

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LORETO A. OLIVA, ET. AL., DEFENDANTS-APPELLANTS.

G.R. Nos. L-6033-35. September 30, 1954

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal in three separate criminal cases tried and decided by the Court of First Instance of Cagayan.

In Case No. 1091-a (now G.R. No. L-6033), for the murder of Fernando Pablo, the accused Cecilio Rol was acquitted, while the res of his co-accused - Loreto Oliva, Jose C. Villanueva, Adriano Quinsay, and Daniel Ulsano - were convicted of the crime, qualified by abuse of superior strength, and aggravated by the circumstance of having taken advantage of their public position as municipal policemen, offset by the mitigating circumstance of lack of intent to commit so grave a wrong as the one committed; and sentenced to suffer each reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Fernando Pablo in the sum of P6,000 without subsidiary imprisonment in case of insolvency, and to pay 1/5 of the costs. From this judgment, the four convicted accused appealed to the Court of Appeals, which forwarded the case to us for decision, considering that all the appellants have been sentenced to reclusion perpetua.

In Cases Nos. 1092-A and 1093-A for arbitrary detention of Eliseo and Sofronio Arreola, with physical injuries (now G.R. No. L-6034 and 6035), accused Angel C. Adap, Alfonso Martinez, Restituto Fronda, Joel Macatiag, and Marcelo Guillermo were acquitted; while the other defendants Loreto A. Oliva, Jose C. Villanueva, Daniel Ulsano, and Adriano Quinsay were found guilty as charged, and all of them were sentenced in each of the two cases to suffer an indeterminate penalty of from 4 months of arresto mayor as minimum to years and 4 months of prision correccional as maximum; to pay jointly and severally to Eliseo Arreola the sum of P75.00 in Case No. 1092-A and to Sofronio Arreola the sum of P50.00 in Case No. 1093-A, with subsidiary imprisonment in case of insolvency but not exceeding 1/3 of the principal penalty; and to pay in each of said cases 1/10 of the costs. From this judgment, the defendants likewise appealed to the Court of Appeals, and the latter again certified the case to us, for decision together with the appeal in the murder case, upon the ground that the three cases arose out of the same acts and occasion.

During the pendency of these cases in this Court, appellant Adriano Quinsay moved to withdraw his appeal in all three cases, which motion was granted. This decision therefore involves only the appeals of Loreto A. Oliva, Jose C. Villanueva, and Daniel Ulsano

Upon a careful review of the records, we find the following facts to be undisputed:

At about 10:00 o'clock in the morning of September 3, 1951 a police patrol composed of ten members of the police force of Aparri, Cagayan composed of Sgt. Jose C. Villanueva, and Policemen Daniel Ulsano, Alfonso Martinez, Joel Macatiag, Marcelo Guillermo, and Angel Adap, at the command of Lieutenant Loreto A. Oliva, headed for barrio Bakiling, Aparri, to investigate the reported murder or suspicious death of one Remegio Marcos. The investigation in Bakiling lasted up to about 4 o'clock in the afternoon; and when the patrol was about to

return to the poblacion, it was met by a truck of the Panifual Saw Mill, from which one Anacleto Abarriao (alias "Big Boy") alighted and complained to the police that on the previous day, at the cockpit of Binalan, Aparri, he had trouble with and was maltreated by the brothers Eliseo and Sofronio Arreola and their relative Fernando Pablo, all of Fugu, Ballesteros. Wherefore, the patrol rode on the Sawmill truck and proceeded to Fugu. Upon arrival, Lt. Oliva instructed his men to summon Eliseo Arreol, Sofronio Arreola, and Fernando Pablo, for the purpose of settling their trouble with Abarriao. Policemen Ulsano, Macatiag, and Guillermo picked up Eliseo from his house and Sofronio from the ricefield where he was plowing; while Mariano Dancel fetched Fernando Pablo. The three men, who were interested in having their dispute with Abarriao settled, voluntarily went with the police, and when brought before Lt. Oliva were asked by the latter to board the truck and come with the police to Aparri so that they could save the expense of the fare in going to town the following day. At Nagsirucan, the patrol picked up three other persons, who were suspected of being responsible for the death of Remigio Marcos. After crossing the Cagayan River at Camalaniugan ferry, the party boarded a Sambrano passenger bus. Upon reaching the town of Aparri, the bus stopped at the Sambrano garage. Lt. Oliva ordered his men to proceed on foot to the municipal building with the Arreola brothers, Fernando Pablo, and the three murder suspects, while he stayed behind to settle a controversy with the Sambrano inspector.

