

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JAIME CANARE, ET AL., DEFENDANTS; AMANDO BONDOC, BERNARDO OLAYA AND ALEJANDRO CANARE, DEFENDANTS AND APPELLANTS.

G.R. No. L-10677. September 30, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

At about 2:00 o'clock in the afternoon of 4 February 1954, after coming from the provincial capitol at Balanga, Bataan, Anastacio Valencia, a member of the provincial board of Bataan, Fortunato Tuazon, Mayor of Bagac, Bataan, and Rufino F. Navarro, a practicing lawyer, rode in a station wagon of Dr. Bamba driven by his chauffeur (Loring). Valencia was bound for Abucay, his hometown, while Tuazon and Navarro were bound for Lalawigan, Samal. Upon arrival at Valencia's residence in Abucay, the latter went up his house to get a book that Navarro was borrowing from him. Navarro requested the chauffeur to get the book from Valencia. When Valencia was already up the house, two shots were fired. Valencia shouted "Pilar, Pilar." Tuazon and Navarro got off the station wagon. Tuazon went to the municipal building of Abucay to call for a policeman. After the two shots were fired, Jaime Canare who was wearing a brown shirt and khaki pants emerged from Valencia's house with a pistol tucked on his waist. About 15 meters away from the house of Valencia near that of Amando Bondoc, there was a jeep being pushed by several persons. Jaime Canare joined and helped the men pushing the jeep. Tuazon returned to Valencia's place with two policemen whom he found at the municipal building and in the plaza. Rustico Sison, who was on his way to a nearby store to buy cigarettes, heard two shots fired as he was about to reach the place north of Valencia's house and saw a man wearing a polo shirt printed with flowers coming from Valencia's house. He returned to his house to inform Mrs. Valencia, who was playing bingo, of what he heard and saw. Upon being informed by Sison that somebody was moaning in pain at her house, Mrs. Valencia ran home. As she was getting near her house, she saw her husband at the right window of the house in the first floor waving at her to hurry up. Mrs. Valencia and Sison found Valencia lying on the cement floor already very weak. Her husband told her that he was shot by Jaime Canare, bodyguard of ^Representative Nuguid, and Bernardo Olaya; that he was about to die and told her to take him to the hospital. She went out to look for a car shouting "sasakyan. sasakyan, pulis, pulis," as she saw a group of persons in front of Amando Bondoc's house pushing a jeep towards Orani. She saw Amando Bondoc at the window of his house and heard him ask the men pushing the jeep,

"Is it through? Is it finished already?" to which question somebody answered "It is already finished. It is already done." Then she met Rufino P. Navarro riding in a station wagon and tried to borrow the station wagon from him but Navarro said that he would pursue on it her husband's assailant. She finally got a weapons carrier owned by one from Abucay she used in taking her husband to the provincial hospital together with Gavino Escaler, his cousin, and a nephew. While on the way to the hospital, her husband vomitted blood. He told her "not to forget the persons who shot him, who were Jaime Canare and Bernardo Olaya." When they reached the hospital, he was brought to the emergency room where he was investigated by Fiscal Eleno Kahayon and Captain Juan D. Bala and Sergeant Candido P. Peñaflor of the Philippine Constabulary! At the trial, Sergeant Penaflor repeated the

question asked by Captain Bala and the answers given by Valencia while lying in bed as follows:

"Were you able to recognize who shot you?" Answer: "Yes, sir." Question: Who were they?" Valencia answered, "Jaime Canare, bodyguard of Nuguid, and Berning." Question by Capt. Bala: "What kind of gun?" Answer: ".45 caliber." Question: "Where did it happen?" Answer: "In my house."

