

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. DOMINGO URAL, ACCUSED AND APPELLANT.

*G.R. NO. L-30801. March 27, 1974*

Ponente: AQUINO, J.

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### AQUINO, J.:

This is an appeal of defendant Domingo Ural from the decision of Judge Vicente G. Erica of the Court of First Instance of Zamboanga del Sur, convicting him of murder, sentencing him to reclusion perpetua, and ordering him to indemnify the heirs of Felix Napola in the sum of twelve thousand pesos and to pay the costs (Criminal Case No. 3280).

The judgment of conviction was based on the testimony of Brigido Alberio, a twenty-six year old former detention prisoner in Buug, Zamboanga del Sur. He had been accused of murder and then set at liberty on June 9, 1966 after posting bail. He went to Barrio Camongo, Dumalinao where his father resided. On July 31, 1966, he intended to go to his residence at Barrio Upper Lamari, Buug but night overtook him in the town. He decided to sleep in the Buug municipal building where there would be more security.

Upon arrival in the municipal building at around eight o'clock, he witnessed an extraordinary occurrence. He saw Policeman Ural (with whom he was already acquainted) inside the jail. Ural was boxing the detention prisoner, Felix Napola. As a consequence of the fistic blows, Napola collapsed on the floor. Ural, the tormentor, stepped on his prostrate body.

Ural went out of the cell. After a short interval, he returned with a bottle. He poured its contents on Napola's recumbent body. Then, he ignited it with a match and left the cell. Napola screamed in agony. He shouted for help. Nobody came to succor him.

Much perturbed by the barbarity which he had just seen, Alberio left the municipal building. Before his departure, Ural cautioned him: "You better keep quiet of what I have done" (sic). Alberio did not sleep anymore that night. From the municipal building, he went to the crossing, where the cargo trucks passed. He hitchhiked in a truck hauling iron ore and went home.

Doctor Luzonia R. Bakil, the municipal health officer, certified that the thirty-year old victim, whom she treated twice, sustained second-degree burns on the arms, neck, left side of the face and one-half of the body including the back (Exh. A). She testified that his dermis and epidermis were burned. If the burns were not properly treated, death would ensue from toxemia and tetanus infection. "Without any medical intervention", the burns would "cause death", she said. She explained that, because there was water in the burnt area, secondary infection would set in, or there would be complications.

Napola died on August 25, 1966. The sanitary inspector issued a certificate of death indicating "burn" as the cause of death (Exh B).

The trial court fittingly deplored the half-hearted manner in which the prosecution (represented by Fiscal Roque

and the private prosecutor, Delfin Agbu) handled the case. It bewailed the prosecution's failure to present as witnesses Juanito de la Serna and Ernesto Ogoc, the detention prisoners who saw the burning of Napola. They had executed a joint affidavit which was one of the bases of the information for murder.[1]

It noted that Rufina Paler, the victim's widow, who was present in court, was a vital witness who should have been presented as a witness to prove the victim's dying declaration or his statements which were part of the *res gestae*. [2]

In this appeal appellant's three assignment of error may be condensed into the issue of credibility or the sufficiency of the prosecution's evidence to prove his guilt beyond reasonable doubt.

His story is that at around nine o'clock in the evening of July 31, 1966 he was in the municipal jail on guard duty. He heard a scream for help from Napola. He entered the cell and found Napola's shirt in flames. With the assistance of Ernesto Ogoc and Anecio Siton, Ural removed Napola's shirt. Ural did not summon a doctor because, according to Napola, the burns were not serious. Besides, he (Ural) was alone in the municipal building.

Felicisima Escareal, Ogoc's common-law wife, whom the trial court branded "as a complete liar", testified that she heard Napola's scream for help. She saw that Napola's shirt was burning but she did not know how it happened to be burned. She said that Ural and Siton removed the shirt of Napola and put out the fire.

Teofilo Matugas, a policeman, declared that he was relieved as guard by Ural at eight-thirty in the evening of July 31st. Matugas denied that Alberio was in the municipal building at eight o'clock.

The trial court held that Ural's denials cannot prevail over the positive testimony of Alberio. It observed that Ural's alleged act of removing Napola's burning shirt was at most an indication that he was "belatedly alarmed by the consequence of his evil act" but would not mean that he was not the incendiary.

Appellant Ural (he was thirty-four years old in March, 1969), in assailing the credibility of Alberio, pointed out that he was not listed as a prosecution witness and that he was convicted of murder.

Those circumstances would not preclude Alberio from being a credible witness. It should be noted that the accused was a policeman. Ordinarily, a crime should be investigated by the police. In this case, there was no police investigation. The crime was investigated by a special counsel of the fiscal's office. That might explain why it was not immediately discovered that Alberio was an eyewitness of the atrocity perpetrated by Ural.

