

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DY TOO (ALIAS DONATO POMORALA) AND CHU SE BENG, DEFENDANTS AND APPELLANTS.

G.R. No. L-1807. April 20, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

For the killing of Chinaman Alfonso Ang Liongto near the wharf of Davao City on April 15, 1946, Dy Too alias Donato Pomorala and Chu Se Beng were charged with murder in the Court of First Instance of Davao, were found guilty and sentenced to reclusion perpetua with the accessory penalties prescribed by law, to indemnify, jointly and severally, the heirs of the deceased Alfonso Ang Liongto in the sum of P5,000 and to pay a proportionate part of the costs. Both accused have brought the case here on appeal.

After a careful review of the evidence in the case, we find the following facts to have been fully established: On March 27, 1946, appellant Chinaman Chu Se Beng with four Chinese companions, named James Young, Ang Chu Yeng, We Cod Guan and Carlos Ching, arrived by plane in Cebu City from Tacloban, Leyte. There they were joined by appellant Dy Too, another Chinaman. Three days later they all took a plane for Davao City where they arrived on March 30, 1946. They took lodging in a hotel kept by a certain "Macao" at Claveria Street. A week later, the six companions transferred to the house of Eustaquio Sambas at Magallanes Street, where they occupied two rooms, the group paying P60 as advance room rent for one month.

In the evening of April 6, 1946, Ang Cui Bao, a Chinaman, went to the People's Restaurant kept by Gan Yek Kiao, in a car sent by the latter, for a conference. In that conference Gan Yek Kiao introduced his visitor Ang Cui Bao to appellant Chu Se Beng and his companion Ang Chu Yeng. These two told Ang Cui Bao that they and some companions had come from Manila with authority to investigate the activities of the Chinese Community in Davao during the Japanese occupation! that a number of local Chinese residents had filed complaints against Alfonso Ang Liongto, and that to investigate said complaints, they (Chu Se Beng and his companions) wanted to confer with said Alfonso Ang Liongto and for this purpose they were asking Ang Cui Bao to notify Liongto of the desired conference, with the warning that should Ang Liongto refuse to confer with them, he might suffer the same fate of a certain Chinaman whom they had killed in Leyte. Ang Cui Bao transmitted the message and warning to Ang Liongto but the latter not only declined to give importance to the matter but also refused to have any conference with Chu Se Beng and his companions, saying that he had just arrived from Manila himself and he knew that no one was authorized either by the Government or the Chinese Consulate to make an investigation. This attitude and decision of Ang Liongto was duly transmitted to Gan Yek Kiao who presumably conveyed it to Chu Se Beng and his companions.

About 7 o'clock in the evening of April 15, 1946, six Chinese were seen on the wharf or pier of Davao, grouped together and apparently in conference. Not far from them and standing near an electric post was appellant Dy Too. About the same time, Ang Liong to was standing in front of his store situated right next to the pier, at a point

about six meters from Dy Too. Wot long thereafter, three witnesses for the prosecution, namely: Jose Ang, a son of Ang Liongto, Maria Gellamucho who was keeping a store next to the house and store of Ang Liongto, and Pantaleon Cabilao, a complete stranger who happened to be at the pier, saw appellant Dy Too approach Ang Liongto from behind and at a distance of about two and one-half meters fire two pistol shots at him, wounding him in the back. Ang Liongto was rushed to the Davao Public Hospital in a jeep but he died on the way. Tommy Alawe, a police detective and two companions, Ramon Posadas and his brother Filemon Posadas, were about 200 to 300 yards from the scene of the shooting. Upon hearing the two shots they hastened toward the pier but on the way they saw a Chinaman whom they later identified as the other appellant Ghu Se Beng running along Monteverde Avenue away from the pier. When questioned by detective Alawe, Chu Se Beng cried out "ladron" at the same time pointing to a man running some distance behind him. Alawe believing that there had been a case of theft or robbery and that the thief or robber was the man indicated, confronted the said person as he came abreast of Alawe and asked him what was the matter. This person, a Chinaman who turned out to be appellant Dy Too and who was carrying a .45 caliber pistol, in his turn cried out "ladron" and pointed to Chu Se Beng who was running ahead of him. Alawe acting upon this information chased Chu Se Beng but because of the headstart had by him while Alawe was questioning Dy Too, Chu se Beng was able to escape. The two companions of Alawe, Ramon Posadas and Filemon Posadas, in their turn chased Dy Too acting on the hunch that after all he may be the real thief indicated by the first Chinaman Chu Se Beng but they were also unable to capture him.

After the fruitless chase Alawe headed for the pier to find out what had really happened and there he was informed that Ang Liongto had been shot down and had been rushed to the hospital. The shooting was immediately reported to police headquarters and Detective Untalan was sent to the scene of the shooting to investigate. With the aid of a flashlight he found two empty .45 caliber cartridges bearing the mark "E-C--42" marked as exhibits "B" and "B-1". During his investigation, one of the sons of the deceased Ang Liongto showed him a copy of a letter addressed by his father to the Provincial Fiscal reporting that six Chinamen who lived in the house of Eustaquio Sambas in Banquerojan, Davao had made threats to kill him. Acting upon this lead, detective Untalan accompanied by other detectives went to the said house and found therein five Chinamen, among whom was appellant Chu Se Beng. It will be remembered in this connection that this was the very house where the two appellants and their four Chinese companions had taken up two rooms. There the detectives were informed that their companion Dy Too had left the house about 5:30 that same afternoon. In the course of the search, two rounds of .45 caliber ammunition bearing the same mark "E-C-42" were found in a buri bag belonging to Dy Too. Two .32 caliber revolvers were also found and confiscated by the detectives. All the five Chinamen were arrested and taken to the police station. A policeman was left in front of the house to wait for Dy Too.

