

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARCIANO VILLEGAS, ALIAS ANONG, EMIGDIO VILLEGAS, ALIAS PABLO AND ALFREDO VILLEGAS, ALIAS PERING, DEFENDANTS AND APPEL...*G.R. No. L-16818. May 31, 1961*

Ponente: REYES, J.B.L., J.

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Direct appeal from the decision of the Court of First Instance of Pangasinan dated February 29, 1960, finding appellants guilty of murder, and sentencing them to suffer the penalty of *reclusión perpetua*; to indemnify, jointly and severally, the heirs of the deceased Felix Jugo in the sum of P6,000.00; and to pay the costs.

The prosecution's version of the incident runs as follows: That around 5:00 o'clock p.m. of December 26, 1959, while the late Felix Jugo was walking along a trail in barrio Bolo, San Jacinto, Pangasinan, on his way to sell eggs, he was suddenly attacked by the three (3) Villegas brothers, Marciano, Emigdio, and Alfredo. Marciano struck Felix at the back of the head with an iron pipe, while the two other brothers hurled stones at him. When Felix fell to the ground, Marciano continued to hit him with the iron pipe. The son of Felix, Gabriel Jugo, who was then walking behind at a distance of about 50 meters, upon seeing his father fall, tried to succor him, but Emigdio and Alfredo stoned and chased him away from the scene. Gabriel informed an elder brother of what happened to their father, after which the barrio lieutenant was also notified. While the barrio lieutenant went to the scene of the killing, Gabriel's elder brother reported the incident to the police authorities at the San Jacinto poblacion, but only the following day did the Chief of Police, with the Provincial Sanitary Inspector, arrive on the scene and inspect the corpse of the deceased. He was found lying face downward, with an iron pipe (Exh. "B") and a stone stained with red (Exhibit "C") beside him. Upon examination conducted by the Provincial Sanitary Inspector, the deceased was found to have sustained fifteen incised-like wounds, bruises, swellings, and scratches as contained in Exhibit "A".

The defense does not dispute that at around 5:00 p.m. of December 26, 1959, Felix Jugo was killed by Marciano Villegas; but it contends that Marciano did so in self-defense. The evidence for the defense tends to establish that on the day and hour already mentioned, appellants Marciano, Emigdio, and Alfredo, along with Antonio Baguio, were resting and conversing in front of the latter's house in barrio Bolo, San Jacinto, Pangasinan. Shortly thereafter, Gabriel Jugo passed by, accompanied by a boy brother-in-law and Juan Narvasa. Gabriel saw Emigdio and accused him of being a chicken thief, Gabriel assumed a belligerent attitude but was pacified by Antonio Baguio and Federico Ronquillo. Then Gabriel sent his boy companion to fetch his father (Felix) "as the chicken thieves were there". When Felix Jugo arrived, he immediately rushed at Marciano, who was then near his own house, and hit the latter with an iron pipe (Exhibit "3" for defense; Exhibit "B" for Prosecution). Supporting his father, Gabriel Jugo boloed Marciano Villegas on the right buttock. Emigdio joined the affray, casting stones at Gabriel, while Alfredo rushed at him with a stick or cane. Thereupon, Gabriel ran away, pursued by Emigdio and Alfredo. Meanwhile, Marciano and Felix grappled with each other; the former was able to wrest away the iron

pipe from Felix Jugo after parrying two blows with his left arm. Getting a piece of bamboo to rearm himself, (Exhibit 4), Felix was about to strike again at Marciano when the latter hit him several times with the iron pipe he had grabbed from Felix. All this time, Emigdio and Alfredo were chasing Gabriel, and when they came back, Felix was already on the ground, dead.

In convicting all the appellants of murder, the lower court gave full credit to the prosecution's version, culled almost exclusively from the testimony of two alleged eyewitnesses—Gabriel Jugo and Lorenzo Abuan. Certain circumstances, however, fail to inspire confidence in the complete veracity of their narrative.

