

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALFREDO LACSON. DEFENDANT AND APPELLANT.*G.R. No. L-1900. May 12, 1949*

Ponente: TUASON, J.

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This is an appeal from a judgment of conviction for robbery with homicide, committing the accused to prison for life, with the accessories of law, and sentencing him to indemnify the heirs of the deceased in the sum of P2,000, to pay them P2,290, which represents the unrecovered amount of the stolen money, and to pay the costs.

Alfredo Lacson, the accused 21 years old at the time of the trial, came from Manila about the middle of April, 1945, to Katipunan, Zamboanga, where his sister and his brother-in-law lived. Buenaventura Guereva, the deceased, a dealer in carabaos, came to Katipunan from Zamboanga City on April 8 with Emiliano Yap, his partner, to buy cattle. Guereva and Lacson met and seemed to become friends.

On April 23, Guereva and Lacson went together to the seashore to bathe. After Guereva had undressed and put on his swimming trunk, or after he had come out of water, he was shot and killed with his own pistol, a .32 automatic, by the accused. He sustained two bullet wounds, one in the forehead and another at the nape. All his money and his pistol were gone when his dead body was found. Having been arrested for the murder, Lacson, after prolonged and unremitting questionings, admitted the killing and having taken Guereva's money and pistol.

The defense theory is that the accused after a fight killed Guereva with the latter's pistol which Lacson succeeded in wresting from the now deceased's hands. Lacson claims that the gun went off accidentally or that he fired the same unconsciously in a moment of dizziness. The crime, therefore, if a crime was committed, was homicide, an the opinion of defense counsel.

Stripped of unimportant details, Lacson's account of the occurrence is as follows:

"About three days before April 23, 1947, I met Buenaventura Guereva when he came to my brother-in-law's house looking for carabaos to buy. Guereva asked me where he could find carabaos and I answered, 'I am a new man here, new to this place, and am not familiar with such things.' Guereva told me that if I wanted to earn money I should go with him, and I accepted the proposition. Guereva told me that for every carabao bought, if I accompanied him, I would be paid P5. We bought five carabaos in Katipunan but I was not given my commission.

"On the morning of April 23, I went to Teodoro Eguia's house looking for Ben (Buenaventura Guereva) and there found him tying a carabao. I asked Guereva for my commission of P25. Guereva replied that his money was in the house of his agent in Piao and invited me to come along to that place to get the money. In Piao, Guereva went up a house whose owner I did not know; when Guereva came down, I asked him if he already had the money but he said I should not worry about my commission. After that I asked Guereva to go home with me but Guereva said that as it was very warm he wanted to go swimming first. I did not refuse to go with Guereva but let him understand that he alone was to bathe because I had had a fever for a week. On the way to

the beach I again reminded Guereva of his promise to give me my commission; I told him that I needed the money and Guereva again told me not to worry. When we arrived at the seashore, Guereva took off his clothes preparatory to taking a bath. Because I did not want to take a bath I put on my pants which I had taken off before we crossed the river. At the beach, I asked Guereva why he was reluctant to pay me my commission, Guereva replied, 'Don't worry, as I have told you, because even your sweetheart I can buy.' I warned him not to include other matters but that he should talk about our agreement; he answered me in the same manner; so I replied also not to repeat the same, otherwise I might get angry, to which he replied, 'If you are strict, then you will take your commission there I retorted, 'It is up to you.' Then I rolled up my pants. While I was doing this, Guereva boxed me at once; I dodged and I was struck here (pointing to his right shoulder). Because of this blow, I felt dizzy. Guereva fell down near his clothes where the pistol was lying and picked it up. When he did this I jumped to wrest the gun from him and succeeded. The struggle for the possession of the arm lasted one minute. With the revolver in my possession I stepped back; afterward I heard a shot, because the deceased tried to rush against me; after the first shot I saw him stagger; I stepped back and heard a second shot; then I saw him fall down; perhaps the revolver was discharged on account of the nervousness with which I was gripped. I had been nervous since I had an attack of typhus in 1933. When I saw him fall down I did not know what to do. I lost my control, I wanted to go back to Katipunan. I was about to start for Katipunan but I changed my mind. What I did was to return to the scene of the crime and take whatever objects of value there were; as I did not find more than money I took it because I might be responsible if it should get lost. On the way I was a little disoriented; I did not know to whom to give report of the occurrence until I thought of giving myself up to the authorities in Manila, because my parents were in Manila and thus they could help me and even give bond in my favor. Once in Dipolog, I went immediately to the FEATI office and bought a ticket, after which I was thinking what would be the best thing for me to do. In this state of mind I thought that if I went to Manila they might accuse me of having escaped. Thus I decided to present myself to Major Pintoy. I went to the headquarters, that is, the house of Major Pintoy, after I came out of the FEATI office. In Major Pintoy's headquarters I met one of his servants and asked him if the Major was in, and he said no. I made the same question to a maidservant. As Major Pintoy was not there I left the money with the houseboy telling him to keep it until I returned to give it to Major Pintoy. I did not count the money."

