

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DELFIN CRUZ (ALIAS LUCIANO NAPONE, ALIAS MANOC),
DEFENDANT AND APPELLANT.**

G.R. No. L-860. April 29, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

Found guilty of homicide, appellant was sentenced to suffer 17 years and 4 months of reclusion temporal, to indemnify the heirs of Margarito Moreno in the sum of P2,000, with subsidiary imprisonment in case of insolvency, and to pay the costs. For his escape from prison he was not granted the benefits of the Law on Indeterminate Sentence.

The witnesses for the prosecution testified as follows:

Quirino Basco: That on August 29, 1945, he saw appellant fire twice with a .45 caliber revolver at Margarito Moreno, in front of the Malayan Grill, Pasay, Rizal. It happened in the afternoon. The distance between appellant and the deceased was about ten meters. After firing, appellant went away in a jeep.

Romulo Gorospe: That as a detective he made an investigation about the death of Margarito Moreno. Appellant admitted that he was the one who shot Margarito Moreno. The admission was made in document Exhibit A, fingerprinted by appellant. Witness saw the .45 caliber automatic pistol which the MPs took from the appellant. Appellant cannot speak nor read English, but the questions and answers in Exhibit A were translated to him.

Mariano B. Lara, Chief, Medical Examiner, Manila Police Department, identified Exhibit B as the carbon copy of the report on the autopsy made on the dead body of Margarito Moreno. The wounds described in Exhibit B, were deadly.

Faustino Gonzaga: That about 4:30 in the afternoon of August 30, 1945, he saw the deceased outside the Malayan Grill. He was shot by appellant. The witness was five meters away. Moreno was hit and "he was already dead when I saw him." After shooting, appellant boarded a jeep. The witness did not notice any conversation between appellant and the deceased. The witness was working at the Malayan Grill and he went out because "I heard talks that there were killing outside." Witness heard a shot and he saw appellant with a revolver.

In Exhibit A, appears the following statement of appellant: "We stayed there for about twenty minutes, waiting for Fely, a girl friend of Wily. Edy did not go out of the jeep during all this time. When Fely did not arrive we went back to our jeep then moved out. Near the corner of the street from the grill to M. de los Santos street, there were some men and one of them stood at the middle of the road and was nearly hit by the jeep. Edy who was then at the wheel driving stopped the car and both the GIs alighted and Wily was boxed by this Filipino. At this time three men from the group went near the two GIs and the Filipino and pacified them. After this we went on our way and upon reaching the corner of Cementina we turned back. And upon seeing the same Filipino that boxed Wily I went out of the jeep with gun in my hand, I fired at him. I missed in the first shot. He tried to run and I fired a shot

again. After firing the two Americans came near me and took me to the jeep and we proceeded to Taft Avenue. We went back because of the eye glasses of Wily that was dropped when he was boxed by the Filipino. I did not intend to kill him, but when we parked the jeep to look for the glasses that was dropped, I saw him coming and I fired at him. As he came forward, I was doubting he would again assault Wily or any of us so that I shot him."

No evidence has been presented by appellant.

We are convinced that the evidence of the prosecution has proved conclusively appellant's guilt, as the one who killed Margarito Moreno, and his crime is punishable as homicide under the Revised Penal Code. His appeal is without merit. There are some details in the testimonies of the witnesses for the prosecution which make said testimonies not completely satisfactory, but the admission made by appellant himself in Exhibit A, considered jointly with said testimonies, is enough to convict appellant, especially because no evidence has been presented by the defense to impugn or belie the theory of the prosecution.

Being in accordance with the facts proved and the applicable provisions of law, the amended decision of the lower court is affirmed with costs.

Paras, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

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