

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANTONIO LIM, ACCUSED AND APPELLANT.

G.R. Nos. L-34397-99. June 10, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Antonio Lim appealed from the decision of the Circuit Criminal Court at Tuguegarao, Cagayan, convicting him of two murders and frustrated murder, sentencing him to reclusion perpetua for each murder and to imprisonment for twelve (12) years and (1) day of reclusion temporal for the frustrated murder, and ordering him to indemnify the heirs of Santiago Tumaliuan in the total sum of P62,000, the heirs of Fausto Guiyab in the sum of P12,000 and Cesar D. Binag in the sum of P3,880 (Criminal Case Nos. CCC-I-115-117).

The prosecution's evidence shows that in the morning of Sunday April 20, 1969 Santiago Tumaliuan, thirty-seven years old, a businessman of San Pablo, Isabela, drove his jeep from that town to Tuguegarao, Cagayan. He was accompanied by his daughter Vilma and by Fausto Guiyab, Juan Malillin and Patrolman Cesar Binag of San Pablo who was in civilian clothes and who was assigned by the chief of police to escort Santiago.

Upon reaching Tuguegarao, Tumaliuan dropped Vilma at Saint Paul College and Malillin at the cockpit. Santiago, Guiyab and Binag proceeded to the house of Encarnacion Mallabo where Santiago and Binag played mahjong up to noontime. Guiyab remained in the jeep to guard it.

From Mrs. Mallabo's house, the three men went to the cockpit. They parked the jeep in front of the gas station near the cockpit. Santiago and Binag entered the cockpit. Guiyab again watched the jeep.

Santiago and Binag stationed themselves in the bleachers on the eastern side of the cockpit. Antonio Lim and his companions were on the southern side. Binag saw on the western side the brothers, Genaro Tumaliuan and Alberto Tumaliuan (Lim's uncles), standing behind Congressman Tito Dupaya.

At about four o'clock in the afternoon, Santiago and Binag left the cockpit. On their way out, they passed by Lim and his bodyguard near the exit. Genaro and Alberto were standing at the gate talking to each other.

When Santiago and Binag reached their jeep, Santiago took the driver's seat. Binag seated himself on the front seat beside Santiago or on his right side. Guiyab occupied the back seat. Santiago drove the jeep to the pump of the gas station to fill it with gasoline. The station attendant poured gasoline into the jeep, placed oil in its engine and water in its radiator.

Binag saw Genaro and Alberto on the street about ten meters away on the right of the jeep. Genaro shouted in the Ibanag dialect *pay-yam mu ngana* ("Fire now").

At that juncture and before the jeep could leave the station, three successive gunshots were fired in a few seconds. The first shot was directed at Santiago who was hit in the head and died instantly.

The second shot was fired at Guiyab who was likewise hit on the head while he was about to leave the jeep.

The third shot hit Patrolman Binag in the jaw. He fell on the cement pavement and lost consciousness. (When Binag testified, there was a reenactment at the gas station of the shooting).

Binag saw Lim firing the first two shots with his .38 caliber nickle-plated Smith & Wesson revolver after Genaro Tumaliuan had shouted "Fire now". Lim was less than a meter away from Santiago's left side. His revolver was pointed about two to three inches from the back of Santiago's left ear. Lim was about a foot away from Guiyab.[*]

Lim was wearing a yellow polo-jacket with other colors. Binag noticed that Lim's firearm was the same as his own service revolver. Being a patrolman and having served in the army, he is familiar with firearms. Binag had known Lim for a long time. They both came from San Pablo. They used to drink liquor together.

After the shooting, Alvaro Corcino, a thirty-five-year old bystander, who was standing beside the concrete post with the sign "Flying A" on the northwestern side about ten meters away from the jeep, saw Lim coming out of the left side of the jeep holding a shiny gun about a foot long pointed downward and walking fast northward to the cockpit about fifty meters away. Lim tucked the gun on the right side of his waist. He passed by Corcino. Corcino recounted to his home folks and to his drinking companions what he had witnessed. He later informed Constabulary Sergeant Eustaquio Malillin about the incident.

