

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIANO ESTEBAN Y MOLINA AND LUIS CAMAYA Y ROCHA, ACCUSED-APPELLANTS.

G.R. Nos. L-27046 and L-27047. March 30, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This is a review of the decision of the Court of First Instance of Rizal, Pasay City Branch VII, dated October 11, 1966, convicting Mariano Esteban and Luis Camaya of murder, sentencing them to death and ordering them to pay solidarily to the heirs of Maria Pascua an indemnity of six thousand pesos (Criminal Case No. 6058-P).

In the same decision, Esteban and Camaya were convicted of frustrated murder with respect to the assault upon Antonio Maravilla. They were each sentenced to a straight penalty of seventeen years and four months of reclusion temporal. No indemnity was imposed (Criminal Case No. 6059-P).

In 1963, there resided in the vicinity of Protacio Street Extension and Gamban Street (Bukid), Pasay City Antonio Maravilla (Landicho), 34; his querida, Loreta Alega (Lulu); Mariano Esteban (Totoy), 42; Tomas Ablola (Arbiola or Mati) (Exh. 3-Esteban, p. 290, Record; 16 tsn March 19, 1964) and the spouses Maria Pascua and Apolonio Lozano. They were neighbors.

Luis Camaya, 27, used to reside in that vicinity. Later, he transferred to 2641 Zamora Street Camaya, Esteban and Ablola called each other compadre.

Sometime in 1961, the husband of Lulu Alega was killed. Four persons, among whom were Esteban, Ablola and Camaya, were implicated in the killing. Camaya was the alleged killer. The case was compromised. It was agreed that the four accused would pay Lulu P1,500 as settlement of the case (Exh. 3-Esteban, pp. 290-1, Record).

About three o'clock in the afternoon of May 1, 1963, Maravilla and Lulu went to the house of Camaya to collect the sum of P47 as the balance still due on the compromise settlement. They had an altercation. Camaya said that Esteban would advance ("magaabono") the payment of the sum of P47 (pp. 334 and 337, Record; Exh. E-2, p. 227, Record).

At about six-thirty in the evening of that same day, May 1, Maravilla repaired to the house of Esteban to collect the balance of P47. Esteban promised to pay twenty pesos the next day. Maravilla reminded Esteban that the criminal case was only provisionally dismissed and that nonpayment of the balance might prejudice him. Esteban said that he would pay that balance and then seek reimbursement from Camaya (Exh. 3-Esteban, pp. 290-291, Record).

Thereafter, Maravilla returned to the yard of the house of Maria Pascua where he and other persons had been having a drinking spree. The yard was inclosed by a mat and woven coconut leaves (See Exh. F, p. 229, Record).

At about seven o'clock in the evening, Maravilla saw Esteban and Ablola or Mati passing by Maria Pascua's

house but they did not come in and did not take part in the drinking bout.

Then, at eleven o'clock, when Maravilla and his six companions had finished drinking and were singing in the yard, successive gunshots were fired at the group. Maravilla stood up and looked over the partition in the direction where the shots originated.

Maravilla saw three men about to leave the place, two of whom were Esteban and Mati. The latter was holding an automatic rifle which looked like a Thompson submachinegun and which he was handing to his companion ("nagaabutan sila").

At that juncture, Maravilla realized that he had been wounded in the shoulder and below the nape at the top of his spinal column. Blood was oozing from his wounds. He felt weak and dizzy. He told Ben Junior to call a policeman.

The gunshots penetrated the house. Maria Pascua, who was sleeping inside the house, was mortally wounded in the head by means of a metal jacketed bullet (Exh. I).

The policemen found three empty shells on the spot near the partition, where Maravilla saw three intruders, and a slug inside the house near the corpse of Maria Pascua.

Maravilla managed to get out of the house and emerged on the street where he collapsed. He was found by the police-men sprawled at the corner of M. de la Cruz and Protacio Streets. When he was asked as to who had shot him, he identified his assailants as "sina Totoy Kangkong, sina Mate" referring to Esteban and Ablola) (117 tsn December 3, 1965).

Maravilla had an entrance gunshot wound on the left shoulder. The bullet caused paralysis from the waist down, blocked his cervical canal and injured his spinal cord and lungs and fractured his ribs. There was no exit wound. The bullet remained inside his chest. (He was hospitalized for more than fifteen months.) Without medical intervention, Maravilla would have died because of those injuries.

Maravilla was brought to the Manila Sanitarium on that same evening of May 1, 1963. He had difficulty in breathing. Patrolman Cayetano Cedilla, who interviewed Maravilla at twelve-quarter in the morning, or about an hour after the shooting, observed that the latter was on the threshold of death. Cedilla took down Maravilla's dying declaration in the presence of two patrolmen. It was thumbmarked by Maravilla (Exh. C, p. 223, Record).

