

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FR. FAUSTINO BALANCIO AND ROSARIO QUERUBIN, DEFENDANTS
AND APPELLANTS.***G. R. No. L-17520. May 31, 1962*

Ponente: DIZON, J.

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Charged with and tried for murder, upon a plea of not guilty in the Court of First Instance of Ilocos Sur, appellants Fr. Faustino Balancio and Rosario Querubin were convicted and each sentenced to suffer imprisonment for life, to indemnify the heirs of the deceased Serafin Querubin in the sum of P6,000.00 and to pay the costs. Both appealed claiming, in substance, that the lower court erred in finding Querubin guilty, as principal, and Fr. Balancio, as principal by inducement, of the crime of murder on the basis of the evidence of record.

Appellant Querubin admits that he shot and killed the deceased policeman Serafin Querubin near the municipal building of Caoayan, Ilocos Sur, in the evening of December 30, 1958, but claims that he did it in self-defense. To substantiate this defense, he testified as follows:

That for several months prior to the date of the incident, the convent of Fr. Balancio had been stoned at night frequently; that although Fr. Balancio sought the help of the authorities to find out who were the culprits and to stop the stoning, their efforts were unsuccessful; that, for his protection, the Philippine Constabulary stationed at Vigan, Ilocos Sur, gave him a security guard named Cpl. Hermogenes Delfin, who was joined later by Pfc. Ernesto Jimenez; that on the night of December 30, while the security guards, Fr. Balancio, herein appellant Querubin and his wife were in the living room of the convent, the place was stoned again, for which reason Cpl. Delfin fired three shots in the air, while Pfc. Jimenez went down with a bloodhound to chase the culprits; that appellant Querubin also went down to help find out who were the culprits, taking a westward direction; that while he was walking, a man under a tree—who turned out to be policeman Serafin Querubin—threw stones at him and then tried to pull a gun out of his pocket, for which reason he beat him to the draw and fired at him.

The lone and uncorroborated testimony of appellant Querubin is not sufficient to establish the above related facts. Explaining why the deceased was impelled to stone him and to attempt to draw his gun, Querubin testified that this was probably due to the fact, that the former thought he had been discovered by appellant as the one who had stoned the convent that night. This could not be so because, according to uncontradicted evidence, the deceased had been conversing at the municipal building with the policeman on guard duty, surnamed Navarro, for some time before the stoning took place and shots were fired, and, as a matter of fact, upon request of policeman Navarro, he was precisely going to the convent to investigate the incident when he was met, fired at and killed by Querubin. The trial court was, therefore justified in not believing the latter's version that, upon meeting the deceased, the latter attacked him in the manner above related. This conclusion becomes stronger upon considering the fact that when the Philippine Constabulary investigators arrived at the scene of the killing that same night, they found the victim's gun still tucked inside his right hip pocket. Certainly, if it was the deceased who, enjoying

the important element of surprise, assaulted Querubin first, the latter could not have beaten him to the draw.

Upon the other hand, the version of the witnesses for the prosecution appears to be more credible. The prosecution evidence shows that about 9:00 o'clock in the evening of December 30, 1953, the deceased Serafin Querubin had gone to the municipal building of Caoayan preparatory to his relieving the policeman on guard duty thereat; that while the two were converting, they heard gunshots coming from the direction of the convent located quite near the municipal building; that because Navarro could not leave the municipal building as his guard duty was not yet over, it fell on the deceased Serafin Querubin to go to the convent to find out what happened; that he had hardly covered the distance of 15 meters from the place where he left policeman Navarro when he met appellant Querubin, to whom he identified himself, at the same time raising his hand; that, instead of replying, Querubin fired at him twice hitting him on the chest, as a result of which he died.

In connection with the above version, it is worthwhile to consider that appellant Querubin and his wife must have been good friends of Fr. Balancio, for it appears that, sometime before the bloody incident, Querubin's wife had gone to the convent to inquire from the priest if their mutual friend, Judge Antonio Quirino, had already arrived, and sometime later Querubin himself arrived at the convent to ask the priest to donate a basketball to the Western Caoayan Athletic Association, of which he was then a member. Due to this friendship, it is quite understandable that Querubin had resented the unjust vexation to which Fr. Balancio had been subjected frequently during the past months. Therefore, when the convent was stoned again that evening while he was there, it was but natural that his anger should be aroused. In that state of mind he went down the convent and then met the deceased, and believing that the latter was the culprit, he fired at him.