Santiago, Guiyab and Binag were brought to the Cagayan Provincial Hospital on that same afternoon. Santiago, who was already dead, was taken to the morgue. He died of cerebral hemorrhage secondary to a gunshot wound on the head.

Guiyab and Binag were confined in the same room. They were in critical condition. Guiyab, a forty-nine-year old farmer died on the following day also of cerebral hemorrhage secondary to gunshot wounds on the head. A fragment of the bullet was embedded in his brain tissue. There were two bullet wounds on Guiyab's head: an entrance wound on the back of his left ear near the mid-occipital region and another wound on the back of his head, presumably an exit wound.

Binag, forty-three years old, sustained a gunshot wound above the left jaw, near the mouth, and a compound fracture of the right jawbone. Foreign metallic bodies had lodged therein. His tongue was injured. He was given blood transfusion. He would have died had he not been given blood transfusion.

He was confined in the hospital for twenty-nine days. On May 16 or twenty-six days after his admission, an operation was performed on him for the extraction of the bullet.

On the night following the shooting, while Binag was in the hospital, Isabelo C. Babaran, the chief of police of San Pablo, interviewed him and asked him who had fired at him and his companions. As Binag could not talk, he wrote on a piece of paper placed on a pillow above his lap the name of his assailant: "Antonio Lim with his bodyguard" (Exh. J, 3-B). Sergeant Malillin, the chief constabulary investigator at Tuguegarao, was present when Binag identified Lim as his assailant.

Prior to the shooting, Vice-Mayor Carlos Tumaliuan of San Pablo, the brother of Santiago, together with other persons, was charged in the Court of First Instance of Isabela with the murder of Paula Tumaliuan and Honoria-Josephine Lim, the mother and sister, respectively, of Antonio Lim. In another case, Eldorado Lim and Policarpio Lim, the brothers of Antonio, were among those charged with the murder of one Francisco Bassig, a candidate for mayor. Binag was a prosecution witness in that case (Exh. W).

Santiago was known to be the financier of his brother Carlos, while Guiyab was a buyer of tobacco for Santiago and was responsible for obtaining bail bonds for Vice-Mayor Carlos Tumaliuan.

Binag spent P600 for his hospitalization. He was not able to work for three months. His salary was seventy pesos

a month. By reason of the injuries, he suffered pains in the jaw. He encountered difficulty in talking.

Santiago Tumaliuan was survived by his thirty-four year old widow and by his nine children with ages ranging from four months to seventeen years. For 1968 Santiago reported in his income tax return a gross income of P16,380. The amount spent for his funeral was not less than P25,000.

On May 16, 1969 Binag's statement was taken by Manuel P. Malana and Rodrigo Ramos, agents of the Criminal Investigation Service (CIS), and by Sergeant Malillin (Exh. M). Binag pointed to Lim as the triggerman.

The same CIS agents and Constabulary investigator took the statement of Ricardo del Rosario, the gas station helper who had sold gasoline to Santiago (Exh. 5). Del Rosario described the assailant as a person of regular build, with long hair about five feet and two inches tall, wearing a "polo-jack shirt checkered colored yellow with combination of other colors" who fled to the cockpit after the shooting. Del Rosario did not name Lim as the assailant.

On the basis of the affidavits, CIS Agent Malana filed against Lim and the Tumaliuan brothers on May 17 in the municipal court of Tuguegarao a complaint for double murder and frustrated murder. Lim was arrested.

In a supplementary affidavit on May 26 Del Rosario stated that Lim, who was presented to him (Del Rosario), was not the person who shot Santiago Tumaliuan, Guiyab and Binag (Exh. 6).

On June 16, 1969 the special counsel of the Provincial Fiscal's office filed in the municipal court three informations, two for murder and one for frustrated murder, against Lim and the Tumaliuan brothers. On July 29, 1969 the Provincial Fiscal filed the same information against the accused in the Court of First Instance of Cagayan. The cases were later transferred to the Circuit Criminal Court.

