

**[ G.R. No. L-10583. December 28, 1956 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ADRIANO DE LA CRUZ ALIAS EDRING, ET AL., DEFENDANTS. ALEJO GALASINAO, ENRIQUE MIGUEL AND AGUSTIN RIVERA, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**MONTEMAYOR, J.:**

Defendants Alejo Galasinao, Enrique Miguel, and Agustin Rivera are appealing the decision of the Court of First Instance of Nueva Vizcaya, finding them guilty of murder for the violent deaths of Ceferino Talavera and, Benjamin Rumbaua, and sentencing each of them to suffer an indeterminate penalty of from fourteen (14) years and eight (8) months to twenty (20) years of *reclusion temporal*, with the accessories of the law, to indemnify jointly and severally the heirs of the deceased in the sum of P4,000, without subsidiary imprisonment in case of insolvency, for the killing of Talavera; and for the murder of Rumbaua, the same penalty and amount of indemnity.

As a sort of background, the following facts culled from the record may be stated. Sometime in May, 1951, a resident of Nueva Vizcaya, named Lucena, wrote to the Department of Justice reporting numerous violent deaths that had occurred in the province, including that of his son, and asking that the same be investigated. In this connection, on several occasions, the newspapers had reported the alleged existence of what was termed a murder syndicate, operating in Nueva Vizcaya, supposedly resulting in the mysterious death or disappearance of numerous individuals in said province. The letter was referred by the Department to the National Bureaus of Investigation (NBI), which in turn sent four of its agents, among them Vivencio Lazaro and Pedro Tandoc to Nueva Vizcaya. Beginning June, 1951, said agents made inquiries and conducted investigations, and interrogated about one hundred witnesses; and according to agent Lazaro, they were able to solve around eighteen cases of murder.

Among these cases allegedly solved were the deaths of Ceferino Talavera and Benjamin

Rumbaua. The NBI agents were able to obtain affidavits supposedly admitting participation or complicity in the killing of the two men, from the three defendants-appellants, as well as from Pedro Miguel, said to be the leader in the actual killings, and one from Cayetano Baria who supposedly witnessed the killings, though he did not agree to, much less participate, in the same. On the strength of these, affidavits, an information for murder of Ceferino Talavera and Benjamin Kumbaua was filed against Adriano de la Cruz alias Edring, former Deputy Governor of Nueva Vizcaya, Guillermo Domingo, Chief of Police of the town of Solano at the time of the killing, Pedro Miguel, and the three defendants-appellants herein.

Cayetano Baria was to be the star witness for the prosecution. For reasons unknown, and to the embarrassment of the prosecution at the trial, Baria turned hostile and declined to ratify the contents of his affidavit, wherein he admitted having witnessed the killing of the two victims and identified the killers. Under such circumstances, the Government had to rely upon the affidavits of the three defendants-appellants and used the same against them. For the reason that the two accused, Adriano de la Cruz and Guillermo Domingo, did not subscribe any affidavit admitting participation in the commission of the crime, and for lack of evidence, upon motion of the defense, after the Government had rested its case, the complaint was dismissed as to them. As regards defendant-appellant Pedro Miguel, he was still at large at the time of the trial, he, according to agent Lazaro, having succeeded in evading arrest after the preliminary investigation conducted by the Justice of the Peace, and at the instance of the fiscal, the case as against Pedro Miguel was provisionally dismissed.

According to the record of the case, in the morning of February 25, 1951, two residents of the barrio of Bintawan, Municipality of Solano, Nueva Vizcaya, went to the poblacion and reported to the Chief of Police the presence of two dead bodies in their barrio. The Chief of Police accompanied by several policemen and a photographer went to the place and found two corpses sprawled in a canal on the side of the road, in the *sitio* of Mongcol, barrio Bintawan, said corpses being positively identified as those of Ceferino Talavera and Benjamin Rumbaua, temporary policemen of Solano, Nueva Vizcaya. The two bodies were taken to the *poblacion* where Dr. Mendoza, president of the Sanitary Division, made the corresponding autopsies and issued a medical certificate for each of them. Because of the importance of the number and the position of the wounds, we are reproducing the pertinent portions of said certificate. For the body of Ceferino Talavera, the certificate reads thus:

“(a) GSW (inlet), behind the right ear and came out on the right cheek on the inner side of the nose.

