

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MELITON BUYCO, DEFENDANT AND APPELLANT.***G.R. No. L-539. January 27, 1948*

Ponente: HILADO, J.

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Appellant was charged in and convicted by the Court of First Instance of Iloilo in Criminal Case No. 405, now subject of this appeal, wherein the information alleged that on or about February 22, 1946, in the Municipality of Oton, province of Iloilo, Philippines, said appellant, being a first class private of the Military Police in said province, with deliberate intent, treachery and abuse of authority, and with a decided purpose to kill, did then and there fire several shots with a Thompson sub-machinegun against Irineo Gellangala, Apolonio Ikoy, and Napoleon Zambales, hitting them on different parts of their bodies and as a result Irineo Gellangala and Apolonio Ikoy died instantaneously and Napoleon Zambales died a few days later. The trial court, presided over by his Honor, Judge Jose Quisumbing, after due trial, rendered judgment on May 8, 1946, finding the following facts as proven through the testimony of the eye-witnesses Eusebio Davila, Perdo Zambales, and Juanito Espera, and that of Doctors Ramon V. Ferrer, who performed the autopsy of the corpse of Apolonio Ikoy and examined that of Irineo Gellangala, and Manuel F. Cartagena, who operated upon the now deceased Napoleon Zambales: that during a dance on the occasion of the feast of the patron saint of barrio Trapiche, Municipality of Oton above mentioned, "between 12 and 12:30 of the midnight of February 22, 1946", there was a verbal brawl followed by a fist fight between Cornelio Soliman and an unknown individual who later resulted to be a resident of Iloilo City; that Eusebio Davila, Chief of the Municipal Police of Oton, and Juanito Espera, a municipal policeman, who were at the place of the incident, intervened to pacify the fighters; that the latter had been scarcely pacified when a third party intervened delivering fist blows upon Cornelio Soliman which knocked him to the ground; that Eusebio Davila attempted to help Cornelio Soliman to his feet, at which moment the accused Meliton Buyco, now appellant, who was on patrol with his six companions, fired in the air two discharges from his Thompson submachinegun; that Eusebio Davila, who saw Meliton Buyco fire, approached the latter and prohibited him from firing again to avoid personal injury among those present; that Meliton Buyco replied that Davila leave him alone because he was an agent of the law; that minutes later Meliton Buyco got hold of the back of the left shoulder of Apolonio Ikoy, who was the one who had boxed Cornelio Soliman, and pushed him forward, firing at him with a discharge from his Thompson sub-machinegun which killed him right then and there. Another bullet of the same discharge by Meliton Buyco found its mark in the body of Irineo Gellangala, who was in almost a straight line from the spot front which Apolonio Ikoy was; that Irineo Gellangala fell and died instantaneously; that the accused appellant Meliton Buyco fired another shot aimed at a group of persons, among them Pedro Sambales and his son Napoleon Zambales, and a bullet of this last shot bit Napoleon Zambales, who died after six days in St. Paul's Hospital, City of Iloilo; that Eusebio Davila tried to place Meliton Buyco under arrest but the latter threatened him with his Thompson submachinegun, and when Eusebio Davila attempted to succor the three wounded persons, Meliton Buyco warned him to withdraw from the spot, and in view of this attitude on the part of the accused, Eusebio Davila desisted from his purpose through fear that he might be another

victim of Meliton Buyco.

Upon examination of the corpse of the deceased Apolonio Ikoy by Doctors Ferrer and Cartagena, there were found three wounds in his body, one which entered the back on the level of the right scapula, another a little below toward the angle of the right scapula, and a third on the left side near the lumbar region, which wounds caused the instantaneous death of Apolonio Ikoy (Exhibit C); on the corpse of Irineo Gellangala there was found one wound in the head penetrating the upper part of the hind occipital bone emerging through the frontal bone, which likewise caused the instant death of said deceased (Exhibit D); and in the corpse of Napeleon Zambales there were found the following wounds according to the medical certificate, Exhibit B:

"A bullet wound allowing entrance of 45 cal. bullet situated at the epigastric region with the bullet lodging just anterior to the skin of the lumbar region to the left side of the eighth vertebrae;

"Two wounds in the stomach, one at its anterior and another at its posterior aspect; and three wounds at different loops of the small intestines."

