

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SABINO TAN AND SOFRONIO GASPAY, DEFENDANTS, SABINO TAN, DEFENDANT AND APPELLANT.*G. R. No. L-516. June 29, 1951*

Ponente: PARAS, C.J.

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This is an appeal from the judgment of the Court of First Instance of Leyte, finding the appellant, Sabino Tan, guilty of murder and sentencing him, in view of the mitigating circumstances of passion or obfuscation, lack of intention to commit so grave a wrong and voluntary surrender, to an indeterminate penalty of from 4 years, 9 months and 11 days, prision correctional, to 8 years and 1 day, prision mayor, with legal accessory penalties, to indemnify the heirs of the deceased in the sum of two thousand pesos, and to pay one-half of the costs of prosecution. Appellant's co-accused, Sofronio Gaspay, was acquitted for insufficiency of the evidence.

In the afternoon of March 16, 1945, in the municipality of Pastrana, Province of Leyte, the appellant was informed by Bias Gardiola about the shooting of the former's horse by Felicisimo Inting. Taken by Bias Gardiola to the place where the horse was shot, the appellant recognized his animal lying dead. Whereupon, after telling Bias Gardiola to go home, the appellant proceeded to the house of Maura Jacinto in barrio Calsadajay. As the appellant asked in a loud voice for the whereabouts of Felicisimo Inting, the latter's brother-in-law (Federico Chan) referred to Felicisimo as being in the house, at the backyard. Upon coming face to face with Felicisimo Inting, the appellant asked him to admit having shot the horse. Felicisimo Inting and Federico Chan denied the imputation, whereupon the appellant shot Felicisimo with a pistol. The latter was hit below the right nipple, perforating the abdomen at the right upper quadrant and wounding the right lobe liver and the doudenun retroperitoneal, with the bullet coming out at the right posterior first lumbar vertebrae area. The appellant then confronted and threatened to kill Federico Chan and Maura Jacinto (the latter, who saw what had happened, having come down from her house to help her son), but Maura begged for mercy. Unloading his pistol and thrusting it and the bullets into his pocket, the appellant left. Felicisimo Inting died in the hospital on March 17, 1945.

According to the appellant, (pp. 2-3 of his brief), the facts were as follows: "On March 16, 1945, accused-appellant while in the house of one Pedro Dacomí, was informed by Bias Gardiola that his horse was shot and killed by Felicisimo Inting. (Testimonies of Bias Gardiola, pp. 88-100; and Sabino Tan, pp. 110-122, t s. n.) Requesting Gardiola to accompany him, both went to the place where the dead horse was and appellant recognized his horse. He then told Gardiola to go home while he proceeded to the house of the deceased to inquire why his horse was killed. As he approached the house, he met Chinki, brother-in-law of the deceased from whom he asked where Felicisimo was. Felicisimo who was in the house, shouted, 'Yes, it was I who shot your horse for having destroyed my plants'. After saying thus, he went to his room and when he came out of said room, his mother, Maura, was seen trying to dissuade him from going downstairs. (Testimonies of Dominador Gerilla, pp. 78-87; and Sabino Tan, pp. 110-122, t. s. n.) But the deceased came down anyway and a short argument ensued

after which the deceased took hold of his pistol which was tucked under the belt of his trousers. Simultaneously, Chinki and the appellant grabbed the hand of the deceased firmly pinning the gun to his body, causing it to explode, (p. 80, t. s. n.) The deceased was hit in the stomach, (pp. 86 and 112, t s. n.)"

In addition to the testimony of eyewitnesses Federico Chan and Maura Jacinto, the prosecution presented Juliana Inting, younger sister of Felicisimo, who testified that as she was coming back from school, she heard the shot emanating from the backyard; that she thereafter saw the appellant holding a pistol; that when the appellant met Sofronio Gaspay, he handed the pistol to the latter; that Sofronio made the question "Was he hit?" to which the appellant answered in the affirmative. The prosecution also put on the witness stand Ricardo Celda, a neighbor of Maura Jacinto, who testified that, attracted by the shot and going to a nearby creek, he saw from a distance of about fifteen meters, the appellant giving his pistol to Sofronio Gaspay.

