

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
TIMOTEO OLGADO, ET AL., DEFENDANT-APPELLANT.***G.R. No. L-4406. March 31, 1952*

Ponente: BENGZON, J.

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Timoteo Olgado, Mario Aninias and Faustino Mirano were tried for double murder and frustrated murder in the Court of First Instance of Quezon. Upon petition filed after the People had rested its case, defendant Faustino Mirano was absolved. The hearing continued as to the other two, who were subsequently declared, in a carefully prepared decision, guilty of having murdered Ananias Lalunio and Cesar Hernandez. They were also found guilty of the frustrated murder of Remigio Manalo. Bearing in mind the attending circumstances, the trial court sentenced both defendants for each of the two murders to an indeterminate penalty ranging from 10 years and 1 day of prison mayor to 17 years, 4 months and 1 day of prison temporal, with the accessory penalties provided by law, plus indemnity to the heirs, and costs. For the crime of frustrated murder, they were sentenced each to imprisonment from 4 years, 2 months and 1 day of prison correccional to 10 years and 1 day prison mayor, with the accessory penalties, and to pay the costs.

From this decision, appeal was taken to the Court of Appeals, which, upon review of the evidence, found the accused guilty, but believing that the offense was punishable with reclusion perpetua, certified and forwarded the record to this Supreme Court for final determination.

The evidence for the people established the following facts;

Early in the morning of February 5, 1947, Remigio Manalo and Cesar Hernandez, 23 and 17 years of age respectively, left the town of Tiaong, Quezon, to attend the fiesta in the town of Candelaria of the same province. In the churchyard of Candelaria, they joined their townmates Ananias Lalunio, brother-in-law of Cesar Hernandez, Clemente Mendoza and Antonio Maralit, (28, 19, and 15) and the group went around together drinking some liquor in a restaurant. Then these repaired to the house of Protasio de Leon, a cousin of Lalunio. While they were still a few meters from the house, two women, (Consolacion Austria, wife of the appellant Mario Aninias, and Rosario Rianzaes, mistress of Timoteo Olgado) passed in front of the house. The young men invited them to go up for some eats. The women gave thanks, but declined the invitation, probably because the young men were not known to them. Some time later, Lalunio and Hernandez saw the two women again coming from the opposite direction. They invited them anew, but seeing that the ladies were unwilling to accept, Lalunio made apparently some improper remarks (according to defense, indecent propositions) which so vexed the women as to draw from them uncomplimentary words.

Afterwards, while the young men were taking their lunch, the policeman Mario Aninias, in uniform and armed, arrived and berated the young men for being rude ("bastos" was the local word) and challenged them to come down. They refused to do so, saying they were not discourteous. Mario Aninias departed only to return later with the appellant Timoteo Olgado and Faustino Mirano, both policemen of the locality. The three were armed with a

revolver, a rifle, and a carbine. Olgado and Aninias entered the house and complained to Protasio de Leon about the conduct of his visitors from Tiaong. De Leon begged the policemen to forget the matter. But Mario Aninias and Olgado told the five visitors to follow them downstairs. Lalunio and his four companions obeyed, believing they would be taken to the municipal building for investigation. The policemen, however, instead of proceeding to the municipal building, led the captives to a secluded place near the Masin River, which is about a hundred meters from the De Leon house. There Olgado and Mario Aninias drew out their guns. Olgado then asked the unarmed prisoners if they were men and if they would fight. The five replied they were men but were unwilling to fight. Olgado called one of the two women who was near the place, and asked: "Who among these men?" The woman indicated the tallest of the captives, Ananias Lalunio. Whereupon, Olgado fired at the prisoners who were standing side by side about two meters away. The first shot hit Lalunio and the second Hernandez. Other shots followed. Remigio Manalo, who was one meter from Lalunio heard shots coming from his left side, fired by the policeman in uniform Mario Aninias. After wounding Lalunio and Hernandez, Olgado fired at Remigio Manalo hitting him in the right leg. Manalo managed to crawl downstream to the opposite bank and to the municipal building where he reported the incident, to the guard on duty. Lalunio, Hernandez, and Manalo, were brought to the provincial Hospital at Lucena, Quezon. In two days Lalunio and Hernandez died as a consequence of gunshot wounds in the abdominal region. Manalo's wound healed after fifteen days. The other young men escaped unharmed.

