

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALBERTO SAN LUIS AND SEVERO NATIVIDAD, DEFENDANTS AND APPELLANTS.

G.R. No. L-2365. May 29, 1950

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PER CURIAM:

We are here to review a sentence of death passed upon two alleged hold-uppers for the crime of robbery with homicide and serious physical injuries in which the victims were Teotimo Mendoza and his chauffeur Faustino Castro.

It appears that the said Teotimo Mendoza was before his death, maintaining several gambling houses in the city of Manila and suburbs. On the night he met his death, January 22, 1948, he left his house at 1332 O'Donnell Street, Manila, sometime after seven o'clock to make his regular inspection of those gambling houses and at the same time to make the nightly collections. He rode on the automobile of his daughter, a Chrysler sedan driven by his chauffeur, Faustino Castro. In the back or hip pocket of his trousers he had his wallet which contained P370 in paper money and some personal papers. As usual he also had with him his .38 caliber pistol. After visiting several gambling houses, he came to the one at No. 2098 Azcarraga Street shortly before 10 o'clock p. m. There he collected P98, which, together with the different amounts taken from the other gambling houses, brought his total collection to P976. This he shoved into one of his pockets, contrary to his usual practice of putting his collections in a paper bag. Going downstairs, he proceeded to his car, which was parked on the street in front of the gambling house, a short distance from the corner of said street and calle Morayta. He occupied the back seat, with the driver, Faustino Castro, on the front seat.

Before the car could start, two men came, each pointing a .45 caliber pistol at them, and ordering them not to move, opened the doors of the car and got in. One of the intruders seated himself beside the driver on the front seat while the other took his place half-standing beside Mendoza, who was in the back seat, and ordered him "to hand over the money." Obeying the command, Mendoza took out the money from his pocket and gave it to the one demanding it, who after receiving same ordered the chauffeur to drive on to Morayta Street, and then, with one hand pointing a gun at Mendoza and with the other searching for his firearm, he was able to get possession of Mendoza's pistol which he found in his pocket. As the car neared the gasoline station on Morayta Street, the driver, fearful that the intruders might have more sinister plans for them, thought of crashing his car into another car that was then leaving the station, with the idea of either scaring the hold-uppers or calling the attention of bystanders, and suiting his action to this thought he bumped his car into the other. But the strategy did not work, because after the crash Mendoza was shot several times by the man beside him, while the driver and the other hold-upper grappled for the possession of the latter's gun which on account of the violence of the collision had slipped from his hand and fell on the front seat and went off. And as the driver was about to get possession of the gun, he was shot repeatedly from behind by the same man who had shot Mendoza, after which, the two hold-uppers got off the car and ran away. Seriously wounded in the face, neck, and shoulder, the driver lost consciousness for a brief moment but upon coming to, he shouted for help, and staggered out of the car. To the

people who came attracted by his cries he said, as they picked him up from the ground, that he and his master had been held up.

Among the people at or near the gasoline station, aside from the occupants of the two cars, were the manager of the station, Angel Sevilla, and a chauffeur named Liberato Tinio. Taking cover when the shooting began, these two came out as soon as the shooting was over, in time to see two gunmen running from behind Mendoza's car towards Azcarraga Street. In the car of Mendoza they found the latter slumped on the rear seat with gunshot wounds, already dead. From the ground they picked up the wounded driver Faustino Castro, loaded him on a jeep and took him to the University of Santos Tomas hospital.

Notified of the shooting, Captain Javier of the Manila Police and his men went immediately to the scene of the crime to investigate. They found the dead body of Men-doza lying on its back on the rear seat of his car, his watch on his left wrist and his wallet with its contents—P370 in paper money and some personal papers—in the hip pocket of his trousers. Inside the car they also found one buri hat with a bullet hole, one fatigue cap, seven .45 caliber empty shells and bullets, one .38 caliber empty shell, several packs of cards and two paper bags containing foodstuff. The corpse was ordered autopsied while the slugs and empty shells were turned over to a ballistic expert for examination.

