

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GAUDENCIO VILLAPA, JUAN PORTACIO AND FAUSTINO PUNTALBA, DEFENDANTS AND APPELLANTS.

G.R. No. L-4259. April 30, 1952

Ponente: REYES, J.

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REYES, J.:

The now deceased Federico Agonias was, with his wife, Herminia Calixto, staying in the house of the latter's father, Guillermo Calixto, in barrio San Marcelino, municipality of Bulangao, Pangasinan province. The house had two bedrooms, one of which was occupied by Guillermo and his family and the other by Federico and his wife.

Between 8 and 9 o'clock, p.m., of December 29, 1947, after the inmates of the house had retired for the night, Herminia, who was still awake nursing her baby, heard a dog bark and thereafter saw her husband Federico, who had been awakened by the noise, go to the door and peep through a small opening. But Herminia noticed that Federico immediately withdrew, for the reason, as she soon found out, that there was a group of men going upstairs. On reaching the door, the group pushed it wide open and entered, and, because there was light in the house, Herminia was able to recognize them as her townmates Faustino Puntalba, Juan Portacio, Gaudencio Villapa, Montano Villapa, and Pacifico Villapa. They were armed with rifles and revolvers.

Once inside, Faustino Puntalba beckoned to Federico with his revolver. Federico obeyed but tried to resist when he was grabbed by the arm. He was, however, overpowered and taken downstairs. In consternation, Herminia began crying, while her father, who was already awake or was awakened when the intruders came, on his part went to his room and armed himself with a shotgun. Seeing him so armed, the intruders did not dare advance and they left, taking Federico with them.

A few minutes later Herminia and her father heard several shots fired about 50 meters to the east of them, and soon there was firing from all directions apparently directed at their house, Guillermo fought back, firing his shotgun from the windows of his house on three sides, that is, North, South, and West. There was no window on the east side. And though he was hit in the abdomen, he continued shooting until the firing from the outside had ceased.

Going downstairs when the shooting was over, Guillermo came upon his neighbor Anong, or Benjamin Tolentino, who lay wounded and groaning some 4 meters north of the house. Thinking perhaps that Guillermo was out to get him, the wounded man begged forgiveness and pleaded for his life, promising to reveal who his companions were and proceeding to do so. He also said that his gun was lying near Guillermo's feet and that the latter could take it. Asked what he and his companions were up to, Anong said that their plan was to abduct Guillermo's daughter and take his money and firearms. It then occurred to Guillermo that it might be desirable to have witnesses to Anong's revelations, and so he called his neighbor Paulina Ripuna and her sons Francisco Abuan and Crispulo Abuan and in their presence again asked Anong who his companions were. Answering the question, Anong, who was

suffering from his wounds and conscious that he was going to die, gasped the names of Faustino Puntalba, Juan Portacio, Gaudencio Villapa, Pacifico Villapa, Montano Villapa, and Fernando Seradoy. He said that they were 16 in all, but the others he was not able to name.

Thereafter Guillermo, for fear that the malefactors might return, went with his family to the house of his sister-in-law Francisca Macaraeg about half a kilometer away, taking along Anong Tolentino in a sled. But the latter died on the way and his body was left on the sled in front of Francisca's house. His gun or rifle was left at the place where he fell, for Guillermo failed to pick it up.

Notified of the incident, MP soldiers from Tayug came to Guillermo's house at about 6:30 o'clock the following morning, followed later by the justice of the peace, the chief of police, and the assistant sanitary inspector of the locality. Searching for evidence at the scene of the crime, the MP's found, among other things, empty cartridges around the house, a Japanese rifle with two live cartridges in its chamber at the spot where Anong Tolentino fell, and about 50 meters northeast of the house the cadaver of Federico Agonias with four bullet wounds. The dead body of Anong Tolentino they found in front of Francisca Macaraeg's house where it was left by Guillermo. In Anong's pocket was also found a live cartridge.

But the MP's were in a hurry to go and conducted a rather haphazard investigation. Of the possible witnesses they questioned only Guillermo Calixto and Paulina Ripuna, and then they left after telling the chief of police to take Crispulo Abuan and Francisco Abuan to the municipal building and take down their affidavits. This the chief of police did. But he made no further investigation of his own, believing that the MP's had done all that was necessary. The man was new in the job, and this was his first case. He was formerly a junior clerk in the office of the municipal treasurer.

