

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. IGNACIO LAGATA, DEFENDANT AND APPELLANT.

G.R. Nos. L-1940-42. March 24, 1949

Ponente: PERFECTO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1f18693726d7/>

PERFECTO, J.:

The witnesses in this case testified in substance as follows:

PROSECUTION

- Eusebio Abria, 20, single, farmer, Jinangutdan, Santa Rita, Samar.—On October 3, 1946, he was in the provincial jail, detained for illegal possession of firearm, but his case was dismissed. Ignacio Lagata was a provincial guard. Six prisoners were then assigned to work in the capitol's plaza: Jesus, Tipace, Eusebio, Mariano, the witness, and Epifanio Labong. Lagata, their guard, ordered them to go to the nursery to pick up gabi. Not long afterwards, they were called to assemble. Epifanio Labong was missing. The nursery is near the provincial hospital in Catbalogan. The place was grassy. Lagata ordered the five prisoners to call Labong. (4-7). As Labong did not answer, Lagata ordered the five prisoners to look for him. They followed the trail. Upon reaching the national highway, Lagata called them. As Labong did not answer their call, Lagata ordered the five to look farther for him. The five prisoners went towards the mountain. Upon reaching a camote plantation, "I saw footprints. I called my companions. While we were all in the camote plantation, I did not know that I was shot by Ignacio Lagata. He was about four meters away from me. He fired at my left arm." At the time the witness was standing, one of his companions was at his right side and the rest were with Lagata. Tipace was about three or four meters behind him. All walked almost together at the moment because they wanted to see the footprints pointed by the witness. "At the moment that I was hit, he immediately called the attention of Ignacio Lagata, 'Mano, I am wounded.' He said, 'It is because you did not approach to me.' " (8-9). "When I saw that he again manipulated the chamber of his gun, I ran away. When I saw that my other companions ran away, I ran also. I noticed that my left arm was wounded. When I was already sitting by the front of the coconut tree, I heard another gun shot." Tipace "is already dead." "I did not see him anymore. When Ignacio Lagata passed by where I was, I requested him to take me. He brought me to the Justice Building. (10). Then he brought me to the Samar provincial hospital. My left arm is amputated just right at the joint between the shoulder and the arm. It is not yet completely healed." The witness had no intention to run from Lagata. (11). Labong asked Lagata for permission to gather gabi. The other prisoners did not say anything. Lagata told them to go to the nursery. While they were gathering gabi, Lagata was near them. (12). But he could not see everybody because there was talahib growing in the place) and it was tall. The witness heard three shots. The second one hit him. After the first shot, "we were all assembled." (13-14). The witness did not see Tipace being shot. "The reason as to why I ran was because I was afraid that I might be shot again." (16). His companions were probably scared and that is why they ran. (17).

- Mariano Ibañez, 25, married, detained prisoner, Zumarraga, Samar.—On October 3, 1946, he was in the provincial jail as a detained prisoner. After breakfast, six prisoners were called: Epifanio Labong, Ceferino

