

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PEDRO CABASA AND IGNACIO AJOS, DEFENDANTS AND APPELLANTS.

G.R. No. L-3022. March 22, 1950

Ponente: TUASON, J.

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TUASON, J.:

On October 22, 1944, Aurelio Saavedra was hauled away from his house, situated at barrio Tamban, municipal district of Surup, province of Davao, by appellant Ignacio Ajos, Gil Castillo and one Luis Dugcoy, each armed with, a rifle or carbine. A few kilometers from Saavedra's house, Saavedra was shot and killed by Ajos. Ajos was a member of a guerrilla unit under the command of his co-defendant Pedro Cabasa, also an appellant, who was a first class private in the organization.

The theory of the prosecution is that Ajos, the leader of the trio, received an order from Cabasa to kill Gaavedra at sitio Mugdog. The theory of the defense is that Cabasa's order was only to arrest Saavedra and bring him to Cabasa for investigation in connection with his alleged collaboration with the Japanese; that on the way back to the guerrilla camp or headquarters, Saavedra tried to wrest his captors' weapons and failing in his attempt, started to flee; that it was while Saavedra was running away that Ajos fired at and killed him. The accused denied Castillo was a guerrilla. They said he was a prisoner and was sent to go along with Ajos and Dugcoy only because neither of these knew the place.

Around the issues thus joined revolves the evidence for both sides. As these issues involve the relative credibility of the witnesses we deem it convenient to extract the pertinent parts of their testimony.

Gil Castillo testified substantially as follows: He was a guerrilla under Pedro Cabasa. On October 22, 1944, Cabasa told Ajos to go to Tamban with the witness and Dugcoy, to get Aurelio Saavedra and shoot hm upon arrival at sitio Mugdog. Thereupon Ajos with Luis Dugcoy and witness made for Saavedra's barrio. Ajos was armed with a carbine, Dugcoy and the witness with rifles. Ajos' carbine was lent him by Cabasa, who told Ajos to use that weapon instead of Ajos' rifle. Upon reaching Saavsdra's place, Ajos told Saavedra that Cabasa sent for him because he was to be taken to the east coast. Irene, Medel, Saavedra 's connon-law wife, and her children were in the house besides Saavedra. Saavedra willingly followed Ajos and his companions and at a distance of about 100 meters from Saavedra's house, Ajos bound Saavedra's hands behind his back with a rope while Dugcoy pointed his gun at him. Once thus tied, Saavedra was taken to Mugdog, about three kilometers distant from Saavedra's house, and there Ajos and Dugcoy led Saavedra to a bush against Saavedra's protest. In the bush, Ajos told Saavedra, "I am going to shoot you." As Saavedra and the witness knew each other, the former begged Castillo to help him, but he replied that he could not do anything since he was only a private. Saavedra was immediately shot by Ajos from a distance of four meters and dropped dead. As Ajos was going to fire another shot the witness prevailed upon him not to do so. Ajos and his two companions covered Saavedra's dead body with small twigs, stones and woods. Afterward the trio returned to the barracks where Ajos reported to the

detachment commander, Cabasa, that his order had been accomplished. Cabasa warned them to keep quiet.

Against Gil Castillo's testimony, Ignacio Ajos in substance stated as follows: He was under Pedro Cabasa. On October 22, 1944, he, Gil Castillo and Luis Dugcoy were commanded at the camp by Pedro Cabasa to arrest Saavedra. When Cabasa gave the order, Gil Castillo was downstairs, only Luis Dugcoy being present besides himself. As he told Cabasa that he did not know the place where Saavedra lived, Cabasa called for Gil Castillo who was then feeding the hogs downstairs. Cabasa told Castillo to go with the witness and Luis Dugcoy and show them Saavedra's house. The order of Cabasa was for Ajos to bring Saavedra to the camp. Cabasa did not tell him to kill Saavedra or to tie Saavedra's hands. They arrived at Saavedra's house at about 2 o'clock p.m. Saavedra upon being appraised of the order of arrest which Ajos read to him expressed his willingness to come along, which he did. It was about 3:50 o'clock p.m. when they left Saavedra's place. They were walking in a file, Dugcoy going ahead, Aurelio following Dugcoy, then Gil Castillo and then Ajos, who was suffering from a sore foot. All of a sudden Ajos heard a call for help from Castillo "because Luis was being grabbed by Aurelio." Ajos fired twice in the air in order to warn Saavedra to stop from his attempt to seize Dugcoy's gun. Saavedra did not succeed in his attempt because Luis' gun was slung on his shoulder and fell to the ground. Failing to grab Dugcoy's gun, Saavedra started to flee and Ajos fired at him. The shot found its mark, Saavedra was killed and buried in the same place. Gil Castillo had a gun but no ammunition because he was a prisoner. He had been arrested by Pedro Cabasa at Nangan. He was at the camp as prisoner. At the camp Hie witness reported what happened to Cabasa.

