

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. QUIRINO RAMOLETE, ANDRES ACOSTA AND FAUSTINO RABARA, ALIAS FAUS, DEFENDANTS, QUIRINO RAMOLETE, DEFENDANT AND APPELLANT.

G.R. NO. L-28108. March 27, 1974

Ponente: AQUINO, J.

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AQUINO, J.:

This is an appeal of defendant Quirino Ramolete from the decision of the Court of First Instance of Ilocos Sur, convicting him of "double murder with serious physical injuries", sentencing him to "double life imprisonment" "for the death of Severino Refuerzo and Mariano Ramolete", and ordering him to indemnify the heirs of the two victims "in the sum of P6,000".

For the lesiones graves sustained by Alfredo Rayray, appellant Ramolete was "sentenced to suffer an indeterminate penalty" ranging from four (4) months and twenty (20) days of arresto mayor to two (2) years, eleven (11) months and ten (10) days of prision correccional and to pay one-third of the costs. (Criminal Case No. 4279).

Quirino Ramolete, Andres Acosta and Faustino Rabara were charged, as coprincipals, with the murder of Mariano Ramolete and Severino Refuerzo and with frustrated murder in connection with the injuries inflicted on Alfredo Rayray. After the prosecution had rested its case, the trial court granted the demurrer to the evidence interposed by Acosta and Rabara. As to them, the case was dismissed.

At the trial Quirino Ramolete admitted that he inflicted injuries on Rayray. He denied having shot Refuerzo and his uncle, Mariano Ramolete (their fathers were cousins). In this appeal, Pio Joven, his counsel de oficio, submits that that portion of the trial court's judgment, convicting Quirino Ramolete of lesiones graves, should not be disturbed. Counsel admits that Ramolete is responsible for Refuerzo's death. But he argues that the offense was homicide and not murder. He contends that the prosecution failed to prove that Quirino Ramolete killed Mariano Ramolete.

The Solicitor General recommends that the death penalty, instead of reclusion perpetua, be imposed for appellant's killing of Mariano Ramolete. His view is that the offense committed by the appellant with respect to Rayray was attempted murder rather than lesiones graves.

So, the controverted points in this appeal are (a) whether appellant Quirino Ramolete killed Mariano Ramolete and whether capital punishment should be imposed on him for that crime; (b) whether the killing of Refuerzo should be categorized as simple homicide or as murder qualified by treachery and premeditation, and (c) whether appellant's admitted infliction of physical injuries on Rayray should be regarded as attempted murder and not lesiones graves.

The case for the prosecution rests on the testimonies of Calixta Rabot, the forty-eight-year old widow of Mariano

Ramolete, and Enriqueta Refuerzo, the fifteen-year old, Grade Six sister of the deceased victim, Severino Refuerzo. They were eyewitnesses of the assaults which had a tragic denouement for Refuerzo and Mariano Ramolete.

From their testimonies, it appears that in the evening of June 24, 1961 there was a gathering in the house of the spouses, Mariano Ramolete and Calixta Rabot, located at Barrio Paratong, Sta. Catalina, Ilocos Sur. A few relatives, neighbors and friends of the couple were celebrating the birth of a grandchild begotten by Nicasia Rabanal, their daughter-in-law (her husband, Mateo Regaspi is the son of Calixta Rabot by her first marriage). A game of cards known as briska was being played near the door of the sala. Among the players were Rayray and Refuerzo. The stakes were pieces of candy called lemon candies or vicks drops. The house was lighted by a Coleman lamp and a lantern.

At about ten o'clock, Quirino Ramolete, a twenty-four-year old farmer, came to the house, entered the sala where the game was being played and asked for candy. Refuerzo and Rayray gave him candy. After eating it, he left the house. About a minute later, he returned, accompanied by Acosta and Rabara. Each of them was armed with a gun. Quirino Ramolete stood at the door, the only ingress and egress of the house (Exh. 1). Behind him were his minions, Acosta and Rabara. They pointed their weapons at the astounded and trapped persons playing briska.

