

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ZOILO CASTRO, DEFENDANT-APPELLANT.

G.R. Nos. L-20555 and L-21449. June 30, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal by the accused from a judgment of conviction in two cases jointly tried by the Court of First Instance of Pampanga.

Said cases arose from an incident which took place on November 29, 1952, in front of the house of the deceased, Moises Gomez, a barrio lieutenant, by a small street in barrio Sto. Niño, San Fernando, Pampanga, at around four to four thirty in the afternoon. It started with an altercation between Donaciano Vitug and Alfredo Briones, and ended with Zoilo Castro, Briones' companion, shooting two persons who later got involved, Moises Gomez, who was killed, and Candido Vitug, who was wounded but did not die.

Separate informations were thereafter filed against Zoilo Castro in the Court of First Instance of Pampanga for murder of Moises Gomez (Criminal Case No. 1546) and for frustrated murder of Candido Vitug (Criminal Case No. 1597). As stated, the cases were jointly tried, after the accused entered a plea of not guilty to both charges. After trial, the accused was convicted of the murder of Moises Gomez, for which the penalty of reclusion perpetua was imposed, plus indemnity of P6,000.00 to the heirs and P1,400.00 to the widow of the deceased; and for attempted murder of Candido Vitug, to suffer four (4) months and twenty (20) days of arresto mayor, as minimum to four (4) years and two (2) months of prision correccional, as maximum, plus indemnity of P800.00 with subsidiary imprisonment if insolvent, and costs, credit of one-half of preventive imprisonment, if any, and forfeiture of the revolver used in the shooting. And hence this appeal.

It is not disputed that at the time of the incident there were a number of persons inside the house of the deceased Moises Gomez where a game of monte was in progress. The prosecution tried to establish through the testimony of Donaciano Vitug that he and his brother Candido went to the house to look for some companions who were gambling there. After staying for about twenty minutes he went out and met Alfredo Briones, a policeman then in plainclothes and off duty, who commented that it would be proper to put a hand grenade into the car owned by Donaciano (Tsn of Feb. 24, 1955, Vergara, p. 3). Said car was then parked in the street in front of the deceased's house. They had exchanged words when Zoilo Castro, Briones' companion, also a policeman then off duty and in plainclothes, came out of the house and asked Briones if Donaciano was tough. As Briones did not answer, Castro challenged Donaciano to fight but the latter refused. Moises Gomez arrived and tried to pacify Castro, explaining that Donaciano will not fight. As Castro refused to listen, Gomez warned that "Before you harm him, you better harm me first." At this, Castro brushed Gomez aside saying "You are another." Gomez then raised his hands and said "We will not fight you." However, Castro stepped back, and calling him "son of a harlot" pulled out his gun and fired at Gomez, who was hit in the head and fell. (Tsn of Dec. 23, 1955, Maglalang, pp. 2-6)

As Gomez was shot, Candido Vitug came out of the house. Castro also shot him. Hit by the first shot, he fell to

the ground and tried to protect himself by kicking Castro as the latter continued to shoot. At this instance, Donaciano got a piece of stone and hit Castro on the head. Castro then faced Donaciano and tried to shoot him but he grabbed Castro's arm. They both fell on the ground as they grappled for the gun. Somehow Castro was able to stand up, but before he could shoot, Donacia-no threw the stone at him. Castro ran with Donaciano chasing him. However, Donaciano was not able to catch him because he was able to board a jeepney (Tsn., *ibid.*, pp. 6-7). Donaciano then brought his brother to the hos-pital.

Candido Vitug testified that, having been told that his brother was arguing with somebody, he went out of the house to find out what was going on. It was then that he was shot. Fallen to the ground, he kicked Castro everytime the latter fired at him. Castro suddenly stopped firing at him and he saw Donaciano grapple with Castro after which Castro was able to run away (Tsn of March 16, 1956, Maglalang, pp. 24-27, 32).

The Vitugs' foregoing testimony was corroborated by Menen Gomez who stated that he saw the incident happen as he was seated on one of the two jeeps parked in front of the house of the deceased.

Conrada Pili-Gomez, the deceased's wife, did not see the deceased being shot (Tsn., *ibid.*, p. 37), but she testified to Castro's occasional presence in their house where her husband maintained a gambling den. On that afternoon, she testified to having seen Menen Gomez sitting with her son in the jeep (Tsn., *ibid.*, p. 51).

Setting forth the theory of self-defense, Zoilo Cas-tro and Alfredo Briones stated that they went to the house of the deceased merely to check a report that said de-ceased was again maintaining a gambling den. During the exchange of words between them, the deceased Gomez pushed Castro, after which he felt himself hit on the head. As Castro fell on his knees, dizzy, he pulled out his gun and, noticing that two men were coming at him, shot them in the belief that he was about to be killed (Tsn of May 6, 1958, pp. 72-81; Tsn of May 14, 1957, Maglalang, pp. 64-65). Jorge Sangalang, a puto vendor, claimed that he saw a man hit Castro with a big stone while the latter was talking to the deceased Gomez (Tsn of July 28, 1958, Maglalang, pp. 88-90).