The defense, through the testimony of the appellant Meliton Buyco and of his companions, the MP soldier Enrique Bernales and Corporal Braulio Taleon, and Lt. Jose M.F. Pelo, and the musician Antonio Herradura, attempted to prove that on the night in question Corporal Braulio Taleon, the appellant Meliton Buyco, and Pvt. Enrique Bernales, and four other companions, arrived at barrio Trapiche from their station in Guimbal, near the auditorium where a dance was being held; that the jeep used by them developed engine trouble, and while they were fixing it, they heard that a fight was going on inside the auditorium causing public disorder which the municipal policemen under the command of Chief Eusebio Davila could not pacify; that the accused Meliton Buyco, followed by Cpl. Braulio Taleon and Private Enrique Bernales, entered the auditorium, intervened in the fight to pacify the combatants, but were unsuccessful; that one of the combatants hurled himself against Corporal Taleon, wrested from the latter his rifle and aimed the same at him, who had fallen on the ground; that the appellant, upon seeing this, fired a shot from his Thompson submachinegun at the individual who afterwards resulted to be Apolonio Ikoy, the latter falling dead; that after these events, and for fear of reprisal which might come from the relatives of Apolonio Ikoy, the MP patrolmen fled from the place and finally reached their detachement station in Guimbal, where they reported the incident to their chief, Lt. Belo.

The trial judge, who saw, heard and observed the witnesses for the state as well as those for the defense testify, did not believe the version given by the latter. Below we quote the analysis that His Honor made of the defense's version as related by its witnesses;

"El juzgado no da credito a la version presentada por la defensa mediante (mediante) el testimonio de Meliton Buyco, y de sus compañeros Enrique Bernales y Braulio Taleón y del músico Antonio Herradura.

"El testimonio del teniente José M. F. Belo no tiene materialidad al caso de autos ni constituye defensa a favor del acusado Meliton Buyco.

"El testigo Antonio Herradura, a quien el juzgado estuvo observando en todo el curso de su declaración, no ha infundido confianza alguna en el ánimo del juzgado; pues desde el comienzo de su testimonio ha estado mintiendo hasta el extremo de decir que no reveló a ninguno lo que él había visto en la noche de autos y que solo lo revelaba por primera vez en aquel día cuando declaraba en la vista como testigo; llegó también a afirmar que no se vió ni se entrevistó con cualquiera de los abogados de la defensa y que estos le presentaron a él como testigo sin saber de lo que él tenía que declarar; lo cual el juzgado cree que es una falsedad. ningún abogado, por mas leve que sea el delito o falta atribuido a su cliente, cometerá la imprudencia de presentar a su testigo sin antes enterarse de lo que el testigo tiene que declarar.

"Sobre el testimonio del acusado melitón Buyco y de sus compañeros Enrique Bernales y Braulio Taleón, el

juzgado tampoco les da crédito. El exhibit E, presentado en contrapruebas, que es la transcripción fiel y correcta de las notas taquigráficas tomadas por el taquígrafo Sr. Alfredo B. Coruña de la declaración del cabo Braulio Taleón el febrero 23, 1946, ante al (el) fiscal Sr. José M. Zambarrano, que se constituyó en el lugar del suceso para investigar el caso de autos, y en el que entre otras cosas Braulio Taleón declara que;

" * * * I just feel he was trying to grab my Thompson, but he was not able to get the Thompson * * *". (El subrayado es nuestro);

contradice la pretensión de la defensa de que Apolonio Ikoy arrebató el Thompson submachine gun de Braulio Taleón, cuando este estaba caído en tierra, y que le apuntó con dicha arma.