While the police immediately started work on the case, for several days they found themselves helpless with the meager clues they had on hand, for although the driver Castro saw the face of the hold-uppers in the brief moment that the light inside the car was switched on when its doors were opened, the men were unknown to him, aside from the fact that he was for several days in a critical condition due to the gunshot wounds he had received. But on January 26th, that is, four days after the crime, Detective Pablo Montilla happened to think that a police character named Alberto San Luis, who had figured in the shooting of an American named Prescott in the Manila Hotel some months before, might have something to do with the hold-up, and acting on this hunch he sent one of his assistants to see the wounded driver at the U. S. T. hospital and show him a picture of San Luis. This the assistant did. But as the picture shown to the driver was rather small and his eyesight had been impaired by the injury to his left eye, he asked for a larger picture. The detective returned with a post card size picture of Alberto San Luis. Upon seeing the picture, the driver trembled and asked that the person in the photograph be brought to his presence. Knowing that San Luis had his residence in Morong, Rizal, the detective went there in the afternoon and arrested him in his house, and then brought him to the driver. Though placed between two ward attendants, who like himself were wearing "civilian" clothes, San Luis was immediately pointed to and identified by the driver as the hold-up man who had seated himself beside him in the car on that fatal night, the driver at the same time addressing him with this remark: "Be thankful that I am now weak, for if I were strong, you will see what I will do to you." To this observation San Luis said nothing. Turned over to Det. Sgt. Lapiña for questioning at the Detective Bureau, San Luis before midnight of that day, made a signed statement, confessing his participation in the hold-up, and naming his co-accused Severo Natividad, alias Berong, as his companion in that affair. He also admitted having received from Natividad P120 just before they parted after leaving the scene of the crime.

Going after Severo Natividad, Detective Francisco was able to apprehend him in the town plaza of Morong while he was waiting for transportation to Manila. Taken to the Detective Bureau and brought face to face with Alberto San Luis, he was identified by the latter in the presence of several detectives, as his companion in the crime. Though thus implicated, Natividad said nothing. He also refused to give a statement and did not even want to give his name to the police. He protested vigorously when the detectives tried to bring him before the driver Castro in the hospital in the company of about 20 students from Santo Tomas University whom the detectives had gathered for the purpose of making the identification of the culprit more difficult and thus more positive, with the result that he had to be brought alone into the presence of Castro, who, upon seeing him immediately identified him as

one of the hold-uppers. Again Natividad said nothing in the face of this damaging accusation.

With the arrest of Natividad, who was found to have a bullet wound in the left leg, San Luis thought it necessary to amplify his previous confession and made another statement, saying that after leaving the scene of the crime he called a taxi and went to Natividad's house on calle Franco, where he dressed Natividad's wound; that he did not mention this fact in his previous confession because he never thought that Natividad would be caught; that the following morning the two of them took a Raytranco bus to Morong and had conversation with the conductor by the name of Uwing whom he jokingly informed that Natividad had a wooden leg in answer to a question as to why the latter was limping; that in Morong they had Natividad's wound treated by Dr. Feliciano Nora; and that the money given to him by Natividad on the night of the crime had already been spent.

According to the doctor who performed the autopsy on Mendoza's body, the latter's death was caused by "severe shock and profuse hemorrhage (900 cc. residual blood) due to multiple (3) gunshot wounds through the abdomen, chest, and left upper extremity lacerating the heart, diaphragm and liver and fracturing the left humerus and left 3rd rib."

The same doctor made an examination of Castro's wound and gave his findings as follows:

"(1)

A gunshot wound of entry located in the lateral left supra-orbital region, measuring 1/2 inch by 1.0 inch in diameter. There is a little gauze strip inserted as a surgical drainage. Below this wound there is small laceration of the lateral canthus of the left eye and reddish contusion injury to the lateral left eyeball.

The malar region of the left face is flattened and there is a bluish area with palpable fractured bone fragments of the left malar bone.

"(2)

A gunshot wound of exit from (1) measuring 1/2 inch by 6/8 inch in diameter, located in the angle of the left lower jaw. There is a gauze strip inserted as a surgical drainage.

"(3)

A gunshot wound of entry measuring 1/4 inch by 1/2 inch in diameter located in the right cheek.

"(4)

A gunshot wound of exit from (3) measuring 1/2 inch by 1/4 inch in diameter, and bearing a narrow gauze strip drainage located in the anterior upper left side of the neck.

