

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FILEMON CUTUEA, DEFENDANT-APPELLANT.***G.R. No. L-12702. March 30, 1962*

Ponente: BAUTISTA ANGELO, J.

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Before the Court of First Instance of Bohol Guillermo Cuevas, Emilio Parilla, Rufino Orillosa, Santiago Jusay, Cesario Sarigumba, Pedro Marapao, Moises Ticong, Filemon Cutura, Guillermo Patayan, John Doe and Richard Doe were charged with the crime of murder committed on the person of one Jesus Cimafranca. Upon motion of the provincial fiscal, the accused Cesario Sarigumba, Moises Ticong and Pedro Marapao were discharged from the information in order that they may be utilized as government witnesses. Thereupon, Guillermo Cuevas, Emilio Parilla, Rufino Orillosa, Santiago Jusay and Filemon Cutura were arraigned and entered a plea of not guilty. After their arraignment, the provincial fiscal moved for the dismissal of the case with respect to accused Guillermo Patayan, John Doe and Richard Doe who were still at large, which motion was granted by the court.

After trial, the court rendered judgment finding the accused Filemon Cutura and Rufino Orillosa guilty of the crime charged, with the mitigating circumstance of obfuscation, and sentenced each of them to suffer an indeterminate penalty of 10 years and 1 day of prison mayor to 17 years 4 months and 1 day of reclusion temporal, and to pay one-eleventh (1/11) of the costs. They were also sentenced to indemnify, jointly and severally, the heirs of the deceased in the amount of P6,000.00, without subsidiary imprisonment in case of insolvency. Guillermo Cuevas, Emilio Parilla and Santiago Jusay were acquitted, with costs de oficio.

Of the two accused who were found guilty, only Filemon Cutura appealed to the Court of Appeals, but in a resolution entered on January 29, 1957, the latter court, considering that the mitigating circumstance of obfuscation is not supported by the evidence, certified the case to this Court upon the theory that the impossible penalty upon appellant is reclusion perpetua which comes under the jurisdiction of this Court.

In the evening of December 11, 1944 a benefit dance was held under the auspices of certain guerrilla organizations in barrio Bahugan, Dimiao, Bohol. The dance was held in honor of the soldiers of the guerrilla forces that were stationed in that place. While the dance was going on, a quarrel arose between one Siding and Jesus Cimafranca in the course of which the latter fired his gun. Having been apprised of the trouble, Lt. Parilla, a detachment commander, and Lt. Cuevas intervened so that peace may be restored and the dance may proceed. While the two officers were trying to pacify the parties the carbine of Cimafranca fired whereupon Lt. Parilla rushed towards him and taking the carbine gave it to one soldier for safekeeping. Lt. Parilla promised to return the carbine to Cimafranca the following morning.

In the morning of the following day, while Lt. Parilla and some soldiers were in the vicinity of the chapel of Bahugan, Cimafranca appeared and asked Lt. Parilla to return him his gun. Lt. Parilla told him to wait, but instead of obeying him, Cimafranca grabbed the gun and said, "Who is brave? Alright you face me now." Because of this incident, the people coming from the chapel scampered away. Cimafranca fired the gun once in the air and tried to

point it at Lt. Parilla who sought cover behind his father Emiliano Cimafranca. Having been pacified by his father, Jesus Cimafranca left the place while Lt. Parilla went to his station in the barrio of Cambayaon, four kilometers from the place of the incident.

On December 13, 1944, Lt. Cuevas ordered some members of his detachment to apprehend Jesus Cimafranca who was then supposed to be near the municipal building of Dimiao, Bohol, but when they went to that place Cimafranca was not to be found and so they proceeded to look for him at a place where there was posted a volunteer guard from whom they inquired about the whereabouts of Cimafranca, and upon being informed that he was in the house of one Saturnina Yecyec in the barrio of Canduaw, they proceeded to said house. Parilla's men divided themselves into two groups some of them staying at the left and the rest at the right with the agreement that when Parilla whistle the men will start firing into the air. Upon reaching near the house, Parilla called for Cimafranca but nobody answered and so Parilla whistled and his men started firing in the air. After hearing the shots, Cimafranca came down the house and gave himself up. The group then proceeded to Dimiao taking with them Cimafranca with his hands hogtied. He was brought to the headquarters of Lt. Cuevas. Upon seeing him, Lt. Cuevas told him that he would pay for what he did, and after uttering this admonition, his men began assaulting Cimafranca. Pedro Marapao gave him several fist blows. Filemon Cutura hit him on the head with a big piece of wood thereby causing him to fall to the ground. Then he was struck on the head by Crispin Carbonera with a piece of iron, and while lying prostrate he was stabbed on the abdomen with a bolo by Rufino Orillosa. As a result of the injuries inflicted on him, Cimafranca died. He was buried in a nearby place. When his body was exhumed it was identified by his mother to be that of her son Jesus Cimafranca.

From the testimony of Dr. Andres Lawengco who examined the body of the deceased the trial court found that the skull of the deceased had a broken portion which could have been caused by a blow with a piece of wood. According to Dr. Lawengco, this fracture was sufficient to cause the death of the victim.