However, considering the facts established by the evidence, we agree with the Solicitor General that the crime committed by Querubin is not murder but simple homicide. Neither treachery nor evident premeditation has been proven.

As regards appellant's claim now that, if convicted, the mitigating circumstance of voluntary surrender should be appreciated in his favor, we find the same to be without merit, because, according to the evidence, he was arrested by Cpl. Delfin before he ever had a chance to surrender.

Coming now to the case of Fr. Balancio, we find that the evidence is clearly insufficient to prove his guilt of murder by inducement.

Of the many prosecution witnesses, only two, Dionisia Querubin, a sister-in-law of the deceased, and Felicisimo Querubin, his brother, actually implicated this appellant. Due to their close relationship with the deceased, it is manifest that their testimony is tainted with bias and cannot be accepted without qualification. To this we must add the circumstance established by the defense that the appellant priest had previous misunderstandings with them. There is, in this connection, sufficient evidence showing that formerly the priest used to send his boys to buy dried fish from the store of Dionisia, but later gave them orders to the contrary when he found out that she was not treating them well. On the other hand, the priest earned the resentment and dislike of Felicisimo Querubin when he dismissed the latter's daughter from the convent for misbehavior.

Besides, a perusal of the record shows that these two witnesses could not even agree on what Fr. Balancio allegedly told appellant Querubin before the shooting happened. According to Dionisia, the priest shouted to his co-appellant: "Remember the promise, even a policeman, shoot him", and that Querubin, after shooting the deceased, said: "Father, I have killed him. It is up to you to take care of my family" (transcript pp. 31, 33, 42, Oct. 1, 1959). For his part, Felicisimo claims that what the priest said was the following: "Even a policeman, you fire at him, I will be responsible later on", and that Querubin, after shooting his victim, said: "Father, I have killed, it is up for you to take care of my family as per agreement" (Id. pp. 57-58, Oct. 1, 1959).

But even assuming that Fr. Balancio really told his co-appellant, before the fatal shooting, what either one of the aforesaid prosecution witnesses claims, that would not be legally sufficient to sustain his conviction of murder by inducement in the absence of other incriminating evidence.

In the case of *People vs. Omine*, 61 Phil. 609, the defendant shouted to his co-defendant: "Pegale y matale" and thereafter the latter struck the victim in the breast with his bolo. This evidence was held insufficient to sustain a finding of guilt because the alleged inducement was not made directly with the intention of procuring the commission of the crime, and it did not appear that such inducement was the determining cause of the commission of the crime. One of the decisions of the Supreme Court of Spain cited in support of the ruling was one where, according to the facts, during a riot in which a person was killed, the accused said to one of the combatants: "Stab him, stab him". The court held that this was not enough to convict him of homicide by inducement, it not appearing that he did anything more than say such words.

Again, in the case of *People vs. Tamayo et al.*, 34 Phil. 38, it appears that while an altercation was in progress, one of the defendants indicated his sympathy for his companions and encouraged them by shouting at them: "Go ahead, hit him". The court held that this alone was not enough evidence to convict him of the crime committed, by inducement.

We, therefore, agree with the recommendation of the Solicitor General that the judgment appealed from should, be reversed, as it is hereby reversed, as far as appellant Fr. Faustino Balancio is concerned, with the result that the latter is acquitted, with one half of the costs declared de oficio.

On the other hand, as regards appellant Rosario Querubin, the appealed judgment is modified by finding him guilty only of homicide, without any aggravating or mitigating circumstance modifying his criminal liability. Applying the indeterminate sentence law to his case, he is hereby sentenced to suffer an indeterminate penalty of not less than six (6) years and one day for prision mayor, nor more than fourteen (14) years, eight (8) months and one day of reclusion temporal; to indemnify the heirs of the deceased Serafin Querubin in the amount of P6,000.00 and to pay one half of the costs. It is so ordered.

Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur..

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