

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

G.R. No. L-2186. January 29, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

In the afternoon of April 19, 1946, at about sunset, four men, looking for the driver of Juan Co Chica, employer of Juan Bulatao, went to the latter's house located in barrio Matatalahib, Tarlac.

Bulatao told them that he was the one they were looking for and asked then what they wanted. They told him to come down "from the house for a while because they wanted to ask something from." What happened immediately thereafter, is narrated by Bulatao himself as follows:

"So I went down the house and again asked them what they wanted to tell me, but without answering that question of mine they boxed me and assaulted me until I fell on the ground, unconscious. When I regained consciousness I was wet and they asked me to sit down and also if I knew why they assaulted me and I told them no. One of them told me that it was due to the wine I drank in the Chinese store. But I remember that the wine which I drank had not been paid for because I usually drink wine at that same store on credit. They told me that the Chinaman reported that I did not want to pay for that wine and that was the reason why they came to hurt me. I explained to them that I usually drink wine at that store on credit, to which they replied that they would take me along to the store. Upon our arrival there, the Chinaman explained to them that I was not the fellow he was referring to but some other person who drank wine at the store on the same time that I did. For this explanation of the Chinaman, the four fellows who boxed me asked for my forgiveness, and it was also the time when I learned that one of them was Jose Tan. To prove that I did not resent the mistake, because after all the mistake was occasioned by my drinking without paying although I have good credit with the owner of that store, I forgave them and as a matter of fact I even embraced the one introduced to me as Jose Tan, their leader. Then I went home."

At about 4:00 o'clock on the next morning, April 20, 1946, as testified to by Marta Dungca and Lucia Go, mother and wife respectively of Jose Tan, a lad called for Jose Tan, at the latter's house, located at barrio Matatalahib, built on the lot of Hilarion Cruz about 150 meters beyond the Tarlac railroad station. Tan's companions in the house were his mother, Marta A. Dungca, the latter's mother, Maria Alfaro, 90 years old, his wife Lucia Go, his one year old son, and his sister-in-law Mercedes Go, 14 years old. (8-9).

Tan went down and was met by four persons, one of them Juan Bulatao, and was held by the four. Maria Dungca looked out of the window and asked: "Why? Where will you bring my son?" They answered that they were going to ask him something behind the concrete wall. The four persons held Tan on both arms, at the shoulder and also behind his back. Tan said that he was going to put on his trousers, but they said that it was not necessary. (9). Marta Dungca and Lucia Go went down and tried to follow the group across the railroad track. Before they reached the track, a motor vehicle was heard being driven away, and the two women were not able to overtake the group. (12). The four men were all armed with short barrel guns. (13). The next morning, at about 9 o'clock, the

two ladies saw Jose Tan already dead. He had his left eye missing. His occipital region was crashed. The bridge of his nose was broken. His lower lip was swollen. (14).

Juan Bulatao was identified by the two women. Their house was low, its ground floor being less than two meters from the ground. The full moon was shining brightly, and at about fifty meters, there was a big 100 Watt electric bulb of the railroad light lighting the place. (10). The two women had the opportunity of looking at the appellant about five meters away. Marta Dungca saw appellant's face, as Bulatao even looked up. (11). Marta Dungca saw him at about two meters distance. (12).

Appellant tried to deny any participation in the kidnapping of Jose Tan, alleging that he did not leave his house during the early morning of April 20, 1946, until he left to go to his work. He presented the testimony of Teodorica Catalan to corroborate him. The testimonies of Marta Dungca and Lucia Go appear, however, to be positive, straightforward and convincing in identifying appellant, and there is nothing on record to show why they should falsely involve appellant.

From the lips of appellant himself there is conclusive evidence that appellant had an ax to grind against Jose Tan, who happened to be the leader of a gang of notorious characters, from whom appellant received a sound beating the evening previous to the kidnapping.

There are some discrepancies between the declarations of Marta Dungca and Lucia Go. The first said that she went with Lucia to follow Jose Tan up to the railroad track, while Lucia said that she went alone. Marta said that she reported the kidnapping to a neighbor, a policeman, while Lucia said that her mother-in-law reported the matter to the MP. The discrepancies are not of such significance as to destroy their veracity. It is not improbable that because of the emotions of the moment and of the intensity of Lucia's attention focused on his husband, the image of the company of her mother-in-law could have been completely obliterated from her mind. Such blank spaces in the human mind are not unusual. It is a phenomenon known in psychology as that of persons looking without seeing due to the distraction caused by intense mental concentration.

Appellant was charged with murder, but was found guilty by the lower court only of homicide with the aggravating circumstance of nocturnity and sentenced to suffer an indeterminate penalty of from eight years and one day of prision mayor, to seventeen years, four months and one day of reclusion temporal, with the accessory penalties provided by law, and to pay the heirs of Jose Tan in the sum of P2,000.

Upon the facts proved, appellant is guilty of murder qualified by treachery, in which nocturnity is absorbed. He must be credited with the mitigating circumstance of vindication of a proximate offense and, therefore, the penalty imposed by the lower court should be modified. The indemnity should also be increased in accordance with the doctrine in *People vs. Amansec*, L-927[1] (45 Off. Gaz. [Supp. to No. 9], 51). Appellant is sentenced to suffer an indeterminate penalty of from four years, two months and one day of prision correccional to ten years and one day of prision mayor, and to pay an indemnity of P6,000 to the heirs of Jose Tan and the costs.[2]

Moran, C.J., Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.
Paras, J., concurs in the result.

[1] 80 Phil., 424.

[2] As modified by resolution in the minutes of February 14, 1949.

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