

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. PACIFICO CLOMA, DEFENDANT AND APPELLANT.

G. R. No. L-15580. May 10, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, by defendant Pacifico Cloma, from a decision of the Court of First Instance of Iloilo convicting him of the crime of murder and sentencing him to life imprisonment, with the corresponding accessory penalties, to indemnify the heirs of Hilarion Magbanua in the sum of P6,000, without subsidiary imprisonment in case of insolvency, owing to the nature of the principal penalty, and to pay one-half (1/2) of the costs.

It is not disputed that, while Hilarion Magbanua, a former policeman, was seated on the floor—seemingly made of bamboo—of the house of Felipe Sales, in the barrio of Pughanan, municipality of Lambunao, province of Iloilo, on April 23, 1956, at about 7:00 p.m., chatting with said Felipe Sales and Alberto Pancer and Federico Sales, several shots rang from under the house. Thereupon Magbanua fell down face upward, although slightly leaning against a basket of palay, and moaned for help. He had: (1) a wound caused by a .45 caliber bullet that entered his right side, at the level of the eighth rib, fracturing the same, and, after traversing the right lung, destroying big blood vessels at the base of the neck, fracturing the cervical vertebrae and injuring the spinal cord, lodged beneath the skull, just medial, to the left of the left mandibular joint; (2) another gunshot wound caused by a .45 caliber bullet that entered the posterior side of the right forearm, with exit at the anterior side thereof. Soon thereafter, a voice was heard near the door demanding that the same be opened. As nobody did it, the door was broken open and two (2) men entered. One was Ciriaco Latoza, Jr., who carried a Thompson sub-machine gun, and the other whose name was then unknown, had a butt-less carbine. The latter asked the former: "is this the one?" pointing to Magbanua. Upon receipt of an affirmative answer, the unknown person fired his carbine twice at Magbanua. One of the bullets, 30 caliber, entered the right eye of Magbanua and blew out the occipital region of his skull. As Latoza and his companion left the house, Pancer approached Magbanua and found, in his opinion, that he was dying. Meanwhile, the two (2) intruders had run towards the open field, where they were joined by a third man. After a while, Pancer went to the house of one Fortunato Maestral, to whom he related the occurrence and asked to accompany him to the poblacion. A son of Maestral took Pancer to the house of the barrio lieutenant, Rustico Mapalim, who, in turn, brought them to that of assistant barrio lieutenant Ignacio Tonato. Then the four (4) of them proceeded to the poblacion and reported the matter to the police. Several policemen accompanied the group to the scene of the crime, where they found

Magbanua already dead and near his body two (2) empty shells, caliber .30, Exhibits L and L-I. Imbedded, in one of the bamboo beams of the house, a .30 slug, Exhibit M, was, also, found. Under the house they picked up two (2) empty Thompson sub-machine gun shells, caliber .45, Exhibits H and H-I.

On April 30, 1956, a complaint for murder was filed against Ciriaco Latoza, Jr. and a John Doe, but for reasons not stated in the record, the case was dismissed. Over two months later, or on July 18, 1956, Ruperto Cloma, a brother of Pacifico Cloma, was apprehended in connection with several cattle rustling incidents in the locality. A

hand grenade and an empty carbine magazine were found in his house. Upon investigation, he revealed the location of the buttless carbine, Exhibit J—which was found hidden in a foxhole, inside a bamboo clump, 50 yards away from said house—and stated, among other things, that it was the weapon brought by his brother Pacifico Cloma to Lambunao on April 23, 1956 and used by him in killing Hilarion Magbanua (see Exhibit E). Upon examination by a ballistic expert of the National Bureau of Investigation, the empty shells, caliber .30, Exhibits L and L-I, found near the body of Magbanua, and the slug Exhibit M, were verified to have been fired from said carbine, Exhibit J (see, also, Exhibits C, N, N-I, N-2, O, O-1, O-2, P, P-I, P-2, Q, Q-I, Q-2, R, R-I to R-4).

