

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO TALORONG, ALIAS INO, ACCUSED WHOSE DEATH SENTENCE IS UNDER REVIEW.

G.R. No. 52516. May 31, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This is a murder case. In the evening of October 18, 1973, Mauro Vidal and his wife, Gonzala Sabanal, were assaulted in their house located at Sitio Amian (Taniokon), Barrio Mainit, Kabankalan, Negros Occidental, by three malefactors to whom they had given supper and who fled after the assault. Vidal, 52, died instantly (Exh. B).

The municipal health officer found that Vidal had two serious stab wounds on the chest which injured his lungs and one of which exited at his back. He had also an entrance stab wound in the arm which exited on his right shoulder (Exh. A).

On the basis of the affidavits of Gonzala Sabanal, Ludovico Gundao and Pedro Vallescas (sworn to before the municipal judge on November 17, 1973) and the medical and death certificates, the chief of police filed on December 1, 1973 in the municipal court a complaint for murder against Ino Talorong, Cesar Rallos and one John Doe who were the culprits named in Vallescas' affidavit.

Talorong was arrested only on May 19, 1975 or nineteen months after the killing (p. 9, Record). He was arrested in Sitio Naga, Barrio Binicuil, Kabankalan which is about sixteen kilometers away from Sitio Amian where the crime was committed. Rallos and John Doe are at large.

Talorong was arrested when he was implicated in connection with the theft of a plow. The arresting officer remembered that he was involved in the killing of Vidal. While in jail, Gonzala Sabanal identified him as one of the three malefactors who ate and slept in her house in the evening of October 18, 1973 (19 tsn May 26, 1977).

Talorong posted bail in the sum of P20 ,000. He waived the second stage of the preliminary investigation. On March 19, 1976, the provincial fiscal filed an information for murder against him with the Circuit Criminal Court at Bacolod City (p. 20, Record).

The main evidence against Talorong is the testimony of Gonzala Sabanal, the only eyewitness to the killing. She declared that in the evening already mentioned three unknown persons appeared in her house. They asked for supper. She prepared supper for them. After eating, they requested that they be allowed to spend the night in her house. She and her husband allowed them to sleep there.

The three slept on a mat upstairs in a room measuring four by five meters. On the other side of the room, Gonzala and her husband Mauro Vidal slept. A kero-sene lamp was placed near the heads of the three strangers. Another kerosene lamp (kinki) was placed near the Vidal spouses.

After the five occupants of the room had lain on the floor for sometime, Gonzala heard one of the guests shout an order to shoot. One of them sat astride her shoulders and stabbed her twice in the back. Another man (later identified by Gonzala as Nilo Talorong) straddled over her husband, Mauro, while the third man, tall and fair-complexioned, stabbed him.

At about nine o'clock in the morning of the following day, Gonzala shouted for help. A neighbor, Ludovico Gundao, appeared and took Gonzala to the hospital where she was treated for one month.

Talorong's defense was an alibi. He testified that in the evening when the crime was committed, he was with his in-laws in Barrio Binicuil, Kabankalan but some moments later he said that he was with his parents in Sitio Naga, Binicuil (8-9 tsn October 26, 1978). A resident of Sitio Naga confirmed Talorong's alibi. The trial court rejected it.

Talorong was convicted of murder, sentenced to death and ordered to pay twelve thousand pesos as indemnity to the heirs of Mauro Vidal. The case was elevated to this Court for automatic review.

Talorong's counsel contends that the trial court erred in relying on the testimony of the victim's widow and in not giving credence to his alibi.

The decisive point is that Talorong, 19, was identified with certitude by Gonzala Sabanal as the one who sat astride her husband in order to immobilize him and prevent him from making any defense and to enable his tall, white companion to inflict the fatal stab wounds.

This is not a case where an eyewitness had merely a brief and passing glimpse of the culprit's features. This is a case where the eyewitness had sufficient opportunity to know and remember the features of Talorong because she served supper to him and his two companions and even allowed them to sleep in her house. The possibility that Gonzala could be mistaken in identifying Talorong is almost nil. She testified that on past occasions she had seen Talorong in Sitio Amian (16-19 tsn May 26, 1977).

Inasmuch as Talorong was indubitably identified by the victim's widow as one of the three malefactors who had abused her hospitality and who, exhibiting a high degree of perversity and criminality and without any known motive, assaulted her and her husband, Talorong's alibi must perforce be regarded as a fabrication.

The death penalty was properly imposed by the trial court in view of the qualifying circumstance of treachery and the generic aggravating circumstances of dwelling and abuse of confidence or manifest ingratitude.

However, for lack of necessary votes, the death penalty is commuted to reclusion perpetua.

The trial court's judgment is affirmed with the modification that the death penalty is reduced to reclusion perpetua. Costs de oficio .

SO ORDERED.

Fernando, C.J., Teehankee, Makasiar, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

Barredo, J., he can see no reason in this case why We should not follow the law and impose the appropriate penalty of death on the accused.

Concepcion, Jr., J., on leave.

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