

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE TINGSON AND PRUDENCIO HAPITAN,
DEFENDANTS-APPELLANTS.**

G.R. No. L-31228. October 24, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Automatic review of the death sentence imposed on the accused-appellants by the Court of First Instance of South Cotabato in its decision of May 2, 1969 convicting them of the crime of murder and sentencing them to indemnify the heirs of the deceased Peñaflor Briones in the sum of P12,000.00 and to pay the costs.

The information filed on July 14, 1958 by the provincial fiscal charged that on May 18, 1958 in the barrio of New Dumangas, municipality of Banga, Cotabato province, the two accused "conspiring, confederating together and mutually helping each other, with deliberate intent to kill, did then and there, willfully, unlawfully and feloniously, with evident premeditation and treachery attack and assault Capt. Peñaflor Briones in the following manner: that accused Prudencio Hapitan, in order to distract the attention of Capt. Briones, who was then in an uninhabited place, went behind the latter, while accused Felipe Tingson went in front of Capt. Briones and shot the latter with the pistol that he conveniently provided himself with all in pursuance of their conspiracy, and as a result of such shot, Capt. Peñaflor Briones sustained gunshot wounds on vital parts of his body that caused his immediate death."

The accused were arraigned and pleaded not guilty on August 23, 1958. The trial got underway on February 5, 1959 and was finally terminated ten years later on December 23, 1968, after which the lower court rendered its judgment of conviction of May 2, 1969.[1]

The deceased victim, Peñaflor Briones, was the collection agent and representative of the International Harvester Company in the province of Cotabato. He was in the actual performance of his duties as such (assisting a deputy sheriff of the province in carrying out a writ for the execution of the judgment of January 14, 1958 rendered by the Manila court of first instance[2] ordering the return of a farm tractor to the said company previously sold and delivered to the two accused and on account of which they owed a balance of P5,231.55 and mortgaged back the tractor to the company) that he met his untimely death on May 18, 1958.

Dr. Sally Habaluyas, municipal health officer of Banga, Cotabato, performed the post mortem examination of the deceased and noted two external puncture wounds, one "between the dediolateral portion of the left side of the neck about one (1) inch below the level of the inferior border of the mandible" and the other "one (1) inch by one (1) centimeter gaping with irregular border and everted, directed dedially, anteriorly and obliquely downwards." The internal examination showed that "the right internal carotid artery, right internal jugular vein and temporomaxillary vein (were) injured, thus extravasation of blood." Cause of death resulting from the gunshot wounds was "internal hem-orrhage," second to the said internal injuries of the carotid artery, jugular vein and temporomaxillary vein already noted.

The trial court thus recounted the fateful events that led to the victim's death: "In the execution of said writ, on May 17, 1958, early morning, the deceased Peñaflor Briones, with Deputy Sheriff Mario P. Saur, a mechanic of the Inter-national Harvester Company, two-PC soldiers, and a guide proceeded to look for the tractor which from the beginning had been concealed by the defendants Hapitan and Tingson. They finally found it in barrio Lakag in a plowed field owned by Tingson about 4:30 that afternoon. Notwithstanding the fact that when touched by the Deputy Sheriff, the engine was still warm, showing that it was actually used a few hours ago, the mechanic found out that the front tires were flat, there was no rotor of the engine and no valve at the pipe of the tire. Asking the persons in the premises, they were told that Tingson and Hapitan were in the town of Banga, impliedly showing that the two were there. To have control of said chattel, the late Briones requested the two PC soldiers to guard the tractor as he will look for the missing spare parts in the town of Banga, for which mission, he left Lakag at 5:00 o'clock in the afternoon accompanied by their guide, with the understanding that he was also to repair the zigzag road which was then destroyed by the rain and impassable at the time (Tsn. witness Mario Saur, Feb. 12, 1960, pp. 62-78). Briones never returned to Sitio Lakag. For on May 18, 1958 at about 11:30 in the morning while he was squatting in an embankment beside the zigzag road, watching the native Tagabilis repairing the road, Prudencio Hapitan and Felipe Tingson approached him after they had parked the jeep which they rode and owned by the former 100 meters behind. At that precise moment Johny Tuan and Antonio Lumbos, (sic) prosecution eyewitnesses, were then six meters away from him, shoveling the earth on a hill and throwing the soil down below which their companions used in filling up the destroyed road. Hapitan walked ahead of Tingson and when he was two meters from Briones, in a loud, hard and angry voice told Briones who remained squatted on the embankment,

