

[WITH RESOLUTION OF SEPTEMBER 30, 1960]*G.R. No. L-13966. June 30, 1960*

Ponente: LABRADOR, J.

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Appeal from a judgment of the Court of First Instance of Iloilo, Hon. Jose R. Querubin, presiding, finding Alberto Dacudao, defendant-appellant, guilty of the crime of murder and sentencing him to reclusion perpetua, to pay the heirs of the deceased Angel Sobrepeña the sum of P6,000.00 and to pay the costs.

The record discloses the following facts: In the evening of December 2, 1957 Angel Sobrepeña attended the dance at a dance hall in Sta. Barbara, Iloilo. The defendant-appellant was also present at the dance hall. He carried with him to the dance hall a garand rifle, with which he was provided as a soldier of the Constabulary. Sometime before nine o'clock that evening Sobrepena was seen dancing. About that time Dacudao had sat down on a desk near the orchestra (7-Up-Tombo), his rifle in his hands. After Sobrepeña had finished dancing and while he was in the hall, the gun that Dacudao was holding exploded or fired, hitting Sobrepeña in the chest, as a result of which he fell down on the floor of the hall dead.

The witnesses for the prosecution testified that Dacudao was seen passing, not through the gate, but through an opening in the fence surrounding the dance hall; that before ten in the evening, Sobrepeña was seen dancing with a partner, while Dacudao was seated in a table near the orchestra; that when the dance was over, Sobrepeña brought his partner to a seat and thereafter proceeded to the gate of the dance hall, holding and tapping his cigarette; that while in that position Dacudao approached him from behind and then called Sobrepeña by his name Procoy. Sobrepeña, thereupon, turned around smiling, but just as he did so Dacudao fired his rifle at Sobrepeña, hitting him in the chest; that one Constabulary soldier tried to wrest the gun from Dacudao but the latter shoved him aside and went away.

The Municipal Health Officer of Sta. Barbara examined the cadaver the following day and made the following post-mortem findings:

" * * * * *

5. Evidence of bullet hole in the Camiseta, blood stained, tho no evidence of powder barns.

6. Entrance gunshot wound, 8½ cm. away from the mid eternal line left chest at the level of the 5th interspace, 2 cms. below and 2½ cms. inside the nipple.

7. There is presence of contusion colar at the lateral half of the margin or lips of the wound. Wound diameter 1 cm.

8. Exit, gunshot wound 2½ cms. X 3 cms. right chest, level of the fifth rib in the mid auxiliary line 13 cms. below the right axila. Distance of wound from mid sternal line to exit of wound is 20 cms.

9. That and thru gunshot wound antero-proximal third right arm traversing anterior to the right humerus with exit at the postero-lateral side 1 cm. below the level of wound of the opposite side. Wound measurement;

antero proximal third is 3 cms. x 2 cms. whereas postero lateral is 5 cms. X 2½ cms. Greater measurement follows axis of the body.

10. Thoracic cavity filled with dark fluid blood, with coagulated blood about the size of 3 closed fists were extracted.

11. Pericardium was perforated at the base with grazing wound at the dependent portion of the right ventricle.

12. Diaphragm perforated.

13. Liver right lobe ruptured."

A last witness for the prosecution is the Chief of Police of New Lucene, Iloilo, who testified that on December 3, 1957, Dacudao presented himself at his office at 9:30 a.m. and told him he was surrendering in connection with the killing of Procoy in Sta. Barbara, explaining that he did so because a few months before Procoy (Sobrepeña) had mauled him at the same place in Sta. Barbara as a result of which his arm was broken (at the same time showing his fractured and broken hand). The Chief said that Dacudao had arrived at his office earlier, and had put his rifle on a rack.

Defendant-appellant describes that the killing had happened thus:

"A—While I was sitting at the desk I held my rifle pointing upwards, my right hand holding it at the balance and then my left hand holding my rifle at the upper handguard. After the orchestra has played a piece and the dancers were through dancing, I tried to look around if I knew somebody inside the dance hall. Suddenly somebody grabbed my rifle and I was caught by surprise. Because of the suddenness of the grabbing of my rifle my left hand holding the upper handguard slipped to the barrel and my right hand slipped also to the small of stock of my rifle of the trigger. And because of the suddenness of the grabbing of my rifle at the barrel, I unconsciously squeezed the trigger. So that recovering my poise, I had to pull my rifle back and at the same time I heard him say that 'so you are still alive'. At the same time when my rifle was grabbed, and I was taken along with my rifle and because of the suddenness I automatically released the safety lock of my rifle and as I pulled back my rifle that was when I squeezed the trigger and he fell."

