

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. APOLONIO ENOMAR, DEFENDANT-APPELLANT

G.R No. L-26898. January 16, 1973

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal from a decision of the Court of First Instance of Misamis Occidental in Criminal Cases Nos. OZ-203 and OZ-204 thereof, the dispositive part of which reads as follows:

"WHEREFORE, in Criminal Case No. OZ-204, the accused, Apolonio Enomar, Leon Enomar, Raymundo Enomar, Pablo Enomar and Basilio Enomar, are hereby found guilty beyond reasonable doubt of the crime of murder. They are hereby sentenced to suffer the penalty of Reclusion Perpetua, with the accessory penalties of the law; to jointly and severally indemnify the heirs of Paulino Aballe the sum of P6,000.00, without subsidiary imprisonment in case of insolvency, and to pay the proportionate costs.

"In Criminal Case No. OZ-203, the accused Apolonio Enomar is hereby found guilty beyond reasonable doubt of the crime of illegal possession of firearm and ammunitions. He is hereby sentenced to suffer an indeterminate penalty ranging from One (1) Year and One (1) Day to Three (3) Years imprisonment, with the accessory penalties of the law, and to pay the costs.

"The revolver, Exhibit 'A' and the live ammunitions, Exhibits 'A-1' to 'A-5' are hereby forfeited in favor of the Government."

After both parties had filed their respective briefs, defendant Leon Enomar moved to withdraw his appeal, which was granted. Hence, this decision refers to the appeal of his co-defendants Apolonio, Raymundo, Pablo and Basilio Enomar.

Apolonio Enomar is the father of Raymundo, Pablo and Basilio Enomar, as well as of said Leon Enomar, who withdrew his appeal. Upon the other hand, Paulino Aballe was Apolonio Enomar's brother-in-law and the other defendants' uncle.

It is not disputed that, on July 22, 1964, Paulino Aballe rebuked his nephew Leon Enomar, because his carabao had gone astray and eaten the young corn plants in the former's land in Pisa-an, municipality of Bonifacio, province of Misamis Occidental. Leon denied, however, the imputation made by his uncle, who, thereupon, admonished him (Leon) for talking "too much" and making said denial, and demanded payment of the corresponding damages. As Leon refused to do so, Paulino Aballe bade him to leave and never again to show his (Leon's) face to him (Paulino).

Three days later, or on July 25, 1964, between 7:00 and 11:00 p.m., a "benefit" (fund raising) dance was held at the "multipurpose center" of Pisa-an, where a radio-phonograph with an amplifier and a loudspeaker of Apolonio Enomar were being used and operated by his aforementioned children. Some sisters of the latter were, likewise, in that place. It appears, also, that, upon invitation of an officer of the organization sponsoring the affair, Paulino Aballe attended the same together with his daughters Alicia and Encamacion. At about 11:00 p.m., Paulino Aballe

decided to return home and left the "center" followed by his daughters. Barely had they gone about ten meters away therefrom than Paulino Aballe was met by Leon Enomar, who stabbed him with a 10-inch hunting knife (Exh. F), about 2 inches below the left nipple, thereby inflicting thereon a wound 1-1/2 inches wide and 5 inches deep, in consequence of which Paulino died, owing to hemorrhage, soon later.

The aftermath of this unfortunate event was the filing of two (2) informations, namely: one, against Leon, Apolonio, Raymundo, Pablo and Basilio Enomar, for murder (Criminal Case No. OZ-204 of the Court of First Instance of Misamis Occidental), alleging:

"That on or about the 25th day of July, 1964, at about 11:00 o'clock in the evening, in barrio Pisa-an, municipality of Bonifacio, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court the above-named accused conspiring and confederating together and helping one another in their common intent to kill with their combined strength and with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, strike and thrust with a hunting knife one Paulino Aballe while the latter was blinded by the blinding light of a flashlight, thereby inflicting upon the said victim Paulino Aballe a wound on his breast near the left nipple which directly and necessarily caused the instantaneous death of said Paulino Aballe.

"Contrary to Art. 248 of the Revised Penal Code with the qualifying circumstance of treachery and the generic aggravating circumstances of evident premeditation, superiority of strength and night time."

and another against Apolonio Enomar, for illegal possession of a firearm and ammunitions (Criminal Case No. OZ-203 of the same court), alleging:

"That on or about the 25th day of July, 1964, in barrio Pisa-an, municipality of Bonifacio, province of Misamis Occidental, Philippines, and within the jurisdiction of this Honorable Court the said accused, did then and there wilfully, unlawfully and feloniously have in his possession, custody and control one revolver with Serial No. 122880 and with lettering on its barrel which reads: "Colt U.S.A. 22 Cal." and five live ammunitions of 22 caliber, without first having obtained the proper license therefor from the corresponding authorities.

"Contrary to law."

