THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PRIMITIVO PERALTA, ET AL., DEFENDANTS. PEDRO PILLOS, DEFENDANT-APPELLANT.

G.R. No. L-30304. June 07, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by Pedro Pillos from the decision of the Court of First Instance of Ilocos Norte, finding him guilty of murder and frustrated murder, and sen-tencing him accordingly.

At about 3 o'clock in the afternoon of 15 October 1967, Fortunato Daquioag, the official NP candidate for mayor of the municipality of Marcos, province of Ilocos Norte, was shot to death while the jeep he was riding in was passing by a political meeting being held for his opponent, re-electionist mayor Primitivo Peralta. The driver of the jeep, Norberto Macatiag, also sustained wounds in the head and on the right arm. As a consequence of this incident, four persons were charged with murder and frustrated murder before the Court of First instance of Ilocos Norte - then municipal mayor Primitivo Peralta, Chief of Police Pedro Pillos, and Patrolmen Jose Rosal and Amando Arios of the Marcos police force.

The record shows that in the evening of 13 October 1967, Chief of Police Pillos was involved in a shooting incident with some followers of candidate Daquioag, which became the subject of a PC investigation. It was in connection with said investigation that Daquioag and six of his men went to the PC detachment in Dingras, riding in a jeep, in the afternoon of 15 October 1967. As the PC officers had agreed to the necessity first of an ocular inspection of the place where the incident allegedly took place, Daquioag left the area with his men[1] and two others - PC Corporal Victorio Campos and barrio captain Segundo de la Cruz - who had requested for a ride up to barrio Capariaan. Daquioag seated himself at the front seat of the MacArthur-type jeep, between driver Macatiag to his left, and Corporal Campos to his right. On the rear side seat behind the driver were seated Albino Bumanglag and Julio Aguidan; Terencio de la Cruz sat on the spare tire on the floor of the vehicle; and Romulo Piedad, Segundo de la Cruz and Julio Menor sat on the rear side seat behind Corporal Campos.

When they reached barrio Alabaan, the occupants of the jeep saw standing in front of the gate of the yard of Fidel Rosal (where a poli-tical meeting was being held), Mayor Peralta, Chief of Police Pillos and Patrolman Jose Rosal, flagging their jeep to stop. As the slow-moving jeep passed by the trio, Chief Pillos and Patrolman Rosal ran after the vehicle and clambered at the right side thereof. Chief Pillos took to the side parallel to the front seat occupied by the driver, Daquioag and Corporal Campos, while Patrolman Rosal was at the rear side of the vehicle, his left hand holding on to the steel support of the jeep-top, his feet planted on the nickel-plated side guards thereof. The chief of police asked the driver to stop the vehicle and when he was not heeded, he grabbed the steering wheel with his left hand.[2] Then he inquired if the occupants of the vehicle were carrying arms. As to what actually transpired after this point, the declarations of the alleged eyewitnesses diverge.

According to the defense, Chief Pillos reached for something under the seat of Corporal Campos and brought out

the barrel of a carbine; that at that instance Daquioag, who was sitting at the left of Campos drew a gun and aimed it at the chief of police. Seeing his superior in danger, according to Patrolman Rosal, he pulled his gun and fired two successive shots at Daquioag, both of which hit him.[3] Rosal declared that he alone fired at the deceased,[4]but that Daquioag was also able to fire his gun.

On the other hand, the prosecution witnesses testified that to the Chief of Police's query whether they were carrying arms Corporal Campos and Daquioag answered in the negative; that immediately there-after, Patrolman Rosal, who was clinging at the rear right side of the jeep, fired his gun hitting the head of Daquioag, and when the latter slumped to the right, with his head resting on the backrest of the seat, Pillos fired at him, hitting Daquioag on the body.[5] The victim was already dead when the jeep stopped in front of his own house about 400 meters away. They also testified that somebody fired shots at the jeep as it was pulling away from the scene of the shooting.