Quirino Ramolete, addressing Rayray, said: "you stand up, Alfredo, and I will shoot you". Calixta Rabot said: "Oh, my son, please don't do that". A commotion ensued. The guests inside the sala shouted simultaneously. They dispersed, scurried away and tried to hide or flee. Quirino Ramolete instructed Rabara and Acosta to go down and watch for those persons who were going to jump out of the house. Quirino shot Refuerzo while the latter was jumping through the window into the batalan or porch. He shot Mariano Ramolete who was in the batalan. He also shot Rayray downstairs. Refuerzo and Mariano Ramolete died on that same night. Rayray was wounded.

Doctor B. C. Eduarte, a junior resident physician of the Ilocos Sur Provincial Hospital at Vigan, found that the deceased seventy-year old Mariano Ramolete, sustained (1) a gunshot wound in the left buttocks without any exit and (2) a through-and-through gunshot wound of entry in the abdomen with an exit on the flank or right iliac region. The second wound was fatal. His findings are quoted below:

"Wound, gunshot, left buttocks at upper outer quadrant about one centimeter in diameter directed medially and downwards.

No wound of exit.

Wound, gunshot, abdomen thru and thru. Entrance at anterior superior iliac spine, one centimeter in diameter directed medially and slightly upwards. Exit.— right iliac region, a slit 2 centimeters long.

Autopsy Findings. — Small intestines perforated nine (9) times and mesentery three (3) times. Hemorrhage, severe secondary.

Cause of Death. — Shock with hemorrhage, severe secondary to gunshot wound of abdomen."

Doctor Moises R. Arce, the rural health physician of Sta. Catalina, who performed a postmortem examination on the body of the deceased twenty-year old Severino Refuerzo, found that he sustained through--and-through gunshot wounds. There were three gunshot wounds of entry on his back and three corresponding wounds of exit on the front as shown below:

"1. Gunshot wound, thorax, back, right, between 10-11 costal ribs, .3 centimeter diameter, 1-1/4 centimeter from spinal column, going inward medially, smashing the liver and blood vessels extensively to the right side, and come out from gunshot wound No. 4.

"2. Gunshot wound, back, left, at the level of the navel, 3-3/4 centimeters from spinal column, .8 centimeter diameter, going inward and come out from gunshot wound No. 5. Organ involved intestine.

"3. Gunshot wound, back, buttocks, right, 3- 3/4 centimeters from coccyx horizontally, going inward and come out from gunshot wound No. 6, .9 centimeter diameter.

"4. Gunshot wound, thorax, front, left-side, 2 centimeters from the xiphoid process, 1-1/2 centimeters in diameter, piercing the 6th costal cartilage.

"5. Gunshot wound, abdomen, front, left at the navel line, 9-1/2 centimeters from umbilicus, 1 centimeter in diameter.

"6. Gunshot wound, hypogastric region, left along the pubic tubercle, 2 centimeters in diameter, 1-1/2 from root of penis. No organ involved.

Cause of death — Internal and external hemorrhage due to the above-mentioned wounds Nos. 1 to 6." (Exh. F).

Doctor Arce concluded that the assailant was behind Refuerzo when he was shot. Inasmuch as the three wounds of entry have almost the same diameter, they were probably inflicted by one gun only, possibly a thirty-caliber rifle.

Rayray, a twenty-one year old farmer, suffered gunshot wounds on the arm and leg (Exh. D). He was hospitalized for more than one month and incapacitated in his work as farmer for one year. He spent one thousand pesos for hospitalization and medical treatment in addition to suffering a loss of income in the amount of four hundred pesos.

Appellant Quirino Ramolete said that, after leaving the house of Mariano Ramolete, he slept in the house of Francisco Ramolete at Barrio Sinaban, Sta. Catalina. On the following morning, he went to the house of Andres Acosta. Then, he hid in the ricefields. On June 30, 1961 he and Andres Acosta boarded a bus and went to Barrio Sta. Cruz, Ballesteros, Cagayan. He stayed in the house of Jacobo Olanino. On July 27, 1961 he was arrested by a Constabulary sergeant.