As to what transpired later in the municipal building, the evidence for the prosecution and of the defense are at variance. After contrasting and weighing the same, we find no error in the lower Court's having taken as proved beyond reasonable doubt that, after arriving at the municipal building, the policemen under the direction of sergeant Villanueva separated Fernando Pablo and the two Arreolas from the suspects of the killing of Remigio Marcos, and then proceeded to maltreat systematically the first three. Sergeant Villanueva slapped and boxed Fernando Pablo first, saying "You rascal, we almost got into trouble because of you"; then assaulted Eliseo Arreola in the same way, and after him, his brother Sofronio. As soon as Villanueva had finished with one suspect, policemen Ulsano and Quinsay took turns in taking up the maltreatment of the detainees. The worst beating was administered to Fernando Pablo who not only received fist blows, but was repeatedly hit in the abdominal region with the rifle butts until he fell prostate; and when lying thus, Pablo's tormentors tried to make him stand up with blows and kicks, and finally sought to bring him back to consciousness by pouring water on his face.

At this juncture, Lieutenant Oliva came in asking what happened, to which Ulsano replied "Zarzuela, sir", meaning that Pablo was merely feigning injury. Oliva reprimanded the men, instructed them to desist from further maltreatment and led Pablo's companions, the Arreola brothers, outside the room, telling them to report to him if somebody would again maltreat them, and advised them to sleep in the municipal building because it was already late. Oliva then ordered Pablo placed inside one of the jail cells, with other prisoners. The latter noticed that Pablo was already dead and called the guard, Rol, to the cell. Finding the prisoners' statement to be correct, Rol informed Lt. Oliva of Pablo's death, and the two went to the house of Dr. Ricardo Alvarado, President of the 4th Sanitary Division, woke him up, and informed him of the death of Fernando Pablo in the municipal jail. At about 12:00 p.m. of September 3 and 1:00 a.m. of the next day, Dr. Alvarado came with the policemen to the municipal building, and as he could not perform an examination of Pablo's body because it was dark in the cell, he merely removed the dead man's outer garments. The next morning, at about 8:00 o'clock, Dr. Alvarado conducted an autopsy of Pablo's remains, and the result of his post-mortem examination is stated as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that I have this day performed an autopsy on the person of FERNANDO PABLO, single, resident of Fugu, Balesteros, Cagayan, and found the following:

- 1.Externally - Ecchymoses around the pelvis and loin below the umbilicus.

2. Internally - On opening the the abdomen below the sternum at the line of the linea alba down to the pelvis and on reaching the peritoneum was found blood serum and hyperemia. On reaching the inner part of the abdomen, blood serum and dark clotted blood was found along the sides of the intestines and omentum. The intestines itself were found to be clean and light pale, but the omentum was mostly hyperemic and congested blood forum thru out the greater and lesser omentum. The spleen was well exposed and found that the tail was ecchymotic. Much dark blood was found inside the abdomen of about 2 or 3 liters. The gall bladder was full and light greenish in color. The urinary bladder was found to have been emptied with a tear wound, showing that the urine was extravasated into the abdomen.

I further certify that the cause of death was internal hemorrhage.