Consequently, a warrant for the arrest of Pacifico Cloma was issued, but it could not be served, because he could not be found. Several days later, upon arrangements made by the mayor of Cabatuan, appellant surrendered, on July 26, 1956. Then he was investigated by the Constabulary, to whom he admitted that he was one of those who killed Magbanua, stating that he had acted upon instigation of one Manuel Torre, who had allegedly been threatened by Magbanua if his candidate was defeated in the elections, and that he (appellant) and one Ignacio Solania had brought the aforementioned carbine to the scene of the occurrence inside a valise (Exhibit F), which, upon his (appellant's) indication; was recovered from one Elias or Zacarias Talamor (Exhibit D).

Thereupon, a criminal complaint for murder was filed against Manuel Torre, Ignacio Solania and Pacifico Cloma, but Solania could not be located and Pacifico Cloma retracted his testimony implicating Manuel Torre. So the case was dismissed as against the latter and Solania, and Pacifico Cloma was left alone to stand trial. In due course, the Court of First Instance of Iloilo rendered the decision aforementioned, from which Pacifico Cloma has appealed.

The case hinges on the sufficiency of the evidence to establish that appellant is one of the killers of Magbanua. In this connection, appellant was identified by Alberto Pan-cer, who stated positively that appellant was the man, then unknown to him, who, armed with a buttless carbine, entered the living room of the house of Felipe Sales, and, after ascertaining that the person lying on the floor wounded was Magbanua twice fired at him with said weapon. This testimony was decisively corroborated by the following circumstances, namely:

- (a) The empty carbine shells, Exhibits L and L-I found by the authorities beside the dead body of Magbanua, and the slug, Exhibit M, found imbedded in a beam of the house of Felipe Sales, are of the same caliber as the butt-less carbine, Exhibit J, and it has been satisfactorily proven that said shells and slug had been fired from said carbine.
- (b) The latter was found in the possession and under the control of Ruperto Cloma—in a foxhole within a clump of bamboo trees, near the house of said Ruperto Cloma—who, upon investigation, declared that said carbine was the weapon used by his brother, appellant herein, in killing Magbanua.
- (c) Upon his apprehension and investigation by the Constabulary, appellants made and signed the statement Exhibit D, which was sworn to by him before the local justice of the peace. Appellant testified that the data contained in Exhibit D were supplied, not by him, but by one of his investigators, and that his signature thereon was obtained through duress. Yet, he said nothing to this effect when, after reading to him the contents of Exhibit D, the justice of the peace inquired whether the same was his statement, whether the signature thereon was his—a fact he admitted on the witness stand—and whether said statement was made, and his aforementioned signature affixed, voluntarily. On the contrary, his answers to these queries of the justice of the peace were all in the affirmative.

Moreover, Exhibit D contains information that only appellant could have supplied. Thus, for instance, Exhibit D states, among other things, that he and his companion met at Talaytayom; that his companion brought a valise in which the carbine he (appellant) had borrowed from his brother was placed; that they went to Lambunao, Iloilo, by passenger bus; that they alighted at the railroad crossing in Misi and went to the house of one Iyas Talamor

where they took their dinner; that, thereafter, they took the valise from under a coconut tree where they had left it; that appellant's companion opened the valise, got the carbine and gave it to him; that appellant inquired why the carbine was being given to him, since he (appellant's companion) was the one who has asked him (appellant) to borrow it; that his companion got from the valise a Thompson wrapped with an old mat and said that it was the firearm he would use; that appellant and his companion left the valise in the house of Talamor; and that it was appellant's companion who bade him (appellant) to shoot Magbanua in the eye. It is clear that these details could have been given by appellant only, not by one of his investigators.

The defense put up by appellant is an alibi. He would have us believe that, at the time of the occurrence, he was in his house, in the barrio of Janipan, municipality of Cabatuan. Obviously, however, his uncorroborated testimony to this effect is insufficient to offset the proof for the prosecution, or even to raise a reasonable doubt as to his guilt.

Wherefore, the decision appealed from is hereby affirmed, with costs against appellant Pacifico Cloma. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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