The testimonies of Felicisima Escareal, Ogoc's common-law wife, and Policeman Matugas are compatible with the prosecution's theory that Ural burned Napola's shirt. Ultimately, the factual issue is: who should be given credence, Alberio or Ural? As already stated, the trial court which had the advantage of seeing their demeanor and behavior on the witness stand, chose to believe Alberio. This Court, after a searching scrutiny of the whole record, does not find any justification for disbelieving Alberio.

This case is covered by article 4 of the Revised Penal Code which provides that "criminal liability shall be incurred by any person committing a felony (*delito*) although the wrongful act done be different from that which he intended". The presumption is "that a person intends the ordinary consequences of his voluntary act" (Sec. 5[c], Rule 131, Rules of Court).

The rationale of the rule in article 4 is found in the doctrine that "*el que es causa de la causa es causa del mal causado*" (he who is the cause of the cause is the cause of the evil caused). "*Conforme a dicha doctrina no alteran la relacion de causalidad las condiciones preexistentes (como las condiciones patologicas del lesionado, la predisposicion del ofendido, la constitucion fisica del- herido, etc.); ni las condiciones concomitantes (la falta de medicos para asistir al herido); ni las condiciones sobrevenidas (como el tetanos, la pulmonia, o la gangrena*

sobrevenidos a consecuencia de la herida)" (1 Cuello Calon, Codigo Penal, 12th Ed., 1968, p. 335-336).

The similar rule in American jurisprudence is that "if the act of the accused was the cause of the cause of death, no more is required" (40 C. J. S. 854). So, where during a quarrel, the accused struck the victim with a lighted lamp, which brake and fell to the floor, causing the oil to ignite and set fire to the rug, and, in the course of the scuffle, which ensued on the floor, the victim's clothes caught fire, resulting in burns from which he died, there was a sufficient causal relation between the death and the acts of the accused to warrant a conviction of homicide. (Williams vs. U. S., 20 Fed. 2nd 269, 40 C. J. S. 854, note 90).

There is a rule that "an individual who unlawfully inflicts wounds upon another person, which result in the death of the latter, is guilty of the crime of homicide, and the fact that the injured person did not receive proper medical attendance does not affect the criminal responsibility" (U. S. vs. Escalona, 12 Phil. 54). In the Escalona case, the victim was wounded on the wrist. It would not have caused death had it been properly treated. The victim died sixty days after the infliction of the wound. It was held that lack of medical care could not be attributed to the wounded man. The person who inflicted the wound was responsible for the result thereof.

The crime committed by appellant Ural was murder by means of fire (incendio) (Par. 3, Art. 248, Revised Penal Code; People vs. Masin, 64 Phil. 757; U. S. vs. Burns, 41 Phil. 418, 432, 440).[3]

The trial court correctly held that the accused took advantage of his public position (Par. 1, Art. 14, Revised Penal Code). He could not have maltreated Napola if he was not a policeman on guard duty. Because of his position, he had access to the cell where Napola was confined. The prisoner was under his custody. "The policeman, who taking advantage of his public position maltreats a private citizen, merits no judicial leniency. The methods sanctioned by medieval practice are surely not appropriate for an enlightened democratic civilization. While the law protects the police officer in the proper discharge of his duties, it must at the same time just as effectively protect the individual from the abuse of the police." (U. S. vs. Pabalan, 37 Phil. 352).

But the trial court failed to appreciate the mitigating circumstance "that the offender had no intention to commit so grave a wrong as that committed" (Par. 3, Art. 13, Revised Penal Code). It is manifest from the proven facts that appellant Ural had no intent to kill Napola. His design was only to maltreat him may be because in his drunken condition he was making a nuisance of himself inside the detention cell. When Ural realized the fearful consequences of his felonious act, he allowed Napola to secure medical treatment at the municipal dispensary.

Lack of intent to commit so grave a wrong offsets the generic aggravating circumstance of abuse of his official position. The trial court properly imposed the penalty of reclusion perpetua which is the medium period of the penalty for murder (Art. 64[4] and 248, Revised Penal Code).

Finding no error in the trial court's judgment, the same is affirmed with costs against the appellant.

### SO ORDERED.

Zaldivar, (Chairman), and Fernandez, JJ., concur.

Barredo, J., concurs in a Separate Opinion.

Fernando, J., concurs with the qualification set forth in the observation of Justice Barredo.

Antonio, J., took no part.

[1]

"Republic of the Philippines ....)  
Province of Zamboanga del Sur .)

