

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. BENJAMIN ABIBUAG, DEFENDANT AND APPELLANT.

G.R. No. L-1137. November 04, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

As testified by Raymondo Lobaton, during an amateur contest which took place in the plaza of Sagay, Negros Occidental, on October 16, 1945, appellant Benjamin Abibuag and Patriotico Lobaton were engaged in a fight. Napoleon Rodriguez approached them for the purpose of separating them. Because they would not separate, Napoleon whipped appellant twice with a whip, and appellant ran away.

On November 13, 1945, at about seven o'clock in the evening while taking supper in the house of Sabina Tan with three companions, Napoleon Rodriguez was shot in the head and died.

No one in the house saw who fired, but Florencio Tribotante testified that at about seven thirty of the same evening, Abibuag went to his house, related to him that he got some trouble while in the beach, and confessed having shot Napoleon Rodriguez, saying that he was a spy of the Japanese. He was carrying with him a carbine and stated as reason for his act the fact that he was whipped by Napoleon. Abibuag dismantled the carbine, wrapped it in a sack, and placed it in a corner under the house, and requested Tribotante to notify his parents regarding the incident.

When Chief of Police Ceferino Barredo arrested appellant, appellant made the admission appearing in Exhibit "B", with the effect that when he saw Napoleon Rodriguez eating in a house he shot him with his carbine, because of the personal grudge due to the fact that about two weeks ago before the shooting, appellant was whipped and kicked by the deceased in the town plaza of Sagay. Because appellant had been laughed at, he decided to kill Napoleon to alleviate his humiliation.

On November 15, 1945, when appellant was brought before Eliseo Benatua, acting Justice of the Peace of Sagay, for preliminary investigation, because appellant was reluctant to answer, the complaint was read to him several times, and he admitted having committed the offense on reasons for which he would not plead guilty.

Exhibit "B" was read at the preliminary investigation by the Chief of Police, but as accused seemed to be reluctant whether he would sign it or not, the Justice of the Peace advised him that it was his right to sign the document or not, and accused stated that he preferred not to sign it, but, as officiated by the Justice of the Peace in Exhibit "C" shown by appellant, the accused admitted having shot the deceased Napoleon Rodriguez, but pleaded not guilty of the offense charged.

The carbine, Exhibit "D" used by the accused for shooting Napoleon Rodriguez was retrieved by the Chief of Police in the house of Florencio Tribotante, dismantled inside a sack, after the accused had admitted that he was the one who shot Napoleon Rodriguez with a carbine, and told the Chief of Police that he buried it somewhere in the cemetery of Sagay. The accused went with the Chief of Police and three policemen to the place where he

allegedly had buried the carbine, but they found it finally in the house of Tribotante; the sack containing the dismantled carbine was buried under the ground. With the carbine the peace officers found magazines and bullets which are marked Exhibit "D". Below the kitchen of the house where the shooting took place, the Chief of Police found an empty shell which is Exhibit "F." He found it at exactly 7:12 p.m.

Appellant's testimony in the hearing and his witnesses' testimonies as to his good conduct are without merit in the face of the overwhelming evidence presented by the prosecution which conclusively show his guilt. In a way, Simeona Palma, one of the witnesses for the defense, residing in the vicinity of the shooting, corroborated the prosecution when she testified that before the shooting, at four o'clock in the afternoon, she saw the accused, going towards his house alone.

The lower court found appellant guilty of murder, with the aggravating circumstance of nocturnity and a mitigating circumstance of and sentenced to reclusion perpetua and to pay the heirs of the deceased the amount of P2,000.00 and the costs.

There being no error in the lower court's decision, the judgment of the same is affirmed with costs against appellant.

Paras, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

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