In his statement dated July 31, 1961 before Corporal Jaime C. Foronda of the Constabulary detachment at Tamag, Vigan, he stated that on the night of June 24, 1961, while he was in the house of Mariano Ramolete, he shot Alfredo Rayray with his paltik gun. He affirmed that on that occasion Acosta shot Mariano Ramolete while Rabara shot Refuerzo. The two used forty-five caliber pistols (Exhs. A to B-2, pages 31 to 36 of the Record.)

However, in his testimony he gave a different version. He said that Rabara shot and killed Mariano Ramolete. He was non-committal as to who shot Refuerzo.

What was the motive for the assaults? On that point, there is a hiatus valde deflendus in the prosecution's evidence. Motive places the case in proper judicial perspective. The record yields some intimation as to the motivation of Quirino Ramolete in killing Refuerzo and in wounding Rayray. About three months before the killing, Refuerzo stabbed one Patricio Ragil, a friend of Quirino Ramolete and Acosta. Rayray was implicated in that incident. Quirino Ramolete testified against Rayray in that case (No. 23, Exh. A-2; No. 9, Exh. D; Statements of Daniel Refuerzo and Miguel Rapanut, pages 10 to 13 of the Record). So, it seems that Quirino Ramolete had a score to settle with Refuerzo and Rayray.

On the other hand, Quirino Ramolete denied that he had any misunderstanding with his uncle, Mariano. Quirino said that Mariano even invited him to play briska in Mariano's house. Calixta Rabot declared she did not know why Quirino Ramolete should kill Mariano Ramolete. She said that, whenever Quirino went to their house, he dined with them.

One curious piece of evidence presented at the last hearing by appellant Quirino Ramolete was an alleged "dying declaration" of Mariano Ramolete, taken by the thirty-nine year old Corporal Cirilo Ducay of the Constabulary detachment at Tamag, Vigan in the early morning of June 25, 1961. He said that he took the statement of Mariano Ramolete near the kitchen of his house while Ramolete was on the point of death. Corporal Laguesma was present. The declaration is in English in the handwriting of Ducay. It was witnessed by the Chief of Police and supposed to have been thumbmarked by Mariano Ramolete with his blood (Exhibit 4, page 17 of the record). The typewritten copy was authenticated by Justice of the Peace Pedro R. Arce. Mariano Ramolete was asked by Ducay:

"Q. Who shoot (sic) you? — A. I don't know only Querino (sic) Ramolete who was holding a gun who come inside my house and his companion whom I don't know his name" (sic). (Page 17 of the Record).

Ducay propounded the questions in English, translated them into Ilocano and translated into English Ramolete's answers. After Mariano Ramolete had made his declaration, Ducay held Ramolete's right thumb, "placed it in his (Ramolete's) blood" and affixed his thumbmark at the bottom of the paper containing the dying declaration as written in English by Ducay. The thumbmark is reddishbrown. Ducay is a native of Santa Maria, Ilocos Sur. He said that he wrote the ante-mortem statement in English because that is the language used in court.

The trial court, in not attaching any probative value to the "dying declaration" and to Ducay's testimony, observed that Mariano Ramolete declared that he did not know his assailant because he was shot in the back. He did not see the aggressor. Moreover, the prosecution witnesses positively identified the culprit as Quirino Ramolete.

The "dying declaration" has an ambiguous, double meaning. While the declarant said that he did not know who was his assailant, in the same breath he pointed to Quirino Ramolete as the gunwielder who, with a companion, entered his domicile. It may be implied from the "dying declaration" that Quirino Ramolete had complicity in the killing of Mariano Ramolete.

Finally, for a complete view of the case, it should be stated that, according to Quirino Ramolete's version, gunshots were also fired under the batalan or porch of Mariano Ramolete's house (6 tsn December 13, 1966).

As already stated, appellant's counsel admits that Quirino Ramolete killed Refuerzo and shot Rayray. The trial court correctly viewed, as a "sign of guilt", Ramolete's flight to Ballesteros. It observed that the two prosecution witnesses, Enriqueta Refuerzo and Calixta Rabot, were positive in their identification of Quirino Ramolete, as the malefactor who shot Refuerzo and Mariano Ramolete. It commented that the defense failed to impair their credibility in spite of rigid cross examination. On the basis of their testimony, the trial court was convinced that Quirino Ramolete killed Refuerzo and Mariano Ramolete.

