

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO GARDON Y NAGA, DEFENDANT-APPELLANT.

G.R. No. 58172. May 28, 1984

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The accused, Rolando Gardon y Naga, appeals his con-viction for Murder by the Circuit Criminal Court of Cebu City (Criminal Case No. CCC-XIV-2133-Cebu), sentencing him to reclusion perpetua, to indemnify the heirs of the deceased Placio Angus, Jr., in the sum of P12,000.00, without subsidiary imprisonment in case of insolvency, and to pay proportionate costs.

The Information included another accused, Osias Cajés,[1] but apparently he was not brought to trial.

The People summed up its evidence thus:

"The evidence for the prosecution showed that at around 10:00 o'clock in the evening of April 27, 1980, while Bonifacio Juab and his neighbor by the name of Demetrio were fishing at the pier behind the Carbon Market in Cebu City, a man, who was later identified as Placio Angus, Jr., fell into the sea. Angus then tried swimming towards the MV Taurus Express, a passenger boat or banca then moored at the pier landing. Meanwhile, appellant approached Demetrio who was sitting beside Juab and warned thus: 'You already know about the incident. Just keep silent about it.' (pp. 2-3, 6, t.s.n., February 25, 1981).

Although neither Juab nor his companion knew exactly how Placio Angus, Jr. fell into the sea, they were nevertheless certain that appellant had something to do with it or was the cause thereof because appellant saw to it that the victim could not approach the pier or the banca docked at the landing. When Angus, Jr. was already on the banca's outrigger and trying to climb up the boat, appellant boxed him and he again fell into the sea. Angus, Jr. then swam farther away shouting: 'Help!', 'Help!'. As the victim kept asking for succor, appellant shouted at the former thus: 'You keep quiet!'. Later, when the victim submerged or sank into the water, appellant inquired: 'Are you already dead?'. Appellant then told Juab: 'Noy, this is only ours. Keep quiet about it.' Juab and his companion were unable to prevent appellant from drowning the victim or to render any assistance to the latter because they were afraid of appellant who was then armed with a knife (pp. 3-4, 6-9, t.s.n., February 25, 1981).

After eyewitness Bonifacio Juab regained his composure, he immediately gathered his fishing paraphernalia, went home, and forthwith reported the matter to the Barangay Police. Appellant and his co-accused, Osias Cajés, were arrested on the same night by the barangay police. They were brought to the nearest police precinct of the Cebu City Police Force where both were investigated. The victim's body was recovered from the sea the morning after the incident in question (pp. 4, 9-10, t.s.n., February 25, 1981).

Corporal Flaviano Sanson of the Cebu City Police Force who took down appellant's written statement (Exhs. 'A' to 'A-3'), declared that the latter admitted to him in the course of the investigation responsibility for the fatal drowning of Placio Angus, Jr., although in appellant's sworn statement (Exhs. 'A' to 'A-3'), he implicated Osias Cajés and tried to blame him for the drowning of aforementioned victim (pp. 2-3, 5, t.s.n., March 19, 1981).

Dr. Crisostomo C. Abbu, medico-legal officer or Medical Services Supervisor III of the Cebu City Health Department, who conducted the autopsy on the body of the victim, made the corresponding necropsy report (Exhs. 'C' to 'C-1') and issued the death certificate (Exhs. 'B' to 'B-1'). He confirmed on the stand that the cause of death of the victim was 'asphyxia by drowning'. He further declared that since the body of the victim was already darkened or bluish in color and nearing the state of decomposition at the time of the autopsy or examination owing to some delay before the same could be actually conducted or performed, it was no longer possible for him to determine whether there were signs of violence or external injuries, like abrasions or contusions, on said body. At such a state or condition of the body, what were possible of determination only would be the presence of serious wounds that leave a deep cutting of the skin, like stab and bullet wounds (pp. 2-10, t.s.n., April 9, 1981)."