In that statement (a res gestae declaration), Maravilla pointed to Esteban and Mati as the gunwielders near the coco-nut palm who shot him at around eleven-thirty in the evening. Maravilla said that earlier in the day he had an altercation with Esteban (Exh. C).

After taking down Maravilla's statement, Patrolman Cedilla picked up Esteban and brought him to the hospital where Maravilla, in the presence of his mother, a patrolman and some nurses, fingered Esteban as his assailant nicknamed Totoy. "Iyan nga, ho, si Totoy", Maravilla assured Cedilla. "Sila ho ang magkasama nina Mate kanina" (12 tsn February 26, 1964; 115-117, 125 tsn December 3, 1965).

A paraffin test was made on Esteban's hands on the following day at the forensic chemistry division of the National Bureau of Investigation. They were found to be "positive with nitrate specks" (Exh. H; p. 230, Record).

On May 3, 1963, or less than forty-eight hours after the shooting, Special Counsel Carlos Rustia of the Pasay city fiscal's office filed in the Court of First Instance two informations against Esteban and two unidentified persons, charging them with murder for the killing of Maria Pascua and frustrated murder for the assault on Maravilla.

About six and a half months after the incident, while Maravilla was confined at the Saint Luke's Hospital,

Patrol-man Cedilla showed him the photographs of Camaya and Ablola. Maravilla identified them as the companions of Esteban on the night when (Maravilla) was shot. The assailants fired the shots when they were four to five meters away from Maravilla (Exh. E, pp. 225-28, Record).

In December, 1963, or after Maravilla had executed his statement of November 15, 1963, implicating Camaya as one of the three assailants (Exh. E), the informations were amended so as to include him as one of the accused (p. 8, Record of Criminal Case No. 6059-P for frustrated murder. No copy of the amended information for murder is found in the record of Criminal Case No. 6058- P for murder.)

Camaya was arrested on December 22 or 23, 1963 (Exh. 2, p. 19, Record of Criminal Case No. 6059-P). At his arraignment on January 10, 1964, he pleaded not guilty.

The two cases were tried jointly by Judge Angel H. Mojica. As already stated, the judgment of conviction was rendered by Judge Francisco de la Rosa in 1966.

Case of Camaya. - His alibi was that at the time the shooting occurred he was working in the city slaughterhouse located at Pinagbarilan Street, Pasay City. The distance between that place and the house of Maria Pascua could be traversed by walking in seven or eight minutes (64-65 tsn September 22, 1965).

The next day Camaya learned from a pork vendor that his compadre, Esteban, was implicated in the killing of Maria Pascua. That information allegedly did not make Camaya apprehensive that the police would be looking for him.

Certain circumstances may indicate that Camaya would most likely be involved in the assault on Maravilla. Camaya was a friend or comrade of Esteban and Mati (Mate) and he had some connection with the motive for the liquidation of Maravilla. Camaya was accused of having taken part in the killing of Lulu's husband in 1961.

A few hours before the shooting, he had a sort of altercation with Maravilla and his common-law wife, Lulu, who made threatening remarks against Camaya because of the latter's failure to complete the payment of the indemnity or compromise settlement for the killing of Lulu's husband. Camaya's alibi does not exclude the possibility of, his having taken part in the shooting of Maravilla.

Notwithstanding these circumstances, it cannot be said that Camaya's complicity in the shooting was established beyond reasonable doubt.

It should be borne in mind that the only eyewitness to the shooting was Maravilla and he did not implicate at all Camaya in his (Maravilla's) statement (Exh. C). That is the fatal weakness in the prosecution's evidence against Camaya which engenders doubts as to his guilt.

If Maravilla recognized Camaya as one of the three assailants or as the companion of Esteban and Mati, then, why did not Maravilla name him as one of the culprits in Maravilla's res gestae declarations made immediately after the shooting?

The prosecution was not able to explain that gap in its evidence. It was only more than six months later or on November 15, 1963 when Maravilla implicated Camaya. That belated denunciation, which lacks spontaneity, is not credible. It has the earmarks of an afterthought or a frameup induced by a grudge or other ulterior motivation.

Consequently, due to the inconclusive evidence against Camaya, he has to be acquitted. His guilt was not established to a moral certainty. As enunciated by Alfonso X (El Sabio), king of Castille and Leon, the compiler of Las Siete Partidas, "mas vale que queden sin castigar diez reds presuntos, que se castigue uno inocente" (Cited in People vs. Cunanan,⁶⁵ O.G. 9012, L-17599, April 24, 1967, 19 SCRA 769; 784).