(b) GSW (inlet) below right ear and came out in the mouth cutting the middle of the lower lip removing many teeth of the right side of the mandible.

(c) Three GSWs just below the right shoulder on the posterior part of the right deltoid muscle and came out of the right chest on the inner border of the middle of the sternum.

(d) Powder burns were detected on the shirt and inlet of all the GSWs.

(e) Death was instantaneous and was caused by shock, profuse bleeding and injury to vital organs as the lung.

(f) GSW caused by .45 caliber bullet.

(g) Rigor mortis has already set in.

(h) Death occurred between 7:00 o'clock p.m., February 24, 1951 and 11:00 o'clock p.m., February 24, 1951.

For the body of Benjamin Rumbaua, the certificate reads as follows:

“(a) GSW (inlet) 1 inch below the left shoulder and 3 inches from the outer border of the left deltoid muscle and came out at the inner end of the left clavicle.

(b) GSW (inlet) below and behind the left ear and came out on the right cheek below the right molar bone.

(c) GSW (inlet) left side of the base of the neck and came out right side of the trachea.

(d) GSW (inlet) a little above the GSW (C) and came out left side of the trachea.

(e) Powder burns were detected on the inlets of the GSW and on the shirt.

(f) Death was instantaneous and was caused by shock, profuse hemorrhage and

injury to vital organs as the lungs and spinal cord.

(g) GSWs were caused by .45 caliber bullet.

(h) Rigor mortis has already set in.

(i) Death occurred between 7:00 o'clock p.m., February 24, 1951 and 11:00 o'clock p. m., February 24, 1951.

The record further reveals that in the afternoon of February 24, 1951, Pedro Miguel, a sergeant, and several temporary policemen, among them the three appellants, were in Paitan, Solano, Nueva Vizcaya, guarding the threshing of palay. Pedro Miguel late in the afternoon ordered the temporary policemen under him, particularly the defendants-appellants herein, to accompany him to the *presidencia* because, according to a note he just received, Chief of Police Guillermo Domingo wanted to talk to them; and so the appellants and Pedro Miguel later in the evening found themselves in the *presidencia*, and were shown into the dispensary, also used as the office of the Puericulture Center. The Chief of Police then appeared and took Pedro Miguel aside to the balcony and conversed with him in private. Thereafter, Pedro Miguel, according to Galasinao's affidavit, returned to where the herein defendants were, approached him (Galasinao) and told him that as per instructions of the Chief of Police, they were going to liquidate temporary policemen Ceferino Talavera and Benjamin Rumbaua, and that he (Galasinao) was charged by the Chief of Police with the duty of doing away with Talavera. According to the affidavit of Enrique Miguel, after the conversation between the Chief of Police and Pedro Miguel, the latter informed them (appellants) that they were to ride in a jeep together with Talavera and Rumbaua whom they were to shoot to death somewhere in the barrio of Bintawan. The affidavit of Agustin Rivera, however, fails to show that affiant Agustin knew or was informed that they were going out to liquidate Rumbaua and Talavera, the affidavit merely saying that the Chief of Police instructed them to board the jeepney and go to the cabaret to fetch policeman Baria.

