

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RAFAEL BELENO, DEFENDANT AND APPELLANT.***G. R. Nos. L-5853-54. March 27, 1953*

Ponente: BENGZON, J.

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Convicted of murder and frustrated murder in the court of first instance of Abra, Rafael Beleno was sentenced to many year's imprisonment, plus accessories, and indemnity. He appealed to the Court of Appeals. That court found him guilty just the same; but believing the penalty should be for life at least, it forwarded the expediente for final adjudication here pursuant to statutory provisions.

According to the evidence,

When in the afternoon of January 2, 1948, Mrs. Consuelo P. de Aquino, her twin daughters Corazon and Amelia, and Mercedes Belmes were walking home from the farm and reached a point between the barrios of Fugano and Nagbutacan, Bangued, Abra, they were ambushed by three men who suddenly fired at them, hitting Mrs. Aquino on the right shoulder, the bullet grazing her breast. Thrown to the ground she was presently urged by Amelia to rise and help Corazon, because the malefactors had grabbed the latter and were killing her. Mrs. Aquino also heard Corazon shouting for help. She turned around and saw Beleno battering Corazon with a rifle, even as Mateo Pizarro had raised the fallen girl from the ground. Horrified at the sight, Consuelo and Amelia started to run; but remembering poor Corazon they came back, again to flee upon meeting Rafael Beleno coming towards them menacingly with the murderous gun. They quickly reached the national road and were given a ride by a passing jeep of Dr. Balmaceda, to the poblacion where they immediately reported the ambushade to the chief of police and the mayor. The next day Rafael Beleno and Mateo Pizarro were arrested. Subsequently the two were charged with murder and frustrated murder, Corazon having died of external and intra cranial hemorrhage, secondary to multiple fractures of the skull.

At the trial, Consuelo and Amelia testified to the acts of Beleno and Pizarro, as above described. Mercedes Belmes, said the Fiscal, was not presented because her testimony would merely be corroborative.

Consuelo (and her husband Gregorio Aquino) declared also about the angry disputes her family had previously with the Belenos over possession of land, including court litigation, Pizarro being a relative of the latter. Such enmity was obviously the motive for the merciless killing and treacherous assault.

Another witness was Fortunato Bocarile, the tenant from whose farmhouse Mrs. Aquino and companions departed that afternoon. He affirmed that that morning Rafael Beleno and Mateo Pizarro went to him to inquire when the party would be returning to the poblacion; that he told them it would be after lunch; and that the two accused left immediately after getting the information.

Rodrigo Agloos, constabulary sergeant, swore that on January 3, 1948, Mateo Pizarro told the municipal mayor that he knew the place where the rifle used in the ambushade had been hidden; that he (Rodrigo) accompanied

Pizarro to retrieve and did retrieve the hidden weapon; that Pizarro told him it belonged to Rafael Beleno who was with him (Pizarro) when both ambushed "the family of Mr. Aquino" (p. 83 s. n.).

The two defendants submitted their defenses separately. Pizarro declared in substance: that day Beleno compelled him under threats to join the shooting expedition; Beleno shot Mrs. Aquino, and pouncing upon the child Corazon, maltreated her with the butt of the gun; out of pity he (Pizarro) tried to raise and help the fallen captive but had to forsake her on orders of Beleno; not content with downing and slaying Corazon, Beleno gouged her right eye with a bolo.

Beleno tried to prove that he was not at the scene of the crime, but at Palao and Suyo about six kilometers away, helping his ailing father. He insinuated it was Pizarro who had committed the offense for purposes of robbery, according to the admissions made by said Pizarro to the mayor, who relayed them to Beleno.

The court of first instance however, discounting the alibi, declared that it was Beleno who had fired the rifle and had beaten and killed Corazon. The court declared further that Pizarro accompanied Beleno; but as he was there reluctantly, laying no violent hands upon the defenseless victims, he committed no offense and was entitled to acquittal.

After reading the whole record, we find that the evidence of Beleno's alibi is unconvincing in the face of the positive identification made by the offended parties, who, the fiscal said, would be corroborated by Mercedes Belmes if placed on the witness stand. And the confession by Pizarro to Sergeant Agloos involving Beleno served definitely to clinch the People's information. It may be stated in this connection that some justices believe Pizarro was not wholly innocent; but his acquittal closes the matter to new inquiry. Nonetheless the point is mentioned in connection with the circumstance that he (Pizarro) allegedly pleaded guilty before the justice of the peace. That plea meant that he and Beleno (they) were responsible or guilty (see p. 107 s. n.) [1]. By the way, as said justice of the peace was a witness for Beleno, Pizarro's admissions before him disclosing Beleno's participation may be taken as evidence against the latter.

Counsel for the appellant considers it very significant that Mrs. Aquino did not immediately indicate the defendants to the Mayor and the Chief of Police, as declared by the latter.

However, in our opinion it is not decisive whether or not she identified the defendants when she reported the hard-hearted attack. The fact remains that both the accused were arrested the next day; which lends color to her claim that she did. Nevertheless it is not strange that victims should at first be secretive about their assailants, for security reasons. And several convictions have been upheld despite the failure of the offended parties, specially women, promptly to name the criminals whom they had recognized in the very act—the reason for their silence being that, afraid of further violence, they kept quiet until their assailants had been apprehended and imprisoned by the proper authorities.

In conclusion, this Court is satisfied beyond reasonable doubt that Rafael Beleno, in company with other men did ambush the party of Mrs. Aquino, wounded her and maltreated and killed Corazon Aquino. It was pitiless murder and frustrated murder[2] qualified by treachery. There were aggravating circumstances such as disregard of sex and unnecessary cruelty, but for lack of necessary votes the appellant is sentenced for murder, to life imprisonment, with the indemnity to the heirs, of the deceased in the amount of P4,000.

For frustrated murder committed against the person of Mrs. Aquino the appellant shall also suffer imprisonment for not less than four years and two months nor more than ten years and one day.

Thus modified as to the penalty, the appealed decision is affirmed with costs against appellant.

Paras, C. J., Feria, Pablo, Tuason, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] Contrary to defense's contention, Pizarro did not absolve Beleno entirely. And as this issue was touched, the motion for new trial founded on similar admissions of Pizarro should be denied.

[2] U. S. vs. Montenegro, 15 Phil., 1; U. S. vs. Villanueva, 2 Phil., 61.

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