

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLE VS. SY PIO ALIAS POLICARPIO DE LA CRUZ, DEFENDANT AND APPELLANT.*G.R. No. L-3827-28. November 23, 1951*

Ponente: BAUTISTA ANGELO, J.

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Defendant was charged with murder in two separate informations filed In the Court of First Instance of Manila. He was found guilty in both cases and sentenced in each to suffer reclusion perpetua, with the accessory penalties of the law, to indemnify the heirs of the deceased in the amount of P2,000, and to pay the cost. He appealed from both Judgments.

Ngo Chu, a Chinese owner of a sari-sari store at No. 1 Hermosa street, City of Manila, was a holder of a licensed revolver. Before going to bed in the night of September 2, 1949, he examined the revolver to be sure that It was loaded and hid it under his pillow. When he woke up early the following morning, the pistol was missing. He immediately reported Its disappearance to a policeman posted at the corner of Rizal Avenue and Cavite street, who advised him to report the matter to Police Precinct No. 1. He, was accompanied In this errand by his landlord Celso Casingan. They took a taxi and proceeded towards the City Hall where the precinct was located, and while passing along Ongpin street they caught glimpse of defendant Sy Pio who was living in the same house where Ngo Chu was staying, walking on the sidewalk near a Chinese theater. They overtook him while he was entering a restaurant, whereupon they alighted from the taxi and followed him. Upon coming near him in the kitchen of the restaurant, Ngo Chu noticed that he was carrying his pistol in his hand. Then defendant said in Chinese: "Don't approach, otherwise I will shoot you or kill you". Upon hearing this remark, Ngo Chu and his companion gave some steps backward, and immediately thereafter they heard a shot. The defendant hurriedly left pistol in hand while Ngo Chu noticed that one Ong Pian fell down. Ngo Chu and Casingan also left to pursue the defendant, but failed to do so. They reported the shooting to the first policeman they saw at the corner of Rizal Avenue and Cavite street. Ong Pian was taken to the St. Luke's Hospital where he died in the afternoon of the same day.

It likewise appears that after the shooting that took place in the restaurant, defendant proceeded to; a house at Misericordia street where, upon arriving, he found one Jose Sy, a Chinaman, seated on a chair, reading a newspaper, and without saying anything, and using the same revolver, fired a shot at said Jose, who was mortally wounded and died instantaneously. Defendant fired other shots in the air and left.

Defendant was apprehended in Tarlac by some members of the Philippine Constabulary several days after perpetrating the two dastardly acts. After an investigation made by said agents of the law, defendant admitted having committed the crimes before the Justice of the Peace of Tarlac and the police officers of Manila who went to the place to arrest him. His declaration was put in writing and was voluntarily signed by him. In his written confession defendant admitted having shot Ong Pian and another Chinaman who turned out to be the other victim.

The facts above recited show conclusively that the defendant is the author of the death of Ong Pian and Jose Sy. He killed them with the revolver of Ngo Chu which the latter hid under his pillow in the night of September 2,

1949 This is supported by the testimony of Ngo Chu and Celso Casingan, both eye-witnesses by the testimony of Francisca Luna, wife of Jose Sy, and a Chinese by the name of Tan Chiong Kiap, also both eye-witnesses, as well as by the written confession made by defendant before the agents of the law. There is nothing that can discredit this evidence for nothing has been shown that these witnesses have testified for reasons other than to tell the truth. No personal or improper motive has been ascribed to their action. Defendant on the other hand has not advanced any defense in justification for his acts other than his uncorroborated version that it was one Chinese named Chua Tone who killed the two deceased as a result of an alleged agreement he had with him, and his seeming imputation that two other Chinese named Yu Owa and Lim Sy Puat took part in the killing. This lone testimony however, which stands uncorroborated, cannot prevail over the unimpeached evidence of the prosecution. To all appearances, as pointed out by the lower court, the persons alluded to by the defendant are at best fictitious or imaginary because he failed to mention any of them in his written confession nor has he made any attempt to prove their identity or their participation in the killing. His confession shows that he shot his victims for personal reasons. Upon the evidence of record, we are persuaded that the defendant is the only author of the death of the two victims.

The acts committed constitute two crimes of murder qualified by treachery. There being no modifying circumstance to consider in favor or against the defendant, the proper penalty should be imposed in the medium degree, or reclusion perpetua.

The judgment in both cases should be affirmed, with costs against the appellant.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

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