

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEODIZON HONRADO, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. L-16499. September 30, 1963*

Ponente: BENGZON, C.J.

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This is an appeal from the decision of the Court of First Instance of Pangasinan finding the above appellants guilty of murder and sentencing each of them to life imprisonment and to indemnify the heirs of the deceased Tan Sek Yee in the sum of P6,000.00, with costs.

Said appellants were charged with murder allegedly committed in May, 1959, in barrio Carmen, municipality of Rosales, province of Pangasinan. The information alleged that said accused, conspiring together and mutually aiding one another with intent to kill, feloniously attacked Tan Sek Yee and inflicted upon him wounds and injuries that caused instant death.

After a plea of not guilty, trial ensued and judgment was subsequently rendered, from which all of the above accused, seeking acquittal therefrom, presented appeals to this Court. The lower court, they contend, erred in finding: (1) that the offended party had been killed with treachery; (2) that in the commission of the crime, conspiracy among the three appellants had existed.

The prosecution has proved that in the afternoon of May 30, 1959, in the United Restaurant of Carmen, Rosales, Pangasinan, Leodizon Honrado and Regino Leonin sat with one named "Kenkoy" engaged in a drinking spree. While sipping beer, one of them tossed a bottle under the table whereat the waitress Gliceria Quicho and her companions were enjoying their lunch. Presently, the said two accused, Leodizon and Regino caused a disturbance, bumping and toppling down the chairs. So, Tan Sek Yee, the old Chinese owner of the restaurant, emerged from his room to stop the trouble.. But the two resisted, fought the owner, even dragged him outside the restaurant, where the said two accused continued boxing their victim, who naturally - defended himself. At this juncture, a passenger jeepney bearing plate No. 42489, (Pangasinan) arrived; and Anselmo Leonin, alighting from the vehicle, pulled an iron bar from its front seat and then rushed to join the scuffle. Without warning, said Anselmo struck the Chinese with the iron bar three times. The first blow on the left side of the head forced Tan Sek Yee to fall into a sitting position. The second and third blows, hit the left side of his neck. Whereupon, the Chinaman fell on the ground, and Anselmo rushed back to his jeepney to drive away on the road to Manila. The accused Regino and Leodizon, after the victim had fallen, returned to the Restaurant.

The Chinaman died immediately of cerebral hemorrhage due to fracture of the skull and laceration of the brain. Dr. Rodolfo C. Flores, who performed the autopsy, attributed the wound and fracture to blows from a blunt instrument, like an iron bar.

Both Regino Leonin and Leodizon Honrado denied all participation in the commission of the offense. Regino swore that all the time, he and Leodizon Honrado were at the United Restaurant drinking liquor; that they had proceeded to said place after having imbibed some wine in the market of Carmen; that while they were there,

nothing beyond the ordinary happened inside the said restaurant ; that as he was drunk, he could not remember anything, except having gone back and forth from his seat and that later, a PC soldier took him to the municipal building.

Leodizon Honrado corroborated the testimony of Regino. He stated that on May 30, 1959, after having had some drinks in the Rosales market, he went to the United Restaurant and met Regino on the way; that there he drank some more, this time with another man called "Kenkoy"; that while they were drinking, the owner of the restaurant, Tan Sek Yee, went to their table and inquired who of them would pay the bill; that when said "Kenkoy" answered that he would, the Chinese insulted them, calling them "balasubas; that upon hearing this insult, he stood up, pushed "Lolo" (the Chinese) to the door of the restaurant and told the latter to leave them (the drinkers) alone; that when he returned to their table, his companions Regino and "Kenkoy" were gone; that he once more sat down to resume his lebaton. He also swore that although he knows Anselmo Leonin, he did not meet him that day, May 30, 1959, nor the day before.

On his part, the accused Anselmo Leonin claimed that on May 30, he drove his jeepney to pick up passengers beginning at about 6:00 o'clock in the morning; took his lunch in Carmen at noon, and continued his driving until about 6:00 o'clock in the afternoon when he was arrested for the death of Tan Sek Yee. To confirm his story, he presented Wilfredo Cabegas, the conductor of his jeepney. After carefully examining the record, we are persuaded beyond reasonable doubt that the evidence sufficiently shows both accused Regino Leonin andLeodizon Honrado to have laid violent hands upon Tan Sek Yee; and that appellant Anselmo Leonin delivered the fatal blow with an iron bar.

Under the circumstances, however, is it right to hold all three accused, guilty of murder? Did conspiracy exist in the commission of the crime?

The trial court found conspiracy to exist becauseLeodizon Honrado and Regino Leonin entered the United Restaurant together and provoking the victim to anger, they dragged him around the place and beat him up; and during the scuffle, Anselmo Leonin, brother of Regino, entered the scene to deliver the fatal blow with an iron bar. Thus the lower court concluded that there was a common purpose to liquidate the Chinaman, the said two accused, Regino andLeodizon having performed acts without which Anselmo Leonin could not have treacherously made the attack.

The evidence introduced during the trial, does not support the conclusion that whenLeodizon Honrado and Regino Leonin entered the restaurant, they had made plans to kill the deceased. No motive has been shown that would kindle the desire to liquidate said Chinaman. The arrival of the accused Anselmo was purely coincidental. The fight happened in a street that said Anselmo regularly passed with his jeepney. He joined the scuffle upon the impulse of the moment. Seeing his brother in a mix-up, he reacted spontaneously.

In *People vs. Ibañez*, 77 Phil. 664, Cosme Magalong and Sixto Ibanez had a quarrel. Cosme ran and was pursued by Sixto Ibanez. Overtaking him, Sixto held Cosme around the neck from behind. And while they were struggling, Irineo, who had followed Sixto (his brother) suddenly stabbed Cosme to death. As held by this Court, only Irineo was guilty of murder. Sixto was acquitted, because he was not aware of the murderous intent of his brother. The same doctrine was applied in *People vs. Delfin*, L15230, L-45979-81, July 31, 1961. In that case, while Francisco and Renato were fighting, Eladio (cousin of the latter) approached and suddenly stabbed Francisco. We held Eladio to be solely responsible for frustrated murder, in the absence of conspiracy, the wounding having been unexpected.

The alibi of the defendants must be discounted. Prosecution witnesses David Knoop [1] and his wife, saw and described the events. Their testimonies are consistent, corroborative and clear. These witnesses being complete

strangers to the appellants, could have no motive to falsely testify; and Jesus Gloria, 55, identified them too. Finally, the arrest of Anselmo and Regino on the same day clinched the case.

Considering that when the accused Anselmo mortally hit the victim, Tan Sek Yee was trying to defend himself (by parrying the blows from the accused Regino and Leodizon) he could not have been aware of any other assailant. And as the attack of Anselmo was sudden, there was treachery. In view of the foregoing, we hold that as recommended by the Solicitor-General, Regino Leonin and Leodizon Honrado should be held guilty only of slight physical injuries; but Anselmo Leonin should be convicted of murder.

Consequently, heeding the official recommendation, appellants Regino Leonin and Leodizon Honrado are each sentenced to 20 days of arresto menor under Art. 266 of the Revised Penal Code. On the other hand, appellant Anselmo Leonin is sentenced to reclusion perpetua and to pay the heirs of the deceased Tan Sek Yee, the amount of P6,000.00 Costs against appellants.

Padilla, Labrador, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] Wrote down the license number of the jeepney in a Free Press magazine which he then carried.

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