

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GABRIEL GASPAR, DEFENDANT AND APPELLANT.

G.R. No. L-2798. May 19, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija finding the defendant guilty of homicide and sentencing him to an indeterminate penalty of from eight years and one day of prision mayor to 14 years, eight months and one day of reclusion temporal, to indemnify the offended party in the sum of P2,000 and to pay the costs.

Mrs. Concepcion Esteban, a public school teacher in Carranglan, Nueva Ecija, eight months pregnant, was killed by a bullet fired from a Thompson sub-machine gun being held by the appellant. The deceased was in the school toilet for girls, a small outhouse, while the accused, a municipal policeman, was on the lower rungs or at the foot of the stairs of the municipal building where he was on detail as guard.

The question for decision is whether the gun went off accidentally, as the defendant pretends, or whether the now deceased was killed deliberately, as the prosecution contends. The motive? The government introduced evidence to show that the accused was tied and beaten up by a brother of the deceased's husband during the Japanese occupation; that on July 26, 1946, ten days before Mrs. Esteban was slain, Mr. and Mrs. Esteban and the defendant had a quarrel in which nasty words and name-callings were uttered on both sides, and that the accused threatened Esteban and his wife that their time was coming.

On the main question, Mariano Vergara testified that on August 4, 1946, at about 6:30 a.m., as he was walking past the municipal building to the house of Deoscortes Esteban, which was not far from the municipal building, he saw the accused on a "platform" or "porch of the stairs of the municipal building," holding a gun pointed towards the school closet for girls, and fire three closely successive shots and a fourth less than half a minute later; that after the shots, he heard cries coming from the school toilet; that he proceeded to the toilet and found Concepcion de Esteban lying on the ground dead in front of it; that there was nothing between the municipal building and the toilet except two strands of barbed wire and small posts which held the wire planted about six meters apart; that from the point where the deceased lay dead he rushed to call Deoscortes Esteban, who lived about 40 meters away, and met the latter coming down the stairs of his house. On cross-examination, the witness declared that he was on his way to see Deoscortes Esteban when the defendant shot Mrs. Esteban, because he wanted to ship a carabao on Esteban's truck to San Jose.

Leonor Paderes testified that he was the principal of the Carranglan Elementary School; that his house was situated across the street from the municipal building; that about 6:30 a.m. on August 14, 1946, as he was getting up from bed to hear mass, it being Sunday, he heard three loud gun-shots followed after a pause by another shot; that he was alarmed and hastened to the municipal building; that upon arriving in front of that building, he saw patrolman Gabriel Caspar holding a Thompson gun and seated on the fourth step of the stairs; that as he was

starting to approach Gaspar he heard cries from the direction of the school toilet for girls and rushed to that place; that he found the dead body of Concepcion Esteban in front of the shack, two or three meters from it; that later Adriano Vergara and many other people arrived; that having found nobody whom he could send to inform the chief of police, he himself looked for the latter but did not find him; that this time he saw Gaspar inside the office of the chief of police and asked him who shot the deceased; that the accused admitted that he did. On cross-examination, Paderes testified that he was married to Deoscortes Esteban's sister; that he met Gabriel Gaspar inside the treasurer's office alone; that he saw holes in the walls of the toilet, the number of which he could not tell; that Deoscortes Esteban also came but his brother-in-law was so much affected by his wife's death that he could not say anything; that he could not tell the number of people who came but there were many; that neither the sergeant, of police nor the chief of police was around.

Deoscortes Esteban testified that his wife was on the family way for eight months; that Adriano Vergara came to his house and told him that his wife had been shot. He said that during the Japanese occupation his brother, Conrado, a guerrilla, apprehended, tied and beat Gaspar because his brother had learned that the defendant had been collecting money from the people of Carranglan; that he saw his brother take Gabriel from the cockpit, bring him behind the said cockpit, order him to kneel down and raise his hands, and beat him; that three months after the liberation of Carranglan, Gaspar accosted witness' other brother, Cecilio, and asked Cecilio to explain why Conrado had tied him up; that he walked up to Gaspar and Cecilio while they were wrangling and asked them what was the matter; that as Gabriel was alone he dared not do anything beyond saying that "your days are coming;" that on July 26, 1946, the accused rode on witness' truck from Carranglan to San Jose and back; that upon arriving at Carranglan the accused refused to pay his fare, saying that it was an insult to require him to do so because he was a municipal policeman; that when witness was insisting that the defendant should pay, his wife arrived and told the accused that his being a policeman did not give him the right to ride gratis on their bus, and the accused paid. On cross-examination, he said that Adriano Vergara came from the same town as he and was his acquaintance.

Gregorio S. de Leon, sanitary inspector, testified that he examined Concepcion Esteban's body; that the deceased had one bullet wound that ran from the right nipple through to the left side of the back.