There is no question that Moises Gomez and Candido Vitug were shot by Zoilo Castro. Precisely how this hap-pened depends upon which of the conflicting testimonies of the parties are credible. The court a quo gave credence to the testimony of the witnesses of the prosecution. The rule adhered to by Us in such cases is that "as far as credibility and veracity of witnesses are concerned, the conclusions of the lower court command great weight and respect, on the ground that the trustworthiness of witnesses and the merit of the defenses by the accused, are in the peculiar domain of the trial court." [1] In this case We see no reason for departing from the same rule, there being no showing that some fact or circumstance of great importance to the case has been overlooked in the records or misapplied or its significance misunder-stood by the lower court. [2]

Appellant, for instance, objects to the lower court's finding that he and Briones proceeded to the deceased's house with "noise and fanfare" on the ground that this is not found in the records. The point, however, is that this circumstance is of no moment, as far as the finding of guilt is concerned.

The records, on the other hand, show that even a defense witness, Ireneo Talao, testified that he saw Cas-tro shoot Gomez as the latter was trying to pacify the former (Tsn of April 6, 1957, p. 55).

Affidavits were presented in the attempt to dismiss the case: that of Conrada Pili-Gomez, wherein she stated that she was no longer interested in the criminal action because she was convinced that Gomez's death was accidental or unavoidable; those of Menen Gomez and of Ireneo Talao wherein both stated that they now realize that having been hit first, Castro merely shot in self-defense.

It is Our opinion that the lower court rightly dis-regarded these affidavits. While Conrada Pili-Gomez con-firmed her affidavit under oath, she admitted having agreed to Castro's proposal of settlement in considera-tion of

P500.00 (Tsn of Nov. 11, 1958, Vergara, pp. 57- 58). And Menen Gomez and Ireneo Talao admitted in open court that they signed the affidavits upon the request of Conrada Pili-Gomez who explained that the case was being amicably settled (Tsn of Nov. 11, 1958, Vergara, pp. 51-61).

Needless to stress, the present criminal cases are not subject to compromise. And the opinion of Conrada Pili-Gomez as to the guilt of the accused, is not controlling, since she was not a witness to the incident in question.

From the evidence, We find testimony to the effect that when shot, Moises had his hands up, either to show that he would not fight, in fright, or to try to ward off the shots that were to come (Tsn of Feb. 24, 1955, Vergara, p. 6; Tsn of Dec. 23, 1955, p. 6; Tsn of April 6, 1957, Maglalang, p. 55). Clearly, the deceased was in a defenseless position when Castro shot him. This constituted treachery and qualified the offense to murder which is punishable under Article 248 of the Revised Penal Code by reclusion temporal in its maximum period to death. As the accused voluntarily surrendered (Tsn of May 4, 1957, Maglalang, p. 70; Tsn of May 6, 1958, Maglalang, p. 81), there obtains a mitigating circumstance in his favor. Accordingly, the penalty should be imposed in its minimum period, reclusion temporal maximum. And the indeterminate sentence law should be applied, ranging in its minimum from prision mayor maximum to reclusion temporal medium (a degree lower to reclusion temporal maximum to death).

As to the other charge, frustrated murder, one physician Dr. Efren Baltazar, senior resident physician of Pampanga Provincial Hospital, testified that without medical attendance, Candido Vitug would have died (Tsn of Jan. 9, 1955, Vergara, pp. 22-23), while another doctor, Dr. Fortunato Guerrero, who treated Candido Vitug in the UST hospital, believed that the wounds of Candido were not necessarily fatal so that he may or may not have recovered without medical treatment (Tsn of Feb. 18, 1959, Maglalang pp. 13-14). We consider this doubt in favor of the accused and affirm the trial court's conviction for attempted murder. As mentioned, accused surrendered voluntarily. Applying this mitigating circumstance also to the penalty for attempted murder (prision correccional maximum to prision mayor medium), the indeterminate sentence minimum should be anywhere from arresto mayor maximum to prision correccional medium; and the indeterminate maximum should be prision correccional maximum. Accordingly, the penalty should be an indeterminate sentenced minimum of four (4) months and twenty (20) days of arresto mayor (as fixed by the court a quo) up to an indeterminate sentence maximum of four (4) years two (2) months and (1) day of prision correccional (add one day to bring it within the minimum period of the penalty provided for by law).

WHEREFORE, the appealed judgment is hereby modified, affirming conviction in both cases, but reducing the penalty for murder to an indeterminate sentence of from ten (10) years and one (1) day of prision mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum, plus the indemnity provided for in the said judgment, and costs, with credit for preventive imprisonment, if any; and correcting the penalty for the attempted murder to four (4) months and twenty (20) days of arresto mayor, as minimum, to four (4) years, two (2) months and one (1) day of prision correccional; in all other respects, said judgment is affirmed. No costs in this instance.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] People v. Evaristo, L-14520, Feb. 26, 1965; People v. Lumayog, L-19142, March 31, 1965.

[2] People v. Amirul Asmawil, L-18761, March 31, 1965.

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