

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SAMUEL GOODE, DEFENDANT-APPELLANT.

G. R. No. L-6358. May 25, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Samuel Goode was accused before the Court of First Instance of Surigao of the crime of murder with assault upon an agent of authority and, after trial, was sentenced to suffer the penalty of reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the costs. Because of the nature of the penalty, the appeal was taken directly to this Court.

In the night of September 22, 1942, while a game of monte was being played in the house of Florentina Ambil at the barrio of Barobo, Lianga, Surigao, two players, Fabian Moreno and Gencroso Altizo, engaged in a heated discussion over a bet of P10.00. Sarafio Tremedal, who was living nearby, came to the house to investigate the matter, he being the barrio lieutenant of the place. Tremedal intervened and tried to pacify the two players at the same time admonishing Florentina Ambil not to allow prohibited games in her house because they usually are the source of trouble. Florentina retorted by saying, that he had nothing, to do with it because the game was being played in her house. To this Tremedal remarked that he had a right to give counsel because he was the barrio lieutenant.

While Florentina and Tremedal were exchanging remarks, Samuel Goode arrived and, siding with his mother Florentina, addressed Tremedal: "You have nothing, to do in coming to my house, you are an intruder you salomabits", and thereupon gave a fist blow to the left jaw of Tremedal causing him to fall flat on the floor face downward. Thereafter, Goode hold Tremedal by the neck, lifted him and challenged him to a fight, at which instance Tremedal remarked that it was not his purpose to fight but merely to counsel peace as it was his duty to do as a barrio lieutenant. Immediately thereafter Goode drew his 45 caliber automatic pistol and fired at Tremedal hitting him on the left eye perforating the cranium. Tremedal fell to the floor and died instantly. Goode pulled him downstairs and threw his dead body on the ground. The next morning the widow reported the matter to the municipal authorities who found the body of the victim laying prostrate on the ground with his face mangled it having been eaten by the pigs during the night.

The corresponding charge was filed with the justice of the peace who immediately issued a warrant for the arrest of the accused. However, the warrant was not served during the occupation because of the uncertainty of the situation. As the records were lost as a result of the war, the case was revived after liberation with the filing of a new information by the provincial fiscal of Surigao on September 16, 1950.

The defense gave two versions relative to the killing of the deceased. On one hand, it claims that the deceased was killed by guerrilla Lt. Gonzalo Villan on August 31, 1942 because he was a Japanese collaborator. To this effect is the testimony of appellant who claims that sometime in June, 1942 the deceased accompanied a group of fourteen

Japanese soldiers in the confiscation of foodstuffs stored inside a guerrilla depot at Lianga. On the other hand, the defense also claims that the deceased was shot to death on the same date by Lt. Gonzalo Villan for violating the curfew orders of the guerrillas in that area. To this effect is the testimony of appellant and his witness Juanito Pingoy who claim that sometime before the shooting there were around thirty-seven guerrillas in the town of Lianga under the command of appellant; that the guerrillas occupied the house of Florentina Ambil as their outpost; that at about 10 o'clock p.m. on August 31, 1942 the deceased passed near the guerrilla outpost and did not stop to identify himself upon being required to do so by the sentry; that the deceased was admonished by the sentry to observe the curfew hours imposed by the guerrillas of Lianga, to which he replied that he was the barrio lieutenant and was on his way to look for food for the guerrillas; and that suddenly the deceased drew his hunting knife and tried to stab Lt. Villan, the guerrilla executive officer, whereupon the latter shot him to death.

The fact that the defense has advanced an alternative version regarding the killing of the deceased is an indication of its weakness and of the fact that it cannot give a true account of how the latter was killed. This weakness is further aggravated by the testimony of the Justice of the Peace Julian Martinez, whom the trial court described as "a venarable and respected man" who has reached "the ripe age of 71" who gave the lie to the claim that the deceased was killed on August 31, 1942, for, according to him, said killing took place on September 22, 1942, as claimed by the prosecution, so much so that he issued a warrant of arrest for the apprehension of the appellant which could not however be effected because of the uncertainty of the situation. The story that at the time of the killing there was a regularly organized guerrilla unit in Lianga under the command of appellant has likewise been belief by the prosecution, for, according to witness Francisco Cayna, the guerrillas in Lianga were only organized in 1943 and were placed, not under the command of appellant, but of one McCarthy. And even if it be granted that at the time of the killing there were already guerrillas in that area and that the deceased was seen accompanying the Japanese patrol in the confiscation of food-stuffs which were then stored in a depot belonging, to the former, his killing outright cannot be justified it appearing that he was then a barrio lieutenant and in that capacity he could not but obey the command of the occupation government. Even therefore under this theory the killing, of the deceased upon the command of appellant is not justified and cannot exempt him from liability.