The necropsy report of the rural health physician who conducted the post-mortem examination on the cadaver of Fortunato Daquioag, contains the following findings:

> "EXTERNAL FINDINGS
>
> 1. Bullet wound - oval, 1 cm. diameter, located at the axillary region, back, left forearm. Powder burns around wound. Entrance of wound no. 2.
>
> 2. Bullet wound – oval, 1-1/4 inch diameter, penetrating, located 1 cm. from mid sternal line, left; 4 cm. below mid clavicular junction, 5 cm. mid nipple line, between the 3rd and 4th ribs, left. Exit of wound no. 1.
>
> 3. Bullet wound - semi-oval lacerated, about 2 cm. in diameter, penetrating, edges averted, located at right midparietal region. Entrance of wound no. 4.
>
> 4. Perforated wound - semi -lacerated, irregular in shape about 4 cm. length and 3 cm. in width, v-shaped lo-cated at left occiput. Exit to wound no. 3.
>
> "INTERNAL FINDINGS
>
> 1. comminuted fracture of the skull, 20 cm. length, mid-parietal from side to side.
>
> 2. lacerations of the brain substance.
>
> 3. Perforated wound, left lung.
>
> 4. Fractured rib, 4th, left.
>
> 5. Internal hemorrhage.
>
> Cause of death - lacerations of the brain substance and perforations, left lung, shock and internal hemorrhage." (Exh. A)

Norberto Macatiag, the driver, also sustained a gunshot wound on the lower third of the lateral aspect of the right arm, from which a slug was extracted at the Ilocos Norte Provincial Hospital, and another wound at the scalp, right parietal, 1 cm. from the hairline and 0.5 cm. in diameter.

On 24 January 1969, the court rendered judgment finding accused Pedro Pillos and Jose Rosal guilty of the crimes charged, and sentencing each of them to life imprisonment, for the slaying of Fortunato Daquioag, and to the indeterminate penalty of 6 months and 1 day of prision correccional, as minimum, to 6 years and 1 day of prision mayor, as maximum, for the wounding of Norberto Macatiag. Both accused were also ordered, jointly and severally, to indemnify the heirs of Daquioag in the sum of P12,000.00, and Macatiag, in the sum of P200.00,

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without subsidiary imprisonment in case of insolvency. The accused Primitivo Peralta and Amando Arios were acquitted, there being no evidence estab-lishing their complicity to the shooting of the victims. From this decision only Pillos has appealed, assailing the correctness of the decision of the lower court finding him guilty of the offenses charged and sentencing him accordingly, allegedly on the basis of the same evidence that acquitted Primitivo Peralta and Amando Arios.

Appellant does not deny that he was with Patrolman Jose Rosal[6] that fateful afternoon of 15 October 1967 along the road in front of the house of Fidel Rosal (the father of his co-accused Jose Rosal); that he flagged down the jeep bearing the deceased Fortunato Daquioag and eight others; that he and Jose Rosal climbed the slow-moving vehicle when it passed by them; and that he positioned himself on the right side of the jeep parallel to the front seat. He denies, however, that he fired any gunshot at all to Daquioag or anyone inside the jeep, and this is corroborated by Rosal's admission in court that he alone fired the two gunshots that caused fatal injuries to Daquioag. In disregarding the testimonies of the accused on this point, the trial court said:

> "After a careful evaluation of the evidence on record, the Court believes that the pretension of the defense that Pedro Pillos, although present, had no participation in the shooting, is belied by the fact that the fired bullet or slug (Exhibit 'F') found in the pool of blood on the front floor of the fatal jeep, turned out to have been fired from Pillos' gun (Exhibit 'C'). This is a most telling evidence which establish the participation of Pillos. It is believed that this is the slug that hit Daquioag at the back, left armpit, plowed thru his body, and came out of the chest."[7]

Of course, there is insinuation that the fragmented slug (Exhibit 'F') found by the PC investigator Lasaten in the pool of blood inside the jeep was planted or placed there on purpose by some interested persons. In the absence of proof, however, that there was tampering with the evidence, as it is in this case, the presumption that the police authorities had regularly performed their official duties must be upheld.

Furthermore, there is no doubt that the first shot fired by Jose Rosal hit the deceased Daquioag at the right mid parietal region (a little above the forehead) penetrating through and through and coming out at the left occiput (back portion) of the head above the ear. Since the second bullet that hit him entered the rear portion of the left forearm (near the armpit), coming out of the chest, left portion, mid nipple line, and perforating the left lung, this left to right direction of the bullet indicates that it was fired from a gun at the rear, left side, of the deceased. Appellant insists that this second bullet also came from the gun of Jose Rosal. It is claimed that when Daquioag was hit on the right side of the head, he turned counterclockwise (towards the left), his head resting on the shoulder of Macatiag, the driver, so that when Rosal fired the second shot, the bullet found its mark at the rear portion of Daquioag's forearm.

