

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE CADA, DEFENDANT AND APPELLANT.***G.R. No. L-1561. January 25, 1949*

Ponente: PERFECTO, J.

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On the night of February 20, 1943, at 11:00 o'clock, Manuel Bertos, 17 years old, got permission from his parents, Honorato Bertos and Carlota Anacta, to get his guitar from somewhere. His mother objected at first, because she was afraid that Manuel might get drowsy as the next morning they had to go to Dolores to build a house. Permission was finally granted and Manuel left their house, located at San Fernando St., Borongan. Because Manuel had been delayed in coming home, his father and mother went down their home to look for him. After a while, they found Manuel and told him to go home. While the three were returning home, Manuel walked at the side of his mother, while his father was a little behind. Upon passing in front of the house of Antonio Anacta, appellant went down from said house, chambered his shotgun, placed its butt on his right shoulder and fired at short distance at Manuel, hitting and shattering the latter's head. Manuel fell down dead. His father immediately took hold of the shotgun and wrestled with appellant for its possession. During the struggle, the barrel of the gun hit Carlota in the head, causing her a minor injury. Honorato was finally able to gain possession of the shotgun, and appellant ran away.

Soon thereafter, police officers came to investigate the incident.

The above is the substance of the testimonies of Carlota Anacta, Honorato Bertos, Gatalina Denoso and Mariano Amongo, witnesses for the prosecution.

The witnesses for the defense tried to show that during the early part of the same evening, Manuel Bertos drank tuba, had trouble with some persons, intervened in a fist fight and, apparently intoxicated, tried, before meeting appellant, to stab two persons, one of whom had to flee, the other continuing in his company.

The latter, Zosiino Limbauan, testified that at about 6:00 o'clock that evening, he and Manuel Bertos drank tuba twice in the store of one Carmelita Apilado, after which Manuel went to the house of Tecla next to the store. Pedro Cardona and Pedro Capacite arrived at the store of Carmelita and exchanged words and blows. (145). The fighters went outside of the store and there continued the fight. Manuel entered in the scuffle to help Cardona. Pedro Capacite got hold of a pole and tried to strike Manuel but Alfredo Cardona ran behind Capacite, got hold of the pole and prevented Capacite from hitting Manuel. After the incident, Zosimo went home to take supper. At about 9:00 o'clock he went out. He met Manuel walking alone in the street. (146-147). Manuel told him "you are a double crosser because you did not help me when I had a quarrel." Zosimo did not utter any word, but Manuel thrust his bolo against him. But Zosimo was not hit. Manuel was not in sound mental condition. (148). Both continued walking together towards the house of one Titong where they met Manuel's parents. The mother asked him about his guitar and Manuel said that it was in the house of Tecla. The four of them continued walking back home. (149). Manuel and his mother was a little ahead, followed by his father and Zosimo. As they reached the

house of Antonio Anacta, Manuel went shouting, "Where are you now Henry. If you want to fight come down." Appellant came down from the house of Antonio Anacta with a shotgun, and said: "Manuel, what are you shouting for? I am a peace officer." Manuel, picking up something from the ground, threw it at appellant and said, "Justice which is useless." (150). Manuel drew his small bolo and approached appellant, who stepped backward. Manuel continued going forward in an attitude of thrusting his bolo. Appellant retreated but when he reached the fence of the house, he levelled his shotgun and fired. (151). Manuel was hit and Zosimo ran to his house. (152).

Appellant testified that on February 20, 1943, he was an MP assigned to Borongan by Lt. Dorillo. (178). Before, he served in the army in Bataan, surrendered on May 18, 1942, and was imprisoned by the Japanese. In September, 1942, he returned to Samar, suffering from malaria. (179). The last days of December, 1942, the guerrilla forces in Samar were organized and he was taken by Lt. Dorillo to join the guerrilla. On the night of February 20, 1943, he was called by Feliciano Titong, because there was trouble in San Fernando St. (180). When they arrived at the municipal building, they found one Barte complaining that he was beaten in San Fernando St. by one Menloy. When Titong and appellant were near the house of Amang Cardona, appellant saw a person and, finding him to be Lienloy, he arrested him and brought him to the municipal building. (181). Lienloy told him that he was not the only one causing trouble as there was Manuel Bertos who was chasing people, and appellant did not arrest him. When appellant came back to the place of the alleged trouble, there was no longer trouble. As there was a shower, and noticing the house of Antonio Anacta to be partly open, he went up and said good evening. (182). Sometime later, appellant heard a shout near the house of Antonio Anacta. It was a challenge for Henry to go down if he was decided to fight. (184). Catalina Denoso said that it was Manuel Bertos and "I reached my gun and I went down. As I passed through the door, I placed the gun on my shoulder." He met in the street Lianuel Bertos, his mother and father, and Zosimo Limbauan. He told Manuel that he was an authority and asked him why he was shouting and challenging anybody in the street. (185). Manuel picked up something on the street and threw it at the appellant, saying, "Justicia na waray data" (authority which has no use), Lianuel drew from his waist on the left side a bolo and rushed towards appellant, who said: "Be careful Manuel I am an agent of the law, a military police, drop that bolo." Manuel did not obey and instead continued rushing. Appellant retreated, but his gun was on guard, "putting the butt of the gun under my right armpit with the muzzle pointed to the deceased." Appellant continued stepping backward for less than 10 meters until he reached the fence where he stopped. (186). "I cocked my gun and loaded it to frighten him only. I tried to fire to the air but I did not notice it went up. Manuel whirled around and fell down dead." The appellant wrestled with Manuel's father who got hold of the gun. Antonio Anacta came and helped in wrestling the gun from appellant, who then ran to the municipal building. (187).

