.)

* * * * *

"Q.

When you conducted the investigation with Ambrosio Bordador and later with Pedro Bordador, you say that they indicated the places where the deceased was shot?— A. Yes, sir.

"Q.

Did you ask Ambrosio Bordador who fired at the deceased?—A. Yes, sir.

"Q.

What did Ambrosio Bordador say?—A. He said that it was Amado Villanueva who fired.

"Q.

Did he also say that Pedro Bordador participated?— A. Yes, sir.

"Q.

Did Pedro and Ambrosio Bordador state what weapon they used?—A. Yes, sir.

"Q.

What weapon?—A. According to Ambrosio, when Amado Villanueva fired at the deceased he also went to slash the latter." (Page 14.)

* * * * *

"Court:

"Q.

From your said two visits to the barrio of San Buenavista, did they also indicate the participation which Pedro Bordador might have had in this case?—A. According to Pedro Bordador he was accompanied by Axnado Villanueva and he also made the same statement as that of Ambrosio Bordador; instead of saying that his companion was Am- brosio Bordador he stated that it was Amado Villanueva.

"Q.

According to your investigation, who took hold of the body and dragged or threw it into a ditch?—A. According to my investigation, it was the two brothers and they admitted it during the ree'nactment of the crime, which ree'nactment was done separately by them." (Page 15.)

* * * * *

"Fiscal (Lieutenant Devera testifying):

"Q.

Did you not take Pedro Bordador there to indicate the place?—A. It was Lieutenant Javalera who accompanied Pedro Bordador when he went to re-enact the crime, and I spoke to Pedro Bordador.

"Q.

What did Pedro Bordador tell you?—A. Pedro Bordador admitted that it was he who killed the deceased, but with the help of Amado Villanueva." (Page 48.)

Upon knowing the above-stated facts, the chief of police of the municipality of General Trias filed the complaint which gave rise to this case in the justice of the peace court, and the appellants, upon being arraigned by the justice of the peace, admitted their crime and pleaded guilty. Amado Villanueva who was also included in the complaint did not want to plead guilty. After the case had been forwarded to the Court of First Instance of Cavite, it was dismissed with respect to Amado Villanueva upon motion of the fiscal who stated that there was not sufficient evidence against said individual.

The defense of the accused-appellants consisted in a general denial, an alibi and in having been maltreated by the constabulary, saying that while they were detained they were struck with the butts of guns, trampled upon on the stomach and slapped by some soldiers, insinuating thereby that if they made the statements contained in Exhibits B and C, it was because of said maltreatments. The truth, however, is that Pedro Bordador did not make the statement Exhibit C in the presence of any constabulary soldier, as it was made by him before the chief of police of the municipality of General Trias while he was detained in the jail of said municipality. It is also true that Ambrosio Bordador was not investigated by any constabulary soldier but by Lieutenant Lamberto T. Javalera

himself; and the latter conducted the investigation taking good care that his questions and the answers given him by Ambrosio Bordador were typewritten by a soldier who acted as his typist. Furthermore, when both appellants appeared before the justices of the peace in whose presence they signed the documents in question, they ratified them in all respects without any objection or the least indication that they had not made the revelations and statements contained therein. Still further, when they were arraigned in the justice of the peace court on May 2, 1936, or several days thereafter they had signed said documents Exhibits B and C, they waived the preliminary investigation, whereupon the case had to be forwarded to the Court of First Instance of Cavite.

The appellants' imputations to the constabulary soldiers are absolutely unfounded, first, because if it were true that they were maltreated said maltreatments would have left some mark on their bodies, and it does not appear that they had called the court's attention to any mark that may be considered a trace thereof; and second, because their testimony is not corroborated and the other evidence shows that responsible constabulary officers and other government officials directly intervened both when their statements contained in Exhibits B and C were taken and during the re-enactment of the crime made by each of them, and under such circumstances it is unbelievable that irregularities have been or could have been committed because said persons would not have so permitted. Furthermore, if the constabulary soldiers or some of their officers had concocted the statements contained in Exhibits B and C, the natural thing is that the salient facts would coincide, which is not the case herein because the intention of said two brothers not to mutually implicate each other is clearly inferable from each of said documents. But this is not all. After the appellants had made the statements contained in said two Exhibits (B and C) before Lieutenant Javalera and before the chief of police of the municipality of General Trias, respectively, they were brought to different justices of the peace to ratify them which they did after they had been carefully informed of the contents thereof; and at the time of the preliminary investigation both waived said proceeding by pleading guilty.

Neither the testimony of Lieutenant Lamberto T. Javalera nor that of Emilia Topacio de Sinsay and Francisca Sinsay can be doubted as regards the manner of taking Ambrosio Bordador's statements, the two re-enactments of the crime made by the appellants and the disappearance of the two carabaos of said Francisca Sinsay, because aside from the fact that they have been entirely corroborated they have not been contradicted by the defense except through the testimony of the appellants.

The lower court held that the crime committed was murder with the qualifying circumstance of treachery. We do not believe such circumstance has been established, particularly if we take into consideration the fact that all the injuries and wounds found on Pedro Sinsay's body were inflicted from the front. Furthermore, the circumstances modifying criminal liability as well as those qualifying a crime or are inherent therein must be established as clearly as the crime itself; they cannot be held to be present from mere conclusions or inferences. Much less can it be said that the aggravating or qualifying circumstance of evident premeditation has been established because, leaving aside Amado Villanueva's testimony which bears all the tokens of a fable, except if we are to believe him a coauthor of this crime, there is no direct evidence showing the existence of said circumstance. It cannot be inferred from the simple fact that there was enmity between Ambrosio Bordador and Pedro Sinsay.

In view of the foregoing considerations, we are of the opinion and so hold that the alleged errors I and II assigned by the appellants are unfounded, and that the crime committed by them is simple homicide without any circumstance modifying criminal liability.

Wherefore, modifying the appealed judgment, we find the appellants guilty of the crime of homicide, and pursuant to the provisions of the Indeterminate Sentence Law sentence them to the penalty of from eight years of prison mayor to fourteen years, eight months and one day of reclusion temporal, affirming said judgment in all other respects, with costs to the appellants. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Recto, and Laurel, JJ., concur.

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