

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE MINDA @ PEPE, DEFENDANT -APPELLANT.*G.R. No. L-4214. March 27, 1952*

Ponente: BAUTISTA ANGELO, J.

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Accused and convicted of murder in the Court of First Instance of Samar, Jose Minda, alias Pepe, was sentenced to suffer reclusion perpetua, with civil interdiction for life and perpetual absolute disqualification, to indemnify the heirs of the deceased in the sum of P3,000, and to pay the costs.

In the evening of July 1, 1950, a party was held in the house of Santiago Balasbas, situated in barrio Estaca, island of Buri, municipality of Catbalogan, Samar, on the occasion of the fiesta of said barrio. The music was supplied by a string band and an orchestra which played alternately in the balcony of the house. The dance was held in the house as well as in the yard fronting thereof. Among the invited guests was Hipolito Gruta. About 11:00 o'clock that night, Gruta danced the curracha, a native dance, in the yard, and his dancing over, he went to the stairs to ask Lopez Balasbas if he could also dance upstairs. As Balasbas told him to ask other people in the house about it, Gruta approached one nicknamed Wood, who was then in the balcony and about a meter away from Jose Minda, both members of the orchestra. After a short conversation he had with Wood, Gruta left and as he was going down the stairs, Jose Minda drew his .45 caliber automatic pistol, pushed Hipolito with his left hand and in a split second fired at him. Upon seeing that her brother was shot, Victoria ran towards him and helped him walk to the house of a cousin twenty meters away. Not long thereafter, policeman Constancio Culapo, who was informed of the incident, arrived, and seeing that Gruta was seriously wounded, advised Victoria to take him to Catbalogan for treatment. Heeding the advice, Gruta was taken to a motorboat which left for Catbalogan that same evening. During the trip, the policeman asked Gruta if he wanted to make a statement, and having agreed to do so, the policeman began asking questions. The policeman took down his declarations in writing and later placed his thumbmark thereon because he was already too weak to sign. Among other things, Gruta stated that he was shot by Jose Minda without any misunderstanding between them. Gruta died before reaching his destination. His body was taken to the municipal building of Catbalogan where an autopsy was conducted by the president of the 7th Sanitary Division of Samar. According to the autopsy, death was caused by internal and external hemorrhage due to a gun shot wound.

Jose Minda invokes self-defense in his favor. He tried to establish that while the orchestra was playing in the night in question, Hipolito Gruta approached one Bonifacio Solayao, a member of the orchestra, and asked to stop the music. The orchestra then was supposedly playing for the residents of barrio Silanga, and as many from this barrio were not able to dance Gruta, a resident of Silanga, insisted on his request, but Solayao told him to wait until the music is over. Thereupon Gruta suddenly grabbed Solayao by the collar of his shirt challenging him to a fight. Solayao did not accept the challenge, but Jose Minda who was near, told Gruta not to interfere. Molested by this remark, Gruta boxed Minda in the face. Minda fell to the ground but stood up immediately and retaliated by boxing Gruta, who moved two or three steps backward. At this juncture Gruta pulled out a dagger which he had

under his shirt and tried to hit Minda with it, but the latter drew his .45 caliber pistol, cocked it, and fired at Gruta who, after being hit ran away.

The versions given by the prosecution and the defense as regards the happening which culminated in the death of the deceased coincide in many material points, the only substantial difference between the two being the claim that the deceased was armed with a dagger and tried to make use of it on the accused before the latter fired the fatal shot, which fact the defense has stressed in an effort to show that the accused acted in self-defence.

But there are meritorious circumstances appearing in the record which make this claim of self-defence unworthy of credence. One is the failure of the defense to present as evidence the dagger or knife which the deceased has allegedly wielded at the moment of the aggression notwithstanding the opportunity it had to do so. If the deceased really made use of a knife or a dagger he must have dropped it at the moment he was seriously wounded. After he was shot he became so weak that he would have fallen to the ground were it not for the timely succor extended to him by her sister Victoria who all the time assisted him until he expired. If he dropped the alleged knife or dagger on the floor where dancing was going on it could have easily been picked up by the accused or by any other bystander. It could not have been kept by the deceased to throw it later to a far place just to disprove that he was the supposed aggressor. His critical condition then forbade such a supposition.

Next is the intrinsic inverisimilitude of the theory of the defense. If it is true that the deceased boxed the accused in the face and the latter fell to the ground, and after retaliating by boxing the deceased the latter moved two or three steps backward, pulled out a dagger, and in a split second swung it at the accused, the latter could not have drawn his .45 caliber pistol, cocked it, and fired it at his assailant without having been hit or without mediating any personal handling between the two. It should be noted that the weapon carried by the accused was not a revolver which could be fired automatically, but a pistol which need to be cocked before it is fired. The suddenness of the alleged aggression would have prevented the accused from making use of his pistol even if he had the intention of using it. But the accused was not wounded in any way, nor has he received any scratch as a result of the incident.

Another circumstance which makes the attitude of the accused suspicious is his failure to report the matter to the local authorities immediately after the firing. A man who had been assailed and made use of his weapon in self-defence would have no compunction nor fear to bring the matter to the authorities because his conscience is clear and he has nothing to hide. But when after the incident, far from taking this step, he wields his pistol in a menacing attitude to scare away the companions of the deceased and later disappears and is only apprehended three days after the occurrence, the only logical conclusion that may be drawn is that the accused is the aggressor and killed his victim in the manner shown by the prosecution.

In our opinion, the testimony of the prosecution witnesses Victoria Gruta, Lopez Balasbas and Hermogenes Perez, all eyewitnesses, deserves credence, since nothing has been shown that they have testified out of spite or because of some ill feeling or resentment. They testified because they were present in the dance and witnessed the tragic occurrence. Their testimony is further reinforced by the dying declaration taken from the deceased by policeman Constancio Culapo moments before he expired. This declaration has all the earmarks of a dying declaration because it was taken at a moment when the deceased was in a very critical condition and was conscious that his end was coming. Policeman Culapo is a disinterested witness whose intervention in the case was prompted by no other consideration than his desire to fulfil his duty.

The failure on the part of the prosecution to establish the motive of the crime is of no moment. This is not essential if the killing has been proven and the identity of the killer is not at issue (*People v. Buyco*, SC-G.R. No. L-539, Jan. 28, 1948; *People v. Edwin Delgado*, SC-G.R. No. L-302, Aug. 7, 1946). But in the present case there

is enough evidence which indicates that the firing was preceded by an unpleasant verbal encounter between the deceased and a brother of the accused, nicknamed Wood, relative to the dance that was then going on, which uncalled for meddling turned out to be the immediate cause of the aggression which resulted in the death of the deceased.

The offense committed is murder, qualified by treachery. There being no modifying circumstance that may be considered against the accused, the proper penalty should be imposed in the medium degree, or reclusion perpetua.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellant.

Paras, C.J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

Feria, J., took no part.

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