The evidence for the defense has not overcome the testimonies of the witnesses for the prosecution who had no motive to twist the truth. If the father and mother of the deceased could, blinded by their parental attachment to the victim, have been induced as a reprisal to procure the doom of appellant, such thing cannot be said regarding witnesses Catalina Denoso and Mariano Amongo who were completely neutral and impartial and could not think of causing injustice to appellant in view of their friendship to him. Before the shooting, appellant had been in their house, engaged in amicable conversation with them. Although the prosecution failed to prove any specific motive why appellant had to attack and kill Manuel Bertos, the narration of facts made by the four witnesses for the prosecution appears so natural, positive and sincere that it cannot fail to command acceptance of its credibility, and the record does not offer any valid reason why we should reverse the action of the trial court in believing it.

There are strong reasons to reject the defense's theory, namely:

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No satisfactory explanation was given why Manuel Bertos had not been stopped from approaching appellant. He

was accompanied by his mother and father and also, according to the defense, by Zosimo Limbauan. There were three persons who could have avoided his coming near the appellant. Appellant had not mentioned that anyone of the three companions of the deceased tried to stop the latter from exposing himself to be shot by appellant. Zosimo said that neither he nor the father did or said anything to stop Manuel from approaching appellant. Zosimo alleged that he and the father were not near Manuel, and he himself dared not do anything. Even if the mother, Carlota Anacta, was the only one at the side of Manuel, it is unbelievable that she had not stopped his son from seeking his own death. On the assumption that, being a woman, she was physically weaker than her son, there should not be any doubt that she could have saved her offspring by a tight embrace. The imminence of the danger would have certainly given her, as shown by a common human experience, the needed strength to overcome her son's attempt to approach appellant, and if she had not been able to overpower him, at least she would have given a chance to her husband to come and help her in holding their son.

- While appellant testified that, in firing, he only intended to fire in the air to scare the deceased, Zosimo testified that appellant actually aimed and fired at the deceased.

- Appellant insinuated in his testimony that he fired in self-defense, but he has not explained why he had to kill Manuel, by levelling his shotgun at the victim's head. Would it not have been enough to impede Manuel's approach to him by thrusting the barrel of his gun, considering that the bolo carried by Manuel, according to Zosimo, was only one foot long? And if it was unavoidable to fire, why did not appellant aim his gun at some other part of Manuel's body that would stop aggression without killing him?

- The contention that Manuel had a bolo carries no weight. To corroborate appellant and Zosimo as to the bolo in question, Feliciano Titong, a defense witness, said that, after the shooting, he saw at the scene of the crime, not far from the body of Manuel, a bolo and its scabbard. He threw them in the school yard for fear that the relatives of the deceased might use the weapon for revenge. But Titong's testimony appears to be belied by his own conduct, when he failed to inform about said bolo and scabbard the police authorities who came to the scene immediately after the shooting. He kept in his bosom the secret of his knowledge until three months later, when he could not hold it any longer and had to communicate it to appellant. The story is too unnatural to deserve any credence.

- The testimony of Zosimo Limbauan is made incredible by another yarn that after having been accused by Manuel to be a double crosser and, for said reason, Manuel thrust his bolo against him, he was able to continue walking together with Manuel as far as the scene of the shooting. Has the story not been concocted just to enable him to appear as a witness as to how the shooting took place?

Although the testimonies for the prosecution failed to offer any evidence to show any motive for appellant to shoot Manuel, appellant's testimony offers the hint that his sense of pride might have been provoked by the fact that, after arresting Menloy, the latter remonstrated that he was not the only one causing trouble and that, while Manuel Bertos was chasing people, appellant did not arrest him. According to appellant, when he came to the house of Antonio Anacta, Catalina Denoso asked him if he had not yet seen Manuel Bertos. A provoked pride may drive a person into perpetrating the most reckless and absurd acts.

The evidence conclusively proved that appellant is guilty of the crime of murder qualified by treachery. It is to be regretted that he happened to be one of the heroes who fought in Bataan and later captured by the Japanese, and that at the time the offense was committed, he was rendering services in the guerrilla forces of Samar; but the law in this case does not make any distinction between ordinary citizens and heroes. We would have considered his valuable services to the Fatherland as a mitigating circumstance, but the law fails to provide for it, and it would exact from heroes the same measure of responsibility for any crime they may have committed as that exacted from an ordinary citizen.

The trial court sentenced appellant to reclusion perpetua with the accessories provided by law and to indemnify the heirs of the deceased in the amount of P2,000 and the costs. The indemnity should be increased to P6,000 in accordance with the doctrine laid down in *People vs. Amansec*,^[1] L-927, 45 Off. Gaz. (Supp. to No. 9), 51, and, as thus modified, the appealed judgment is affirmed.

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

[1] 80 Phil., 424.

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