"Braulio Taleón trató de explicar esta contradicción, diciendo que cuando le investigaba el fiscal Zambarrano no se acordaba de todo lo ocurrido en la noche de autos por haberse desvelado aquella noche, y que en el día de la vista, Mayo 2, 1946, ya se acordaba muy bien de los detalles del suceso. Al efecto, cuando el juzgado le hizo repetir a Braulio Taleón, durante la sesión de la tarde, lo que él había declarado en inglés durante la sesión de la mañana el testigo lo repitió rápidamente en el mismo lenguaje inglés palabra por palabra y sin parar hasta terminar. Este demuestra, como lo ha observado el juzgado, que la declaración de Braulio Taleón estaba preparada de antemano y bien estudiada de memoria con el propósito de no equivocarse en su testimonio.

"En cuanto a la declaración del acusado Melitón Buyco, estando la misma amoldada al testimonio de sus testigos a quienes el juzgado no da crédito, no merece favorable consideración del juzgado.

"Es un hecho no discutido que la causa de la muerte de Apolonio Ikoy, Irineo Gellangala y Napoleon Zambales se (ha) debido a las heridas causadas por el acusado Meliton Buyco al disparar descargas de su Thompson submachine gun contra ellos." (Appendix, Appellant's Brief, pp. VII-X).

On page 70 of the stenographic transcript there appear, indicating the way the trial judge was impressed by the testimony of the defense witness Herradura, the following question and answer:

"Juzgado: ¿Debe usted tener en cuenta que el Juzgado está observando su actitud y manera de declarar en este asunto?—R. Si, señor."

There is much in what the Solicitor General says in his brief about the unlikelihood of the defense's version to the effect that Ikoy attacked Corporal Taleon, felling him down, wrested from him his Thompson submachine gun, and was aiming the weapon against the corporal when he (Ikoy) was shot by the accused. Among other things, the Solicitor General points out that Taleon testified before the fiscal on the very day following the incident to the effect that Ikoy did not succeed in getting hold of his gun (see also t.s.n., pp. 79-80). That Taleon's gun allegedly wrested from him by Ikoy was not exhibited as evidence at the trial although it appears that immediately after the incident it was taken by Taleon with him, is also mentioned by the Solicitor General as another indication of the improbability of the version of the defense. It is stated in this connection that if Ikoy really was holding Taleon's gun when the appellant fired at him, it must have been hit "by the bullets aimed at Ikoy". From the evidence, even that of the defense, it appears that the accused so fixed the firing mechanism of his submachine gun that a single pull at the trigger would fire several bullets automatically in succession. It is also pointed out that the admitted flight of the "MP's" after the fall of Ikoy, from fear of retaliation from the latter's relatives, is indicative of guilty conscience, for otherwise, for otherwise, since they were all armed with Thompson submachine guns, surely better armed than those relatives could possibly be, that fact would have enabled them to stand their ground if they really were legally performing their duty.

It seems very unlikely that Ikoy, a plain citizen, who had had no trouble with Corporal Taleon, from aught that appears in the record, should assault this officer of the law, who was armed with a weapon no less deadly than a Thompson submachine gun and was accompanied by several members of the MPC all likewise armed. And it is

still harder to conceive under such circumstances that Ikoy, not satisfied with allegedly downing the corporal, should wrest from him his gun and attempt to fire at him with it, within sight and near presence of the latter's companions. For these and other reasons not necessary to set forth, it is no wonder that the trial judge not only was not favorably impressed by the version of the defense but positively believed that the witnesses who gave that version were not telling the truth.

On the other hand, the accused admits the killing and his counsel frankly asserts in his brief (p. 7) that his client, acting in defense of the person of Corporal Taleon "directed a burst of TG (Thompson Gun) shots to Taleon's assailant". Here, then, is an admission that the accused discharged more than one shot at the deceased. Having thus admitted that he killed the victim, it was incumbent upon the accused to offer a justification satisfactory to the courts to exculpate him. He endeavored to do this—to carry the burden of proof that had been shifted on him—through the witnesses that he presented at the trial and himself. The trial judge who saw, heard, and observed the witnesses testify was impressed by them in the manner described in his own words quoted above. A careful review of the evidence and the record has failed to indicate sufficient reasons for our disturbing the findings of fact made by the trial judge. Defense counsel strenuously argues in effect that it is unbelievable that the appellant should have killed the victim if it had not been for the purpose of defending his corporal from the alleged threat of Ikoy to shoot. However, here is a case where the defense thus setup has failed to be established to the satisfaction of the courts of justice. In such a case, the killing being admitted, the law presumes that there was motive therefor (U.S. vs. Ricafort, 1 Phil., 173, U.S. vs. McMann, 4 Phil. 561; U.S. vs. Reyes, 18 Phil., 495; U.S. vs. Balmori, 18 Phil., 578; People vs. Francisco, 44 Off. Gaz., 4847.) The law must be applied to the facts. In the mind and eyes of the law in such cases, even though the motive might have been successfully concealed from the human perception of others, and might be known only to the agent and to his God, still there it was impelling the agent to the criminal transgression. The defense would have us deem it strange that the appellant should have willfully killed the three victims above named. But truth is at times stranger than fiction, and under the established facts the actual case is one of those instances.

