

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALBERTO EOQUE Y VILLENA AND ALEJANDRO PEREZ Y ALONZO,
DEFENDANTS. ALEJANDRO PEBEZ Y ALONZO, DEFENDANT AND
APPELLANT.**

G. R. No. L-3513. September 29, 1951

Ponente: REYES, J.

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REYES, J.:

Alejandro Perez and Alberto Roque were convicted of murder in the Court of First Instance of Manila and sentenced to a penalty of not less than 8 years of prision mayor and not more than 14 years and 8. months of reclusion temporal, plus indemnity and costs. From this sentence Alejandro Perez appealed to the Court of Appeals, but that court has certified the case to us on the ground that the penalty that should be imposed is life imprisonment. The other accused did not appeal.

It appears from the testimony of the witnesses for the prosecution that at about midnight of May 1, 1947, while Elpidio Soriano, Joaquin Cristobal, and Rogelio Villafranca were gathered together telling stories at one end of the Pefialosa wooden bridge in the City of Manila, two men approached from the other end and, without any warning, attacked them with gunfire. Jumping off the bridge into the water below, Cristobal succeeded in getting away unhurt; while Villafranca, though hit with a bullet in each arm, also managed to escape in the same manner. But Soriano was not so fortunate, for, unable to escape, he was riddled with shot and he died on the spot with five bullet wounds.

Information gathered by the police that same night pointed to Alberto Roque and Alejandro Perez as the malefactors. But the two had fled and were not captured until some days later when the police came upon them as they were eating together in a house on Asuncion Street, armed with the very guns they had used in the commission of the crime. Taken to the police station and subjected to questioning, they gave their account of the shooting as well as the part played by each. Their statements were taken down in writing and thereafter authenticated by them with their signatures.

It may be gathered from those statements that some three months prior to the shooting the deceased and his brother "Pacing" had killed one Bienvenido Victorio alias Bombay, a housemate and close friend of Roque, and since then Roque and Perez had been worried with the thought that the deceased was also after them, taking them for members of Bombay's gang. They were in this state of mind when, walking along the estero on the night in question, they spotted Soriano on the bridge conversing with some companions. Armed as they were with a gun each and seeing that here was a chance to eliminate a threat to their life, Roque approached Soriano and at close range opened fire, as did also Perez who was following not far behind. After seeing Soriano drop as a result of the fusillade and with the rest of the group scampering for safety, Roque and Perez left the place and passed the remainder of the night in a cemetery. Early the next morning they went to Batangas and there stayed in the house of Perez's brother until they returned to Manila on the 26th of the same month, the day they were arrested by the

police.

At the trial appellant declared that he was not at the scene of the crime for he was then in Marulas, Polo, Bulacan. But the alibi is so weak that it is no longer insisted on in this appeal. What is now claimed is that appellant did not fire at the deceased and was not in connivance with his co-accused, who was the only one who did so.

As against the contention that appellant did not fire at the deceased, we have Roque's confession to the contrary. Villafranca, it is true, testified that appellant fired upward (*disparo hacia arriba*). But this witness did not say that all of the four shots which appellant admits in his confession to have fired were not aimed at anybody, while on the other hand it is evident that he did not see appellant fire all of the four shots because, according to him, the very first bullet hit him in the left arm and he immediately jumped off the bridge. It is likewise true that, according to the findings of the ballistic expert, the two bullets recovered from the body of the deceased were fired from the pistol supposedly used by Roque. But there is no proof, that all of the five wounds of the deceased and the two wounds sustained by Villafranca were all produced by bullets fired from the same gun, while the five shots which Roque fired according to appellant's confession are not sufficient to account for all of the seven wounds.

In any event, regardless of whether or not the deceased was hit by any of appellant's bullets, there is enough proof of conspiracy between him and his co-accused to make him jointly liable for the killing of the deceased. Asked why he went with Roque in order to kill the deceased, appellant says in his confession that it was because the deceased and his brother "Pacing" wanted to kill him also, it thus appears that appellant and his co-accused had a common motive for eliminating the deceased. And it also appears that they were acting in concert, for according to their confession they exchanged guns before they attacked and as Roque advanced appellant followed, thus giving him cover, and even contributed to his offensive power by also firing himself. They also fled and hid together here in Manila and also in Batangas where they lived with appellant's brother for some time. Afterwards they returned to Manila together and they were still together when arrested.

The crime committed is murder qualified by treachery, considering that the attack was sudden and the victim was in no position to defend himself. But the fact that appellant was only 17 years old when the crime was committed constitutes a mitigating circumstance. This is so despite the passage of Republic Act No. 47, reducing the age limit of minor delinquents entitled to suspension of sentence. (*People vs. Macabuhay*, 83 Phil., 464; *People vs. Garcia*, 85 Phil., 651; and *People vs. Tapang*, 88 Phil., 721) The penalty for murder should, therefore, be imposed in the minimum degree.

Applying the Indeterminate Sentence Law, the trial court sentenced appellant to a penalty below the range prescribed by law. To correct this error, appellant is hereby sentenced to an indeterminate penalty of from 10 years and 1 day of prison mayor to 17 years, 4 months and 1 day of reclusion temporal. Modified as to the penalty, the judgment appealed from is affirmed, with costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, and Jugo, JJ., concur.

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