

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TIMOTEO SAGARIO, BUENCONSEJO CATAGUE, JULIAN MAGONG AND ALFONSO CATAGUE, DEFENDANTS AND APPELLANTS.

G.R. Nos. L-1264-65. May 31, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

The four appellants were found in one case guilty of murder and sentenced to reclusion perpetua, to indemnify jointly and severally the heirs of Marcelo Portillo in the sum of P2,000 and to pay the costs; in the second case, they were found guilty of the crime of murder with less physical injuries and sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of Rufino Portillo in the sum of P2,000 and to pay the costs.

On the midnight of May 26, 1946, the house of Damian Portillo was assaulted by armed men, as a result of which, Marcelo Portillo, son of Damian, was shot and killed. Rufino Portillo, a baby boy of Marcelo and grandson of Damian, was also shot and killed in the hands of his grandmother Leonila Roca who, on the same occasion, was also wounded in the right midilio inguinal region. The assault took place in sitio Canawe, municipality of Isabela, Province of Negros Occidental.

The above facts appear in a statement in appellants' brief, which is adopted by the prosecution.

The two main questions in this appeal relate to the identity of the four appellants as co-authors of the assault and as to the existence of conspiracy among themselves.

With the exception of Julian Magong, appellants are related to each other and to the victims. Before the assault, appellants entertained grievances against Damian Portillo. Buenconsejo Catague, after having twice bought rice on credit, was denied a third similar request; Portillo denied Julian Magong's request to cut the former's bamboos on credit; Alfonso Catague wanted to buy ten cavans of palay from Portillo, but the latter gave him only one cavan; Timoteo Sagario is the son of Igmedio Sagario who was removed from his tenancy by Portillo on account of his inefficiency in his work.

On the afternoon of May 26, 1946, Jose Aguilar went to sitio Bartolina with his ten-year old son to buy salt and bagoong. They took shelter in the house of one Espiridion Basa upon being caught by the rain. Gathered there were Igmedio and Timoteo Sagario, Buenconsejo Catague, Julian Magong, Teofilo Villafuerte and two unidentified individuals. Aguilar got into conversation with Igmedio and suggested to him to see Portillo about the return of his tenancy. Igmedio replied that it was not necessary because he would kill Portillo and his family that night. Timoteo Sagario pulled Aguilar to the kitchen and, thrusting his revolver against his stomach, announced that he would kill him. He desisted, however, upon the pleas of Aguilar and intervention of Teofilo Villafuerte. For fear, Aguilar squeezed himself under the kitchen stove. Buenconsejo Catague told him that he would have to come with them that night. After an exchange of threats from Buenconsejo and pleas from Aguilar, Buenconsejo changed his mind and told Aguilar that he could stay but that he was not to leave the place and warn Damian Portillo as, otherwise, he and his family would all be killed. Igmedio and Timo-teo Sagario, Julian

Magong and the two unidentified Cebuanos left leaving behind Villafuerte and Buenconsejo who, at about 9 o'clock after supper, also left. Aguilar tried to leave too but, upon seeing a person walking back and forth downstairs desisted from leaving the place.

At midnight he heard two shots coming from the direction of the house of Damian Portillo, about half a kilometer away. At that midnight, while cradling in her arms her sick three-year old grandson Rufino, Leonila Roca, upon hearing the barking of their dog, ordered servant Felipe Palomaria to drive away the dog lest it might bite anyone. Felipe was met by Buenconsejo who seized him by the arms. Standing beside him near the doorway were the Sagarios and Julian Magong. Buenconsejo took away Felipe's bolo and delivered him to Alfonso Catague, father of Buenconsejo. Alfonso, followed by two unidentified persons brought Felipe to a rice seedbed, where Felipe heard a shot. Then he was brought to an irrigation dam of Portillo where he heard another shot. Alfonso asked Felipe if Portillo had arms. Alfonso tied his hands with a nito vine and brought him to a coconut grove. Upon learning that Felipe was just a servant, Alfonso untied him, and Felipe used the opportunity to escape and hide in a creek, returning to the house of Portillo towards dawn.

In the meantime, Marcelo Portillo went down the house. Buenconsejo met him and asked him what he was going to do. Marcelo answered that he is going to drive away the dog. Igmedio Sagario told Buenconsejo to shoot and Buenconsejo fired against Marcelo, hitting him on the breast above the left nipple and killing him.

Running to another side of the house to look for her husband, Leonila saw the door already opened. Timoteo Sagario, standing there, aimed his revolver at her and fired killing baby Eufino Portillo. The bullet passed through the child's body and lodged in Leonila's right midilio inguinal region, causing a wound which took twenty-three days for the point of entrance to close. Then Leonila heard Buenconsejo shouting to the inmates that they were lucky that his gun jammed, otherwise, they would have been killed including their cats.

Upon the testimonies on record, we are fully satisfied that appellants, all acquaintances of the witnesses for the prosecution, have been conclusively identified. Felipe Palomaria identified Buenconsejo and Alfonso Catague and also Igmedio and Timoteo Sagario and Julian Magong as the persons standing by the side of Buenconsejo near the doorway of Portillo's house, at the time Felipe was held by the arms by Buenconsejo. Leonila Roca saw Buenconsejo firing against his son Marcelo upon the order of Igmedio Sagario and saw Timoteo Sagario firing at her while she had in her arms her grandson Rufino Portillo. Honorata Ledesma, widow of Marcelo, saw Buenconsejo firing his rifle at her husband, upon the order of Ignacio Sagario, and by the light of a lamp on a table beside her sick son, she also saw Timoteo Sagario standing by the door from where he shot her child and mother-in-law. Damian Portillo saw, by the moving light of a flashlight which was held by Igmedio and by peeping through a hole in his granary, Igmedio and Timoteo Sagario, Alfonso and Buenconsejo Catague, Julian Magong, and Teofilo Villafuerte.

The evidence on record offers ample ground to conclude that appellants committed the two crimes here in question pursuant to a conspiracy. Each and everyone of them had grievances against Damian Portillo, the head of the family to which the victims belonged; they gathered in the house of Espiridion Basa on the afternoon previous to the midnight killings, their actuations in the Basa house indicated that they were acting under the same purpose, and the same purpose can be gathered from their conduct at the time the assault took place.

For all the foregoing, we are satisfied that the evidence on record has proved beyond all doubt that appellants are guilty of the crimes of murder and murder with less serious physical injuries for which they were convicted in these two cases by the trial court. The penalty imposed in the appealed judgment is in accordance with law, although the indemnity that should be paid to the heirs of Marcelo Portillo should be increased to six thousand pesos (P6,000) in accordance with our decision laid down in the case of *People vs. Amansec*, (80 Phil., 424, 435)

the same modification is also true as to the indemnity to the heirs of the deceased Rufmo Portillo. Thus modified, the appealed judgment is affirmed.

Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

PERFECTO, J.:

We certify that the Chief Justice and Mr. Justice Ozaeta voted in support of this decision.

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