

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARIANITO FETALVERO AND FILADELFO CACHOLA, DEFENDANTS AND APPELLANTS.

G.R. No. L-16234. April 26, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from the decision, dated June 22, 1959, in Criminal Case No. 2235 of the Court of First Instance of Ilocos Sur, finding both accused therein guilty of murder; and sentencing defendant Marianito Fetalvero to an indeterminate penalty of from 17 years and 4 months of reclusión temporal to 20 years of reclusión temporal, and the defendant Filadelfo Cachola, to reclusión perpetua, both with the accessory penalties provided by law; to indemnify, jointly and severally, the heirs of the deceased Ernesto Alquetra in the sum of P6,000.00 without subsidiary imprisonment in case of insolvency; and both to share equally the costs.

The following facts have been established by the evidence: In barrio Capangpangan, Vigan, Ilocos Sur, on February 1, 1955, between 7:00 to 7:30 p.m. and after supper, the deceased Ernesto Alquetra and his ten-year old nephew Enrique Alquetra went down their house to defecate at a vacant lot nearby, a place habitually used by some people in the neighborhood for that purpose. On their way, Ernesto and Enrique met Filomena Alquetra who was going to her grandmother's house to ask for some rice for her father. Ernesto and Enrique continued to walk, with the latter behind his uncle at about 1½ meters, when abruptly, Ernesto swerved north. Before Enrique could follow his uncle, he saw in the other direction, three meters away, appellant Fetalvero, who was wearing a hat and a black jacket. Taking two steps forward, Fetalvero drew a gun about 10 inches long, aimed at Ernesto who was then about eight meters away, and fired successively. Even, as he tried to run away, already hit, Ernesto was met by appellant Cachola, Fetalvero's brother-in-law, who thereupon also fired at Ernesto. The guns used by appellants bore the same appearance.

Upon felling the hapless victim, Cachola scampered from the scene; Fetalvero had already run away after firing his successive shots at Ernesto. While fleeing, Cachola came upon Romeo Alquetra, who had gone down their house to follow his brother Ernesto, and also took a shot at Romeo but fortunately missed. Meanwhile, ten-year old Enrique, who had sought refuge behind a tree during the incident, run home to call for help. He met his uncle Romeo along the way, to whom he cried out that Fetalvero and Cachola had killed his uncle Ernesto. Romeo, Enrique, and others rushed to the spot, but Ernesto was, by then, a corpse.

Appellants Fetalvero and Cachola interposed self defense and alibi, respectively, to exculpate themselves from the charge. Fetalvero alleged that he was on his way to the Vigan población to see a movie that night; that as he was passing by Ernesto's house, he saw the latter by the roadside, as if waiting; that when Ernesto recognized him, the former said: "This is the end of you now," simultaneously drawing a gun and firing at appellant Fetalvero; that in self-defense, appellant also drew his 22-caliber automatic and shot Ernesto several times.

Fetalvero's claim of self-defense not only lacks basis, except his sole and uncorroborated testimony, but is also

belied by the overwhelming evidence on record. That the deceased was the aggressor, who allegedly was first to draw and shoot, is negated by the absence of any gun of his. Nobody found it, not even the defense witness, patrolman Nicolas Torio, who allegedly was first to arrive on the scene. Again, the deceased Ernesto would not have brought along his ten-year old nephew, Enrique, had his plan been to ambush and kill appellant Fetalvero, or anyone else. We see no reason for further indulging in a discussion of this alleged self-defense, which is clearly a fabrication. Indeed, even Appellant Fetalvero must have been advised of the futility of maintaining such an untenable theory, for, on more than one occasion in the trial court, appellant Fetalvero offered to plead guilty to homicide, an offer, however, understandably rejected by the prosecution.

Equally unmeritorious is appellant Cachola's alibi that at the time of the incident, he was at home cooking. Except for this assertion coming from appellant Cachola himself, we find the alibi completely unsupported. True, appellant Fetalvero, Cachola's brother-in-law, asserted that he left the latter at home, and that Cachola did not participate in the killing. Fetalvero had nothing to lose in so testifying, while trying to cover up for his brother-in-law. Fetalvero could not admit that Cachola was with him in the killing of the deceased Ernesto without wrecking his (Fetalvero's) claim of self-defense. Consequently, Fetalvero's assertion that his brother-in-law was at home during the incident is bereft of any probative force. And at the risk of being trite, an alibi, we say again, can not prevail over positive identification by witnesses.

