

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CESAR TAMIANA, DEFENDANT AND APPELLANT.

G. R. No. L-3688. September 29, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

In its decision of January 27, 1950, the court of first instance of Pampanga found Sergeant Cesar Tamiana guilty of having murdered Sergeant Bernardo Tanhueco and therefore sentenced him to reclusion perpetua, to indemnify the heirs of the deceased in the sum of P3,000 and to pay the costs.

Pursuant to defendant's appeal, we have reviewed the evidence of record, which shows the following material facts:

In the evening of August 17, 1949, near the Rotonda of the town of Angeles, Pampanga, there was a sharp exchange of words between Crisanto Pineda and Sgt. Cesar Tamiana of the Philippine Constabulary, the latter asserting that the former had intentionally bumped against him, while the former protested his innocence. Tamiana was then dressed in civilian clothes. Advised on time of the trouble, two policemen (Juan Cunanan and Bernardo Tanhueco) approached the parties to investigate, and, when Tanhueco asked what the matter was, Tamiana replied in Tagalog, "You have no right to intervene because I am a member of the Constabulary." Apparently in a conciliatory tone Tanhueco countered: "We are policemen of, this town. It is scandalous, so we better settle this matter in the police station." Tamiana did not object, and the four proceeded to the police sub-station at the corner of Rizal and Miranda Streets of the same municipality, where the Chief of Police Proceso Wingo starting to make inquiries noticed that Tamiana was fingering the pistol in his pocket. Wherefore he immediately ordered that Tamiana be disarmed, which was done by Patrolman Benjamin Santos. The weapon was handed to the Chief of Police, who in turn laid it on his table.

Then he inquired about Tamiana's identity. Tamiana answered he was an agent of the Constabulary. So the Chief demanded his identification card plus the corresponding license for the revolver. Sergeant Tamiana presented a piece of paper which was a "special order". At this juncture several armed constabulary men appeared, one of whom stationed himself at the window pointing a gun towards the policemen even as another, with a Garand rifle aimed at the latter, threatened to shoot "if they refused to return Tamiana's gun." Surprised momentarily the town cops could not prevent Tamiana from suddenly grabbing his gun on the table and shooting Corporal Tanhueco in the abdomen. The victim cried he had been hit, and urged his companions to shoot the fleeing sergeant, who was out of reach in a few seconds. There was some exchange of shots afterwards, but no other casualty ensued.

Tanhueco was rushed to the 20th Army Hospital at Clark Field. On the way he confided to Policeman Jose Mercado, who accompanied him in the car, that he was going to die, and that it was Tamiana who had wounded him. Three days later Tanhueco passed away in consequence of the deadly injury.

Patrolman Cunanan swore that he saw this appellant, swiftly snatch the pistol from the table and shoot Tanhueco. He was only about two meters from Tanhueco. The happening was likewise seen and related by Pedro Lao,

another policeman, and also by Floreneio Batac, the last being a witness for the defense, who stated in court:

"Q.

*** * *** Before you heard a shot, was it not a fact that Sgt. Tamiana grabbed his gun on the table?

—

A.

Yes, sir, I saw him grab his gun on the table.

Q.

Did he succeed in getting his. gun from the table?

—

A.

Yes, sir.

Q.

And he stepped one step?

—

A.

Yes, sir.

Q.

And that was the time you heard a shot?

—

A.

Yes, sir.

Q.

And after you heard a shot, did you not hear" anything else' from Cpl. Bernardo Tanhueco?

—

A.

Cpl. Tanhueco said "Ouch, he shot me, shoot him;"

The defense dwells extensively on the prosecution's failure to submit the bullet that produced Tanhueco's death, insisting that it was the best evidence of defendant's culpability. Pointing out to the possibility that the guns that had been fired by other persons on that occasion might have hit the unfortunate policeman, the appellant insists,

that if the bullet had been produced, it could be accurately determined whether it was a .45 pistol bullet, the caliber of Tamiana's automatic.

On this point it should be explained that, there being witnesses who beheld Tamiana's pointing and firing the gun at Tanhueco, it was needless for the People to take the trouble of offering the fatal slug in evidence. There was sufficient direct proof—not secondary, nor circumstantial as defense contends—to connect defendant's hand with the slaying of Tanhueco. If the defense believed that another's firearm had felled Tanhueco, it was its privilege and duty to exhibit the corresponding bullet. No proof that it was unavailable to defendant.

By the way, Captain Weidner of the U. S. 24th Medical Group testified that he treated Tanhueco at the Clark Field Hospital on August 17, 1949, that Tanhueco died of the gunshot wound in the abdomen, and that "we did not remove the bullet." Therefore prosecution's failure to present the projectile was duly accounted for—supposing it was necessary to do so.

It will be remembered that Juan Cunanan testified that he saw Tamiana cock the gun and push it towards Tanhueco; and that immediately he heard a shot followed by Tanhueco's shouting "ouch, he shot me" and pointing to Tamiana. Pedro Lao another policeman who was present, gave the same version, although he did not mention the cocking of the firearm. He added however that after the detonation he spied some smoke from the barrel of Tamiana's gun.

It is alleged that, as these two witnesses were "behind" Tanhueco and the Chief of Police, they could not have watched Tamiana's movements. The answer is, that depends upon the sizes of the policemen, their relative positions and the distances between them, circumstances which must have been considered by the lower court.

Anyway the flight of Tamiana and the statements of Tanhueco both immediately after the blast and on the way to the Hospital, even if considered merely as part of the *res gestae*, lend convincing corroboration to the narrations of both Cunanan and Lao.

In conclusion, the mind may rest easy on the pronouncement that Tamiana actually shot the unhappy policeman of Angeles. With treachery too, because the attack was so sudden that the town officers had no time to pull their guns and could not defend themselves, what with the circumstance that they were practically held up by the guns pointed at them by Tamiana's companions outside the police building.

The offense is murder, and the penalty imposed by the trial court is in accordance with law. Judgment affirmed, with costs.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Reyes, and Jugo, JJ., concur.

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