

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELINO SIMON Y CUILAO, ET AL., DEFENDANTS. FELINO SIMON Y CUILAO AND REMIGIO DE VERA Y SEBRANO, DEFENDANTS AND APPELLA...

G.R. No. L-18035. February 28, 1964

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

The above-named accused were charged, together with Felix Sarmiento and Romulo Ranin, in the Court of First Instance of Manila with the crime of attempted robbery in an inhabited house with homicide and frustrated homicide.

After trial, the court a quo (Judge Conrado M. Vasquez; presiding) absolved Sarmiento and Ranin on insufficiency of evidence to establish guilt beyond reasonable doubt, but found the accused Felino Simon and Remigio de Vera guilty of the crimes of murder and frustrated murder, and imposed upon them the corresponding penalties for those crimes.

However, on motion of accused de Vera, the court (Judge Felix Q. Antonio presiding) modified its judgment, with respect to de Vera only, as follows:

"WHEREFORE, in view of the foregoing, the judgment of this Court of November 29, 1960, is hereby modified with respect to the accused Remigio de Vera only, as follows:

"WHEREFORE, the Court finds the accused Remigio de Vera guilty beyond reasonable doubt, as principal of the crime of homicide and frustrated homicide, aggravated by the circumstance of treachery, and hereby sentences him for the crime of homicide with respect to the killing of Coong Too, to suffer an indeterminate penalty from 12 years of prision mayor, as the minimum, to 20 years of reclusion temporal, as the maximum, with the accessories of the law, to indemnify the heirs of the deceased, Coong Too, jointly and severally, with his co-accused, Felino Simon, in the sum of P6,000.00 without subsidiary imprisonment in case of insolvency, and for the crime of frustrated homicide for the shooting of Chua Sam, to suffer an indeterminate penalty from 6 years of prision correccional as the minimum, to 12 years of prision mayor, as the maximum, with the accessories of the law, and to pay 1/4 of the costs."

Both Felino Simon and Remigio de Vera interposed the instant appeal.

We agree substantially with the findings of fact of the trial court, insofar as these appellants are concerned, which are as follows:

Chua Sam is a Chinaman engaged in selling "puto" (native cakes). In one of his early morning rounds, at about four o'clock on 4 October 1958, he went to deliver his goods to a sari-sari store at 2450 San Anton Street, Sampaloc, Manila. Arriving in a tricycle, he knocked at the door. The door was opened and a hand reached for him, held him by the front of his shirt, and pulled him inside the store. Once inside the store, Chua was told to

squat, and he did. He saw Benito Co, alias Co Too, a Chinese helper. in the store, lying on the floor, face down and hands tied. He saw also a man holding a gun, and this man was shorter than the one who pulled Chua inside the store.

While Chua was in squatting position, the smaller man shot him and then shot Co Too. Immediately thereafter, the taller man—the man who pulled Chua inside—and the man with the gun scampered away. Chua and Co Too also managed to flee in different directions, with Chua hailing a taxi and telling the driver to bring him to the hospital; but the driver, seeing his passenger wounded, brought him instead to Precinct 2 of the, Manila police where a policeman accompanied Chua to the North General Hospital. Co Too (who apparently managed to untie his hands) was, later found by policemen sprawled on the street some distance from the store and was taken to the same hospital, where he died of shock and hemorrhage due to gunshot wound at the right molar region, fracturing the molar bone and cricoid cartilage, lacerating the tongue and the left carotid artery.

Chua Sam was treated for: "1. Wound, gunshot, thru and thru, point of entrance, neck lateral right, POX chest, postero-lateral, level of 4th rib, along the post axillary line, left; 2. Intra-thoracic injury; 3. Shock, secondary", which could have produced death but for the timely and skillful treatment at the hospital.

Police investigators, who rushed to the scene of the crime that same morning of 4 October 1958 and took pictures inside the store, were unable to discover any fingerprints; however, they found empty shells and slug of a .38 caliber pistol. No sign of a struggle was seen, and money in a box and the goods in the store were found intact.

The main factual issue in this case is the identification of the two men whom Chua Sam encountered inside the store standing over the helpless Co Too. The prosecution rested its case on this issue on the sole testimony of Chua Sam; on the other hand, the defense insinuates that Chua Sam identified those two men to be the accused-appellants Felino Simon and Eemigio de Vera as a result of police inducement.

