

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DONATO TORTUGA, JOSE TORTUGA, VICENTE TORTUGA, MARCELO
TORTUGA AND ANDRES TORTUGA, DEFENDANTS. MARCELO
TORTUGA, DEFEND...**

G. R. No. L-3740. November 26, 1951

Ponente: PADILLA, J.

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PADILLA, J.:

Lorenzo Torreon died as a result of bodily injuries inflicted upon him. Donato Tortuga, Jose Tortuga, Vicente Tortuga, Marcelino Tortuga and Andre's Tortuga were charged with murder for the death of Lorenzo Torreon. After trial the Court of First Instance of Bohol acquitted Donato Tortuga, Jose Tortuga, Vicente Tortuga and Andres Tortuga upon reasonable doubt, and found Marcelino Tortuga guilty beyond reasonable doubt of homicide and, taking into consideration abuse of superior strength and the age of the victim who was over 60 years, sentenced him to suffer an indeterminate sentence of from 10 years and 1 day of prison mayor to 20 years of reclusion temporal to indemnify the heirs of the deceased in the sum of P2,000 and to pay one-fifth of the costs. Marcelino Tortuga has appealed.

It appears that on 9 October 1944, Lorenzo Torreon hired three laborers to plow his land la Cantamugday, municipality of Jetafe, province of Bohol. At about 8:00 o'clock in the morning of that day, Donato Tortuga and his children Jose, Vicente, Marcelino, Andres and Marciano, the last named killed by the guerrillas while under arrest for the death of Lorenzo Torreon, all armed with bolos except Marcelino who was with a spear, appeared at the place where Margarito Anco and Antonio Torreon, two farm hands engaged by Lorenzo Torreon, were plowing. Upon seeing them the laborers abandoned their ploughs, and the Tortugas crossed the creek and came to the place where Lorenzo Torreon was. As the latter noticed the aggressive attitude of the Tortugas he shouted "Let us talk things over." Jose told Lorenzo to put down his bolo. The latter did as he was told. Marciano went behind Lorenzo and with his bolo hacked him while Jose thrust his bolo into Lorenzo's abdomen. The latter tried to run away but stumbled down when his pajama loose trousers were hooked on the barbed wire fence. He rose and again attempted to run away but Marcelino speared him on the back. Lorenzo fell down. After the latter's fall the Tortugas set upon him with their weapons until he died. Zosimo Flores, one of the farm hands, ran towards the house of Melchora Obregon de Torreon, the wife of Lorenzo, and told her that her husband was killed. After receiving the report that Lorenzo Torreon was killed, Ananias Abellana, who at the time of the occurrence was a captain of the Army and at the time of the trial the commander of the M.P.C. of the province of Bohol, together with Perfecto Torcinde, who at the time of the occurrence was a municipal policeman of Jetafe, Bohol, and at the time of the trial the chief of police of the said municipality and Florentino Alfar, a sergeant of the USAFFE, made an inquest of the deceased in the afternoon of that day and found in his body the following bruises and wounds:

(a) Body lying face upward, head towards the North, and feet towards the South.

(b) One (1) punctured wound, 2 inches deep, 1/2 inch wide on the right side chest.

- (c) One spear wound above the right breast, 1-1/4 inches wide and 4 inches in penetration.
- (d) One (1) stabbed wound on the abdomen just over the sexual organ causing the exposure of the right intestine during the examination.
- (e) One (1) punctured wound on the left side of the scrotum, causing the exposure of the left testis.
- (f) Five (5) long elongated bruises, presumably caused by barbed wire on the left thigh just above the knee.
- (g) One (1) stabbed wound on the left upper arm cutting almost 1/3 of the said arm.
- (h) One (1) punctured wound located on the right side of his back, 2 inches long, 1 inch wide and penetrating into the abdomen.
- (j) One (1) punctured wound, 3/4 inch long, 1-1/2 inches deep located on the right side of his back.
- (k) One (1) slashed wound just over the right elbow, 3 inches in length.
- (l) One (1) slashed wound, 1 inch long located on the inner right elbow.
- (m) One (1) bruise presumably inflicted by blade weapon located on the inner forearm.
- (n) One (1) slashed wound located on the right side of the back.
- (o) One (1) punctured wound on the right side of the right thigh. 4 inches deep.
- (p) One (1) slashed wound below and on the inner side of the right thumb.
- (q) One (1) slashed wound at the base of the left little finger cutting the palm.
- (r) One (1) bruise probably inflicted by a blade weapon located on the right arm. (Exhibit A.)