There is no dispute that as a result of certain incidents that had taken place between Jesus Cimafranca and some soldiers of the guerrilla forces stationed in Dimiao, Bohol, he was arrested under the authority of the commander of said forces in the morning of December 13, 1944, and upon being brought before Lt. Guillermo Cuevas he was manhandled and tortured and as a result of the injuries inflicted on him he died on the very same occasion. The only question to be determined is whether or not appellant Filemon Cutura actually participated in the assault which culminated in the victim's death and if he did what is the extent of his criminal responsibility.

After a careful review of the evidence, the Court is satisfied that appellant actually participated in the assault which resulted in the victim's immediate death. To this effect no less than six witnesses testified who pointed to him as the one who hit the accused on the head with a big piece of wood. These witnesses are Pedro Marapao, Cesario Sarigumba; Domingo Balasa, Leonor Dellosa, Moises Ticong and Severino Bangalao. These witnesses could not have been mistaken in their identification not only because they were all present on the occasion of the assault but because appellant is well-known to them.

Counsel for the defense, however, makes an attempt to weaken the testimony of Pedro Marapao, Cesario Sarigumba, Moises Ticong and Leonor Dellosa by pointing out certain variance in their declarations because, while Pedro Marapao stated that appellant hit Cimafranca on the head, Sarigumba said that he was hit in both lower cheeks and head, and at the left and right portions of the face, whereas Ticong and Dellosa were not able to mention on what part of Cimafranca's body the blow of appellant landed. But we consider this variance inconsequential because, aside from the fact that the assault was effected by several persons at the same time which may have accounted for the alleged discrepancy, it appears clear that appellant Cutura actually hit the deceased with a big piece of wood thus contributing to his immediate death.

It is true that Marapao, Sarigumba and Ticong were formerly co-accused of appellant who were later discharged to be utilized as government witnesses, but this circumstance alone cannot nullify their testimony if they are otherwise found credible by the trial court. Moreover, while the testimony of said witnesses should be taken with caution, there is no reason why it cannot be given credence it appearing that the same appears corroborated by other eyewitnesses such as Leonor Dellosa, Domingo Balasa and Severino Bangalao who likewise declared that appellant actually assaulted the deceased.

The claim of appellant that he has not in any way taken part in the assault because it was Cesario Sarigumba who hit the deceased with a piece of wood and Pedro Marapao who stabbed him on the abdomen is of no avail for it appears contradicted by six eyewitnesses who pointed to him as one of the aggressors. It is noteworthy that in his attempt at his own exculpation no mention was made by him of the participation of his co-accused Rufino Orillosa thereby indirectly relieving him from liability, which attempt failed when Rufino Orillosa took in good grace his conviction by not appealing from the decision. This is an indication of the character of appellant who in his desire to exculpate himself would have no compunction in distorting the truth.

The trial court after evaluating the evidence reached the conclusion that the attack on the deceased is not the result of conspiracy or of a preconceived plan hatched by the accused and for that reason gave the opinion that their liability can only be considered in the light of their individual participation and not of a common criminal design. While we agree that the existence of conspiracy does not necessarily require that there be a previous agreement to commit a crime because such may be inferred from the manner and circumstances surrounding its commission, we consider it unnecessary to dwell on this matter, for even in its absence we may conclude that appellant is responsible for the death of Jesus Cimafranca. It is a matter that appears clear in the record that appellant hit Cimafranca on the head with a big piece of wood which has contributed to his death. The blow inflicted by appellant may not have been mortal, but it certainly accelerated the death of the victim. It is not necessary that each of the separate injuries be necessarily fatal in itself. It is sufficient if they cooperated in bringing about his death or contributed mortally thereto. (U.S. vs. Rodriguez, 23 Phil., 22; U.S. vs. Abiog, 37 Phil., 140.)

The defense claims that the trial court erred in not considering in favor of appellant the benefit of Amnesty Proclamation No. 8, series of 1946, because the deceased was assaulted in pursuance of the resistance movement in which 5 appellant and his co-accused were then engaged in the province of Bohol. It appears that this claim has already been presented before the Amnesty Guerrilla Commission that has jurisdiction over the case but that it was rejected because it was found that the aggression was the result of personal strife and not the hostile activities of the deceased. The trial court made the same finding in its decision. Indeed, it appears that the quarrel between Cimafranca and the men who arrested him has as its root the incident Cimafranca had between him and one Siding as a result of which his officers intervened but who were all defied and disobeyed. There is not a scintilla of evidence showing that his arrest was due to activities inimical to the resistance movement.

We find, however, that the trial court erred in considering in favor of the accused the mitigating circumstance of obfuscation for the record is barren of any evidence to support it. It must be remembered that when Cimafranca was arrested and brought to the headquarters of Lt. Cuevas with both hands tied, he was immediately taken before said lieutenant who then and there made the admonition that the time has come for him to pay for what he had done. Cimafranca did not utter a word, and yet simply induced by such admonition appellant and his co-accused jumped upon him and inflicted the injuries that killed him. There really appears no justification for concluding that appellant participated in the assault prompted by passion and obfuscation as found by the trial court. There being no modifying circumstance to consider in favor or against the accused, the proper penalty to be imposed under Article 248 of the Revised Penal Code is reclusion perpetua. The penalty imposed by the trial court, therefore, should be modified accordingly.

WHEREFORE, modified as above indicated, the decision appealed from is affirmed in all other respects, with costs against appellant.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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