Municipality of Pagadian

JOINT-AFFIDAVIT

WE, ERNESTO OGO, married, and JUANITO DE LA CERNA, single, both of legal age, farmers, residents of Lakewood, Lapuyan, Zamboanga del Sur and at Buug, Zamboanga del Sur, respectively, after having been duly sworn to in accordance with law hereby depose and say:

That both of us were confined inside the municipal jail of Buug, Zamboanga del Sur on July 31, 1966 for offenses allegedly committed by us and on same date our companions inside the said jail were Anisio Siton and Felix Napola, the latter being confined for being drunk;

That at about 8:00 o'clock in the evening, more or less on July 31, 1966, our policeman guard by the name of Domingo Ural entered the jail and called for Felix Napola. He called for him and told him that Felix Napola is aggressive. When Felix Napola went near Domingo Ural, the latter boxed him at his lower chin and he fell to the cement floor of the jail. He kicked him also at the same spot after Felix Napola fell to the floor. Because Felix Napola cannot stand anymore, Domingo Ural got a bottle and poured the contents of said bottle to the dress of Felix Napola. Domingo Ural lighted a match and burned the spot where the substance in the bottle was poured in the dress of Felix Napola. The dress of Felix Napola got burned and Felix Napola got burned. He was forced to stand up and asked mercy from Domingo Ural. Instead Domingo Ural locked the jail and went out and Domingo Ural threatened us not to talk about the burning of Felix Napola to anybody or else he will burn us also.

When Felix Napola was already suffering much from the burns he sustained, Ural became frightened and he and Inesio Siton helped put out the fire.

Affiants further sayeth none.

(SGD.) Ernesto Ogo

(SGD.) Juanito de la Cerna

ERNESTO OGO

JUANITO DE LA CERNA

(Affiant)

(Affiant)

SUBSCRIBED AND SWORN to before me this 19th day of September, 1966 hereat Pagadian, Zamboanga del Sur.

(SGD.) Basilio T. Roque

BASILIO T. ROQUE

Special Counsel"

[2] Mrs. Napola (Mapola) testified at the preliminary investigation conducted by Basilio T. Roque, a special counsel, that she learned from a neighbor that her husband suffered burns in the municipal jail in the evening of July 31, 1966. Her husband told her that Policeman Ural had burned him. Ural allowed her to bring Napola to the dispensary where he was treated. Because of the injuries on his mouth and his swollen gums, he could not eat and move his head. He was confined in jail due to drunkenness. He was burned from the waist up to the neck and on the back and right arm. She reported the case to the mayor. That functionary said that he would not take any hand in the case. Mrs. Napola was cross-examined by Ural's counsel.

At the same preliminary investigation the witnesses, Ernesto Ogoc and Juanito de la Serna, testified and were cross-examined by Ural's counsel. The accused presented evidence at the preliminary investigation.

[3] "Un sujeto, despues de cohabitar con una prostituta, encendio un mixto que aplico a uno de los latones de petroleo que habia proximos a la cama en que yacieron, inflamandose el contenido de aquel y cayendo el liquido sobre la prostituta, que fallecio a consecuencia de las quemaduras.

El Tribunal Supremo declara:

Que segun el articulo 418 delCodigo penal, es reo de asesinato el que por medio de incendio mata a persona que no le este ligada por alguno de los vinculos familiares senalados en el art. 417, entendiendose empleado el incendio en este concepto juridico cuando se mata o intenta matar por medio de fuego aplicado directa o inmediatamente sobre la persona objeto de la accion criminal, siempre que lo sea con riesgo de propagacion a cosas distintas, en cualquiera de las condiciones previstas en el capitulo 7, o, titulo 13 del libro 2.o delCodigo penal; cuyo medio de ejecucion de aquel delito, principal el la intencion del culpable estima la ley con el grave caracter que atribuye tambien a la inundacion y al empleo del veneno, no solo por los peligros que implica, sino igualmente por la notoria malicia, semejante a la alevosia, que revela la accion que para su exito no se detiene ante el respeto de otros derechos que pone en inminente riesgo o quebranta y lesiona a impulso de decidida resolution.

Que todas estas consideraciones aparecen manifiestas en el acto ejecutado por el procesado, puesto que voluntariamente empleo el petroleo inflamado para lesionar a la interfecta, poniendo el fuego, que por su natural poder se propago al local en que se cometio el delito, al servicio de su proposito punible; constituyendo por esto el incendio, elemento integrante del delito de asesinato, \* \* \*." (Sentencia de 29 de Noviembre de 1887, II Hidalgo, Codigo Penal, 175).

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### CONCURRING OPINION

#### BARREDO, J.:

Except for the unnecessary reference to the supposed statement of the deceased to his wife and the joint affidavit of Ogoc and De la Serna, all of which were not properly presented in evidence, hence it is preferable not to mention them in order to avoid any suspicion that our judgment has been influenced by factors other than evidence duly presented in court, I concur.

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