

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE ATIENZA, CEFERINO DAGOHYO, HILARION BIRADOR AND FRANCISCO OYANDO, DEFENDANTS AND APPELLANTS.

G.R. No. L-1913. May 28, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellants are accused of having murdered Lucio Balmes on April 28, 1948, in Caguray, municipality of Bulalakaw, Mindoro. Finding them guilty, the lower court sentenced Jose Atienza and Ceferino Dagohoy to *reclusión perpetua* and Hilarion Birador and Francisco Oyando, after crediting them with the mitigating circumstance of lack of education, to an indeterminate penalty of from 10 years and 1 day of *prisión mayor* to 17 years, 4 months and 1 day of *reclusión temporal*, all appellants to jointly and severally indemnify the heirs of the deceased in the sum of P2,000.

According to the theory of the prosecution, at about 10 o'clock in the morning of April 28, 1946, Lucio Balmes and Antonio Contreras, accompanied by Mangyans Simon and Ontoy, went to the pasture land of Filemon Atienza. Upon reaching the barbed wire fence surrounding it, near the Caguray river, they found the gate closed. Antonio ordered Simon to open it. As soon as it was opened, Antonio, followed by Lucio Balmes, went inside. At that moment they saw at a distance of about 30 brazas, seven persons, including the four appellants. Antonio shouted "Pepe." Thereupon, Jose Atienza fired. Antonio immediately dropped to the ground, face downward. He saw Balmes also lying flat on the ground. Jose Atienza and companions continued firing at them for forty minutes. When the firing stopped, Antonio crawled towards Balmes and found him bathed in blood. Antonio continued crawling until he reached a creek and then proceeded to the town of Bulalakaw, where he arrived at about 10 o'clock in the evening of the same day and went to the Chief of Police to report the matter.

The theory of the defense is to the effect that none of the accused was present at the time and place where the crime was committed and could not have participated in the commission thereof; that none of the accused had known Balmes in life nor had any dealings with him; that when Balmes came to Bulalakaw for the purpose of purchasing cattle, he must have brought with him a considerable sum of money, a fact known only to Antonio Contreras and other members of his family; that on April 27, 1946, Balmes was induced by Antonio Contreras and others to go with them to the pasture land of the Contreras family at Curanga where they will show Lucio the cattle they were selling him; that upon arriving there in the afternoon, Balmes found out that there was not a single cattle in the pen and, on his disappointment might have said strong words; that at about that time, he was murdered by Antonio Contreras and companions, one of them shooting him from a short distance at his left breast and another giving him a hard blow in the right lower jaw, and that, to avoid responsibility therefor, they brought the corpse inside the barbed wire fence of Filemon Atienza to make it appear that he was shot by Filemon Atienza and companions.

Before the arraignment, the lower court, granting the fiscal's motion, dismissed the information with regard to

Filemon and Aniceto Atienza.

Both briefs, the one filed by counsel for the defense and that filed by the Solicitor General, join in the prayer that appellants be acquitted, although defense counsel also prays that the provincial fiscal of Mindoro be ordered to prosecute Antonio Contreras and others for the murder of Lucio Balmes. After a careful consideration of the evidence on record, we are of the opinion that the joint prayer for acquittal is well taken.

Put under analysis, the prosecution's theory appears to be wanting. It cannot stand the test of logic and appears to be unnatural upon the standard of common experience.

The sanitary inspector, upon post-mortem examination, found in the body of Balmes two wounds, one at the left breast, affecting the heart, caused by a bullet, and another at the right of the lower jaw, fracturing the bone, caused by a heavy blow, not by a bullet. This heavy blow suggests a blunt instrument.

This heavy blow inflicted on the lower jaw of the deceased, to the extent of breaking the bone, suggests an action that does not tally with the prosecution's theory. It is an element incompatible with the whole story, according to which the whole aggression of the accused consisted in firing bullets continuously for forty minutes, after which they left. Antonio Contreras also left crawling, while the two Mangyans had escaped beforehand. Balmes was left in the scene, dead. There is no one who could have broken the jaw of Balmes. No one would suppose that a third person who happened to come to the place, after the shooting affray, had been so crazy as to engage in the ghastly task of breaking the jaw of a cadaver. That broken jaw of Balmes offers an eloquent and conclusive evidence that he was killed under different circumstances than those described by Antonio Contreras and Simon, the Mangyan, the two witnesses who gave the story for the prosecution.

Another hitch to the story is the fact that, notwithstanding the fact that the accused had been firing incessantly at the group of Antonio Contreras and Balmes, only one bullet hit its mark, not Antonio Contreras, an alleged enemy of the Atienza family, but Balmes, a neutral and unknown to the Atienza family. If the accused were bent on killing Antonio Contreras, as the latter would want us to believe, it is incomprehensible why they have wasted so much time, noise and ammunition, by sending volley after volley to the object of their aggression, instead of approaching the place where Antonio Contreras was lying face downward, absolutely defenseless and in such a position as to be killed by one bullet. The accused could have even pursued the two Mangyans and killed them on the spot, and thus eliminate all witnesses of the murder, besides saving much powder and metal and forty minutes of detonations which could have attracted the attention of possible neighbors or passers-by. The conduct attributed to the accused by the story of the prosecution is not that of murderers but of pranksters toying with firearms.

If the accused murdered Balmes, according to the story of Antonio Contreras, it is understandable why they just abandoned the body in the place, where it could have been easily found by the authorities when they had plenty of time to bury it in some hidden place, thus concealing an evidence of the crime. That they had plenty of time to make the burial is shown by the fact that, according to Antonio Contreras, it took him twelve hours from Caguray, the alleged place of the killing, to the town of Bulalakaw. The way the body of Balmes was abandoned in the grazing land of the Atienza family, instead of supporting the theory of the prosecution, seems rather to be a planted evidence, intended to incriminate members of the Atienza family.

The appealed decision is reversed and appellants are acquitted. They shall be immediately released upon promulgation of this decision.

The petition of appellant's counsel for an order addressed to the provincial fiscal of Mindoro to prosecute Antonio Contreras and others is denied, as it is up to said counsel, with the evidence he may present, to convince said officer to take action and, at any rate, administrative remedies should be exhausted before resort to tribunals is

had.

Parás, Actg. C.J., Feria, and Tuason, JJ., concur.

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