

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RENATO DELFIN, ET AL., DEFENDANTS AND APPELLANTS.***G.R. Nos. L-15230 and L-15979-81. July 31, 1961*

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

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Renato Delfin and Hoc Seng alias Celso Mate were charged before the Court of First Instance of Leyte with murder for the killing of Ang Ban alias Tiwa (Criminal Case No. 1127). Renato Delfin alone was also accused before the same Court of First Instance of (1) slander by deed allegedly committed against the person of Ang Giok Chuan alias Chuana (Criminal Case No. 1079); (2) of illegal possession of firearm (Criminal Case No. 1080). Finally, in a fourth case, Renato, together with his cousin, Eladio Delfin, was charged with frustrated murder for the stabbing of Francisco Ang alias Ekiong (Criminal Case No. 1081). To all the informations, the three accused entered separate pleas of "not guilty."

The facts which gave rise to the charges are allied incidents, and for this reason, a joint trial was agreed upon by the accused and the prosecution. Trial having thus been conducted, the three defendants were found guilty as charged and sentenced accordingly.

From the verdict of conviction, the accused interposed separately their appeal, in each of the four cases, but in view of the murder case, all the appeals are now in this Court for a joint consideration.

The evidence for the State, accepted by the trial court, is to the effect that between the hours of 3:00 and 4:00 o'clock in the afternoon of January 26, 1957, accused Renato Delfin, Eladio Delfin, and another unidentified companion came to the store of Sy Leng Hag at the town of Naval, Leyte. Renato insistently asked the storeowner to sell to the trio three bottles of beer, to which Sy Leng Hag replied that there was none. Angered by the response, Renato immediately held Sy by the collar. Ang Giok Chuan alias Chuana, a niece of Sy, lost no time in interceding in behalf of her uncle by assuring Renato that there was really no beer for sale. Incensed by the intervention of Chuana, who at the same time was also trying to release Sy from the hold of Renato, the latter slapped her on the left cheek in the presence of several customers. Humiliated and embarrassed, the woman burst into tears.

At this juncture, Chuana's brother, Francisco Ang alias Ekiong, whose attention was attracted by the commotion, left his father Ang Ban's store and proceeded to investigate what seemed to be some trouble nearby. Barely had he inquired from his sister why she was crying when he was confronted by Renato Delfin with these words "What do you want, to defend her?" Instantly, Renato gave Francisco a fist blow which, however, missed because the latter was able to duck in time. A fight ensued between the two protagonists in which Francisco evidently appeared to be the better boxer.

While Francisco and Renato were thus sparring it out, accused Eladio Delfin approached from behind Francisco and, whipping out a dagger, stabbed the latter by a forward swing from behind, arching downward toward the victim's abdomen on the level of his umbilicus. Eladio attempted to deliver a second thrust, but Chuana, noticing

this, grappled with him for the possession of the weapon. In the struggle, Eladio was able to wriggle loose from the desperate hold of Chuana and ran away. Francisco held the gaping wound firmly with both hands to keep the intestines from coming out; forthwith, he was escorted home.

In the meanwhile, Renato had scurried home to the store-residence of Hoc Seng, the husband of his wife's sister. Readily sensing that Renato was in trouble, Hoc Seng inquired what had happened to him, and Renato replied that he had an exchange of fist blows with Francisco Ang. Hoc Seng promptly went inside his room which was just behind the store, and after a short while came out with his licensed pistol. Handing the weapon over to Renato, Hoc Seng remarked, "Here you shoot, kill anyone of them. I will be responsible for everything, including your family." Renato took the pistol, tucked it inside his right pocket, and hurriedly left.

Meanwhile, Ang Ban rushed to his house as soon as he learned that his son was stabbed. Reaching home, he ordered somebody to send a telegram to Cebu containing a request that a plane be flown to Naval to airlift Francisco to a hospital for medical treatment. Informed later by the messenger that the telegraph office had already closed, Ang Ban personally proceeded to the post office building in order to plead with the operator to send the wire in view of its urgency. On the way, Ang Ban was met by Renato Delfin, who, upon seeing the former, drew his gun and pointed it at Ang. The latter raised his hands above the head in an act of surrender, but despite this, Renato thrice fired the pistol at point blank range, hitting and felling his unarmed victim with mortal gunshot wounds, which injuries shortly thereafter caused the latter's untimely death. Renato was placed under arrest by policemen Santos Vicera and Fortunato Calixtro, and while he did not offer any resistance, the gun accidentally fired while the police officers were in the process of disarming him.

