

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
CORNELIO MANUEL, DEFENDANT-APPELLANT.***G.R. Nos. L-23786-87. August 29, 1969*

Ponente: MAKALINTAL, J.

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On November 15, 1956 two informations, one for murder (Criminal Case No. 2511) and the other for illegal possession of firearm (Criminal Case No. 2512), were filed against appellant Cornelio Manuel before the Court of First Instance of Ilocos Norte. Simultaneously filed before the same court were two other separate but closely related charges, against Indelecia Saguid-Irorita for parricide (Criminal Case No. 2510) and for illegal possession of firearm (Criminal Case No. 2513). As these four (4) cases had to do with the death of Dominador Irorita, accused Indelecia's husband, a joint trial was allowed for the reception of the evidence for the prosecution. However, appellant's motion for a separate trial was granted insofar as the presentation of his own evidence was concerned.

Upon conclusion of the trial the court a quo rendered a single decision in all four (4) cases on October 30, 1963, acquitting Indelecia but finding appellant Cornelio Manuel guilty of both charges against him. In Criminal Case No. 2511 (for murder) he was sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased in the amount of P6, 000.00 and to pay the costs of the proceedings[1]; and in Criminal Case No. 2512 (for illegal possession of firearm) he was sentenced to suffer the penalty of TEN (10) YEARS imprisonment and to pay the costs of the proceedings. Hence this appeal.[2]

From the testimony of the nine (9) witnesses for the prosecution, the following facts have been substantially established: that Dominador Irorita and Indelecia Saguid-Irorita were husband and wife; that Indelecia had been sustaining illicit relations with appellant; that Dominador died in the early afternoon of September 6, 1965 in barrio Ester, Municipality of Vintar, Ilocos Norte, and when Indelecia, the deceased's widow, and Segundina, the latter's mother, were questioned about the cause of Dominador's death, both replied that the deceased had died of tuberculosis; that because of a persistent rumor, which spread in the barrio after the deceased's internment, that he died not of tuberculosis but from gunshot wounds he had received, then barrio lieutenant Miguel Leaño conducted further inquiries, which eventually led to Indelecia's admission that the rumor was true; that she even directed him (barrio lieutenant Miguel Leaño) to a big pile of cogon grass about 150 meters east of her house, where the fatal gun was recovered; that Victor Flores substantially corroborated the testimony of Miguel Leaño on this point, the former being the latter's companion at the time; that in order to determine positively the cause of Dominador's death, his body was exhumed on September 13, 1956 and a post mortem examination was made by Dr. Caridad Cid, municipal health officer of Vintar, who confirmed that Dominador had died indeed from gunshot wounds; and that a sergeant Gamayo of the local P.C. command then personally conducted the investigation of the case, which culminated in the execution of separate written sworn statements by Indelecia, Segundina and herein appellant. In her statement (Exh. "C"), Indelecia fingered appellant as the gun-wielder, and admitted at the same time that she was really appellant's mistress. Segundina, in a separate statement (Exh. "E"), merely stated

that she saw appellant leaving the vicinity of the victim's house after the fatal shooting. When confronted with the two statements later, appellant executed a statement of his own (Exh. "A"), wherein he admitted that he was the one who fired the fatal shots, using an unlicensed .45 caliber sub-machinegun for the purpose. Juan Jacinto, Justice of the peace of Vintar before whom the aforesaid statements were sworn to duly apprised the affiants of their constitutional rights before he affixed his signatures to the respective jurats. A portion of the bamboo flooring in the victim's house, which had been shattered by the bullets fired at the victim, was found to have been sub-sequently repaired.

The foregoing, in synthesis, is the evidence given by the prosecution witnesses against appellant. In ad-judging him guilty of the offenses charged, the trial court did not confine itself to the facts and circumstances established by the said evidence but considered also the testimony of Indelecia given in the course of her own trial and in her own defense, to the effect that it was appellant who shot and killed her husband. This is now assigned as error, and we find the assignment well taken. Indelecia was not a witness for the prosecution, and her testimony in her own defense cannot be considered against appellant. Not only was the trial separate insofar as their respective defenses were concerned, but appellant was not present when Indelecia's testimony was given. One of the rights of every person charged in a criminal case is to be confronted by and to cross-examine the witness against him.[3] This right is violated if the evidence taken in another case, or in the separate trial of another accused, is considered to his detriment.[4]

The case for the prosecution must find its basis somewhere else. The most relevant piece of evidence is appellant's confession (Exh. "A"), wherein he admitted that in the afternoon of September 6, 1956 he entered Dominador Irorita's house and posted himself directly below the place on the bamboo floor where Dominador was sleeping side by side with his wife Indelecia; that with a .45 caliber sub-machine-gun, which he likewise admitted belonged to him, he pumped three bullets into the victim; that after the shooting, appellant gave the gun to Indelecia, with whom appellant had been maintaining illicit relations for a long time and who was herself aware of the plan to kill her husband.