As said in the Ricafort case, *supra*. " * * * In this, as in almost every crime apparently without motive, the motives which might exist are innumerable—motives unknown perhaps to the relatives of the deceased who testified at the trial and not even disclosed to the three who cooperated in a certain measure in the crime".

In the McMann case, *supra*. the court said; "The question of motive is of course very important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but in this case, where it is proved beyond all doubt that the defendant was the one who caused the death of McKay, it is not so important to know the exact reason for the deed". In the case at bar the accused admits having caused the death of the victims, aside from the evidence against him.

In the Balmori case, *supra*, we find the same idea expressed in a different way thus;

"But, argues counsel, why should they set the fire in the presence of Agapita Rivera, well knowing that their act was seen. We do not definitely know. Neither did we know, In a case before us some months ago, why the accused, in apparent cold blood, killed three grown persons and a little babe in plain view of several persons. We know only that he did it. While motive is generally of great importance in a criminal case, it is not absolutely indispensable. The evidence in the case relating to the actual commission of the crime may be so overwhelming that the question of motive may become secondary." (U. S. vs. Balmori, 18 Phil., 578, 590).

The trial judge found and held that the defendant was guilty of the crime charged; namely, triple murder, and imposed upon him the penalty of *reclusión perpetua*, with indemnity to the heirs of Apolonio Ikoy in the sum of P2,000, to the heirs of Irineo Gellangala in the sum of P2,000, and to the heirs of Napoleon Zambales also in the sum of P2,000, with the accessories of the law, and to pay the costs. In this we do not fully concur with His

Honor.

The evidence discloses, as found by the same judge, that Apolonio Ikoy and Irineo Gellangala died from bullets discharged by the same shot which was aimed at the former. It will be remembered that the shot was fired from a submachine gun and, as already staged, it appears that the appellant so fixed the mechanism of his submachine gun that a single pull at the trigger would fire several bullets automatically in succession. Viada (Vol. II, 5th ed., p. 629), commenting on article 90 of the Spanish Penal Code, corresponding to article 48 of our Revised Penal Code, gives an example of the first case mentioned therein of a single act constituting two or more grave or less grave felonies as follows; A person fires a gun against another with intention to kill the latter, and not only kills him but also a third person who was beside the victim: here, he says, we have a single act, a single shot, which produces two homicides. In the instant case, as regards Apolonio Ikoy, the evidence discloses that, while Apolonio Ikoy had his back towards Meliton Buyco, the defendant-appellant, the latter got hold of the former's right shoulder, pushed him forward and while Ikoy's body was moving in the direction of the push, Buyco fired at his back (t. s. n., p. 14). It, therefore, appears that the aggressor employed means, methods or forms in the execution of the crime which tended directly and specially to insure its execution without risk to himself from the defense which the offended party might make—that the act was committed with treachery. This qualifies the killing of Apolonio Ikoy as murder (Rev. Penal Code, art. 248).

The killing of Irineo Gellangala under the evidence must be classified as homicide, because the wrongful act done consisting in the killing of Irineo Gellangala constituted a felony (delito) for which said agent is criminally liable, pursuant to article 4, paragraph 1, of the Revised Penal Code (see also U. S. vs. Diana, 32 Phil., 344), which act is presumed to be voluntary (U. S. vs. Gloria, 3 Phil., 333, 335).