According to the affidavits, while the appellants were still at the *presidencia*, Rumbaua and Talavera arrived in a jeepney, Talavera at the wheel, and after that they all boarded the vehicle and proceeded to the cabaret where they picked up policeman Baria to accompany them. From the cabaret, the jeepney driven by Talavera proceeded toward barrio Bintawan, with Rumbaua seated by his side in the front seat. Directly behind Talavera sat Galasinao, and Pedro Miguel posted himself behind Rumbaua, but on the

way, Pedro Miguel and Galasinao changed places so that Pedro sat directly behind Talavera and Galasinao sat behind Rumbaua. When the jeepney reached the sitio of Mongcol, this about 7:30 in the evening, Pedro ordered Talavera to stop the jeep and switch off the lights. Talavera obeyed but asked why. Once the vehicle was at a complete stop and its lights were out, Pedro signalled Galasinao to do his part, and almost simultaneously, Pedro and Galasinao fired their Thompson automatic submachine guns, diagonally upward, that is to say, Pedro hit Rumbaua who sat to his right in the front seat, and Galasinao hit Talavera then at the wheel.

Judging from the number of wounds shown by the medical certificates, the two Thompson submachine guns must each have fired more than once. Being automatic, pressure on the trigger would produce a burst of fire or succession of shots, the firing to continue until the pressure on the trigger is removed. The position of the wounds on the left side of the head, neck, and shoulder of Rumbaua and on the right side of the head, neck and shoulder of Talavera support the theory that the two Thompson submachine guns were fired while held and aimed diagonally from behind the unsuspecting victims.

The record further shows that the jeepney used in the fatal ride was borrowed from its owner Petronila Santos late in the afternoon of February 24, 1951, her driver informing her that the Chief of Police of Solano was borrowing it. Petronila told the court that she readily lent her vehicle because she was afraid of the Chief of Police and his men, although she admitted that all she heard about the borrowing of her jeepney by the Chief of Police was mere hearsay, based on what her driver told her, because she was in the kitchen at the time and had no opportunity to see who was the person or persons who came to get the jeepney. But she said that her vehicle was not returned to her that night and she had to send for it at the *presidencia* the next morning. It was then that she found two round holes, each as big as a fifty centavo coin, in the canvass top, above the front seat, evidently produced by the slugs from the Thompson submachine guns.

At the trial, the three appellants repudiated the affidavits signed by them, claiming that the statements and admission contained therein were given involuntarily and under pressure and after they had been intimidated and maltreated by the agent of the NBL. However, these claims of maltreatment and intimidation were flatly denied by the Government agents, which denials were accepted by the trial court, specially since the said affidavits were signed in the presence of the Clerk of Court, Miguel Guevara, who before having affiants sign the same asked them if they understood the contents thereof, which were read and translated in the dialect, and if they were given freely and voluntarily, and only upon

receiving an affirmative answer did he allow them to sign said affidavits. No complaint about maltreatment or intimidation or use of force was made to Guevara, not even by appellant Galasinao, who is a relative of his wife.

To reinforce their claim of innocence, the defense introduced evidence calculated to show that the deceased Talavera and Kumbaua were killed by the Huks because on February 23, 1951, there had been an encounter between the Huks and the police of Solano; that a patrol was organized by the Constabulary under Capt. Magin San Juan to reinforce the Solano police; that when they arrived in the barrio, they found the Huks gone, but they also found two dead bodies evidently killed by the Huks near the Mactiangat river, and that these were supposed to be those of Ceferino Talavera and Benjamin Rumbaua. To counteract said evidence, the Government was able to introduce the police blotter of the town of Solano, Nueva Vizcaya, showing that the two bodies found, presumably killed by the Huks, were those of policemen Bernardo Biacad and Victoriano Sapon, and not those of Talavera and Rumbaua.

