

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LORENZO AGUILAR, DEFENDANT AND APPELLANT.

G. R. No. L-3248 and L-3249. May 16, 1951

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

For the killing of the brothers Pedro Gonzales and Vivencia Gonzales, defendant Lorenzo Aguilar was prosecuted for murder in two separate cases, Criminal Cases Nos. 1168 and 1169, of the Court of First Instance of Camarines Sur. After a joint trial, Aguilar was found guilty of murder in both cases and was sentenced in each case to reclusion perpetua, to indemnify the heirs of the victim in the sum of P6,000, and to pay the costs. These two cases are here now on appeal.

There is no question as to the fact, and the appellant admits that in the evening of September 20, 1948, in the municipality of Libmanan, province of Camarines Sur,

while on patrol as a municipal policeman, and armed with a Thompson Submachinegun, near the market place, then well lighted, he fired upon Pedro Gonzales and his brother Vivencio Gonzales, inflicting upon the first, four wounds on the chest and abdomen, and on the second, eight wounds about the same region of the body, killing Pedro almost instantly and producing the death of Vivencio a few minutes later. He claims, however, that he acted in self-defense, which defense was rejected by the trial court.

After a careful review of the evidence, we agree with the trial court that the shooting took place in the manner described by the witnesses for the prosecution and as found by the lower court, as follows. About seven o'clock in the evening of September 20, 1948, the two brothers Pedro and Vivencio and one Candido Borbe, left the store of Tomas Aureus. On their way home, Candido Borbe stopped at a neighboring store to buy cigarettes, leaving his companions in the street. After making his purchase and as he was leaving the store to rejoin his two companions, he saw the accused approaching the two brothers, and at a distance of from four to five meters from the two, he opened fire on them with his Thompson rifle. At the first burst of fire Pedro fell down dead and almost immediately a second burst from the machinegun followed felling Vivencio. Instead of staying to see what it was all about, Candido fled running to the house of Vivencio's wife to notify her of what had befallen her husband. The incident took place only a few meters away from the store of Tomas Aureus who, upon hearing the firing, looked out of his store and saw Pedro Gonzales fall.

Attracted by the many shots, Arsenio Aycardo, another policeman and Chief of Police Rito Dilanco rushed to the scene. Aycardo arrived first and to him the accused surrendered his firearm. To Chief of Police Dilanco who came, a minute or two later, the defendant surrendered himself or rather gave himself up.

It is clear from this accepted version of the incident by the prosecution that the shooting was deliberate and unprovoked, and that consequently, the appellant is criminally responsible for the killing of the two victims. However, as already stated, the appellant claims that he acted in self-defense, and in support of said theory he told the court during the trial that as he met or rather came upon the two brothers that evening, Pedro Gonzales

accosted him with the question as to whether or not he was the one who had arrested his brother Vivencio several nights before, and that upon his answering in the affirmative, Vivencio immediately punched him in the left cheek, causing him to fall to the ground; that as he was trying to stand up, Pedro Gonzales immediately attacked him with a fan knife (Exh. "2"), slashing at him right and left, the knife, in the first swing grazing his body about the region of the abdomen, ripping his uniform but not reaching or cutting his body, and that in the second swing, the knife hit him in the left forearm as he tried to ward off the blow; that Vivencio throw sand in his face presumably to blind and disable him; and that in order to defend himself, he stepped back, unslung his machinegun from his shoulder, cocked it and then opened fire on the two brothers. The defense introduced in evidence a fan knife (Exh. "2") which was allegedly found open by Patrolman Aycardo on the scene of the crime, about one meter away from the righthand of Pedro Gonzales as he lay dead in the street. The medical certificate issued by Dr. Villaluz was also presented to describe his (defendant's) wound in the left forearm, said to be one inch long and ^ centimeter deep.

The defense proved that on the night of September 16th of the same year, that is to say, about four days before the killing, appellant while on his beat, in a street near the market, found Vivencio Gonzales with two friends, all under the influence of liquor, and dancing "pantomina"; that being within the market zone and because of the lateness of the hour, he ordered them to stop; that two of them obeyed and stopped but Vivencio continued dancing and making a spectacle of himself and otherwise creating a scandal, and so defendant Aguilar arrested him and took him to the Municipal Building, Vivencio all the time protesting that he could not be arrested as he was a barrio lieutenant which as a matter of fact, he was; that subsequently, Vivencio spoke to the Chief of Police and insisted that the appellant had no right to arrest him because he was a barrio lieutenant and suggested, if not demanded, that Aguilar be dismissed from the service; that the Chief of Police told Vivencio that the suggested dismissal was not within his power because Aguilar had been appointed by the Mayor, so that Vivencio should lodge his complaint with and address his demand to the Mayor; and that Vivencio declared that if the Chief of Police could not diplomatically dismiss Aguilar, he (Vivencio) would dismiss him (defendant) in a bad way. The defense also introduced evidence to the effect that the two brothers, victims of the killing were given to drinking, were often drunk and were bad characters, abusive and desperate, known as "tough guys" and feared in the community.