Tipace, Eustaquio Galet, Jesus Mañoso, Eusebio Abria and the witness, Mariano Ibañez. They went at work in the plaza of the provincial jail. At about 11:00 o'clock, they were taking a rest and while they were taking a rest, the witness heard Lagata inviting the prisoners to go to the nursery to gather gabi, near the provincial hospital. They scattered to get gabi. "We scarcely got three gabis when I heard Ignacio Lagata calling us to assemble." The place was grassy with talahib plants growing thereon. While the prisoners were picking gabi, Lagata was standing by the side of a mango tree. At the call of Lagata, only five prisoners assembled. Labong was absent, and Lagata ordered them to call for him. (19-21). "Inasmuch as Epifanio Labong did not answer our call, Ignacio Lagata ordered us to go to the mountain and look for Epifanio Labong. Eusebio Abria then went to the camote plantation. He found footprints and he called Ignacio Lagata to inform him that he saw footprints. On account of this report of Eusebio Abria that he saw flattened grass and that he was unable to look for Epifanio Labong so Ignacio Lagata fired at him and he was hit on the left arm." He was at about three meters from Lagata. (22). The witness was at the left side of Ceferino Tipace at about two meters from Abria. Abria said, "Mano, I am wounded." Lagata said in turn, "Come around, assemble here." Abria came to the right side of Lagata. (23). "Once we were already assembled there, Ignacio Lagata cocked his gun and shot Ceferino Tipace and when I saw that Ceferino Tipace was hit then I ran away because I had in mind that had I not ran I would have been shot also." At the time Tipace was "standing and carrying with him on his left arm some gabi and when he turned to the left that was the time when he was shot by Ignacio Lagata. The bullet penetrated from the left side of the armpit and came;out from the right side of the body." Tipace was at about two meters then from Lagata. "At about 4:00 o'clock in the afternoon of that day, I returned to the provincial jail. I did not return immediately because I was afraid." Tipace was killed. (23-24). One morning, Lagata gave the witness fistic blows on the abdominal region and kicked him at the back, because the previous night the witness told the prisoners not to make much noise. "I did not have ill-feeling because he had the right to maltreat me even if I was not at fault." (29). At the time they were searching for Labong, before the shooting, they were walking in an ordinary way, looking towards the ground, one after another, at about half a meter from each other. Lagata was behind all of them. (31).

- Gilberto C. Rosales, 63, married, president, Sanitary Division, Catbalogan, Samar.—On October 17, 1946, the cadaver of Ceferino Tipace was exhumed. (35). The witness found in it, "A gun shot wound which went through the body from the lower left axillary region to the right shoulder." (36).

- Eustaquio Galet, 20, married, detained prisoner.—On October 3, 1946, he was one of the six prisoners who worked in the premises of the capitol building. (38). "We went to the nursery and each one of us got gabi. The guard, Ignacio Lagata, was under the mango tree. I was about ten meters away from him. It was grassy in the place where we were picking gabi. Not long after we were called by Ignacio Lagata because we were going home already. One was missing, Epifanio Labong. Ignacio Lagata ordered us to call Epifanio Labong but Epifanio Labong did not answer." (39). The talahib plants growing in the place "were taller than myself." Lagata ordered us to search for Epifanio Labong. We went around the place and then crossed the national highway and went up the mountain until we reached to a place where cogon grass were growing. Eusebio Abria and myself saw flattened grass. We informed Ignacio Lagata that there was a trace where a person had passed by or he may have gone that way. Then Ignacio Lagata fired one time. While we were searching for Epifanio Labong each one of us were bent and leaning looking downward. I heard a gun shot and that was the time when Eusebio Abria was shot and then once he was hit, he called Ignacio Lagata telling him, 'Mano, I am wounded,' and immediately placed his hand at his wound and then got near to Ignacio Lagata." (40). "Upon seeing that one of our companions was already shot without fault, I ran away and came down to the Capitol Building and then went to the provincial jail and reported the matter to the Sergeant of the guards." His companion then was Jesus Mañoso. They reached the provincial jail at about 12:00 o'clock noon. The shooting took place at about 11:30. (41). The witness heard Labohg ask Lagata to accompany the group to the nursery to gather gabi. When he was shot, Abria was bent and leaning his body

downward to the ground while Lagata was behind him. (42). The witness heard the shot that killed Ceferino Tipace. "I was already descending near the Capitol Building that was the time when I heard the shot." (43). Jesus Mañoso ran away with the witness, but Ceferino Tipace and Mariano Ibañez remained. The treatment received by the witness from Lagata was good. (44).

- Pedro Mayuga, 39, married, Chief, Samar provincial hospital.—On October 3, 1946, prisoner Eusebio Abria was brought to the hospital with a wound on the upper side of his left arm which was amputated from the shoulder joint. "The patient was at first given resuscitating medical treatment to combat the shock caused by the hemorrhage and later the shoulder joint was disarticulated." After his arm was cut, he was confined in the hospital until November 6. (46-47). The wound must have been produced by a gun shot. There are indications that the shot was fired at close range. Very likely around five meters. (48). There was no possibility of saving the arm because "all the vital tissues were destroyed and the bone was completely cut." (49). "Powder-burn was noticeable in all the vital parts of the tissues destroyed from outward and inward." (50).