The accused said that he had P175. This was what remained, he said, of P250 which his father had given him when he left Manila for Zamboanga.

A close analysis of the defendant's previous statements and actions and of the prosecution's evidence from impartial sources rejects the defendant's testimony.

The accused did not earn a commission on any carabaos, according to the preponderance of evidence. Before Guereva was murdered he had bought only five carabaos at P70, according to his partner, Emiliano Yap, and his widow. These five carabaos were bought through Pablo Ibalarosa in Katipunan and the defendant had nothing to do with that transaction. Yap, as Guereva's partner, could not have been ignorant of the number and identity of cattle Guereva had bought and paid for.

The accused mentioned one Genobaten as the person from whom Guereva bought five carabaos with his help, but this Mrs. Genobaten was not introduced as a witness and only a hazy reference was made to her identity. The defendant was not definite even as to the pronunciation or spelling of her name, and his evidence on this point, as in many others, is vague and evasive. Following is the stenographic transcript of his testimony:

"P. From whom, if you know, did Buenaventura Guereva buy these carabaos?—R. From Genobaten.

"P. And from whom?—R. I know only Genobaten.

"P. How many carabaos were purchased from Genobaten?—R. Five.

"P. The only thing that you have done, therefore, was to accompany Guereva to Genobaten; is that right?—R.

What I did was to tell Buenaventura Guereva that Mrs. Genobaten or Genovatim had carabaos for sale; he told me that if there are really carabaos for sale by Mrs. Genovatim and I could buy from her, I would have a commission.

"P. Do I understand from you that for having informed only the deceased that there was carabao for sale, you were already entitled to P5.?—R. He was the one who invited me to become a partner in the business."

Moreover, here the accused did not say that the deal for the purchase of Genobaten's or Genovatim's carabaos went through. In fact he categorically said in Exhibit H to the Chief of Police, Jose Jalamana, the first officer who questioned him, that he did not buy any carabaos for or in company with the deceased. He told the chief of police that he went to see Guereva on the morning of the 23rd of April in Teodoro Eguia's (ex-treasurer's) house; that his purpose in seeing Guereva was to remind him of the carabaos which they had contracted for in Mias; that Guereva told him the price was too high; that thereupon, at about 8 o'clock, Guereva invited him to go to Dalman's house in Piao; that he did not know Guereva's object in taking him to that place; that after leaving Dalman's house they separated; that he had known Buenaventura Guereva for only three days and had been with him only three times—on Friday, on Sunday (April 20), and on the 22d. He related everything he and Guereva did together on those days. On Friday, April 18th, he said, they went to the house near the bank of the Piao river, on the 20th, they went to the beach at the mouth of the river to have snapshots taken with some girls; and on the 22d, they went to see Dalman. There is not the slightest hint in this testimony that Guereva and the accused bought cattle from Genobaten or Genovatim. What he did make clear was that he found carabaos for sale in Mias but that Guereva thought they were too expensive and refused to take them. It looks as though the accused had in mind the five carabaos bought through Ibalarosa as the livestock he said he bought from Genobaten. It is undeniable Guereva had not paid for any carabaos other than those.