The accused offered the following version: A few moments after the exchange of words at or near the house of De Leon between the young men and the two ladies, Mario Aninias reported to corporal Timoteo Olgado and policeman Faustino Mirano, that he had seen, on Alday Street, five suspicious-looking men following Consolacion Austria, wife of Aninias, and Rosario Rianzales, common-law wife of Olgado, who were walking towards the Masin River. Whereupon, the three accused proceeded to the riverside to investigate. Seeing nobody there, they continued to the house where the two women lived. There, they saw Rosario Rianzales and Consolacion Austria weeping and fixing their torn dresses. Upon being asked, the two women told Olgado and Aninias they had been abused by one of the five young men who had laid lascivious hands upon them. The policemen hastened to the house of De Leon in search of the five offenders. Olgado asked them what happened. Ananias Lalunio denied having offended the two women, explaining that nothing of the sort had occurred. Nevertheless, Olgado required the Tiaong visitors to follow the officers to the municipal building for investigation, instructing them to walk in front of him and his other companions. The five did as ordered, but upon reaching the corner of Alday and Salazar Streets, they suddenly fled towards the Masin River. The three policemen ran in pursuit, Olgado leading. According to the appellant Olgado as he was turning round a bend, he saw Ananias Lalunio aim and fire his gun at him. So in self-defense he stopped, returned the fire and started shooting. Ananias Lalunio and Cesar Hernandez were downed, wounded. Found in the possession of Lalunio was a .45 caliber pistol (Exhibit 9) with 3 unspent bullets. Mission accomplished, the policemen returned to the poblacion and reported the incident to the Chief of Police Eligio Manalo and delivered the pistol of Lalunio.

Consolacion Austria, wife of appellant Mario Aninias testified and corroborated her husband's story stating that when she and Rosario Rianzales went to the river to wash their feet the five young men rushed at them; that Lalunio grabbed Rosario and another grabbed her (Consolacion); that only after violent struggle could they free themselves; but not before Consolacion's blue dress, Exhibit 5, and Rosario's chemise, Exhibit 6, had been torn.

The accused Mario Aninias renounce the right to testify in his behalf.

Timoteo Olgado swore on the witness stand that with his revolver he had fired at the deceased Lalunio and Hernandez and also at Remigio Manalo in defense of his person.

Like the Court of Appeals, and the court of first instance we accept the People's version of the shooting at

Candelaria. It is hard to believe that on the very morning of the town fiesta, five visitors would attempt to commit rape or unchaste abuses upon women they never knew before. It does not appear that any complaint against the Tiaong boys has even been filed.

It is improbable that Lalunio and his companions would attempt to escape, knowing full well that the three policemen were armed with guns. To escape they had to run and cover about 70 meters in order that they could reach the slope or curve towards the river.

It is even more improbable that, after escaping, the young men would stop to face and engage in a gun duel the three fully armed policemen. They were unarmed, except Lalunio according to defense. But Clemente Mendoza testified that none of his companions carried any firearm on that day. Protasio de Leon said none of his visitors was armed. More than this, Timoteo Olgado in an unguarded moment on cross-examination, declared he did not notice any firearm on the men from Tiaong when he talked to them at Protasio's house. And Major Pedro Alcantara, provincial commander of Quezon, in rebuttal, testified that contrary to defense's allegations, Chief of police Eligio Manalo, witness for the defense, did not present to him the .45 caliber pistol (supposedly used by Lalunio).

Neither is it credible that all the shots were fired by defendant Olgado only, and that accused Mario Aninias did not fire at all. It would be strange that Aninias, who felt aggrieved because his wife had been wronged would not lend a hand in the "hour of reckoning." Furthermore, Manalo heard shots fired from his left by "the policeman in uniform," meaning Mario Aninias. This was corroborated by Ananias Lalunio in his ante-mortem declaration, Exhibit "B" wherein he stated that the persons who shot him were policemen from Candelaria, one wearing a uniform, meaning the defendant Mario Aninias, and the other one in civilian clothes, referring to Timoteo Olgado.

We are of the opinion, after a study of the records, that the criminal responsibility of the two defendants for the fatal consequences of the affair is equal and co-extensive. Both must share full responsibility as authors of the crime described in the information.

The two murders were attended by the qualifying circumstance of treachery which includes abuse of superior strength, by the generic aggravating circumstance of having taken advantage of public position, and by the mitigating circumstance of voluntary surrender to the proper authorities.

It seems quite clear that the defendants were provoked on account of the indecent propositions made to the women by Lalunio and companions. For Mario Aninias this is an additional mitigating circumstance (vindication of grave offense to his wife or passion and obfuscation); but for Timoteo Olgado it is not, because his relations with Rosario Rianzares were illegitimate. (U.S. v. Hicks 14 Phil. 217; People v. Silay Cruz 53 Phil. 635)

Wherefore the accused Timoteo Olgado should suffer the penalty of reclusion perpetua, for each of the murder. In view of the additional mitigating circumstance in favor of Aninias the term of imprisonment imposed on him by the court of first instance is within the limits prescribed by law.

The term of imprisonment upon both appellants for the injuries suffered by Remigio Manalo should be not less than four years two months and one day of reclusion temporal.

Pursuant to the provision of Art. 70 of the Revised Penal Code as amended, the maximum period of confinement of the appellants shall not exceed 40 years.

With the modification indicated as to appellants' incarceration, the appealed decision is affirmed, with costs.

So ordered.

Paras, C.J., Pablo, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Feria, Jugo, and Bautista Angelo, JJ., took no part.

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