'Pare; why did you fix this road when this does not belong to your jurisdiction? If you want to fix a road you go to other place.' (Tsn. Antonio Lumbos, pp. 11, 90)

"In a low voice, he answered,

'I just help you fix this road so that your tractor will pass.' (Tsn. p. 12)

"Then Hapitan proceeded himself behind Briones and posted himself four meters from him on his right side when he shouted:

'Stop working on the road.' (Tsn. p. 60)

"At this moment, Briones turned his face to his right side facing accused Prudencio Hapitan while Felipe Tingson approached him from his left side who when he was one and a half (1-1/2) meters from Briones, suddenly drew his pistol, with his right hand from his right waist pointed his gun towards Briones and fire the same while simultaneously he said,

'Why are you doing this, Pare?' (Tsn. pp. 13, 17, 79, 80 and 87).

"Briones was then smoking a Chelsea cigarette and hit on his left neck with the bullet having an exit on his right face, the cigarette butt was thrown by him and while he was in the act of covering his face, Tingson fired the second shot while Briones fell down on his back. Immediately thereafter, Tingson with his pistol placed again on his right waist, ran back following Prudencio Hapitan towards the jeep which they parked; started it and rode back.

"In the premises where Briones died, were found a cigarette butt of Chelsea cigarette and two empty shells of a pistol, Luger, with caliber 9MM, of which Tingson was armed at the time (Exhibits 'C', 'C-1', 'F', 'F-1', 'F-2', 'J', and 'L'). At that time also, Prudencio Hapitan was a holder and possessor of a pistol, Colt. caliber .45 with a permit to carry the same outside. (Exhibits 'I' and 'K')"

The trial court duly recorded that the narration thus given by it "in the main, is the evidence of the prosecution testified by eyewitnesses Antonio Lumbos, and Johny Tuan corroborated by Datu Piang Eduard, Chief of Police Arcadio Mabaquiao, Patrolman Arturo Gangoso, Photographer Teodoro Escobarte, Sgt. Francisco Montilla of the Philippine Constabulary, Tiburcio Lucido and Judge Rodolfo Ortiz of the Municipal Court of Banga, Cotabato, Manager Nathaniel Crew, Manager of the International Harvester Company, Deputy Sheriff Silvestre L. Roda, and Deputy Sheriff Mario P. Saur. Their testimonies were confirmed by documentary evidence, far more important, those of eyewitnesses Antonio Lumbos and Johny Tuan, by the medical findings of Doctora Sally Habaluyas on the injuries sustained by the deceased which caused his untimely demise."

1. Accused Felipe Tingson, who admittedly fired the fatal shots, put up a plea of self-defense. He claimed that angered by his plea to be allowed to retain possession of the tractor until he had finished his planting, the deceased had countered that he was tired of being fooled and asked him: "What do you want?" At the same time, the deceased allegedly drew a pistol from his left waist with his right hand, compelling said accused to shoot him in self-defense.

The trial court rejected this plea and found that said accused dismally failed to discharge the burden of establishing his said defense by credible, clear and convincing evidence.[3] The trial court, analyzing the evidence, thus summarized its reasons:

"1. While (Tingson) and his witnesses claimed that the deceased was holding a gun at the time when he shot him, yet on his demise, this gun was never taken by him nor presented in Court. There was nothing which prevented him from presenting the same to the authorities as in that zigzag road Briones died alone and without anyone coming to his aid.

* * * * *

"On the other hand, the witnesses for the prosecution were in unison in declaring to this Court that the deceased never possessed any firearm at that time. (Testimonies of Tony Lumbos, Johny Tuan, Fair Lilian Briones, Judge Ortiz and others.)

"2. While accused Tingson admitted that he shot Briones with his licensed pistol (Luger, Cal. 9MM. with Serial No. 670) and after shooting Briones, he placed it on his waist, this gun, however, has not been surrendered for it was lost while he was running from the place where he shot Briones toward the jeep. This explanation for the loss of his gun is not only absurd but ridiculous, having in mind that between the place where Briones was shot until where the jeep was parked was only 100 meters and he was following the zigzag road. He could have easily located the gun by coming back and could have found the same. The truth is, he wanted still to possess the gun in spite of the fact that he used it in the commission of a crime in the same manner that he wanted to withhold the tractor after it was ordered by the Court to be returned to the company. This simply shows his greed and avarice.

