

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE VILLAMORA ET AL., DEFENDANTS. JOSE VILLAMORA, FRANCISCO BARAUDEL AND PEDRO RENTORIA, DEFENDANTS-APPELLANTS.

G.R. No. L-2054. April 29, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

This is a review of the decision of the court of first instance of Albay holding the defendants Jose Villamora, Pedro Rentoria and Francisco Barauel guilty of the murder of Gregorio Acuña. Originally there were twenty-two defendants. For lack of sufficient evidence the number was reduced to seven in the Court of First Instance. One escaped before trial. Three were acquitted.

Reminiscent of the 1920 uprising in Intramuros in which constabulary men sought revenge upon the police because of an outrage committed by policemen against a constabulary soldier[1], the facts of this case are these:

In the night of February 21, 1946, in the dancing hall Agua Caliente of Legaspi, Albay, Gregorio Acuña, a local character known as "Gallahad", a boxer and a "tough guy", summarily ejected three soldiers and one Lieutenant Aquino of the Philippine Army from the dining salon. The next day the incident was reported to the accused Lt. Jose Villamora in the Camp Cerro Gordo of the Army in Albay, where there were many soldiers and officers. Resenting this as an affront to the corps, Lt. Villamora ordered the men then in camp to line up and advising them of the insult, he invited and urged them to follow him to chastise Acuña that the latter may understand how serious it is to offend an officer of the Army. Pursuant to his exhortation about seventy enlisted men (or fifty according to some witnesses) advanced to the Agua Caliente Cabaret. Gregorio Acuña was not there. So the group proceeded to Barrio Tulatula, Legaspi, where Acuña resided. Among the group of soldiers were (in addition to Villamora), the accused Pedro Rentoria, Francisco Barauel and one Jesus Buena who has escaped while under detention.

When the expedition reached a Chinese store, Lieutenant Villamora told the soldiers to go ahead and act accordingly. Upon reaching the barrio, the men surrounded the house of Gregorio Acuña. Some threw stones at it, others began tearing down the sawali walls, while others attempted to enter the door. Awakened from sleep and aware of the danger, Gregorio Acuña jumped from the house and made a run for safety. He was pursued and overtaken near a brook. Francisco Barauel hit him on the head with an iron bar. Others stoned him. Pedro Rentoria stabbed him several times with a bayonet until he fell to the ground in a dying condition. The party then left him shouting "Mabuhay si Teniente Aquino".

Captain Cipriano Elizaga-Que of the Military Police Command was dispatched immediately to the scene after the Army authorities had knowledge of the incident. The cadaver of Acuña presented no less than twelve wounds, and his verdict was that death came from traumatic shock with secondary internal hemorrhage.

The Military Police of the Philippine Army immediately took a hand. Lt. Felix Icamen, Investigator and Intelligence Officer, began the inquiry with the assistance of Lt. Jose T. Lajom. Major Demetrio Camua,

Provincial Provost Marshall, also intervened and questioned the accused Lieutenant Villamora.

In the course of this investigation the three accused-appellants voluntarily made certain statements contained in the affidavits Exhibits C, D and E which were signed and sworn to by them before Luis F. Baquizal, justice of the peace of the provincial capital.

In the said documents the accused admitted their participation substantially as above related, although each tried (vainly) to minimize his responsibility. For instance, Jose Villamora stated that he only told his men "to box" Gregorio Acuña so that "he may realize the insulting of the Army personnel" (Exhibit C). Francisco Barauel claimed that he joined the men because they said they were going to Albay for a walk; that after leaving Agua Caliente Cabaret, he came to know that the purpose of the group was to club and cripple Acuña as suggested by Lieutenant Villamora; that on the way he picked an iron bar, just in case something happened; that when he saw Gregorio Acuña, armed with a bolo fighting with Pedro Rentoria, he hit Acuña with the iron bar even as Rentoria stabbed the victim. Pedro Rentoria, on the other hand, admitting his membership in the punitive expedition, swore that he struck only after Acuña, cornered by the soldiers, had first slashed him with a bolo.

These affidavits must have told the true story—with the coloring already noted. Two were executed on the same day the crime was committed and the third on the next day. They were prepared by officers of the same Camp Cerro Gordo (who could not be suspected of partiality against their own comrades-in-arms). They were sworn to before the justice of the peace of the provincial capital who affirmed in court that the affiants, appearing before him, stated that they knew the contents of the affidavits and that they voluntarily subscribed them.

