

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SERAPIO TORRES AND BERNARDO DE LOS SANTOS,
DEFENDANTS-APPELLANTS.**

G.R. No. L-4642. May 29, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

In the afternoon of January 17, 1950, about five o'clock, General Mariano Castaneda of the Philippine Army, accompanied by his aide, Colonel Valentin Salgado and his orderly Sgt. Manadao were returning on horseback from V. Luna Hospital in Kamias District to Camp Murphy, both places in Quezon City. Riding along a winding trail until they reached Kamias Road, they turned towards Highway 54. Colonel Salgado rode abreast with the general on the left side, the orderly following them slightly to the right. The party had just passed the corner when they were suddenly fired upon, with a burst of an automatic rifle whizzing from the direction of some bamboo clumps about fifteen meters distant. Mortally wounded in the left armpit, Colonel Salgado dropped from his mount; and General Castaneda, sensing grave peril galloped away to the City Hall, narrowly missing another hail of bullets. His orderly hurried away too, proceeding to Camp Murphy and leading Colonel Salgado's horse.

Captain Andres Bambao of the Quezon City Police and his men immediately repaired to the scene of the crime, brought Colonel Salgado's lifeless body to a hospital, and began the search for the sniper or snipers who had decamped in the meantime.

People living or found around the vicinity were naturally questioned. Jose Ramos, a stone-cutter in nearby quarries was picked up several times for investigation. He was finally released after he had promised to assist in tracking down the guilty persons. Upon returning to work he noticed that two stone-cutters, co-workers of his, Bernardo de los Santos and Serapio Torres, had disappeared since the afternoon of January 17. He so informed Captain Bambao and both agreed upon a definite plan of action. Ramos pretended he was hiding in Kamias district from the authorities, and the police conducted feigned searches for him. Meanwhile he endeavored and was able to contact Bernardo and Serapio then also lying low. These at first refused to believe Ramos was a fugitive. But when informed of raids conducted by the police to apprehend Ramos, they fell for the trick, and gave him their confidence. And one day when the three were in conversation partaking a "merienda" with Eusebio Santos, Ramos casually remarked to Santos that he wished he had a gun for protection against the police. Completely taken in, Serapio Torres volunteered the information that he knew where a gun could be obtained, but it was a fatal weapon (delinquente) because it had been used in killing (Col.) Salgado. Serapio further revealed that he had concealed that gun in the creek nearby. Soon Ramos secretly relayed the hot tip to Captain Bambao.

(The police at that time already knew the kind of firearm used, because in the morning of January 18, 1950 Detective Rosauro Alcantara discovered 28 empty shells fired from a carbine caliber .30, near the bamboo grove and the postmortem showed the bullet that finished Col. Salgado was of that kind.)

Serapio was arrested, and search for the firearm in the creek started. For two days laborers dived, with no result.

The fire department was even requested, and began to pump the water from the creek. The record does not say so, but probably when Torres was told and realized that sooner or later the gun would be recovered from the creek, he finally confessed to Captain Bambao that he hid it there after the shooting because he was forced to do it by Nick Pamintuan. Then he plunged into the water and retrieved the murderous weapon — an automatic carbine, which, because of its cut butt, Ramos immediately identified as the gun he had seen in the hands of Bernardo de los Santos a month before. Two magazines were also retrieved by him near the carbine — from the bottom of the creek.

Torres was kept in custody after that, but a few days later he escaped and was recaptured by the Manila Police, whose Lieutenant Enrique B. Morales took charge of his investigation, in the course of which Serapio revealed the existence in Kamias of a group called Samahang Sandatahan (Society of Armed Men) the purpose of which was to overthrow the government and to liquidate high government officials. He mentioned names in the list Exh. H-1 written by himself (Serapio). In that group Serapio was the consultant and Bernardo de los Santos, member. Other names disclosed by him were those of Nick Pamintuan and Pabling. Thereafter he indicated Bernardo de los Santos "as one of the companions of Nicasio Pamintuan and Pabling" responsible for the death of Colonel Salgado. (Jose Ramos had also revealed the existence of such organization, with the significant detail that Nick (Pamintuan) and Pabling were the "trigger men" thereof.)

Lt. Morales reported the news to Captain Bambao; and Bernardo de los Santos was apprehended in Longos, Laguna where he had fled, according to Serapio Torres. Quizzed by Sgt. Leones of the Detective Division, Bernardo de los Santos declared that afternoon of January 17 he was at the window of the house of Eusebio de los Santos (near the scene of the shooting) and saw Nick (Pamintuan) and Pabling going to the bamboo grove; that later he heard a volley of shots and saw Nick and Pabling hurrying to the creek; that he also ran and overtook them in the field; that before they parted Nick gave him a pistol, and then handed to Pio (Serapio) a carbine.