* * * * *

"3. His testimony as to where Briones was hit, that is, on his breast, as they were facing each other is unfortunately not concurred by the medical findings of Doctora Habaluyas of the injuries sustained by the victim that the entry of the bullet was on the left neck and the exit was on the right face, evidently showing that the aggressor was on the left side of the victim and not in the front of him. His testimony and those of his two eyewitnesses Donguines and Fineza that the deceased was hit on the breast are therefore rehearsed tales for one may search in vain from the post-mortem examination conducted, of any injury, however slight, on the breast of the deceased. The testimonies of the defense witnesses are at war with physical facts and must therefore be disregarded. * * *

* * * * *

"4. If there was any aggression at the time of the commencement of the incident, such could not have come from the deceased who had no personal interest whatsoever at stake with the tractor. Note that he was only a collection agent of the company. Besides, at the time, the tractor was already guarded by PC soldiers and actually, therefore, was in possession of the sheriff. Any such aggression could have come from accused Tingson who was the party offended by the refusal of Briones to extend to him the possession of the tractor. *

* *11

The Court finds no reversible error in the trial court's appreciation of the evidence nor merit in the accused's contention that it erred in its rejection of his plea of self-defense.

The trial court's finding that the accused Tingson had suddenly and without warning shot twice in succession the unarmed victim (who was then squatting on an embankment besides the road watching the native Tagabilis he had employed to repair the road) was based on the testimony of two prosecution eyewitnesses, Johny Tuan and Antonio Lumbos, who were just six meters away. On the other hand, the trial court could not give any credence to Tingson's self-serving plea of self-defense, in view of its observations already reproduced above, aside from the fact that the prosecution established from the testimony of the deceased's widow[4] and of the Philippine Constabulary clerk-custodian of firearm licenses records[5] that no license to possess firearm had been issued to the deceased.

2. Neither does the Court find reversible error in the trial court's finding that treachery attended the fatal shooting of the victim and therefore qualified the offense committed by Tingson as murder. There is treachery when as in this case, the accused in committing the killing, "employed means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." [6] Here, the accused Tingson, from a vantage point, suddenly and without warning shot the victim, who was unarmed and in a squatting position, totally unprepared to defend himself. Since Tingson had fired from the left side of the deceased, the bullet hit the deceased on the left side of his neck and exited on the right side of his face. While the victim was in the act of instinctively covering his face, Tingson fired his second shot as the victim fell down on his back. Indeed, this was a treacherous attack, as it insured the offender from any risk and no opportunity was given the victim to take any defensive or retaliatory act. Apart from the suddenness of the attack, which eliminated any possibility of defense on the part of the victim, [7] Tingson's firing of a second shot when his victim was already helpless and prostrate evinced Tingson's conscious choice of the means and manner of execution employed by him to directly and specially insure the killing of his victim without risk to himself.

The Court thus finds that accused Tingson's guilt of the offense of murder was established beyond reasonable doubt.

3. On the trial court's finding that two generic aggravating circumstances of evident premeditation and use of motor vehicle attended the commission of the crime, the Court agrees with the Solicitor General's concurrence with the accused's contention that such circumstances had not been duly proven. The State correctly noted that " * * There is no evidence showing when the appellant became determined to kill the deceased, from which to reckon the period sufficient in a judicial sense to afford him full opportunity for meditation and reflection to allow his conscience to overcome the resolution of his will if he desires to harken to its warnings. * * "

As was stated by the Court in *People vs. Diva*, [8] " * * To properly appreciate the circumstance of evident premeditation, it is necessary to establish with proof, as clear as the proof of the crime itself, * * (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and the execution to allow him to reflect. * * " None of these requisites was shown to be present in the case at bar.

As to the use of motor vehicle, the State correctly observed that "* * * Neither is there a showing that the motor vehicle (jeep) was purposely used to facilitate the commission of the offense nor does it appear that without it the offense charged could not have been committed."

4. The Court, upon a review of the record, likewise agrees with the Solicitor General's endorsement of the accused's submittal that conspiracy between Tingson, who admittedly alone fatally shot the deceased, and his co-accused Prudencio Hapitan, to commit the crime of murder had not been duly shown, and that absent such conspiracy, the accused Hapitan is entitled to an acquittal.