Leon Enomar did not deny being the killer of his uncle. In fact, on July 26, 1964, at about 12:30 am, he gave himself up at the police station in the municipal building, stating that he had killed Paulino Aballe by stabbing him with the hunting knife Exh. F, and surrendered the same. In the trial court, Leon Enomar claimed to have acted in self-defense and without intent to kill. His story was to the effect that, upon meeting Paulino Aballe in the evening of the occurrence, he (Leon) said, "Good morning there, Manong," to which Paulino replied, "What is that?" Leon Enomar explained that he had just answered a minor call of nature, but Paulino Aballe commented that he (Leon) was just pretending, for even when his carabao was caught flagrante eating corn plants, he (Leon Enomar) denied it. This led to an altercation, in the course of which Paulino challenged Leon to a fight and gave him a fist blow that missed its mark. Paulino boxed Leon again, hitting him this time on his right side. As Leon fell into a ditch on one side of the road, Paulino picked up a stick, about a meter long and the size of his wrist, and struck Leon with it; but the latter evaded the blow by rolling on his right side. Then Paulino bade him to get up and said that he (Paulino) would kill him (Leon), whereupon, the latter stood up frightened and, drawing out his hunting knife Exh. F, stabbed Paulino near his left armpit, although without the intent to kill him, as he struck once more.

The lower court found this testimony unworthy of credence and, accordingly, convicted him, as above-indicated, of the crime of murder. The appeal of Leon Enomar having been withdrawn, it is no longer necessary to dwell on this phase of the occurrence. The issue before Us is limited to the alleged participation therein of appellants Apolonio, Raymundo, Pablo and Basilio Enomar in the commission of said crime of murder. Apolonio Enomar

made no more than a feeble attempt to deny the other charge against him.

The prosecution tried to prove that, shortly before Paulino Aballe and his daughters proceeded to leave the "center," appellants herein and Leon Enomar were together, about 10 meters away therefrom, some under a coconut tree and the others under a caimito tree, 5 meters away, on one side of the road leading to the house of the Aballes; that, as Paulino Aballe appeared, soon after, followed by his daughters, Raymundo Enomar, who had a gun with him, switched on a flashlight and aimed the beam of its light at the face of Paulino, that, somewhat blinded by the glare of the flashlight, Paulino raised his left hand over his eyebrows to see better, but, thereupon, Leon Enomar sallied forth and stabbed him; that, as Alicia and Encamacion Abaile screamed for help, their brother Panfilo Abaile, then still in the "center," ran to the place where his sisters were, in time to see his father staggering in a zigzagging direction, before he fell face down; that Apolonio Enomar was then a few paces in front of Paulino Abaile, with a gun aimed at him; that, accordingly, Panfilo grappled with Apolonio Enomar to disarm him; that then Pablo and Basilio Enomar tried, one after the other, to stab Panfilo, but in vain, because each time the latter made use of the body of Apolonio Enomar to shield him; that, as Apolonio Enomar and Panfilo Abaile wrestled with each other, the gun fired, although nobody was hit; that Panfilo then succeeded in disarming Apolonio; and that, immediately thereafter, Panfilo proceeded to the police station in the municipal building and turned in, to the officer on duty, the gun Exh. A thus taken from Apolonio Enomar, including the five (5) bullets it still contained.

In support of its version of the occurrence, the prosecution introduced the testimony of Panfilo and Alicia Abaile, Aurelio, Mamerto, and William Quambut, Justiniano Tulod, the barrio captain of Pisa-an, Health Officer Dr. Godofredo Ozarraga, Claudio Galrio, firearm clerk in the office of the P.C. Provincial Commander of Misamis Occidental, and Police Sergeant Jose Nantis, of the municipality of Bonifacio.

Needless to say, appellants denied having performed the acts imputed to them by the prosecution. Apolonio Enomar testified that, on July 25, 1964, at about 11:00 p.m., he noticed two (2) men running towards the upper part of the "area"—referring to the place where the party was being held—followed by a commotion that caused the people to scamper away; that, sensing trouble, he bade his children Raymundo, Basilio and Pablo to pack up their things; that, while he was watching them do this, Panfilo Abaile appeared with a gun aimed at him; that, as he tried to snatch the gun, the same was fired; that Panfilo then boxed him, first on the mouth and then on the neck, in consequence of which he fell down to the ground; that forthwith Panfilo got back the gun, whereupon he (Apolonio) ran to the house of barrio captain Aniano or Justiniano Tulod; that he (Apolonio) told the latter that he (Apolonio) had wrested Panfilo's revolver, but Tulod replied that the same was his (Apolonio's) gun; that Tulod bade him to come up the house, because he (Tulod) would go to the scene of the occurrence and find out what had happened there; that when Tulod came back, later that evening, he said that Paulino Aballe had been stabbed by Leon Enomar; that Tulod, moreover, advised Apolonio to go home because the children of Paulino Aballe might find him (Apolonio Enomar) in his (Tulod's) house and kill him; that he (Apolonio), therefore, returned to his house, where his wife informed him that their son Leon had stabbed and killed Paulino Aballe, and that, following her advice, Leon had gone to the municipal building and surrendered to the police; that, sometime later that morning, policemen came and brought him, together with Raymundo and Pablo Enomar to the police station; that Basilio Enomar was arrested a little later; that, after an investigation conducted by the police, appellants were released; and that he (Apolonio Enomar) had not seen the gun, Exh. A, before.