Appellant's counsel, in support of his contention that Quirino Ramolete did not kill Mariano Ramolete, quotes in his brief a portion of Enriqueta Refuerzo's testimony that she did not see Quirino firing at Mariano. However, counsel omitted Enriqueta's subsequent declaration that she knew "that Quirino Ramolete fired at her brother", Severino, and at "Mariano Ramolete" (16 tsn April 3, 1963). An impartial perusal of Enriqueta's entire testimony reveals that she categorically testified that Quirino Ramolete killed Mariano Ramolete (4 and 7 tsn April 3, 1963).

Appellant's counsel impugns the trial court's finding that Calixta Rabot testified that Quirino Ramolete shot Mariano Ramolete. Counsel cites her declaration that, because a wall separated her and her husband, Mariano Ramolete, she did not see Quirino Ramolete shooting Mariano. As shown below, her declaration was quoted out of context.

Whether the killing of Refuerzo was treacherous and whether Quirino Ramolete killed Mariano Ramolete may be deduced from the pertinent portions of the testimonies of the prosecution witnesses quoted hereunder:

Testimony of Enriqueta Refuerzo

"Q. You said Quirino Ramolete killed some, do you know *** who were those that were killed? — A. *** Severino Refuerzo and Mariano Ramolete, sir. (4 tsn April 3, 1963).

Q. And when Quirino Ramolete fired his gun what happened next? — A. *** There was someone who was killed.

Q. Who was that that was killed? — A. Severino Refuerzo and Mariano Ramolete, sir.

Q. How about his two companions, Andres Acosta and Fausto Rabara, how far were you to them? — A. They were farther to me than Quirino Ramolete.

Q. And what did they do with their guns that they were holding? — A. They fired their guns, sir.

Q. Can you tell the Court the direction where they fired their guns? — A. Quirino Ramolete pointed his gun to Severino Refuerzo. I don't know to whom the other pointed their guns. (7 tsn).

Q. And when you heard a noise which seems that someone was coming up, you made a conclusion that Quirino Ramolete was going up? — A. No, sir. He talked when he came up and said, "Stand up, Alfredo, and I will shoot you." (14 tsn).

Q. When Quirino Ramolete uttered those words to Alfredo Rayray, what did Alfredo Rayray do? — A. They went out because they were afraid, sir. *** Our companions including Severino Refuerzo went out, sir. *** When Severino Refuerzo jumped from the batalan, it was at that moment when Quirino Ramolete fired at him.

Q. How far were you when Quirino Ramolete fired at Severino Refuerzo? — A. I was about one meter from them, Your Honor. I was at the doorway. (15 tsn).

Q. And neither did you see also Quirino Ramolete fire at Mariano Ramolete? — A. No, sir. When Quirino Ramolete fired at Severino Refuerzo, Mariano Ramolete was at the batalan.

Q. So, all that you know is that Quirino Ramolete fired at your brother (Refuerzo) and to Mariano Ramolete? — A. Yes, sir. (16 tsn).

Court: — Q. Are you sure that it was Quirino Ramolete who fired at your deceased brother? — A. Yes, Your Honor, I saw him. (23 tsn).

Q. So you saw Quirino Ramolete pointing his gun? He was not particularly trying to shoot your brother because all of you were scampering, is that right? — A. I was sure, sir. When my brother jumped to go down, it was then that he, Quirino Ramolete, pointed his gun at him. (24 tsn).

Q. To where did you ran? — A. When we ran away, Severino Refuerzo jumped out of the window west of the door. (8 tsn March 15, 1966).

Q. Then what happened? — A. When we had been running, scampering towards any direction, I remembered Severino Refuerzo, and when I looked, that was the time when I saw Quirino Ramolete shot him (9 tsn).

Q. What was the position of Severino Refuerzo when he was fired at by Quirino Ramolete? — A. He was in the act of jumping over the window so he could go to the batalan because that is where the stairs were. (10 tsn).

Q. How far was Quirino Ramolete when he fired at Severino Refuerzo? — A. It was near, sir. (The witness indicating a distance of about two and a half meters).