Only Lim was tried. The cases were tried by Judge Amado B. Reyes. Before he could decide the same, he was transferred to Bataan. His successor, Judge Romeo M. Escareal, in a decision consisting of seventy printed pages, containing a complete summary of the evidence and detailed factual findings, rendered the judgment already mentioned.[*]

In this appeal, Lim, a forty-year old resident of Barrio San Jose, San Pablo, characterizes the prosecution's evidence as inconsistent, incredible and inherently weak. He claims that his defense of alibi is meritorious.

At the trial he denied that he shot Santiago, Guiyab and Binag at the gas station in the afternoon of April 20, 1969. He said that Binag was a policeman of Vice-Mayor Carlos Tumaliuan of San Pablo, who is a brother of Santiago and who killed his (Lim's) mother and his sister.

When Lim was first asked where he was on April 20, 1969, he did not answer the question immediately (374 tsn January 15, 1970). He said that he left his house at San Pablo at around ten o'clock in the morning of April 20 and went to the cockpit at Balzain, Tuguegarao. He was wearing khaki pants and a brown shirt, garments which allegedly brought him good luck when he wore them at the cockpit.

He reached the cockpit at around eleven o'clock. He lunched at the carinderia in the cockpit. He stayed in the southern side of the arena. On his left was Matias Santo Tomas. On his right was Constabulary Sergeant Adriano Ordonio. He stayed in the cockpit up to five o'clock in the afternoon. Santo Tomas corroborated Lim's alibi.

While still in the cockpit, Lim was informed that there was an incident at the gas station. He said that Ordonio advised him not to leave the cockpit. (Ordonio did not confirm that allegation at the trial). When Lim saw Congressman Dupaya leaving the cockpit he left also. He saw many persons at the gas station. He stopped there in order to gather news. He learned that Santiago Tumaliuan was shot. He and his uncle, Genaro Tumaliuan, boarded a bus and went home. Ordonio was left behind.

In the course of his testimony the parties made of record Lim's personal appearance. They agreed that he was brown, light in build, had short hair and broad shoulders and was coughing intermittently. He did not appear to be healthy. He had a stooping posture. He is five feet and six inches tall.

Lim testified that on May 19, 1969, when he was arrested by CIS Agents Ramos and Malana and Sergeant Malillin, they took his statement (Exh. 8). Then, Malana told him that if he would pay six thousand pesos, they would release him. They made him ride in a jeep. After going around the poblacion of Tuguegarao, they brought him back to the Constabulary barracks at around one o'clock in the morning of May 20. Then the three conferred. After the conference, they brought him to the provincial jail. It was then about two o'clock in the morning.

Lim said that on November 4, 1969, when the case was first tried, Sergeant Malillin asked P1,500 from him when they met at a store adjacent to the courthouse. Malillin promised not to testify against Lim if he would pay P1,500. Lim told Malillin that he could not give the latter any amount because Lim had not committed any wrong. Lim admitted that he did not inform his lawyers about the attempted extortion. He did not ask them to denounce to the court the alleged extortion.

Lim admitted that when he was arrested he did not ask the CIS Agents Malana and Ramos and Sergeant Malillin why they were arresting him.

The crucial issue is whether credence can be given to Binag's testimony that at the moment when he saw Genaro Tumaliuan (who was ten meters away on Binag's right) and heard him shouting "Fire now" or "Go ahead", Binag in a split second heard a gunshot and, on turning his head to the left, he saw Lim aiming his revolver at the head of Santiago Tumaliuan, then in another second at the left side of Guiyab's head, and in another second at Binag's left jaw.

Appellant Lim contends that Binag's testimony is incredible because he admitted that he did not see Lim at all in the gas station or near the jeep prior to the shooting.

After ruminating on that point and visualizing the highly dramatic and unusual situation described by Binag, we have come to the conclusion that his testimony is believable.

Binag had seen Lim and the Tumaliuan brothers in the cockpit at around four o'clock when Binag and Santiago left the Bleachers and walked to the gas station fifty meters away. When Binag and Santiago left the cockpit, Binag saw Lim at the exit and the Tumaliuan brothers at the gate.

