

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MAURO PALISOC ALIAS UROY AND JOSE ADAN, DEFENDANTS-APPELLANTS.

G.R. No. L-2194. June 30, 1950

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a sentence of death imposed upon the appellants by the Court of First Instance of Pangasinan for the murder of Domingo Cancino and Rufino Cayabyab and the frustrated murder of Emeterio Cancino.

The evidence shows that Emeterio Cancino had a little store located on the roadside in the barrio of Balaybuaya, Bayambang, Pangasinan. A few meters behind this store he had his house and not far from this house lived his father, Domingo Cancino, and his brother-in-law, Rufino Cayabyab.

At about 10 o'clock in the evening of March 5, 1947, while Emeterio, his father Domingo, his brother Emilio, and his brother-in-law Rufino Cayabyab were gathered behind Emeterio's store, which had already closed for the night, they were joined by Policarpio Macaranas and the herein appellants Mauro Palisoc and Jose Adan who said that they wanted to buy coca-cola and cigarettes. The trio were armed—Macaranas, with a .45 caliber pistol, and each of his two companions, with a carbine. To accommodate the newcomers, who were all well known to him, Emeterio went into the store through the back-door, brought out 3 bottles of coca-cola and 3 packages of cigarettes and handed these to them. After the coca-cola had been consumed, Emeterio had his younger brother Emilio return the empty bottles to the store and, at the request of the newcomers, also asked him to fetch some matches. But while Emilio was returning the bottles to the store, all of a sudden Policarpio Macaranas gave a signal, and instantly he and his two companions opened fire, each of them on his particular target, i.e., Macaranas on Emeterio, Adan on Domingo, and Palisoc on Cayabyab. Having received fatal wounds, Domingo and Cayabyab died on the spot. But Emeterio, though seriously wounded, was able to run and when pursued he managed to elude his pursuers by hiding in a palm grove. Emilio escaped injury by lying flat on the ground inside the store.

Attracted by the shots, Pedro Junio, a policeman on patrol duty in that vicinity, ran towards the scene of the crime, but taking the precaution of firing in the air and taking cover behind a coconut tree. The shot drew fire from the malefactors, but it probably also scared them because they ran away,. Proceeding to Emeterio's place as soon as the coast was clear, he there came upon the lifeless bodies of Domingo and Cayabyab and, about 30 meters away, upon Emeterio himself who lay wounded in the palm grove. Near the scene of the crime the policeman also found a sun-helmet with the name "M. Palisoc" written thereon. Closer inspection of the place made later by Sgt. Juan Ariola of the MPs yielded one live cartridge, 4 empty shells, caliber .45, and 11 empty shells, caliber .30.

Investigated after their arrest, appellants made statements revealing their part in the crime, and after the statements had been reduced to writing the same were by them signed and ratified under oath before the justice of the peace

of Bayambang. The appellant Palisoc further admitted that the sun-helmet found near the scene of the crime was his, having dropped or left it there on the night of the shooting as he hurriedly ran home. He also pleaded guilty at the preliminary investigation before the justice of the peace. Policarpio Macaranas, up to the trial of the case, had not been apprehended.

There is no dispute as to the killing of Domingo Cancino and Rufino Cayabyab and the wounding of Emeterio Cancino at the time and place and in the manner above stated. The only question is on the identity of the persons who perpetrated the crime.

The defense contends that appellants could not have been recognized by Emeterio Cancino and his brother Emilio because the night was dark. But it is an admitted fact that there was a moon that night, and the two brothers testified that at the time of the commission of the crime the sky was cloudless and the moon shining brightly. Considering that they had known appellants for some time for they often bought cigarettes and other goods from their store—Adan even admits having known Emilio since childhood, while Emilio on his part says that he and Adan were often together—it is not reason able to believe that the brothers could have been mistaken about appellants' identity. And in the case of Palisoc, there is the further circumstance that a sun helmet bearing his initial and surname and which he was seen wearing that night was found near the scene of the crime shortly after the shooting.

Appellants claim that the statements containing their confession were wrung from them through violence and intimidation. But this is denied by the police officers as well as by the justice of the peace before whom the statements were ratified under oath. And the alleged involuntariness of those statements seems to be belied by the fact that in them appellants have tried to exculpate themselves though admitting their part in the crime. Moreover, the appellant Palisoc in a way reiterated his own confession by pleading guilty at the preliminary investigation.