Granting that there was money due the defendant by the deceased, the seashore, of all the places, was the last to quarrel over P25. It was not the place or the occasion to force Guereva to pay that small amount. They came together and they were in no time to go home together. The defendant could not have been in such a hurry as to insist on getting his remuneration even as Guereva was still in his swimming trunk just through with his bath or about to plunge into the water. Guereva was not going to run away, and Lacson was not in dire need of his alleged commission in that instant. He said he had P175, his own money.

From all appearances, Guereva and the accused came to the seashore in the friendliest of terms. This is clearly indicated by the testimony of Irineo Tagbac and Artemio Tagbag, father and son. These witnesses testified that about 7 o'clock a.m. on April 23, Guereva and Lacson passed by their (witnesses') house on the way to the Piao River; that as it was high tide and the water was deep, Lacson came back and left his shoes in their house; that afterward Lacson returned to the river and waded across after Guereva had reached the opposite bank.

From Luis Badiango's testimony we also gather the inference that all was well in the relation between defendant and deceased. It appears from this testimony that Guereva let Lacson have his pistol before he was killed, a fact which denoted the lack of any hostility between them. Badiango, 30 years old, laborer, testified that at 7 o'clock on April 23, he was at his place cracking coconuts; that he saw Lacson seated at the foot of a tree wiping with a handkerchief a nickle-plated pistol that looked like Exhibit C (Guereva's gun); that he saw Lacson put the pistol back in his pocket after polishing it; that shortly afterward Guereva emerged and the two men walked past him in the direction of the seashore, which was 500 brazas from where he was working; that at about 9 o'clock, he saw Lacson walk back to town alone. Like the Tagbags', Badiango's testimony has the characteristics of sincerity. The defendant did not attempt to impeach the veracity of these three witnesses.

The fact that Guereva left or was going to leave on the beach his clothes, all the money he had amounting to several thousand pesos, and his pistol, with nobody to watch them except the defendant, is conclusive refutation

of the allegation that there was unpleasantness between them, or that Lacson was pestering Guereva about his alleged commission of P25 and Guereva refused to give it to him.

The fight is not proved by the facts. The defendant's description in court of the alleged scuffle and of the shooting is entirely unconvincing. Sick with fever for seven days, still suffering from the after-effects of a typhoid fever attack which he had more than ten years before, nervous and weak, and dizzy from a blow he had just received, the accused would have the Court believe that he was able to disarm Guereva and use the pistol against his antagonist, who was only 30 years old, apparently without much difficulty. He would make the Court believe in Exhibit Y that in spite of his weakened physical condition, he dealt Guereva on the chest a stiff blow that flattened him on his back. As to the firing of the gun, Lacson's evidence is confused and differs in at least one vital point from one of his previous statements. He testified at the trial that the gun was discharged accidentally; that he just heard one explosion and then another; that he did not know what was happening because he was out of himself. Yet he gave to understand in the same breath that he was aware of what occurred, stating that Guereva rushed toward him after he wrested Guereva's pistol. d in Exhibit G, one of his statements before Captain Fernandez, he was more definite and less ambiguous and did not claim ignorance of what happened. He said that after he seized the pistol from Guereva's hands, Guereva dashed away and he pulled the trigger twice after which Guereva fell to the ground. Note the contradiction. One statement says Guereva ran away from him; another says Guereva lunged forward to attack him.

Vivencio R. Carpio, district health nurse who examined the body of the deceased on the beach before it was removed or touched, testified that he did not find any bruise, contusion or any other sign of violence on the person of the deceased. He discovered no indication that Guereva had been knocked down with a blow on the chest.

The falsity of the theory of struggle for the possession of Guereva's gun is clinched by Badiango's testimony to which reference has already been made—that Lacson had the pistol before he and Guereva got to the beach. This testimony, as has also been pointed out, was not denied by the accused. This bit of evidence is all the more trustworthy because the accused himself said he once had Guereva's weapon and practiced shooting with it.

One thing the accused made clearly understood in his testimony and extrajudicial statements amidst their incoherence and contradictions is that he and Guereva were on their feet when Guereva was hit twice. But the trajectory of the missiles as revealed by Guereva's wounds gives the lie to this assertion.