We are convinced of appellant's guilt. The testimony of Federico Chan and Maura Jacinto was found by the trial court to have been given in "an easy, natural and unimpassioned manner." In the words of the trial court, it "had repeated moments to observe the evidently anguished mother (Maura Jacinto) of the deceased; her conduct iri testifying, her demeanor, tone of voice, calmness and general attitude—which altogether had convinced the court of her sincerity." We have found no cogent reason for concluding that the lower court erred in appreciating the evidence oh record.

In all likelihood, appellant's belief (right or wrong) that Felicisimo Inting killed his horse prompted the appellant to get even by shooting Felicisimo. It is improbable that, if Felicisimo had come down from his room to attack the appellant with his pistol, he would approach the appellant so closely that the latter might wrest away Felicisimo's weapon. The improbability of the alleged struggle for the possession of the gun becomes the more apparent, because, if there was such a struggle, the position of the gun would have been vertically upwards or downwards, and not horizontal as shown by the direction of the wound of Felicisimo Inting.

The appellant relies on the alleged fact, established by the testimony of Sgt. Santiago Paladin, that the gun which accidentally killed Felicisimo was found buried under an empty drum near the house of Maura Jacinto. The significance of this point is negated by the dismissal of the case for illegal possession of firearms against Maura Jacinto. We are inclined to agree with the intimation of the trial court "that there seems to have been an effort on the part of Sgt. Santiago Paladin and his companions to exert influence, if not pressure, upon Maura Jacinto to desist from further prosecuting the murder case, for the death of her son if she did not want any further troubled-referring to the alleged illegal possession by her of a firearm which to the mind of the court bore the earmarks of a planted charge."

The appellant, without giving particulars, also alleges that there are contradictions between the testimony of the witnesses for the prosecution and their affidavits. As aptly pointed out by the Solicitor General, the contradictions, if any, may be explained by the fact that an "affidavit * * * will not always disclose the whole facts, and will oftentimes and without design incorrectly describe, without the deponent detecting it, some of the occurrences, narrated * * *" (2 Moore on Facts, 1098) and "being taken ex parte, is almost always incomplete and often inaccurate, sometimes from partial suggestions, and sometimes from the want of suggestions and inquiries, without the aid of which the witness may be unable to recall the connected collateral circumstances necessary for the correction of the first suggestions of his memory, and for his accurate recollection of all that belongs to the subject" (2 Moore on Facts, 1094-1095).

The crime committed is murder, in view of the qualifying circumstance of treachery, the appellant having shot his victim with such suddenness as to insure the accomplishment of appellant's criminal design. While we agree with the Solicitor General that the appellant is not entitled to the mitigating circumstance of lack of intention to commit

a grave wrong because of the kind of weapon used by him, or to the mitigating circumstance of voluntary surrender because the appellant was merely alleged to have reported the accidental firing of Felicisimo's gun to the municipal mayor and neither admitted the commission of the crime nor submitted himself to the custody of the authorities, we are of the opinion that the trial court correctly considered the mitigating circumstance of passion or obfuscation. It is noteworthy that appellant's act in shooting Felicisimo was influenced by a legitimate feeling consequent upon his belief that Felicisimo killed his horse, and that the appellant, after being informed of and having seen the face of his horse, at once proceeded to the house of Felicisimo, thereby virtually having no time necessary to reflect on what he would do.

The prescribed penalty is reclusion temporal in its maximum period to death. On account of the presence of one mitigating circumstance, without any aggravating circumstance, and under the provisions of the Indeterminate Sentence Law, the appealed judgment will be affirmed with the sole modification that the appellant is hereby sentenced to an indeterminate penalty of from 10 years and 1 day, prision mayor, to 17 years, 4 months and 1 day, reclusion temporal. So ordered with costs against the appellant.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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