The culpability of these appellants is therefore, in our opinion, beyond reasonable doubt.

The attorney de oficio for Villamora earnestly contends that there is not enough evidence to convict said officer. But the testimony of Victoriano Antonio who heard him say to the soldiers "Iros a Tulatula, ustedes ya cuidado de lo que os he dicho" and Exhibit C is enough to convict this appellant. We do not have to reckon with the statements of the other accused Exhibits D and E for the purpose of connecting him with the murderous assault.

The attorney for the appellants Barauel and Rentoria makes the following assignment of errors:

- "1. The Court a quo erred in holding that defendant-appellant Francisco Barauel participated in the killing of Gregorio Acuña.
- "2. The Court a quo erred in not finding that defendant-appellant Pedro Rentoria acted in self-defense in killing Gregorio Acuña.
- "3. The Court a quo erred in qualifying the killing with evident premeditation.
- "4. The Court a quo erred in holding that the killing was committed with abuse of superior strength."

It is argued for appellant Francisco Barauel that inasmuch as there was no conspiracy to kill Acuña, and inasmuch as Barauel only hit him with an iron bar, the latter may not be held responsible for the death. The answer is that there was conspiracy to punish Acuña, and because of it, all the conspirators are responsible for whatever consequences arose from the punishment. Death resulted: Therefore all were criminally liable for it.

The assertion that Barauel struck Acuña "to prevent" the latter "from hacking with a bolo Pedro Rentoria" can not excuse the offense because the act was in pursuance of the general purpose to attack and chastise Acuña. When three persons conspire to criminally assault X, it would be absurd to uphold the plea that one of the assailants merely hit X during the fight in order to prevent him from wounding his other co-conspirators.

The same reasoning disposes of the second assignment of error to the effect that Pedro Rentoria "stabbed

Gregorio Acuña only with a view to weakening him otherwise said Acuña would kill them with a bolo, the deceased being husky and a boxer".

The third assignment of error must be sustained. Evident premeditation has not been sufficiently proven. The attack seems to have been decided on the spur of the moment. And there was "no lapse of a substantial interval of time clearly sufficient in a judicial sense to afford a full opportunity for meditation and reflection; and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to hearken to its warnings"[2].

There was treachery, however, because the group that attacked Acuña and surrounded his house consisted of not less than nineteen persons (Exhibit C) , and Acuña had absolutely no chance to defend his life[3]. Abuse of superior strength is absorbed by this circumstance.

Hence the killing must be classified as murder.

The appealed judgment (as amended) sentenced appellants to life imprisonment with the accessories and to indemnify the heirs of the deceased in the amount of P2,000. It is in accordance with law. (Article 248, Revised Penal Code). Wherefore, it is affirmed, with costs.

So ordered.

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

[1] People vs. Cabrera, 43 Phil., 64.

[2] U. S. vs. Gil, 13 Phil., 530; People vs. Bangug, 52 Phil., 87, Albert Rev. Penal Code, New Edition, p. 122.

[3] U. S. vs. Baul, 39 Phil., 846; U. S. vs. Estopia, 28 Phil., 97.

CONCURRING OPINION

MONTEMAYOR, J.:

That the appellants are guilty, I agree. However, under the circumstances under which the crime was committed, I believe that the defendants should be accorded the mitigating circumstance of sufficient provocation, or of having acted upon an impulse producing passion or obfuscation, under Art. 13 of the Revised Penal Code, section 4 or section 6 or section 10.

I am trying to put myself in the place of one of the appellants,—a humble but discipline soldier, taught to look up to his officer for leadership and to obey him. According to the facts related in the majority decision, the deceased described as a boxer and a "tough guy," had summarily ejected from a dance hall a lieutenant and several fellow soldiers. Thereafter another lieutenant called the soldiers of the garrison, including the appellants to a meeting where he explained the incident to them, calling their attention to the grave insult committed against their organization and urging them to avenge the outrage and vindicate their honor, at the same time offering to lead as in fact he led them towards the house of the deceased. Of course the act as well as the intention to take the law into their own hands was all wrong. But the feeling and passion that then dominated the soldiers specially after the talk and the intervention of their officer should be considered. In point of fact many of the soldiers responded to the call and appeal of their lieutenant. That was the result of mass psychology and an appeal to their spirit de corps. I believe that the law on mitigating circumstances is applicable, and should be applied so as to warrant the

imposition of the penalty in its minimum degree, namely, reclusion temporal in its maximum degree, instead of reclusion perpetua.

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