

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ARTEMIO TURALBA, ALIAS ARTING, DEFENDANT AND APPELLANT.***G.R. NO. L-29118. February 28, 1974*

Ponente: AQUINO, J.

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At around seven o'clock in the evening of April 29, 1964 Pablo Fernandez, a forty-eight year old barrio captain, was in front of his small store located at Carosucan Sur, Asingan, Pangasinan. While engaged in the routinary chore of fixing the ropes for the yoke or for hauling the load (guyudan) of his carabao, he was struck by a shotgun blast. He was rushed to the Tayug Emergency Hospital where he expired soon after his admission.

Doctor Melquiades A. Bravo, the surgeon who examined the cadaver of Fernandez, certified that the cause of death was "irreversible shock due to massive internal and external hemorrhage". About two thousand cubic centimeters of blood had accumulated in the abdominal cavity. The bleeding was brought about by a multiple gunshot wound of entry, with five holes, found on the victim's back. The slugs penetrated the abdominal cavity, injured the liver, kidney and intestines and fractured the lumbar vertebrae and the right forearm. Three holes in the right thorax indicated the exit of the slugs. Two slugs were recovered inside the abdominal cavity (Exh. A). Attached to Doctor Bravo's medical certificate is a diagram graphically depicting the five points of entry of the pellets on the victim's back (Exh. B-2), their exit on his thorax and the fracture on his right forearm (Exh. B-1).

Policeman Emilio Calibo, a resident of Barrio Carosucan Sur was in his house when he heard the gunshot. He was informed by the rural police that Pablo Fernandez had been shot. He went to the poblacion to summon police and Constabulary men. He returned to the barrio accompanied by Police Sergeant Osmundo de la Cruz and Constabulary Sergeant Ernesto Liberato. They were informed by the rural police that the assailant was Artemio Turalba, also a resident of Carosucan Sur (Artemio was twenty years old and already married when he testified in 1967).

At around nine o'clock the peace officers proceeded to the suspect's house. They talked with Bernabe Turalba, Artemio's father. Bernabe gave to Sergeant Liberato his shotgun (Exh. E). It smelt of gunpowder, meaning that it had just been recently fired (28 tsn Mones; 13 tsn Rollolazo). Artemio Turalba was taken to the Constabulary headquarters at Tayug. He was turned over to Sergeant Perez. Neither he nor his father protested against his being brought to the Constabulary headquarters for investigation.

The next day, April 30th, Police Sergeant M. G. Gayangos took, by question and answer, the statements of Nemesio Fernandez and Ernesto Fernandez, the victim's brother and son, respectively. They pointed to Artemio Turalba as the killer. The statements were sworn to before the municipal judge (Exh. C or 1).

Sergeant Gayangos filed in the municipal court of Asingan a complaint for murder against Turalba. The judge conducted a preliminary examination by interrogating Nemesio and Ernesto on the basis of their sworn statements. Nemesio declared that sometime before the shooting Turalba bought cigarettes from Pablo Fernandez himself. Nemesio said that, when he heard the gunshot, he "looked at the direction of the fire and *** saw

Artemio Turalba running away with a shotgun in his right hand" (Exh. D or 2). Ernesto reiterated the allegations in his statement.

Turalba waived the second stage of the preliminary investigation. The record was elevated to the Court of First Instance, where the fiscal filed against him an information for murder.

Ernesto Fernandez, twenty-two years old, testified that he was eating supper inside the store, with his mother and younger sister, when he heard the gunshot. When he rushed out of the store, he saw Artemio Turalba, who was only six meters away, holding a shotgun. He beamed his flashlight at Turalba who fled to the fenced premises of the barrio school. He followed Turalba but when the latter turned to face him, he (Ernesto) went back to the store and informed his mother and uncle that Artemio Turalba had shot his father. Ernesto hired a jeep and brought his father, who was writhing in pain, to the hospital where he breathed his last.

Nemesio Fernandez, twenty-eight years old, corroborated the testimony of his nephew, Ernesto. Nemesio said that he attended to his brother after he (Pablo) was shot. Guerrero Castillo, a defense witness, confirmed that Nemesio and Ernesto were near the store of Pablo Fernandez when the shooting occurred. He further confirmed that Ernesto "ran after somebody who shot his father".

Juanito Par, a thirty-eight year old rural policeman, was on the street near the store of Fernandez at the time he was shot. Par was hobnobbing with Isidro Antolin, another rural policeman. Par focussed his flashlight at Turalba and identified him as the gunwielder who was fleeing from the scene of the shooting. He chased Turalba within the school premises. Being unarmed, he could not arrest Turalba. He gave up the chase. He rendered assistance in taking Pablo Fernandez to the hospital. He said that the shotgun held by Turalba was similar to Exhibit E.

