

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ADOLFO CANOY, NORBERTO CATAO, AND POLICARPO TANTANO,
DEFENDANTS-APPELLANTS.**

G.R. No. L-6037. September 30, 1954

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Charged with, and convicted of, murder, defendants Adolfo Canoy, Norberto Catao and Policarpo Tantano were sentenced by the Court of First Instance of Cebu to life imprisonment, to jointly and severally indemnify the heirs of Quirino Nacua, deceased in the sum of P6,000.00, and to pay the costs. The case is now before us on appeal taken by said defendants.

This case involves one of the fatal incidents that marred the general elections held in the Philippines on November 8, 1949. On that fateful day, a little after 11:00 a.m., Dioscoro Nacua, a watcher in Precinct No. 1 of the barrio of Napo, municipality of Carcar, Cebu, the polling place of which was housed in the Napo Elementary School, died, as a consequence of several bullet wounds inflicted upon him near said school building. As his brother, Quirino Nacua went to the scene of the occurrence soon thereafter, and began to ascend the stairs of said building, he was, likewise, fatally riddled by gun fire. Appellant Adolfo Canoy admitted having shot Quirino once, but claimed to have acted in self-defense, and asserted that the other bullet wounds found in the body of Quirino Nacua were inflicted by prosecution witness Illuminado Nacua. Appellants Norberto Catao and Policarpo Tantano denied any participation in the killing of Quirino Nacua, and set up an alibi. Consequently, this appeal hinges on the credibility of the opposing witnesses.

Those of the prosecution testified that, upon the arrival of Quirino Nacua at the foot of the stairs of the Napo Elementary School, appellant Norberto Catao, who was near a flagpole, about 30 feet away, pointed his gun at Quirino who, thereupon, raised his arms and begged Norberto not to shoot, but the latter said "That cannot be * * *. Let us wait for Adolfo Canoy." Almost immediately, Adolfo arrived, wielding a carbine. With his arms still raised, Quirino prayed that his life be spared, at the same time retreating up the flight of stairs, but Adolfo Canoy, as well as Norberto Catao and Policarpo Tantano, who were beside him, mowed him down with a volley of shots.

The pertinent part of the testimony of Adolfo Canoy, which reflects the theory of the defense, reads as follows:

Q.

Can you tell the Court who killed Quirino Nacua?

A.

I did. This is what happened: First I heard a series of shots while I was yet at the junction of the road in Napo. Upon hearing the shots, I ran towards the school building because I was assigned there and it was only Catao who was left there. When I was at the midway between the junction and the school building, bullets whizzed above my

head, so I lay flat on the ground while the shooting continued. When the shooting ceased, I crawled slowly, and then when I was in front of the house of Rubi, I heard a shout asking for help, and the shout came from the school building. I raised my head and I saw Illuminado Nacua and Quirino Nacua grappling for the possession of the gun of Illuminado Nacua. When I saw that the carbine of Illuminado, who was one of our special policemen, was about to be wrested, ran towards them and when I was at the flagpole it was the very time when the gun was wrested from the possession of Illuminado Nacua, and then Quirino Nacua fired at me. Inasmuch as I was near the flagpole, I took cover behind the cement base of the flagpole

* * *

Q.

How many shots, more or less, did Quirino fired at you when you were behind the cement base of the flagpole?

A.

Due to lapse of time I cannot be sure, but I think there were four or five shots.

Q.

Did you not answer the shots fired at you?

A.

I fired back because it was impossible for me to run away, because he had a carbine in his hands.

* * *

Q.

How many shots did you fire when you returned the fire?

A.

When he ceased firing, I fired only once.

Q.

Did you hit Quirino ?

A.

As far as I could see, he was hit because he whirled.

* * *

Q.

When Quirino Nacua whirled as a consequence of the shot which he received from your gun, what happened with the gun which he was holding?

A.

It was thrown to the ground.

Q.

When already on the ground, what happened?

A.

When Illuminado Nacua saw that it fell to the ground, he picked it up; after picking it up, he said, 'now I am going to shoot you because you are 'maldito' and you grabbed my carbine'. I even tried to stop Illuminado, I said; 'that is enough, Do', but he answered, 'I will go ahead shooting him'.' (T.s.n., pp. 378-379.)

Upon a review of the record, we are fully satisfied that the lower court was justified in accepting the version of the prosecution and in giving no credence to. that of the defense. To begin with, the latter contends that Adolfo Canoy shot Quirino only once, his other bullet wounds having been inflicted by Illuminado Nacua, when Quirino was already sprawled unconscious, perhaps dead, on the stairs of said school building. However, in the words of Dr. Ildefonso Ybud, President of Sanitary Division No. 14 of Cebu, who, soon after the shooting, repaired to the scene of the occurrence:

" * * * I have physically examined the cadavie of one Quirino Nacua, 26 yrs. old, more or less, married residing in Ocana, Carcar, Cebu. The cadaver was found on the second step of the stairs of the Klementary School of Napo, Carcar, Cebu, in a lateral, right recumbent position with both arms and forearm in semiflexion, and the left leg extended downward and the right leg in semiflexion on the stairs. Blood scattered in the same place and supposed to be his owned. His face was laying on the right side facing to the floor of the school building.