Pedro Cabasa testified that he was a recognized guerrilla. On or about October 22, 1944, his camp was located in Luzon, Surup, Davao. He was the detachment commander of that unit. Luis Dugcoy and Ignacio Ajos were his soldiers. On the date above mentioned, he gave an order to Ignacio Ajos and Luis Dugcoy for the apprehension of Saavedra in Tamban. Gil Castillo was not present when he gave the order; Castillo was downstairs feeding the hogs. He ordered the arrest of Saavedra for his pro-Japanese activities'. Because, according to Dugcoy, he did not know the place where Saavedra lived, he got Gil Castillo to guide Ajos and Dugcoy. He called the testimony of Castillo about his alleged order to shoot Saavedra "as false and frame-tip." He said Castillo and two brothers had been caught in September, 1944, in where the brothers were under the command of Estrella, municipal chief of police of the puppet government in Surup. That was how Gil Castillo became his prisoner. He also denied that he ordered Ajos to tie Aurelio Saavedra. He admitted having given Castillo a gun but said there was no ammunition. He said he did this "as a military tactics, to give attraction to certain people to surrender to my camp." Saavedra, he said, did not reach the camp because, according to Ajos, at Lilisan Saavedra grabbed the rifle Dugcoy, and Castillo shouted for help, upon which Ajos shot into the air while Luis and Saavedra were grappling the possession of the gun.

Luis Dugcoy did not testify. Neither was he prosecuted.

It is clear in our mind that Aurelio Saavedra was killed by Ajos in the manner and under the circumstances related by Gil Castillo. That Saavedra's hands or arms were securely bound was affirmed not only by Castillo but also by Irene Medel, Saavedra's mistress. That was in fact the most natural step for Ajos and his companions to take as a simple matter of precaution. With his hands shackled and with three armed men to contend with, it was unthinkable that Saavedra would dare escape or snatch the guns of his captors. We are also convinced that Gil Castillo himself was a guerrilla and was provided with ammunition as well as Ajos and Dugcoy. That he was armed with a rifle seems to be a conclusive refutation of the assertion that he was a prisoner. Cabasa's and Ajos' explanations for Castillo's possession of a gun sound foolish.

What was Cabasa's role in the slaying of Saavedra? It has been seen that Cabasa, although admitting that he ordered Saavedra's arrest denied that he told Ajos to kill the now deceased. But we are inclined to give credence

to Castillo's testimony, and so is Ajos, counsel in this Instance. Gil Castillo was direct and positive in his statement that an order to do away with Saavedra was given by Cabasa. The very fact that Saavedra was killed on the way to the camp is a good corroboration of Castillo's testimony. For it is hard to conceive that Ajos would have slain his prisoner if his instruction had been to take Saavedra for investigation, unless we should accept the discredited version that Saavedra made a dash for freedom. A mere private, obedient and meek, Ajos had no reason of his own to kill the deceased. According to the court, Ajos was of humble disposition, lacking education but inclined to obey blindly the orders of his superiors.

Unlike Ajos, Cabasa had a motive to liquidate Saavedra. Cabasa had been jilted by Irene Medel, Saavedra's common-law wife. According to the latter, a Spanish mestiza married to another man but cohabiting with Saavedra, about one week before October 22, 1944, Pedro Cabasa while walking past her house on patrol with men of his unit, saw her, came up, embraced her, and tried to kiss her. At that time she was alone with her children, Saavedra being away. She screamed for help and only then did Cabasa release her and get off the house. She said he made love to her but she protested that she was married.

The theory that Cabasa should have Saavedra killed for his rebuff by Irene Medel might sound unreasonable and appear out of proportion to Irene's "impudence." But Saavedra's assassination could have been conceived with a triple objective: to inflict moral suffering on the woman herself and deprive her of material support, and, in possible expectation of a new approach to win her, to put Saavedra out of the way and to warn the woman of his power of retribution. Cabasa was a man who, it would seem, would stop at nothing to attain his end. Supreme within his territory, it appeared that this accused was arrogant, vindictive, brutal, intolerant of any opposition or disobedience. In Exhibit D, Castillo's affidavit which was admitted in evidence without objection and which Ajos' counsel quoted in his brief, the affiant thus described this appellant:

"He was a little king in our place, and I don't know of any person who could dare oppose him or disobey him while he was herein our place. How many cows and pigs were killed or ordered killed by him? The owners could not oppose him because they were afraid of him. If these big people were afraid of him, with more reasons that I should be afraid because I am only a poor man. * * * Daring Cabasa's time here he could do what he pleased. Do you not know, sir, that Cabasa also killed three persons in the house of the Hussian in Mugdog? After killing these three men in Mugdog, nothing happened to him; he could still return here with his carbine, and all the people were afraid. * * * One Venancio (Monobo) of Malipugi, Tibinwan, Surup, for wasting only one bullet, he was tied to a coconut tree in the heat of the sun, by Cabasa; he was also butt-struck by Cabasa while tied; Julio Antolin, barrio lieutenant of Langa, Surup, was also tied in the heat of the sun to a tree and butt-struck by him because the former did not give the latter chickens and eggs; and because he was not given chickens and eggs, he was accused by Cabasa of being a pro-Japanese; all other persons who would refuse him rice, clothing, chickens and other foodstuffs he would say to them that they were Japanese spies or pro-Japanese; one Catalino Sajulla of Sigaboy, who was only explaining to Cabasa as to what would happen to the houses if burned after evacuating them, Cabasa harshly and at once pointed his gun at Sajulla, telling him he was a spy of the Japanese; and lastly his soldier, Martin Malintad for failing to bring him foodstuffs which he ordered the former to commandeer, was also butt-struck by him, and threatened him to shoot him should he again fail to comply with his orders."

That Cabasa did not molest the woman after her husband had been slain does not destroy the validity of our surmise; his desistance may well have been due to change of mind or other causes arising after the murder.

Counsel for Ajos concluded from Cabasa's character that Ajos feared and blindly obeyed his chief and that when Cabasa gave him his carbine to murder Saavedra he must have obeyed under the impression that if he did not he himself would be shot. Ajos thus acted, it is argued, under the impulse of uncontrollable fear and should be freed from penal responsibility under Section 6 of Article 12 of the Revised Penal Code.

The trouble with this plea is that it is not founded on any claim by Ajos himself. Ajos made absolutely no reference to the fact that he acted under duress or under the impulse of an uncontrollable fear for his life or safety. Fear, being entirely personal and a matter of defense, lying within the peculiar knowledge of the subject, should be alleged and proved to the satisfaction of the court by the accused. For the rest, Ajos killed Saavedra without the presence of Cabasa and could very well have disregarded Cabasa's order without imminent danger of being subjected to punishment for his disobedience. He was not under physical or moral compulsion to return to the camp.

The defendants undertook to establish that Aurelio Saavedra was a Japanese spy and that his arrest was motivated by his collaboration with the enemy. Cabasa testified that on November 20, 1943, he and his men were attacked in the schoolhouse in barrio Luzon by fifty constabulary soldiers armed with rifles and guided by Saavedra. Pedro Fabian was sworn to declare that in compliance with an order of the guerrilla commander he hunted pigs north of Mugdog the first week of November, 1943, that as it rained, he took shelter and spent the night in the house of one Alejandra Palma Gil; that early the next day he was arrested in that house by the constabulary and saw Saavedra leaning against a tree, a short distance from the constabulary soldiers. Cabasa added that in September, 1944, two members of the constabulary were captured by the guerrillas and in the course of the investigation admitted that Saavedra had been the guide of the constabulary when they assaulted the guerrillas in November, 1943.

The lower court did not give credence to Cabasa's and Fabian's testimony. It observed that Fabian was Irene Medel's lawful husband and naturally disliked Saavedra. The court also observed that for one year nothing was done against Saavedra and that it was only shortly after Irene Medel had rejected Cabasa's advances that Saavedra was apprehended and killed. Moreover Fabian's testimony was contradicted by Nicolas Gloschenko who, testifying in rebuttal, stated positively that it was the son of his servant who led the constabulary to the house of Alejandra Palma Gil where Fabian was arrested.

The trial court found both accused of murder and sentenced Cabasa to an indeterminate penalty of from 6 years and 1 day of prison mayor to 12 years and one day of reclusion temporal, and Ignacio Ajos to an indeterminate penalty of from 4 years, 2 months and 1 day of prison correccional to 10 years and 1 day of prison mayor (sic), both to indemnify jointly and severally the heirs of Aurelio Saavedra in the sum of P2,000, with subsidiary imprisonment in case of insolvency, and to pay proportionate shares of the costs.

The crime committed is murder qualified by treachery. Neither mitigating nor aggravating circumstances attended the commission of the offense with respect to Cabasa, but the extenuating circumstance of lack of instruction is to be appreciated in favor of Ajos with no aggravating circumstance to compensate it. Cabasa will therefore be sentenced to reclusion perpetua with the corresponding accessories and Ajos to an indeterminate penalty of from 12 years and 1 day to 20 years of prison correccional, also with accessories of law, both to pay the heirs of the deceased, jointly and severally, P6,000 as indemnity, and each to pay one-half of the costs of both instances. It is so ordered.

Moran, C.J., Ozaeta, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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