

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JAMES YOUNG (ALIAS JIMMY YOUNG, ALIAS TENG ENG YOUNG),
DEFENDANT AND APPELLANT.**

G.R. No. L-2161. May 26, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

The above-named appellant, who claims to have been born in Surigao, Philippines, of Chinese father and Filipino mother, was accused of murder in the Court of First Instance of Davao in an information which reads as follows:

"The undersigned accuses James Young, alias Jimmy Young, alias Teng Eng Young, of the crime of murder under article 248 of the Revised Penal Code committed as follows:

"That on or about April 15, 1946, in the City of Davao, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, conspiring and cooperating together with Dy Too, alias Donato Pomarala, and Chu Chi Beng, both accused and convicted for this same offense in criminal case No. 131 of this Court, as well as with Carlos Ching, Ang Chu Yeng and Uy Kuet Guan, who have also been prosecuted but are still at large, with deliberate intent and with intent to kill, with treachery and evident premeditation, attacked, assaulted and shot with a 45-cal. pistol one Alfonso Ang Liongto, thereby inflicting upon the latter gunshot wounds which directly caused the death of the said Alfonso Ang Liongto.

"The execution of the foregoing offense was also attended by the aggravating circumstances of (1) nighttime and (2) reward or promise. Contrary to law.

"Davao City, Philippines, December 18, 1947.

"(Sgd.) Bernardo Teves

"Provincial Fiscal and

"City Attorney Ex-officio"

Upon his plea of not guilty he was tried, convicted, and sentenced by Judge Enrique A. Fernandez to suffer life imprisonment with the accessories of the law, to indemnify the heirs of the deceased Alfonso Ang Liongto in the sum of P2,000, and to pay the costs. From that sentence he appealed to this court.

During the trial of the cause seven witnesses testified for the prosecution, and the accused alone testified in his own behalf.

There can be no doubt as to the guilt of the accused, since he himself, in his testimony before the trial court, admitted his participation in the murder of Alfonso Ang Liongto in consideration of a promise of reward of P50,000, of which he claimed to have received only PI 0,300 at the time of the trial. The circumstances under which the crime was committed, as narrated by the witnesses for the prosecution and by the accused himself, are as follows:

Sometime before March 27, 1946, the appellant, who was then in Manila, received a letter from a friend of his

named Go Tiong, of the City of Davao, "urging me to go to Davao and bring along my followers and henchmen with me because they needed us there." Upon receipt of that letter the appellant took a boat bound for Leyte, bringing along with him a former classmate of his named Ang Chiu Eng. In Leyte, according to his own narration, he picked up other friends of his named Carlos Ching, Chu Chi Beng, and Uy Kuet Guan, and then proceeded to Cebu. There he invited another henchman named Dy To, alias Donato Pomarala, to join him, and from there the party, then composed of six persons headed by the accused, took a plane for the City of Davao, where they arrived on March 27, 1946. At the airport they were met by a delegation of several local Chinese residents, among whom the accused named the following: Go Tiong, Lim Chan, Lim Peng, Go Cam, Te Chaye, Lo Bok, and Ang Tiong. From the airport the local Chinese residents took the accused and his companions in three jeeps to a hotel on Claveria Street, Davao, where they stayed for four days, after which they moved to a house on Magallanes Street.

As to what happened from the time the accused and his "followers and henchmen" arrived in Davao on March 27, 1946, to April 16, 1946, we find the following statement of facts contained in the printed brief filed in this court by Atty. Juan B. Espolong, who defended the appellant in the trial court and who continued to represent him in this court, to be substantially correct:

"* * * Since March 27 to April 12, 1946, in the Hotel, in the house at Calle Magallanes and in a certain house at Matina, Davao City, Co Tiong, Chuchi Beng, Lim Chan, Lim Sui, Co Cam and Lo Bok had conferences regarding the killing of Alfonso Ang Liongto (t. s. n. pp. 105, 106, 107 and 108). Thus in the conferences above mentioned those local Chinese offered the accused-appellant and his companions the amount of P50,000 to kill Alfonso Ang Liongto and further offered them help should they engage in business in Davao, also assuring them immunity from arrest, because with the money which they had they could bribe the authorities of Davao. And for the identification of the victim they furnished them a picture of Alfonso Ang Liongto. They also furnished them a list of the names of the Davao Chinese community who were interested in the death of Ang Liongto. They maintained and insisted that Ang Liongto ought to die for his pro-Japanese activities during the occupation and because of the competition in the business he offers them. In the month of April, 1946, they had fixed the date of the commission of the crime on April 15, 1946, and in view of the fact that the accused and his companions had not agreed as to who would work out or execute the agreement they decided in drawing a lot, the one who draws the No. 1 should be the killer and the one who draws the No. 2 will act as assistant. And the rest of his companions to act as guards in the vicinity of the crime to be committed by one of the companions of the accused-appellant. And in the drawing of the lot they prepared six pieces of paper with their respective numbers from 1 to 6, rolled the same and placed them on the table. After the drawing of the lot, Dy To got the paper with the No. 1 and Carlos Cheng got the other one which bore No. 2 (t.s.n. pp. 19, 20 and 108). On the 15th day of April, 1946, Lim Chan delivered two pistols to the accused to be used in the commission of the crime and on the night of April 15, 1946, [the accused] delivered the same to Dy To and Carlos Cheng about 6:00 o'clock in the evening (t.s.n. pp. 52 to 53). The accused-appellant, Ang Chiu Eng, Chu Chi Beng, Uy Kuet Guan and some of the thirty-six Chinese who were interested in the death of Ang Liongto, on seeing the latter go out of his house clothed in under'trousers and take a walk in front of his house, the accused-appellant upon instruction of the Chinese from Davao went to the Aldolor Restaurant to look for Dy To and Carlos Cheng. After having been notified that Ang Liongto is in front of his house they went to Santa Ana, in an unlighted automobile. When they reached the place about 80 meters from the house of Ang Liongto where some local Chinese were gathered, the local Chinese in Davao pointed to Dy To and Carlos Cheng the place where Ang Liongto was standing, advising them to work with caution and should approach the place one after the other. Dy To on reaching the place about six meters from Ang Liongto, and to be sure of the identity of the victim, called on him, 'Ang Liongto' and when the victim looked to the rear, Dy To fired at the deceased, hitting him at the back with the .45-caliber pistol which he was then bringing, thus killing Alfonso Ang Liongto right on the spot (t.s.n. p. 61). And on the same night several hours after the crime the accused-appellant, Carlos Cheng, Chu Chi Beng and Uy Kuet Guan were arrested by the police in the house at Magallanes Street, Davao City, while Dy To was arrested the next day. The members of the Secret Service

found in the possession of the accused-appellant and his companions the letter of Go Tiong written to the accused-appellant inviting him to come to Davao to kill Ang Liongto and a list wherein appears the names of the Chinese interested in killing Ang Liongto but the whereabouts of these documents are unknown.

"On the next day about 9:00 o'clock in the morning, that was on April 16, 1946, the accused-appellant, Ang Chiu Eng, Carlos Cheng and Uy Kuet Guan were released. Chiu Chi Beng and Dy To were prosecuted and subsequently convicted and sentenced to reclusion perpetua." (Pages 5-8, brief for the defendant-appellant.)

According to the appellant's own testimony, the Davao Chinese who hired him and his companions gave two reasons why they wanted to have Ang Liongto killed. He said: "The first reason was that Ang Liongto was their enemy because he was with the Japanese, he was a collaborator; the second reason was that Ang Liongto was their great business competitor." (Page 107, t.s.n.) On cross-examination the appellant testified in part as follows:

"Q. And whereas here you admitted your participation in the killing of Ang Liongto, why is it that when [the] information was read to you you did not interpose a plea of guilty and rather take chances of your life and liberty? A. I really admit my guilt or participation in the killing of Ang Liongto but I am sorry that those people here in Davao who were instrumental in the killing of Ang Liongto are not being punished. I admit that I am also at fault but I believe that, their guilt is heavier than mine and before I came here to Davao I signed 2 affidavits and I presume that they are also in jail already, but when I arrived here I found out that these people are not in jail." (Page 126, t.s.n.)

Anent the foregoing observation of the appellant, it may not be amiss to state here that the records of this court show that since the filing of this case a separate criminal action has been instituted against several other persons involved in the murder of Ang Liongto.

In this court the appellant makes the following assignments of error:

"1. The lower court erred in admitting the testimony of Dy To, the trigger man in this murder case, as a witness for the prosecution and against his co-accused.

"2. The lower court erred in admitting nighttime as an aggravating circumstance in the case at bar.

"3. The lower court erred in imposing the penalty of reclusion perpetua to the accused and failed to apply to him the Indeterminate Sentence Law.

"4. The lower court erred in not ordering the fiscal's office to drop the case against the accused-appellant with the end in view of utilizing said accused-appellant as government witness in order to bring before the bar of justice all the responsible parties in the murder of Alfonso Ang Liongto."

The first assignment of error deserves no serious consideration, first, because counsel for the appellant did not interpose any objection to the testimony of Dy To during the trial in the court below; and, second, because when the appellant himself testified in his own behalf he not only confirmed the testimony of Dy To but elaborated upon it with more details. When Dy To testified in this case he had been convicted and sentenced in criminal case No. 131 of the Court of First Instance of Davao for his participation in the murder of Ang Liongto. His testimony, therefore, could not have been given under a promise of leniency. Of what avail would it be to the appellant to attack the admissibility of a testimony to which he did not object in the lower court but which on the contrary he himself confirmed when he testified in his own behalf?

