

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN MARTINEZ GODINEZ, DEFENDANT AND APPELLANT.

G.R. No. L-12268. November 28, 1959

Ponente: BARRERA, J.

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BARRERA, J.:

Juan Martinez y Godinez was: charged in the Court of First Instance of Manila (in Criminal Case No. 35737) with the crime of murder, for the killing of Spanish Consul Horencio Millaruelo. After trial, he was found guilty of the crime charged, and sentenced to suffer the penalty of reclusion perpetua, and to pay indemnity in the sum of P6,000.00 and costs. From this judgment of conviction, he has appealed to us.

The records disclose that in the morning of May 4, 1956, at about 11:20 o'clock, while Carmen Fernandez and Carmen Suarez were at their room in the Spanish Consulate at Ayala Building, Manila, they heard a gunshot. Moments later, while trying to locate where the shot came from, they saw appellant, with hands on his head, coming out of his room. He told them that Consul Millaruelo was shot and badly hurt, and asked them to call a doctor. Carmen Fernandez rushed out to fetch a doctor. In the meantime, appellant kept going; in and out of his room. Later, he told Carmen Suarez to call up the Spanish Embassy to inform it of the occurrence. Shortly there after, Dr. Esperidion Tiongson arrived. He tried to revive the victim but his efforts proved futile, because hardly, a minute later the victim died.

Having; been informed about the incident, Emillo Blanco and Capt. Joaquin Valero of the Spanish, Embassy hastened to the scene; of the incident and there found the victim already dead. Valero found on appellant's table a piece of paper (Exh. BB), containing certain computations, in the handwriting of the deceased among which was the figure "P43,430.84".

Minutes later, at about 12:16 o'clock past noon, Sgt. Capistrano, Patrolman Mallare, and Detective Aguirre of the Manila Police Department, also arrived at the scene to conduct an investigation of the incident. Appellant admitted to them that it was he who had accidentally shot the deceased with his .45 caliber pistol (EXh. K). Sgt. Capistrano found the pistol lying on top of appellant's table, fully cocked and loaded with 3 rounds of ammunition (Exhs. K, K-1, and K-2) inside its magazine. Inside its chamber, was one live bullet. "They also found an empty .45 caliber cartridge shell (Exh. N) near the victim's body, and a slug (Exh. C), on the northeast corner of the room. Said empty cartridge shell, slug, and ammunitions were thereafter submitted for examination and testing to Ballistics Chief, Simeon Molina, of the MPD. In his report (Exh. Y), Molina stated that the pistol was mechanically sound, and that when fired, it ejects a bullet in a straightforward direction; and that when cocked, it does not go off, even when dropped from 6 inches to 1 yard on hard material. On May 5, 1956, Sgt. Capistrano took down in writing appellant's statement (Exh.Q) regarding the incident.

According to Dr. Mariano de Lara, Chief Medical Examiner of the MPD, the wound produced by the bullet which hit the victim traversed his left chest, obliquely coming downward out of his back; and that the gun shot pierced the victim's heart completely, from front to back, passing through the spleen. (Exh. E).

Appellant claims that the shooting of the deceased Millaruelo was purely accidental. He relates that: In the morning of May 4, 1956, between 11:00 and 11:30 o'clock he was in his room in the Spanish Consulate. The deceased entered the room, as appellant wanted to show him some papers, and took a chair, moving it in front of appellant's table. Appellant, who was seated on his chair behind his table and facing the deceased, stood up, pushing back his chair, so that he could open his center drawer. At that time the pistol (Exh. K) was inside the drawer on top of the papers which he wanted to show the deceased, which papers consisted of letters with money attached to them and which were about 2 1/2 inches thick. In order to get said papers, appellant lifted the pistol with his right hand such that it was in an unnatural position, that is, he was holding it laterally, while trying to get the papers from the drawer with his left hand. While in that position, the pistol exploded, hitting the deceased on the chest.