In a well considered decision, the trial court presided over by Judge Jose N. Leuterio gave a number of reasons for not accepting the theory of self-defense, most if not all of which, in our opinion are plausible and valid. For instance, His Honor says, that if it were really true that the accused fired the shots from his rifle at close range in an effort to defend himself from the attack by the two brothers, the wounds and the clothing of the victims would have shown severe powder burns, especially in view of the many shots fired in rapid succession, and yet, as it turned out, the wounds bore no powder burns, and the clothing of but one of the victims showed only slight powder burns, indicating that the shots were fired from a distance of about four meters or more as testified to by the witness Candido Borbe. Agrin, as observed by the trial court, the two Gonzales brothers who were members of the Guerrilla and had later joined the Bicol Brigade organized upon the landing of the Americans in 1945, must have been familiar with the nature, operation and effectiveness of modern automatic weapons, and they would not have dared attack the accused who was then armed with Thompson Submachinegun, much less, persisted in the attack, unarmed as they were; and that instead, if they were really bent on assaulting the accused, instead of punching him in the face and trying to wound him with a knife, as claimed by the defense, they would have first grabbed his Thompson Submachinegun, either to disarm him or to prevent him from using the same.

When first investigated by Capt. Velarde the defendant told that officer that when he fell down after receiving the fist blow from Vivencio, he immediately cocked his rifle and before he could stand up and from a semi-reclining position, he opened fire. Under such circumstances, and because the two brothers were then both standing, the

bullets would have taken a more or less oblique direction, that is to say, going upward. However, the position of the wounds, especially those where the bullets entered and came out of the body showed a more or less horizontal or even a downward trajectory of the slugs, thereby indicating that the rifle was held and aimed with the barrel in a horizontal or slightly downward position, from which one may rightly conclude that the defendant was then standing when he fired the shots. Possibly realizing this turn in the evidence, abandoning his previous statements on this point made to Capt. Velarde, he (defendant) testified during the trial that he began to fire his machinegun after he had gotten up from his fall to the ground and was already on his feet. This, of course, affects his credibility as a witness. Moreover, the fan knife, Exhibit "2", which was supposedly used by Pedro Gonzales in attacking the defendant, was not proven by the defense to have belonged to Pedro. On the contrary, his widow told the court that she had never seen her husband possessing or using said lower court, at the time and place that the shooting took place, there were quite a number of bystanders or passersby, and yet the accused could not present anyone of them as a witness to support his theory of self-defense. On the other hand, the prosecution presented Tomas Aureus and Candido Borbe, both of whom appear to be disinterested witnesses, without any reason or motive for testifying falsely against appellant. It will be remembered that witness Borbe assured the court that the accused shot down the two brothers deliberately and without any provocation or previous conversation, much less, aggression.

As to the motive or reason behind the crime, in the absence of direct evidence, we can only surmise, and hazard a possibility. Knowing the desperate nature of the two brothers and that because of the arrest of Vivencio four nights before, and considering the threat that he had uttered, the brothers had a score to settle with him, and perhaps suspecting that they might have been armed, rather than wait to be assaulted, he anticipated their expected move, and, as it were, beat them to the attack. Of course in such a case, there can be no self-defense for the reason that there was no previous aggression to repel.

In view of the foregoing, we agree with the trial court and we find that the guilt of the accused of the crime of murder, has been established beyond reasonable doubt. The killing is qualified with treachery, inasmuch as the shooting was sudden, and unexpected, and the victims were not in a position to defend themselves, especially from a submachine-gun. The crime committed was therefore, that of murder. We also agree with the Solicitor General that the mitigating circumstance of voluntary surrender should be accorded the appellant. The presence of this mitigating circumstance without any aggravating circumstance to offset the same justifies the imposition of the penalty corresponding to murder, in its minimum degree. As recommended by the Solicitor General the prison sentence of reclusion perpetua imposed by the trial court upon the appellant in each of these two cases is hereby reduced to an indeterminate sentence of not less than ten (10) years and one (1) day of prisión mayor and not more than seventeen (17) years of reclusion temporal. In all other respects, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Tuason and Jugo, JJ., concur.

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