We sustain the second assignment of error in the sense that nighttime as an aggravating circumstance in this case is absorbed in that of treachery, which is the proper aggravating circumstance to consider. (People vs. Chan Lin Wat, 50 Phil., 191.) There was treachery in this case because the attack was sudden and totally unexpected and, furthermore, the victim never had an opportunity to defend himself. (U. S. vs. Cabiling, 7 Phil., 469; People vs.

Pengzon, 44 Phil., 224.)

In support of his third assignment of error counsel for the appellant presents the startling argument that his client was a poor man who had never owned a thousand pesos and that "a cold fifty thousand bucks in exchange of a man's life" was too great a temptation for him to resist. We quote counsel's own words just to show to what extent one's moral sense seems to have atrophied:

"The accused since birth was a poor man and a son of a poor farmer, that since his boyhood he has never owned a thousand pesos in his own name. Now, here comes a chance for him. A cold fifty thousand bucks in exchange of a man's life. A simple job. Perhaps a question of seconds' work and that would transform him into a new man. Once in a small nipa shack, now in a palatial mansion! This poor ignorant man blinded by the promise of wealth, protection and stability was given to do the forbidden deed."

Such a plea is a disgrace to the bar and an affront to the court.

The fourth and last assignment of error hardly needs any comment. Suffice it to say that under section 9 of Rule 115 the court may discharge a codefendant so that he may be a witness for the Government only under certain conditions therein specified, among which are (1) that there is absolute necessity for the testimony of the defendant whose discharge is requested and (2) that said defendant does not appear to be the most guilty—which conditions did not obtain in this case. As a matter of fact no one ever requested the trial court to discharge the appellant for that purpose.

The appellant's guilt has been proved beyond doubt. The degree of his depravity is apparent from the record. He was the leader of a band of gangsters who hired their services to kill for a price. In the present case he traveled all the way from Manila to Davao, by boat, by plane, and by automobile, in the pursuit of his nefarious trade, in which he enlisted the aid of five other killers to whom he referred as his "followers and henchmen." The only useful purpose which the life of such a public enemy could serve to society would be for the latter to make of it a deterrent exemplarity through the application of retributory justice as ordained by law.

The killing in question was attended by evident premeditation, which qualified the crime as murder. The crime was aggravated by two proven circumstances: (1) It was committed in consideration of a price, reward, or promise and (2) with treachery. (Nos. 11 and 16, article 14, Revised Penal Code.)

The trial court erred in conceding to appellant the mitigating circumstance of lack of instruction. We agree with the Solicitor General that there is no evidence to show that. On the other hand, his affidavits Exhibits E and G, on every page of which he wrote his John Hancock like signature and from one of which (Exhibit E) it may be inferred that he had gone to school, betray a fair degree of instruction and a high degree of intelligence on the part of this appellant.

In view of the presence of two aggravating circumstances and the absence of any mitigating circumstance, we should impose the death penalty upon the appellant in accordance with article 248, in relation to No. 3 of article 64, of the Revised Penal Code.

Before the approval on June 17, 1948, of Republic Act No. 296, the concurrence of all the Justices of the Supreme Court was necessary for the pronouncement of a judgment imposing the death penalty. (Section 133, Revised Administrative Code.) Evidently to remedy the notorious difficulty, if not virtual impossibility, of obtaining such unanimity, and in view of the alarming rise of criminality, and particularly of the rampancy of the crime of murder, that for some years had prevailed (and is still prevailing) in this country, the Congress by said Republic Act No. 296 (section 9) changed the former law by requiring only the concurrence of at least eight Justices in the imposition of the death penalty. After a long deliberation, the Court by a majority vote reached the conclusion that

Republic Act No. 296 is procedural and not substantive, and that it is applicable to cases pending in the courts at the time of the approval of said Act and to crimes committed before that approval.

In the present case only seven Justices voted to impose the death penalty. Mr. Justice Perfecto dissented and voted to impose life imprisonment only. Mr. Justice Paras and Mr. Justice Reyes agreed with the majority that on the merits of the case the appellant deserves the death penalty, but, being of the opinion that Republic Act No. 296 is not applicable to crimes committed before the approval of said Act, they believed the death penalty cannot be imposed in this case in view of the dissenting vote of Mr. Justice Perfecto. Hence they were constrained to vote for the imposition of life imprisonment only.

Therefore, for lack of the necessary number of votes to impose the death penalty, the sentence appealed from is affirmed, with costs. So ordered.

Paras, Feria, Pablo, Perfecto, Tuason, Montemayor, and Reyes, JJ., concur.

Bengzon, J., concurs in the result.

OZAETA, J.:

I certify that the Chief Justice voted with the majority to impose the death penalty.

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