Carpio declared that Guereva's body was "lying straight on his back with the face turned upwards; the body was naked save for a little swimming trunk." Before touching it, he said, he saw a bullet wound on the right side of the forehead, two or three inches above the right eye. He said, he turned over the corpse and saw another bullet wound on the occipital region just below the skull. The bullet that entered in the forehead lodged in the left side of the occipital region penetrating through the brain. He extracted this bullet with his scalpel simply by making a shallow incision in the scalp. The wound in the back of the neck, he added, was about two inches deep and he could touch the bullet with his finger. He further said there were two bullet holes in the back of Guereva's buri hat, one on the edge of the upturned brim and another at the base of the crown. Both holes were caused by one bullet and would fit into the decedent's wound just mentioned if the hat were put on his head. The hole produced by this bullet slightly sloped forward, about 10 degrees below horizontal.

Carpio rightly opined that the shot that caused this wound was fired from behind and that Guereva's head was on a level lower than the hand that pulled the trigger. He also correctly concluded that the shot from the back was the first of the two. He reasoned that if the forehead wound had been inflicted first, the hat could not have been on Guereva's head when he received the other shot. It was not possible for the first shot not to have knocked off the hat.

Furthermore, the direction of the missile that struck the forehead—from the forehead above the right eye to the left occiput—is testimony to the fact that the deceased was down on his back when he was hit by that shot.

The defendant's account of the affair at the trial is in substantial agreement with his statements to Captain Fernandez but is widely at variance on material details with his statement to the chief of police on April 24. To the chief of police he denied having killed Guereva or seen the killing. He denied having gone with the deceased anywhere on the 23rd or having taken away Guereva's money and pistol. He said that on that date, at 7 o'clock in the morning, he looked for Buenaventura Guereva in EguJa's house; that he wanted to see Guereva in connection with the carabaos which they were buying in Mias; that Guereva invited him to go to Dalman's house at Piao and they went there at 8 o'clock; that after they left Dalman's house they separated and he did not know where Guereva went from there; that he "went to the countryside where Guereva said there were carabaos for sale. What is more important, he insinuated that somebody else had slain Guereva. He swore that Guereva had a misunderstanding with a companion by the name of Peping in regard to a deal about which they could not come to terms; that he was with Guereva and Peping at a dispensary when these two were arguing; that Peping was not with him and Guereva at Dalman's house, "but" he added, "as I arrived from the mountains or the interior part when I left Ben, I passed by the house of ex-Treasurer Eguia and asked the mother of the ex-treasurer if Ben already arrived, and she told me that he arrived and left at once for Piao river to take a bath accompanied by someone; I guessed it was Peping." He said that when he did not find Guereva in Eguia's house and was told that Guereva had gone for a swim with someone, he stayed in town. Asked if he knew what happened to Ben, he answered, "No, I don't know." When he was told that Ben had been murdered presumably with his own pistol, he remarked that he only "knew it last night when I was brought (arrested)."

This deliberate falsehood and defendant's endeavor to absolve himself of any participation in the crime is absolutely irreconcilable with a clear conscience of one who had killed another accidentally or in defense of his person. The adverse implication of his lying is too manifest to need elucidation or to be explained away with his un-reasonable version of the slaying, even if we disregard all the Government's positive and unimpeachable evidence which repels his story.

Other proofs of defendant's guilt of the crime charged are his attempted flight immediately after the commission of the crime and his spending of some of his victim's money and concealment of the rest.

The defendant hurried to the FEATI office at Dipolog, a neighboring town, to board a plane scheduled to leave for Manila on the same morning Guereva was murdered. He then had, without doubt, Guereva's money and pistol. As the plane had left one hour before he arrived, he booked passage for the following day, although he changed his mind after he got the ticket and did not make the trip. The defendant's explanation that he wanted to surrender to the authorities in Manila because his parents, who were in that city, could help him and could file a bond for him is untenable. The Manila authorities, as he very well knew, had no jurisdiction over the case, and if bond was to be allowed, as he also must have known, it had to be passed upon in Katipunan. Moreover, he had a brother-in-law and a sister in Katipunan with whom he was staying and who apparently were well off. There was nothing his father could do for him in Manila that his parent and defendant's brother-in-law could not do in Mindanao. That the defendant desisted, after paying for a ticket, from his projected flight only shows the confusion of his mind, a confusion in itself a sign of a troubled conscience brought on by the consciousness of the enormity of his crime.

