

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
GERARDO NARSOLIS ET AL., DEFENDANTS. GERARDO NARSOLIS,
DEFENDANT-APPELLANT.**

G.R. No. L-2784. March 25, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This case is here on appeal brought by appellant Gerardo Narsolis from a decision of the Court of First Instance of Mindoro finding him guilty of murder and sentencing him to reclusion perpetua with the accessory penalties provided by law, to pay the sum of P2,000 to the heirs of the deceased Patricio Aguilar, and to pay on-half of the costs.

There is no dispute as to the following facts. On May 30, 1948, on the occasion of the barrio fiesta of Calabugao, Baco, Mindoro, Captain P. Francisco, who was in command of the Constabulary garrison at Calapan, Mindoro, sent to the said barrio of Calabugao Sgt. Apolinario Acosta to check up on violations of the motor vehicle law, and Sgt. Gerardo Narsolis, Pvts. Constancio Tizon, Simeon Villegas and two other constabulary men to check up on unlicensed firearms. At about 8 o'clock in the evening in the public square or plaza of said barrio near a stage or platform where some exhibitions were to be given, Private Tizon and the deceased Patricio Aguilar engaged in a quarrel or dispute which developed into a struggle or fist fight, in the course of which, Aguilar was killed with a pistol shot, the bullet entering his head from the left side near the left ear and coming out at the right side slightly above the right ear.

The theory of the prosecution is that as Aguilar staggered from a fist blow he received on the chin from Tizon, appellant Narsolis approached Aguilar from behind, embraced him and then shot him in the head with a pistol which he later threw at the feet of his fallen and dead victim.

According to the defense, however, neither Narsolis nor any one of the men under him was armed that night because they had been sent by their commander on a peaceful mission, not to arrest any one but only to detect and note down those people attending the barrio fiesta who may be keeping unlicensed firearms, and that because of this they went in plain clothes and without any arms; that what really happened in connection with the death of Aguilar was that as the latter staggered back from the blow inflicted by Tizon, said Aguilar drew from his pocket or his waist a pistol (Exhibit 5) intending evidently, to shoot Tizon with it but that Pvt. Villegas who happened to be near and anticipating and. to forestall the criminal design and homicidal attack of the deceased, seized with both hands Aguilar's right hand holding the revolver, intending to disarm him and prevent bloodshed but that in the struggle for the possession or retention of the weapon, it accidentally fired hitting Aguilar in the head and killing him, the pistol dropping to the ground from the deceased's nerveless hand, later to be found near his body and presented in evidence in court as Exhibit 5.

There is evidence to the effect that the pistol found that night by Sergeants. Abac and Acosta near the feet of Aguilar had been carefully, even gingerly picked up and handled so as to preserve finger-prints on it and placed in

an empty "Piedmont" cigarette container and delivered to Capt. Francisco who it is said sent it to Manila for analysis and inspection by experts. It is also claimed by the defense that Capt. Francisco could testify on this sending of the gun to Manila and on the result of the analysis or examination, particularly for finger-prints. However, despite the insistence of defense counsel for the postponement of the trial to wait for the arrival of Capt. Francisco who at that time was in Manila and had been summoned by two radiograms to attend said trial at Calapan, Mindoro, the trial court refused to accommodate the defense and the case was decided without the benefit of his testimony. In this the lower court erred. Moreover, after thoroughly reviewing this case and studying its record, we find the evidence incomplete and unsatisfactory, both for the prosecution and for the defense. In the interest of justice, said evidence should be supplemented and reinforced, not exactly for the benefit of the defense but mainly to have a sufficient and adequate basis to intelligently and justly determine the guilt or innocence of the defendant. For instance, the prosecution should have made efforts to show that Narsolis and his men were as contended, really armed on that occasion and that it was customary, if not a matter of regulation, that whenever constabulary soldiers are sent out on a mission, even in plain clothes, they should be and were invariably armed, if this is really a fact; and that furthermore, the gun that was delivered to Capt. Francisco and presumably sent to Manila belonged to Narsolis according to the office records of the garrison or of the supply officer of said garrison, provided of course that this is the truth; or that before the day of the shooting, Aguilar had been known to carry a gun, with or without license, and that the death weapon belonged to him or bore his finger-prints. Evidence might also have been presented to substantiate the claim of the defense that when Villegas, according to him, revealed to Capt. Francisco that it was he who unintentionally and accidentally caused the death of Aguilar while trying to disarm him, his superiors placed him under arrest, had him charged with violation of Section 94 of the General Court Martial Law and confined until he was courtmartialed. If this was really done, the trial court should be informed of the result of said charge and court martial proceedings. Proof of motive for the alleged cold-blooded killing of the deceased by appellant Narsolis, if any, will also aid the court in correctly deciding this case.

The affidavits in Tagalog were not translated into English or Spanish. In his affidavit Exhibit 1, par. 1, Gaudencio Alasaas uses the word bolog to describe the man who allegedly shot Aguilar. In his affidavit Exhibit 4, paragraph 2, Celestino de la Roca uses the same word bolog to describe the same man supposed to have shot the deceased. This Court does not exactly know the meaning attached by the people of Baco, Mindoro, of which the affiants were residents to that word bolog. Some Tagalog speaking persons tell us that bolog means a man who is bald-headed or with short cropped hair. Another from Mindoro says that the word bolog with the accent on the first syllable means to mate (referring to pigs or swine.) In Pangasinan, bolog means a ram or male sheep, or a male goat, both mature and healthy, used for breeding purposes. Applied to a man it may mean that he is sexually strong or inclined.

Evidence on this point, namely, the meaning of the word bolog, should be introduced for the information of the court, as well as the appearance, if still remembered, of Narsolis about May 30, 1948, as to whether or not he was bald-headed, or; with short cropped hair, or commonly known by a nickname bolog.

For the foregoing reasons, the case is remanded to the trial court with instructions to reopen the case, hold a new trial at which the evidence indicated and suggested may be presented and received and that thereafter, on the basis of said evidence as well as the evidence already presented and received at the former trial, a new decision be rendered by said trial court. So ordered.

Ozaeta, Pablo, Bengzon, Padilla, Tuason, and Reyes, JJ., concur.

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