The witness testified further that the victim tried to talk some more but upon seeing that he was weakening, Captain, Bala stopped him. Dr. Norberto Gabaya, senior resident physician of the provincial hospital, attended to the victim upon his arrival at the hospital in the afternoon of 4 February 1954 between 2:00 and 3:00 o'clock. The victim told the doctor, "Operate me at once." After he was given stimulant to make him stronger, the doctor operated on him. The victim expired at 5:30 o'clock in the afternoon (Exhibit B) and at 6:00 o'clock in the evening of the same day, Dr. Gabaya performed an autopsy on the cadaver. On 5 February 1954 he issued the following certificate:

TO WHOM IT MAY CONCERN:

This is to certify that an autopsy has been performed on the body of Anastacio Valencia, 37 yrs. old, married, of Abucay, Bataan, at around 6:00 p.m., February 4, 1954 and that the following are our findings:

- Bullet wound thru and thru with a bullet of entrance 2/3 inch in diameter with powder burn on the right hypochondriac region, passing through the liver, stomach, left diaphragm, and the base on the left lung. Bullet of exit 1 1/3 inch in diameter on the left lateral thoracic region. Same bullet passed thru the inner region of the lower 3rd of the left humerus, fracturing the humerus and passing out thru the lateral side of the lower 3rd of the left humerus.
- Bullet wound of entrance one inch in diameter of the right lumbar region passing thru and thru 3 portions of the small intestines and thru and thru the mesenteric attachment of the small intestine. Bullet lodge on the left iliac region, just beneath the skin.
- Presence of profuse hemorrhage in the abdominal cavity and on the left thoracic cavity. Food materials present on the abdominal cavity with one worm coming out from the perforated wound of the intestine. (Exhibit A)

At the trial, he testified that he recovered one of the leads (slug) in the iliac region; that the two wounds sustained by the victim were fatal that one of them was enough to cause death; and that the cause of death was profusion of blood.

On 12 March 1954 an information was filed by the Provincial Fiscal in the Court of First Instance of Bataan charging Jaime Canare, Bernardo Olaya, Alejandro Canare, Amando Bondoc, Nicanor Santos and one Loring with murder and conspiracy among them to commit it. Jaime Canare died on 19 May 1954 before arraignment and the last two have not been arraigned because they have not been apprehended. Upon arraignment, the remaining three defendants entered a plea of not guilty. After the prosecution had rested its case, the defendants moved for dismissal of the case on the ground that the prosecution had failed to prove conspiracy and submitted the case for judgment without presenting evidence in their defense. In a decision dated 31 October, stamped received by the clerk of court on 21 November 1955, the Court found them guilty as charged and sentenced each of them to suffer the penalty of life imprisonment, to indemnify the heirs of the victim in the sum of P6,000 and to pay the costs proportionately.

On 22 December 1955 the defendants filed an "alternative motion for reconsideration and/or new trial" on the ground that the evidence does not prove beyond reasonable doubt the existence of conspiracy among the defendants; and that errors of law and irregularities were committed during the trial of the case prejudicial to the substantial rights of the defendants. On 26 March 1956 the Court denied their motion. Hence this appeal.

There is no question that Jaime Canare was the one who fired the two fatal shots at Anastacio Valencia that caused his death. The question now is are the appellants criminally responsible?

The circumstances that the trial court took into consideration to deem conspiracy proved are those recounted by Alejandro Canare in his extrajudicial statement which he refused to sign (Exhibit H; p. 141, t.s.n.). Such extra-judicial statement, if proved to be voluntary, would bind him but not his co-defendants. And even if such circumstances were to be taken into account, neither do they establish nor constitute conspiracy. Hence, the guilt or innocence of each must be determined by the part they took in the perpetration of the crime.