By his own admission, defendant picked Guereva's rolls of bills from the pocket of Guereva's trousers and carried them away together with Guereva's pistol. Out of this money he, we believe, paid for the airplane ticket, and out of this money he tried to buy a package of cigarettes and a bottle of beer offering a ten-peso bill for which the storeowner had no change. Dionisio Tabelaeran, the storeowner, testified that the accused took out of his pocket a

wad of ten and twenty-peso bills "as thick as your finger." The accused, he said, was perspiring copiously and looked around nervously as he pulled out and opened the package of paper money.

Taking his victim's money and pistol is not, by any standard, the reaction of an intelligent man (the accused had finished 2nd year high school) who had killed his adversary accidentally, in self-defense, or in a fit of obfuscation. His reaction by all standards is, rather, to leave everything as it is and to notify the first person he meets or the authorities. Near the place of the killing were Badiango and the Tagbacs, one of whom, at least, he saw when he was returning to town. In the remote event the killer could take the money and the weapon of his antagonist with innocent purpose, he would hand them over to the proper officers of the law at the first opportunity.

What the accused did was to entrust the revolver and the money, or part of the money, to friends for safekeeping, even if they happened to be an Army Major's servants. There is no indication that, as he now says, it was his intention to give them to Major Pintoy, his friends' employer, when the Major arrived. There was no reason to wait for Major Pintoy who was away on inspection and the date of whose return was not known. Other officers there were aplenty, officers who not only could be trusted with the money and the pistol but had started looking for those very things as well as the author of the crime.

As a matter of fact, the accused refused to divulge the whereabouts and the ownership of the money and of the pistol when he was already under arrest. The money and the pistol were recovered not through his revelation but because Major Pintoy's servants produced them of their own volition. It was only after the pistol and the cused admitted having taken them. We have seen that to the chief of police he insisted that he knew nothing of Guereva's money and arm. And to Captain Fernandez, who took over the case from the chief of police, he, accused, for some time would not admit that the pistol belonged to the deceased. He declared before Captain Fernandez that the weapon had been left to him by a friend whose name he could not recall. At first he denied that it was the pistol with which he had shot Guereva. In fact, he denied having killed Guereva. Not before he was confronted with the findings of the military police did he break down and admitted, "Yes, sir, I killed Buenaventura Guereva." As to the money, it took Captain Fernandez some effort to make him state how he came to have it.

If as the accused said, he was afraid to tell the truth because he was familiar with the practice of the Military police of maltreating prisoners, he gave no reason why he lied to the chief of police, or why he did not give himself up and turn the money and the pistol over to the councilor who also investigated the murder, or to the mayor, or to the justice of the peace. The said councilor, it is interesting to note, was no other than ex-Treasurer Eguia whom the defendant frequently mentioned in his testimony and statements. At any rate, there was no reason, as he must have known, to be afraid of being maltreated by the military police if he would only make a clean breast of everything. With the experience which he said he had as a former member of that organization, he undoubtedly knew that only suspects who refused to confess were subjected to improper treatment.

When and how Lacson conceived the plan to kill Guereva only the latter could have partly disclosed. But from the defendant's testimony it appears that he knew Guereva was carrying much money with him. He declared that Guereva had gone to his (Lacson's) brother-in-law's house in search of carabaos for sale. We think the defendant's testimony that he went around with Guereva looking for carabaos was correct, as far as that goes.

There was robbery and the evidence on this point is not wholly circumstantial. Quite apart from what has been said regarding defendant's use of some of the money, a large part of Guereva's cash remains unaccounted for.

