

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIONISIO CARPIO Y ESTACIO ET AL., DEFENDANTS. DIONISIO CARPIO Y ESTACIO, DEFENDANT-APPELLANT.*G.R. No. L-1783. April 30, 1949*

Ponente: BENGZON, J.

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In this case coming from the Court of First Instance of Rizal, Judge Bienvenido A. Tan declared the accused Dionisio Carpio y Estacio and Pablo Carel y Mendoza guilty of attempted robbery with homicide. He sentenced the first to a life term and the second to a period of reclusion temporal, both to indemnify the heirs of the victim and to pay the costs. Carpio appealed.

Early in the morning of September 26, 1947, Norman E. Lamb an American citizen was held up and shot a few meters from his jeep which was parked in front of the house numbered 400 on Leveriza Street, City of Rizal. He had just conducted Gertrudes Castro to her home nearby. She heard the shots, ran downstairs and shouted for help. When people arrived, Lamb was rushed to the Philippine General Hospital and then to the Tenth Army Hospital where he expired on account of his bullet wounds, notwithstanding blood transfusion and other medical treatment. She testified, that a few minutes before the shooting, when Lamb was bidding her good-night, she observed two persons walking slowly, by the jeep and when she was about to enter her residence she heard several detonations.

Prompt police activity led to the arrest and indictment of the above-named defendants together with one James Craig y Ruben, who was subsequently discharged to become a witness for the prosecution. He declared more or less as follows:

"I am a taxi driver. At about two o'clock in the morning of September 26, 1947, I parked my taxi on Harrison, Street, Pasay, behind a jeep marked MPC. Pablo Carel and Jose Gutierrez were sitting inside. Pablo Carel hired my taxi and told me to proceed to Bill's Place, which I did. Pablo Carel entered that bar and a few moments later he returned to the taxi accompanied by Dionisio Carpio and we went back to Harrison Street where Gutierrez was waiting. Carel alighted, but Gutierrez entered the vehicle. There Gutierrez informed Carpio that a jeep was usually seen parked in Leveriza, that it could be taken, and that he had a ready buyer. Appellant agreed but suggested that they wait for Carel. When the latter arrived we proceeded to Leveriza. Carel gave Carpio his pistol Exhibit I. Then Carpio walked away with Jose Gutierrez. A short while thereafter I was startled by the sound of several shots. Carpio came back hurriedly and told me to drive him to his home in Galaz, Caloocan Rizal. I asked him what happened. He informed me he had a duel with the American who was inside the jeep. Upon arriving at his home he called for his mother. She advised him to go to a hospital to dress his wound but he refused for fear the policemen might locate him there. In payment for my services Carpio gave me the pistol Exhibit I which I tried to pawn to Pedro Ambrosio. The latter had no money, so I threw it away, being afraid."

It appears that the American returned the fire of the assailants. And when appellant was investigated some hours

after the shooting, he had a fresh gunshot wound.

The pistol Exhibit I was picked on the premises of Pedro Ambrosio. Ballistics expert Julius H. Klinger, criminologist of Philrycom swore that one of the bullets extracted from the corpse of Norman E. Lamb came out of that gun.

Undoubtedly, the principal and positive evidence against Dionisio Carpio is the testimony of James Craig, the taxi driver, who was an accomplice. It must be taken cautiously, coming as it does from a polluted source. Nevertheless we are satisfied from a careful examination of the same that he related the true story. He was practically corroborated by the discovery of the revolver near the house of Ambrosio, the wound in the body of Carpio, and partially by the declarations of these same defendants Pablo Carel and Dionisio Carpio who admitted in open court they were present at the scene of the crime, at the time mentioned by the witnesses for the prosecution and with the individuals described by them.

Said defendants, asserted in exculpation, that they had no previous conspiracy to attack the American, that Jose Gutierrez snatched the pistol from Pablo Carel, that said Gutierrez ordered Dionisio Carpio to follow him, that upon meeting the American, Jose Gutierrez held him up, that Carpio tried to avoid the encounter by placing himself between the two, but that he was unsuccessful, Gutierrez having started shooting. This line of defense is of course understandable, because Jose Gutierrez is still at large and malefactors are not averse to "passing the buck."

On the other hand, as heretofore stated, the testimony of James Craig is sufficiently convincing despite some of the alleged incongruities and unlikely details which defense counsel has diligently pointed out. Such deficiencies admit of reasonable explanation and do not refer to essentials. It is noteworthy that these defendants were immediately apprehended and made written statements which in many points confirmed the facts established by the testimony and documents submitted by the prosecution.

The offense is attempted robbery with homicide. We are inclined to think it was murder; but because no person witnessed the manner the attack had begun, the defendant and appellant must be given the benefit of the doubt. Anyway the information charged homicide.

The penalty prescribed by law for the felony is reclusion temporal in its maximum period to reclusion perpetua (article 297 Revised Penal Code) which is to be applied in its maximum period, there being two aggravating circumstances to wit: nighttime and the use of motor vehicle. The imprisonment meted out to appellant is therefore correct. But the indemnity should be raised to P2,000. With this modification, the appealed judgment is affirmed with costs. So ordered.

Paras, Feria, Pablo, Tuason, and Reyes, JJ., concur.

Perfecto, J., We concur subject to our consist opinion that the indemnity must be raised to P6,000 in accordance with the doctrines in *People vs. Amansec*, 80 Phil., 424.

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