Chuana, together with an uncle and a cousin, brought the badly-wounded Ang Ban to their house. Dr. Zamora, who was fetched to render medical assistance, was able to administer preliminary treatment only to Francisco Ang, for Ang Ban, in the meanwhile, had already died. Upon physician's advice, Francisco was brought to a hospital in Tacloban City, where able medical assistance saved his life.

Upon the other hand, appellants' story goes that between the hours of 3:30 and 4:00 o'clock in the afternoon of the 26th of January, 1957, Renato Delfin was in the market place collecting license fees and taxes upon orders of his superior, the municipal treasurer of Naval; that later, he passed by the store of Sy Leng Hag to collect differential license fees and taxes, such as for retail selling of tobacco and wine; that while he was urging the store-owner to pay, Chuana intervened by telling Sy not to pay because he was not delinquent; that because Chuana was blocking the way, Renato slightly pushed her aside; that while Renato was preparing the official receipt after Sy had already expressed his willingness to pay, somebody patted him on the shoulder, and as he turned around to see who it was, he was dealt a fist blow delivered by Francisco Ang, as a consequence of which he fell to the floor; that when he tried to stand, he was ganged upon by Chuana, Rosendo Yap, Sy Leng Hag, Francisco Ang and Ang Ban; that Eladio Delfin a cousin of Renato, who happened to be passing by at the time, rushed to the succor of Renato, but because Francisco had a knife with which he tried to attack Eladio, the latter stabbed Francisco in self-defense; that Renato then ran away and proceeded to the store of Hoc Seng, and once inside, he went to the adjacent room and forcibly opened a drawer wherein Hoc's pistol was kept; that after grabbing the weapon, he stepped out to look for a policeman to accompany him back to Sy's store in order to retrieve the official receipts he left behind during the mauling; that on the way, he met Ang Ban who approached him; that Renato told Ang not to come any nearer, but the latter unmindful of the warning, merely shouted back, "So you are the one who wounded my son!"; that Ang at the same time made a move to take out a revolver inside his pocket, but Renato proved himself to be faster to the draw, for not only was he able to fire a warning shot, which Ang did not heed, but appellant was also able to fire three times more in succession, hitting and felling Ang before the latter could fire back; and that, finally, when Renato turned away intending to proceed to the municipal building, he was met

by Santos Vicera and Fortunato Calixtro of the Naval police force to whom he surrendered and related the incident.

Our own review of the records of the case convinces us beyond doubt that the State's account of the incidents is, as the lower court found, the version to be believed. Eyewitnesses to the slapping and stabbing incidents which occurred inside the store of Sy Leng Hag include Ang Giok Chuan and Inocencio Abilar, a salesman at Sy's Store. These witnesses attested in unison to the unjustified slapping of Chuana by Renato and the subsequent stabbing of Francisco Ang by Eladio Delfin. The defense's claim that Eenato was at Sy's store to collect municipal taxes and license fees is difficult to reconcile with the testimony of another defense witness, Macario Danghel, the acting municipal treasurer of Naval, who knew for a fact that Sy Leng Hag was not delinquent in the payment of his municipal dues (see also Exhibits "G"-"J"). If, as Renato admitted, he had no misunderstanding whatsoever with Francisco Ang, it is unlikely that Francisco would suddenly burst inside the store, and, without any provocation, attack said accused. Regino Durano, who was presented to corroborate the testimony of Renato on this point, said that he accompanied Renato all the way in collecting taxes, yet he could not remember whether or not Renato was in fact able to collect any taxes during the afternoon of the incident. He testified that he scurried off after Francisco Ang alias Ekiong hit Renato with a fist blow. Had Francisco been really the aggressor, the witness would not have left his office-mate to be mauled without at least calling for police assistance.