Anselma Guereva, Buenaventura's widow, testified that her husband left Zamboanga city for Katipunan on April 8 with P5,350. She said that she had kept that money as a wife before her husband took it from her and tucked it in his clothes. Of this amount, she declared, her husband paid P350 for five carabaos, according to information

given her when she came to Katipunan after her husband's death. And Emiliano Yap, Guereva's partner, was positive that Guereva had bought and paid for only five carabaos at P70 each before he was killed. He swore that Guereva on April 20 had P5,000 unexpended. He emphasized that as partners he and the deceased knew what each had done and spent. We may add that if Guereva had bought more than five carabaos, the cattle could not have been missed and the certificates of ownership would have been issued to the purchaser. Guereva had no reason to hide the carabaos and the transaction about them from his partner; and the accused, on trial for his life, would have left no stone unturned to produce or point to them. With his close association with the deceased in the latter's search for cattle, it should not have been hard for him to locate the carabaos Guereva had purchased if he had purchased more than five.

Guereva had not paid for board and lodging when he was slain. Making allowance for small incidental expenses, Guereva's cash on April 23 was not much less than P5,000. There is therefore a shortage of more than P2,000. There can be no question that Major Pintoy's servants did not keep the difference. Although the accused said in one part of his testimony that he did not count the money he left with Major Pintoy's servant, later he admitted he did and that the amount was P2,600. The servants produced P110 more than that amount—P2,710.

There is an important fact which has been overlooked and which has a close bearing on defendant's intention with regard to Guereva's money and pistol. Lacson deposited that money, or part of that money, and the pistol with Major Pintoy's servants only after he missed the plane for Manila on the 23rd. He went straight to the airport from the place of the crime, as far as the evidence would show, except for a brief stop at a store to buy cigarettes and beer. If the accused had caught the plane on that date, Major Pintoy's servants would not have figured in this case. If he had succeeded in fleeing to Manila on the 23rd, he would have taken all the money and the pistol along. Was it his intention to surrender them to the Manila authorities too?

The defendant testified that he had P175, what was left, he said, of the amount given him by his father when he came to Zamboanga. There is complete absence of proof of the existence of this money outside of the defendant's self-serving testimony. On the contrary, as we have seen, the bundle from which he took the Treasury note which he tendered for a package of cigarettes and a bottle of beer was Guereva's money.

Emiliano Yap gave persuasive evidence that the accused was "broke." He said that on April 20, he and Guereva invited Lacson to eat in a carinderia and that at the table the defendant confided to them that he wanted to elope with a girl and lamented the fact that he lacked funds. As defendant's counsel stated in their brief in connection with another point, P175 was more than enough to enable their client to carry out his wishes. The argument is correct except that the accused, as he admitted to Guereva and Yap, did not have that amount.

In view of all these considerations, we are of the opinion that the judgment of the trial court should be affirmed with costs, except that the indemnity should be raised from P2,000 to P6,000. It is so ordered.

Moran, C. J., Perfecto, Bengzon, Montemayor, and Reyes, JJ., concur.

CONCURRENTE

PABLO, M.:

El mismo acusado admite que con dos tiros de revolver, el mato a Buenaventura Guereva despojandole despues del dinero que tenia. Y, como defensa, declara en sustancia lo siguiente: Que segun convenio, ayudaria a Buenaventura a comprar carabaos bajo compensaeion de P5 por cada cabeza comprada; que en la maiiana del 23 de abril de 1947 fue a la casa de Teodoro Eguia para ver a Buenaventura y cobrar los P25 que le debia, como

recompensa de sus trabajos ya prestados, y no le pago diciendo que no tenia entonces dinero porque estaba en la casa de Piao. Fueron a la casa de este. Buenaventura subio. Al bajar, el acusado le pregunto si ya habia obtenido dinero y Buenaventura le dijo que no se preocupase; que no ha de volar con el dinero; que tenia tanto que podia comprar aun a su novia. Buenaventura el invito a tomar un bano en la playa. El acusado le acompaño, pero le advirtio que no podia tomar un bano porque estaba con fiebre. Mientras iban hacia la playa, el acusado reitero la cobranza de la cantidad de P25 porque tenia necesidad de ella, a lo que Buenaventura contesto que no se preocupase. Al llegar a la playa, Buenaventura se dispuso para tomar bano. Preguntado Buenaventura por que se mostraba reacio en pagarle los P25, contesto; "No te preocupes porque, ya te he dicho, puedo comprar inclusive a tu novia." El acusado le dijo que no debiera hablar de otras cosas sino de su negoeio; que no hablase de su novia porque si lo repitiese podria enfadarse. Por esto, sostuvieron una lucha y cuando Buenaventura eacaba su revolver el acusado se lo arrebató, le disparó dos tiros por los cuales murio. Textualmente, continuo declarando:

"Yo estaba para proceder a Katipunan, pero cambie de parecer. Lo que hice era volver al sitio de la escena y recoger cualquier cosa de valor; y, como no encontraba ali mas que dinero solamente, saquis el dinero, porque si cualquiera cosa despiies se perdiese podria ser yo responsable. Estando yo en el camino, estaba un poco desorientado, no sabia a quien dar cuenta del hecho, hasta que llegue a pensar en el camino de entregarme a las autoridades en Manila, porque mis padres estaban en Manila y así me podrian ayudar e inclusive podran prestar fianza a mi favor. Estando ya en Dipolog', me dirigi inmediatamente a la Oficina de la FEATI y corrpre un billete; despues de haber coneeguido el billete de la FEATI, estaba pensando en lo que podria hacer mejor. Estando en ese estado de animo, si iba a Manila, me podrian inclusive acusarme de haberme escapado del lugar. Así es que me decidi entregarme al Major."

Los hechos expuestos por el acusado no le eximen de su responsabilidad como autor del delito de robo con homicidio.

Que el acusado cometio el delito de robo con homicidio la comprueba Dionisio Tabelaeran, dueno de una tienda en el barrio Menang del municipio de Katipunan, que declaro que el acusado habia acudido a eso de las 10:00 de la manana del suceso a su tienda para comprar una cajetilla de cigarrillos Chesterfield y una botella de cerveza; que al pagar saco de su bolsillo un manojo de billetes del grosor de su dedo y los billetes eran de P10 y P20 de denomination y el ultimo de los cuales era de P5 que saco para pagar la cajetilla de cigarrillos. Como el acusado, segun el mismo, no tenia mas que P175, entonces aquel manojo de billetes de un dedo de grosor no podian ser los P175 sino parte del dinero que habia sustraído de las ropas de Buenaventura. Habia hecho uso del dinero de Buenaventura. De esto podemos deducir que el acusado obraba con miras de lucro al apoderarse del dinero.

Ademas, no es imposible que despues de oir expresiones impropias contra su novia y de varias e infructuosas co-branzas, haya dicho para su capote: "Puesto que no me pagas a buenas los P25, te los cobro de otro modo." Y así cobro su credito, con derramamiento de sangre: lo cual es incompatible con su declaracido: "Lo que hice era volver al sitio de la escena y recoger cualquiera cosa de valor; y, como no encontraba alii mas que dinero solamente, saque el dinero, porque si cualquiera cosa despues se perdiese podria ser yo responsable."

Si posteriormente, al fracasar su viaje en aeroplano a Manila, el acusado deposito el dinero y revolver en poder de un criado del Major Pintoy, ello no puede considerarse como desistimiento de la comision del delito porque ya estaba cometido. La mas favorable presuncion a su favor seria que quiso restituir la cantidad robada que es, despues de todo, obligation del que comete el delito de robo.

Esa restitution del dinero y revolver no convierte el delito de robo con homicidio en homicidio solamente. Robo con homicidio es un delito complejo (art. 294, Cod. Pen. Rev.), solo e indivisible. (Sentencias del Tribunal Supremo de España de 17 de Diciembre de 1875 y 11 de Septiembre de 1878; Estados Unidos contra Villorente y Bislig, 30 Jur. Fil., 62; Estados Unidos contra Perez, 32 Jur. Fil., 172; Estados Unidos contra Landasan, 35 Jur.

Fil., 366; y Pueblo contra Mantawar y otros, 80 Phil., 817. Por la restitution de la cosa robada no puede descomponerse en robo y homicidio (dos delitos) el indivisible delito de robo con homicidio.

Voto por que el acusado sea condenado por el delito de robo con homicidio y no por el delito de homicidio solamente.