On the other hand, appellant Turalba denied that he was the killer of Pablo Fernandez. He testified that at the time of the shooting, he was in front of the store of Narcisa Obello, which was opposite his house. He was conversing with her and with Celestino Serafica, Benigno Obello and his father. His house was about three hundred meters away from the house of Pablo Fernandez. While engrossed in the conversation, they heard a gunshot. Since the store was about to close, Narcisa Obello told them to go home. He went home to sleep.

At about nine o'clock, when he was already asleep, police officers came to his house and took him to the Constabulary headquarters at Tayug. He went voluntarily with the police officers. Neither he nor his parents inquired why he was being taken to Tayug.

At the Constabulary headquarters, he was asked who shot Pablo Fernandez and he answered: "I do not know anything about that". There, he saw Gregorio Manipon who was also being grilled as to the killing of Fernandez. He and Manipon were subjected to a paraffin test. He stayed in the headquarters for more than an hour. He came to know for the first time on May 11, 1964 that he was accused of killing Fernandez.

Guerrero Castillo, a neighbor of Turalba, testified that he informed the latter's counsel, also a resident of Carosucan Sur, that it was Gregorio Manipon who shot Pablo Fernandez. Said counsel did not bother to file any complaint against Manipon.

The chief forensic chemist of the Constabulary Central Laboratory made a paraffin test on May 5, 1964 of the cast made from the hands of Artemio Turalba and Gregorio Manipon. The result was negative for gunpowder residue (Exh. 3). The chemist clarified that she did not know whether the paraffin cast, which was tested, was taken from the hands of Manipon and Turalba within seventy-two hours from April 29, 1964. Nitrates would remain in their hands only within three days after the firing of a gun.

The trial court found that the declaration of the prosecution witnesses, that Turalba shot Pablo Fernandez, was not

"destroyed by the defense". It noted that Ernesto Fernandez and Juanito Par positively identified Turalba as the culprit. It ruled that Turalba was guilty of murder beyond reasonable doubt. And it sentenced him to reclusion perpetua and ordered him to indemnify the heirs of the deceased in the sum of six thousand pesos.

In this appeal, nine of the ten assignments of error of appellant Turalba may be reduced to the issue of credibility or the killer's identity. Appellant's counsel concedes that Pablo Fernandez "was shot by a man who later ran away".

Turalba contends that, because the paraffin test showed that his hands were negative for gunpowder and because another suspect, Gregorio Manipon, was pointed out as the possible killer, his (Turalba's) guilt was not proven beyond reasonable doubt. That contention has no merit. The negative result of the paraffin test is not a conclusive proof that Turalba was not the gunwielder. The Solicitor General points out that he might have used gloves when he handled the shotgun (Exh. E).

His contention that the testimony of Guerrero Castillo should be given credence is flagrantly untenable because, as already pointed out, even appellant's lawyer, who was apprised by Castillo that Manipon was the assailant, did not bother to take that imputation seriously. The trial court directly asked Castillo: "So, you are telling a lie?". Castillo did not answer.

Turalba vehemently impugns the credibility of the prosecution witnesses. He has cited inconsistencies in their testimonies. The Court has painstakingly scrutinized the prosecution's evidence. It is convinced that the contradictions in the testimonies of Juanito Par, Patrolman Calibo, Ernesto Fernandez and Nemesio Fernandez refer to minor or trivial details which do not impair the credible character of their identification of appellant Turalba as the assassin, which is the crucial or material point in this case. Those discrepancies cannot be attributed to a deliberate intent to pervert the truth. They are attributable to forgetfulness or to innocent mistakes (People vs. Selfaison, 110 Phil. 899; People vs. De Otero, 51 Phil. 201, 209; People vs. Resayaga, L-23234, December 26, 1973).

The fact that the pellets taken from the victim's body were not presented in evidence and thus precluded a comparison of "their striations with the shotgun" (Exh. E) does not weaken at all the case of the prosecution. The defense did not demand their production. Appellant's witness, Sergeant Liberato, who investigated the case, was not asked by the defense as to why the pellets were not produced.