We do not find convincing appellant's explanation of the victim's death admittedly caused by him. Appellant declared that the safety lock of the pistol was set in the day before the incident and that nobody had touched it. But he failed to satisfactorily explain why it was fully cocked at the time of the incident. His claim that it was always cocked from the time he got its license in 1947 as a precaution against an emergency is incredible. As the trial court correctly observed, appellant had no reason for so doing as he had admitted that he had no enemies who might make an attempt on his life. Said claim is disproved by the testimony of his own witness and friend Salvajuaegui who declared that on 3 occasions when he visited appellant at the Consulate in April and May, 1956 prior to the incident, he saw appellant's pistol but the same was never cocked. It is likewise disproved by the testimony of defense witness Concepcion Torres who stated that on certain occasions when appellant requested her to get some papers from the drawer, appellant told her that the pistol was not loaded. He admitted that had it not been fully cocked, it would not have discharged even by a slight touch. Appellant knew that the pistol had 3 safety devices for the purpose of preventing its accidental firing; and that one had to press the safety grip and press the trigger beyond the slack point, exerting a pressure of 4.8 pounds, in order to fire. In spite of said safety devices, appellant relates that when he lifted the pistol, it discharged, but could not explain why it did fire, notwithstanding the fact that, according to him, he had handled several kinds of pistols before. It is significant that the pistol was subjected to a test by Ballistic Chief Molina and was found to be mechanically sound, and that even if fully cocked and dropped on a hard material, from 6 inches to 1 yard, it will not go off.

It was likewise shown that it was appellant's habit whenever he took some papers from his drawer, to simply push aside the pistol without lifting the same. He admitted that it was not necessary for him to lift the pistol to get the papers he wanted to show to the deceased, that is, that he could have pulled out said papers even if the pistol was on top of them. He, likewise admitted that he could have lifted the pistol without placing his forefinger on its trigger. Yet significantly on this occasion, he did exactly the opposite of all these.

At this juncture, it is interesting to note that appellant did relate several inconsistent accounts of the incident, which further indicate the improbability of his claim of accidental shooting. In his statement to Sgt. Capistrano (Exh. Q), he said that when he lifted the pistol with his right hand to get hold of the papers underneath it with his left hand, it exploded. But when he was interviewed by Patrolman Valentin, Francisco Palisoc, and Jose Mascañan, who went to the scene of the shooting right after its occurrence, he declared that his pistol went off after he had placed it on his table. He also stated that he was standing when the pistol-fired, explaining in this connection that he had to stand, in order to open his drawer. Yet, he had made a previous statement that he was sitting on his chair when the pistol exploded.

Finally, as observed by the trial court, if it is really true that the shooting was accidental, appellant should have rushed to the aid of the deceased and embraced and comforted him. He did not. Instead, he strangely cocked his pistol again (it was found so cocked immediately after the occurrence) as if intending to use it anew, and stood by

his table looking at the deceased fall backward.

All the foregoing circumstances, to our mind, disprove appellant's claim that his shooting of the deceased was purely accidental, and convince us that it was done intentionally.

Appellant did not lack motives to eliminate the deceased. It was duly established by the prosecution that as chancellor of the Spanish Consulate since 1947 up to the time of his dismissal on May 5, 1956 (Exh. KK), he took charge of the consulate as general manager, treasurer, and disbursing officer. The different consuls under whom he served had full trust and confidence in him that, whenever he prepared balance sheets, they never bothered to take inventory of the cash in his safe. In fact appellant admitted that he alone had the key to the consulate safe since 1941.

This reliance reposed on him by his superiors induced appellant to believe that he was indispensable in the consulate, and that he had, therefore, more right to occupy the position of acting consul, whenever the titular consul was on leave. When Consul Jose Agullo went on leave on April 7, 1956, appellant naturally expected that he would be designated as the acting consul. But he failed to get the designation, and so expressed his resentment and disgust. During a conversation with Consul Agullo and the deceased, appellant told them of his pretended right to be appointed as acting consul. The deceased, however, answered in a friendly manner that no such right existed. Upon learning that the deceased was to be designated as acting consul, he wrote a letter dated February 17, 1956 (Exh. CC) to his former chief, Consul Nicolas Martin Alonzo, stating inter alia, that the designation of the deceased was a "pisoton" (injustice) to him. Said letter, in part, reads:

"Creame Sr. Alonzo, que, lo que vengo pidiendo de hace anos, lo creo de justicia y equidad, por lo que he de recordarle interceda en mi favor ante la Seccion correspondiente para mejorar con ella mi situacion, ya que en esta, de dia en dia el costo de yida va , elevandose al extremo de tener que incurrir en privaciones para poder hacer frente a todas las necesidades de familia.

