

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FELIPE GUMAHIN, DEFENDANT-APPELLANT.***G.R. No. L-22357. October 31, 1967*

Ponente: FERNANDO, J.

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On April 23, 1960, close to midnight in Ampinican, Salay, Misamis Oriental, on an occasion that should have been attended with joy and gaiety, a ball for the canvassing of votes to determine who would be the barrio queen, tragedy struck unexpectedly and unaccountably. The president of the local Parents-Teachers' Association, Antonio Galamiton, was shot dead. Appellant, Felipe Gumahin, then a municipal policeman of Salay, was indicted for murder, tried, and having been found guilty, sentenced to death. Under the law, the case was sent up to us for automatic review.

The information for murder filed before the Court of First Instance of Misamis Oriental charged appellant of having "with impunity and with abuse of official position as a municipal policeman, and with the qualifying circumstance of alevosia and the generic aggravating circumstance of known premeditation," wilfully, unlawfully and feloniously attacked, assaulted and fired on the day and place above-mentioned "at Antonio Galamiton with a service revolver inflicting upon him mortal wounds on the vital parts of his body, as a result of which the said Antonio Galamiton died."

At the trial before the Hon. Abundio Z. Arrieta, Judge of the Court of First Instance of Misamis Oriental, evidence was introduced by the prosecution and defense. Thereafter, the accused, as above noted, was found guilty beyond reasonable doubt of the crime of murder, qualified by treachery and attended by the aggravating circumstances of impunity and abuse of official position, as charged in the information, contrary to and in violation of Article 248 of the Revised Penal Code. He was sentenced "to suffer the supreme penalty of death, to indemnify the heirs of the deceased, Antonio Galamiton, in the sum of P6,000.00 and to pay the costs."

From the evidence introduced at the trial by both the prosecution and defense, there was no dispute as to the antecedents of the fatal occurrence, the protagonists therein, and the gunshot wounds inflicted on the deceased, one of which was mortal. There were different versions as to how the deceased met his untimely end.

On the evening of April 23, 1960, a dance was held at the cemented tennis court beside the old public school building in Ampinican, a barrio of Salay, Misamis Oriental. The affair was attended by many people, among them the late Antonio Galamiton. At about midnight, there was a lull to allow for the counting of the ballots cast in the beauty contest for the approaching barrio fiesta. Before the canvass could begin, the accused Felipe Gumahin, armed with a .38 cal. Smith & Wesson service revolver, with another policeman, Eladio Excelise, armed with a carbine, suspecting that a certain Abraham Salarda, then standing outside the tennis court by the gate, was carrying a firearm, went to and pointed their weapons at him. Appellant Gumahin confronted him with this accusation: "Don't move; you are a wise guy; where is your arm."

A conflict of evidence developed as to what transpired next, but it was undeniable that the deceased, Antonio

Galamiton, did protest against the treatment to which Salarda was subjected and that soon thereafter, he lay dead from a fatal gunshot wound coming from the revolver of appellant Gumahin.

There was no dispute either as to the number of wounds stained by the deceased disclosed by an autopsy performed on his remains the next day by the municipal health officer of Salay. There was a contused wound on the left ear as large as a twenty-centavo coin; a bullet wound on the outer left arm about 3 or 4 inches below the shoulder, traversing the muscle and coming out towards the back; and the fatal bullet wound on the left chest at the level of the nipple penetrating the diaphragm downward, the bullet coming out on the right flank at the region of the 12th rib on the right side of his body. It was the view of the doctor that this chest wound which pierced the heart and the liver caused internal hemorrhage and instantaneous death.

As to what happened after appellant and the other policeman confronted Salarda, there was a conflict of evidence. According to the witnesses for the prosecution, Salarda himself, one Timoteo Sabud, and two eyewitnesses who saw the whole unfortunate event, Fernando Ala-an and Bienvenido Galamiton, after Salarda was confronted with the accusation that he was "a wise guy" and that he had a firearm with him, came the answer that he did not have any. This notwithstanding, appellant ordered his companion to search him. This was done, but nothing was found on Salarda. Appellant was not satisfied; he ordered the latter to remove his clothes. He was obeyed, the latter starting to unbutton his shirt.

It was at this stage that the deceased, Antonio Galamiton, approached the group, requesting appellant and Excelise to refrain from compelling Salarda to undress in public. He pointed out that even if he had committed a crime, he should be taken to the municipal building, where the search could be continued in private. Appellant was incensed by this action of the deceased. In an angry tone, he asked if Galamiton was siding with Salarda and whether he wanted to fight. At the same time he struck him at the left ear with the barrel of his revolver, causing his victim to stagger from the blow. Wishing to avoid aggravating the incident, Galamiton walked away towards the direction of the orchestra but appellant, his ire, apparently uncontrolled, went after him.