On the other hand, appellant, as the only witness for the defense, declared that at around 10:00 in the evening of April 27, 1980, while he was sitting on a bench outside the store where he works, located at the back of Carbon Market, Cebu City, beside the pier, he saw at a distance of about 8 meters, Osias Cajes, a cook on the MV Taurus (who is familiar but not personally known to him) exchanging fist blows with another man near the edge of the pier. Hearing a shout for help he ran towards the pier. The man (Placio Angus, Jr.), who was exchanging blows with Osias Cajes, fell into the sea. Seeing that the latter was swimming away from the pier, he left and went back to the store. He saw Osias Cajes board the banca which was moored at the pier. Appellant denied having hit or boxed the deceased.

At around 12:00 midnight that same evening, appellant was arrested by the barangay tanods and taken to the police precinct where his statement was reduced to writing the following day. Quoted hereunder is a portion of that statement wherein, contrary to his oral testimony, appellant admitted having boxed the deceased:

"Question: At 10:00 o'clock in the evening more or less of April 27, 1980, will you tell us where were you?

Answer : I was at a store in Carbon Market near the pier.

Question: You said that you were at the store, will you tell us what were you doing there?

Answer : I was sitting sir.

Question: While you were sitting, did you notice an incident?

Answer : Yes, sir, I saw Osias Cajes and another person having a fist fight at the pier.

Question: While Osias Cajes and a person (Junior) were having a fist fight, what did you do?

Answer : I approached Osias Cajes and his adversary and box the person whom Osias Cajes was fighting with. The person fighting with Osias Cajes ran but Osias Cajes pursued him. When Osias Cajes caught up with his enemy, Osias Cajes mauled him until the said person fell into the sea. The said person swam toward a boat and when the said person climbed up thru the outrigger Osias Cajes met him and the person fell from the outrigger. The said person swam until the time that I did not hear anymore from the said person." (Exhibit "A").

After Osias Cajes was apprehended, he gave the following sworn, statement:

"Question: While you were on board the banca, did you notice an unusual incident?

Answer: I disembarked from the banca in order to buy cigarettes. After I bought cigarettes I return to the banca already in company with Rolando Gardon. We passed by a person who was sleeping and I ask Rolando Gardon who was that person sleeping. I was even told by Rolando Gardon that we will box the said person. I refused and left Rolando Gardon. I returned to the banca and while there I saw that Rolando Gardon was mauling a man. I went down from the banca and called Rolando Gardon's attention. I was told by Rolando Gardon not to meddle. I went back to the banca and I also saw that Rolando Gardon told the person to jump into the sea because if he won't Gardon will stab him with the knife he was carrying at the time. The said person jumped

into the sea and swam towards the outrigger of our banca. When the said person reach the banca I received him. When the said person was already standing on the side of the banca Rolando Gardon came and box the said person 'who fell into the sea again. The said person swam away from the banca. I saw the said person swimming and shouting for help. Not long after the said person submerge and I did not see him anymore."

The foregoing statement was not offered in evidence but was merely attached to the Information. According to the Trial Judge[2] , "the police investigator, convinced of Cajes' testimony, recommended that Cajes be utilized as a state witness." The transcript of the proceedings, however, does not include his testimony.

Convicted of Murder, appellant attributes the follow-ing errors to the Trial Court:

I

The Court a quo erred in giving full weight and credence to the sole and uncorroborated testimony of prosecution eyewitness Bonifacio Juab merely because in its opinion it was direct and positive evidence without, however, judiciously taking into account that alleged facts generated thereby were inherently improbable, inconsistent with human nature or against the natural course of things and, therefore, it ought to be discarded in evidence.

II

The Court a quo erred in appreciating as evidence against the appellant the sworn deposition of accused Osias Cajes which was not even offered in evidence by the prosecution itself and neither was he presented as a witness so as to afford appellant the opportunity to cross-examine him thereon.

III

The Court a quo erred in ill-advisedly appreciating the sworn deposition of appellant exhibit 'A', to be in the nature of an extrajudicial confession when, in truth and in fact, it was not so by any stretch of the imagination.

