

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEOPOLDO SALIENTE, ACCUSED-APPELLANT.

G.R. No. 58183. February 14, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

Leopoldo Saliente appealed from the decision of the Court of First Instance of Leyte, Palo Branch IV, convicting him of robbery with homicide and lesiones graves, sentencing him to death and ordering him to pay an indemnity of P12,500 to the heirs of Gregorio Real (Criminal Case No. 2169).

Saliente, 18 or 20, an illiterate farmer, admitted that he killed Gregorio Real, 52, the father of Norma, whom he was courting, but he interposed self-defense to justify the killing.

Real sustained twelve stab wounds, four on the chest and seven on the back (Exh. I). The doctor, who conducted the autopsy, surmised that the wounds were inflicted by means of a three-bladed weapon known as berdugillo.

On the other hand, the killer, Saliente, on the occasion of the killing, suffered thirteen incised wounds on the head (temporal and occipital regions), chest, chin, shoulder and buttocks or gluteal region. He was hospitalized from July 8 to 24, 1974, a period of sixteen days (Exh. 2 and 3). The doctor testified that the wounds of Saliente in the head and breast were serious.

Saliente's version is that at past six o'clock in the evening of Sunday, July 7, 1974, he went to the house of his alleged sweetheart, Norma Real, 18, located in Sitio Villa, Barrio Hilaba, Pastrana, Leyte. Sometime later, Norma's father, Gregorio, arrived and directed his flashlight at Saliente. Gregorio was drunk. He had always disliked Saliente. He did not want Saliente to court Norma.

When Real saw Saliente in the house, he got mad. After scolding his daughter for allowing Saliente to visit her, Real struck Saliente in the face with his bolo (pisao). Saliente fell on the floor, face down. In that position, Real hit him on the buttocks with his bolo.

Saliente heard Donata Hernit, Real's wife, telling him to desist from injuring Saliente. Real did not heed her. He struck Saliente once more on the head (alimpodhan). Saliente managed to rise and grapple with Real. Saliente drew his three-bladed knife (berdugillo) and repeatedly stabbed Real. He (Real) collapsed on the floor and died.

Leopoldo Saliente left the house and walked to Barrio Parasan, Jaro where he resided. On reaching the house of his uncle, Pedro Saliente, he asked for assistance because he was wounded. Leopoldo was brought to the provincial hospital where, as already stated, he was confined for more than two weeks.

On the other hand, the prosecution's version is that in the evening of July 7, 1974, Leopoldo Saliente, together with his cousin Benedicto Saliente, Boy Maganda, Romulo Metila, Rodrigo Cabidog and two unidentified persons, all armed, went to Gregorio Real's house. Cabidog bought cigarettes from Donata Hernit.

One of the men entered the house through the window. He told Norma Real to keep quiet. Gregorio Real, on

noticing the intruder, wrestled with him. The man assaulted Real with a bolo. Then, according to Donata and Norma, Leopoldo Saliente entered the house. Donata got a bolo and stabbed Leopoldo. Leopoldo retaliated by wounding her in the chest. Two other persons attacked Real. The intruders ransacked the house and allegedly took five hundred pesos cash and a bolo.

Leopoldo Saliente contends that the trial court erred in giving credence to the testimonies of Norma Real and Donata Hernit and the prosecution's improbable and contradictory evidence and in not sustaining his plea of self-defense.

It should be noted that according to Mamillano Teberio, the chief of police of Pastrana, at about ten o'clock in the evening of July 7, 1974, Norma Real and the barrio captain of Hilaba reported to him that Gregorio Real was killed and that there was a robbery in his house. Teberio testified that Norma admitted that she did not know the perpetrators of the alleged robbery with homicide (40 tsn February 23, 1981).

The unreliable character of the prosecution's evidence shown by the fact that Donata Hernit in her clarificatory affidavit dated March 29, 1978 stated that Romulo Metila, one of the accused, did not enter her house in the evening of July 7, 1974 (Exh. 2, p. 148, Record).

The trial court in its order of July 20, 1979 dismissed the case against Metila. It noted that Metila was implicated by Leopoldo Saliente in his extrajudicial confession which was not admissible in evidence because it was taken during custodial interrogation when Leopoldo was not assisted by counsel. Leopoldo repudiated that confession during the trial. It was in the dialect. There was no translation.

Furthermore, the trial court acquitted Benedicto Saliente. It did not believe Donata's testimony that she saw Benedicto in her house in the evening of July 7, 1974.

Although the incident occurred in the evening of July 7, 1974, it was only on July 24, 1974 when the statements of Donata Hernit and her stepdaughter Norma were taken (Exh. H and 2). Leopoldo Saliente testified that Norma and Donata charged him with robbery with homicide because he was not able to comply with their demand that he should pay P3,000 for the death of Gregorio Real (134 tsn April 1, 1980).

Norma and Donata did not prove conclusively in their testimonies that they had P500 cash at the time the incident occurred. Hence, the alleged taking of that amount was not established with certainty.

The Solicitor General in his manifestation and motion in lieu of an appellee's brief dated January 10, 1983 made a painstaking analysis of the prosecution's evidence. He and his assistants noted several discrepancies and improbabilities in the testimonies of Donata and Norma. He recommended the acquittal of Leopoldo Saliente on the ground that his guilt was not proven beyond reasonable doubt. That recommendation is justified.

We hold that Real was the aggressor and that Saliente acted in self-defense. The killing was justified.

WHEREFORE, the trial court's judgment of conviction is reversed and set aside and Leopoldo Saliente is absolved of the crime charged. He should be released immediately unless he is detained for another offense. Costs de oficio.

SO ORDERED.

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

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