Raymundo Enomar corroborated his father (Apolonio Enomar) and denied having focused his flashlight at Paulino Aballe—as testified to by some witnesses for the prosecution—thereby enabling Leon Enomar to stab their uncle (Paulino Aballe) with impunity. Raymundo testified, also, that before their things had been fully packed up, as directed by his father, Apolonio Enomar, he (Raymundo) and his brothers Basilio and Pablo ran

away, because they saw Anastacio Aballe and Alfredo Suzon fast approaching them, armed with big pieces of firewood; that Anastacio and Alfredo stopped chasing them (Raymundo, Basilio and Pablo Enomar) as soon as they were outside the "multipurpose center"; that they sought refuge in the house of Miguel Villahermosa, 40 to 50 meters away from the scene of the occurrence; that they stayed in said house up to past midnight, when Basilio Enomar went to his house, together with his wife, that soon after, several policemen arrived at the house of Villahermosa and picked up Raymundo and Pablo Enomar, as well as brought them to the police station, after apprehending their father, Apolonio Enomar, in the latter's house: that upon reaching the police station, they found Leon Enomar already in jail; and that policemen began to investigate them at about 7:00 a.m.

Basilio Enomar, in turn, corroborated the testimony of Apolonio and Raymundo Enomar.

Apart from narrating his incident with Paulino Aballe, on July 22, 1964, Leon Enomar testified that, after being in charge, for a while, of the radio-phonograph and amplifier in the multipurpose center, he asked his brother Basilio to relieve him; that he then went out of the dance hall to relax and answer a minor call of nature not far away; that thereafter, he headed for the "center," but, before reaching the same, he met Paulino Aballe, who had with him the altercation above-referred to, and boxed him several times, as well as tried to hit him with a big stick, Exhibit 1, in view of which he (Leon) stabbed his uncle in self-defense; that he thereupon ran home, where his mother advised him to report to the police at the municipal building, which he did; that while confined in jail, he asked Rogelio Monares to go to the scene of the occurrence and look for and pick up said stick; that Monares did so and later delivered Exhibit 1 to Apolonio Enomar.

The defense, likewise, introduced the testimony of Manuel Broca, a member of the barrio council, Jovito Mendoza, Chief of Police of Bonifacio, Gaudencio Abella, Rogelio Monares, the aforementioned Dr. Godofredo Ozarraga, who examined Apolonio Enomar a day or so after the occurrence, and found, as well as treated, a small wound at the center of the lower lip and a slight swelling at the left angle of the lower jaw, Martin Lumpayao, Bartolome Leonardo and Emilia Sumalpong.

Upon the other hand, Cipriano Ramirez, Gaspar Belhida, Restituto Agua, Miguel Villahermosa, Mamerto Quambut and Panfilo and Alicia Aballe took the witness stand as rebuttal witnesses.

The main issue for Our determination in Case G.R. No. L-26899 for murder is whether or not there had been conspiracy between appellants herein and their co-defendant Leon Enomar, who has withdrawn his appeal. The prosecution maintains that the answer should be in the affirmative. In support thereof, it invokes the testimony of its witnesses to the effect that, shortly before the occurrence, the five (5) defendants were seen together under two (2) trees, by the side of the road leading to the house of the

Aballes; that, before Paulino Aballe was stabbed by Leon Enomar, his brother Raymundo Enomar — who, allegedly, held, also, a gun — had focused the beam of his flashlight at the face of Paulino, as if to make it difficult for him to see Leon Enomar, who lunged forward and stabbed him; that, immediately thereafter, Apolonio Enomar was seen, a few paces in front of Paulino Aballe, with the unlicensed gun Exh. A aimed at him; and that, as Panfilo Aballe grappled with Apolonio Enomar to disarm him, Pablo and Basilio Enomar tried, one after the other, to stab him, although in vain.