Obviously, Lim and the Tumaliuan brothers must have stealthily followed at a distance the unsuspecting Santiago and Binag while they were walking to the cockpit. Binag's testimony at the preliminary investigation sheds some light on that climactic aspect of the case:

"Q. You already knew of the bad blood existing between Santiago Tumaliuan and his brother Carlos Tumaliuan, on one hand, and Antonio Lim, Genaro Tumaliuan and Alberto Tumaliuan, on the other. You yourself, as you say, are a 'state witness' in a murder case against the brothers of Antonio Lim. Now, when you saw Antonio Lim, Genaro Tumaliuan and Alberto Tumaliuan with bodyguards at the cockpit of Tuguegarao, observing you and watching you from strategic positions, as you said, were you not alarmed? - A. No, sir.

"Q. Did you talk with Santiago Tumaliuan regarding the presence of his enemies? - A. No, sir because he was also seeing them.

"Q. What did he say? - A. None; none of us suspected that any attempt would be made against us.

"Q. You said that Genaro Tumaliuan and Antonio Lim (should be Alberto Tumaliuan) were a meter apart, facing you when the former said, 'Pay-yam mu ngana'. Now, before he said that, how long had they been

facing you? - A. That was the only time I saw them.

"Q. When you went out of the cockpit, did you not try to observe if they followed you? - A. No.

"Q. When Genaro Tumaliuan told Antonio Lim, 'Pay-yam mu ngana'; what did Santiago Tumaliuan do? A. There was no time for him to do anything, for he was immediately shot.

"Q. You said that Genaro Tumaliuan and Alberto Tumaliuan were facing you when Genaro Tumaliuan said 'Payam mu ngana'. What was the position of Antonio Lim at that time? - A. I don't know. I looked at him only after I heard the first shot and that's when I saw him at our back. Then he fired also at Fausto Guiyab, then at me, in rapid succession." (page 24, Exhibit 3).

Lim and his companions must have hidden themselves at the gas station while Santiago and Binag were in their jeep waiting for Del Rosario to finish filling up the jeep with gasoline and giving the change to Santiago. It should be noted that another jeep was in the rear of Santiago's jeep while it was parked at the gas station.

Maybe Lim was already at the back of Santiago's jeep when Genaro Tumaliuan shouted the ominous signal or order: "Fire now". The Tumaliuan brothers acted as Lim's lookouts.

Appellant Lim evinces surprise that Binag even recognized the color of his shirt. Binag remembered that Lim was wearing a yellow "polo-jacket" because Binag saw Lim in the southern bleachers during the three to four hours when he and Santiago were in the eastern side of the cockpit.

Appellant Lim surmises that Santiago's jeep was "an open vehicle" and, therefore, Binag should have seen Lim some minutes before the shooting if Lim was really in the gas station. But there is no evidence that Santiago's jeep was an open vehicle. As noted by the Solicitor General, many private jeeps while open at the sides, have a canvas covering extending to the rear so that its back is closed.

The alleged flaws in the reenactment of the shooting of Guiyab as pointed out by appellant Lim, do not destroy Binag's credibility. What is important is that Binag saw Lim firing his revolver at Guiyab. Binag's memory could not have photographically registered every detail of that unnerving incident which flashed with lightning rapidity in his presence.

The alleged inconsistencies in the testimonies of the prosecution witnesses on the manner Exhibit J was written by Binag do not destroy its probative value. The prosecutors conducting the direct examination simply failed to familiarize themselves with the details surrounding its execution. Consequently, one witness stated details which the other witnesses failed to state because they were not asked about those details.

In assailing the authenticity of Exhibit J appellant Lim notes "the evenness of the strokes and the precision in the spacing of what is written" therein. That observation is not well-taken. The words "Antonio Lim with his Bodyguard" written in Exhibit J were written diagonally or obliquely on the paper. The letters were unevenly written. The unevenness becomes more marked when Exhibit J is contrasted with Exhibit L or 3-A, a piece of paper wherein Binag wrote the same words during the preliminary investigation when he was already out of the hospital. It is in Exhibit L where the strokes of his penmanship are even and precise.

As to the failure of the chief of police to produce Exhibit J at the preliminary investigation, a circumstance which according to appellant Lim militates against its veracity, it suffices to state that the judgment of conviction was based mainly on Binag's testimony and not exclusively on Exhibit J.