Enrique, Romeo and Filomena all clearly testified as to Cachola's identity and complicity in the crime. Enrique, only a ten-year old boy, relatively much less exposed to corruptive influences, unwaveringly pointed to Cachola as the one who, with Fetalvero, shot his untie in told blood. As early as the very night of the incident, February 1, 1955, in his affidavit, Exhibit "1" for the defense, ten-year old Enrique not only named Cachola as one of his uncle's assailants, but pointed to this man in a face-to-face confrontation. The time was too short from the incident to have enabled him to devise a false identification, especially considering the age of the boy. Another telling piece in the pile of evidence is that from the spot of the killing itself, defense witness patrolman Nicolas Torio admitted that almost immediately, he went to Cachola's house, because reports gathered on the scene pointed to appellants Fetalvero and Cachola as the killers. The fact confirms the spontaneous character of the identification, which, together with the rest of the evidence, leaves no room for reasonable doubt as to the guilt of both appellants. Particularly as to the alibi, it is pertinent to mention that the house in which both appellants Fetalvero and Cachola lived was only about 100 meters from the deceased Ernesto Alquetra's house and within the immediate vicinity of the killing, rendering it perfectly possible for appellant Cachola to have executed his purpose at the scene of the crime and be back in his house in no time at all.

The credibility of Enrique, Romeo and Filomena Alquetra is assailed as prejudiced because of their close relation to the deceased. The alleged affiliation of the Alquetra family to a rival political faction, and, particularly as to appellant Cachola, the killing in 1947 of one "Piano", allegedly related to the Alquetras, in which Cachola was also suspected, are ascribed as motives for their testifying falsely against appellants. Far too speculative and finding no support in the evidence, the above imputations can be given no decisive weight. It is not to be lightly supposed that the relatives of the deceased victim would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know to be innocent thereof.

The trial court, which had the better opportunity to observe the demeanor and truthfulness of the witnesses, was satisfied that the witnesses for the State were reliable and it is entitled to great weight in assessing matters of credibility. The alleged inconsistencies or deficiencies in the statements of some prosecution witnesses, if at all, are insufficient to neutralize the heavy array of direct and circumstantial evidence pointing to the guilt of appellants. In fact, the alleged bad blood between appellant Fetalvero and deceased Ernesto Alquetra lends further credence to appellants' guilt, for both sides admit that even prior to the fatal incident, the deceased and Fetalvero

had been mortal enemies, and had figured in a previous stabbing incident. Taken in connection with appellants' own assertion that they and the Alquetras belonged to rival political factions and did not see eye to eye with each other, the circumstances show conclusively that appellants had had more than sufficient motive to liquidate the deceased.

The crime is murder, qualified by treachery, and penalized under Article 248 of the Revised Penal Code by *reclusión temporal* maximum to death. Nocturnity and superior strength are absorbed by treachery (*People vs. Magsalin*, 82 Phil., 271; others). Crediting appellant Fetalvero with, voluntary surrender as found by the lower court, the penalty imposable under the Code is in the minimum period, or *reclusión temporal* maximum. Applying the Indeterminate Sentence Law to appellant Fetalvero, the trial court correctly imposed on him the penalty of from 17 years and 4 months of *reclusión temporal* medium to 20 years of *reclusión temporal* maximum, that being a penalty the minimum of which is within the range of the penalty next lower in degree to that prescribed by the Code, while the maximum is within that which is properly imposable under the Code considering the mitigating circumstance of voluntary surrender. Since no modifying circumstance can be considered as regards appellant Cachola, the trial court again correctly imposed on him *reclusión perpetua*, as the medium period of that prescribed by law.

Finding no error in the decision appealed from, the same is hereby affirmed in toto. Costs against appellants.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Paredes, and Dizon, JJ., concur.

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