"It makes no difference whether the defendant's intention was to strike Dionisio Legara with the butt of the billiard cue or not, for the blow fell on the head of Cayetano Gomez * * *.

"The same crime would have been committed if the injured man and deceased had been Dionisio Legara, instead of the defendant's nephew, Cayetano Gomez; the crime of homicide would have been committed just the same and one man would have been deprived of his life by the criminal act of another." (U. S. vs. Diana, 32 Phil., 344, 348).

"* * * Although the wrongful act be committed against a person other than the one whom it was intended to injure, this fact does not excuse the offender from criminal liability for the voluntary commission of a wrongful act or misdemeanor, according to paragraph 3 of Article 1 of the Penal Code" (Now art. 4 of Revised Penal Code.—Per Arellano. C. J., in U.S. vs. Maisa, 8 Phil, 597).

By virtue of Article 48 of the Revised Penal Code, as amended by Act No. 4000, the murder and homicide thus resulting from that single discharge should be punished with the capital penalty, i. e., the penalty for the more serious offense in the maximum period or degree.

As to the death of Napoleon Zambales, the evidence reveals that it resulted from another and different shot by the same defendant-appellant from the same gun. The evidence discloses that after discharging the shot which killed Apolonio Ikoy and Irineo Gellangala, the accused holding his gun with the barrel pointing in the direction where he was facing, changed his position to face toward one side and fired another burst from the gun, which shot hit Napoleon Zambales (t.s.n. p. 5). Six days later this third victim died in St. Paul's Hospital. Under art. 249, in relation to article 4, paragraph 1, of the Revised Penal Code, the instant defendant must be held to have thereby committed the crime of homicide. In U.S. vs. Gloria. 3 Phil., 333, 335, this Court held that:

"* * * All acts punishable by the law are presumed to be voluntary in the absence of proof to the contrary. With respect to crimes of personal violence, the penal law looks particularly to the material results following

the unlawful act and holds the aggressor responsible for all the consequences thereof."

This last killing is a separate homicide also included in the charge and proven without objection on the part of defense counsel. The Supreme Court of Spain held in its judgment of January 27, 1876, that one who, after a dispute, discharges four shots from a pistol, mortally wounding with the first one of the combatants and inflicting with the second physical injuries upon another, should be punished for the said crimes separately in accordance with article 88 of the Spanish Penal Code upon the ground that, although the shots were fired successively, they did not constitute one single but two diverse acts, for the two different persons at whom they were directed (II Viada, 5th ed., p. 633-634). The same Tribunal in its judgment of February 7, 1879, held that a person who, posting himself in front of four individuals, fires four shots with a pistol saying: "toma tú toma tú," wounding two of them, is guilty of four different crimes of discharge of firearm against a determinate person, two complexed with that of physical injuries, since the four shots were produced by four distinct acts (II Viada, 5th ed., p. 636).

The penalty corresponding to the killing of Napoleon Zambales, there being neither aggravating nor mitigating circumstance, is reclusion temporal in its medium period (Revised Penal Code. art. 249).

Wherefore, the judgment appealed from is hereby modified so that appellant Meliton Buyco, as he is hereby, convicted of the crime of murder complexed with homicide for the deaths of Apolonio Ikoy and Irineo Gellangala, for which, pursuant to article 48 of the Revised Penal Code, in the opinion of a majority of this Court the penalty of death should be imposed upon him, but there being no unanimity in this respect, said penalty is hereby lowered to reclusión perpetua; and he is hereby convicted of the crime of homicide, without any modifying circumstance, for the death of Napoleon Zambales, for which the indeterminate penalty of 6 years and 1 day of prisión mayor to 14 years, 8 months and 1 day of reclusión temporal is hereby imposed on him, pursuant to article 249 of the Revised Penal Code, in relation with Section 1 of Act No. 4103 (Indeterminate Sentence Law), as amended by Section 1 of Act No. 4225. In all other respects, the judgment appealed from is affirmed. So ordered.

Moran, C.J., Parás, Feria, Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason JJ., concur.

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