The assistant sanitary inspector examined the corpses and found that Anong Tolentino had two wounds, one in each leg, both produced by buckshots; while Federico Agonias had four wounds, one at the right elbow, one at the back below the right shoulder, another a little below this, and still another at the left buttock, all produced by bullets from a .32-cal. pistol or carbine. The inspector attribute the death of both to hemorrhage because he found plenty of blood at the spot where their bodies were found.

For the death of Federico Agonias an information for murder was filed in the Court of First Instance of Pangasinan against Gaudencio Villapa, Faustino Puntalba alias Juan Puntalba, and Juan Portacio, alleging—

"That on or about the 29th day of December, 1947, in the municipality of Balungao, province of Pangasinan, Philippines, and within the jurisdiction of this Court, the above-named accused, together and in connivance with Montano Villapa, Pacifico Villapa, Fernando Seradoy and nine others who until now have not as yet been apprehended, armed with unlicensed firearms, and taking advantage of the nighttime, went to the house where Guillermo Calixto and his family were then living as their dwelling, took down Federico Agonias, one of the inmates in the said house, and did then and there voluntarily, illegally and criminally, with Evident premeditation and treachery, and taking advantage of their superior strength, and with intent to kill, shot said Federico Agonias, thereby inflicting upon him mortal wounds in different parts of his body, to wit: (a) wound 9, cm. long and 7 1/2 cm. wide across the right elbow joint; (b) wound, 15 cm. deep and 1/2 cm. in diameter at the back just below the right shoulder; (c) wound, 17 cm. deep and 1/2 cm. in diameter at the left buttock, all produced by gunshots, which wounds caused the death of said Federico Agonias."

All of the accused pleaded not guilty but after trial they were found guilty of homicide and sentenced each to suffer "an indeterminate penalty of from 6 years and 1 day of prision mayor to 14 years, 1 month, and 1 day of reclusion temporal, to indemnify jointly and severally the heirs of the deceased Federico Agonias alias Agoñas alias Agunyas in the sum of P6,000 without subsidiary imprisonment in case of insolvency, with the accessory of the law, and to pay the costs." From this sentence the defendants appealed to the Court of Appeals, but that court

certified the case here for the reason that in its opinion the appellants are guilty of murder and should be sentenced to death.

There is no question about the commission of the crime. The only question refers to the identity of the perpetrators.

Herminia Calixto and her father testified that they were able to identify the appellants as among those who broke into their house that night. We have no hesitation in accepting this, testimony, considering that there was light in the house and father and daughter had known the appellants for years, two of these being their neighbors while the third was a townmate.

The point is made that if Guillermo and Herminia had really been able to recognize those who broke into their house that night they surely would have revealed their names to the MPs the following morning. But the point is answered in the testimony of both. Thus, Guillermo declared that he was suffering badly from his wound, and the MPs, who were in a hurry to leave, asked him only a few questions and he answered those questions. It was not until he was questioned by the fiscal that he was asked about the identity of the malefactors. On her part Herminia explained that the MPs did not bother to question her at all. They were in a hurry, and finding her stricken with grief, very much confused and not in the mood to talk, they turned to her father and it was him they questioned.

No reason has been shown why these two witnesses should testify falsely against the appellants. Indeed, the appellant Faustino Puntalba admitted on the witness stand that he had never had "any misunderstanding with Herminia" or "any quarrel with Guillermo" before the killing. And while the other two appellants, Gaudencio Villapa and Juan Portacio, hint that Guillermo might have resented the fact that they used to collect from him chickens and rice for the support of the guerrillas during the Japanese occupation, Gaudencio Villapa admitted that this fact never marred his cordial relations with Guillermo and that as a matter of fact the latter used to invite the guerrillas "to do some plowing on his land and help him in house construction."

Each of the appellant set up an alibi. But we find no convincing note in their stories, which both the trial court and the Court of Appeals have, by detailed analysis, shown to be improbable. And besides, the places where they claim to have been on the night in question were not very far from the scene of the crime.

Testifying about the motive for the crime, Herminia Calixto said that in that month of December during the harvest season her husband, having caught a carabao belonging to one of the accused, took the animal to the barrio lieutenant. The defense claims that this motive is insufficient for so grave a crime. But, as the trial court has observed, in those days serious crimes were being committed for a futile cause as a result probably of the breakdown in morality brought about by the last war, the court having taken judicial notice of the fact that at the time the present crime was committed robberies and killings were rampant in the town of Balungao.