Q. Afterwards, what did you do and what happened next? — A. When there was no more firing, I went out and I saw Severino Refuerzo and Mariano Ramolete on the batalan and Mariano Ramolete was at his head.

Q. What was their condition? — A. Severino Refuerzo was then dead and Ramolete was agonizing. (10-11 tsn).

Q. After you heard Quirino Ramolete say that he will shoot Alfredo Rayray, you ran inside the room where Nicasia Rabanal was, is it not? — A. Not immediately, sir, because I stood up near the door where he was and that was the time when he fired at Severino (Refuerzo).

Q. Everybody who was inside the house had to pass that door where Quirino Ramolete was at that time? — A. Yes, sir. (16-17 tsn).

Testimony of Calixta Rabot

Q. When did your husband, Mariano Ramolete, die? — A. He died two years ago, sir.

Q. What was the cause of his death? — A. He was shot by Quirino Ramolete, sir. (tsn).

Q. And about you, how far were you in relation to Quirino Ramolete? — A. I was not very far, sir. He was close to me.

Q. How close was it? Will you indicate the distance from your place? — A. A distance of about one yard, sir.

Q. What else happened when the players ran away? — A. Quirino Ramolete fired his gun, sir.

Q. What else happened? — A. He shot Severino (Refuerzo) and my husband, Mariano (Ramolete), sir. (4-5 tsn April 4, 1963).

Q. And you said that Severino Refuerzo ran and was fired at. Do you know or did you see the one who fired at him? — A. Quirino Ramolete, sir.

Q. And where was your husband at the time when Quirino Ramolete fired at Severino Refuerzo? — A. He was in the batalan, sir.

Q. But you did not actually see your husband being fired upon, is it not? — A. As soon as Severino Refuerzo fell prostrate, my husband also fell. (7-8 tsn April 4, 1963).

Q. But your husband was in your batalan and between the batalan and where you were was a wall? — A. Yes, sir. The wall is here and here is where my husband fell (the witness indicating the walling to be between her and the place where her husband fell). (10 tsn).

Q. As a matter of fact, while you were near Quirino Ramolete, you did not see him in the batalan and you only knew that he was there when your husband was moaning? — A. Yes, sir, because when Severino Refuerzo fell my husband fell also. (10 tsn).

Q. x x x You mean to say that what you had stated that only Quirino Ramolete fired at Severino Refuerzo and your husband is not true? — A. What I saw Quirino Ramolete fired at Severino Refuerzo and my husband. (Id. 13 tsn.).

Q. Can you tell the Court who was the accused who shot your husband? — A. Quirino Ramolete, your Honor. (18 tsn).

Q. When you saw Quirino Ramolete shoot your husband, was your husband inside the house? — A. He was at the batalan, your Honor. (18 tsn).

Q. When you were at the doorway of the kitchen that was the time when he shot your husband? — A. Yes, sir.

Q. And you were very near the place where your husband was shot? — A. I was close to him, your Honor.

Q. How near were you from him? — A. From here to there, your Honor (the witness indicating a length of two meters).

Q. From the place where Quirino Ramolete shot your husband, how far was your husband to Quirino Ramolete

at the time he was shot? —A. He was very close, your Honor. He was here while Severino Refuerzo and my husband were here dead (the witness indicating (where) she, the witness, was from the two deceased Mariano Ramolete and Severino Refuerzo).

Q. When you said Quirino Ramolete shot Severino Refuerzo and your husband, were they shot simultaneously? — A. As soon as Severino Refuerzo fell prostrate, my husband also fell, your Honor.

Q. Did Severino Refuerzo and your husband fall to the ground when they were shot? — A. They fell on the front of the batalan, your Honor.

Q. So they were both dying and killed on the batalan? — A. Yes, your Honor. (18-199 tsn).

Considering the foregoing oral evidence, appellant's claim that he did not kill Mariano Ramolete is not borne out by the record.

A close scrutiny and dispassionate appraisal of the testimonies of Calixta Rabot and Enriqueta Refuerzo confirm the trial court's finding that they witnessed the shooting of Refuerzo by Quirino Ramolete. However, there is a palpable nebulousness in their testimonies as to how Mariano Ramolete was shot by Quirino Ramolete or how Mariano received the fatal gunshot wound of entry in the abdomen whose corresponding exit wound was in the left iliac region and how the other gunshot wound in his buttocks was inflicted.