The Solicitor General thus reviewed the evidence against Hapitan: "(D)atu Piang Eduard testified that in the morning of May 18, 1958, after Briones had left with the men he had furnished him to repair the road going to Lakag, appellants Tingson and Hapitan and two other unidentified men arrived at his house (pp. 7, 8, 9, 40, 41, 48, t.s.n., November 23, 1959, Stenographer Ibero); that when he asked them where they were going, appellant Tingson answered that they were going to Lakag to look for an agent of the International Harvester Company who was seizing his tractor (pp. 9, 10, 42, t.s.n., November 23, 1959, Stenographer Ibero); that Datu Piang informed them that there was a stout man who came that morning who asked him to furnish him with ten men equipped with shovels, picks and a heavy hoe (pp. 10, 42, t.s.n., November 23, 1959; Stenographer Ibero); that he also told Tingson and his companions that the stout man told him he was going to repair the road going to Lakag (pp. 10, 42, t.s.n., November 23, 1959, Stenographer Ibero); and that after hearing what he said, Hapitan said, 'We will go now' (pp. 12, 42, t.s.n., November 23, 1959, Stenographer Ibero) and left (p. 12, t.s.n., November 23, 1959, Stenographer Ibero).

"The next prosecution witness, Antonio Lumbos, testified that upon seeing the deceased who was sitting atop a small hill, Hapitan (angrily) asked, 'Pare, why did you fix this road when this does not belong to your jurisdiction? If you want to fix a road you go to other place' (pp. 11, 65, 66, 90, t.s.n., February 5, 1959, Stenographer Ibero); that in a low voice the deceased answered, 'I am going to fix this road so that your tractor could pass' (pp. 12, 67, 68, t.s.n., February 5, 1959, Stenographer Ibero); that Hapitan went behind the deceased and ordered the men to stop working and the deceased ordered them to stop (pp. 68, 69, 78, t.s.n., February 5, 1959, Stenographer Ibero); and that it was at that juncture that his co-appellant Tingson shot the deceased (p. 13, t.s.n., February 5, 1959, Stenographer Ibero).

"Prosecution witness Johny Tuan testified that it was appellant Hapitan who asked the deceased why he was working there and told him that he should not work there because that was not his place (pp. 139, 188, 189, t.s.n., February 6, 1959, Stenographer Ibero); that the deceased answered, 'We are helping you so that your tractor can pass the road' (pp. 139, 175, 176, t.s.n., February 6, 1959, Stenographer Ibero); that appellant Hapitan went behind the deceased (pp. 141, 142, 175, t.s.n., February 6, 1959, Stenographer Ibero); and that it was at that juncture that the appellant Tingson fired at the deceased (pp. 143, 144, 145, 193, 198, t.s.n., February 6, 1959, Stenographer Ibero)."

Answering its own question of '(W)ill the foregoing suffice to establish appellant Hapitan's guilt beyond reasonable doubt? Is it enough to establish conspiracy with his co-appellant?' the State submits that the existence of a common design between the accused for the accomplishment of the same unlawful purpose and objective has not been clearly and convincingly shown, and that the guidepost restated by the Court in *People vs. Tividad*[9] that "* * * While it may be true that direct proof is not essential to prove conspiracy and that it may be shown by acts and circumstances from which may logically be inferred the existence of a common design among the accused to commit the offense charged (*People vs. Cabrera*, 43 Phil. 64, 96; *People vs. Carbonel*, 48 Phil. 868, 875-876), nonetheless the evidence to prove the same must be positive and convincing (*People vs. Aplegido*, 43 O.G. 114, 117). As a facile device by which an accused may be ensnared and kept within the penal fold, conspiracy requires conclusive proof if we are to maintain in full strength the substance of the time-honored

principle of criminal law requiring proof beyond reasonable doubt before conviction, * * *" has not been met.

The Court concurs with the State's conclusion that " * * * we are constrained to admit that the evidence at hand is not sufficient to establish beyond reasonable doubt that appellant Hapitan had conspired with his co-appellant in killing the deceased. To be sure he had not in any manner actively participated in wounding the deceased. As a matter of fact soon after the shooting, Hapitan ran away and did nothing to inflict any injury upon the prostrate victim."

The Court further finds it improbable that if Hapitan had entered into a criminal conspiracy with Tingson to kill the deceased, that he would have brought with him to the site his own wife and two children.[10] The Court also finds that Hapitan had not put up the defense of alibi as misconstrued by the trial court in its decision. Rather Hapitan's testimony was that he had actually seen and talked to the deceased Briones who was directing the native Bilaans in repairing the road at the site; that he had proceeded down hill to help them fix the damaged road, some forty meters away from the deceased, and it was then that he heard two shots and ran up the hill and found the deceased fallen and dying; that he ran to his jeep and found his wife and two children who were frightened and ran to their farm-house some three kilometers away; and that later, Tingson joined him and told him "that something happened to him, that he shot Capt. Briones." [11]

It therefore finds the accused Prudencio Hapitan to be entitled to an acquittal.