Upon a review of the record, We are not satisfied, however, that the alleged conspiracy has been duly proven. To begin with, the defendants denied having been together under the aforementioned trees, soon before the occurrence. True that, testifying for the prosecution, Alicia Aballe, Aurelio Quambut and William Quambut affirmed that, a few moments before the occurrence, they saw some of the defendants under a coconut tree, and the other defendants under a "caimito" tree about 5 meters away. It should be noted, however, that Alicia Aballe was in the dance hall, until her father, Paulino Aballe, had decided to go home, at about 11 p.m., and she and her

sister Encamacion followed him. Hence, Alicia could not have seen the aforementioned trees and those who allegedly were under the same, until then. Moreover, defendants' presence at the foot of said trees does not necessarily establish conspiracy among them, for it is not unusual for Filipinos if not customary among them, when attending social gatherings to stay together with members of their respective families. In fact, Aurelio Quambut said that the Enomars were then telling stories to each other. Then, again, like Alicia Aballe, Aurelio Quambut was inside the dance hall looking mostly at the dancers, whereas the trees above referred to were about 10 meters away from said place. Considering that there was no electricity in that locality, and that the illumination in the "center" was provided by petromax lamps, it is difficult to believe that Aurelio Quambut could have seen, much less identified the men allegedly seated under the "shadow" of said trees, inasmuch as the moon was shining.

We have not overlooked the fact that concededly appellants were in the "multipurpose center." In fact, the radio-phonograph of appellant Apolonio Enomar, with its amplifier and loudspeaker, had been engaged for the benefit dance held therein, and were being operated by his sons Leon, Raymundo, Basilio and Pablo Enomar, with the assistance of their sisters and the wives of some of the aforementioned appellants. Once they knew, however, that Leon had had an incident with Paulino Aballe, appellants had every reason to believe that Paulino's children, particularly Panfilo and Anastacio Aballe — apart from Alicia and Encamacion Aballe— would come to the assistance of their father. Hence, it is not improbable that Apolonio Enomar drew out his unlicensed gun to defend himself against any possible attempt of the Aballes to retaliate against him and his other children, Raymundo, Basilio and Pablo. It is, also, quite probable, when Basilio and Pablo Enomar saw Panfilo Aballe grappling with Apolonio Enomar, that said brothers deemed it necessary to intervene in "defense" of their own father. Again, the circumstance — denied by Raymundo Enomar — that he had focused his flashlight on the face of Paulino Aballe, may indicate that said appellant wanted to know the identity of the person with whom Leon Enomar was then having an altercation — according to the evidence for the defense — thus impliedly negating the existence of the conspiracy alleged by the prosecution.

In a situation such as that which existed at the scene of the occurrence, where there was a commotion in consequence of which the people attending the benefit dance scampered away, a confusion was bound to arise, in the course of which it was difficult for the people gathered in that place to have a clear and precise notion of the sequence of events, which is vital in the case of appellants herein. Moreover, it is understandable that those more or less attached or related to either of the contending parties should view the same, even if unwittingly, in accordance with their respective leanings, if not biases and prejudices. Then, also, the following circumstances are significant and should be borne in mind in the determination of the issue under consideration, namely:

- 1) Had appellants really conspired to kill Paulino Aballe, the former would have seen to it that the female members of their family — the daughters of Apolonio Enomar and his daughters-in-law and wives of some of the appellants who were in the "center," helping each other in the operation of the radio-phonograph used therein — left the place before the occurrence, but they did not do so.
- 2) Immediately after said occurrence, Apolonio Enomar sought refuge in the house of barrio captain Justiniano Tulod and stayed there until the latter, after going to the "center" and ascertaining what had transpired there, came back and informed him (Apolonio Enomar) that his son Leon has stabbed Paulino Aballe. Surely, such information would have been superfluous had Apolonio Enomar and his co-appellants conspired with Leon to kill Paulino Aballe. In other words, it would appear that Apolonio Enomar did not know exactly what had happened near the aforementioned "multipurpose center."
- 3) This conclusion is borne out by the fact that Raymundo, Basilio and Pablo Enomar had similarly sought sanctuary in the house of Miguel Villahermosa — not far away from said "center" — thereby indicating fear against

possible reprisals from the Abailes, something they would have anticipated had they planned or conspired to kill Paulino Aballe, who, after all, was their uncle, he being their mother's brother.

On the whole, We are of the opinion and so hold, therefore, that the charge of murder against appellants Apolonio, Raymundo, Basilio and Pablo Enomar has not been established beyond reasonable doubt, and that the decision in Case G.R. No. L-26899 should, accordingly, be reversed, insofar as they are concerned, with costs de oficio.

With respect to Case G.R. No. L-26898, it is clear that the gun wrested by Panfilo Aballe from Apolonio Enomar is unlicensed, and that he is guilty, therefore, of illegal possession of said firearm and of the ammunitions contained therein. And being in accordance with the facts and the law, the appealed decision, insofar as it refers to said case, should, therefore, be as it is hereby, affirmed, with costs against appellant Apolonio Enomar.

IT IS SO ORDERED.

Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Barredo, J., did not take part.

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