(Sgd) RICARDO G. ALVARADO
President 4th Sanitary Division"
(Exh. A, p.3, Rec. Case No.1091-A)

In the morning of September 4, Sgt. Villanueva took the Arreola brothers to the place where they had their breakfast. He asked them to sign an affidavit to the effect that Pablo fell from the truck and that he was a Huk, but the brothers refused it was not true. In the afternoon, Villanueva ordered the brothers to guard the remains of Fernando Pablo. They stood guard up to the afternoon of September 5, when they helped bury Pablo's remains. After the burial, Sgt. Villanueva still did not permit the Arreola brothers to go home, saying that they must wait for Lt. Oliva. the Arreolas were actually released only in the afternoon of September 6. The morning after their release, they went to the Ballesteros Emergency Hospital, where they were treated by Dr. Emilio A. Alonso for the injuries inflicted upon them by the policemen Villanueva, Quinsay and Ulsano. According to the medical certificates Exhs. H and J (p.69, Rec Case 1092-A; and p.60, Case 1093-A), Dr. Alonso found on the person of Eliseo Arreola a contusion on the right lower costal region with marked ecchymosis, which took 20 days to heal, and contusions on the right and left arms (dorsal), side, which healed in 10 days; while on the person of Sofronio Arreola, he found swellings on the left arm, right hand, and chest, and also swellings with ecchymosis on the forearm; which lesions healed in 10 days' treatment. Dr. Alonzo charged and received from the brothers P25.00 for medicine used, without collecting from them any professional fees because they were poor.

The maltreatment of the deceased Pablo and of the Arreola brothers by appellants Ulsano and Villanueva, (and by the accused Quinsay who has abandoned his appeal), was amply attested in court not only by Sofronio and Eliseo Arreola and by Eusebio Caculitan, a detainee who had been lodged in the prison cells of the municipal building some time before the arrival of Pablo and the Arreolas, but also by the testimonies of doctors Alvarado and Alonzo. Upon the other hand, the attempt of these appellants to attribute Pablo's death to injuries inflicted by "Big Boy" Abarriao the day previous, is belied by the seriousness of the injuries, as disclosed by the autopsy. Were the defense version truthful, the internal hemorrhage and the rupture of the urinary bladder would have caused Pablo to expire the next day, even before reaching the municipal building in the evening of September 3. At least, he would have arrived at Aparri in a condition that would have caused the police to immediately call for a physician or take Pablo to the hospital instead of the jail. Certainly he would not have been able to walk a hundred meters from the Sambrano bus station to the municipal building.

The same reason militate against the alternative defense that Fernando Pablo's death was due to a fall inside the truck where he rode with the policemen when the speeding vehicle at one time was suddenly braked to a stop to avoid hitting a carabao. Such a fall could not have inflicted such extensive injuries as the autopsy has revealed.

We agree with the Solicitor General that the conviction of Lieutenant Loreto Oliva of either murder or arbitrary detention is entirely without support. Sofronio and Eliseo Arreola, as prosecution witnesses, testified that Oliva arrived only after Pablo had been tortured by Sgt. Villanueva and policemen Ulsano and Quinsay, and already lay

dying on the floor of the police quarters. The Arreolas also asserted that Oliva inquired what happened and angrily upbraided his men for the maltreatment of Pablo (t.s.n. pp. 66 and 112), a clear indication that the torture was done without his knowledge. Eusebio Caculitan, testifying for the prosecution stated that Oliva had taken one of the Arreolas out of the police department for a separate investigation and arrived only to order some one to revive Pablo by pouring water on his face he lay sprawling on the floor (t.s.n. pp. 34-36). Oliva therefore took no hand in the death of Pablo, and there is no proof that he ordered or conspired with his men to torture the deceased of that he had any knowledge of it nor opportunity to stop the maltreatment one time. There is no support for the trial Court's finding that Oliva made the maltreatment possible, or that Oliva arrested the offended parties out of complaisance for "Big Boy" Abrriao.

Neither can appellant Oliva be held responsible for the Arreolas' detention until September 6, since Eliseo Arreola himself testified that he and his companions voluntarily went to Aparri with the patrol and that after the death of Pablo, Lt. Oliva permitted the Arreola brothers to sleep in the hall of the municipal building.

