

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS.
FAUSTO CARLOS, DEFENDANT AND APPELLANT.***G. R. No. L-16306. July 31, 1962*

Ponente: BARRERA, J.

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This is an appeal taken by Fausto Carlos from the decision of the Court of First Instance of Bulacan (in Crim. Case No. 2551) convicting him of the crime of murder for the killing of Artemio Mutoc, and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the deceased's heirs in the sum of P6,000.00 with subsidiary imprisonment in case of insolvency and to pay the costs.

The uncontroverted facts as borne out by the records, briefly are: In the afternoon of November 5, 1948, the deceased Artemio Mutoc arrived in the municipal building at Calumpit, Bulacan, and requested that he be permitted to see a Huk detainee named Ignacio Sitchon, alias Sanggumay, who was wounded and captured by appellant and his policemen in an encounter with the Huks at Sitio Gugo, Calumpit, Bulacan, the previous day. The request was relayed by Policeman Roberto Cruz, then on guard, to appellant who, as Municipal Mayor at the time, gave the permission. Thereupon, Mutoc went inside the municipal jail (located in the municipal building) and, after a while, asked the guard to call the appellant. The Mayor (appellant) at first refused to go stating that whatever Mutoc desired to say, he could tell the policeman. However, as Mutoc insisted in talking to the Mayor himself, the latter went inside the municipal jail. After some time, a shot was heard by Policeman Cruz who was at the time near the entrance of the municipal building some 15 meters away from the compartment serving as the jail itself. As Cruz turned to where the shot came from, he heard a call for guard and saw the deceased and the appellant struggling against each other near the door of the jail, with the accused holding a revolver with his right hand. As they continued struggling, they got inside the jail again and the guard lost sight of them. Then, three other shots were heard in quick succession. By the time Cruz got to the door of the jail, the accused was already coming out, with the deceased lying prostrate and lifeless on the floor of the jail. The accused immediately ordered Cruz to call for the Chief of Police and the other policemen.

As it is, no one saw what actually took place inside the jail, how the struggle between the accused and the deceased started and how the shots were fired admittedly from the revolver of the accused. All that we have on these points are the position of the three gunshot wounds found in the body of the deceased and the testimony of the accused himself which presents a queer theory of accident and self-defense, queer because the two defenses are incompatible with each other. Accident presupposes lack of intention to fire at the victim; self-defense assumes voluntariness, but induced only by necessity. However it may be, the patent facts do not support either of the two defenses.

The wounds inflicted upon the deceased were one on the right shoulder, one on the left chest and another behind the right ear. The positions of these three wounds are such that they could not have resulted from less than three shots. No two of them could have been produced by one shot. And they could not have been inflicted by shots accidentally fired during the scuffle as described by the accused himself. On this point, we agree with the trial

judge that—

"The demonstration of the struggle by the accused shows that the deceased was holding with his left hand the right hand of the accused which the accused was trying to keep away from the deceased, thereby showing that the gun in hand was a little to the rear of the accused. Whether the arm was pulled backward when it was in the level of his head or when it was on the level of his waist or hip, the direction of the gun would be either upward or downward. So that even if the gun exploded or fired accidentally in the position, demonstrated by the accused, it could not have hit the deceased Artemio Mutoc on the breast, on the right ear, and on the right shoulder. These wounds could not have been inflicted by the position of the gun, as demonstrated by the accused, because it would have been pointed either downward or upward, and never in front. * * *."

In fact, the accused himself said in his direct examination by his counsel:

"Q.

You said that you were trying to place your gun out of reach of Artemio Mutoc. What happened after you were trying to place it out of his reach?

"A.

I believe that in order to avoid his intention, I shot him.

"Q.

You mean to say you were able to fire your gun at him?

"A.

Yes sir." (t.s.n., p. 65.)

Pursuing further this point, appellant's own counsel proceeded:

"Q.

And while he was pulling you inside, what did you do?

"A.

In order to save myself from his worst intention I shot him again, I think two or three times. I do not remember.

"Q.

Do you know if you hit him?

"A.

I hit him because I saw him stumble." (t.s.n., p. 70)

Neither does it appear convincing that appellant acted clearly in self-defense. Counsel for appellant in his brief, tried to emphasize that the provocation came from the deceased. This is not borne out by the records. From the testimony of the accused himself, narrating what took place after he got inside the jail, it appears that when the deceased asked that the detained Huk Sanggumay be released to him, the appellant, instead of directly answering, reproached the deceased by saying: "Because of the amnesty, I thought you (deceased) are not a Huk anymore,

and if you are still a Huk, I will tell the policemen to detain you here", and immediately shouted and called for the guards. It was at this juncture that the deceased, according to the appellant, pulled a hand grenade from his (deceased) pocket, whereupon the appellant drew his revolver. Continuing, appellant declared: "Because he knew that I could use my revolver ahead of his hand grenade, he placed it again in his pocket and tried to get my revolver. He tried to snatch my revolver." (t.s.n. ,p. 62). Then, the scuffle ensued. From this narration of the appellant himself, it is not improbable that the struggle was provoked, not by the deceased who, aware of the presence of policemen in the building, could not expect to succeed, alone, at the time, "almost unconscious", according to appellant himself, but by the latter's action in denouncing the deceased as an unmitigated Huk reneging the amnesty, and calling the guards to detain him, too. The reference made by appellant to a hand grenade being pulled out of the deceased's pocket is not beyond doubt. No one of the policemen who investigated the victim, which laid on the floor where he fell, throughout the night until the following morning when his family took his body, testified, of his own knowledge, on the existence of said hand grenade at the time of the incident or immediately thereafter. It was only in the morning when the body was to be removed that policeman Cruz was told to take away a hand grenade from the pocket of the deceased's trousers. It is not, therefore, entirely without reason that the trial judge expressed the belief that the hand grenade was surreptitiously planted after the deceased had already expired. Be that as it may, since according to appellant's own testimony, the deceased has returned the hand grenade to his pocket upon seeing the appellant draw his revolver, appellant was not in grave danger of his life as the deceased was otherwise unarmed. It has not been shown that the deceased ever was in a position to be able to snatch the revolver. The testimony of the appellant heretofore quoted as to the situation when he fired at the deceased does not indicate any reasonable or urgent necessity to shoot the deceased. For all that appears in the record, the deceased never was able even to touch or reach the revolver. All the time, the deceased's right hand was holding the appellant by the breast of his shirt, pulling him. By and large, it can not be said that appellant has satisfactorily demonstrated that his firing at the deceased as he admittedly did, was justified.

The trial court held the appellant guilty of murder, finding that there were treachery and evident premeditation attending the commission of the offense. We find neither circumstance duly proven. The shooting was preceded by a struggle or was in the course thereof. Neither is there anything in the record to show that appellant had any previous intention to kill the deceased. In fact, he went inside the jail only upon insistence of the deceased.

There is no merit in appellant's contention that the filing of the present case is due to the vindictiveness of his political opponent. The fact is that he admitted having caused the death of the deceased, and it became the duty of the proper authorities to take the case to the court for determination of his responsibility, if any.

In the circumstances we find appellant guilty of homicide only. As to aggravating or mitigating circumstance was present in the commission of the crime, the judgment of the lower court is hereby modified and appellant sentenced to an indeterminate penalty of from 6 years and 1 day of prision mayor, as minimum, to 14 years, 8 months, and 1 day of reclusion temporal, as maximum.

Wherefore, modified as above indicated, the judgment of the trial court is affirmed in all other respects, with costs de officio. So ordered.

Bengzon, C. J., Padilla, Labrador, Concepcion, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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