

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BIENVENIDO NOCUM, DEFENDANT AND APPELLANT.

G.R. No. L-482. February 25, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

For having discharged a gun and accidentally killed Eugenio Francisco, the defendant Bienvenido Nocum, alias Bembe, was tried in the Court of First Instance of Manila, before the Honorable Alfonso Felix, judge. Found guilty of homicide through reckless negligence, he appealed in due course.

According to the evidence, about 9 o'clock in the evening of November 21, 1945, there was a fistic fight between Federico Bautista and Vicente Aurencio at the corner of Mayhaligue and Magdalena Streets, City of Manila. Desiring to stop the encounter, defendant shouted at the combatants. As these paid him no attention, he drew a .45 caliber pistol and shot twice in the air. The bout continued, however; so he fired another shot at the ground, but unfortunately the bullet ricocheted and hit Eugenio Francisco, an innocent by-stander, resident of the place. The wounded man was promptly carried to the St. Luke's Hospital where he expired soon after.

The above paragraph is a composite and abridged statement of the declarations of several witnesses (Jesus Santos, Vicente and Juan Aurencio and Ramon Gagui) in connection with defendant's confession Exhibit F.[1] But his attorney, assailing the validity of said confession on the ground of involuntariness, contends in this Court that inasmuch as the corpus delicti had not been demonstrated by evidence dehors that document, his client should be absolved, pursuant to several pertinent decisions. (United States vs. De la Cruz, 2 Phil., 148; and People vs. Bantagan, 54 Phil., 834.) Particular attention has been given to these points. Yet there is competent proof establishing the fact that, during the affray, pistol detonations were heard, and that one of the bullets produced the tragic death of Eugenio Francisco, whose photograph is Exhibit B. That is proof of the corpus delicti, i. e., proof of violent death, whether or not feloniously caused. (See Moran, Law of Evidence, Revised Edition, pp. 108, 109; People vs. Mones, 58 Phil., 46.) The confession Exhibit F served to identify the person who fired those shots and committed the offense.

We feel no inclination to reject such confession, because the uncorroborated and implausible testimony of the accused, alleging he had been manhandled before signing this document, about which he knew nothing, could not definitely overcome the positive assertions of Pablo Montilla of the Manila Police Department (before whom Exhibit F had been executed) that no force or intimidation had been employed on Nocum, who willingly signed it "after propounding to him all the questions and explaining to him the contents" thereof. The impartiality of that officer of the law has not been shaken by the lone testimony of herein appellant, which, as explained in the People's brief, deserves no credence. Nocum said in court that he signed Exhibit F when Montilla told him "it was simply a proof that they arrested me" (p. 27, t. s. n.). This is inconsistent with the alleged third-degree methods. If he was forced, deceit was unnecessary. And yet, he could not be deceived thusly, because he was no illiterate, being seventh grader.

Anyway, the trial judge had the chance to see the opposing witnesses, and to observe their demeanor on the stand; and in the conflict of their statements we will not interfere with his judgment, unless the record discloses some important circumstance which was overlooked, (*United States vs. Remigio*, 37 Phil., 599; *United States vs. Maralit*, 36 Phil., 155), it being the peculiar province of trial courts to resolve questions relating to the credibility of witness. (*United States vs. Pico*, 15 Phil., 549.).

The mishap should be classed as homicide through reckless imprudence, the slaying having been unintentional (cf. *People vs. Sara*, 55 Phil., 939; and *United States vs. Reodique*, 32 Phil., 458). It is apparent the defendant wilfully discharged his gun—for which he exhibited no license, by the way—without taking the precautions demanded by the circumstance that the district was populated, and the likelihood that his bullet would glance over the hard pavement of the Manila thoroughfare.

A landowner surprised a youngster in the act of stealing some fruit in his orchard. To scare the intruder he fired a shotgun aiming at the foliage of a cherry tree. The shot scattered and a pellet injured the boy, who was standing under the tree. That was reckless negligence, the Spanish Supreme Court decided. (Sent., June 20, 1900, *Viada*, 5th ed., Vol. 7, p. 14.)