"A * * * When Milo Tan asked me, I told him that Lt. Oliva released us the previous night and asked whether we had any place wherein to sleep and we told him that we would sleep in the house of Milo Tan and that because it was already late, we slept in the municipal hall." (t.s.n. p. 3)

The extrajudicial statements of Olivia's co-accused are not competent proof against him, not being made in his presence. They are not even admissible in rebuttal because Olivia presented no evidence in his behalf.

The records of the case are thus clear that those really responsible for the death of Fernando Pablo were Sergeant Villanueva and policemen Ulsano and Quinsay. Likewise, despite in his denials, it is abundantly proved that it was the sergeant, Villanueva, who detained the Arreola Brothers and forbade them from leaving the municipal building until Pablo was buried, unsuccessfully attempting in the meantime have them subscribed to an affidavit that Pablo's death was due to accidental injuries, and that the deceased was a Huk. The sergeant would not allow the Arreolas to go home on the 4th of September, when Pablo's relatives arrived, notwithstanding the orders of Lieutenant Oliva, so that the Arreolas were in fact arbitrarily detained by him from the 4th to the 6th of September, when they were finally allowed to depart and tend to their injuries. While the brothers were occasionally permitted to leave the municipal building and eat at the house of one Milo ta, the complainants were evidently too terrorized to take advantage of these occasional sallies and meekly returned to custody even docilely stood guard over the remains of Pablo until it was buried. As pointed out by the Solicitor General in his brief.

" * * *. It clearly appears from this testimony that it was Sergeant Villanueva who continuously kept them under guard the remains of Fernando Pablo and to help prepare his coffin, by telling them to come back to the municipal building after taking their meals outside, and making sure that they came back by conducting them, and by telling them not to go until after the burial of the remains of Pablo (pp. 67, 70, 105, 106, 123, 124, 382, 390, t.s.n.) (Brief of Appellee, p. 25)

The cooperation of appellant Daniel Ulsano toward this arbitrary detention is not satisfactorily shown. The probabilities are that, as a disciplined subordinate, he left everything to his superior, Sergeant Villanueva, and anyway he could not presume to overrule the latter's orders. For this reason, we are not inclined to hold him responsible for this charge. But the record is clear that he must stand equally responsible with the sergeant for the murder of Fernando Pablo, in whose maltreatment this accused actively participated together with his co-accused Quinsay and Villanueva, as well as for the physical injuries inflicted upon the brothers Arreola.

There being no clear evidence that the maltreatment inflicted on the offended parties was for the purpose of extorting confessions or information, Art. 235 of the Revised Penal Code does not apply.

Wherefore, the conviction of appellants Jose Villanueva and Daniel Ulsano in case No. 1091-A of the Court of

First Instance of Cagayan (G.R. No. L-6033) for the murder of Fernando Pablo (with aggravating circumstance of public position utilized by the offender offset by the lack of intent to commit so grave a wrong doing as the one inflicted) is hereby affirmed. Loreto Oliva is, however, acquitted of this charge, with costs de oficio.

In the other two cases (Nos. 1092-A and 1093-A of the Court below, L-6034 and 6035 of this Court), the conviction and sentence of appellant Jose A. Villanueva, for arbitrary detention complexed with physical injuries, is likewise affirmed. But appellant Loreto A. Oliva is acquitted therefrom, with costs de oficio. Appellant Daniel Ulsano is likewise acquitted from this charge and, instead, convicted only of less serious physical injuries, aggravated by the circumstance of having taken advantage of public position (U.S. vs. Yumul, 34 Phil. 169; U.S. vs. Cerdana, 51 Phil. 393), and sentenced to six (6) months of arresto mayor.

The civil liabilities imposed by the trial Court shall be understood as imposed only upon appellants Jose Villanueva and Daniel Ulsano, in solidum with the accused Adriano Quinsay, who abandoned his appeal.

Costs in this instance shall be taxed against appellants Jose Villanueva and Adrian Quinsay. So ordered.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

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