

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CUSTODIO REGAL, AND DIONISIO REGAL, DEFENDANTS AND APPELLANTS.

G. R. No. L-14753. July 31, 1962

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The Court of First Instance of Samar found Custodio Regal and his son Dionisio Regal guilty of the murder of Pio Abuyen, sentenced each of them to suffer the penalty of reclusion perpetua and ordered them to indemnify jointly and severally the victim's heirs in the sum of P6,000 and to pay the proportionate share of the costs. Each accused was credited with one half of the preventive imprisonment he had undergone.

The incriminatory facts, as established by the prosecution, are: (On August 31, 1958 at about five in the afternoon, Pio Abuyen and his wife Irene Abriol left the poblacion of Guiuan, Samar, to return home to the island of Tobabao. From Guiuan they walked to barrio Camponggo, where they took a ferryboat to sitio Omatobang, Tobabao. Also on board were Antonio Bugtong and a dumb man unnamed in the record. On arriving at Omatobang, the spouses continued on foot. They had hardly passed a guava tree on the left side of the road when a gunshot rang out. Nine pellets hit Abuyen on his left side and left shoulder. Instinctively, he turned towards the place from which the shot came, and recognizing his assailant, cried out: "Odio (referring to Custodio Regal), if you did not hit me only by surprise." Irene Abriol saw Custodio and Dionisio behind the guava tree, Custodio still aiming the gun at Abuyen. The latter died on the spot.

According to Dr. Pedro Montero, Guiuan Municipal Health Officer, who autopsied the victim, "one of the pellets penetrated the auxiliary muscle, pectorally, major and minor, the membrane covering the heart muscle itself, hitting the ventricle, both thru and thru, that means penetrated; two pellets lodged in the pectoral muscles"; and "death was caused by hemorrhage due to the gunshot wounds on the vital organs, ventricle of the heart."

Appellants contend that they could not have committed the crime since they were, at the time of its commission, in the poblacion of Guiuan, having arrived there at three in the afternoon from fishing at sea. After selling the greater part of their haul and buying rice and other commodities to take home, appellants, with their fishing companion Maximino Espina, went to the wharf of Chinaman Choca, where Custodio had a drinking spree with Sulpicio Lavidí. Shortly before six o'clock Custodio was seen there by Antonio Bugtong, who came and borrowed P0.50 from him to pay Antonio's ferryboat fare. Appellants and Maximino left the wharf by banca a little before eight in the evening, arriving at Tobabao an hour later.

In support of their alibi, appellants point to the testimony of Antonio Bugtong and Sulpicio Lavidí. Both however, appear to be unreliable. Custodio Regal is Antonio's uncle, from whom he had previously asked favors. On the very day in question, Custodio had lent him P.50 so he could pay his fare to Tobabao. And while asserting that at the time the ferryboat, with himself and the victim and the latter's wife on board, left Camponggo, appellants were still at the wharf of Chinaman Choca, he admitted that appellants could have left immediately thereafter for

Tobabao, or even gone ahead of the ferryboat, since they had their own boat at their disposal.

To establish their claim that at almost 8 o'clock in the evening they were still in Guiuan, appellants rely on the declaration of Sulpicio Lavidí that they left Guiuan by boat a little before the church bells tolled that hour. Lavidí, however, demonstrated that his sense of time was utterly unreliable when he declared that on August 15, 1958, two weeks before the crime was committed, he already knew he was going to testify in appellants' behalf. Indeed, he contradicted himself as to the time the said appellants left Guiuan, for in another part of his testimony he reckoned that he and Custodio began drinking at 4:30 and continued to do so for two hours, or until 6:30. Such testimony cannot rule out the possibility that appellants in fact left early enough to reach Tobabao ahead of the deceased.

The defense of alibi has no weight against positive identification of the culprit (*People vs. Linde*, 110 Phil., 637). In this case the appellants were seen and positively identified by the victim's wife, Irene Abriol. When she turned after hearing the shot she saw Custodio still pointing the gun at herself and her husband. To detract from the effect of testimony, appellants presented Julian Odivilas (one of the policemen who investigated the incident), who declared that Irene, when asked if she recognized her husband's assailants, replied that she did not. This, however, was directly rebutted by two other investigating police officers, Policarpio Padul and Silvino Llealde, according to whom Irene promptly referred to appellants when she was asked to identify the malefactors.

The evidence shows beyond reasonable doubt that it was Custodio Regal who fired the fatal shot and shows likewise that he had sufficient motive for the crime. Some three weeks before he had a quarrel with the deceased over the boundary separating his land from that being administered by Abuyen. But as to Dionisio Regal, except for his presence at the scene of the killing, there is absolutely no evidence of his complicity. Where there is no proof of conspiracy, mere passive presence of the accused at the scene of the crime does not make him a co-principal (*People vs. Silvestre and Atienza*, 56 Phil., 353; *People vs. Bañez, et al.*, 77 Phil., 136). It does not appear that Dionisio did anything to help his father, or that he shared his father's sentiments against Abuyen. He should therefore be acquitted.

Wherefore, the judgment appealed from is affirmed with respect to Custodio Regal, who is ordered to pay the full amount of indemnity fixed by the trial court, and reversed with respect to appellant Dionisio Regal, with one-half of the costs de oficio.

Bengzon, C. J., Labrador, Concepcion, Barrera, Paredes, Dizon, and Regala, JJ., concur.

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