The following lesions were found in his body during the examinations:

- One mortal lacerated gunshot wound on the maxila region, right side, with the direction inward and upward not passing thru to the other side of the face, with the fracture of the lower maxilar bone, right side.
- One mortal lacerated gunshot wound of the same region, right face penetrating with the direction upward inward. The opening of the wound is about 2 inches with fracture of the same maxilar bone.
- One gunshot wound on the face right side below the mouth with fracture of the maxilar bone with upward inward direction.
- One mortal gunshot wound on the face right side penetrating with 1 eta. diameter with fracture of segomatic bone of the face right side.
- One mortal gunshot wound on the cervical region, penetrating on the middle of the anterior portion of the same region.
- Two mortal gunshot wounds penetrating on the breast one below the other with 1 cm. diameter penetrating in the left side of the sternon.
- One mortal gunshot wound on the breast right side at the level of the fourth rib near the sternon penetrating but not passing thru to the back with 1 cm. diameter.
- One gunshot found lacerated, on the right arm internal portion of same with 2 inches long and 1 inch deep.
- Two gunshot wounds on the left thigh perforating with 1 1/2 inch diameter respectively, one of these wounds

passed thru to the anterior portion of the thigh.

- One gunshot wound in the third antero-inferior portion of the thigh right side with 1 1/2 inch diameter not passing thru.
- The middle finger of the right hand, is fractured without wound.

Cause of death? Because of different mortal wounds on his body and the acute hemorrhage of the said wounds, caused his immediate death." (Exhibit A.).

These injuries confirm the theory of the prosecution and conclusively refute that of the defense. Indeed, if as the latter would have us believe, Quirino was already lying down, either unconscious or dead, when Illuminado Nacua allegedly fired at him, the aforementioned wounds of Quirino would have "been on the left side of his body, which was the one then exposed, and would have followed either a sidewise or downward direction. Yet, said wounds were on his right side and had an upward trajectory, thus showing that he was shot while standing at a level higher than that of his assailants. Needless to say, Illuminado Nacua denied positively the commission of the act imputed to him by Adolfo Canoy, and had no possible motive to shoot Quirino Nacua. Indeed, when Adolfo Canoy verbally reported the occurrence to the chief of police, soon after, he (Canoy) did not mention any participation of Illuminado Nacua in the shooting of Quirino Nacau.

Again, the Injuries of the latter were clustered in three regions, for he had h bullet wounds on the right side of the face, 6 in or about the thoracic region (1 in the cervical region, almost at the base of the neck and, a few centimeters away, 4 in the upper part of the breast, besides in the anterior portion of the right arm) and 3 in the thighs (1 in the left and 2 in the right thigh), apart from 1 exit wound, thus indicating that he was shot simultaneously by three men—the appellants herein, according to the evidence for the prosecution. This fact is further borne out by the circumstance that near the base of the flagpole, where Adolfo Canoy was posted when he fired at Quirino Nacau, 14 empty shells were found immediately after the occurrence, notwithstanding Adolfo's testimony to the effect that he had fired once only. The number of empty shells found in said place completely discredits said testimony and substantiates the truth of the version given by the witnesses for the prosecution. Lastly, their testimony to the effect that Quirino Nacau was holding up his arms when he was fired upon is fully established by the lacerated gunshot wound in the internal or anterior portion of his right

Counsel for the defense assails the veracity of Illuminado Nacua, Nicanor Genosolango and Jose Cabellero, who testified for the prosecution, on account of their failure to implicate, in their affidavits Exhibits 2, 4 and 5—made shortly after the occurrence—appellants herein. This silence, however, has been satisfactorily explained, for appellants were members of the police force of Carcar and two of them, namely Norberto Catao and Adolfo Canoy were present at the time of the taking of said affidavits. After the tragic end of the Nacua brothers, said witnesses could hardly be expected to risk meeting the same fate, until, at least, after the appellants were suspended from office, which took place several months later or on February 9, 1950.

As regards the alibi set up by Norberto Catao and admitted that he had been assigned to the school building in question in the morning of November 8, 1949; that he had killed Dioscoro Nacua a few minutes before the arrival of Quirino Nacua that he (Norberto Catao) was at the gate when the latter came and that said alibi is not being pressed in their appeal.

For the rest, there is competent evidence of appellants' motive. During the elections held in 1947. Adolfo Canoy and Norberto Catao had an incident with Dioscoro Nacau and Quirino Nacua, who belonged to the Nacionalista Party leaders and members of the Liberal Party held a caucus in the house of the Municipal Mayor of attended said meeting, during which instructions were issued to the effect that Dioscoro and Quirino Nacua should be liquidated if they should go to the barrio of Hapo in which they do not reside, and start trouble therein. The next

evening, said defendants took their dinner in the house of a councilor and influential leader of the party in Napo who offered a monetary reward to whoever shall kill the Nacua brothers.

We are satisfied, therefore, from the record before us that the guilt of appellants herein has been established beyond reasonable doubt. Although the crime was committed with evident premeditation and In a place where public functions were being performed, without any mitigating circumstance to offset these aggravating circumstances, we cannot impose the extreme penalty, which, otherwise, should be meted out, owing to the absence of the number of votes necessary therefor.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the appellants.

IT IS SO ORDERED.

Padilla, Montemayor, Reyes, A., Bautista Angelo Concepcion, and Reyes, J.B.L., concur.

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