Early the next morning Dy Too was seen entering the house wearing khaki pants dripping wet, with neither shirt nor undershirt on him. The guard immediately ieat to the station to report what he had seen, but when he, accompanied by other policemen, returned to the house they were informed that Dy Too had already left heading for the river. The policemen followed him and finally saw him in a banca being rowed away. He was arrested and when asked where he was going, he answered that he was going to a distant barrio which was found to be much nearer and much more easily accessible by land instead of by water transportation. After being questioned at the police station, he was taken to the house where he was staying and there he showed the police the pair of wet pants which he had hidden under the stove. While being detained at the police station, appellant Dy Too spoke to one Ramon Posadas who was at the station as a witness and told him that he should not sign any paper because the police had no evidence against him (Dy Too) because although he had really killed Ang Liongto, the gun with which he shot him had not been found, and that if Posadas would help him, he (Dy Too) would introduce him to many rich Chinese merchants who were coming to the station and said Chinese merchants would give him anything that he wanted.

Based on all these evidences, there is not the least doubt that Dy Too was the killer. He was seen by three ocular witnesses who saw the actual shooting and positively identified him as he fired the shots and as he passed near them when he ran away to escape. This, apart from his admission made to Ramon Posadas at the police station that he was the one who killed Ang Liongto, Dy Too did not even bother or take the trouble to testify at the trial in order to deny the imputation made against him as the person who fired the fatal shots.

The case against appellant Chu Se Beng is not so easy. He did not participate in the shooting. His criminal responsibility if any must be based on conspiracy. Considering all that had happened before the shooting of Ang Liongto, from the time that Chu Se Beng and four other Chinese companions left Leyte by plane until the conference at Gan Yek Kiao's restaurant where Chu Se Beng made a threat against Ang Liongto's life, including the events that took place shortly after the killing, we are convinced that there was a conspiracy between Dy Too and Chu Se Beng to kill Ang Liongto. It may not be amiss to recall that Chu Se Beng and his four companions upon arriving in Cebu on March 27, 1946, immediately contacted Dy Too and three days later they all emplaned for Davao. There, they lodged together in the same hotel at Claveria Street. A few days later Chu Se Beng and his four original Chinese companions and his co-appellant transferred to the house of Eustaquio Sambas where they occupied two rooms paying P60 in advance. Then, on April 6, in the evening, Chu Se Beng and his companion Ang Chu Yen had a conference with Gan Yek Kiao and Ang Cui Bao, Chinese residents, where Chu Se Beng sent a message to Ang Liongto for the latter to confer with him and his companions who had been authorized from Manila to investigate him particularly his conduct during the Japanese occupation, accompanying the invitation with threats that if he refused to see them, he might be killed, lastly, it will be remembered that Chu Se Beng was near the scene of the killing, perhaps one of the Chinamen who were seen suspiciously loitering at the pier right in front of the house of Ang Liongto, and that immediately after the shooting he was seen running away from it. And, what is more important, to avoid being suspected or apprehended by the police, he tried to confuse and mislead detective Alawe by making it appear that what had been committed was not a killing but a robbery or theft and he even indicated someone behind as the thief. Dy Too in his turn and showing an understanding and concert of action played the same trick on the police by shouting "ladron" and pointing to Chu Se Beng who had continued running away and had already a good headstart rendering difficult his capture as in fact he escaped that evening.

The defense of alibi interposed by both appellants was correctly rejected by the trial court. Chu Se Beng claimed that he was in the house all evening playing poker with his companions and later went to bed, but this defense may not prevail over the testimony of at least two witnesses who saw him running away from the scene of the crime immediately after the shooting. As to Dy Too, his theory that he was in a movie house all evening on April 15 was not accepted by the trial court which found that the place where he pretended to have taken refreshments and entertained friends at the Restaurant "El Dolor" is only about five minutes ride from the pier and that he could have easily gone to that place before he went to the movie house, assuming that he actually went there that evening. Moreover, he was seen by two others as he ran away from the pier carrying a .45 caliber gun, the same caliber of the two empty shells found at the scene of the shooting as well as of two rounds of ammunition found in his buri bag in his room.

The circumstances surrounding the shooting clearly prove the qualifying circumstance of treachery. The deceased was shot from behind in a surprise and unexpected attack. We agree with the trial court that the aggravating circumstance of premeditation accompanied the killing. The elaborate preparations made by the two appellants from the time that they left Cebu and during the several days of their stay in Davao where they tried to contact Ang Liongto, perhaps to obtain money from him or lure him into a trap, with threats against his life, have sufficiently established this aggravating circumstance. To offset it, the lower court found in their favor the mitigating circumstance of lack of instruction. The Solicitor General, however, believes that the two appellants

being merchants and, consequently, intelligent and not entirely ignorant, are not entitled to the same. It is to be noted, however, that the trial court did not believe the claim of the appellants, made through Chu Se Beng, that they were merchants who had come to Cebu with a capital of P12,000 to buy corn. There is, therefore, no reason to uphold the contention of the Solicitor General and reject the finding of the trial court.

In conclusion, we find the guilt of the two appellants to have been established beyond reasonable doubt. Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Padilla voted for affirmance.

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