"(5)

A gunshot wound of re-entry from exit wound No. (4), measuring 3/4 inch by 1.0 inch in diameter located in the left supra-clavicular region. This wound is also packed by a gauze strip.

"(6)

A sutured closed surgical incision of the skin over the upper left scapular region in the posterior chest. Dr. Calma of the U. S. T. Hospital, the attending Surgeon, admitted to the undersigned that this wound was caused by the surgical removal of a .45 caliber bullet under skin over this area by N. G. Hosp. Doctors.

"(7)

A gunshot wound of entry, measuring 1/4 inch by 1/4 inch in diameter located in the anterior upper patellar region of the right knee.

"(8)

A gunshot wound of exit from No. (7), measuring 1/2 inch by 3/4 inch in diameter located in the lower lateral right thigh.

Conclusion:

"All the above gunshot wound injuries' are serious in nature. All the wounds in the head, neck and chest are threatening life at the time of examination. Their ultimate outcome at that time could not be definitely predicted, but if he survives, there will be permanent anatomical deformities and functional impairment."

The above facts have been established by the evidence for the prosecution.

In their defense, the appellants, through their testimony and that of Francisco Espinelli who, like themselves, was confined in the national prison at Muntinlupa, tried to prove that in the evening in question San Luis met his friend Espinelli at a restaurant on Quezon Boulevard; that after eating there the two of them went to calle Morayta and stopped in front of the driveway to the gasoline station on said street; that while they were conversing about the offer of Espinelli to sell some blasting caps, Severo Natividad came and joined the two; that while they were standing there, a car which was parked nearby suddenly backed up, hitting San Luis' left leg with its left bumper; that San Luis then tapped on the rear part of the car, but the driver did not seem to pay any attention, and so, after the car had stopped, San Luis went to the right side of the car and addressed the driver thus: "Padre, if you back out your car, please take the trouble of looking back first," to which the driver replied: "Why, were you hurt?" San Luis answered that he was only hurt a little but admonished the driver that in backing up his car he should first look behind to avoid accidents. The driver retorted that if, after all, San Luis was not hurt, there was no need for him to sermonize anybody. A heated discussion followed, and while it was going on Natividad came near the car. On seeing him, Mendoza, who was in the rear seat, gave him a kick, and just then a shot was fired from inside the car. At this juncture, Espinelli went around to the left side of the car, opened the door and fired at Mendoza, and seeing that the latter was about to return the fire he hit him on the hand which was holding the pistol, causing this to drop on the front seat between the driver and San Luis. These two grappled for the gun, and when San Luis felt that the driver was getting the upper hand, he called for Espinelli's help, whereupon the latter fired about three times at the driver, putting him out of combat and enabling San Luis to get possession of the weapon. Thereafter the three scampered away.

Rejecting the story related by appellants and their witness and accepting the prosecution's version as the true one, the trial court found Alberto San Luis and Severo Natividad guilty of robbery with homicide and serious physical injuries with the aggravating circumstances of nocturnity and treachery, not offset by any mitigating circumstance, and sentenced them to death, jointly and severally to indemnify the heirs of the deceased Teotimo Mendoza in the sum of P2,000, and to pay proportionate costs. This is the sentence that has been brought here for review because of the nature of the penalty imposed.

It being admitted that the appellants were at the scene of the crime and even figured in the incident which produced that crime, the question for determination is whether the shooting occurred by reason of a robbery, as related by the driver, Faustino Castro, and confirmed by one of the appellants in his confession before the police, or as a result of a street brawl, as both appellants and their witness, Francisco Espinelli, would, with their testimony, have the court believe. The case hinges on the credibility of witnesses, and as is the rule in such cases the trial judge's opinion as to which of them should be believed is entitled to great weight. The trial judge who heard the witnesses in this case testify and had occasion to observe their demeanor on the stand was of the opinion that those of the prosecution were the ones that deserve credence. The record discloses nothing which might justify our taking a different view.