The second version advanced by the defense is just as unworthy of credence as the first. According to the witnesses for the defense, there were around thirty-seven guerrillas who at the time of the killing were stationed at the house of Florentine Ambil located on the main road at barrio Barobo and that it was on the occasion when the deceased passed by in violation of the curfew orders issued by appellant as commander that said deceased defied the sentry and tried to assault with a knife Lt. Gonzalo Villan. In the first place, if it is true that the town of Lianga was under the control of the Japanese so much so that the latter used to send soldiers to patrol the place and confiscate foodstuffs for their own use, how can it be pretended that the guerrillas were properly organized and had as their outpost a house located on the main road with a sentry guarding that road as though in defiance of the occupation government? How can it be possible for the guerrillas to adopt a curfew regulation and enforce the same in an open manner without catering detection on the part of the Japanese authorities?

Even if the claim as to the curfew regulation were true, considering that, according to appellant, there were around thirty-seven guerrillas who were in complete control of the town of Lianga and said guerrillas were then armed with pistols and revolvers, it cannot be reasonably believed that the deceased, single-handed, would defy their authority and even attempt to assault with a knife one of the officers as the defense would like us to believe. The deceased, who was then a barrio lieutenant, should know the consequences of such an act and, knowing, them, could not fail to see that to attempt to do it would be suicidal. It is evident that this version cannot be accepted as it is against logic and reason.

The defense also claims that the lower court erred in not entertaining its motion to quash based on the ground that

the information against appellant charges more than one offense. It appears however that the accused was charged not only with the killing of the deceased but with having done it on the occasion when the latter was in the exercise of his functions as barrio lieutenant. Such being the case, the acts charged come under one of the exceptions of Article 48 of the Revised Penal Code which allows the inclusion in the information of more than one offense when the same are the result of one single act. The plea that the assault upon an agent of authority cannot be considered because appellant was also a councilor at the time of the killing, cannot be entertained because, even if true, this kind of offence can be committed even by a public officer or employee (Article 48, Revised Penal Code).

The defense likewise contends that the trial court erred in not declaring that the appellant is entitled to the benefits of Amnesty Proclamation No. 8 of the late President Roxas. But this question has already been passed upon by the 13th Guerrilla-Amnesty Commission to which the case was referred precisely upon petition of appellant, and said Commission denied said appellant the benefits of the amnesty on the ground that "there is nothing of record to show that the accused committed the offense in pursuance of the resistance movement and not due to personal motives." Since this case has been already acted upon by the Guerrilla Amnesty Commission, the lower court acted properly in abstaining from passing upon the same question now raised by appellant. Indeed, how can he be entitled to the benefits of said proclamation when he now claims that it is not he but Lt. Gonzalo Villan who killed the deceased?

And with regard to the claim that the prosecution of this case has suffered considerable delay, suffice it to say that such delay is due not to the fault of the prosecution but to the fact that appellant could not be apprehended during the Japanese occupation in view of the uncertainty of the situation. As this Court has said, the delay in the prosecution of crimes committed during the occupation should not militate against the complainant for the court can "take judicial notice of the fact that it took many months after liberation before normalcy had been reestablished in the country. The unsettled conditions in many parts during the first year after liberation were such that many persons did not feel safe to bring their grievances to courts of justice." (People v. Manzanares, G. R. No. L-1293, May 24, 1948.)

Considering that appellant is guilty of the crime of murder with assault upon an agent of authority, a complex crime, for which the penalty for the most serious crime is prescribed, the Solicitor General recommends that the penalty of death be meted out to appellant. However, for lack of the requisite vote, in view of the circumstances under which the crime was committed, the Court resolved to affirm, as it hereby affirms, the decision appealed from, with costs against appellant.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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