

[G.R. No. 1344. January 19, 1904]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, VALENTIN TRONO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MAPA, J.:

The defendants, charged with the murder of Benito Perez, were convicted by the trial court of the offense of lesiones menos graves, and sentenced to six months of *arresto mayor* the payment of 100 Mexican pesos as damages to the heirs of the deceased, and to the costs of the trial.

From the evidence introduced at the trial it appears that late at night on February 4, 1903, the deceased, Benito Perez, Policarpo Guevara, and Felipe Bautista, were arrested in their respective houses by the defendants; that "Valentin Trono was a subinspector of the municipal police of the town of Hagonoy; that he was accompanied by two municipal policemen named Jose and Agustin; that the deceased and his companions were suspected of the theft of a revolver belonging to one Maximo Angeles; that when Benito Perez was arrested he was in good health, not suffering from any disease; that he and his companions, Guevara and Bautista, were taken by their captors to a place called Sapang-Angelo and there beaten and illtreated, and that while they were undergoing this ill treatment Benito was heard to beg Maximo to pardon him, uttering the following words: "Maximo, have pity on me or else kill me at once;" that the blows inflicted left Policarpo Guevara breathless for some time and caused Felipe Bautista to suffer pains in the region of the heart for about an hour; that Benito Perez was so severely ill treated that in order to reach the municipal building of the town, to which the prisoners were taken after the ill treatment was inflicted upon them, he was obliged to lean upon the policeman Jose for the whole distance; that he was unable to stand, and furthermore

complained of sharp pains in the abdomen; that when the prisoners were brought before the municipal president the following day they were discharged by him, as nothing was brought out against them in the investigation made concerning the theft of Maximo Angeles's revolver, which had led to their detention. Further, that Benito Perez, on account of the condition in which he had been left, was unable to return to his house alone, and that therefore a brother of his, named Estanislao, was obliged to take him from the municipal building to his home in a boat; that upon arrival at his home the deceased was obliged to go to bed, and his mother, Candelaria de los Santos, found his condition to be so serious that she immediately reported the facts to the justice of the peace of the town, denouncing the persons who had ill treated Benito as guilty of the crime of attempted homicide; that during the short time that the deceased was in bed he was unable to eat, urinated with great difficulty, and expelled with his urine drops of blood; that he complained of intense pains in the stomach and told his family that the pains were the result of blows inflicted upon him with a gun and other ill treatment received by him, and that his injuries would be the death of him. The deceased died on the morning of the day following—that is, February 6, 1903. At the time that Benito Perez and his companions were arrested each of the defendants was armed with a revolver and that Policemen Jose and Agustin were armed with guns.

The defense admits the fact of the arrest of Benito Perez and of Felipe Bautista and Policarpo Guevara by the defendants, but denies that they illtreated the said Benito. Nevertheless the proof for the prosecution upon this point is conclusive.

Felipe Bautista and Policarpo Guevara, who were with Benito Perez at the time of his arrest, after testifying that Perez was separated from them by their captors a distance of from 8 to 10 brazas at a place called Sapang-Angelo, they proceeded to testify that they heard blows inflicted on Benito and his groans and his supplications to Maximo to pardon him; both of them believed—for they were unable to see owing to the darkness of the night—that the blows were inflicted with a gun, owing to the fact Maximo Angeles took the gun which was carried by the policeman Agustin, who was standing beside the witness when he commenced to illtreat Benito.

The testimony of these witnesses has been corroborated by that of Pedro

Santos, who was sent, together with one Esperidion, by Benito's mother to follow the latter and observe what was being done to him. This witness says that while Benito and his captors were on the edge of the estero and he and his companion, Esperidion, on the opposite bank some 10 brazas away from the place where the others were, he heard them beating Benito with the butt of a gun, and heard the latter's groans and his supplications to Maximo and Valentin for pardon. They testified that they heard him say that if they would not pardon him they had better put him out of his misery at once.

