

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AGUSTIN TENG YAO, DEFENDANT AND APPELLANT.***G.R. No. L-14675. November 29, 1961*

Ponente: PADILLA, J.

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In a complaint subscribed and sworn to on 25 February 1956 by sergeant Martin C. Cabigas of the Philippine Constabulary Agustin Tengyao was charged with murder for the death of Villamor Pagarigan, a prisoner serving sentence in the provincial jail, on 17 February 1956 in Bontoc, Mountain Province. After preliminary investigation, on 5 March 1956 the Justice of the Peace of Bontoc bound him over to the Court of First Instance where on 11 May 1956 the Provincial Fiscal filed an information charging him with murder under the provisions of article 248 of the Revised Penal Code. Upon arraignment the defendant entered a plea of not guilty. The Court proceeded with the trial of the case. After the prosecution had rested its case, counsel for the defendant moved for the dismissal of the case on the ground that the prosecution had failed to prove a prima facie case against the defendant and prayed that he be granted a period of twenty days from 4 March 1958 within which to file a memorandum in support of his motion. The Provincial Fiscal waived his right to file a memorandum in reply. Whereupon the Court granted the defendant the period asked for the purpose stated. On 26 March 1958 the defendant sent by registered mail his memorandum in support of the motion to dismiss, which was received by the Court on 28 March 1958. On 24 April 1958 the Court denied the defendant's motion to dismiss. On 23 June 1958 the defendant filed a motion for reconsideration. On 28 June 1958 the Court denied it.

Upon resumption of the trial of the case the defendant introduced his evidence and the prosecution, its rebuttal evidence. On 31 October 1958 the Court rendered judgment holding that "there was no imperative need for the accused to shoot Pagarigan;" that the shooting of the latter was unjustified; and that the defendant is guilty of the crime charged, and sentencing him to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the sum of P6,000 and to pay the costs.

The defendant has appealed.

The appellant was a guard in the provincial jail of Bontoc, Mountain Province. In the afternoon of 17 February 1956 sergeant Bartolome Dipalog of the provincial guards assigned the appellant and Walter Casiwen to watch the prisoners Villamor Pagarigan and Pais Palaoay, who had been told to cut grass (zacate) for feed of the carabaos owned by the provincial government in Cholao, Bontoc, Mountain Province. After Pagarigan had cut some stalks of grass (zacate) and bundled them, he asked the appellant's permission to defecate, which the latter granted. The former went to a place about seven or eight meters away from the appellant and sought cover behind stone boulders to defecate, from where the appellant could see him from the bust up (Exhibits C & F). While Pagarigan was defecating the appellant passed water and afterwards took out his match to light a cigarette. At that juncture he noticed that Pagarigan had disappeared from sight. He called out Pagarigan's name and went to where the latter was defecating to look for him but he was no longer there. Again the appellant called out Pagarigan's name and went to the irrigation ditch nearby. There he saw footprints. The appellant followed the path of the

footprints and saw Pagarigan running away. He ordered Pagarigan to stop and when he refused, he fired a warning shot in the air while he was about seven meters away from him. Because Pagarigan did not heed his warning, the appellant fired another shot which misfired. The appellant reloaded his gun and as Pagarigan jumped to the lower part of the rice paddies, he aimed and fired at his leg hitting him. At that time the appellant was about four meters away from Pagarigan. While the victim was on the lower part of the rice paddies, about seven meters away from the appellant, the former made an attempt to jump. At that juncture the appellant aimed and fired at his back but was not sure that he hit him. When the appellant finally caught up with Pagarigan the former found that he had hit the latter on the back. The appellant called for his companion, Walter Casiwen, and told him to report the incident to the provincial warden (Exhibit C). Casiwen did as requested.

Captain Juan M. Duyan, commanding officer of the 12th P. C. Company, stationed in Bontoc, and Dr. Sotero A. Torralba, chief of the provincial hospital, received report of the incident. Captain Duyan ordered sergeant Martin C. Cabigas and private William David to proceed to the scene to investigate. Dr. Torralba dispatched Dr. Lucio Mendoza in an ambulance to the same place.