The penalty imposed on the appellant is 2 months and 1 day to 1 year and 1 day, indemnity of P2,000 with subsidiary imprisonment, and costs. It is within the limits authorized by law. (Article 365, Rev. Penal Code, and Act No. 4103.) (Act No. 284.)

Wherefore, the appealed judgment is affirmed, with costs against appellant.

Moran, C.J., Feria, Pablo, Hilado, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

[1] Nocom said: "In my efforts to pacify them I shouted at them to quit fighting but they did not give heed. I then took hold of my .45 caliber pistol and fired two shots into the air, but still they continued fighting. I then fired another more shot into the ground, without any intention of hitting anybody, but accidentally it hit Eugenio Francisco who was standing on the other side of the street." (Exhibit F.)

DISSENTING

PERFECTO, J., with whom concurs PARAS, J.:

Appellant is indicted for homicide committed on November 21, 1945, which caused the death of Eugenio Francisco. The lower court sentenced him to from two months and one day of *arresto mayor* to one year and one day of *prision correccional*, to indemnify the heirs of Eugenio Francisco in the sum of P2,000 and to suffer the corresponding subsidiary imprisonment in case of insolvency, and to pay the costs.

The lower court found appellant guilty of homicide through reckless imprudence, upon the prosecution's theory, stated in the appealed decision as follows: "On November 21, 1945, at about 9 o'clock in the evening, and at the corner of Mayhaligue and Magdalena Streets in the District of Sta. Cruz of this City of Manila, a quarrel developed between Vicente Aurencio and Federico Bautista in which other gangsters intervened. On that occasion defendant Bienvenido Nocom, one of the members of the gang, desiring to stop the fight, shouted at the combatants in vain; so he decided to discharge his revolver twice in the air, but seeing that even this recourse was not taken heed of by his quarrelling friends, he fired another shot to the ground which unfortunately ricocheted and hit a passer-by named Eugenio Francisco. The wounded man was taken to the hospital where he expired soon after his arrival therein."

These pronouncements of the lower court are not supported by the evidence. They are based on fantasy.

The prosecution called five witnesses to testify and presented two exhibits as evidence.

Pablo Montilla has no personal knowledge of the incident, because he arrived at the place about thirty minutes after the incident was over. His testimony, notwithstanding, tends to show alleged admissions of appellant during the investigation and about the voluntariness of appellant's written statement Exhibit F. Jesus Santos, another police officer, has no personal knowledge as to how the deceased Eugenio Francisco was shot, because when he arrived at the place he saw the deceased being held and attended inside the store where the witness was told that somebody was shot. Ramon Gagui, testified that he never had seen Bienvenido Nocum, although he was present during the incident in which Federico Bautista and Vicente Aurencio had been fighting and he heard shots during the fight. Vicente Aurencio and Juan Aurencio did not testify anything against Nocum. They have not seen him at the place of the incident. They do not know him. The two exhibits of the prosecution which were admitted are Exhibit B, which is a photograph of the deceased, and Exhibit F, which is the written statement attributed to appellant.

Appellant, a laborer, 22 years of age, sixth grade, testified that he had never seen the deceased and denied having been at the place of the incident on November 21, 1945, because at that time he was in the province where he had been since September. When he signed Exhibit F, he was not asked by Pablo Montilla questions regarding the killing of Eugenio Francisco. Appellant did not see Exhibit F being typewritten. He denied having been asked by Montilla the questions appearing in the statement and having given the answer attributed to him. He never possessed any revolver, be it .45 caliber or any other caliber. Exhibit F was not read or translated in Tagalog to the appellant, who was told to sign it simply as a proof that he was arrested. Appellant was not given opportunity to read the document. "This statement was rolled in such a way that I could not see the contents; and before I was asked to sign it the policeman hurt me," pointing to Pablo Montilla as the one who hurt him. Explaining why he appeared in court wearing a torn dress, appellant said: "Because when he boxed me in the stomach I turned towards the right, and he held me by the right arm." The witness was wearing the same suit when he was compelled to sign Exhibit F. "Afterwards two of his companions arrived, bringing pieces of wet cloth. They tied them in my neck and, after tying them, they folded their sides and I did not know what happened to me afterwards," that is, the witness became unconscious "and I fell to the ground." Only after the lapse of some time, when appellant recovered consciousness, when he was made to sign Exhibit F. Exhibit F appears to have been signed on March 12, 1946, nearly four months after the shooting of Eugenio Francisco, and about one month after appellant had been arrested on February 14, 1946.

