

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, FELIPE SEGISMUNDO, MAURO HERNAEZ AND PATROCINIO FONTANO, DEFENDANTS-APPELLANTS.

G.R. No. L-6773. June 30, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

As a consequence of two (2) shots fired by defendant Felipe Segismundo in Vigan, Ilocos Sur, on July 5, 1951, between 9:00 and 10:00 a.m., Mariano Alagar sustained the following injuries:

1. "Wound, bullet shot, thru and thru. The bullet entered at the back slightly lateral to the midline at the level of the 12th thoracic vertebra and came out in front just below the left nipple. The spinal cord and liver were injured causing paraplegia of the lower extremities and severe hemoperitoneum.
2. " Wound, bullet shot, nonpenetrating, hypochondrium, left." (Exhibit A, p. 39, Record.)

Forthwith, the corresponding complaint, for frustrated murder, was filed, with the Justice of the Peace Court of Vigan, against Felipe Segismundo, Catalino Palma and Feliciano Quedado. Soon thereafter, on the same date, the complaint was amended to include Mauro Hernaez, Patrocinio Fontano and Primitivo Piga as defendants. On July 11, 1951, Alagar died as a consequence of his aforesaid injuries. Hence, said amended complaint was again amended to charge murder. The right to a preliminary investigation having been subsequently waived by the defendants, the case was forwarded to the Court of First Instance of Ilocos Sur, where the corresponding information for murder was filed against said defendants. After due trial, the court of first Instance acquitted Palma, Piga and Quedado, but convicted Segismundo, Hernaez and Fontano - the first, as author of the crime charged, and the last two (2) as accomplices - and sentenced them as follows: Segismundo to life imprisonment, with the accessory penalties provided by law, and to indemnify the heirs of Mariano Alagar in the sum of P4,000.00; and Hernaez and Fontano to an indeterminate penalty ranging from 4 years, 2 months and 1 day of prison correccional to 12 years and 6 months of reclusion temporal with the accessory penalties provided by law, and to jointly and severally indemnify the heirs of said deceased in the sum of P2,000.00. Segismundo, Hernaez and Fontano, who were likewise sentenced to pay three-sixths (3/6) of the costs, have appealed from said decision.

The version of appellant Segismundo is as follows: As he accidentally met Alagar in the morning of the occurrence, Alagar inquired about the sum of P40.00 delivered by him to Segismundo, on June 25, 1951, for the purchase of lumber, to be used in the repair of a movie house belonging to Alagar. Said amount, however, was appropriated by Segismundo in payment of a credit he had against Alagar, for wages as his (Alagar's) former body guard. Immediately after his aforementioned query, Alagar gave a fist blow to Segismundo, who stepped backward. Then, saying: "you are now becoming proud and you intend to resist x x x," Alagar attempted to insert his right hand in the right hind pocket of his trousers. Knowing that Alagar owned a gun, Segismundo thought that he (Alagar) intended to use his firearm with a homicidal purpose. Accordingly, Segismundo beat him

to the draw and shot him on the breast. As, Alagar turned his body, thus giving his back to Segismundo, the latter thought that his shot had missed its target. So he fired at Alagar on the back.

At the outset, it is apparent that Segismundo does not deserve an acquittal, even if his version were given full faith and credence. Indeed, it would appear from his testimony that the fatal shot was fired when Alagar - who, according to the defense, originally faced Segismundo - had his back turned towards the latter, so that he (Segismundo) could not have believed that his life was then in danger. Anyhow, Segismundo's story deserves no serious consideration for:

1. Alagar was not armed at all. Hence, he could not have placed his right hand in his right hind pocket, as Segismundo would have us believe.
2. Segismundo admitted that he had ceased to work for Alagar since May, 1951. Why, then, should Alagar deliver P40.00 to Segismundo, on June 25, 1951, for the alleged purpose of purchasing lumber for him (Alagar)? Again, the fact that Alagar had dispensed with the services of Segismundo strongly suggests that former was not satisfied with the latter, who, apparently, resented the former's act.
3. The nature and location of the injuries suffered by Alagar confirm the theory of the prosecution, which was sustained by the lower court, namely: that Alagar was walking along the street, unaware of the presence of Segismundo, when the latter approached from behind and shot him on the back, and that, as Alagar fell down face downward, and then tried to rise, by pushing his torso upward, Segismundo, who, meanwhile, had placed himself in front of Alagar, shot him once more, although the bullet, which, evidently, had a downward direction, merely grazed the hypochondriac or abdominal portion of Alagar's body. Had the first shot been aimed at this region, as testified to by Segismundo, the bullet would have pierced the hypochondrium, instead of grazing it, for Alagar was standing at the beginning of the attack.
5. As stated in the decision appealed from, being unarmed, it is quite improbable that Alagar would have attacked, with his bare fists, appellant Segismundo, who must have been known to be thoroughly competent to defend himself, for other wise Alagar would not have engaged his services as his (Alagar's) body guard. Besides, Alagar knew that Segismundo had a firearm, the license therefor having been secured precisely through Alagar's intervention.

In short, there is no merit in the appeal taken by appellant Segismundo.

With reference to defendants-appellants Mauro Hernaez and Patrocinio Fontano, the lower court found them guilty as accomplices, in view of the testimony of Graciano Perilla and Dr. Favis to the effect that, after the first shot, they had urged or incited Segismundo, by words and signs, to fire at Alagar. Perilla stated that he saw appellant Hernaez, after the first report, at some distance from Segismundo, bidding him, to "give him some more," at the same time motioning with his right arm as if to shoot downward, whereas Dr. Favis asserted that Fontano was near a drugstore, signalling to another person, and that he (Dr. Favis) then heard someone, whose identity he did not know, says "give him some more." Obviously, this testimony of Dr. Favis is insufficient to warrant the conviction of Fontano. As regards the testimony of Perilla, the Solicitor General admits that it cannot be relied upon, for, as a member of the police force of Bantay, he was on duty in that municipality, not in Vigan, on the date of the occurrence. Besides, it appears that, not long before the same, Perilla had had an altercation with Hernaez, because the latter prevented him from attending a given dance without paying the price of the corresponding admission ticket.

Consequently, the guilt of Hernaez and Fontano has not, to our mind, been established beyond reasonable doubt, and, in line with the recommendation of the Solicitor General, the charge against those two appellants should be,

as it is hereby, dismissed, with the proportionate part of the cost de officio. Thus modified, the decision appealed from is hereby affirmed, as regards appellant Segismundo; with the proportionate part of the costs against him.

IT IS SO ORDERED.

Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Reyes, J.B.L., JJ., concur.

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