Eladio Delfin declared in his own defense that he did not proceed to the municipal building after he stabbed Francisco Ang ("Ekiong") because he was afraid someone might wreak vengeance on him. But if fear of reprisal from his victim's relatives was his sole reason for wanting to take refuge, we see no reason why he should also hide from the authorities. He knew for a fact that peace officers were looking for him; yet he did not readily dare give himself up. Likewise indicative of this accused's consciousness of guilt was his act in throwing away the dagger with which he grievously wounded Francisco. Repeated inconsistencies in his testimony stand to confirm that Eladio had not disclosed the truth.

The defense's effort to prove the alleged violent temper of the offended party, Francisco Ang, was successfully blocked by the prosecution. The positive and convincing attestations of the prosecution witnesses regarding the commission of the felony in question has left the incident unimportant.

Anent the convictions for murder and illegal possession of firearm, we find the guilt of appellants Renato Delfin and Hoc Seng to have been similarly proved. After the incidents that occurred in Sy's store, Renato admittedly proceeded to Hoc Seng's store. Benigno Balce and Natividad Santillan, who were then at Hoe's store to make some purchases, saw Renato enter the store panting; and that after he had informed Hoc Seng what had happened, the latter hurriedly went inside his room and shortly later came out with a pistol which he handed to Renato saying, "Here, you shoot, kill anyone of them. I am responsible."

What transpired shortly thereafter was related at the witness stand by Ang Gio Chuan and Santos Vicera, the former as she rushed to fetch a doctor for her brother "Ekiong", and Vicera as he wended his way home, after a tour of duty. Their attention roused by the first shots, both saw Renato repeatedly shoot Ang Ban, while the latter had both hands raised above his head. Ang Ban staggered, held his abdomen with his hands, and fell into a nearby ditch. Policeman Santos Vicera then approached Renato (a second cousin) and forthwith placed him under arrest. When asked by the arresting officer whose gun it was he used in shooting the deceased, Renato confessed that it was Hoc Seng who made him use it.

The defense, in an effort to exculpate Hoc Seng from the murder charge, presented Enrique Palconit, Ogdula Ibañez, Roman Madeja and Primitiva Buot to testify that Natividad Santillan could not have been in Naval on the date of the incident, as she was then in the town of Villaba. Their testimony, however, appears tainted with

unreliability. Thus, Enrique Palconit admitted that Salud Chan, the wife of Hoc Seng, visited him several times to urge him to testify in this case; and, as a matter of fact, the witness conceded that he does not really remember the exact date, but only the month, when he allegedly saw Natividad Santillan in Villaba. Ogdula Ibanez went to the extent of contradicting obvious facts; for instance, she swore that her affidavit (Exhibit "7-A, Hoc Seng") was executed by her in Naval when the document itself indicates that it was subscribed to in Almeria, Leyte. Roman Madeja, who, incidentally, is related by affinity to one of the accused, Renato Delfin, could not explain satisfactorily to the court why, of all the passengers that supposedly disembarked at Naval from a boat coming from Villaba on the 27th of January, one day after the shooting incident, he was able to recall only Santillan and Ogdula Ibañez.

Primitiva Buot, a daughter of Natividad Santillan, asserted that her mother left for Naval from Villaba only on the 27th of January (1957); yet she also declared that she never met her (Santillan) at anytime during said month, thus leaving unexplained how she learned of Santillan's departure. This witness also admitted that she was offered P1,000 to testify for the defense and her own brother, Claro Tuhamak, declared in court that Primitiva admitted to him that she was given the money by Hoc Seng's wife, Salud Chan.

To discredit Benigno Balce, Sergeant Apolinario Verutiao of the Philippine Constabulary was presented to testify that when the sergeant, in the course of his investigation, asked Balce whether he knew anything about the case, the latter replied in the negative. This is not significant, for the initial reluctance of witnesses in this country to volunteer information about a criminal case, and their unwillingness to be involved in or dragged into criminal investigations is common, and has been judicially declared not to affect credibility (*People vs. Villamin*, 64, Phil., 884). In any case, it is a fact that Benigno Balce, like Natividad Santillan, came out publicly with his knowledge about the case barely 13 days after its occurrence, by subscribing to an affidavit before the local justice of the peace.