DEFENSE

- Andres Saludario, 49, married, nursery foreman, Catbalogan, Samar.—On October 3, 1946, he saw Lagata in the nursery guarding six prisoners. (53-54). The prisoners were just within the premises of the nursery just beyond the mango tree. Lagata was about seven meters from them and he was looking at them all the time. The place was grassy. The grass was about half a meter tall. (55). The ground near the hill was covered with cogon and talahib. By the height they could cover a man in standing position. The witness heard about the disappearance of prisoner Epifanio Labong. At the time, the witness was already far, because he had to attend to several laborers detailed at the Capitol Building. When he returned from the Capitol Building, he was informed that Epifanio Labong disappeared. (57-59). The witness did not hear any gun shot explosion in the nursery. He saw the accused guarding the prisoners at about 8:00 o'clock in the morning. (60). The witness stayed in the nursery until about 8:30, when he came to the Capitol Building. (61).

- Ignacio Lagata, 27, married, Catbalogan.—On October 3, 1946, he accompanied the six prisoners from the provincial jail to the plaza of the provincial capitol. He remained there until 10 o'clock in the morning, when he told them to return to the provincial jail. The six prisoners requested him to allow them to get some gabi in the nursery. Lagata went with them to a spot around the mango tree. (63-64). The grass in the place was knee-high. Lagata was under a mango tree about five meters from the prisoners. He was watching all of them. They were scattered around the mango tree. (65). While he was looking back, Epifanio Labong took advantage and escaped. "I did not discover that but when I called them to assemble I found out that one was missing. I asked the rest of the prisoners as to where Epifanio Labong was. I told them that what shall we do he is already far and they said that in that place there is plenty of gabi. I told the prisoners to go to that spot. We went there and the prisoners were ahead because they know the place. (66). When we arrived at the place, we did not see Labong and Tipace called our attention telling us that this is the place through which Epifanio Labong passed." The witness did not see the track of Epifanio Labong but the prisoners, however, were the ones who indicated to him the place through which Epifanio Labong passed. "I followed them. Up to above the national highway. When we reached up the place another prisoner called also our attention telling us that here is the place through which Labong passed and so we went up. When we reached above, they were already far from me. So I told them to stop because they were already far from me. They did not heed order to stop. Then I fired up to the air. They scattered. I could only see two of them. I also saw one of them running towards the mountain. So I fired at him." It was Eusebio Abria, and he was at about five meters from him. "He was going up the mountain. After I fired at Eusebio Abria, I saw him running. I just left him because I was looking for the rest. I saw also Ibañez running. He was running towards me and then around me. I called his attention and told him to stop from running or else lie down

and give up your arm. He did not heed my order. I fired at him." (67-69). The witness saw Ibañez running before him towards the south road. He was Tipace. One minute elapsed from the time the witness fired at Abria to the time he fired at Ibañez. The witness fired at them because he sympathizes with other policemen from whom other prisoners escaped. (70). "Because if it so happened that a prisoner escaped under my custody, I would be the one to be put in jail and if I cannot fire at him, I will be the one to be put in jail. "The truth is that they ran away." At the time he fired at Tipace and Abria, they were running away. (71). "That was in my mind was that if I could overtake them and not fire at them, I would meet the same situation as what other guards met under whose custody prisoners escaped and some of them were discharged from their duty." Ibañez testified against the accused because the latter fired at his father-in-law. (72). One day, the accused maltreated Ibañez. He slapped him two times. He was the only prisoner he slapped. (73). At the time they were looking for Labong, the prisoners were walking in line one meter from one to another. The accused was near them. (77). When he fired at Abria, the latter was about five meters from him and when he fired at Tipace, the latter was four meters from him. At the time, Tipace was running sidewise to the accused and he could see where the accused was. His face was facing the accused. (78). When he fired at Abria, he lost hope to recover Labong. "I was hopeless already." (80). The picking up of gabi was hot part of the work of the prisoners. (81).