We find the account of the killing by these prosecution witnesses so sketchy and nebulous as to engender the suspicion that material points have been concealed to compose a predetermined pattern of the incident. In describing the alleged details of the killing, and only after much prodding, all Gabriel Jugo could say was that, from behind, Marciano hit his father on the head with an iron pipe, while Emigdio and Alfredo Villegas threw stones, also hitting his father on the back of the head; that when his father fell, Marciano still hit him several times, and killed him. Note that except for the allegedly treacherous assault and the participation of Emigdio and Alfredo in throwing stones at the deceased, this account of the killing is perfectly consistent with that of the defense, which admits that Marciano killed Felix with an iron pipe. To better emphasize treachery, this witness averred that the place of ambush was along a trail with tall, overgrown bushes and talahib; but the assertion is disproved by the Provincial Sanitary Inspector who testified that there were no tall grasses at the place of the killing, and that in fact, it was in an open field. The Chief of Police likewise estimated the height of the grass in the vicinity to be no more than about one foot.

The prosecution would have it believed that appellants purposely waited along the trail for their victim, who was then carrying eggs, and from the bushes, treacherously pounced on their quarry from behind. If the deceased was carrying eggs—about 40 in number, Gabriel said—it is unexplained why no trace of these eggs, of their remains, or even just of their container, was ever found by anybody at or near the spot of the killing. Also Emigdio and Alfredo had not armed themselves and used weapons no more effective than stones. This fact tends to negative a premeditated waylaying.

Gabriel Jugo charged that the two Villegas brothers chased him with bolos and stones; and Lorenzo Abuan (who turns out to be a tenant of the private prosecutor) also said in passing that Alfredo carried a bolo. This claim is belied by the fact that among the injuries inflicted on the deceased, not one was caused by a bolo; while Gabriel, professedly confronted by two armed adversaries, not only managed to wound one of them, but escaped unscathed from the unequal encounter.

It may also be observed that if the three Villegas brothers had deliberately ambushed Felix Jugo, they would not have done so at a spot close to their dwellings, for they would have sensed that by so doing, suspicion would immediately fall upon them. All in all, the evidence for the prosecution fails to establish the guilt of appellants beyond reasonable doubt.

On the other hand, that the deceased was the aggressor in the affray is sufficiently established by the record. Not only Marciano and Alfredo Villegas, but Antonio Baguio and Juan Narvasa as well, bystanders during the incident, clearly and convincingly described the events leading to the attack unleashed by the deceased Felix Jugo on appellant Marciano Villegas. Juan Narvasa was, in fact, with Gabriel Jugo as the latter passed by and upbraided Emigdio Villegas, and then sent for his father. Federico Ronquillo, another bystander and originally listed as a prosecution witness in the complaint before the trial court, would have corroborated the aggression by the deceased against appellant Marciano, but his presentation was dispensed with upon admission by the prosecution of the corroborative nature of his testimony. These witnesses do not appear related to appellants or

impelled by any improper motive that would discredit their account of the unlawful aggression committed by the deceased. Moreover, there is evidence that the late Felix Jugo was notoriously a bully, a trouble-seeker given to violent acts, who had tangled even with some members of the local police force. It is not surprising, therefore, that he should respond violently to a summons from his son, Gabriel, for him to come as the chicken thieves had been found; and armed with an iron pipe, to give vent to his anger upon arriving at the scene and finding the appellants herein, whom he believed to have stolen his chickens. This was not the first time that the deceased had taken an aggressive attitude toward Marciano, because just three days prior to the fatal incident, the deceased admittedly had challenged Marciano Villegas to a fight over some wood which allegedly came from the land leased by Felix.

The nature of the killing as an offshoot of a spontaneous turn of events—not a previously conceived ambush - is seen by the use of stones by Emigdio and Alfredo, weapons unlikely to be chosen in the cool calculation of a treacherous ambush. No eggs, or traces thereof, were found in the vicinity of the killing, because in fact, the deceased was not on his way to sell eggs, but to accost appellants and have it out with them, as the defense witnesses asserted.

The number of wounds appearing in the medical certificate Exhibit "A" does not necessarily indicate murder, because many of these wounds were only bruises, swellings and scratches. Besides, the use of blunt instruments in combat should be expected to ordinarily produce more wounds than other more deadly weapons, since the struggle usually would last longer. Of course, the number of wounds would indicate that contrary to what has been asserted by the defense, the deceased was not hit by Marciano only three times.

