

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOAQUIN BAUTISTA AND LUIS GAOAT, DEFENDANTS AND APPELLANTS.

G.R. No. L-440. November 29, 1947

Ponente: TUASON, J.

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TUASON, J.:

Jacinto Belmonte while asleep (on the floor, it seems) was shot from under the house and died one hour or less afterward. The missile hit him on the left side below the armpit and came out of the left breast above the nipple. The time was between 10 and 11 o'clock at night and the date was January 13, 1942. Formal complaint was filed with the justice of the peace on September 13, 1945, against Joaquin Bautista and Luis Gaoat as the alleged authors, although the crime was reported to the authorities soon after its commission.

Two witnesses testified for the prosecution, Lagrimas Belmonte and Fructuoso Belmonte, daughter and brother respectively of the deceased. Both declared in substance that they and other members of the household had gone to sleep when they were aroused by the report of a gun. They opened the window and saw Luis Gaoat running towards his house which was about fifteen meters away. As Gaoat was climbing up the *batalan* of his dwelling, Joaquin Bautista, the other accused, emerged in a crouching position from under the house of the deceased, revolver in hand, and followed Gaoat into the latter's house. There was no moon but the night was starry and there was sufficient light for them to recognize the two defendants, these being their neighbors.

The two accused put up different defenses. Bautista said that he was in the town or municipality of Lallo on January 13, 1942. Other witnesses undertook to corroborate him. For his part, Gaoat admitted that he was in the immediate vicinity of Belmonte's house when the shot was fired but said that the man who shot the deceased was Francisco Garma (Joaquin Bautista's father-in-law, who at the time of the trial was already dead). Going into detail, he testified that at about 10 o'clock, Francisco Garma dropped at his house and invited him to buy *basi* at the home of one Rafael Calobong; that when they got in front of Jacinto Belmonte's house, Garma stopped, told him to wait and crawled under Belmonte's house; that not long after, he heard a gunshot, upon which he rushed to his house because he was afraid to be implicated; that Francisco Garma also ran but in the direction of his own house, which was about one kilometer from the Belmontes'. Gaoat disclaims any knowledge of Garma's design.

It is evident that Francisco Garma was brought into the case as a last minute attempt to save at least Bautista without any risk of worsening Gaoat's case or of causing the punishment of the newly implicated party. By his admission, Gaoat never told anyone that Garma and not Bautista was with him when Jacinto Belmonte was killed. Not even at the preliminary investigation of the case did he mention Garma's name. He admitted that he pointed to Garma as the perpetrator of the crime for the first time when he took the stand in the Court of First Instance.

No sufficient if any motive has been shown for Francisco Garma to slay Jacinto Belmonte. The only evidence given on this score is that of Andres Garma, Francisco Garma's nephew, and of Joaquin Bautista, to the effect that Jacinto Belmonte owed Garma and refused to pay and that because of Belmonte's refusal Garma threatened to kill

the debtor. But Lagrimas Belmonte, the deceased's daughter, said that since they settled in that barrio they had never borrowed a centavo from Garma. It was, she said, Garma who owed Francisco Sabas money. We do not hesitate to say that the prosecution witness's testimony is more worthy of belief.

Gaoat's denial of complicity in the crime does not harmonize with his admission, on cross-examination, that he pleaded guilty, although that plea was substituted afterward with one of not guilty. His statement that he pleaded guilty only to "the fact that I have seen Francisco Garma commit the crime" is silly. Again, this accused, who lived only about fifteen meters from Belmonte's house, did not, unlike Belmonte's other neighbors, answer the screams for help of the decedent's daughter. As a matter of fact, according to the latter, Gaoat never came after her father was shot. Gaoat countered with the testimony that he not only came but was requested by Lagrimas Belmonte to summon Fructuoso Belmonte. Lagrimas Belmonte, testifying in rebuttal, characterized this testimony as nonsense, stated that Fructuoso Belmonte was in her house asleep when her father was slain. Again we believe Lagrimas Belmonte.

Gaoat's companion who was seen holding a pistol, we are convinced, was not Garma but Bautista. Bautista's alibi is very unsatisfactory. The trial judge described it as "forced and lacking in conviction." This, too, is our appraisal of the evidence on this feature of the case.

