

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEES, VS. MELCHOR CASTILLO, ELEUTERIO CAMPOS, PABLO MACHICA AND GUILLERMO BOCO, DEFENDANTS-APPELLANTS.

G.R. No. L-10555. May 30, 1958

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This case is before as en consulta, the Court of First Instance of Samar having sentenced defendants Melchor Castillo, Eleuterio Campos, Pablo Machica and Guillermo Boco, for of murder, to the extreme penalty, to jointly and severally indemnify the heirs of the deceased Segundo Guariño in P6,000 and to pay the costs.

It is not disputed that while playing the game locally known as "holing-hoging", Segundo Guariño and Eptacio Terencio had a misunderstanding and then quarrelled near the market place of the municipality of Quinapundan, Samar, on September 12, 1954, at about 4:30 p.m. Policeman Pablo Machica, who was on duty nearby, approached them, blew his whistle and shouted "justicia", in an effort to stop the fight, but Guariño faced Machica and angrily said, "You demon" - with a drawn knife, according to Machica. The latter aimed his automatic carbine at Guariño, and seemingly pressed the trigger, for a click was heard, but the gun did not fire. He, therefore, lowered the muzzle of the carbine and tried to rechamber it, but, before he knew it, Guariño had stabbed him on the breast with the knife Exhibit 9. As Machica fell down, with a finger on the trigger of his unlocked carbine, it fired twice - into the air, according to Machica and the prosecution - whereupon Guariño ran away. At this juncture, police Sgt. Eusebio Asebias came. Upon being informed by Machica that Guariño had stabbed him, Asebias ordered policeman Eleuterio Campos, who arrived, soon there after, to pursue Guariño". Campos went after Guariño, then about 300 meters away, and, presently, overtook him as he jumped over a ditch. After seizing the knife of Guariño, Campos brought him to the municipal building, where policeman Guillermo Boco hit Guariño on the head with the butt of a carbine. Then, Melchor Castillo, the local chief of police, came and bade Guariño to sit on one of the steps of the stairs leading to the second floor of the municipal building, near its door.

Meanwhile, a constabulary soldier, named Pastor Legista had arrived on board a bus. As it was nearing the town hall, Legista saw Guariño being pursued and, then, overtaken and arrested by Campos. Out of curiosity, Legista alighted from the bus and followed Campos, Guariño and Boco, who were followed by Machica, to the municipal building, noticing that Castillo, Boco and Campos were beating Guariño (Rosario Basario testified that Machica had, also, laid hands upon Guariño, and this was corroborated by defendant Boco), Legista urged municipal Mayor, Pamfilo Pabelonia, who had arrived in the meantime, to dissuade Castillo from further castigating Guariño. Then, two gun shots were heard. As Legista turned, he saw Castillo holding the .45 caliber pistol Exhibit A, pointed at Guariño, whose body twisted and then fell down, his forehead hitting the floor. Legista asked Castillo why he had shot Guariño, whereupon Castillo replied: "He deserves that because he was the one who wounded my policeman and I am responsible for my acts and I will answer for it."

According to Dr. Florencio G. Joaban, the Municipal Health Officer who made a post-mortem examination of the

body of Guariño, the latter died of internal hemorrhage, and had the following injuries:

"a) One bullet wound on the inferior third, posterior right forearm, passing through the anterior portion, upper, of the same (right forearm):

"b) One wound at the region of McBurney's point;

"c) One bullet wound one inch above the McBurney's point;

"d) Lacerated wound, measuring two inches long, one centimeter wide, with depression of the outer wall postero-internal side of the right parietal region, parallel to the postero-parieto-occipital joint;

"e) Lacerated wound, measuring one and one-half inch long, one centimeter wide, one inch above the letter (d), with depression of the outer wall of the skull."

It is conceded that the internal hemorrhage that resulted in the death of Guariño, was caused by the aforementioned bullet wounds. Consequently, the main issue in this case is: who inflicted said bullet wounds?

In this connection, the testimony of Pastor Legista to the effect that it is defendant Melchor Castillo, was substantially corroborated by Rosario Basario, who witnessed the occurrence while she was confined in a cell, in the municipal building, less than three (3) meters from the place where Guariño was maltreated and shot. Substantial corroboration was, also, furnished by defendants Machica, Campos and Boco.