Appellant Lim's alibi is very vulnerable. He said that he was in the cockpit at the time the shooting was perpetrated at the gas station. The cockpit is only fifty meters away from the gas station. Lim could have gone to the gas station to commit the dastardly deed and then returned to the cockpit in a matter of minutes, which was

exactly what he did according to the prosecution's evidence.

An alibi is foolproof if the accused was in another place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission (*People vs. Resayaga*, L-23234, December 26, 1973, 54 SCRA 350, 354). Lim's alibi does not negative the possibility that he was the author of the offenses charged.

On the other hand, appellant attempt to discredit Corcino's testimony cannot be taken seriously. No motive has been shown as to why he would frameup Lim. Corcino testified at the risk of endangering his life.

After a thorough study of the record, we are convinced that the guilt of the accused was proven beyond reasonable doubt.

The three informations allege treachery and premeditation as qualifying circumstances. The shooting was indubitably treacherous. Lim, in unexpectedly shooting the three victims when they had no inkling that he was in the gas station, employed a form of assault which directly and specially insured its execution without risk to himself arising from the defense which the victims might have made (Art. 14[16] , Revised Penal Code). The surprise assault precluded them from making any defense at all.

Premeditation was not proven. The prosecution failed to establish (a) the time when Lim determined to commit the crimes, (b) the act showing that he had clung to his determination, and (c) a sufficient interval of time between the determination and the execution that would have afforded him full opportunity for meditation and reflection and allowed his conscience to overcome the resolution of his will (*vencer las determinaciones de la voluntad*) had he desired to hearken to its warnings (*People vs. Diaz*, L-24002, January 21, 1974, 55 SCRA 178).

There being no generic aggravating and mitigating circumstances, the penalty of reclusion perpetua for each of the two murders was properly imposed (Arts. 64[1] and 248, Revised Penal Code).

Appellant's counsel pointed out that an indeterminate sentence should be imposed for the frustrated murder. The Solicitor General agrees with that contention. It is well-taken.

Wherefore, the lower court's' judgment in the two murder cases, L-34398 and L-34399 (Criminal Cases Nos. CCC-I-116 and CCC-I-117) is affirmed.

Its judgment in L-34397 (Criminal Case No. CCC-I-115) for frustrated murder is modified by imposing on appellant Lim an indeterminate sentence of six (6) years of prision correccional, as minimum, to twelve (12) years and one (1) day of reclusion temporal minimum, as maximum. In all other respects the lower court's judgment in that case is affirmed. Costs against the appellant.

SO ORDERED.

Fernando, (Chairman), Barredo, Antonio, and Martin, JJ., concur.

Concepcion Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

[*] Binag in his statement described the shooting as follows:

"Agu (Santiago Tumaliuan) requested me to get the key of the jeep from Fausto Guiyab. After giving the said key to Agu, he (Santiago Tumaliuan) began starting the jeep. Because there was a jeep parked behind our jeep, I requested the latter to give way for us to get out. The jeep behind was a little bit hesitant but however he

granted our request.

"Agu then brought the jeep in front of one of the gas pumps to gas up in preparation to our journey to San Pablo. I was seated at the right front seat of the jeep. Fausto Guiyab was seated behind us while Agu (Santiago Tumaliuan) was in the wheel.

"Seconds after the gasoline boy had given the money change to Agu, I heard a gunshot at my left side and when I glanced at my left I saw ANTONIO LIM directed the shot at the back of the head of Agu (Santiago Tumaliuan) and at split seconds ANTONIO LIM again shot directly to Fausto Guiyab and for his third shot he hit me at my left face and after that I fell unconscious." (No. 19, Exh. M).

[*]The Tumaliuan brothers were arrested after Lim was tried. Alberto died on April 30, 1971. Judge Escareal in a decision dated June 19, 1972 convicted Genaro as an accomplice in two homicides and in one frustrated homicide (referring to the killing of Santiago Tumaliuan and Fausto Guiyab and the wounding of Cesar Binag, respectively) (Criminal Cases Nos. CCC-1-21-23).

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