Appellant's counsel de officio contends that the killing of Refuerzo by Quirino Ramolete was not attended with treachery because "no deceit and trickery" were employed. He argues that "while it is true that the wounds of Severino Refuerzo were at his back", there was no treachery since he "was not waylaid or trapped" pursuant to "a preconceived plot by his aggressor". Counsel says that there is no proof that there was treachery at the inception of the attack and that there is no showing that Quirino Ramolete, in shooting Refuerzo, was not exposed to any risk which would "require him to put up a defense". Hence, while admitting that Quirino Ramolete killed Refuerzo, counsel concludes that the killing was only homicide.

These contentions are untenable. The trial court found that the killings of Refuerzo and Mariano Ramolete were attended with treachery because the wounds which they sustained were on the back. The Solicitor General agrees that treachery was present because the wounds on the back indicate that the victims were shot from behind.

A conscientious review of the circumstances surrounding the killing of Refuerzo supports the finding that there was treachery. Appellant Quirino Ramolete first came to the house unarmed and ostensibly with pacific intentions. As it turned out, his purpose was to reconnoiter or to case the house and ascertain whether the intended victims were present and unarmed. That conduct of Quirino Ramolete amounted to "trickery or deceit". He dissembled and camouflaged his murderous intention by giving the inmates of the house the impression that he would not do them any harm.

Having satisfied himself that the place and time were propitious for the execution of his diabolical plan, he left the house and fetched his confederates, Acosta and Rabara. After equipping themselves with deadly weapons, they entered the house to put into effect their felonious design. They surprised the persons inside the house particularly Refuerzo. Ramolete strategically stationed himself near the door, "the only exit in the house". (8, 17 tsn March 15, 1966).

Refuerzo must have instinctively felt that he was one of the objects of Quirino Ramolete's vindictive hostility in view of the prior incident regarding Ragil, Quirino's friend. Inasmuch as Refuerzo was unarmed and utterly defenseless, he tried to escape through the window. Quirino Ramolete shot him in that situation. Refuerzo fell into the batalan with three serious gunshot wounds of entry on his back. Treachery (alevosia) was manifest in that manner of assault because it insured the killing without any risk to the assailant (Par. 16, Art. 14 of the Revised

Penal Code).

An attack made on a person who was running away and who was completely defenseless was held to be treacherous (*People vs. Logrono*, 96 Phil. 975; Cf. *People vs. Sawit*, 100 Phil. 507, 512). Where the attack was made with firearms and the victims were unarmed and with no means of defense or escape because they were trapped inside a house, the assault in that situation was held to be treacherous (*People vs. Hairal and Tajiril*, 97 Phil. 966).

As to the culpability of appellant Quirino Ramolete for the death of Mariano Ramolete, the Court is not convinced that the killing was attended with treachery. As already noted, although the prosecution had established Quirino Ramolete's responsibility for the killing of Mariano Ramolete, it failed to establish clearly the circumstances surrounding the killing. Consequently, the killing of Mariano Ramolete should be characterized as homicide aggravated by dwelling. He was killed in his own house without having given any provocations (Par. 3, Art. 14, Revised Penal Code).

But dwelling is not aggravating in the killing of Refuerzo since he was a mere visitor in Mariano Ramolete's house (Cf. *People vs. Basa*, 83 Phil. 622, citing 1 Viada, *Codigo Penal*, Cuarta Edicion, page 338 and *People vs. Celespara*, 82 Phil. 399).

The trial court held that there was no abuse of superiority because only Quirino Ramolete committed the three offenses. It is not necessary to pass upon that point and upon its finding that nocturnity was also aggravating. Treachery absorbs abuse of superior strength and nocturnity.

It is alleged in the information that the killings were also qualified with premeditation. While it is manifest that the assaults were not perpetrated on a momentary impulse and that there must have been some planning and deliberation, yet it cannot be held that there was premeditation conocida. As correctly observed by the trial court, the evidence does not show (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination and (c) an appreciable interval of time between the determination and the execution of the crime that was sufficient to allow him to reflect upon the consequence of his act and to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) if he desired to hearken to its warnings (*People vs. Fuentesuela*, 73 Phil. 553; *U.S. vs. Gil*, 13 Phil. 530, 547).