IV

The Court a quo erred in entirely discrediting the testimony of appellant as unworthy of being given credence on the ground his defense was a denial when, a sensu contrario, the facts testified to by him had badges of truth and more in accord with human experience and observation; and that, moreover, the same gained greater consideration and weight in the light of the prosecution evidence which appeared weak and insufficient.

V

The Court a quo erred even if granting, arguendo, the appellant was culpable for the death by drowning of the deceased Placio Angus, Jr. after boxing him yet treachery was not attendant thereto and, therefore, he could only be guilty of homicide as analogously held in U.S. versus Valdez, 41 Phil. 497; that, furthermore, the attenuating circumstance of lack of intent to commit so grave a wrong as that committed should have been appreciated in his favor without any aggravating circumstance to offset the same.

VI

The Court a quo erred in not acquitting the appellant of the crime charged at bar upon failure of the prosecution to establish the requisite quantum of proof necessary for conviction beyond reasonable doubt."

There is no reason to doubt the positive identifica-tion of appellant by prosecution eyewitness Bonifacio Juab, himself a barangay tanod. Thus,

"Q Mr. Juab. Where were you at 10:00 o'clock in the evening of April 27, 1980?

A I was fishing at the Pier sir.

Q In what particular part of the Pier were you fishing?

A 2nd Street.

Q Is that behind the carbon market?

A Yes, sir.

Q Who was your companion when you went fishing?

A My neighbor by the name of Demetrio.

Q His surname?

A I do not know his surname.

Q How far were you when fishing to Demetrio?

A Around an arms length away from each other.

Q Could you tell to the Honorable Court what were in the vicinity wherein you were fishing?

A No. That is a pier. Nothing. That is a pier.

Q Then what happened while you were fishing together with Demetrio that evening?

A There was a man who fell into the water.

Q Then what did you do upon seeing that a man fell into the water?

A Nothing sir. I just watched him swimming towards the banca.

Q How far were you to that man whom you said swam towards the banca?

A Only a arms length away from me, sir, that was also the place that he fell into the sea.

Q Do you know that person?

A I do not know.

Q Do you know the name now?

A Yes, sir. I already know who is he.

Q Who is he?

A Placio Angus, Jr.

Q Do you know why that Placio Angus, Jr. fell to the Water?

A I do not know.

Q Then, while Placio Angus, Jr. was swimming towards the banca what happened?

A Rolando Gardon approached my companion who was just beside me and said, 'You already know about the incident. Just keep silent about it.'

Q If Rolando Gardon is inside the courtroom now, will you please point him out?

A The one wearing white t-shirt (witness pointing to the accused Rolando Gardon).

Q Then what was the response made by you and that Demetrio after that statement made by Rolando Gardon?

A Demetrio did not answer him, sir, and after that Rolando Gardon proceeded towards the banca and after reaching the banca the man who fell into the sea was already on the outrigger of the banca and Rolando Gardon met that man and boxed him and the man fell into the sea again.

Q How far were you to the place where Rolando Gardon boxed that man that fell to the water?

A Around five arms lengths.

Q Again, that distance, was there any obstruction?

A None.

Q What lighted the place if there was any?

A The light from the banca and the light from the moon.

Q So you have clearly identified Rolando Gardon as the one who boxed Placio Angus?

A Yes.

Q Then what happened after Placio Angus was boxed by Gardon when he fell to the water?

A He swam farther away shouting 'Help!' 'Help!'

Q Then what did you do after hearing the words, 'Help!' 'Help'

A I just watched where he was going to.

Q Then what happened while you were following your eyes to them?

A At that time, sir, Lando went up on the pier again and shouted to the person swimming who was all the time shouting 'Help! Help!', then Lando said 'You keep quiet!' And then a little later the man submerged and then Lando said, 'Are you al-ready dead?' And then he confided to me and said, 'Noy, this is only ours. Keep quite about it.'

Q What did you do upon hearing the words of Gardon?

