

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. COSME BAYONGAN AND MAGELLAN TOBIAS, DEFENDANTS-APPELLANTS.*G.R. No. L-23658. April 26, 1968*

Ponente: FERNANDO, J.

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It is a sad commentary on the times that ever so often social affairs, where mutual enjoyment and good fellowship should be the rule, are marred by displays of bad feeling, outbursts of temper, fist fights, and even more violent altercations, at times resulting in death, if not during the occasion, immediately or soon thereafter. Such a tragedy did occur in the early morning of January 26, 1960, after a dance held at the municipal building of Sallapadan, Abra. One Roberto Bustamante was fatally shot.

For his death, Cosme Bayongan, Magellan Tobias, Augusto Beras and Eugenio Blanza were accused of the crime of murder. They were arraigned and with the assistance of counsel entered a plea of not guilty. After trial, the Court of First Instance of Abra, in a decision rendered on July 30, 1964, acquitted Beras and Blanza but found the now appellants, Cosme Bayongan and Magellan Tobias, “guilty beyond reasonable doubt of the crime of murder,” sentencing “each of them to suffer the penalty of Reclusion Perpetua, each to indemnify the heirs of the deceased Roberto Bustamante jointly and severally in the amount of P6,000.00, with accessory penalties provided for by law, and each to pay the proportionate part of the costs.”[1] Hence this appeal.

The prosecution presented two witnesses, the medical officer, who performed an autopsy on the body of the deceased and a certain Candido Ayco, who was an eyewitness. The widow, Mrs. Roberto Bustamante, likewise testified on the civil aspects of the case. The guilt or lack of it of the appellants would therefore depend on the testimony of Candido Ayco. This is one instance where a sole witness was relied upon for the determination of the culpability of those charged with the serious crime of murder.

Candido Ayco was put on the stand by the then Provincial Fiscal of Abra. In answers to questions propounded by the Fiscal, he testified that in the evening of January 25, 1960, he was at Sallapadan, Abra, with several companions including the deceased, Roberto Bustamante, as well as the ladies with them. They attended the benefit dance held in the first floor of the municipal building that evening. Then when asked if anything did occur, his answer was: “. . . After the dance that was the time when Roberto Bustamante was shot.”[2] Elaborating, he testified that the affair being over, he looked for some of his companions so they could take their meals together. He met the accused Magellan Tobias, who immediately challenged him with his gun by pointing a .45 caliber pistol at him from a distance of two meters.[3] At that time, with a gun pointed at him, somebody, according to Ayco, clubbed his head, and when he turned around, he saw Augusto Beras, one of the accused, holding a club. He was then struck on the head, after which Beras ran to be pursued by him.[4] He was not, however, able to overtake him. He then joined his companions at the place where their truck was so that they could take their meals.

That “was the time when Cosme Bayongan arrived and [he] was already holding a shotgun and his companions

were also holding their guns.”[5] With him were the other accused, Magellan Tobias, Augusto Beras and Eugenio Blanza.[6] It is Ayco’s version that Bayongan went directly towards him pointing his gun at him and issuing a challenge.[7] Because of such threatening attitude, according to witness, he asked for his forgiveness and said he was “not going to fight.”[8] After he made that remark, the accused, Bayongan, called for Tobias and handed him his shotgun.[9] At that time, the deceased, Bustamante, came near. He asked a question: “What is that?” Before any answer could be heard, according to Ayco, “he was shot by Magellan Tobias.”[10] He was fired upon from a distance of four meters with a pistol caliber .45.[11]

With his categorical declaration that it was Tobias who shot Bustamante, the Fiscal reminded the witness, Ayco, of the affidavit he had executed in relation to the case, an affidavit carefully read by him before signing, in the office of the Provincial Fiscal.[12] He was then asked whether he remembered what were the contents of such affidavit, to which he answered in the affirmative.[13] In said affidavit, he asserted that there were two who fired, his answer being “. . . , two of them fired.”[14] When asked who they were, he replied: “Magellan Tobias and Cosme Bayongan, sir.”[15] An explanation was then in order why he only mentioned Magellan Tobias earlier as the one who fired at Roberto Bustamante; all he could say was: “I forgot, sir, because of the length of time that has already elapsed.”[16]

