

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO ABALOS, DEFENDANT AND APPELLANT.

G.R. No. L-2190. October 19, 1949

Ponente: BENGZON, J.

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BENGZON, J.:

Review of a judgment of conviction for murder. Judge Fidel Fernandez of Samar found appellant Francisco Abalos guilty of having shot and killed Maximo Cabueños, upon the testimony of one eye-witness, and upon proof of admissions made by the accused. The defense was alibi.

The transcript of the stenographic notes taken during the trial and the medical certificate Exhibit A authorize the following account of the killing:

During the Japanese occupation Francisco Abalos was a constabulary soldier stationed at Catbalogan, Samar. On May 13, 1944 a constabulary detachment consisting of the accused and others (including Artemio Merida), under the command of Lieutenant Ramento proceeded to Gandara, Samar, on patrol duty. About 2 o'clock the next morning, the company reached a place near barrio Peñaplata and went to the house of Maximo Cabueños, a guerrilla. Cabueños was not there, but the party found therein one Vicente Cipriano whose services they enlisted as guide to the barrio. Hearing their destination, the soldiers deployed so as to encircle the place. The appellant and Artemio Merida, accompanied by Vicente Cipriano, walked to the right until they arrived at the house of one Jesus Rama. It was then about 5:00 a. m. Even as appellant and his companions were entering Rama's dwelling, Maximo Cabueños jumped through the window and scurried to a ricefield. Appellant pursued him, and shooting with his rifle, hit the runaway in the stomach. Cabueños fell. Helped later by Jesus Rama, the wounded man returned to the house; but he died that very afternoon.

Artemio Merida was beside Abalos at the moment the latter fired his gun, and he saw the victim drop to the ground. Vicente Cipriano heard the detonation, and having been told by Abalos to go "where that man was shot", found the victim in serious condition, his intestines coming out of the abdomen.

Both these persons (Merida and Cipriano) were the People's witnesses at the trial of this case.

The accused-appellant admitted in court that he was present with the soldiers at Rawis near Peñaplata. But he denied having shot the unfortunate man, saying he was detailed to watch the bancas used by the party in going to the locality, and that watching the bancas was all he did during that evening. Defended by two attorneys, he elected to submit his case without corroborating testimony. His counsel made this announcement before presenting his evidence:

"Inasmuch as the effort to bring Serafin Ramento in this court has failed, this representation would like to request this court the continuation of the trial of this case and the presentation of the defense even without the testimony of Serafin Ramento."

The Serafin Ramento mentioned in the above statement evidently referred to Lt. Ramento under whose command

the police officers went the rounds of the barrio on that occasion.

Now then, considering that under the law the accused had a right to compel the presence of said officer, and considering that according to the prosecution, Lt. Ramento investigating the affair at the place and time of the shooting, was informed by Abalos that he had shot Maximo because the latter had run, the inference is logical that Ramento's testimony, if presented, would not favor the defendant. Wherefore, under the circumstances the alibi must be deemed insufficient to overcome the direct evidence for the People.

"Oral evidence of alibi is so easily manufactured and usually so unreliable that it can rarely be given credence. People vs. Badilla, 48 Phil., 718."

"Defense of alibi rejected in a case of homicide, there being no legal reason for discrediting the witnesses for the prosecution, who were present at the time of the fight and saw accused inflict the wound on the side of deceased. People vs. Cabantug, 49 Phil., 482."

"The defense of alibi is not satisfactorily established where the testimony is not free from suspicion, was not corroborated by another witness, and no insistence was made to secure the attendance of another witness who could have appeared and testified to the facts, and this circumstance was (not) explained. People vs. Pili, 51 Phil., 965."

The herein appellant has, no doubt, liquidated Maximo Cabueños. However, we do not believe that the killing was accomplished with treachery. It does not appear that the shooting was premeditated nor that the accused had consciously chosen that method of attack directly and specially to facilitate the perpetration of the homicide without risk to himself. His decision to shoot Cabueños seemed to be sudden, in view of the latter's flight, and the position of both the victim and the killer was entirely accidental. Therefore treachery may not be imputed to him.[1]

Appellant is guilty of homicide for which the law prescribes the punishment of reclusion temporal. (Art. 249, Rev. Penal Code). In the absence of mitigating and aggravating circumstances the appellant must be made to serve imprisonment for not less than 6 years and 1 day of prision mayor nor more than 14 years 8 months and 1 day of reclusion temporal. Modified as to the term of imprisonment, the appealed decision is affirmed, with costs. So ordered.

Moran, C.J., Ozaeta, Paras, Feria, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] See People vs. Tumaob, 83 Phil., 732, People vs. Calinawan, 83 Phil., 642.

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