Appellant Turalba in his last assignment of error contends that there was no motive that would impel him to kill Pablo Fernandez. That contention is belied by the evidence. The prosecution proved that at a wedding party sometime in 1962, while Pablo Fernandez was delivering a speech as barrio lieutenant, Bernabe Turalba, appellant's father, was making an unnecessary disturbance. Fernandez was annoyed. He struck Bernabe on the head with a piece of wood. Artemio Turalba was present on that occasion. Because of that humiliating incident, the Turalba family harbored a grudge against Pablo Fernandez.

Although the incident transpired in 1962 and the killing was perpetrated in 1964, the long interval of time would not necessarily mean that the flame of revenge had flickered and died. To proud and sensitive persons, who desire to retain a good reputation or image in their community and who do not want to be regarded as cowards, such an affront or loss of face would rankle for many years. The suppressed rage would find adequate release only in some sort of vindictive retaliation.

Turalba's version, that, at the time of shooting, he was in front of his neighbor's store, conversing with some persons, does not support his plea of innocence. Those persons did not corroborate his alibi. The three-hundred-meter distance between his house and the scene of the crime, which distance could obviously be

traversed in a matter of minutes, would not have precluded him from perpetrating the crime and returning to the vicinity of his abode as if he had done nothing.

An alibi is credible if the accused proves that he was at another place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (People vs. Lumantas, L-28355, July 17, 1969, 28 SCRA 764, 768; People vs. Resayaga, L-23234, December 26, 1973; People vs. Tamani, L-22160-1, January 21, 1974). Turalba's alibi is not worthy of belief.

The information charges Turalba with murder aggravated by treachery, premeditation and nocturnity. He perpetrated the killing with alevosia because his unexpected assault on Fernandez at night insured its consummation without any risk to himself arising from any defense which the victim might have made (par. 16, Art. 14, Revised Penal Code). Fernandez was caught unaware. He was performing a task incidental to his livelihood. He must have performed that task several times in the past without any danger to his life, a fact that would be known to his assailant because they lived in the same barrio. The multiple gunshot wound of entry on the victim's back, with exit in the thorax and right forearm, shows that the assailant was behind the victim when he was liquidated. That circumstance was confirmed by the prosecution eyewitnesses. Nocturnity is merged with treachery.

Turalba contends that he is entitled to the mitigating circumstance of voluntary surrender to the authorities. That contention is based on an entry in the police blotter of Villasis, Pangasinan, stating that on May 11, 1964 "at 1:00 p.m. Artemio Turalba (was) surrendered to this office by Atty. Querubin Raceles of Asingan as the former is suspected and charged for murder. At 4 p.m. Artemio Turalba was released for having filed his bail bond" (Exh. 4). Sergeant Juan M. Leonin of the Villasis police force identified the entry. The chief of police certified to its correctness.

Appellant's contention is meritorious. The record shows that on April 30, 1964, the municipal judge of Asingan, after conducting the requisite preliminary examination, ordered Turalba's arrest. The record does not show that a warrant of arrest was issued. Policeman Calibo testified that Turalba was never arrested because he posted bail.

As noted above, he surrendered to the police of Villasis on May 11, 1964. The municipal judge of Villasis approved his bail bond. The municipal judge of Asingan had issued an order on that day, May 11th, authorizing the Villasis town judge to approve Turalba's bail if "he surrenders" to the Villasis police.

Appellant's case is similar to the Yecla case where "five days after the commission of the crime and two days after the issuance of the order for the arrest of the appellant, the latter presented himself in the municipal building to post the bond for his temporary release". It was held that his surrender "to post a bond for his temporary release was in obedience to the order of arrest and was tantamount to the delivery of his person to the authorities to answer for the crime for which his arrest was ordered". Voluntary surrender to the authorities was mitigating in that case. "The law does not require that the surrender be prior to the order of arrest." (People vs. Yecla and Cahilig, 68 Phil. 740).

Inasmuch as appellant Turalba is entitled to the mitigating circumstance of voluntary surrender to the authorities and since there are no generic aggravating circumstances, the penalty for murder, which is reclusion temporal maximum to death, should be imposed in its minimum period (Arts 64[2] and 248, Revised Penal Code). He is entitled to the benefits of the Indeterminate Sentence Law.

ACCORDINGLY, the trial court's judgment, convicting appellant Artemio Turalba of murder is affirmed. In lieu of reclusion perpetua, he is sentenced to an indeterminate penalty of fourteen (14) years and eight (8) months of reclusion temporal minimum, as minimum, to twenty (20) years of reclusion temporal maximum, as maximum.

He is ordered to indemnify the heirs of Pablo Fernandez in the sum of twelve thousand pesos and to pay the costs.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Antonio, and Fernandez, JJ., concur.

Barredo, J., took no part.

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