A I just looked at Lando Gardon at that time, sir, then immediately I gathered my fishing paraphernalia, went home, called the barangay police and arrested him (witness pointing the accused Rolando Gardon).

Q What did you do with Gardon?

A We brought him to the police precinct.

Q Then how about the person who was drowned?

A In the morning we dove for him and we were able to recover his body.

Q Then what happened to Placio Angus, Jr."

A Already dead."[3]

The place where the incident occurred was well-lighted and Juab's and Demetrio's presence at that time fishing was confirmed by appellant himself.

"COURT (To the witness):

Q No one was fishing there?

A There were but quite far.

Q But near enough to see what happened?

A They can see the place because it was lighted."[4]

Juab was instrumental in the apprehension of appellant two hours later and he identified the appellant when confronted at the police precinct the next day.[5] The early identification of appellant by the prosecution eyewitness, which identification led to his prompt arrest, bespeaks of the spontaneity and veracity of said witness.[6] Juab has not been shown to have had any improper motive to testify falsely against appellant, so that his testimony deserves full faith and credit.[7]

The failure to present all the eyewitnesses to an act does not necessarily give rise to an unfavorable presumption, especially when the testimony of the witness sought to be presented is merely corroborative.[8] If the other witnesses could have helped appellant, he should have availed of the compulsory processes of the Court to enable him to present them as his own witnesses.[9]

The declarations of Juab that are allegedly "inherently improbable", "inconsistent with human nature", or "against the natural course of things" are not really so. Appellant's warning to Juab and Demetrio not to reveal the incident is not improbable for he knew that they had witnessed the victim's falling into the sea. That the other passengers on board the boat did not make any outcry while appellant was shouting at the victim as the latter clambered up the outrigger is neither incredible, it not having been shown that they were aware of the happening, or even if aware, they were about to depart for Bohol. That Juab neither bothered to help the victim was explained by him stating that he was overcome by fear because he saw that appellant was carrying a knife while he himself was unarmed.[10] It was for the same reason that Juab did not arrest appellant on the spot but felt it more prudent to call other barangay policemen.[11] That the victim, after falling into the sea, would swim away from the banca and not just hold on to the outrigger is not necessarily contrary to human nature. Facts prevail over assumption.[12] That appellant had told the victim to stop shouting for help and had asked him whether he was still alive as the latter was submerged in the sea is neither bizarre. Persons react differently to similar situations.[13] Besides, it was apparent that appellant was bent on doing away with the victim.

That appellant did not flee from the scene of the crime is not necessarily indicative of a clear conscience. He may have smugly thought that the two men fishing on the pier would not be able to identify him, or that they would keep "quiet about it" at his behest.

True, Juab's companion, Demetrio, was not presented to corroborate the former's testimony. It is well settled, however, that the testimony of only one witness, if credible and positive and if it satisfies the Court beyond reasonable doubt, is sufficient to convict.[14]

The second assigned error challenges the consideration by the Trial Court of Osias Cajes' sworn statement. Although it was, in fact, incorporated in the Decision appealed from, conviction was not predicated thereon but upon oral testimonies and other documentary evidence.

As to the third assigned error, while it may be that the lower Court had used the term "confession" in referring to appellant's sworn statement (Exhibit "A"), it is obvious that it was not a confession since it was exculpatory in nature. Appellant's only admission therein was that he had boxed the victim in cooperation with Osias Cajes. The mistake in nomenclature has not really prejudiced the accused.

The fourth assigned error dwells on the credibility of witnesses, in respect of which, it is well-settled that the

findings of the lower Court, which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies are accorded the highest degree of respect by this Tribunal.[15] Greater weight must be given to the positive testimonies of prosecution witnesses than to the denials made by the defense.[16] No substantial reason has been advanced to justify a departure from those general rules.