Upon the other hand, Castillo would have us believe that the fatal injuries of Guariño were caused by Machica, for, after wounding him on the breast, Guariño tried to stab him once again, whereupon he twice fired his carbine at Guariño. In support of this pretense, Castillo introduced Exhibit 5, an alleged affidavit, to this effect, of Machica, and Exhibit 4, which is claimed to be an ante mortem declaration of Guariño, stating that Machica was the one who shot him. The defense introduced, also, the testimony of: (a) Francisco Obillo and Jacinto Calzado, in order to prove that Pastor Legista had arrived after the occurrence; (b) Maria Yakit, in order to establish that Rosario Basario was not confined in the municipal jail until after said occurrence; and (c) Mayor Pabelonia, with respect to the circumstances under which said Exhibits 4 and 5, and the affidavits of Maria Takit and Bosario Basario were allegedly sworn to before him. It, likewise, placed Guillermo Jabulan, Victor Longatan and Luis Abit, on the witness stand, Their testimony, as regards, circumstances under which Machica's carbine was fired, is compatible, however, with the theory of the prosecution. Lastly, the defendants testified in their own behalf, although the story given by Castillo conflicts with that of his co-defendants Machica, Campos and Boco.

The lower court held that the bullet wounds of Guariño were inflicted, not by Machica, as contended by Castillo, but by Castillo himself, as contended by the prosecution, and we are of the opinion that this finding is correct.

To begin with, upon exhumation and autopsy of Guariño's body, what was found therein was a slug .45 Caliber, which is that of Castillo's pistol, and could not have come from Machica's .30 caliber carbine. Hence, neither Guariño nor Machica could have possibly made said statements (Exhibits 5 and 4). Moreover, the record shows that Exhibit 4 was prepared by Castillo, who caused the thumbmark of Guariño to be affixed thereon, when Guariño was dead already, and that Machica affixed his signature on Exhibit 5 - without having a chance to read it, and without the presence of Mayor Pabelonia, before which it purports to have been sworn - because his (Machica's) superior officer, Castillo, threatened to shoot him unless he signed it. This is borne out by the fact that Machica's signature appears written with a pen and ink other than those used by Pabelonia, who is a cousin of Castillo's wife, and was interested in his welfare. What is more, Pabelonia admitted that Guariño did not state to him under oath that the contents of Exhibit 4 is true, although the instrument purports to have been sworn to before him; that, in fact, Guariño did not say a single word to him, in connection with said document; that two policemen held Guariño by the armpits, with his arms hanging on both sides, while Castillo was preparing Exhibit

4; that when Pabelonia asked Guariño whether the contents thereof, were true, Guariño's head merely bowed; that the head was never raised thereafter; and that he (Pabelonia) did not verify whether Guariño was dead or not.

Again, during the presentation of the evidence for the defense, at the joint trial of the accused herein, several incidents took place which deserve special notice. After defendant Campos had given testimony indicating that Castillo was the one who shot Guariño, Atty. Gerardo Pabello withdrew his appearance as counsel for Campos, upon the ground that he (Pabello) had expected Campos to tell the truth. When, thereafter, defendant Boco gave a similar testimony, adverse to Castillo, Atty. Generoso Juaban withdrew as counsel for Boco, upon the ground that, before taking the witness stand, he had given a different version to his aforementioned counsel. Thereupon, Atty. Cinco - who, like Atty. Pabello, had entered his appearance as counsel for Castillo - moved for a separate trial (which was denied), upon the ground that Boco's testimony was "against our concerted agreement with all counsels representing the accused". Soon thereafter, Atty. Pabello informed the court that one of the bondsmen of Campos was withdrawing as such, for appropriate action as regards this accused, who was, accordingly, ordered detained. Thus, the acts of Attorneys Pabello and Juaban, in the lower court, tended to affect adversely their clients therein. Campos and Boco. Now, we find brief, filed with this Court, for defendant Castillo - tending to show that the fatal wounds of Guariño were caused by Machica - is signed by Attys. Juaban and Pabello, both of whom had entered their appearance in the lower court as counsel for Machica - aside from Campos, as regards Pabello, and Boco, as regards Juaban. In short, Castillo's present counsel, who are urging his acquittal, were the very attorneys who represented, in the lower court, his co-defendants Machica, Campos and Boco. It is not surprising, therefore, that the latter's aforementioned counsel in that court had reached a "concerted agreement" with Atty. Cinco, who represented Castillo, exclusively. Inasmuch as the testimony of Campos and Boco - and, hence, that of Machica, which is substantially the same, as regards the author of Guariño's bullet wounds - was "against" said concerted agreement, it follows that the theory agreed upon by counsel for the defendants in the lower court - or, at least, between Attys. Cinco, Pabello and Juaban - was that said injuries were inflicted by Machica. One of the most important implications of the foregoing circumstances, is that the version of Castillo was the product of study, deliberation and agreement, whereas the testimony of Machica, Boco and Campos, pointing to Castillo as the author of said bullet wounds, bear all the earmarks of being candid, frank and unvarnished, said testimony having been given without the assistance or knowledge, and even against the advice, of their aforementioned counsel - who acted as if they had been supplied by Castillo himself or by those interested in his acquittal.