Mainly on the strength of the above facts, the city attorney of Quezon City filed on March 21, 1950 an information for attempted murder and murder against Nick Pamintuan, Serapio Torres, Bernardo de los Santos and Pabling "Doe".

The case proceeded against Serapio and Bernardo because the other two had not been arrested. During the trial held in the months of April and May, 1950 before the Hon. Demetrio Encarnacion, General Castaneda, Capt. Andres Bambao, Jose Ramos, Rosauro Alcantara, Enrique B. Morales, Sgt. Leones and others testified to the events herein set forth.

There was also evidence that the newly-found carbine and the magazines, together with the 28 empty shells picked on January 18 near the bamboo trees were submitted to the National Bureau of Investigation. And Edgar Bond, Chief of the Ballistics & Questioned Documents Section of that Bureau declared in court that the 28 shells had been fired from the identical carbine.

Furthermore, Eusebio Santos, who lived near the bamboo trees testified that afternoon of January 17, he was sick in bed in his house near the site of the ambush; that startled by the volley of shots fired from the bamboo grove, he got up, looked and saw Nick and Pabling hurrying to the creek, the first with a carbine in hand, followed by Serapio Torres and Bernardo de los Santos; that a little later Pabling returned to enjoin him under pain of death not to report to the authorities, threat which was repeated three weeks afterwards by Nick and Pabling.

The trial judge gave full credit to the evidence of the prosecution in his decision of May 29, 1950, and declared that Serapio Torres, Bernardo de los Santos, Nick Pamintuan and Pabling, being members of the Samahang Sandatahan conspired to ambush and did ambush General Castaneda and Colonel Salgado, slaying the latter, and imperilling the life of the former. He consequently sentenced them to life imprisonment and to pay jointly and

severally, the sum of P6,000.00 to the heirs of the deceased.

The two defendants promptly appealed, and the expediente was forwarded to the Court of Appeals, wherein their counsel of record, by his communication dated July 7, 1950, gave notice that they were "withdrawing our intention to appeal". The Court of Appeals, however, required "counsel to submit a petition to said effect signed by all appellants in person". Thereafter, the appellate tribunal forwarded the record to this Supreme Court, because the penalty imposed by the trial judge was reclusion perpetua.

Here the appellants submitted a printed brief vigorously maintaining their innocence. Obviously they changed their minds about withdrawing their appeal. However, inasmuch as the penalty meted out to them by the court a quo was less than they deserved, maybe someone committed a tactical error.

There is no doubt in our minds that the proofs presented by the prosecution hereinbefore described sufficiently establish the participation of these two appellants in the murder of Colonel Salgado and the attempt upon the life of General Castañeda.

The evidence for the defense consisted only of the uncorroborated, contradicted and incredible testimony of the two defendants themselves.

Having been tricked into disclosing the whereabouts of the murderous weapon and realizing its implications, Serapio Torres related the unlikely story that on said afternoon he was cutting stones in the quarry; that immediately after the shooting two men "came to the place where he was working and ordered him to hide a gun in the creek, with the threat that he should follow the said order, otherwise he would be killed." We say unlikely because, as the prosecution says, it is ridiculous to believe that a criminal would entrust the disposal of the weapon used in the ambush to one who was not a co-conspirator — even to a total stranger, Serapio Torres having asserted that he was not acquainted with Nick.

Bernardo de los Santos claimed, and swore before the court, that at the time of the shooting he was asleep in the house of his sister. Yet he did not present her in corroboration, nor did he explain his failure to do so. That sister again could have confirmed his allegation that afternoon he escaped from Kamias and went into hiding because she informed him the authorities were arresting all the men in the district. This wholesale arrest was of course an improbable story; but it was intended to counteract the logical inference of guilt from his having escaped and hidden for some time until his capture in Laguna province. And Eusebio Santos who testified to having seen him running away from the scene of the crime together with Nick, Pabling and Serapio Torres was his close relative, his brother having married Eusebio's sister. (P. 189, t.s.n.)

In our considered opinion the judgment of conviction rested on sufficient evidence. Two crimes were perpetrated: murder and attempted murder. The appealed decision imposed on these appellants the correct penalty for the murder (Art. 248, Revised Penal Code). But they should also atone for the attempt on the life of General Castañeda with an additional imprisonment of not less than four years and 2 months of prision correccional nor more than eight years of prision mayor, i.e., the medium period, because although the offenses was committed in disregard of rank, they are entitled to the mitigating circumstance of lack of instruction.

Wherefore, thus modified, the appealed decision is affirmed, with costs against appellants. So ordered.

Paras, C. J., Feria, Pablo, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.
Bautista Angelo, J., no part.

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