We are convinced that there was unlawful aggression on the part of Felix Jugo without sufficient provocation from Marciano Villegas; but it has not been satisfactorily shown that there was reasonable necessity for the killing of the former. The test of reasonableness depends not only on the character of the weapon employed, but also on the physical condition, age, size and other circumstances pertaining to the combatants. Compared to Felix, who was about 60 years old, Marciano, who was about 36, was relatively still at the peak of manhood. With his relative youth, taller stature, and bigger build, no impelling danger is shown to have threatened Marciano's life, after he had wrested the iron pipe from Felix, as to necessitate his dealing mortal blows on the latter until he died. Also, the presence at the scene of Marciano's two brothers, whose cooperation could certainly be counted upon, precluded a reasonable chance of Felix being able to turn the tables on Villegas. We cannot believe that the deceased was yet able to pick up a bamboo cane (Exh. "4") with which, allegedly, he tried again to strike Marciano. This cane was not found by the authorities at the scene of the crime. It follows that Marciano, while the victim of an unprovoked aggression, is still liable for homicide.

As to appellants Emigdio and Alfredo, the evidence as a whole would show that they were not entirely free from participation in the killing of the deceased. The numerous contusions inflicted on the deceased support the assertion that they threw stones at the deceased, but during the struggle between Marciano and the deceased, after the latter had attacked the former with the iron pipe. Absolutely no evidence exists to prove that any stone thrown by either Emigdio or Alfredo inflicted any mortal injury on Felix Jugo, nor does it appear that they joined Marciano in hitting the deceased after the latter crashed to the ground from Marciano's blows. Thus, the form and manner of assistance by Emigdio and Alfredo does not safely disclose that unity of purpose and design and compulsion by a common motive that would make them co- principals with the actual slayer, Marciano. At most, they could only be held liable as accomplices, in that they cooperated in the execution of the offense by simultaneous acts which were not indispensable (People vs. Tumayao, 56 Phil., 587; People vs. Tamayo, 44 Phil., 38; People vs. Cortez, 55 Phil., 143).

We, therefore, hold appellant Marciano guilty of homicide, punishable with *reclusión temporal* under Article 249 of the Revised Penal Code. Having acted in incomplete self-defense, with the majority of the requisites for

justification concurring, the penalty should be reduced one degree lower, i.e., to prisión mayor, pursuant to Article 69, in connection with paragraph 2, Article 61, and Article 71, of the Code, to be imposed in its minimum period, since this accused voluntarily surrendered to the authorities, and no aggravating circumstance is present that would offset this mitigating circumstance. Applying the Indeterminate Sentence Law, appellant Marciano should be sentenced to an indeterminate penalty ranging from 4 years and 2 months of prisión correccional to 6 years and 1 day of prisión mayor, with the accessories provided by law.

As accomplices to the homicide, the acts of Emigdio and Alfredo are punishable by prisión mayor, under Article 52 in connection with Article 71, of the Penal Code. Since Emigdio and Alfredo acted in defense of their brother, Marciano, in the face of an unlawful aggression without provocation, the penalty should be reduced by at least one degree, pursuant to Article 69 of the Code, or to prisión correccional, to be imposed in its medium period, no other modifying circumstances being present.

In view of the foregoing, the decision subject of review is set aside, and another is entered finding appellants guilty only of homicide; sentencing appellant Marciano Villegas to an indeterminate penalty ranging from 4 years and 2 months of prisión correccional to 6 years and 1 day of prisión mayor, with the accessories provided by law; and to indemnify the heirs of the deceased in the sum of P3,000.00, without subsidiary imprisonment in case of insolvency. Appellants Emigdio and Alfredo Villegas, as accomplices, are sentenced to an indeterminate penalty not less than 6 months of arresto mayor, and not more than 2 years, 4 months and 1 day of prisión correccional with the accessories provided by law; and, jointly and severally to pay the heirs of the deceased in the sum of P3,000.00 by way of indemnity with subsidiary imprisonment in case of insolvency.

In case of the insolvency of Marciano Villegas as principal, then, Emigdio and Alfredo Villegas, as accomplices, shall be subsidiarily liable, jointly and severally, for the indemnity due from said principal; and should Emigdio and Alfredo Villegas be insolvent, Marciano Villegas, as principal, shall be subsidiarily liable for their share of the indemnity (Article 110, Revised Penal Code; *People vs. Cortez*, supra.).

Costs against appellants in both instances.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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