The evidence against Amando Bondoc is the testimony of Pilar Renosa, the widow of the victim, to the effect that when she went out of her house to look for a car on which to take her wounded husband to the hospital, she saw several persons in front of Amando Bondoc's house pushing a jeep towards Qrani; that she saw Amando Bondoc at the window of his house and heard him ask the men pushing the jeep, "Is it through? Is it finished already?" to which question somebody answered, "It is already finished. It is already done." In his affidavit subscribed and sworn to on 8 February 1954 before Assistant Provincial Fiscal Luis A. Nolasco, he stated that at about 12:00, o'clock noon of 4 February 1954, after playing pingpong with the son of one Bascara and three other friends (of the, son of Bascara) and feeling hungry already, he started walking home; that when he was passing by the store of Alfonso Reyes, he was invited by the latter to come in; that as soon as he entered the store, the owner opened a bottle of pepsi-cola and a bottle of liquor and offered him to drink; that he declined the offer because he was already drunk; that at the insistence of the owner of the store, he took a drink; that while drinking, Mayor Lorenzo de la Fuente happened to pass by and he invited him to join him; that the latter accepted his invitation; that while they were drinking Alejandro Canare came riding in a jeep driven by a chauffeur and requested him to do some repairs on the jeep; that they went to Abucay to make the repairs; that upon arrival there he asked Alejandro to point to him the repairs to be made; that Alejandro pointed to him the screw of the steering wheel and the starter to be repaired; that as the repair could easily be done and finished in a short time, he invited Alejandro and the driver to his house and offered them a drink; that while they were drinking, Jaime Canare arrived; that when he learned that the new arrival was Alejandro's companion, he also invited him to come up and offered him a drink; that when he (the appellant Bondoc) became drunk already, he went out of his house to vomit; that when he came back after ten minutes, his guests were already gone; that he did not know where they went; that he looked for the jeep to be repaired but it was also gone; and that he learned that Valencia was shot because he heard his wife Pilar crying (Exhibit I).

The question Amando Bondoc asked the men pushing the jeep near his house, "Is it through? Is it finished already?" could have reference to the jeep and not necessarily to the shooting of Anastacio Valencia because even if he were drunk and could not repair the jeep, he could have caused it to be repaired. And granting that Anastacio Valencia caused the removal of appellant Amando Bondoc as chief of police of Abucay, a fact which he denies, because he claims that he quit the post of his own free will, such removal is not a sufficient motive for him to kill the one who caused his removal. He should be acquitted.

The only evidence against Alejandro Canare is to the effect that he was in the company of Jaime Canare in the jeep that passed in front of the victim's house before the incident between 12:00 o'clock noon and 1:00 o'clock in the afternoon of 4 February 1954; that he was with him in the same jeep when Jaime Canare escaped after the incident. The evidence does not disclose any other act of his tending to link him with the commission of the crime, done either before or during or after it. The evidence against him is not sufficient to convict him beyond reasonable doubt. He should also be acquitted.

The only damaging evidence against Bernardo Olaya is the dying declaration of Anastacio Valencia, when the latter was about to be operated on, to the effect that Jaime Canare was in the company of or accompanied by

Bernardo Olaya when Jaime Canare shot him. This alone does not prove that Bernardo Olaya was in the know of what Jaime Canare planned or intended to do, because as no one actually saw except Bernardo Olaya the firing by Jaime Canare of his .45 caliber pistol, what he said in his extrajudicial statement that he was asked by Amando Bondoc to call Anastacio Valencia; that complying with the request he went to the latter's house which was close to Amando Bondoc's place; that after opening the door he saw Anastacio Valencia coming down whom he greeted; and that someone behind him who later on turned to be Jaime Canare cocked his pistol and shot Anastacio Valencia, has to be accepted. This statement nullifies or destroys any implication that may be inferred from the statement of the dying man Anastacio Valencia that Bernardo Olaya being in the company of or having accompanied Jaime Canare when the latter shot Anastacio Valencia knew or was presumed to know what Jaime Canare planned or intended to do? The evidence fails to establish his complicity in the commission of the crime[1]. He should also be acquitted.

The judgment appealed from is reversed and the appellants are acquitted, with the proportionate costs de oficio.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

[1]People vs. Tamayo, 44 Phil., 38.

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