Appellant was charged with murder, serious physical injuries and evasion through negligence in three separate cases which have been tried jointly. Finding him guilty, the trial court sentenced him as follows:

"(a) For Murder (Case No. 809)—Reclusion Perpetua with civil interdiction for life and perpetual absolute disqualification, indemnify the heirs of Ceferino Tipace Two Thousand Pesos (P2,000) and pay the costs of this action;

"(b) For serious physical injuries (Case No. 810)—An indeterminate imprisonment of two (2) years and four (4) months as minimum to four (4) years, nine (9) months and ten (10) days of prison correccional as maximum and to pay the costs of this action; and

"(c) For evasion through negligence (Case No. 811)—An indeterminate imprisonment of two (2) months and one (1) day of arresto mayor as minimum to one (1) year, one (1) month and ten (10) days of prison correccional as maximum, and to pay the costs." (p. 45, rec.)"

The evidence is conclusive to the effect that the escape of prisoner Epifanio Labong was due to the negligence of the appellant. The six prisoners were supposed to work in the plaza of the Provincial Capitol and to return to jail after said work, but appellant allowed them instead to go to the nursery to gather gabi, without any apparent authority to do so.

Considering that the place was grassy and tall talahib was growing therein, the height of which could conceal persons in standing position, appellant must have seen immediately that it was a choice place for any prisoner that may want to escape. Such negligence of appellant is punishable, under article 224 of the Revised Penal Code, and the penalty imposed by the trial court is in accordance with law.

As regards the shooting of Abria and Tipace, we are convinced that the facts were as narrated by the witnesses for the prosecution. Abria was shot when he was only three meters away from appellant and the latter has not even shown that Abria attempted to escape. Tipace was also shot when he was about four or five meters away from appellant. The latter's allegation that Tipace was running,—conveying the idea that said prisoner was in the act of escaping,—appears to be inconsistent with his own testimony to the effect that Tipace was running sidewise, with his face looking towards appellant, and with the undisputed fact that Tipace was hit near one axilla, the bullet coming out from the opposite shoulder. If Tipace's purpose was to escape, the natural thing for him to do would have been to give his back to appellant.

The criminal responsibility of appellant regarding the killing of Tipace can be exacted from him on the basis of his own testimony. The way he fired at Tipace (whom he misnamed first as Ibañez) is described by appellant in the following words:

"He was running towards me and then around me.

"I called his attention and told him to stop from running or else lie down and give up your arm. He did not heed my advice.

"Inasmuch as he did not heed my advice so I fired at him.

"His direction while he was running was not exactly towards me but running in front of me to the left side." (69).

Explaining his reason for firing at Abria and Tipace, appellant gave the following reason: "Because I sympathize with the other policemen from whom prisoners escaped." (70). "If it so happened that a prisoner escaped under my custody, I would be the one to be put in jail and if I cannot fire at him, I will be the one to be put in jail." (71). (Italics ours.)

It is clear that Lagata had absolutely no reason to fire at Tipace. Lagata could have fired at him in self-defense or if absolutely necessary to avoid his escape. The record does not show that Tipace was bent on committing any act of aggression or that he attempted to escape. According to Lagata, "he was running towards and then around me." (Italic ours.) How could anyone in his senses imagine that Tipace intended to escape by running towards and around the very guard he was supposed to escape from?

There is no question that the escape of Labong scared appellant, according to him, because of the experience of other guards who were dismissed from office or even prosecuted because of prisoners who had escaped under their custody, and that it was his duty to fire against the prisoners if he wanted to be exempt from any responsibility. Even if appellant sincerely believed, although erroneously, that in firing the shots he acted in the performance of his official duty, the circumstances of the case show that there was no necessity for him to fire directly against the prisoners, so as to seriously wound one of them and kill instantaneously another. While custodians of prisoners should take all care to avoid the latter's escape, only absolute necessity would authorize them to fire against them. Theirs is the burden of proof as to such necessity. The summary liquidation of prisoners, under flimsy pretexts of attempts of escape, which has been and is being practiced in dictatorial systems of government, has always been and is shocking to the universal conscience of humanity.