Gaoat and Bautista had a previous common adventure which tends to link both of them with this case and which shows their proneness to take another man's life on the slightest or without provocation, a disposition which was given impetus no doubt by the confusion that accompanied the Japanese invasion. That incident was sufficient to goad into action the two men who had shown little or no sense of responsibility and were taking advantage of the existing chaos.

Francisco Sabas testified that on December 18, 1941, Luis Gaoat came to his house ostensibly looking for one of Sabas's employees. He and Gaoat talked for a while on the porch mostly about "their (defendants') looting of Chinese stores." Going in for supper, he left Gaoat on the porch. When he got through eating his revolver was gone and he found his mat upside down and his wallet and coins scattered. He sat again at the porch with a flashlight. Soon he heard a shot and a bullet whizzed over his head. He stood up and with the aid of his flashlight saw Joaquin Bautista with a revolver in his hand and Luis Gaoat and one Bienvenido Remigio behind him. He reported the theft to Jacinto Belmonte, the barrio lieutenant, and Belmonte looked over the footprints below the porch and made a drawing. The following morning Belmonte made an investigation regarding the whereabouts of the stolen revolver. Sabas did not know the result of the investigation for soon after that he evacuated to another place. Two years later the two defendants pleaded guilty of stealing Sabas's revolver, in the justice of the peace court.

Lagrimas Belmonte testified that in her father's investigation of the theft of Sabas's gun, her father found the footprints to be Joaquin Bautista's and Luis Gaoat's. In the course of that investigation, according to this witness, the deceased told Gaoat that maybe he and Bautista had stolen Sabas's revolver. Luis Gaoat, she said, got angry and never talked with her father while Bautista never showed up after that.

The identity of the two defendants having been duly established, Bautista's liability as principal is incontestable. Beyond doubt he fired the shot. As to Gaoat, the circumstances surrounding the case also satisfy us beyond question that he was in concert with Bautista in the planning of the crime and participated in its material execution by standing guard or lending Bautista moral support. He is criminally responsible to the same extent as his co-accused.

The court below found the defendants guilty of murder qualified by evident premeditation, and appreciating in their favor the circumstance of lack of education, it sentenced them to 20 years of cadena temporal, to indemnify,

jointly and severally, the heirs of the deceased in the sum of P2,000 and each to pay one-half of the costs. The Solicitor General disagrees with the penalty thus imposed and recommends the maximum, which is death. He contends that besides premeditation there were present the aggravating circumstances of treachery, dwelling and nocturnity, without any mitigating circumstance to offset them.

There is no sufficient evidence of evident premeditation. There is no evidence as to the time when the defendants decided to kill Belmonte. But treachery was undoubtedly present. It is this circumstance that should raise the killing to murder.

Night time is merged with treachery. Nocturnity, it has been held, may not be taken as an aggravating circumstance separate and independent of that of treachery. (U. S. vs. Salgado, 11 Phil., 56; People vs. Bumanglag, 56 Phil., 10; People vs. Madrid, G. R. No. 41967, Nov. 9, 1934; People vs. Banguy, 52 Phil., 87.) The reason for this rule is that nighttime forms part of the peculiar treacherous means and manner adopted to insure the execution of the crime. (People vs. Pardo, p. 568, ante.)

The aggravating circumstance of dwelling should be taken into account. In a case of murder committed under very similar circumstances (U. S. vs. Moro Macarinfas, 40 Phil., 1), it was held that "though the aggressor did not go up into nor enter the interior of the house of the deceased yet the fact that he entered the ground of the same and went under the house in order to inflict on the offended party the very severe wound resulting in death, it is obvious that there was present in the commission of the crime the aggravating circumstance that the same was committed in the dwelling of the offended party."

However, we believe that the trial court properly considered the mitigating circumstance of lack of education. This circumstance compensates the aggravating circumstance just mentioned, with the result that the prescribed penalty should be imposed in its medium degree, which is reclusion perpetua.

The judgment of the lower court is affirmed with the modification that the principal penalty shall be reclusion perpetua instead of cadena temporal. The appellants will pay the costs of this instance in equal proportion.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, and Bengzon, JJ., concur.

MORAN, C. J.:

I certify that Mr. Justice Padilla joins in this decision.

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