The defense of Hoc Seng is that Renato Delfin, after his fight with Francisco Ang ("Ekiong"), went to Hoc Seng's house, and without the latter's knowledge or consent, broke open the locked drawer where a licensed pistol was kept, took the weapon, sallied forth before anyone could stop him, and later shot Ang Ban in self-defense. We find this version improbable and incredible. Renato Delfin had just seen his cousin Arcadio stab Francisco ("Ekiong") Ang and deal him a severe wound. Renato, therefore, was aware that "Ekiong" had been more than amply repaid for the blow on Renato's face, and had actually got the worst of the struggle. Renato could have no further interest in harming anyone else, much less to break open his brother-in-law's furniture, and without his consent seize and use his gun, thus involving Hoc Seng unnecessarily. As we view it, only Hoc Seng's influence and incitement (as narrated by the witnesses for the State, Balce and Santillan) could have implanted in Renato's mind the idea of making further use of the deadly firearm against Hoc Seng's personal enemies and business rivals, the Angs.

That Hoc Seng's action in handing the gun to Renato and inciting the latter to shoot his enemies constituted co-authorship by induction is clear, when we take into account Hoc Seng's moral influence on his brother-in-law, whose wife was the younger sister of Hoc Seng's wife, Salud Chan; that since the fire that razed Naval, Renato and his wife lived in the house of Hoc Seng and his wife; that Hoc Seng helped Renato financially by paying him for odd tasks that aided Delfin to eke out his meager pay as municipal tax collector. Had Hoc Seng contended himself with words of ill-will toward the Angs, perhaps he could plausibly argue that he was merely guilty of improper advice not amounting to a crime. But on the record before us, we are satisfied that Hoc Seng's counsel and his handing of the gun to his excited brother-in-law were the determinant impulse that induced Renato to embark in the killing of Ang Ban.

We also find untenable Renato Delfin's claim that he shot Ang Ban in self-defense when the latter allegedly drew

a gun from his pocket. When taken into custody, Renato made no mention of any gun carried by his victim, not even to his relative, policeman Santos Vicera, who placed him under arrest, probably because he realized that the law officer had seen him shoot down Ang Ban while the latter had his hands up in token of surrender. It may be added that the circumstances make it highly unlikely that the deceased should attack Renato; with his son grievously wounded, the thing naturally uppermost in Ang Ban's mind would be the overriding necessity of securing means to save his son's life and have him transported as soon as possible to a place where adequate treatment would be obtainable, rather than avenge his wounding. This concern makes it improbable that Ang Ban should proceed to the Naval post office carrying a weapon, or that he should attack Renato Delfin when they accidentally met in the street.

The witnesses presented to support Renato Delfin's version of the killing of Ang Ban gave contradictory versions about the appearance of the victim at the time; and one of them, Macario Cañeda, erroneously pointed to the court bailiff Victoriano Ayuste as the chinaman whom he saw pick up (and by inference, to have hidden) the gun of the deceased. These witnesses do not impress us with their reliability or veracity.

Having accordingly reached our conclusion on the actual issues, we now come to the points of law raised by the appellants. It is first urged that the Court of First Instance of Leyte had no jurisdiction to entertain the case for slander by deed, since what was actually committed was simple slander. Settled is the rule, however, that the jurisdiction of a court is determined in criminal cases by the allegations of the complaint or information and not by the result of proof (*People vs. Go Hiok*, 62 Phil., 501, and cases cited therein). Besides, the evidence is clear that Renato Delfin did not merely push Chuana aside, as he claims, but slapped her in order to ridicule and shame her before other people. Said acts constitute the felony of slander by deed, defined and penalized under Article 359 of the Revised Penal Code by *arresto mayor* in its maximum period to *prision correccional* in its minimum period. The maximum penalty imposed by the lower court is below the correct range; hence, it must be raised accordingly.