The theory of appellant loses strength in the face of the following circumstances: first, according to Corporal Campos, when he heard the first shot he ducked, his lowered head touching the outer part of his thigh.[8] With Campos' body thus bent forward and outwardly, there would be nothing that would hold or prop up the body of Daquioag. So, when the first shot hit him on the head, the body could have really slumped on the right side with his head resting on the backrest of the front seat, as testified to by the prosecution witnesses. In this posi-tion, Rosal could not have inflicted the second wound; it would have been caused by a bullet fired from a gun at the front, right side of the jeep. Secondly, as pointed out by the trial judge, the PC investigator found pools of blood (a) on the floor of the jeep, rear, below the front seat-backrest, and (b) on the floor of the front seat. If we follow ap-pellant's theory that the deceased, on being hit on the head, immediately reeled towards the left and it was while his head lay on the shoulder of the driver that he was hit the second time, then why would there be a pool of blood at the back part of the jeep below the backrest of the front seat? Thirdly, if the wounds sustained by the deceased were both inflicted by the same person, how can we account for the presence of powder burns around

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the second, whereas the first (head) wound was found to be clean? The only logical conclusion that can be drawn from this fact is that the gun from whence the first bullet was fired (Rosal's) was farther than that which fired the bullet that entered the forearm of the deceased. As demonstrated by Rosal during the trial, when he fired at Daquioag, the muzzle of his gun was more than 3 feet away from the latter's body.[9] Dr. Puruganan, the physician who con-ducted the post-mortem examination of the victim, on the other hand, testified that the muzzle of the gun from where the first shot was fired must have been more or less one meter from the head of the deceased,[10] thus tallying with Rosal's testimony. But the range of firing of the gun that inflicted the second wound was only about 18 inches.[11] Undeniably, Pillos, who was at the side of Corporal Campos, would be much nearer to Daquioag when the latter, slumped to the right side, received the second wound in his body.

Then, according to Rosal himself, he fired the two shots successively, the difference in time between the first and the second shot being merely a matter of seconds.[12] It is very unlikely, therefore, that in such split-second Daquioag's body, by sheer reaction to or impact of the shot, could have turned at the waist,[13] by an angle of no less than 45º, in order that from its original position when the first bullet plowed through his brain the rear part of his body would be exposed to the path of the second bullet. This is even on the assumption that when the first bullet hit him, Daquioag's back was resting flat against the backrest of the seat, which is doubtful. Considering that the presence of the Chief of Police, clinging on to the right side of the jeep and inquiring about firearms, is something unusual if not foretelling of danger, the normal reaction of an ordinary person would be to turn his body a little towards that side that engaged his attention. In a situation like that, it would require a wider angle than 45º to place Daquioag's body in that position pictured by ap-pellant when the second shot was fired.

Another piece of evidence that points to appellant's participation in the shooting incident of 15 October 1967 is the existence of the wounds of driver Macatiag.[14] It may be recalled that according to the witnesses, when the jeep was flagged down by the accused, it did not come to a full stop; it merely slowed down. In fact, it kept on running until it reached the front of the house of Daquioag about 400 meters away from where the shooting had taken place. In other words, although the driver could have managed taking quick glances at what was happening inside the vehicle, he kept his eyes on the road and minded his driving. And yet, he sustained two gunshot wounds-one on the lower third, lateral aspect of the right arm from which the slug, Exhibit "J", was extracted,[15] and another, an abrasion on the scalp, right parietal, 1 cm. from the hairline. If it were true that it was only Rosal who fired his gun inside the jeep, and he fired at Daquioag only twice, it is difficult to explain how Macatiag got his wounds. Even assuming for the sake of argument that the slug that embedded on his right arm had previously passed through the body of the slain Daquioag, how did Macatiag get grazed on the head? There is no showing that when the deceased was shot in the head Macatiag's head was in the trajectory line of that bullet. Upon the other hand, there is a bullet hole found by the PC investigator on the canvass-top of the jeep, located on the left side above the driver's head. This is a clear indication that somebody situated on the right side of the driver had also discharged a gun, and it supports the declarations of the prosecution wit-nesses that Chief Pillos took part in the shooting.