Although uncorroborated, we find nothing incredible in the testimony of the witness Chua Sam. When he was pulled inside the store, he came face to face with the assailants. The place, which the pictures (Exhs. "L", "L-3" & "L-4") show not to be a large establishment, was lighted with four long fluorescent lamps set in a row. Proof of motive for the otherwise senseless killing is not essential; but it could well be that the assailants realized that they were known to their victims, and, for this reason, wanted them liquidated.

Chua Sam testified that he knew the appellants before the incident, and that he had seen them loitering in San Anton Street. When the original four defendants (Simon, Vera, Sarmiento and Ranin) were lined up before him by the police, at the time Chua was confined at the hospital but after he regained consciousness, the witness pointed to appellants Felino Simon and Remigio de Vera.

The trial court has remarked Chua's "sincerity and straightforward manner of giving his testimony". And while the police exceeded their authority in maltreating Sarmiento and Ranin, until they confessed, as it was found by the court a quo in acquitting this pair, Chua Sam never incriminated these defendants, a fact which strengthens his credibility and at the same time belies the insinuation that the police merely put the words into his mouth to clinch their case. If they had instructed Chua Sam on what to say, they would have seen to it that his testimony dovetailed with the confessions extorted from Ranin and Sarmiento.

The defense of both the accused-appellants is difficult to believe. Felino Simon testified that he slept in his house at 2327-H San Anton, Sampaloc, Manila, from 9 o'clock in the evening of 3 October 1958 until his wife awakened him at 7 o'clock the following morning to inform him of a commotion in the Chinese store across the street. Simon's house is barely eight meters from the store, and while his wife admitted that she was a light sleeper, she claim to have heard no gun-fire.

De Vera's alibi is that he was also sound asleep at the time of the incident, having passed out after a drinking spree at about 5 o'clock in the afternoon of 3 October 1958, and did not wake up until 9 o'clock the following morning. It might be true that a friend of his, Carlitos de Guzman, dropped by de Vera in the morning of 3 October 1958 to invite him to his birthday on 12 October, but that upon suggestion of de Vera, Guzman decided to celebrate his birthday right then and there, the two consuming four bottles of Tanduay rum and a case of beer; but Guzman left the house of de Vera at 5 o'clock in the afternoon and did not return until 9 o'clock the following morning, thus leaving unaccounted for where de Vera was during Guzman's absence.

Standing independently of any other evidence, the actions of Simon and de Vera in committing the crime show conspiracy: they were both inside the store when Chua unsuspectingly knocked at the door on that fatal dawn; lying prostrate was Co Too, rendered defenseless y] by the two appellants; one opened the door while the other , I stood guard "with a gun; and their instant and simultaneous flight from the scene of their crime after shooting their victims all show identity of design. From these facts also, treachery in the commission of the misdeed is made manifest, since the squatting Chua Sam and the prostrate Co Too were both unarmed and plainly unable to put up any effective defense; thus the accused ran no risk whatever in shooting both Chinamen.

No attempted robbery in an inhabited house was proven at all, although two separate crimes of murder and frustrated murder, both qualified by treachery, were fully established. However, the appellants cannot be convicted and punished for murder and frustrated murder, since the information filed against them is only for attempted robbery in an inhabited house with homicide and frustrated homicide (U.S. vs. Campo, 23 Phil. 368; People vs. Alonzo, L-4405, July 31, 1954). The appellants can thus be held guilty only of homicide and frustrated homicide, aggravated by treachery, as correctly held by Judge Antonio in the amended judgment in de Vera, which should be made extensive to the other accused-appellant Felino' Simon.

WHEREFORE, the appealed decision is modified both accused-appellants, Remigio de Vera and Felino Simon, are found guilty of the crimes of homicide and frustrated homicide, aggravated by the circumstance of treachery. For the killing of Co Too, each of them shall suffer an indeterminate penalty ranging from twelve (12) years of prision mayor, as minimum, to twenty (20) years of reclusion temporal, as maximum, with the accessory penalties set by the law; to indemnify, jointly and severally, the heirs of Co Too in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency.

For the shooting of Chua Sam, each of the appellants shall also suffer an indeterminate penalty of not less than six (6) years of prision correccional, as the minimum, and not more than twelve (12) years of prision mayor; as the maximum, with the accessories of the law; add to pay the costs.

And it appearing that the alleged confessions of Felix Sarmiento and Romulo Ranin were obtained through violence, the trial court is instructed to refer the records of the case to the Department of Justice, after reading of the sentence to appellants herein, for investigation and such administrative action against the persons found responsible as the facts may warrant.

Finally, the separate action for damages for the injuries to Chua Sam is hereby reserved.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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