

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CAYETANO RODRIGUEZ, DEFENDANT-APPELLANT.

G.R. No. L-41263. December 15, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this murder case is whether Cayetano Rodriguez, 37, a former policeman, accidentally shot Domingo Balisi, as claimed by the said accused, or maliciously shot the victim, as claimed by the prosecution.

Between eight and nine o'clock in the evening of February 1, 1972, a shot from Rodriguez's rifle wounded his neighbor and alleged friend, Domingo Balisi, 31. The victim was then in the yard of his father, Quirino, located at Barrio San Jose, San Pablo, Isabela. He was conversing with his father and his neighbors, Ventura Cammayo, Cesar Fulugan and Vicente Panganiban. They were squatting on the ground in a semi-circle. Cammayo and Quirino were facing the gate.

Domingo had an entrance gunshot wound in the back, at a point opposite the left side of his chest. The bullet exited below his right nipple. Although seriously wounded, he managed to enter his father's house, followed by Quirino, Cammayo and Rodriguez himself. The gunwielder was silent when Cammayo asked him why he shot Domingo.

Olimpia Balisi, the wife of Domingo, who was summoned to her father-in-law's house after the shooting, asked her husband what happened. Domingo replied that he was shot by Rodriguez. He gave the same reply to the barrio captain. He was brought in a jeep hired by Cammayo to the emergency hospital at Cabagan where a Constabulary investigator took down his antemortem declaration. In that statement, he again identified Rodriguez as his assailant.

Domingo died on that same night while he was being transferred to the provincial hospital. The chief of police confiscated from the wife of Rodriguez the rifle used in the shooting. Rodriguez was not in his house. He went into hiding.

The version of Rodriguez was that while he was pursuing a dog that was running with his kettle of cooked fish, he allegedly fired at the dog when it was about to enter Quirino Balisi's yard. It was only during the commotion which ensued after the shooting that Rodriguez supposedly came to know that Domingo Balisi was wounded. Rodriguez claimed that the wounding was accidental and unintentional.

He and the victim were like brothers. He entered Quirino's house and when he saw Domingo suffering from the gunshot wound, he (Rodriguez) extracted the slug from the exit wound below Domingo's right nipple.

Rodriguez said that he was the one who procured the jeep that brought Domingo to the emergency hospital but he did not go with the jeep because he was afraid that he might be harmed. He allegedly reported the shooting to the barrio captain but not to the police because he assumed that he had not committed a crime.

He said that he attended Domingo's funeral but this was denied by his witness, Fulugan, and by the barrio captain. He testified that when he was informed that there was a warrant for his arrest, he surrendered to the chief of police (38-39 tsn Feb. 1974).

However, the record shows that the warrant dated February 12, 1972 was served upon him in March, 1972 and he posted his bail bond on the 15th of that month. He appeared before the Constabulary detachment at San Jose only after a release order was issued by the municipal court (p. 28, Rollo).

On the other hand, the prosecution's version was that Rodriguez suddenly appeared near the open gate of Quirino's yard and, at a distance of fifteen meters, feloniously shot Domingo whose back was turned against Rodriguez and while Domingo was conversing with his father and three other persons. The shooting occurred when there was a full moon.

As testified by Domingo's widow, Olimpia, the motive for the cold-blooded assassination was Rodriguez's infatuation for her. She testified that before she married Domingo and when Rodriguez was already married to her first cousin, Geronima Balisi, he courted her (Olimpia). She rebuffed his advances. After she married Domingo, Rodriguez persisted in making immoral proposals to her. She spurned them. Rodriguez denied that he courted Olimpia.

The learned trial judge gave credence to the prosecution's version and rejected the fish-and-dog story of Rodriguez. It convicted Rodriguez of murder, sentenced him to reclusion perpetua and ordered him to pay an indemnity of twelve thousand pesos to the victim's heirs (Criminal Case No. 51, Cabagan, Branch III, CFI of Isabela). From that judgment, Rodriguez appealed to this Court.

He contends that the trial court erred in giving probative value to the testimony of the victim's widow and in finding him guilty of murder beyond reasonable doubt.

These contentions cannot be sustained. The trial court correctly found that Rodriguez liquidated Domingo in order to eliminate any legal and moral impediment to his winning the love of Domingo's wife.

It did not err in holding that Rodriguez's guilt was proven beyond reasonable doubt because his testimony that the shooting was accidental appears to be a palpable fabrication. Quirino and his son-in-law, Cammayo, were telling the truth when they testified that they saw Rodriguez deliberately firing his rifle at the back of Domingo. What hit Domingo was not a stray bullet but a bullet that was fired at him point-blank by Rodriguez.

For that same reason, appellant's alternative contention that lack of intent to commit so grave a wrong should be appreciated as a mitigating circumstance is untenable. Rodriguez intended to kill Domingo. He used a deadly weapon in consummating the killing. The means which he employed were adequate to bring about the evil which was caused and intended. This is not a case where the wrongful act was different from that which was intended.

Nor can voluntary surrender to the authorities be appreciated in appellant's favor, as argued by his counsel and as recommended by the Solicitor General. Appellant surrendered only after a warrant for his arrest was issued and he had found it futile to continue being a fugitive from justice.

The trial court did not err in holding that the crime committed was murder qualified by treachery. Rodriguez made a sudden, deliberate and surprise attack on the unwary and unarmed victim whose back was turned and who did not expect that he would be assaulted.

The testimony of Olimpia Balisi that in a prior incident Rodriguez shot Domingo with the same rifle, while Domingo was attending to his carabao but no grave wound was inflicted, is not sufficient to prove evident premeditation. Olimpia did not give any details as to the circumstances surrounding that incident. No criminal

action was taken against Rodriguez for his alleged attempt against Domingo.

WHEREFORE, the trial court's judgment is affirmed. Costs against the appellant.

SO ORDERED.

Makasiar, (Chairman), Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Concepcion, Jr., J., no part.

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