We are convinced, therefore, beyond reasonable doubt, that the fatal shots were fired by defendant Castillo, under the conditions testified to by the witnesses for the prosecution.

What was the nature of the participation of Machica, Campos and Boco in the commission of the crime charged?

Campos testified that, after apprehending Guariño, and turning him over to Boco, in the municipal building, he took a bath in a river nearby and then changed clothes in his house, after which he returned to the town hall, where he found that Guariño was dead already. Upon the other hand, Boco asserted that, after Guariño was taken from him by Castillo, supposedly for investigation, he (Boco) proceeded towards the door of the municipal building, where he was when Castillo shot Guariño. Machica, in turn, declared that, after stabbing him, Guariño ran away, whereupon Sgt. Asebias came and ordered Campos to pursue Guariño, after which Asebias brought him to the second floor of said building, where he was when the fatal shots were fired.

Testifying as defense witness, Boco admitted, however, that he had beaten Guariño with a wooden club, although adding that he did so upon orders of Castillo; that Campos had similarly clubbed Guariño; and that Machica kicked him during the investigation. This evidence for the defense merely corroborates the testimony of prosecution witness Rosario Basario who witnessed the beating and assassination of Guariño while confined in a

cell less than three (3) meters away from the scene of the occurrence. It, also, corroborates the testimony of Pastor Legista, although the latter did not see Machica lay hands on Guariño, which is understandable, for, while trying to persuade Mayor Pabelonia to avoid unnecessary cruelty, he was not looking at Guariño and his tormentors. At the same time, the failure of the testimonies of Pastor Legists and Rosario Basario to dovetail with each other in this respect, indicates that their versions are not the product of a "concerted agreement" - unlike the theory of the defense.

In any event, we do not believe that the circumstances surrounding the case - particularly the presence of Machica, Campos and Boco at the scene of the occurrences; the beating administered by them to Guariño, without competent proof that they wanted or intended to kill him; and their failure to prevent Castillo from firing at Guariño - are sufficient to hold Machica, Campos and Boco responsible for his (Guariño's) death. There was no previous indication that Castillo intended to kill Guariño. Castillo did not say that he would shoot Guariño, or utter anything that would warn his co-defendants of his (Castillo's) intent to fire at Guariño. Castillo just drew out his gun and fired. It would even appear that his co-defendants could not have stopped it, even if they wanted to. The whole thing was over in a split second. Accordingly, the responsibility of Machica, Campos and Boco should be limited to the effects of their respective acts in the maltreatment of Guariño. Unfortunately, the evidence thereon is not as specific and detailed as it should be. It appears, however, that, in addition to the bullet wounds inflicted by Castillo Guariño had the following injuries:

"Lacerated wound, measuring two inches long, one centimeter wide, with depression of the outer wall posterior-internal side of the right parietal region, parallel to the postero-parieto-occipital joint;

"Lacerated wound, measuring one and one-half inch long, one centimeter wide, one inch above the letter (d), with depression of the outer wall of the skull,"

Although there is no direct evidence on the effect of these injuries, the Court takes cognizance of the fact that the depressions in the occipital region indicate fractures in the cranium, which would have, at least, required medical treatment for more than ninety (90) days. Hence, Boco, Campos and Machica are guilty of serious physical injuries, under subdivision 3, in relation to the penultimate paragraph, of Article 263 and Article 248 of the Revised Penal Code, the crime having been committed with, treachery cruelty and abuse of public position. Accordingly, defendants Eleuterio Campos, Pablo Machica and Guillermo Boco are hereby sentenced to an indeterminate penalty ranging from two (2) years and four (4) months to six (6) years of prision correccional, with the accessory penalties provided by law.

As regards defendant Melchor Castillo, we find him guilty of murder, qualified by treachery, with the generic aggravating circumstances of cruelty and abuse of public position, without any mitigating circumstance to offset the same. The proper penalty is death, which cannot be imposed, however, for lack of the requisite number of votes. Consequently, said defendant is hereby sentenced to life imprisonment, with the corresponding accessory penalties.

Thus modified as to the penalty, the decision of the lower court is hereby affirmed, therefore, in all other respects, with costs against the defendants.

IT IS SO ORDERED.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Reyes, J.B.L., Endencia, and Felix, JJ., concur.

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