Appellant Renato Delfin should be acquitted in the frustrated murder charge, no conspiracy between him and Eladio Delfin having been adequately proved by the prosecution. The arrival of Francisco Ang in Sy's store and later his critical wounding by Eladio were the result of an unexpected turn of events, which neither the latter nor Renato could have foreseen. The commission of the felony by Eladio Delfin, however, was clearly characterized by treachery, as the lower court found, since the stabbing was achieved from behind the victim and committed without risk to the accused arising from any defense which the offended party might make. It may be noted in this regard that Eladio did not take part in the initial aggression (fist-fight between Francisco Ang and Renato Delfin), and his sudden participation was something Francisco did not expect. The penalty imposed by the lower court against Eladio Delfin, being below the correct range, should be raised accordingly.

The charge for illegal possession of firearm against appellant Renato Delfin is substantiated by the evidence of record. It is urged, however, that because Renato possessed the firearm for not more than three minutes, it can not be said that there was *animus possidendi*, citing the obiter dictum in *People vs. Estoista*, 93 Phil., 647; 49 Off. Gaz., 3330, to the effect that a temporary, incidental, casual or harmless possession or control of a firearm does not constitute the said felony. Defense cites the very same case which laid down the rule that the seizure of a firearm by one who has not been licensed for the purpose, with the intention of using the same unlawfully, however brief the possession was, constitute the crime defined and punishable under Republic Act No. 4, by imprisonment of not less than 1 year and 1 day to 5 years. The case syllabus reads:

"It being established that the defendant was alone when he walked to the plantation where he was to hunt with the rifle of his father, in whose name the firearm was licensed, and that the son, away from his father's sight and control, carried the gun for the only purpose of using it, as in fact he did with the fatal consequences, the

son's conviction for the offense of illegal possession of firearm was in accordance with law."

The penalty of 5 years imprisonment imposed by the lower court is not indeterminate; thus, it should be modified accordingly.

The killing of Ang Ban by Renato Delfin was characterized by treachery, and consequently, the lower court was correct in meting out the penalty for murder. It has been conclusively shown that Ang Ban, the deceased, was not afforded any chance to defend himself and indeed, he had both hands raised above his head in token of submission or surrender when Renato shot him three times.

In prevailing upon Renato to commit the killing, Hoc Seng is to be held criminally responsible for said deed as a principal by induction, for we have no doubt but that said accused's inducement was the determinative factor or cause that moved Renato to kill. However, he should be held guilty only of homicide, since it does not appear that Hoc Seng induced Renato to employ treachery in carrying out the killing of Ang Ban (R.P.C. Art. 62, No. 4; U.S. vs. Gamao, 23 Phil., 81; People vs. Carandang 54 Phil., 503; People vs. Valdellon, 46 Phil., 245).

In view of all the foregoing, the appealed judgment are modified as follows:

a) In G. R. No. L-15230, the guilt of appellant Renato Delfin of the crime of murder has been established beyond reasonable doubt, and finding no error in the judgment decreed by the lower court as to him, the same is hereby affirmed, with costs. As to appellant Hoc Seng, whom we find to be guilty only of homicide by induction, he is sentenced to suffer the indeterminate penalty of from eight (8) years of prision mayor to 17 years of reclusion temporal, and to indemnify the heirs of deceased Ang Ban in the sum of P6,000, jointly and severally, with Renato Delfin, with costs.

b) In G. R. No. L-15979, the Court finds Renato Delfin guilty of serious slander by deed, and he is hereby sentenced to an indeterminate penalty of from 2 months and 1 day of arresto mayor to 1 year and 4 months of prision correccional, plus costs.

c) In G. R. No. L-15980, said Renato Delfin is found guilty of the crime of illegal possession of firearm, and the Court therefore sentences him to undergo imprisonment of not less than 1 year, as minimum, and not more than 3 years, as maximum, in accordance with the indeterminate Sentence Law (Sec. 1, Act No. 4103 as amended by Act No. 4225), and to pay costs.

d) Finally, in G. R. No. L-15981, we find appellant Eladio Delfin guilty beyond reasonable doubt of the crime of frustrated murder, and the Court thus sentences him to suffer an imprisonment of from 6 years, 4 months and 11 days of prision mayor to 12 years and 1 day of reclusion temporal, to indemnify Francisco Ang in the total sum of P2,375, and to pay the costs. For insufficiency of evidence, appellant Renato Delfin is acquitted of this crime of frustrated murder and absolved from the civil liability connected therewith and the costs.

Bengzon, C. J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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