"Como Vd. bien saber vengo prestando servicio sin fallar un solo dia y en mas de una ocasi6n no se guarda a mi persona consideration alguna. Ahora mismo me entero de los planes del Sr. Agullo, quien al parecer desea ausentarse un par de meses de vacaciones y tengo entendido que el Sr. Embajador, designara al Sr. Millaruelo, para hacerse cargo durante su ausencia—No cree Vd. que esto es un pisoton que de nuevo me dan, ya que anteriormente, lo fui por el Sr. Beltran y por el Sr. Santiago de Concha, cuando Vd. realizo se dara debida justicia a mi persona. * * *." (Italics supplied.)

In fact, appellant testified that there was no reason at all for bringing another man from outside, when the work in the consulate was going on smoothly with him in the office.

It appears that the deceased, being a military man and a lawyer, was very strict, straightforward, and exacting in his official duties. He usually wanted to run things by himself in his own way, intervening even in minute details in the office. Before he took over officially as acting consul on May 2, 1956, he started visiting the consulate since April 7 in order to familiarize himself on how it was being run. Appellant was, as a result, disappointed and disgusted, especially when the deceased undertook to change the office procedure. For such change of procedure, more particularly in the keeping of consulate funds, would mean the inevitable discovery of appellant's admitted misappropriation in the sum of P43,334.92 which he had applied to his personal use without the knowledge of his superiors since 1949, a procedure which the previous consuls never instituted at all. And it is evident that appellant's misappropriation had been discovered by the deceased. This is shown by Exhibit HH, a page of appellant's desk calendar on which are written in appellant's handwriting the following: "Millaruelo—P43,000 para depositar en Embajada", as well as by Exhibit BB, a sheet of pad paper found on top of appellant's desk on the day of the occurrence, containing computations in the handwriting of the deceased among which is the figure "P43,430.84" the amount of appellant's shortage. As the trial court said:

*** En primer lugar, el no haber (Millaruelo) firmado el balance general de 30 de Abril, habiendo firmado el balance de sellos, demuestra que el balance era falso en cuanto hacia constar la actual existencia en caja de los fondos desfalcados. En segundo lugar, la anotacion que el acusado raismo puso en su calendario de mesa, que dice "P43,000 para entregar embajada," revela que habia una orden en tal sentido que solo podia haber emanado, en las circunstancias del caso, de Millaruelo. Carece de importancia el que esa anotacion aparece puesta en la hoja del calendario correspondiente al 7 de Abril, pues esta admitido que el acusado tenia la costumbre de poner esas anotaciones en las hojas de su almanaque de mesa sin tener en cuenta la fecha que llevaba la hoja donde ponia una anotacion particular. En, tercer lugar, el mismo testigo de la defensa, Profesor Montiel, declara haber oido a Millaruelo decirle al acusado hacia el mediodia del 2 de Mayo, cuando estaban frente a las oficinas del National City Bank, que "queria aquello arreglado pronto," y el mismo acusado admite, en su declaracion escrita, cuidadosamente preparada del 7 de Mayo y entregada al embajador espanol: 'El dia 29 de Abril me dijo (Millaruelo) que queria todo arreglado en fecha 30' (Abril). Cuando Millaruelo dijo que 'queria tbdo arreglado' tenia que referirse principalmente a los fondos que faltaban en la caja del consulado y que no eran moco de pavo. En verdad no consta que hubiese otra cosa que 'arreglar pronto' excepto la reposicion de aquellos fondos, porque los sellos consulares estaban en orden,"

It was established that on May 2, 1956, when the deceased assumed his official duties as acting consul, he and appellant had a violent discussion in appellant's room regarding the accounts of the latter. Defense witness Carmen Fernandez declared that she overheard the deceased say to appellant: "Eso no es mi cuenta". (That is not my lookout). Being a strict disciplinarian, the deceased did exactly what appellant was trying to avoid, namely, the physical inventory of the consulate funds, of which he was responsible. All of these factors and events must have influenced the thinking and behavior of appellant on the morning of the fatal day and overwhelmed him completely. On this point, the trial court stated:

"El acusado habia Uegado a nn punto de desesperacion: los repetidos atropellos, 'pisotones', de que era objeto por parte de sus superiores, con las repetidas frustraciones de su deseo de interinar como jefe del consulado y de obtener atimento de sueldo, apesar de los meritorios aaios de servicio y capacidad que pretende haber rendido y demostrado; la designacion de Millaruelo como consul interino que hacia imposible que el acusado pudiera continuar ocultando su desfalco; la negativa de Millaruelo de actuar de encubridor del desfalco cuando se nego a firmar al balance general de Abril hasta que el acusado tuviera 'arreglado todo el dia 30' (de Abril) reponiendo los fondos desfalcados, y el cambio radical de los procedimientos del consulado que hirieran al acusado en su mal entendido amor propio con la, consiguiente perdida de prestigio ante los empleados del consulado que habian venido considerandole como el factotum en aquella oficina, y la perspectiva de la expulsion del servicio, la deshonra y la prision, ante la imposibilidad de cubrir el desfalco descubierto por Millaruelo: Todo ello constituia movil suficiente para llegar al crimen utilizando como victima a la persona que mejor venia a naano porque era la que vino a dar al traste con sus bien calculados planes y habia provocado ademas su odio por sus maneras autoritarias, su negativa a encubrir el desfalco y sus apremiantes ordenes de "tenerlo todo arreglado" es decir, haber restitucidn completo, 'ei dia 30 Abril'".

But appellant contends that the existence of a motive alone would not be proof that he actually committed the offense. In support of his contention, appellant invokes the decision of this Court in the case of *People vs. Marcos, et.al.* (70) Phil., 468) wherein it was stated that "the existence of a motive alone though perhaps an important consideration, is not proof of the commission of the crime, much less of the guilt of the defendants-appellants."

The principle invoked is not applicable to the ease at bar. It relates to cases where there is no other evidence as to the identity of the offender. Motive alone cannot serve as the link between the offense and the person suspected to have committed the offense. Hence, in the *Marcos* case, the accused were acquitted because while the possible motive of appellants to desire the death of the victim Nalundasan was established, the identity of the person responsible for his death was not satisfactorily proved. But here it is not disputed that the deceased died as a consequence of a bullet wound which was discharged by appellant from his .45 caliber pistol (Exh. K). The

existence of a motive on the part of appellant becomes decisive in determining the probability and credibility of his version that the shooting was purely accidental.

There was treachery in the willful shooting of the deceased which qualifies the crime as murder, inasmuch as it was executed suddenly and unexpectedly, without any warning to the deceased, who was seated at the time, and in a closed room where only the deceased and appellant were present, thereby ensuring the accomplishment of the offense without risk to appellant. (People vs. Pengzon, 44 Phil, 224; People vs. Bandojo, 70 Phil., 486; People vs. Dosal, 92 Phil., 877) [1]. The aggravating circumstance of disregard of respect due to rank (Art. 14, par. 3, Rev. Penal Code) attended its commission, as it was not disputed that the deceased was the acting consul of the Spanish Consulate at the time of the incident, while appellant was a mere chansellor, a subordinate of the deceased. Said circumstance, although not alleged in the information was proved at the trial and, therefore, may be taken into consideration. (People vs. Collado, 60 Phil., 610; People vs. Abella, et al., 45 Off. Gaz., 1802.)

We agree with the Solicitor General that the aggravating circumstance of evident premeditation was not duly proved. There was no mitigating circumstance to offset the aforementioned aggravating circumstance of disregard of respect due to rank. The case, therefore, calls for the application of the maximum penalty provided by law—death. However, for failure in this case to get the necessary votes to impose said penalty, the judgment of the trial court is affirmed, with costs against the appellant.

It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Endencia, JJ., concur.

[1] See also People vs. Noble, 77 Phil., 93; People vs. Sabijon, et al., G. R. No. L-6509, April 29, 1954.

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