

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ELIODORO ORTEGA @ DORING, DEFENDANT-APPELLANT.***G.R. No. L-5511. March 25, 1953*

Ponente: BAUTISTA ANGELO, J.

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Eliodoro Ortega and Victoriano Castillo were charged in the Court of First Instance of Zamboanga with the crime of robbery with homicide (Case No. 1353). Eliodoro Ortega was further charged in the same court with the crime of illegal possession of firearm (Case No. 1352). Upon arraignment, Ortega pleaded not guilty to the charge of illegal possession of firearm, and both Ortega and Castillo also pleaded not guilty in the case of robbery with homicide. However, when the two cases were called for a joint trial, Castillo changed his plea to guilty with the approval of the court. After trial, the court, in a single decision, found Eliodoro Ortega guilty of illegal possession of firearm and sentenced him to two years of imprisonment, to pay a fine of P1,000 with subsidiary imprisonment in case of insolvency, and to pay the costs; it likewise found Eliodoro Ortega and Victoriano Castillo guilty of robbery with homicide and sentenced each of them to reclusion perpetua, to pay the heirs of the deceased Felicito Lagradante in the sum of P2,000.00, with the accessory penalties prescribed by law, and to pay the costs. From this judgment, both accused appealed.

With regard to the crime of illegal possession of firearm, the Solicitor General recommends the acquittal of Eliodoro Ortega on the strength of Republic Act No. 482 in the light of the evidence presented by the prosecution. It appears that the only evidence against the accused is his own confession wherein he states that a homemade revolver, caliber .38, was taken in his house on March 13, 1951, which he bought for self-defense and that he had no license to possess said firearm. Considering that, under Republic Act No. 482, a person who possesses a firearm may, without incurring any liability, surrender the same within a period of one year, except when he makes use of it or carries it on his person, and the firearm in question was found in the house of the accused before the expiration of the period therein provided, the recommendation of the Solicitor General is well taken.

With regard to the case of robbery with homicide, the evidence for the prosecution has established the following facts: On the night of March 7, 1951, appellants Eliodoro Ortega and Victoriano Castillo went to the house of Felicito Lagradante, who was then a guard of the lumber concession of Martha Lumber Company, pretending to ask for some cigarette. Lagradante was at the time preparing chocolate. After offering them cigarette he told them to wait and shortly thereafter offered them chocolate. Suddenly Castillo grabbed a bolo from a table and hacked the neck of Lagradante and when the latter offered resistance, Castillo continued hacking him until he fell. Thereafter, Ortega got hold of Lagradante's carbine and fired at the latter. Believing that Lagradante was already dead, Castillo and Ortega left the house taking with them Lagradante's carbine, bolo and flashlight.

On March 8, 1951, the incident was reported to the authorities by one Ricardo Garus and the cadaver of Lagradante was taken to the city of Basilan for an autopsy. This was performed by Dr. Conrado Yumul, Charity physician of Lagmitan, who found the injuries described in his report exhibit "B". On March 11, 1951, a report was received in the office of the chief of police of Basilan City that Ortega had sold a carbine to a certain moro

Hassan several days after the incident and policeman Cornelio Cuevas was commissioned to get the carbine. This was done and the carbine of Lagradante was found in Hassan's house. The flashlight of Lagradante was found in the house of Castillo while Lagradante's bolo was found about 75 meters from the scene of the killing. When Castillo and Ortega were investigated, both confessed to the killing and then and there reenacted the crime. These facts appear in their confessions which were subscribed and sworn to before Municipal Judge Doroteo de Guzman.

The accused admitted having caused the death of Felicito Lagradante but tried to justify the killing by giving the following version: While the two accused were in the house of the deceased, the latter told them that he was good in fencing and could kill even five persons who dared face him. To prove it Lagradante took a piece of wood and told Ortega to get hold of a bolo. As Ortega refused, Castillo volunteered to take his place. Thereupon, Lagradante asked Castillo to hit him and obligingly the latter raised his right hand and slowly brought down the bolo. Lagradante urged Castillo to hit him harder and when he did so Lagradante was not able to parry the blow and was hit on the left side of the neck. Then Castillo thrusted the bolo at Lagradante, hitting the latter in the abdomen. Upon being hit both grappled with each other until Lagradante fell down dead. Ortega took the carbine from a corner of the house and pressed its trigger to see if it was loaded but he could not tell if the shot hit the deceased. Ortega and Castillo left the house bringing with them the carbine and flashlight.

The version thus given by the accused is too absurd to deserve consideration. It is belied not only by the confessions of the two accused but by the nature of the wounds found in the body of the deceased. The report of Dr. Yumul shows that the deceased received three incise wounds and one penetrating, besides two gunshot wounds, which certainly run counter to those allegedly inflicted by Castillo in the fencing demonstration narrated by him. A circumstance which weakens this defense is the fact that Castillo who is given practically the whole blame for the killing was not presented to corroborate the testimony of Ortega, and instead he pleaded guilty to the charge.

The claim that Ortega cannot be held responsible for the death of the deceased because the two gunshot wounds he inflicted upon the latter were apparently not serious cannot be sustained it appearing that Ortega and Castillo have conspired to commit the crime, as shown by the fact that both went to the house together and did not leave until after they were sure that he was dead. They went to the house of the deceased with the common design of committing the robbery and in perpetrating it they cooperated in taking his life.

The claim that the confessions of the accused cannot be given any evidentiary value because they were not given voluntarily cannot also be entertained in the light of the testimony of Municipal Judge Doroteo de Guzman and the reenactment of the crime made by them which tallied in its essential parts with the facts appearing in said confessions.

Finding no error in the decision appealed from with regard to the crime of robbery with homicide, the same is hereby affirmed, with costs.

With regard to the charge of illegal possession of firearm, the accused is acquitted, with costs de oficio.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.
Feria, J., no part.

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