It was not necessary that the witnesses should see the actual blows struck. It was sufficient that they heard them in order to be able to testify as to the fact that the blows were struck, more especially when the sound of the blows was followed by groans, showing suffering of the victim. The fact that the blows were struck with a gun or some other instrument is a circumstance of so accidental a character that it can not affect the reality of the facts in the case. Even if the blows had been struck with a club the result would be the same upon proof of the fact that the blows were struck and of the consequences thereof. But in the present case the witnesses had good reason for believing that the blows were struck with guns, for this was the weapon which Maximo used when striking and beating Benito. It is true that he might have struck him with the hand alone or with a revolver, which Maximo also carried on that occasion (it does not appear that he had any other weapon), but we believe that it can not be absolutely asserted that it is impossible to distinguish by the sense of hearing blows given with the hand or with a revolver from those caused by a gun, taking into consideration the larger dimension and weight of the latter weapon and consequently the greater force and increased sound which would be produced by the blows inflicted with such an implement.

In addition to what has been testified by the foregoing witnesses, there is material evidence of the battery of Benito Perex shown by the testimony of Felipe Bautista and Policarpo Guevara, who testified that, after hearing the blows given to the former, they saw him unable to stand and complaining of sharp pains in the abdomen and being compelled to walk leaning on the policeman Jose, in order to be able to reach the municipal building of the town.

Evidence is likewise found in the fact that different parts of his body, such as the neck, hands, ribs, arms, and abdomen were seen by the witnesses,

Estanislao Perez, Raymundo Perez, Juliana de los Santos, and Candelaria de los Santos, to be bruised and swollen.

The municipal president of Hagonoy, Jose It. Lopez, a witness on behalf of the defense, likewise must have observed something abnormal about Benito Perez when brought before him on the following morning, because he inquired of him, as testified by said president, whether he was ill, to which Benito replied that he was. The president testified that what moved him to make such inquiry was the fact that he noticed that Benito's face was pale; but according to Policarpo Guevara this was due to the fact that Benito was unable to remain on his feet in the presence of the president, in spite of the orders of the accused, Valentin, who told him to stand up. We give credit to the statement of the witness Guevara because it is not natural that the mere pallor on the face of a person who appears before an official accused of a crime should attract the latter's attention to the point of moving him to inquire whether he was ill or not.

The partiality of President Lopez in favor of the accused, Valentin Trono, is explained at once if it be taken into account that on being questioned during the trial what relationship he had with Valentin he replied that he refused to testify as to family secrets.

The very doctor, Andre's Icasiano, who examined Benito Perez, notwithstanding his manifest, clear, and evident tendency to favor the accused, was forced to certify that there appeared on the upper part of the left iliac region near the edge of the innominate bone two bruises caused by an instrument causing a contusion, one of the size of a half dollar and the other the size of a 20-cent piece.

The foregoing details show likewise the seriousness of the wounds of Benito Perez. They broke him down to such an extent that he was unable to again stand up from the moment he received the blows until the moment of his death. He was unable to reach the municipal building without the support of the policeman Jose, neither was he able to walk to his home, but was conveyed in a banca. His condition was so serious when he arrived at the latter place that his mother, Candelaria de los Santos, justly alarmed, went without loss of time to file an information before the justice of the peace against the authors of the crime for attempted homicide. The physician, Icasiano, who examined Benito by

order of the justice, called upon him twice on the same night with an interval of two hours only, which shows that he had fully realized the serious condition of his patient. The latter in the meantime was unable to take any food. He could only urinate a few drops of blood and felt continuous and sharp pains in the abdomen, which he attributed to the blows and ill treatment to which he had been subjected. He felt that he was dying; he so advised his family, and a few hours later the crisis came and he passed away. All this is proven by the combined testimony of the witnesses already mentioned, Candelaria and Juliana de los Santos, Estanislao and Raymunda Perez and Policarpo Guevara, and Felipe Bautista.

The defense contends that the death of Benito Perez was not due to the wounds inflicted, which were not serious, but to hepatic colic brought on by hypertrophic cirrhosis, from which the deceased had been suffering for a long time, basing such allegation on the certificate and testimony of the physician, Don Andres Icasiano, wherein such a statement is made.

We can not give any credit to the testimony of this physician because the facts which would serve as a foundation to his conclusion are manifestly inexact.

In the first place, in his certificate on folio 18 it is stated that the body of the deceased only showed two small bruises on the superior part of the left iliac region. The witness Esteban Perez testified that the deceased had bruises and swellings on the superior part of the left hand, on the neck, on the ribs, and on the abdomen; Raymunda Perez affirms having seen bruises on the abdomen on both sides, on the left arm, and on the left side of the neck; and Candelaria de los Santos likewise saw them on the upper part of the left hand and on the left side of the neck and on the ribs. In the second place, the physician affirms that the deceased devoted himself on the night of the occurrence to his customary libations. Nothing is shown in the case to corroborate this alleged habit, and especially nobody testified to having seen the deceased drunk on the night of the occurrence.