Upon arrival sergeant Cabigas saw the scene of the incident and found in the vicinity four empty shells and two live ammunitions of a .30 caliber rifle (Exhibits D, D-1, D-2, D-3, E and E-1). Sergeant Cabigas took the appellant into custody and brought him to the P. C. headquarters in Bontoc where on the same day, 17 February 1956, the appellant freely and voluntarily narrated to sergeant Cabigas how he shot and killed the victim. On the next day, 18 February 1956, he subscribed and swore before Judge Jerome Fakat, Justice of the Peace of Bontoc, the statement he gave to sergeant Cabigas, Exhibit C. On 22 February 1956 the appellant was interrogated by Captain Duyan and he subscribed and swore before Bernabe de Castro, deputy clerk of the Court of First Instance, the statement, Exhibit F.

In the afternoon of the day of the incident, 17 February 1956, the cadaver of the victim was brought to the Provincial hospital where at about 5:00 or 6:00 o'clock in the afternoon, Dr. Sotero A. Torralba conducted a post mortem examination and found the following:

1. Wounds, Gunshot

- a. Thru and thru, middle third, medial aspect, right thigh (2"x4")
- b. Thru and thru, at the inter-scapular region ($\frac{1}{2}$ cm. in diameter) with exit at the right side of chest 2 cm. below the right nipple.

2. Wound, lacerated, thorax, right lateral side 5 $\frac{1}{2}$ long extending up to the ribs. (Exhibit A.)

According to Dr. Torralba, the point of entry of the first wound is on the back of the thigh and the point of exit is on the front middle part of the thigh, and the point of entry of the second wound is on the middle of the back, about 4 $\frac{1}{2}$ inches below the nape of the neck, and the point of exit is about 2 cms. below the right nipple; and that the assailant must have followed the victim from behind. Internal hemorrhage is the cause of death (Exhibit A), which could have been instantaneous.

The appellant does not deny having shot and killed Villamor Pagarigan but pleads that he did it in fulfillment of a duty as a provincial guard to prevent his escape, and under the impulse of an uncontrollable fear of an equal or greater injury, the certainty of being imprisoned had the victim succeeded in escaping.

On the witness stand the appellant swears that when he saw Pagarigan at a distance of about 120 meters "running away without clothes and swinging his bolo," he shouted at him to stop but refused; that he ran after Pagarigan and fired a warning shot in the air; that when he did not stop despite the warning the appellant fired another shot

in the air but misfired; that at a distance of about 80 meters the appellant aimed and fired at the victim's leg but was not sure whether he hit him; that Pagarigan ran to and hid in the thick and tall grass (zacate) stalks; that the appellant pursued him and fired at him in the thicket two or three times; that afterwards he looked into the thicket and saw Pagarigan lying flat on his belly.

The appellant has deviated from his original statement, Exhibit C, given freely and voluntarily before sergeant Martin C. Cabigas on the day of the incident, 17 February 1956. There and then he stated that when he saw Pagarigan running away he ordered him to stop; that when he refused he fired a warning shot in the air while he was about seven meters away from him; that because Pagarigan did not heed his warning shot he again fired another shot which misfired; that he reloaded his gun and as Pagarigan jumped to the lower part of the rice paddies, at a distance of about four meters he aimed and fired at his leg hitting him; that when Pagarigan again attempted to jump, at a distance of about seven meters away from him, the appellant fired at his back but was not sure that he hit him. As the trial Court aptly said—

* * * This story as told to Sgt. Cabigas is more believable than his version on the witness stand for the former was related when the accused has no chance to concoct or weave a fanciful yarn. His statements then were spontaneous and made when he had as yet no chance or opportunity to talk with anyone who may be interested in his acquittal. So that what the accused tried to picture that he and the deceased were still far away from each other is of doubtful veracity.

While it is the appellant's duty as a provincial guard to prevent the escape of the victim, his act of shooting and killing the latter is unjustified. He already had wounded him on the thigh while at a distance of about four meters away from the victim and the wound the latter had sustained would have made it difficult for him to run away because he would have limped. It could have been very easy for the appellant to recapture the victim without the necessity of firing another shot at him. Besides, as found by the trial Court, and this is borne out by the evidence, the probability of escape was remote because the victim was running toward a steep cliff of 50 yards high. Moreover at that time the victim had but less than five months to serve in jail, because he was supposed to have been released from confinement on 20 July 1956 (Exhibit H & H-1), and would not have thought of escaping.