Human life is valuable, albeit, sacred. Cain has been the object of unrelentless curse for centuries and millennia and his name will always be remembered in shame as long as there are human generations able to read the Genesis. Twenty centuries of Christianity have not been enough to make less imperative the admonition that "Thou shalt not kill," uttered by the greatest pundit and prophet of Israel. Laws, constitutions, world charters have been written to protect human life. Still it is imperative that all men be imbued with the spirit of the Sermon on the Mount that the words of the gospels be translated into reality, and that their meaning fill all horizons with the eternal aroma of encyclic love of mankind.

As recommended by the prosecution, appellant is entitled to the benefit of the mitigating circumstance of incomplete justifying circumstance defined in paragraph 5 of Article 11 of the Revised Penal Code. Consequently, appellant should be sentenced for homicide to an indeterminate penalty of six years and one day of prision mayor to twelve years and one day of reclusion temporal and, in the case of serious physical injuries, to an indeterminate penalty of four months and one day of arresto mayor to two years, four months and one day of prision correccional.

Modified as above stated, the appealed decision is affirmed with costs against appellant.

Feria, Briones, Tuason, and Reyes, JJ., concur.

Moran, C.J., in the result.

DISSENTING

PARAS, J.:

The accused, Ignacio Lagata, a provincial guard of Catbalogan, Samar, was in charge of six prisoners charged with murder, assigned to clean the Capitol Plaza of Samar. On their return to the prison compound, he gave said prisoners permission to gather gabi, in the presence of the accused who remained at a distance of about six meters. Instantly, he discovered that prisoner Epifanio Labong had escaped. The accused then asked the remaining prisoners to help in locating him, but in so doing he was led by said prisoners to places where escape was much easier. The accused fired his gun in the air in order to stop the fleeing prisoners. Some of the prisoners were already going to the nearby mountain apparently in attempt also to escape. Whereupon the accused decided to aim his gun at those who were fleeing until one of them was hurt and another was killed.

The question now is, under the circumstances, what was the duty of the appellant guard? If he allowed, them to escape, he would have been charged with infidelity in the custody of prisoners. He was provided with a gun for some purpose. In my opinion, he made use of it legally in the performance of his official duty. (United States vs. Magno, 8 Phil., 320, 321; People vs. Delima, 46 Phil., 738.) To hold otherwise would be to plainly encourage the escape of prisoners, what with the many jailbreaks that had already taken place.

As stated in the majority opinion, appellant fired at Eusebio Abria because, as the latter himself stated on direct examination at the trial, he did not approach the appellant guard when called. Indeed, he further stated that "when I saw my other companions run away, I ran also."

Eustaquio Galet, a prosecution witness, on direct question by counsel de oficio, stated: "I heard Epifanio Labong ask Lagata to accompany the group to the nursery to gather gabi." "About how many minutes was the interval between the shot of Eusebio Abria and the next shot that you heard?" Galet answered: "About 15 minutes."

The accused fired three shots, one in the air to call the prisoners back or as a warning that they should not run away; the second hit Abria; and the third hit Ceferino Tipace. "And it was during the time that the rest were running when you heard the next shot and you ran too?" Asked this question, Abria answered: "Yes, Sir." As may be seen, the testimony of the very witness for the prosecution confirms the statement of the accused that he fired at Abria when he was running away with the rest of the prisoners. (See p. 71, t. s. n.)

In view of the above considerations, I vote for the acquittal of the appellant.

Pablo, M., Concurro con la absolucion del acusado.

Bengzon, J., I also vote to acquit.

Montemayor, J., I concur in this opinion of Mr. Justice Paras.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.