For the defense, Rodrigo Sotelo testified as the first witness. He said that on August 4, 1946, he was sergeant of police in Carranglan; that at about 6 o'clock in the morning, as he was opening his store situated about 40 meters from the municipal building, he heard the report of a gun; that he shouted to Gabriel Gaspar who was the guard, and asked him what was the matter; that Gabriel answered, "Brother, come now because my hand was accidentally hit by my Thompson;" that he ran to the municipal building, found defendant's finger bleeding, and returned to his store to get a piece of cloth to bandage the wound; that he asked Gabriel what happened and Gabriel answered that he had been accidentally wounded by his own gun; that soon as he had bandaged Gaspar's finger, he returned to his store and heard a noise; that he looked out and saw Gaspar running towards the chief of police's house; that he followed Gaspar and the latter and he met the chief of police; that they came back to the municipal building with the chief of police.

Gregorio S. de Leon testified that he found one bullet wound in a finger of the accused and a slightly broken bone; that he issued a certificate upon the request of the interested party, Gabriel Gaspar. On the same day at 9 a.m., Gaspar came for treatment. He said that 'Gabriel Gaspar had come to him and told him that he was wounded.

Epifanio Mendoza testified that on August 4, 1946, he was a member of the police force of Carranglan; that at 6:30 in the morning, he met Adriano Vergara and he and Vergara started out together from Vergara's house in barrio Bantog, Carranglan, about one kilometer distant from the municipal building; that he was to relieve Gaspar as guard at 7 o'clock that morning; that upon arrival at the municipal building he saw Gaspar with a wound in one

of his left fingers; that the chief of police informed him that Gaspar's finger had been accidentally shot.

Alfonso Mariano, chief of police, testified that on August 4, 1946, an accident happened to one of his policemen; that he talked with the accused when he met the latter in the street; that when they met the first thing the accused told him was, "Nadesgracia ako" (I met with an accident) and Gaspar showed him his index finger with bandage stained with blood. Gaspar, he said, explained to him that he was wounded when his gun went off accidentally. He then took Gaspar back to the municipal building and saw in front of it a crowd and "a group of people weeping." He said that in the municipal building he found three empty cartridges; that he asked the deceased's husband what happened and Esteban answered he did not know. On cross-examination, Mariano testified that beyond saying that he had met with an accident and showing him his finger, the accused did not tell him anything. At that time the accused did not tell him that "he shot somebody,," He took the accused back to the municipal building after they met in the street because he heard that somebody had been shot and he was wondering who shot the woman. According to him, the accused surrendered to him "as the one injured," giving the impression that he had not committed any crime. He put the defendant nevertheless under custody because it occurred to him the accused might be the one who shot the woman although the accused did not tell him so. On further cross-examination, he said that he asked the accused if he shot the woman and the accused said he did not and did not know who did.

Gabriel Gaspar, the accused, gave the following account of the tragedy: On August 4, 1946, he was on duty as guard in the municipal building. While he was holding his Thompson "my elbow slipped on my thigh and upon slipping in order to avoid the Thompson sub-machine -gun to fall down, I tried to grab it with my left hand and my right arm was accidentally put in the trigger and the gun went off hitting my index finger on the left hand." After I have committed the accident, I heard someone calling and upon looking at him I saw my sergeant," Rodrigo Sotelo, Sotelo then returned to his store and got a bandage for defendant's wound. After Sotelo had put the bandage around defendant's index finger, he left. Defendant met the chief of police on the way and told his chief that he had met with an accident. Defendant came back with the chief of police to the municipal building, 50 yards from which "there was a commotion." They went, he said, to see what it was about and "according to them somebody was shot accidentally." He declared that he had not had any quarrel with Deoscortes Esteban or his wife about bus fare. "I do not know of any discussion with him," he continued. He denied having seen or met Adriano Vergara inside the municipal jail of Carranglan. He said he was on good terms with the Esteban family before August 4. He said he had been handling the sub-machine gun for two months and knew its mechanism. He said his assignment as guard started at 7 o'clock in the morning of August 3 and was to last until 7 o'clock the following morning. From the time his gun was fired until Sergeant Sotelo put a bandage around his left finger, about twenty minutes elapsed. As soon as the sergeant of police left, he started to go to the house of the chief of police. Before he started, he did not see anything. He did not see people near the school closet. He wanted to tell the chief of police that his index finger had been wounded. There was no guard to relieve him. Even after he and the chief of police returned to the municipal building, he did not learn immediately that somebody had been killed. Notwithstanding there was a commotion he did not attempt to see what it was about. It was the chief of police who went to the place and he did not go with the latter. It was only when the chief of police took his affidavit that he learned somebody, Mrs. Esteban, had been hit; that was about 7 o'clock, less than one hour from the time his gun went off.