Appellant, however, declared on the witness stand that his thumbmark on the said confession was procured through force, violence and intimidation. Specifically, he said that the PC soldiers under Sergeant Gamayo maltreated him by boxing him and hitting him in various parts of his body with the steel butts of their guns; and that he was repeatedly placed, face downward, inside a drumfull of water until he became unconscious. This brutal treatment, he declared, continued throughout the night and until the morning of September 14, 1956. As proof of his maltreatment appellant presented a medical certificate (Exh. "4") signed by Dr. Roman de la Cuesta, chief of the Ilocos Norte Provincial Hospital, which certificate lists the following injuries found in his person:

- "1. Abrasion, multiple scaring, costal arch, right chondro-sternal articulation, level of third rib, left;
2. Two abrasions at supra-scapular region left; and one abrasion, shoulder, ter or aspect, right;
3. Healed, deep abrasion, between 3rd and 4th fingers, doesum hand, left."

That the said injuries were due to maltreatment by the PC soldiers who obtained appellant's confession is rather doubtful. According to Dr. de la Cuesta, injury No. 3 in the certificate was probably the earliest to be inflicted. Upon cross-examination he gave the opinion that the same could not have been sustained earlier than seven (7) days prior to the physical examination of appellant. Since the physical examination was made on September 24, 1956, the said injury dated back no earlier than September 17, that is, four days after the alleged maltreatment on the night of September 13. Besides, if it was true that appellant had been repeatedly pummelled with steel gun butts in different parts of his body the injuries would have been much more serious than just abrasions. It was not at all improbable that those abrasions were self-inflicted after the confession had been given.

Another significant circumstance is that when appellant was brought before Judge Juan Jacinto on September 15, 1956 to ratify the statement he had given earlier to the investigators, he voluntarily reaffirmed the truth of its contents. Judge Jacinto, commendably enough, did not confine himself to the simple formality of having the declarant swear to the written statement, but examined him closely and had the proceedings before him separately recorded in writing, thus:

"x x x x x x x x x x"

Q Showing to you this statement (Court shows) in which appears a thumbmark on the name 'Cornelio Manuel', is this the declaration which you thumbmarked before the PC?

A Yes, sir.

Q Now, listen. Remember that this declaration incriminates you. And you have a right not to incriminate yourself. This will be used against you in Court. Did you willingly declare before the PC and did you willingly thumbmark this statement?

A I declared them because they are the truth and nothing but the truth.

Q And you will not deny them?

A I have some reluctance because I declared them after I was maltreated by the PC.

Q But all these declarations came from your own mouth, is that it?

A Yes, because they forced me.

Q Did anyone teach you to declare what I read to you?

A No one, sir, but I declared them after I was forced.

Q But you admit the truth of everything contained in this thumbmarked declaration of yours? Remember I am not forcing you in any way, that is why there are two witnesses.

A Yes, I admit the truth of my declaration read to me.

Q Therefore, what you only want to tell to the Court is that, although your declaration before the PC is true, you declared the truth only after you were maltreated?

A Yes, sir.

Q Are you sure now of that? I am not forcing you. Be free to tell the truth.

A What I want to say is that the firearm is not mine and that I was not the one who shot Dominador Irorita." (Exh. "B")

Q Who owns the firearm then?

A The deceased, Dominador Irorita.

Q Why do you say that it is his?

A It is the truth.

Q Why?

A I have seen it before in his possession.

Q Where did you see it?

A In his house.

Q He showed it to you?

A No, sir, but I saw that he cleaned it.

Q How many times did you see him clean it?

A Only once.

Q When did you see him clean it?

A Long time ago. Four months ago.

Q Now listen, so everything I read to you, now deny?

A No, sir, I do not deny all, but..... (witness pauses). . . . the truth is that I do not own the firearm, and even if that is only what will mitigate me.

Q You must remember that you are in Court. Tell the truth only; you are making many contradictory statements. What do you mean when you say that even if that is only what will mitigate me (paca-alusaysayac).

A Yes, sir, because it is not licensed. I do not admit that, because it is not mine.

Q Now, except that part which says that you own the firearm, you admit the truth of all the other parts of the declaration I read to you?

A Yes, sir, the other parts are true.

Q You will not change your mind again?