It may be true, as appellant maintains, that his purpose in trying to stop the jeep was only to verify a tip that the occupants thereof were carrying firearms. But the legitimacy of his purpose would not negate his commission subsequently of illegal acts, nor would such lawful purpose legitimize otherwise unlawful acts. The fact remains that the evidence on record has sufficiently established that appellant and Rosal almost simultaneously fired their guns at Daquioag, resulting in the latter's death and the wounding of driver Macatiag. Under the circumstances, it is not even necessary to show that appellant and Rosal had previously agreed to carry out the offense. By their concerted acts of aiming and actually firing at Daquioag and/or the occupants of the jeep, appellant Pillos and Rosal showed oneness of purpose and unity in the execution of the criminal act, thereby making them co-conspirators in its accomplishment,[16] equally liable for all the consequences thereof,[17] it being immaterial

who actually fired the fatal shot.[18]

We also agree with the lower court that the crimes committed were murder and frustrated murder, the shooting having been charac-terized by treachery. From the accounts of witnesses, it appears clear that the firing of the guns was simultaneous and sudden, just immediately after the chief of police had asked whether they were carrying firearms, that the occupants of the jeep could not have ex-pected that said peace officers would open fire on them. In fact, Daquioag and his companions must have been completely taken by surprise by Pillos and Rosal, that not even one of those in the jeep had the sense, or the opportunity, to jump out of the vehicle to avoid getting caught in the crossfire.

To show that the deceased Daquioag was not totally unaware of what was coming to him, the defense tried to make capital of the fact that Corporal Campos found on the floor of the jeep at the front a .22 caliber revolver said to belong to the slain man. Appellant and Rosal then testified that when the former discovered the barrel of a carbine from under the seat where Corporal Campos was sitting, Daquioag pulled out a gun and pointed it to the chief of police. This version, however, was vehemently denied by Corporal Campos, a totally disinterested person who happened to be an eyewitness to the incident, and We are not prepared to overrule the trial judge in giving more credence to the testimony of this witness. We find no error, therefore, in the ruling of the lower court declaring appellant Pedro Pillos guilty of the crimes of murder and frustrated murder, and in sentencing him to life imprisonment and to the indeterminate penalty of from 6 months and 1 day of prision correccional, as minimum, to 6 years and 1 day of prision mayor, as maximum, for the slaying of Fortunato Daquioag and the wounding of Norberto Macatiag, respectively; to indemnify Macatiag and the heirs of the deceased; and to pay one-fourth of the costs.

WHEREFORE, the decision appealed from is hereby affirmed, with costs in this instance taxed against the appellant.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.
Ruiz Castro, J., did not take part.

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[1] Norberto Macatiag, who was driving the vehicle, Julio Aguidan, Albino Bumanglag, Terencio de la Cruz, Romulo Piedad, and Julio Menor.

[2] Page 107, t.s.n., hearing of 31 October 1967; pages 813-814, t.s.n., 23 May 1968; page 19, t.s.n., 4 June 1968.

[3] Pages 817-819, t.s.n., hearing of 23 May 1968.

[4] Pages 838-839, t.s.n., 23 May 1968.

[5] Page 108, t.s.n., 31 October 1967; pages 176, 181, 252-253, t.s.n., 2 November 1967; page 389, t.s.n., 20 February 1968; pages 439-440, t.s.n., 21 February 1968.

[6] Originally an appellant in this case, Rosal subsequently withdrew his appeal, which was approved by this Court by resolu-tion of 18 July 1969.

[7] Pages 374-375, CFI record.

[8] Page 108, t.s.n., hearing of 31 October 1967.

[9] Page 838, t.s.n., 23 May 1968.

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[10] Page 13, t.s.n., 30 October 1967.

[11] Page 9, t.s.n., 30 October 1967.

[12] Page 818, t.s.n., 23 May 1968; pages 839-840, t.s.n., 24 May 1968.

[13] The deceased was seated, and hedged in by two persons; and the front seat of a jeep would not also provide much room for free movement of the body.

[14] Exhibit "I".

[15] Exhibit "J" was found by the ballistician to have been fired from the .38 cal. revolver in possession of Jose Rosal.

[16] People vs. Tapac, L-26491, 20 May 1969, 28 SCRA 191; People vs. Pagaduan, L-26948, 25 August 1969, 29 SCRA 54; People vs. Fon-tillas, L-25298, 16 April 1968, 23 SCRA 74; People vs. Estrada, L-26103, 17 January 1968, 22 SCRA 111; People vs. Tividad, L-21469, 30 June 1967, 20 SCRA 549; People vs. Guarmes, L-12819, 29 December 1960; People vs. Santiago, L-12860, 29 December 1960; People vs. Sawit, 100 Phil. 507.

[17] See People vs. Espejo, L-27708, 19 December 1970, 36 SCRA 400.

[18] People vs. Upao Moro, L-6771, 28 May 1957; People vs. Omar, L-7137, 30 April 1955.

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