Appellant's testimony as to the torture he underwent before he was made to sign Exhibit F has never been rebutted by the prosecution. Although police officer Pablo Montilla was present in the court room at the time appellant testified as to his torture, so much so that he pointed to Montilla as one of the three police officers who boxed him and tortured him with wet cloth, until the accused lost consciousness and fell down, said Montilla did not dare to contradict appellant's testimony. The testimony remains unchallenged and should be given its full value.

We are not willing to lend our support to a sentence convicting a man of a crime and sending him to prison upon the involuntary evidence of an alleged confession extracted from him by torture. It would simply be iniquitous. All words of condemnation against the third degree methods are not enough to paint in all its ugliness the practice compelling a person to sign an involuntary confession through physical sufferings. We should eradicate completely, once and for all, all traces which symbolize the kempei methods at Fort Santiago, zoning camps, and other torture chambers operated by the sadistic Nippon regime.

The second paragraph of the majority opinion, wherein it appears that appellant fired the bullet which ricocheted

and hit Eugenio Francisco, is represented by the majority as a composite and abridged statement of the declarations of witnesses Jesus Santos, Vicente Aurencio, Juan Aurencio, and Ramon Gagui. We regret to disagree. There is absolutely nothing in the declarations of said persons to show that appellant was present in the place where the incident took place, much less that he fired any shot at all. It seems to us beyond all understanding how the majority were able to read in the declarations of said witnesses what no one will be able to find therein. No one should be convicted on what can be imagined appearing in the testimonies of witnesses but which, as a matter of fact, does not appear in them. An accused must be convicted on the strength of actual evidence; never on the hazy creatures of our imagination. We have read and re-read the declarations of the four witnesses mentioned in the majority decision, but we were unable to find any support to the majority position. No one even mentioned the name of appellant Nocum and, as to Vicente Aurencio, Juan Aurencio and Ramon Gagui, notwithstanding the leading questions propounded by the fiscal, they stated categorically that they had not seen Bienvenido Nocum and that they do not even know him.

Vicente Aurencio testified:

"Q. El acusado Bienvenido Nocum estaba alli en aquella ocasion?—A. No estaba alli; no le conozco. Con mayor razon no estaba. No le conozco a ese."

Juan Aurencio testified equally that "no recuerdo que este acusado Nocum fuera compañero de ellos." Asked if he knows Bienvenido Nocum, he answered "No señor." Asked if he saw him on the occasion of the incident he answered, "No, señor." Concerning the shots fired, he said: "Yo oi una detonacion pero no se quien disparo."

In the whole testimony of Jesus Santos there is absolutely no mention of Nocum.

As to the alleged confession Exhibit F of appellant, because appellant testified that he was told "that it was simply a proof that they arrested me," the majority would not believe that appellant's signature in the document was obtained by third degree methods, upon the novel theory of inconsistency of deceit and force or torture as means to extract involuntary confessions or admissions. Such naive proposition shows lack of sense of reality. There is absolutely no incompatibility in the use of deceit and torture to secure involuntary admissions or confessions. As a matter of fact they are complementary, and in many cases they have been simultaneously used.

The majority do not accept that appellant could have been deceived, "because he was no illiterate, being a seventh grader." In the first place, appellant finished only the sixth grade. In the second place, literacy has never been an absolute guarantee against deceit. There is no kind, grade or measure of culture which can be considered absolutely deceit-proof.

We vote to reverse the appealed decision and for the acquittal of appellant.

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