Subsequently, after the direct examination, Judge Donesa, of the lower court, asked the witness, Ayco: “Did you see who of the accused shot the victim?” The answer was: “The two, Your Honor, but I do not know who among them hit the victim because they were two who fired at him.”[17] Those two he identified as Cosme Bayongan and Magellan Tobias, both of them using pistols caliber .45.[18] As a matter of fact, according to the witness, again in reply to a question of the court, Tobias, in addition to the pistol, was holding a shotgun with his left hand, but it was the pistol that was fired.[19] Nor could the witness identify as to who of the two hit the victim.

The witness, Ayco, was certain, however, that at the time of such shots, “Cosme Bayongan was at the left side towards the front of Roberto Bustamante.”[20] The testimony of the medical officer who conducted the autopsy was summarized by the lower-court thus: “Dr. Laureano Gonzales testified that he was the Municipal Health Officer of the Municipality of Bucay, Abra, on January 26, 1960; that he performed an autopsy on the body of the deceased Roberto Bustamante on said date; that he found out that the deceased sustained a gunshot wound located on the left side of the back of the body and about 20 cm. from the shoulder on the same side; that the point of entrance of the bullet was on the back of the body while the point of exit was in front as shown on Exhibit 1 (p. 402, rec); that the said wound was fatal, the cause of his death being internal hemorrhage, that he made a written Report, Exhibit A, for the autopsy he had performed (p. 370, rec.).”[21]

In the light of the indisputable fact that the deceased sustained only one gunshot wound located on the left side of the back of the body, the point of entrance of the bullet being on the back, with the point of exit being in front and the equally undeniable fact that the accused Bayongan was at the left side towards the front of the deceased, Bustamante, coupled with earlier declaration of the lone witness, Ayco, that it was only Tobias who fired the pistol, although later on rectified, it cannot be said that Bayongan’s guilt had been proved beyond reasonable doubt. He is therefore entitled to an acquittal. The words of former Chief Justice Moran are highly persuasive: “Although the testimony of a single witness may be sufficient ground for conviction when it appears to be persuasive, yet when not only is it self-contradictory but even inconsistent with previous statements made by witness himself, conviction cannot be made to rest wholly on it.”[22]

Is the appellant, Magellan Tobias, likewise entitled to an acquittal? The answer must be in the negative. As was already noted, the witness, Ayco, categorically testified that Bustamante “was shot by Magellan Tobias.”[23] Later on when he was reminded of the affidavit he previously executed, Ayco, in answer to the question as to who fired at the deceased, stated: “. . . They were Magellan Tobias and Cosme Bayongan alias Urat.”[24] This

witness was likewise certain that Tobias used a pistol caliber .45, color black.[25] To the query as to whether he noticed the shot having hit the deceased, this was his reply: “Yes, sir, because he was the one at the back of Roberto Bustamante at the time he was shot.”[26] Ayco was equally certain that Tobias was behind Bustamante at a distance of about four meters.[27]

From the testimony of the medical officer, which, as summarized by the lower court, was noted a few pages back, it was indisputable “that the deceased sustained a gunshot wound located on the left side of the back of the body and about 20 cm. from the shoulder on the same side; that the point of entrance of the bullet was on the back of the body, while the point of exit was in the front . . . ,”[28] It was true that in the course of the questions by Judge Donesá, the witness, Ayco, could not say categorically as to who among appellants Bayongan and Tobias hit the victim. He was certain however, that both of them were each holding a pistol caliber .45. He likewise informed the lower court judge that it was that pistol that was fired by appellant Tobias. With such definiteness evinced by the witness, Ayco, it is difficult to absolve appellant Tobias entirely of all responsibility.