The appellant contends that he is exempt from criminal liability in killing the victim because he "acted under an impulse of an uncontrollable fear of equal or greater injury." According to him had the victim succeeded in escaping, "he was certain of his going to prison." As already stated, the first wound sustained by the victim was enough to prevent him from running fast and the appellant could have easily recaptured him. Besides he could not have escaped. For these reasons his fear of equal or greater injury is unwarranted.

The appellant assails the accuracy as evidence against him of the statement, Exhibit C. "The use by the appellant of unintelligible and faulty language, the probability of inaccurate interpretation by the examiner, the appellant's present state of mind and emotional tension at the time his affidavit was being taken should all be borne in mind," says his counsel. Judge Jerome Fakat, Justice of the Peace of Bontoc, before whom the appellant subscribed and swore the statement, Exhibit C, testifies that when on 18 February 1956 the appellant came to him with the statement, Exhibit C, already prepared, he (Judge Fakat) read to him the questions propounded by the investigating officer and the appellant's answers, one by one, in the Bontoc dialect, a dialect which the appellant understood; that the appellant acknowledged to him the truth of the answers he had given; that the appellant did not give indication that he was in doubt as to the meaning and import of his answers; and that the appellant did not complain to him that he was under compulsion in giving those answers and in signing his statement. These statements and observations of Judge Fakat, a disinterested witness with no evil motive to pervert the truth to deprive the appellant of his life and liberty, render unassailable the conclusion reached by the trial Court that the appellant's sworn statement, Exhibit C, "is more believable than his version on the witness stand for the former

was related when the accused had no chance to concoct or weave a fanciful yarn."

The appellant claims the benefit of four mitigating circumstances, namely, voluntary surrender, having given himself up to the P.C. authorities for investigation; lack of instruction, being unschooled, illiterate and a member of the non-Christian tribe; passion or obfuscation, engendered by the powerful impulse of fear of punishment; and lack of intention to commit so grave a wrong. Of these mitigating circumstances, only the first and the last may be considered in favor of the appellant. "Not illiteracy alone but also lack of sufficient intelligence are necessary to invoke the benefit of the circumstance" of lack of instruction. [1] There is no showing that before the appellant fired the shot that caused the fatal wound on the victim's back, the latter had provoked the former to anger. The fact that after wounding the victim on the thigh, making it difficult for him to flee, the appellant fired at him on the back, a shot no longer necessary for his recapture, which under ordinary circumstances could not be deemed lack of intent to commit so grave a wrong, still in the spur of the moment he could not have harbored the intent to kill the prisoner. All he wanted to do was to stop him to prevent his escape. So the attenuating circumstance of lack of intent to commit so grave a wrong may be taken into account. There is, however, no aggravating circumstance to offset the two mitigating circumstances.

Although the last shot that killed the victim was fired at the latter's back, it cannot be considered done with treachery to qualify the crime committed by the appellant because the shots were fired in succession and the appellant had no intent to employ means, methods or forms in the execution thereof which tended directly and especially to insure its execution, without risk to himself arising from the defense which the victim might make. It may be doubted that he knew that the victim was hit on the thigh.

The crime committed by the appellant is homicide, provided for and punished with reclusion temporal in article 249 of the Revised Penal Code. In view of the presence of two attenuating circumstances without any aggravating circumstance to offset them, in accord with paragraph 5, article 64, of the Revised Penal Code, prision mayor, the penalty next lower to that prescribed by law, must be imposed. Pursuant to the Indeterminate Sentence Law, the minimum penalty that should be imposed is 6 months and 1 day of prision correctional and the maximum, is 8 years and 1 day of prision mayor and the accessories of the law.

Modified as hereinabove stated as to penalty to be meted out to the appellant, the rest of the judgment appealed from is affirmed, with costs against him.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

[1] People vs. Ripas, 95 Phil., 63; People vs. Semañada, 103 Phil., 790.

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