One of the witnesses for the defense, the one who was detailed to guard at the dance hall testified for the prosecution. All that he declared is that as he heard the shot he went to find where it came from and found there at Sobrepeña sprawled. Another witness testified that Sobrepeña and Dacudao were struggling for the possession of the rifle. The third testified that he saw Sobrepeña approaching Dacudao, trying to grab the gun from the latter, and that as the gun was pulled, it fired and the person grabbing it fell and died.

The story given by the defendant-appellant is hard to believe, especially that which explains how the safety locked happened to be released and the trigger pulled and the gun fired. The deceased could not have had the rash imprudence of approaching an armed man just to grab the latter's gun. That given by the witnesses for the prosecution appears to be more in accord with the ordinary conduct of men. But the post-mortem findings corroborate completely this theory, and conclusively prove the falsity of the theory of the defense. In the first place, the lack of powder traces on the undershirt around the hole caused by the bullet prove that appellant and victim were not close to each other when the shot was fired. In the second place, the direction of the wound on the chest of the victim, that is from the left to the right side, proves that appellant and victim could not have been face to face, struggling for the possession of the rifle, as claimed by appellant. Lastly, nothing was shown to prove that the eye-witness who testified for the prosecution did not testify truthfully either because they were partial to the deceased and were enemies of the appellant. On the other hand, the witnesses for appellant were fellow soldiers whose esprit de corps must have induced them to protect their colleagues, the appellant, and save him at any cost even to the extent of falsifying the truth.

The lower court found that the crime was committed with the aggravating circumstances of evident premeditation and treachery, offset by the mitigating circumstance of voluntary surrender. There is no doubt in our mind that treachery attended the commission of the offense because the appellant shot the deceased after calling the latter by name and as the latter was turning towards the accused, unprepared to defend himself against the sudden attack of the appellant. This aggravating circumstance qualifies the crime. We do not believe, however, as the trial court does, that evident premeditation was present and attended the shooting. There is no evidence to show that the appellant had known that his victim was going to the dance hall in the evening in question; neither was there any other evidence to prove this aggravating circumstance. The Solicitor General also believed that the aggravating circumstance of evident premeditation is not sufficiently proved. On the other hand, the mitigating circumstance of voluntary surrender is admitted by both sides. Under the circumstances, the crime is that of murder qualified by the aggravating circumstance of treachery and the mitigating circumstance of voluntary surrender. The penalty prescribed for the offense must therefore be imposed in its medium degree, i.e., reclusion perpetua.

Wherefore, the judgment appealed from should be, as it hereby is, affirmed. With costs.

Bengzon, Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur. Padilla, J., took no part.

RESOLUTION

September 30, 1960

LABRADOR, J.:

On motion of defendant-appellant, which we find well- founded, the dispositive part of the decision in this case is hereby modified to read as follows:

"The lower court found that the crime was committed with the aggravating circumstances of evident premeditation and treachery, offset by the mitigating circumstances of voluntary surrender. There is no doubt in our mind that treachery attended the commission of the offense because the appellant shot the deceased after calling the latter by name and as the latter was turning towards the accused, unprepared to defend himself against the sudden attack of the appellant. This aggravating circumstance qualifies the crime. We do not believe, however, as the trial court does, that evident premeditation was present and attended the shooting. There is no evidence to show that appellant had known that his victim was going to the dance hall in the evening in question; neither was there any other evidence to prove this aggravating circumstance. The Solicitor General also believes that the aggravating circumstance of evident premeditation is not sufficiently proved. On the other hand, the mitigating circumstance of voluntary surrender is admitted by both sides. Under the circumstances, the crime is that of murder qualified by the aggravating circumstance of treachery and the mitigating circumstance of voluntary surrender. The penalty prescribed for the offense must therefore be imposed in its minimum degree.

Wherefore, the judgment appealed from should be, as it hereby is, modified, and the imprisonment reduced to an indeterminate sentence which shall not be less than twelve years of prision mayor nor more than 17 years, 4 months and 1 day of reclusion temporal. With costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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