How to do justice in the case involving Rayray is rendered difficult by the contradictory and confusing evidence in the record. As already noted, Quirino Ramolete was charged with frustrated murder for having assaulted Rayray. The lower court convicted him of lesiones graves. His counsel in this appeal prays that that judgment be affirmed. The Solicitor General recommends that he be convicted of attempted murder.

Rayray himself, as an ambivalent witness, was not helpful in dissipating the discrepancies in the testimonial evidence. Listed as a prosecution witness for being an offended party, he testified for the defense. Obviously, he must have been under heavy pressure to sabotage the prosecution of his assailant or assailants.

Two days after the shooting, Rayray signed a statement before Constabulary Corporal Rodolfo Purisima while confined in the hospital. It was sworn to before the justice of the peace of Vigan. Rayray said that Quirino Ramolete shot him in the arm while he (Rayray) "was at the stairs". Then, Acosta shot him in the leg. He collapsed. (Exh. D).

Rayray, testifying as a defense witness more than five years after the tragic occurrence, said on direct examination that he had an altercation with Quirino Ramolete in the house of Mariano Ramolete during the card game. He told Quirino: "I have been losing and it is only my first time to win this game, 'yot' ". Quirino went out. Rayray followed Quirino. Then, there was a gunshot and Rayray "felt a stinging pain" in his body. He was bleeding. He

ran and went downstairs, where he collapsed.

On cross-examination, Rayray said that his statement before the justice of the peace (Exh. D) was fabricated by the late Mayor Jose Rapisura. He said that he was intimidated by the mayor and by Policeman Racsa. Rayray categorically testified that Quirino Ramolete shot him (36 tsn November 22, 1966). A prosecution witness testified that Rayray was shot downstairs or when he went down (17 tsn April 3, 1963; 10 tsn March 15, 1966).

Quirino Ramolete's version on the witness stand was that, after his altercation with Rayray, the latter gripped his (Rayray's) gun and rushed at him (Ramolete), saying: "Why do you have bad feelings?" Quirino shot Rayray twice in the arm. The trial court did not accord any credence to Quirino's story.

After weighing carefully the evidence, the Court concludes that the shooting of Rayray by Quirino Ramolete was attempted homicide. Appellant Ramolete intended to kill Rayray but he was not able to perform all the acts of execution necessary to consummate the killing. The wounds suffered by Rayray on his arm and leg did not affect his vital organs. They were not mortal. There was no treachery because Quirino Ramolete first warned Rayray that he would be shot. No modifying circumstances can be considered in the assault against Rayray.

WHEREFORE, as to the killing of Severino Refuerzo, the judgment of the trial court is affirmed (Arts. 64[1] and 248, Revised Penal Code), with the modification that the indemnity should be twelve thousand pesos. The penalty should be designated as reclusion perpetua. The term "life imprisonment" is not correct (People vs. Mobe, 81, Phil. 58).

For the killing of Mariano Ramolete, appellant Quirino Ramolete is guilty of homicide aggravated by dwelling (morada). He is sentenced to an indeterminate penalty ranging from twelve (12) years of prision mayor to eighteen (18) years of reclusion temporal and to pay the heirs of the victim an indemnity of twelve thousand pesos.

In the third case the lower court's judgment is also modified. Appellant Quirino Ramolete is convicted of attempted homicide as to Alfredo Rayray instead of lesiones graves. There being no modifying circumstances, he is sentenced to an indeterminate penalty ranging from six months of arresto mayor to three (3) years of prision correccional and to indemnify Rayray in the sum of one thousand four hundred pesos (P1,400) to cover his medical expenses and loss of income. Costs against the appellant.

The maximum duration of forty years fixed in article 70 of the Revised Penal Code applies to the service of the three sentences.

SO ORDERED.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Esguerra, Fernandez, and Muñoz Palma, JJ., concur. Teehankee and Antonio, JJ., concur in the result.

Makasiar, J., took no part.

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