Both appellants also tried to establish an alibi. Appellant Palisoc declared that he was, on the night in question, in the house of his neighbor Petra Licuanan pounding rice from 8 to 12 o'clock. Corroborated only by his relatives and neighbor, this declaration cannot override his confession and prevail over the testimony of the Cancino brothers positively identifying him as one of the male factors.

Appellant Adan, on his part, testified with the corroboration of his wife Juana Ramos that on the night in question they celebrated the latter's birthday anniversary and they were busy entertaining their guests from 5 to 11 p.m. This does not merit belief, it having been proved by the record of births of the municipality of Malasiqui, Pangasinan that Juana Ramos was born on March 7 and not on March 5.

While there is no clear cut proof as to the motive for the crime, we are inclined to agree with the Solicitor General that the assailants must have been actuated by a desire to avenge their friend Pedro Carida, who, shortly before the commission of the crime in question had been turned over to the authorities by the Cancinos for robbing their store, there being indication that the assailants had wanted to call the Cancinos to account for what they did to Carida, for Emilio testified that as he went into the store to get matches he heard appellant Palisoc tell Emeterio: "Compadre, we have known that you caught our companion Pedro Carida."

Pending consideration of this case in this Court appellants filed a motion for a new trial based on alleged newly found evidence consisting of the affidavits of their prison mates in Muntinglupa who were confined in that penitentiary for very grave offenses. One of the affidavits is that of Saturnino de la Vega, confined for the crime of robbery with homicide and illegal possession of firearms. According to this affidavit, appellants had nothing to do with the crime herein charged, which, according to him, was committed by a group headed by one Marcelo Custodio and which he himself had been forced to join. The affidavit says that when Custodio and his companion reached the house of the Cancinos they announced their presence by calling to the inmates; "Tao po," and that in

answer to the call Domingo Cancino said: "Sino ba kayo, ah si Marcelo Custodio pala." (And who are you, Ah, it is Marcelo Custodio.) This answer indicates that Marcelo Custodio was a person well-known to the Cancinos, and if this be the fact we see no reason why they should impute the crime to herein appellants who, it is claimed, were not in that group. Moreover, while it is established that the crime was committed at about 10 o'clock at night, the affidavit says that the assailants arrived at the house of the Cancinos at about 7 p.m.

Another affidavit is by Crispin Licuanan, in prison for murder, and the third affidavit is by Casimiro Versamin, who is confined for double murder and robbery in band with homicide. Both of these affidavits, however, contain mere hearsay, being based merely on what Saturnino de la Vega had been telling his prison mates regarding the perpetrators of the crime.

With this kind of newly discovered evidence, we see no sufficient reason for reopening the case, considering the clear and conclusive proof on appellants' guilt.

We find appellants guilty of two murders and one frustrated murder. The killing of Dominador Cancino and Rufino Cayabyab and the frustrated killing of Emeterio Cancino were attended by the qualifying circumstance of treachery, since the attack was so sudden and unexpected and the volleys that produced the "wounds were delivered at such close range that the victims could not have put up any effective defense. The wounding of Emeterio Cancino must be characterized as frustrated murder as there is evidence that had it not been for medical assistance timely rendered this man would have died of his wounds. Both appellants must be held responsible for each of these three crimes, for the facts proved indicate conspiracy among them as revealed by their concerted action. They came to the scene of the crime together and all of them armed, and at a signal from one of them they all opened fire on their victims. For this reason they should each be held guilty for two separate murders and one frustrated murder.

The lower court considered these three crimes as a complex one and applying Article 4# of the Revised Penal Code, as amended, sentenced appellants to the maximum degree of the penalty for murder, which is death, despite the absence of aggravating circumstances, the trial court having declared that the circumstances of nighttime and abuse of superior strength were already included in the circumstance of treachery, which qualified the killing as murder. The judgment must be corrected in the sense that appellants should be as they are hereby declared guilty of two separate crimes of murder and one frustrated murder. For each of the consummated crimes of murder they should be sentenced to life imprisonment. For the crime of frustrated murder they should be sentenced to imprisonment of from 4 years, 2 months and 1 day, as minimum, to 10 years and 1 day, as maximum. But the total of the three penalties shall not exceed 40 years. The indemnity imposed below (P8,000.00) need not be disturbed.

With the modification herein indicated, the judgment below is affirmed, with costs.

Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

Moran, C.J., Paras, Feria, and Padilla, JJ., did not take part.

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