A No, more sir." (Exh. "B")

Clearly then, except that part in which he admitted ownership of the fatal gun, appellant voluntarily affirmed the veracity of his extrajudicial confession. This affirm-ation is in effect a second confession, the voluntary charac-ter of which is beyond dispute, considering the circumstances under which it was made. Indeed appellant felt free enough from restraint to deny that the gun used in the killing was his and to say that it belonged to the deceased himself. In the face of his categorical and repeated admission of the truth of his previous statements, with the only exception just referred to, his half-hearted attempt to deny that he shot Irorita deserves no consideration at all.

Appellant's principal defense is alibi. According to him he spent the whole day of September 6, 1956 working in a place locally known as Alilog, a good 2 kilometers away from the house of the victim; and left his house early that morning and only learned of the victim's death late that night when he returned home. As proof of his presence in Alilog, appellant presented an old notebook (Exh. "5") which contains, among other matters a list of the persons who supposedly worked there on September 6, 1956[5].

The said notebook and its contents, however, fail to furnish convincing support to appellant's testimony. There is no showing that the entries in the notebook are authentic. And, in spite of appellant's assertion that there were about twelve (12) other workers in his group who were with him at the time, not one came forward to corroborate him. Even his own father, who he claimed was his companion in going to and coming from Alilog, was not presented by the defense.

Then again, the 2-kilometer distance between Alilog and barrio Ester, where the crime was committed, does not rule out the possibility of appellant's being at the latter place at the time of the killing.

"For that defense (alibi) to succeed, it should be shown to the satisfaction of a prudent mind that the distances between the places where the accused claimed to be and where the crime was committed are such that it would have been clearly impossible for him to be at the latter at the time of the crime." (People v. Secapuri, G.R. No. L-17518, February 28, 1966)

"x x x For it (alibi) to prosper, it is not enough to prove that defendant was somewhere else when the crime was committed, but must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time." (People v. Jamero, G.R. No. L-19852, July 29, 1968; 24 SCRA 206)

The crime was characterized by treachery and hence properly qualified as murder. The victim was shot while asleep, without any risk to appellant. And since appellant surreptitiously entered the house of the victim to commit the crime, the trial court correctly considered dwelling as an aggravating circumstance.

On the other hand, we find no reason to disturb the trial court's appreciation of lack of instruction as a mitigating circumstance. The said court was in a position to gauge appellant's level of intelligence from his appearance, demeanor and manner of answering questions.

The penalty for murder is reclusion temporal in its maximum period to death (Art. 248, RPC). Because the generic aggravating circumstance of dwelling is offset by the mitigating circumstance of lack of instruction, the penalty prescribed by law in its medium period, that is, reclusion perpetua, was correctly imposed by the trial court in the murder case.

With respect to the charge of illegal possession of firearm, there is no alternative but to find appellant guilty thereof. Considering that it was he who fired the fatal shots, his possession of the unlicensed death weapon cannot be denied. Considering further that he actually made use thereof for an illegal purpose, the imposition of the penalty prescribed by law in its maximum period, namely, imprisonment to 10 years, is likewise justified. (See 2692, Ad. Code, as amended).

Wherefore, the judgment appealed from is hereby affirmed with respect to the penalty imposed upon appellant Cornelio Manuel in each of the two cases, but is modified by increasing the indemnity adjudged by the lower court in the murder case to P12, 000.00, to be paid to the heirs of Dominador Irorita other than his wife. Costs against appellant.

Concepcion, C.J., Dizon, Zaldivar, Castro, Fernando, Capistrano, Teehankee and Barredo, JJ., concur.
Sanchez, J., took no part.

[1] In the charge of murder against Cornelio Manuel, Segundina Agbayani, Indelecia's mother, was likewise charged as an accessory. Eventually she was acquitted by the trial court on the ground of reasonable doubt.

[2] Actually, Cornelio Manuel has appealed to this Court only his conviction for murder; his conviction for illegal possession of firearm was initially appealed to the Court of Appeals. But, as explained by the deputy clerk of the trial court in his transmittal letter dated October 10, 1964, the records of both cases were forwarded here because "the evidence in both cases, both oral and documentary are inextricably the same, and it would be impossible to forward the murder case to the Honorable Supreme Court and the illegal possession of firearm to the Honorable Court of Appeals." This decision therefore deals also with Criminal Case No. 2512 (for illegal possession of firearm).

[3] Sec. 1(f), Rule 115, Rules of Court. The Constitution also provides that "(I)n all criminal prosecutions the accused shall enjoy the right x x x to meet the witness (against him) face to face x x x" (Art. III, Sec. 1, (17)).

[4] See *U.S. v. Bello*, 11 Phil. 526; see also *People v. Lavarias* G.R. No. L-24399, June 29, 1968.

[5] The persons listed in the notebook were members of a local association known as "zanjeria", the purpose of which was to help transform otherwise barren land into productive ricefields for a share in the expected harvests. Appellant was admittedly a member of the "zanjeria".

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