Moreover, those two dead bodies which according to the police blotter were those of policemen Biacad and Sapon, were found on February 23, in the barrio of Madiangat, and could not possibly be the bodies of Talavera and Rumbaua, who were killed in the barrioo of Bintawan on February 24, in the evening, not only according to the statements of the appellants in their affidavits, but also according to the medical certificates issued by Dr. Mendoza, who examined the said bodies of Talavera and Rumbaua in the morning of February 25, to the effect that the two policemen died the night before, between 7:00 and 11:00 p.m. Furthermore, judging from the wounds found on the bodies of Talavera and Rumbaua, said wounds could not have been inflicted by the Huks in an encounter with Government forces because, as may be seen from the medical certificates, the wounds of Talavera were all on the right side of the head, neck, and shoulder, the bullets taking a trajectory upward, while the wounds of Rumbaua were all on the left side of the head, neck, and shoulder, the bullets taking the same upward direction; and what is more, powder burns were found on the clothings and inlets of the wounds, showing that the shots were fired at a very close range. All this points to the shooting done within the jeepney by Galasinao and Pedro Miguel as already described.

With respect to appellant Galasinao, we agree with the trial court that his guilt has been established beyond reasonable doubt. According to his affidavit, he not only knew of the plan to kill and the role he was going to play, namely, to shoot Talavera, which role he apparently accepted, but he actually shot and killed Talavera. As regards Enrique Miguel,

while some of the members of the Court are inclined to hold him responsible only as an accomplice because of the relatively minor part taken by him, the majority of the members voted, though reluctantly, to hold him liable as a principal because he knew before boarding the jeep at the *presidencia* that evening that they were going to kill the two victims and he offered no objection to the plan, but even joined his companions in the jeepney and was present at the actual killings. However, the members of the Court believe that he is not nearly as guilty as Galasinao and is deserving of Executive clemency or pardon after serving a substantial portion of his prison sentence. Finally, with respect to Agustin Rivera, the Tribunal is unanimous in holding that contrary to the recommendation of the Solicitor General that he be held liable as an accessory after the fact, he should be acquitted. According to his affidavit—the only evidence against him—he played not even second fiddle in the gruesome drama with such a tragic ending. He was merely ordered to board the jeepney, not knowing, not even suspecting the reason or purpose of the ride. He did not take part in the killing, neither did he profit by it, nor try to conceal the same from the authorities. It is true that he helped his companions in removing the two dead bodies from the jeepney and throwing them into the ditch, but there was no attempt to bury or hide said bodies, not even cover them with grass or bushes. In fact, the evident design and plan of the culprits as unfolded during the trial, was not to hide the bodies, but to just leave them on the roadside so as to make it appear that those two, policemen were killed by Huks in an encounter with the Government forces.

As to the crime committed and the penalty to be imposed, the trial court correctly found the crime to be that of murder, of each of the victims, the killing being qualified by treachery. The lower court, however, erred in imposing the corresponding penalty. Murder is penalized with *reclusion temporal* in its maximum period to death. No mitigating circumstance was found. Consequently, the penalty should have been imposed at least in its medium degree which is life imprisonment. Now, with respect to other aggravating circumstances, we have that of night time which evidently was purposely sought as part of the scheme to do away with the two victims. We can also consider the aggravating circumstance of superior strength, but these circumstances may well be regarded as included in and absorbed by the circumstance of treachery. Then, there is the aggravating circumstance of use of motor vehicle. It is true that the two victims were not forcibly carried in the jeepney to be killed at a spot outside the *poblacion* and that said two victims voluntarily rode in said motor vehicle, one of them even driving it. But the effect is the same; Talavera and Rumbaua, in all innocence and ingenuousness, wholly ignoring the fate that awaited them, were lured and taken to the scene of the killing by means of a motor

vehicle. Strictly, the presence of this aggravating circumstance would call for and indicate the imposition of the penalty in its maximum degree, namely, death. However, in the absence of the votes necessary to impose the extreme penalty, the punishment will have to be that of life imprisonment for each of the two deaths. The amount of the indemnity fixed by the trial court will also be increased from P4,000 to P6,000.

In view of the foregoing, with the exception of the acquittal of appellant Agustin Rivera, and with the modification of the penalty and indemnity, the appealed decision is affirmed, with costs.

*Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.*

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