5. It remains to determine the appropriate penalty imposable on the accused Felipe Tingson. The crime of murder committed by him is penalized by reclusion temporal in its maximum period to death.[12] Since the Court has ruled out the two aggravating circumstances of evident premeditation and use a motor vehicle considered against him by the trial court, supra, there remains the mitigating circumstance of voluntary surrender duly appreciated by it in the accused's favor. Hence, the minimum period of the penalty provided for by law should be imposed, and with the accused entitled to the benefits of the Indeterminate Sentence Law, the penalty that should be imposed upon the said accused, in lieu of the penalty of 17 years, 4 months and 1 day to 20 years of reclusion temporal recommended by the Solicitor General, is a reduced penalty of 12 years of prision mayor as minimum to 20 years of reclusion temporal as maximum.

ACCORDINGLY, the judgment under review is modified as follows:

The sentence of death against the accused Prudencio Hapitan is hereby set aside and he is acquitted of the crime charged, on reasonable doubt, with proportionate costs de oficio, and his immediate release from detention, unless he is held on some other valid charge, is hereby ordered; and

The sentence of death against the accused Felipe Tingson is likewise hereby set aside and he is instead sentenced to suffer imprisonment for a period of from twelve (12) years of prision mayor as minimum to twenty (20) years of reclusion temporal as maximum and to pay the proportionate costs. The judgment against said accused Tingson to indemnify the heirs of the deceased in the sum of P12,000.00 is affirmed.

SO ORDERED.

Concepcion, C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, and Esguerra, JJ., concur.

Makalintal, J., on leave.

Antonio, J., did not take part.

[1] Hearings were had on February 5 and 6, 1959, August 6 and 7, 1959, November 23 and 24, 1959, February 12, 1960, June 29 and 30, 1961, March 26 to 29, 1962, inclusive, before Judge Jose C. Borromeo then presiding the

court. The prosecution submitted its case and exhibits at the hearing of February 12, 1960. The defense commenced the presentation of its witnesses at the session of June 29, 1961 and presented practically all of its witnesses, ten of them, by the last hearing held on March 29, 1962 before Judge Borromeo. Thereafter, no hearings were held in the case for more than six (6) years. Judge Borromeo was apparently transferred to another court and was succeeded in the latter part of 1962 by Judge Jesus Quintillan. As per the records, all the hearings set for December 1962 up to November, 1966 were cancelled by Judge Quintillan for a number of reasons, urged either by the prosecution or defense, e. g. the serious illness in 1963 of Atty. G. Opinion, Jr. of the private prosecution, who was eventually replaced, the withdrawals of defense counsels Manuel Javellana and of his successor, Procopio Devera on December 7, 1964 and June 8, 1966, respectively, etc. No hearing appears to have been scheduled in 1967. Judge Quintillan was replaced in late 1967 by Judge A. Aportadera, who cancelled the hearings set for January 24, and 25, 1968 upon the petition of Atty. Matias Basco, as new defense counsel. Judge Pedro Samson C. Animas succeeded Judge Aportadera in the latter part of 1968, resumed the hearings on September 26 and October 25, 1968, December 4 and 16, 1968 and finally terminated the same on December 23, 1968, after he had warned at the first hearing before him on Sept. 26, 1968 "that there will be no further postponement, considering that this case was commenced in 1958 * * *." It was before him that the two accused testified, after which the defense submitted its case, and he rendered the sentence under review.

[2] Civil Case No. 32375 of the Manila court of first instance, Branch XV, entitled "International Harvester Co. of the Phil., plaintiff, vs. Prudencio Hapitan, Felipe Tingson and John Doe, defendants."

[3] See *People vs. Garcellano*, 23 SCRA 595 (May 13, 1968); *People vs. Diva*, 23 SCRA 332 (April 29, 1968); and *People vs. Ansoyon*, 75 Phil. 772.

[4] T.s.n. Ibero (Aug. 6 and 7, 1959), p. 7.

[5] T.s.n. Millare (Nov. 23, 1959), p. 11.

[6] Article 14, par. 16, Revised Penal Code.

[7] See *People vs. Mabaga*, 28 SCRA 779 (July 25, 1969) and cases cited.

[8] See fn. 3, *supra*.

[9] 20 SCRA 549, 554 (June 30, 1967), per Castro, J. See also *People vs. Portuguesa*, 20 SCRA 901 (July 31, 1967).

[10] T.s.n. Ibero (Sept. 26, 1968), p. 8.

[11] *Idem*, pp. 16-25.

[12] Art. 248, Revised Penal Code.

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