His Honor Judge Nable, referring to Adriano Vergara's testimony said that this witness "is clear and definite in his description of what happened," adding that, although uncorroborated, "his narration (is) coherent and the statements were given in unvacillating manner." For contrast, the trial Judge made light of the theory of accident. He said, "The expert on firearm introduced as a witness said that a Thompson sub-machine gun once locked, would not fire. The accused was on duty during the whole night. If the happening took place during nighttime, it

might be believable that the accused would have his gun unlocked, prepared for any emergency, but it happened when it was already light, 6:30 in the morning, according to the prosecution, or 6:00 in the morning, according to the defense, in the month of August when the sun rises early, which made unnecessary the unlocking of the Thompson sub-machine gun."

There is no reason to set aside the trial court's opinion of Vergara's credibility. Other than that Vergara was a native of the same town in Cavite as the complaining witness, and was Esteban's acquaintance, there is no circumstance by which his veracity can be questioned seriously. The testimony of Epifanio Mendoza, defendant's fellow policeman, that he and Vergara came to town together from the latter's barrio one kilometer away, insinuating that Vergara was not in the vicinity of the place where Mrs. Esteban was killed, was denied by Vergara's evidence and was given slight attention by the trial Judge who had seen both witnesses at close range. And the delay of over one month before Vergara made a detailed and sworn declaration regarding the killing v/as explained by the fact that it was only in September when the grieving husband had sufficiently recovered from his tragedy and preoccupations and was in a mood to concentrate on the prosecution of his wife's killer. After all, a complaint had been filed by the chief of police as early as August 4, and although it was for homicide through reckless imprudence only, there is no showing that Esteban was aware that Gaspar was not charged with the proper and graver offense.

The defendant's version of the occurrence is not persuasive and his conduct following Mrs. Esteban's death does not square with the hypothesis of innocence. Leaving aside the question of the gun being unlocked, which the trial court doubted, the defendant's description of how the gun slipped from his hand was rather awkward. That he grabbed the muzzle of his Thompson with his left hand and his forearm touched the trigger in trying to stop the gun from falling, and when it was in a horizontal position, (as it must have been, judging from the trajectory of the projectile), does not look natural. The theory of accidental discharge of the gun might be plausible if the firearm had dropped clear to the floor with the trigger cocked, but then that would not tally with the defendant's wound in the finger.

So not only is defendant's story discredited by an eye-witness whose manner of testifying impressed the court, but his testimony is inherently weak. Such testimony must be convincing to be of value. Let it be remembered that the burden of proof is shifted on the defendant to show in a satisfactory manner an affirmative defense such as that here interposed to avoid the legal consequences of his act.

It is very significant that the defendant did not move from his place to help the deceased. Indeed, by his own admission and by the testimony of his own witnesses he did not so much as take a glance at Mrs. Esteban or her body before he set out to notify the chief of police of his finger's injury. Notwithstanding his statement to the contrary, there is no doubt that people, as was natural, had milled around the dead body of Mrs. Esteban, and the victim's screams had been heard farther than the municipal building where he was. In fact he had been asked by Paderes who shot the deceased, according to this witness whom we believe. The defendant's aversion to see the corpse persisted after he came back with the chief of police to the municipal building. Although then, according to him and the chief of police, there was a commotion not many yards from the town hall, the chief of police alone strode to see the object of the tumult.

It is said that a murderer dreads the sight of the victim of his crime. If this is true, the defendant's attitude and reaction noted above were an illustration of this psychological phenomenon. By instinct if not through a sense of official duty, any police officer who has a clear conscience would rush to see a dying or dead woman lying on the ground almost in his presence.

No less revealing was the undue emphasis which the appellant put on his wound and his "desgracia." His first and

sole concern, it seems, was to tell his interrogators, one of whom he sought, about his finger while carefully omitting to mention the truly tragic result of the supposed accidental firing of his gun. In his anxiety to let the chief of police see his injured finger, he abandoned his post at a time when there was no other policeman to take his place, and as if to make sure that his finger wound was attested in a customary and more impressive fashion, he caused the sanitary inspector to dress it, though it had already been dressed by Sergeant Sotelo, and to issue a medical certificate.

All of which, in our Judgment, gives validity to the finding that the deceased was intentionally fired upon and that the defendant's injury in the tip of a finger was inflicted on purpose to give color of truth to a preconceived plan of defense, a plan which, overdone, has unfortunately boomeranged.

The court below found the defendant guilty of homicide instead of murder v/as charged. We agree with the Solicitor General that the killing in question constitutes murder qualified by treachery, but we do not agree that any aggravating circumstance attended the crime. We also agree that the indemnity of P2,000 assessed by the trial court should be raised to P6,000.

Wherefore, the appellant is pronounced guilty of murder and sentenced to reclusion perpetua, to the accessories of law, to indemnify the heirs of the deceased in the sum of P6,000, and to pay the costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I hereby certify that the Chief Justice concurs in this decision.

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