It is true that the case for the prosecution rests principally on the testimony of the driver Faustino Castro. But this testimony leaves no room for doubt, confirmed as it is by appellant San Luis's confession and also by what was declared by other ocular witnesses. Thus, Castro's declaration that he and his master were held-up by two men only, and that these two are the appellants herein, not only coincides with San Luis' confession on that point but is also confirmed by Liberato Tinio and Angel Sevilla, who were at the scene of the crime and testified at the trial that, after the shooting, they saw two persons of the same height and build as the appellants running away from the car. These same witnesses, together with Eusebio Lariosa (the driver of the car that was bumped), also corroborated Castro's testimony that the shooting occurred after the collision of the two cars, and not before, as the defense would have the court believe. Sevilla, Tinio, and Lariosa are all of them disinterested witnesses, and nothing has been proved to show that they could have had any motive for not telling the truth. And, speaking of Castro's testimony, the trial judge observes that the same "carried in its simplicity and naturalness, the characteristics of veracity in contrast with the testimony of the witnesses for the defense which are not only contradictory but do not ring true throughout."

On the other hand, we find that the theory of the defense is not only inherently improbable but also contrary to the indisputable facts established by the testimony of disinterested witnesses. The theory is improbable because if it were true that appellants and their alleged saviour Francisco Espinelli had merely acted in self-defense, it is hard to understand why after killing the aggressor and seriously wounding his companion, they should all flee and go into hiding instead of notifying the authorities, especially when they had in their favor the circumstance that they were in possession of the aggressor's pistol and that one of them, the appellant Natividad, had been wounded. The course that they took belies their innocence and greatly weakens their theory of self-defense. And it is significant that when appellants were investigated by the police they said nothing about this alleged self-defense and even made no mention of Espinelli.

But the one circumstance which, perhaps more than any other, destroys the story told by the appellants and their witness is their claim that the shooting occurred before the collision of the two cars. If their story of self-defense were true, we do not see how the driver, seriously wounded as he already was to the point of losing consciousness, could still have driven the car and brought about the crash. But the fact is, as established by the clear testimony of disinterested witnesses and confirmed by San Luis's confession, the shooting occurred after and not before the collision. To this may be added the fact that, as the witness Eusebio Lariosa, the driver of the other car, approached the wounded Castro immediately after the shooting, the latter told him to help them because they were held-up.

Francisco Espinelli told a cock and bull story as to how he was able to disarm the deceased Mendoza by knocking the latter's pistol out of his hand just as he was about to shoot, a feat not only improbable in itself but made doubly so by the fact that the deceased was inside the car while Espinelli was outside. The story detracts greatly from the credibility of this witness.

The role played by Espinelli in the story concocted by the defense becomes perfectly understandable when it is noted that he was, together with appellants, an inmate of the national prison at Muntinlupa, and admitted on cross-examination that he had a talk with San Luis in prison and was asked by him to testify in this case. To what lengths he would go to favor appellants is shown by his admission to the effect that he had been robbing jeeps so that he could be in a position to render them aid and that it would not matter to him if he should be prosecuted for the crime now in question because, anyway, he was already serving a prison sentence of many years' duration. This revelation furnishes a sufficient explanation for Espinelli's attempt to assume entire responsibility for the present crime even if we should disregard the trial judge's observation that this witness had already been convicted of robbery in two cases, and that in the trial of his co-accused Saturnino Seria in one of those cases

(criminal case No. 5930), which was held before the same trial judge, Espinelli also tried to exculpate his co-accused by assuming responsibility for the crime.

In the trial, appellant San Luis repudiated his confession on the ground that the same was extracted from him through force and intimidation, but this claim is denied by Det. Lapiña, before whom the confession was made, who also declared that on the occasion when the confession was made, which was in the evening of the day of his arrest, friends of San Luis and newspaper reporters were at the police station and talked to them, and that on the following day San Luis talked to his lawyer. Besides, the record does not disclose that any complaint for maltreatment has ever been filed by or on behalf of this appellant. And, indeed, even supposing that the confession was really involuntary, the same was made admissible in evidence by reason of the fact that in consequence thereof a fact was discovered which confirmed it. (III Moran's Comments on the Rules of Court, p. 100.) That fact relates to appellant Natividad's participation in the crime, which was revealed by the said confession and subsequently confirmed by Castro's positive identification of this appellant. It may here be repeated that the confession is confirmed in its essentials by the testimony of the driver Castro and by the other eyewitnesses. And while this confession may not be taken into account to the prejudice of the appellant Natividad, still the latter's responsibility for the crime is sufficiently established by the declaration of the driver Castro and the other prosecution witnesses, and cannot be brushed aside by appellant's tale of self-defense which has been shown to be incredible.