The appellant claims that it was Marciano Tortuga alone who killed Lorenzo Torredn because the latter destroyed the former's cornfield and that the other defendants were not present and did not take part in the killing of Lorenzo Torreon. It is claimed that Jose" was harvesting corn in Ondol, four kilometers away from the place of the incident; Vicente was at Butong, municipality of Talibon, and the rest —Marcelino, Andres and their father Donate— were in Cangmundo, the first two plowing the land of their father.

To show that Marciano alone killed the deceased, Maximo Enriquez, barrio lieutenant of Cangmundo, testified that at about 9:00 o'clock a.m. of 9 October 1944, Marciano Tortuga appeared at his house carrying a bolo and a spear smeared with blood and told him that he had killed Lorenzo Torreo'n and that he was surrendering the bolo and spear. Thereupon, the barrio lieutenant kept Marciano under custody in his. house and went to the place of Donato to inform him of the occurrence. In the house he found Donato, Andres, Marcelino, Antonio Socias and Martin Garcia taking their breakfast. The following day, Donato and his sons Jose", Vicente, Marcelino and Andre's repaired to the house of the barrio lieutenant and upon arriving there the guerrillas arrested and took them to their camp in barrio Cruz and from there to another in barrio Cantores. On their way to the latter place Marciano Tortuga was shot and.killed by the soldiers when he attempted to run away. Later on, Jose made good his escape.

It is hard to believe that on that occasion Marciano Tortuga would arm himself with a bolo and spear, there being no evidence that he anticipated a quarrel or fight. Granting that Maximo Enriquez saw Marciano carrying a bolo and a spear smeared with blood, when the latter came to his house to report that he had killed Lorenzo, it is not improbable that after killing Lorenzo, Marciano took the spear from his,brother Marcelino to relieve the latter from responsibility for his part in the killing since at least one of them must answer for it. But the testimony of Maximo Enriquez is not reliable because he is closely related to the appellant, his mother being the sister of the

appellant's father. The 13 wounds inflicted upon and the seven bruises suffered by the deceased could not have been caused by a single individual. The claim that the testimony of the eyewitnesses for the prosecution should not be believed, for there was no wound on the back of the deceased which was caused by a spear, has no merit, because the wound on the right side of the back of the deceased which was 2 inches in length and 1 inch in width and penetrated into the abdomen, wider in the center than at both ends, indicated that it might have been caused by a spear.

That Marciano Tortuga killed the deceased because the latter destroyed the growing corn on his field is not true. The motive was a long standing feud between the deceased, on the one hand, and the Tortuga family, on the other, which grew out of a controversy over the ownership of a 75-hectare tract of land which was being plowed by the farm hands engaged by the deceased on the day he met his untimely end. It must be borne in mind that it was not the deceased who plowed the land on the occasion of the occurrence but the farm hands whose services he had engaged, so that if it was the destruction of, or the damage to, Marciano's corn growing on his field that angered him, he would have assaulted the farm hands and not the deceased who was on the other side of the creek. The evidence shows that the Tortugas had to cross the creek to assault the deceased. Marciano, on whom the whole blame is laid, could not be the only one who assaulted Lorenzo Torreon, because if that were the case, the farm hands of the latter would not have been frightened and would not have run away but would have rendered him help.

Lorenzo Torreon was around 60 years old when he was killed. The way he was slain by an over-powering strength of a number of individuals after he had put down his bolo clearly constitutes treachery because he was not in a position to defend himself—his assailants employing means in the execution of the crime which tended directly and specially to insure its consummation without risk to them from the defense the assaulted party might make. This qualifying circumstance absorbs the aggravating circumstance of having taken advantage of superior strength. The mere fact that the deceased was around 60 years of age is not sufficient for the holding that the crime was committed in disregard of the respect due the deceased on account of his age. The crime was committed without regard to his

The crime is murder without the attendance of any aggravating or mitigating circumstance. The penalty provided for in article 24\$ of the Revised Penal Code must be imposed in its medium period.

We find the appellant guilty of murder and sentence him to suffer reclusion perpetua. the accessories of the law, to indemnify the heirs of the deceased in the sum of P2,000 and to pay 1/5 of the costs in the first instance and the costs in the first instance and the costs in the instance.

The judgment appealed from is modified in the manner above stated.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Reyes, and Jugo, JJ., concur.
Mr. Justice Montemayor and Mr. Justice Bautista Angelo took no part.

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