The crowd because of what was happening perceptively thinned. Even Salarda hurriedly left the place. Ala-an and Bienvenido Galamiton remained and witnessed the unfortunate occurrence. Locating the deceased near the orchestra, appellant struck him with his revolver which simultaneously exploded. The deceased staggered and fell to the ground. It was in that position that appellant shot him on the left shoulder. Galamiton though feeling the effects of the wound tried to rise up. Before he could assume a standing position, appellant put his left hand on his right hand, pressed his revolver against his breast and shot him on the left nipple at the same time pushing him aside. The wound as above noted was fatal. Antonio Galamiton fell lifeless on the cement floor.

The Chief of Police of Salay, who was at that time in the canvassing table a few meters away, then ordered the appellant and the other policeman to bring the deceased to the municipal building. They dragged the corpse at the road-side, appellant holding the shoulder and his companion the right foot. Upon reaching the highway, they put it into a bus which took it to the municipal building.

What was the version of the defense? When placed on the stand, appellant narrated that while maintaining peace and order at the dance held that evening of April 23, 1960, with Pat. Excelise, he was told by the latter to be careful because a certain woman had informed him that "somebody would make trouble in this dance." They did agree to stay in the corner to observe the people in the place. Sometime later, they noticed a certain person unknown to them leaning by a post who apparently "observed every person that used to pass by." The two getting suspicious agreed to approach that unknown individual and searched his body to find out whether he had any weapon. They did so and Excelise was able to search him. Before he could finish the job, the deceased, Antonio Galamiton, came and in a harsh voice shouted: "You are abusive policemen."

Excelise approached Galamiton and took him to the place where the orchestra was. Appellant wanted to continue the search but was unable to do so as he saw the deceased come towards him, at the same time reprimanding him. Appellant believed that Galamiton "was going to rush at me because I saw two persons trying to stop him." The deceased was however able to extricate himself from those two. Noticing that, appellant took out his "revolver and fired a warning shot." Then according to appellant, the deceased was able to reach him holding his right hand with his two hands. He was un-able to free himself from such a hold, and both of them fell down the cement pavement.

Then according to appellant, while in that position he "heard a shot." At that time his right hand was being held by the right hand of Antonio Galamiton, who was on top of him. When he fell on the cement pavement, with his head hitting it, and with Antonio Galamiton on top of him he "noticed that his [Galamiton's] grasp was already weak." So he pushed him aside. He tried to get up but could not do so right away as half of the body of Galamiton was also "on top of [his] leg." He was able to stand up finally and saw the Chief of Police standing nearby. When asked what had happened, appellant answered that deceased was "trying to grab my revolver." It was then that the Chief of Police told them that Galamiton be brought to Salay for treatment.

This he did, being helped in the process by the other policemen, Excelise. They carried him, appellant holding the upper portion of his body while the latter held his feet. They rode with him on a Mindanao Bus, but upon their arrival at the municipal building, Galamiton was "already dead." It was only later on that he found out that the person searched by them was Abraham Salarda.

The other policeman, Excelise, corroborated in the main the above version. Three other defense witnesses testified to their having seen the deceased rush towards the appellant and try to get hold of his revolver which exploded twice during that incident.

The lower court in convicting the appellant chose to believe the testimony for the prosecution. Thus: "A judicious appraisal of the testimonies of the witnesses persuades the court that the weight of the evidence supports the charge against the accused. The theory of accidental shooting which the defense endeavored to weave through its array of witnesses finds no substantial basis. Aside from the evident bias and untrustworthy behavior manifested by the witnesses for the defense during their turn on the witness stand, their given version of the incident appears strained because it cannot be reconciled with physical facts and the natural course of events. For instance, the bullet wound at the rear of the upper left arm of the deceased Antonio Galamiton and the rip across the back part of his shirt which, according to the uncontradicted testimony of Dr. Jovito Aguinaldo must have been produced by the bullet after cutting through the flesh do not fit into the theory of the defense." [1]

The second circumstance, according to the lower court, reflecting on the probability of the version of the defense "is the location of the bullet wound on the chest of the deceased Galamiton above his left nipple." From the testimony of the municipal health officer, "this wound, which carried heavier powder, burns than the left arm wound took a downward course passing through the heart, the diaphragm and the liver and came out on the right flank of the deceased at the level of the last floating rib." The trial court correctly observed that no one of the witnesses for the defense could tell how this particular wound was inflicted. On the other hand, the testimony of both the eyewitnesses, Ala-an and Bienvenido Galamiton, to the effect that the deceased was in a squatting position when appellant held him by the left arm and shot him at close range would satisfactorily explain its location.