On the whole the case hinges on the credibility of witnesses. And while the defense has called attention to some discrepancies in the declarations of the principal witnesses, the record discloses nothing of real importance to justify reversal of the finding below that the appellants were among those who broke into the house of Guillermo Calixto on the night in question.

The declaration attributed to the now deceased Anong Tolentino as to who were his companions that night and what they were up to, may not, as the defense contends, be admissible in evidence even as a part of the *res gestae*. But even without this alleged declaration, we think that appellants' connection with the crime has been sufficiently established.

There is on the record a motion for new trial presented when this case was still in the Court of Appeals which does not appear to have been resolved. The motion was filed by the appellants Gaudencio Villapa and Juan

Portacio and was based on alleged newly discovered evidence consisting of the affidavits of Montano Villapa and Pacifico Villapa executed by them after their arrest in connection with the present crime, in which affidavits these two confess having been with the group that went to the house of Guillermo Calixto on the night in question but assert that the appellant Gaudencio Villapa was not with them. But, as the Solicitor General points out in his brief, one may easily surmise why Montano Villapa and Pacifico Villapa should try to save these two appellants, it appearing that one of them, Gaudencio Villapa, is their brother, while the latter's wife is a niece of the other appellant, Juan Portacio. Furthermore, the fact should not be overlooked that the very statement in these affidavits that the affiants had gone to the house of Guillermo Calixto on the night in question and were there during the commencement of the shooting contradicts the alibi put up by their brother, the appellant Gaudencio Villapa, that at the time the crime was committed he and his said two brothers were threshing rice in the farm of his landlord Martin Vallejos. With this contradiction, it is not likely that if Montano Villapa and Pacifico Villapa were allowed to testify at a new trial their testimony would affect the result of the case. The said motion for new trial cannot therefore be granted.

The information charges the appellants with the crime of murder. The trial court found them guilty only of homicide. But because the trial court also found that the killing was committed with the attendance of superior strength and aid of armed men, the Solicitor General recommends that they be declared guilty of murder under Article 248, paragraph 1, Revised Penal Code, and sentenced to death in view of the presence of the aggravating circumstances of nighttime and dwelling. There is merit in this recommendation, and we note that the Court of Appeals has come to more or less the same conclusion as may be seen from the following excerpt from its resolution.

"But while we agree with the trial court that the identity of defendants-appellants has been established beyond reasonable doubt, we do not agree with it in its conclusion as to the nature of the crime committed. True it is no witness testified as to the manner in which the wounds found on the person of Federico Agonias were inflicted upon by him, but the direction of the wounds, which is from the back towards the front, proves beyond reasonable doubt that the shots were fired at him from the back. The evidence for the prosecution further shows that before the house of Guillermo Calixto was fired at from all directions, three successive shots were heard east of the house, and as the body of Federico Agonias was found east of the house, the first three successive shots must have been the ones with which they killed him. In our opinion, the crime committed is that of murder, with the qualifying circumstance either of evident premeditation or of treachery. The acts of the appellants in taking away the deceased from his house and afterwards shooting him from behind till he died are conclusive evidence of the existence of these two qualifying circumstances. If we add to these the fact that at least five people participated in taking him away from his house, most of them armed, the existence of the aggravating circumstance of abuse of superior strength also becomes patent. The fact that the accused-appellants were provided with firearms, however, is considered by us as included within the aggravating circumstance of abuse of superior strength."

We are satisfied that appellants were among those responsible for the killing of Federico Agonias. The insinuation that the latter may have been the victim of Guillermo Calixto's indiscriminate or blind shooting is not to be taken seriously in the face of uncontradicted evidence that the deceased man's wounds were inflicted with a .32-caliber pistol or carbine, whereas the firearm used by Guillermo Calixto was a shotgun.

Because the killing was done with the attendance of superior strength and aid of armed men, the crime committed is murder under article 248, paragraph 1, of the Revised Penal Code. There is at least the aggravating circumstance of nighttime which would raise the penalty to death. But there being no sufficient vote for the imposition of this penalty on the appellants Faustino Puntalba and Gaudencio Villapa, and in the case of the appellant Juan Portacio the aggravating circumstance is offset by his voluntary surrender, the Court is constrained to impose the medium degree of the penalty prescribed for the offense, or life imprisonment.

Wherefore, the judgment below is modified, and the appellants are declared guilty of murder and sentenced each to life imprisonment, with the accessories of the law, jointly and severally to indemnify the heirs of Federico Agonias in the sum of P6,000, and to pay proportionate costs.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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