In the third place it is stated in said certificate of the physician that the deceased, *after the blows the effects whereof are being inquired into went on foot to the town from a distant barrio, and vice versa*. This is manifestly

untrue, because the proof in this case shows that from the place where the deceased was illtreated he was compelled to walk, being supported by a policeman until he reached the town, and in order to take him from the town to his home it was necessary to use a boat.

These last statements are so unjustified that the physician, Icasiano, when testifying, withdrew them during the trial. Why, then, did he set them forth in the certificate which appears on folio 18?

There is nothing in the case to show that the deceased had ever suffered from hypertrophic cirrhosis. The ailment which the deceased had at the time referred to by the physician, Icasiano, was cholera, according to the mother-of the deceased, Candelaria de los Santos, who testified, besides, referring to the time to which this case refers, that her son was of a robust constitution and suffered no ailments whatever.

There are, besides, the following facts to be taken into consideration: After the physician, Icasiano, had examined the deceased, and while the latter was still alive, he told Raymunda Perez that the deceased was suffering from *blows with a rifle*.

When the death had taken place, the family of the deceased repeatedly requested the physician, Icasiano, to examine the body, which the latter flatly refused to do, and warned them, on the other hand, to bury him quickly, under the pretext that he had died of cholera.

It likewise appears from the testimony of Raymunda Perez that said physician is an intimate friend of the accused, Maximo Angeles.

Expert testimony no doubt constitutes evidence worthy of meriting consideration, although not exclusive, on questions of a professional character. The courts of justice, however, are not bound to submit their findings necessarily to such testimony; they are free to weigh them, and they can give or refuse to give them any value as proof, or they can even counterbalance such evidence with the other elements of conviction which may have been adduced during the trial. In the present case there are to be found sufficient data which show in a conclusive manner the seriousness of the wounds inflicted upon

the deceased, which from the very first moment prevented him from keeping on his feet, and caused him continuous and sharp pains in the abdomen and retention of the urine—symptoms which constantly showed themselves until death came—which in the absence of satisfactory proof to the contrary may be attributed to these causes, which undoubtedly were sufficient in themselves to bring about the death of the deceased.

The guilt of the accused is fully established in this case. They arrested the deceased and took him out of his house. They took him to a place called Sapang-Angelo, and they likewise committed the act of which they are charged. Nevertheless their participation in the execution thereof was not equal. Maximo Angeles and Valentin Trono's participation was evidently direct and immediate, because they ill treated and assaulted the deceased, as appears from the testimony of Policarpo Guevara and Pedro Santos, as stated by the deceased himself to his mother (Candelaria de los Santos) and Juliana de los Santos.

With regard to Maximo Angeles, there likewise exists the testimony of Felipe Bautista, who says that this defendant illtreated and struck the deceased. Angeles and Trono are therefore to be considered as the authors by direct participation of the death of Benito Perez.

As to the other defendant, Timoteo Natividad, his cooperation was in the nature of protection and aid, for even if it is true that he accompanied his codefendants and was likewise present with them in the place where the crime was committed, it does not appear, nevertheless, that he took any direct part in the ill treatment of the deceased; and for this reason he should be considered only as an accomplice of the two first named.

There is to be taken into account the aggravating circumstance of committing the deed at night and abuse of superiority, which should be compensated with the mitigating circumstance of the defendants not having the intention of causing an evil so great as that which was actually produced, for an examination of the record fully convinces us that when the former illtreated and struck Benito Perez they did not have in mind the deliberate intent of depriving him of his life, but only that of forcing him by such means to return the revolver which they claimed had been stolen.

We therefore reverse the judgment appealed from and sentence the defendants Maximo Angeles and Valentin Trono to the penalty of fourteen years eight months and one day of *reclusion temporal*, and Timoteo Natividad to the penalty of eight years and one day of *prision mayor*, and all three to the payment of an indemnity consisting of 500 pesos, Philippine currency, to the heirs of the deceased, and to the payment of the costs in this instance.

Arellano, C.J., Torres, Cooper, McDonough, and Johnson, JJ., concur.

DISSENTING

WILLARD, J.:

Believing that the defendant Timoteo Natividad should be condemned as a coprincipal, I do not agree with the penalty imposed upon said defendant.