There is this other circumstance which in the opinion of the lower court cannot be reconciled with the contention of the accused. It "is the fact that his clothes were never smeared with the blood of his victim except for a few spots on his left trouser's pocket. According to Dr. Aguinaldo, the death of said victim was instantaneous due to

the rupture of the heart and other vital organs. The human body is of such a nature that blood spurts out immediately in large quantity when the heart is pierced. Since the accused was lying on the pavement on his back as he claims when with the deceased stop him was wounded on the left breast, it is inconceivably strange why the front of his uniform was not spilled with his victim's blood. It only goes to show that their bodies were not actually in contact when said accused wounded his victim." [2]

On appeal, twelve errors were assigned by counsel for the appellant. The first dealt with the alleged failure to conduct the first stage of the preliminary investigation before the arrest of the accused notwithstanding his objection against being held in custody without such a procedure being followed. Considering how fairly conducted was the trial of his case and how carefully his rights were protected, this alleged irregularity merits no further consideration.

The remaining errors dealt with the credibility accorded the testimony of the municipal health officer and other witnesses for the prosecution and the refusal to uphold the theory of the defense that it was the deceased who attacked appellant; the lower court, so it was alleged, consequently erred in not acquitting appellant. The above assignments of errors do not carry persuasion. The findings of the lower court embodied in a well-written decision cannot only stand the test of the most rigid scrutiny but also has in its favor the well-settled principle that as far as credibility is concerned, the findings of the lower court which had the opportunity to see, hear and observe the witnesses testify and to weigh their testimonies will be accorded the highest degree of respect by this Tribunal.

As this Court stated in *People v. Tila-on*: [3] "Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from." To the same effect: "Appellate courts as a rule desist from disturbing the findings of the trial court on the credibility of witnesses, for the latter is in a better position to appreciate the same, having seen and heard the witnesses themselves and observed their behavior and manner of testifying during the trial. We find no reason to depart from this settled practice, since it has not been shown that the trial court has overlooked certain facts of substance and value that, if considered, might affect the result of the case." [4]

The latest formulation of such a doctrine follows: "Time after time, this Court has declared that the matter of assigning values to declarations at the witness stand is best and most competently performed or carried out by the trial judge because the latter, unlike appellate magistrates, can weigh such testimonies in the light of the declarant's demeanor, conduct and attitude at the trial. * * * Of course, this rule admits of exceptions as when patent inconsistencies in the statements of witnesses are ignored by the lower court or when the conclusions arrived at are clearly unsupported by the evidence. The appellants herein, however, have not established the existence of any such exception in this case." [5]

That is all there is to this case then. The vigorous effort on the part of counsel for appellant to exculpate appellant while no doubt in keeping with the principle that a lawyer should exert his utmost to serve his client's cause, does not warrant a reversal; it affords no legal basis for the acquittal of the appellant. The sad and dismal fate suffered by the deceased calls for the corresponding penalty to be meted the culprit. It is all the more regrettable that the deceased in trying to uphold human dignity and in striving to prevent the abusive exercise of authority met a tragic death. The least this Court can do under the circumstances is to make clear to all and sundry, especially to members of police forces, that the authority conferred on them to maintain peace and order should be exercised with due regard to the constitutional rights, most especially so of those who belong to the lower-income groups. If in a case like the present, the full force of the penal statute is not felt by the perpetrator of the misdeed, then the law itself stands condemned. This we should not allow to happen.

The Court believes however that while murder, qualified by treachery, was committed by the appellant, the aggravating circumstances of evident premeditation, impunity and abuse of official position, as charged in the information, were not duly proved.

WHEREFORE, the penalty imposed by the lower court is hereby modified; the accused is condemned to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased, Antonio Galamiton in the sum of P6,000.00 and to pay the costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Decision, Brief for appellant, pp. XII-XIII.

[2] Decision, Brief for appellant, p. XVI.

[3] L-12406, June 30, 1961.

[4] People v. Agrecio Lumayag, L-19142, March 31, 1965, citing People v. Curiano, L-15256, October 31, 1963.

[5] The People of the Philippines v. Secapuri, L-17518-19, February 28, 1966, citing People v. Refuerzo, (1949) 82 Phil. 576; People v. Aguipo, L-12123, July 31, 1958; and People v. Romawak, L-19644, October 31, 1964.

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