As noted by the lower court, this is the gist of his testimony: “Magellan Tobias testified that on the night of January 25, 1960, he attended a dance on the ground floor of the municipal building located in barrio Subosob, Sallapadan, Abra; that when he arrived in the place, he saw his barriomates already there and dancing; that after the dance he wanted to go home but Candido Ayco grabbed him on the collar of his shirt and thereafter ran away eastward; that as he wanted to go home the accused Bayongan called him and handed to him his (Bayongan) Brown ing shotgun and said: ‘Hold it as I sport with Candido Ayco’; that after taking the said shotgun he went towards the eastern side of the place where they were standing and there he saw the deceased Roberto Bustamante struck the accused Bayongan with a bolo; that at the time the deceased Bustamante was behind the accused Bayongan while Sagao was at the left side of the deceased Bustamante but Ayco ran away; that it was Sagao who fired his revolver Cal. 45 at the deceased Bustamante at the time when the deceased Bustamante was striking the accused Bayongan with a bolo and the latter retreated; that when the incident took place he was about 5 to 6 meters away from Sagao.”[29] It is further noted by the lower court that appellant Tobias “stayed in the P.C. barracks for 6 days in Bangued, Abra, without having executed an affidavit that he was not the one who shot the deceased Bustamante.”[30]

The defense did point to one Rodrigo Sagao, a companion of the deceased, Bustamante, as the party responsible for his death. Appellant Bayongan testified on direct examination that after he heard a gun detonation from a pistol caliber .45 he saw the deceased, Bustamante, “fell face downward.”[31] When asked whether he was able to notice who might have been responsible for the shot, his answer was “Rodrigo Sagao, sir.”[32] He did admit on cross-examination that this Sagao is already dead.[33] He likewise admitted, as noted in the decision, “that he did not execute any affidavit to show that Sagao was the one who killed the deceased Bustamante, nor did he inform the Justice of the Peace nor the police force of Sallapadan, Abra, nor the Sergeant of the Guard of the P.C. barracks in Bangued, Abra where he was detained that Sagao was the one who killed the deceased Bustamante because he preferred to testify on the matter in the Court of First Instance.”[34]

Considering the firmness with which the witness, Ayco, adhered to his declaration that appellant Tobias did shoot at the deceased under circumstances given confirmation by the point of entrance and the point of exit of the bullet wound, a reversal of the judgment, as far as appellant Tobias is concerned, does not appear warranted. The crime committed by appellant Tobias is not, however, murder, but simple homicide, without any mitigating or aggravating circumstances.

WHEREFORE, the decision of the lower court is modified, acquitting the appellant, Cosme Bayongan, and finding Magellan Tobias guilty of the crime of homicide, to suffer the penalty of imprisonment for six years and one day, as minimum, to fourteen years, eight months and one day, as maximum, to indemnify the heirs of the

deceased, Roberto Bustamante, in the amount of P6.000.00 with accessory penalty provided for by law and to pay one-fourth of the costs.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.

Judgment modified.

[1] Decision of the lower court, Appendix to Brief of Defendants-Appellants, p. 60.

[2] T.s.n., Session of Septemebr 26, 1962, p. 10

[3] Ibid pp. 10 and p. 11.

[4] Ibid p. 11.

[5] Ibid p. 13.

[6] Ibid p. 14.

[7] Ibid p. 15.

[8] Ibid p. 18.

[9] Ibid p. 19-20.

[10] Ibid p. 20.

[11] Ibid p. 20.

[12] Ibid p. 21.

[13] Ibid p. 24

[14] Ibid p. 24

[15] Ibid p. 24

[16] Ibid p. 24

[17] T.s.n., Session of January 22, 1963, p. 81.

[18] Ibid p.81.

[19] Ibid p.82.

[20] T.s.n., Session of September 26, 1962, p. 28.

[21] Decision of the lower court, Appendix, Brief for Defendants-Appellants, p. 45

[22] People v. Cauilan, 79 Phil. 272, 274 (1947).

[23] T.s.n., Session of September 26, 1962, p. 20.

[24] Ibid p. 25.

[25] Ibid p. 25.

[26] Ibid p. 26.

[27] Ibid p. 26.

[28] Decision, Appendix, Brief for Defendants-Appellants, p. 45.

[29] Ibid p. 50-51.

[30] Ibid p. 51.

[31] T.s.n., Session of February 27, 1963.

[32] Ibid p. 106

[33] T.s.n., Session of February 28, 1963.

[34] Decision, Appendix, Brief for Defendants-Appellants, p. 45.

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