

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MANUEL ANCHETA, ET AL., DEFENDANTS. MANUEL ANCHETA AND
AGUSTIN DAGDAGAN, DEFENDANTS AND APPELLANTS.**

G.R. Nos. L-11366-67. August 28, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Manuel Ancheta appeals from two judgments rendered by the Court of First Instance of Davao finding him guilty of murder with assault upon an agent of authority and sentencing him to suffer the penalty of reclusion perpetua, the accessories thereof, to indemnify jointly and severally with his co-defendants the heirs of Genaro Lao, the victim, in the sum of P6,000, without subsidiary imprisonment in case of insolvency and to pay the proportionate costs in case No. 3424; and of robbery and sentencing him to suffer an indeterminate penalty of from 4 years of prison correctional to 8 years and 1 day of prison mayor, the accessories thereof, and to pay the proportionate costs in criminal case No. 3365. The Court ordered the forfeiture of the piece of wood (Exhibit E, p. 29, t.s.n.) and the bayonet (Exhibit R, p. 50, ts.n.) used to commit the crime and the return to the heirs of the deceased patrolman Genaro Lao of Exhibits "F", "F-1", "F-2", "F-3", "G", "H", "I", "J", "K", "L", "L-1", "L-2", "M", "N", "N-1", "O", "O-1", "P", "P-1" and "S", which belonged to the deceased.

Genaro Lao was a patrolman of the police department of Davao City detailed at a precinct in the barrio of Torril. From 11:00 o'clock in the evening of 21 May 1955 to 7:00 o'clock in the morning of the next day, he was on patrol duty in the barrio. As he failed to report to his precinct after duty, corporal Inocentes Acenita reported that fact to the assistant precinct commander. Upon being apprised of the failure of the patrolman to report to his precinct after duty, lieutenant Grande, the precinct commander, ordered his men to search for the missing patrolman. On 23 May, Sixto Campanado, the overseer of the plantation in Marapangui owned by one Florendo, reported to the police authorities that Jose Gacusan, one of the guards in the plantation, had in his possession an unlicensed .38 caliber pistol and that he had been acting suspiciously. The precinct commander instructed corporal Inocentes Acenita, patrolman Mamaining Mato-on and one Chaves and detective Regino Paclar to proceed to the plantation and apprehend and investigate Jose Gacusan as he might have something to do with the disappearance of the patrolman. On their way, about 300 meters from the plantation, they met Jose Gacusan. Detective Regino Paclar accosted him and touched his right hip and found concealed on his waist a .38 caliber pistol which he confiscated. Upon questioning, Jose Gacusan admitted that the pistol belonged to patrolman Genaro Lao; that he together with Manuel Ancheta and Agustin Dagdagan killed patrolman Lao at the junction of barrios Torril and Lizada; that he used a piece of wood in clubbing the victim while Agustin Dagdagan used a bayonet in stabbing him; that after killing him they dumped his body in a ditch at the abaca plantation at Bangoy and covered it with banana or abaca leaves; and that they hid in the hacienda, the weapons with which they killed their victim. The bayonet (Exhibit K, p. 50, t.s.n.) and a flashlight belonging to patrolman Genaro Lao (Exhibit S) were found in the place pointed by Jose Gacusan. The police investigators proceeded to the plantation at Marapangui, rounded up Manuel Ancheta, Agustin Dagdagan, Atanacio Dominguez, Sotero Ola, Fidel Nicolas

and another unnamed laborer and brought them together with Jose Gacusan to the police headquarters for investigation. On their way from Marapangui Agustin Dagdagan pointed to the police investigators the place where they dumped the body of the victim. They found it lying in a ditch covered with dried banana or abaca leaves. Corporal Acenita assigned patrolman Ghaves and detective Paclar to guard the cadaver and proceeded to the police headquarters with the suspects.

Dr. Alfonso Soberano, City Health Officer, was summoned to the scene and right then and there performed a post mortem examination on the cadaver. He found the following wounds sustained by the victim:

2 stabbed longitudinal wounds of about $\frac{3}{4}$ inch long and as far as the outer surface of the ribs were found about 2 inches below the left nipple. They did not penetrate. Stabbed horizontal wound of about $\frac{3}{4}$ inch long was found in the right side of the chin. It reached as far as the bone. The lower part of the right face was swollen and in fact practically the whole face was bluish in color. The outer part of the left eye was swollen and bluish. A. horizontal lacerated wound was found practically the whole length of the upper part of the left eye. The wound reached down to the bone only.

He concluded that internal hemorrhage was the cause of death (Exhibit D).

In separate sworn statements subscribed and sworn to before Leo Medialdea, special counsel of Davao City, on 6 June 1955, Manuel Ancheta, Atanacio Dominguez and Agustin Dagdagan admitted and confessed that they and Jose Gacusan conspired with each other to kill the victim (Exhibits A, B and C).

Upon arraignment Jose Gacusan entered a plea of guilty to the two informations and was sentenced accordingly. His three co-defendants entered a plea of not guilty. After joint trial of the two cases, the Court found them guilty as charged in the informations and sentenced each of them to suffer the same penalty imposed upon Manuel Ancheta as stated at the beginning of this decision. Only Manuel Ancheta and Agustin Dagdagan have appealed. On 29 January 1959 the latter withdrew his appeal.

As the appellant was not included in the information for robbery (No. 3365), that part of the judgment finding him guilty thereof as charged in the information and sentencing him therefor is a nullity and should be set aside.

In their separate sworn statements subscribed and sworn to before Leo Medialdea, special counsel of Davao City, on 6 June 1955, the appellant and his co-defendants admitted and confessed that they had conspired with each other to kill the victim. Hence the guilt of one is the guilt of all. Although the appellant did not take an active part in the killing of the victim, as he did not do anything to prevent it, he is as guilty as his co-principals.

The appellant repudiates his sworn statement. He denies that he and his co-defendants conspired to kill patrolman Genaro Lao and claims that he was tortured by the policemen in the city jail and for that reason he signed the affidavit Exhibit A. Such repudiation cannot prevail over the disinterested testimony of the officer before whom the appellant subscribed and swore his statement and who testified that he read, translated and explained to him in Ilocano the contents and meaning thereof and that he ratified the contents of his statement. Besides, the finding by the police officers of the body of the deceased patrolman and of the instruments or tools used to commit the crime in the places pointed by two co-defendants of the appellant is a strong proof of their participation in the commission of the crime. Furthermore, when corporal Inocentes Acenita asked Jose Gacusan in the presence of the appellant and Agustin Dagdagan who were his companions when patrolman Genaro Lao was killed, Gacusan answered that the appellant and Agustin Dagdagan were his companions. The appellant and Agustin Dagdagan in spite of the imputation remained silent. This is an implied admission that the answer of Jose Gacusan to the question asked by the corporal is true.

The judgment appealed from in criminal case No. 3424 for murder with assault upon an agent of authority is

affirmed, with costs against the appellant; and that rendered in criminal case No. 3365 for robbery as far as it finds the appellant guilty thereof and imposes a penalty upon him being a nullity is set aside, without costs in this instance and in the Court below.

Paras, C. J., Bengzon Montemayor, Bautista Angela, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

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