The wound in Natividad's left leg is, we think, sufficiently accounted for in the decision below as having been due to a ricochet, and the bullet hole in the hat which had been left in the death car and turned out to be that of appellant San Luis may well have been caused by a bullet fired from Natividad's gun as he was shooting at the driver while the latter was struggling with San Luis, or it may also be possible that the hat fell off during the struggle and was hit by a bullet when it was already on the floor of the car.

As to the claim that robbery has not been established, there is no gainsaying the fact that after Mendoza's visit to the gambling house at No. 2098 Azcarraga, he had already collected a total of P976 from the different gambling houses. That was apart from the P370 which he had in his wallet when he left his house that evening. But the defense argues that if robbery had been appellants' object, why then was the P370 in Mendoza's wallet not taken by them? The suggestion is that some other people may have taken hold of the money after the hold-uppers had fled. It is sufficient answer to this argument that the driver actually saw Mendoza hand the money to appellant Natividad, and this fact is in some way corroborated by San Luis' confession to the effect that immediately after the commission of the crime and before they parted he was given P120 by Natividad. That the wallet with its valuable contents was not taken may be explained by the fact that being in the back pocket of Mendoza's trousers it may have escaped detection, to say nothing of the possibility that when the money collected from the different gambling houses was handed by Mendoza to Natividad, the latter may have thought that that was all the money the former had. And while it is true that Mendoza's wrist watch was not taken, that may have been due to the fact that the appellants were acting in haste and may also have thought that possession of said article by them might lead to their identification as the authors of the crime.

The evidence shows that Mendoza was shot several times after he had been disarmed by Natividad. And with the aggressor already armed with two pistols, i. e., his own and that of Mendoza, it is hard to conceive how the latter could have put up an effective defense. He could not expect any help from his companion (the driver Castro) who was himself struggling with San Luis for the possession of another gun. It may, therefore, be said that Natividad inflicted the fatal wounds on Mendoza without danger to himself arising from the defense which the offended party might make. It is true that only the acts of Natividad are characterized by treachery, for it does not appear that San Luis fired any of the shots that killed Mendoza and wounded Castro. But San Luis is responsible not

only for his own acts but also for those of his confederate, Natividad, since the evidence shows that there was conspiracy between the two.

To establish conspiracy, it is not essential that there be proof as to previous agreement to commit a crime, it being sufficient that the malefactors shall have acted in concert pursuant to the same objective. (People vs. Timbol et al., G. R. No. 47473.) In the present case, it appears that appellants approached the car together and showed concerted action when one of them, with his drawn pistol, covered the driver on the front seat, while the other also with a drawn pistol covered Mendoza in the back seat, one of them telling those inside the car "not to move." The two also entered the car by opening the doors simultaneously: one, the front door, and the other, the rear. And in the case of appellant San Luis, the conspiracy is further made manifest by his confession where-in it appears, among other things, that he received a part of the booty.

After a careful study of the evidence, we find the appellants guilty as principals of the crime with which they are charged, which is robbery with homicide and serious physical injuries and for which the law prescribes the penalty of *reclusión perpetua* to death. There are no mitigating circumstances. On the other hand, the aggravating circumstance of nocturnity, which has been correctly appreciated by the trial court and not disputed by the defense, is present. In addition, the trial court has already taken into account the aggravating circumstance of treachery, which is also proven. But even if this latter circumstance be disregarded, there would still be the aggravating circumstance of nocturnity to be taken into account. The penalty imposable is, therefore, the maximum prescribed by law for the offense, which is death. The indemnity imposed by the trial court is only P2,000. This should be raised to P6,000 in line with the precedent established in similar cases.

Wherefore, with the only modification that the indemnity to be paid to the heirs of the deceased be raised to P6,000 and, in addition, the appellants be also required to reimburse to the said heirs the sum stolen, amounting to P976, which the lower court appears to have overlooked, the sentence below is hereby affirmed, with costs against the appellants.

This sentence of death shall be carried into effect in the manner prescribed by law upon a day to be fixed by the judge of the court of origin.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ.

Judgment imposing death penalty affirmed and modified as to indemnity.

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