The fifth assignment of error, however, is well taken. Treachery has not been proven. Prosecution eyewitness Juab himself declared that he did not know why the victim fell into the water. As the Solicitor General had aptly observed:

"There is no disclosure on how the initial attack or assault on the victim started. There is no showing that the attack was sudden. There is also no evidence, and the said testimony does not show, that the appellant employed means and methods or form of execution tending directly and specially to facilitate the commission of the offense without danger to him coming from the deceased. More, it has not been established that appellant has deliberated upon, or consciously adopted, any such means or methods in the commission of the crime. As thus correctly stated by appellant, the requisite for treachery to be appreciated in the case at bar is not present (*People vs. Payao*, 68 SCRA 70; *People vs. Santos*, 85 SCRA 630; *People vs. Samonte, Jr.*, 64 SCRA 319). Indeed, it is the rule that treachery should be proven as fully as the crime itself (*People vs. Ardisa*, 55 SCRA 245; *People vs. Balmaceda*, 87 SCRA 94). Accordingly, the crime committed by appellant is homicide, not murder".[17]

The case of *U.S. vs. Valdez*, 41 Phil. 497 (1921), is analogous. In that case, the accused had brandished a big knife at the victim while they were on a small boat in the Pasig River. Before the accused reached the victim at the bow of the boat, the latter, believing his life in danger, threw himself into the water, disappeared beneath the surface and was seen no more. The accused therein was convicted of Homicide.

"If a person against whom a criminal assault is directed reasonably believes himself to be in danger of death or great bodily harm and in order to escape jumps into the water, impelled by the instinct of self preservation, the assailant is responsible for homicide in case death results by drowning".[18]

Appellant should likewise be chargeable with Homicide. The mitigating circumstance of lack of intent to commit so grave a wrong cannot be appreciated in appellant's favor. His determined resolution to do the victim wrong was evident when, even after the victim had disappeared beneath the surface of the sea, he cruelly asked "are you already dead?" Appellant's bid for acquittal in his sixth assignment of error, therefore, deserves no consideration.

WHEREFORE, the Court finds the accused, Rolando Gardon y Naga, guilty beyond reasonable doubt of the crime of Homicide and in the absence of any modifying circumstances, hereby sentences him to suffer an indeterminate penalty of eight (8) years and one (1) day of prision mayor as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum; to indemnify the heirs of the deceased Placio Angus, Jr. in the sum of P30,000.00;[19] and to pay one-half of the costs. SO ORDERED.

Teehankee, (Chairman), Plana, Relova, Gutierrez, Jr., and De La Fuente, JJ., concur.

[1] p. 1, Original Record.

[2] p. 4, Decision.

[3] T.s.n., February 25, 1981, pp. 2-4.

[4] T.s.n., April 14, 1981, p. 6.

[5] T.s.n., March 19, 1981, p. 2; T.s.n., April 14, 1981, p. 7.

- [6] People vs. Tumulip, 60 SCRA 303 (1974).
- [7] People vs. Valdemoro, 102 SCRA 170 (1981); People vs. Pingkian, 107 SCRA 112 (1981).
- [8] People vs. Genoguin, 56 SCRA 181 (1974); People vs. Manimtim, 120 SCRA 324 (1983).
- [9] People vs. Ombao, 103 SCRA 233 (1981).
- [10] T.s.n., February 25, 1981, p. 7.
- [11] Ibid. p. 4.
- [12] People vs. Macalisang, 22 SCRA 699 (1968); People vs. Battung, Jr., 102 SCRA 158 (1981).
- [13] People vs. Realon, 99 SCRA 422 (1980); People vs. Gonzales, 99 SCRA 697 (1980).
- [14] People vs. Boduso, 60 SCRA 60 (1974); People vs. Candado, 84 SCRA 508 (1978).
- [15] People vs. Garcia, 105 SCRA 325 (1981); People vs. Mendoza, 105 SCRA 459 (1981).
- [16] People vs. Plateros, 83 SCRA 401 (1978).
- [17] Brief for Plaintiff-Appellee, pp. 24-25.
- [18] U.S. vs. Valdez, 41 Phil. 497 (1921).
- [19] People vs. de la Fuente, G.R. Nos. 63251-52, December 29, 1983.

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