Case of Esteban. - The factual complexion of his case is different from that of his compadre, Camaya. Esteban's alibi was that he was in his house at the time of the shooting. On that evening, he was supposed to work in the slaughterhouse with Camaya from eleven o'clock to six o'clock in the morning (Exh. 3-Esteban). Esteban's house was six lots away from the scene of the shooting (3 tsn October 5, 1965).

But, according to his version, he did not work and he preferred to sleep because Camaya did not pay him the five pesos which he owed to Esteban and which the latter would use to pay his electric bill. That flimsy pretext is not credible.

Esteban was sufficiently identified by Maravilla in the latter's *res gestae* declarations as one of the three assailants who fired the shots that killed Maria Pascua and seriously wounded Maravilla. The paraffin test proved that he fired a gun shortly before his arrest.

At the confrontation in the hospital, when Maravilla and the policemen fingered him as the gunwielder, Esteban did not say anything. Because of his silence the policemen confined him in jail instead of releasing him.

Esteban was infuriated by Maravilla's threat five hours before the shooting that the dismissal of the homicide case against Esteban for his complicity in the killing of Lulu's husband was only provisional.

Knowing Maravilla to be a criminal character (he was charged with murder in 1962 in the Court of First Instance at Pasay City for having killed Zosimo Priego, Exh. 3-Deposition, p. 289, Record), Esteban feared that Maravilla was capable of asking for the revival of that homicide case. So, Esteban liquidated Maravilla to prevent the resurrection of the homicide case.

Manuel S. Tonogbanua, counsel de oficio, who made an able presentation of the case for the appellants, meticulously and conscientiously scrutinized Maravilla's testimony and vehemently assailed his credibility.

Counsel contended that Maravilla could not have identified Esteban as one of the assailants because the partition, which enclosed the yard where Maravilla and his companions were drinking, had a height exceeding Maravilla's height.

That contention is not correct. Maravilla testified that his height was more than the height of the partition. He is six feet and one inch tall while the height of the partition was only five feet and ten inches (7-8 tsn April 8, 1964; 87 tsn April 3, 1965; 6 tsn March 19, 1964).

Counsel stressed that Maravilla was already very inebriated when he was shot and, therefore, he did not have sufficient consciousness to recognize his nocturnal assailants who were about five meters away from him.

It is true that Maravilla had imbibed much beer and gin but the fact is that he was able to come out of the yard and he collapsed on the street where a policeman extracted from him the statement that he was shot by Totoy and Mati (referring to Esteban and Ablola). There is no reason to doubt the veracity of the policeman's testimony on this point.

And that testimony signifies that Maravilla, in spite of his wounds and his intoxication, still retained sufficient consciousness or awareness of what had happened to him and had the capacity to articulate intelligently what was, in his mind.

We have painstakingly reviewed the evidence. We agree with the trial court that Esteban was sufficiently identified by Maravilla as one of the three assailants and that his guilt was established beyond reasonable doubt.

As to Maria Pascua, who was killed while asleep, the killing is murder qualified by treachery which absorbs nocturnity. Dwelling should be appreciated as an aggravating circumstance. As no extenuating circumstances

were present, the penalty imposable upon Esteban is death (Arts. 64 and 248, Revised Penal Code).

The fact that Esteban intended to kill Maravilla and in the course of the assault incidentally killed Maria Pascua makes him liable for murder just the same because a person committing a felony is criminally liable although the wrongful act done be different from that which he intended (Art. 4, Revised Penal Code). This rule covers *aberratio ictus* or mistake as to victim.

As to Maravilla, Esteban is guilty of frustrated murder. The trial court erred in imposing upon him straight penalty of seventeen years and four months. Esteban is entitled to an indeterminate sentence the maximum of which should be taken from reclusion temporal minimum and the minimum from the range of prision correccional maximum to prision mayor medium since no generic mitigating and aggravating circumstances can be appreciated in connection with that offense.

WHEREFORE, (1) the judgment of conviction as to Luis Camaya is set aside. He is acquitted on the ground of reasonable doubt.

(2) The trial court's judgment convicting Mariano Esteban of murder is affirmed with the modification that the indemnity which he should pay to the heirs of the victim, Maria Pascua, is increased to twelve thousand pesos. For lack of necessary votes, the death penalty imposable upon him is commuted to reclusion perpetua.

For the frustrated murder, Esteban is sentenced to an indeterminate penalty of ten (10) years of prision mayor as minimum to fourteen (14) years of reclusion temporal as maximum, in lieu of the straight penalty of seventeen years and four months of reclusion temporal, imposed by the trial court. Esteban is further ordered to pay Antonio Maravilla an indemnity of ten thousand pesos. Costs de oficio in the two cases.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, De Castro, and Melencio-Herrera, JJ., concur.

Abad Santos, J., on abroad.

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