DISSENTING

PARAS, J.:

This is an appeal from a judgment of the Court of First Instance of Zamboanga finding the appellant, Alfredo Lacson, guilty of robbery with homicide and sentencing him to reclusion perpetua and its accessories, to indemnify the heirs of Buenaventura Guereva in the sum of P2,000, plus P2,290 and the costs of the prosecution.

In the morning of April 23, 1947, the dead body of Buenaventura Guereva, almost naked except for a bathing trunk, was found lying flat on his back at about two hundred meters from the bank of a river in barrio Piao, Katipunan, Zamboanga, with his buri hat beside him. The cause of death was two mortal .32-caliber bullet wounds, one at the nape of the neck two inches deep without any exit, the bullet having lodged at the base of the skull, and the other on the right temple penetrating through the brain and skull, also without exit, the bullet having lodged just beneath the scalp of the occiput. Nobody saw the killing, but the appellant was prosecuted therefor and convicted, as already stated, of the crime of robbery with homicide, the theory of the prosecution being that the appellant, being in need of money and knowing that Buenaventura Guereva had with him his money with which he was to buy cattle in Katipunan, for sale in Manila, shot the latter twice with Buenaventura's revolver which was then in appellant's possession; that after Buenaventura had fallen dead, the appellant took away from Buenaventura's clothes piled under a nearby tree his money amounting to some P5,000. Appellant's conviction was based purely on circumstantial evidence, against which he alleged that he fired the two fatal shots at Buenaventura unknowingly in the course of a fight between them and after the appellant was able to wrest from Buenaventura the latter's revolver; that the challenge to fight came from Buenaventura due to the insistence of appellant in collecting a commission of P25 which he earned for helping Buenaventura buy five heads of carabao, a commission which the latter, however, then refused to pay; that seeing Buenaventura dead, the appellant thought of getting Buenaventura's money with the view only of safeguarding it; that the appellant indeed deposited Buenaventura's money and revolver with the servants of the MP provincial commander, Major Pintoy, in the absence of the latter to whom he really intended to personally deposit Buenaventura's belongings.

Upon a careful examination of the record, we are inclined to adopt the view of counsel for the appellant, namely, that conviction should be only for homicide. If speculations are to be made, they should be in the form favorable to the appellant, not only because there is the legal presumption of innocence but because culpability should be established beyond any reasonable doubt. As admitted by the prosecution, Buenaventura and the appellant had been acquainted for three days and the evidence is not sufficient to establish any relationship of confidence between the two. If so, it is hardly possible that the appellant could have managed to borrow, prior to and until the date in question, Buenaventura's revolver. The fact that the sum of P2,710 was really deposited with the servants of Major Pintoy and actually recovered, strongly negatives any intent of gain on the part of the appellant when he took possession of Buenaventura's money. That the appellant needed money is not in itself proof that he would steal or rob. Moreover, there is uncontradicted evidence that he had some money, even if only P175. It is alleged for the prosecution that the appellant needed money since he intended to elope with his sweetheart. If this was true, it is strange that he would commit a heinous crime that would virtually prevent him from accomplishing his aim. Indeed, Buenaventura could not have had on the occasion in question the amount of P5,000 in his pocket,

because the very witness for the prosecution, Pablo Ibaleros, testified that previously, or in the month of March, Buenaventura bought 45 carabaos, two at P50 each and forty three at P60 each, aside from five more heads at P70 each, or a total of P3,280. The latter amount, if summed with P2,710 (the money deposited by the appellant with the servants of Major Pintoy), nearly approximates the alleged capital of Buenaventura, especially if it is borne in mind that it was only the latter who could have known the exact amount of his money, and that the evidence for the prosecution on the point must be more or less conjectural.

It is argued, however, that the appellant, immediately after the incident in question, sought passage for Manila by plane, an intended flight by which he could effect his escape, and an act inconsistent with innocence. Appellant's explanation is that he contemplated giving up to the authorities in Manila where his parents could help him. It is not pretended that the appellant attempted to buy a ticket for his sweetheart, and this further negatives the allegation that he might have committed the robbery in order to carry out the elopement of his sweetheart. Appellant's explanation may not be sound, but we certainly cannot judge his subsequent actions by normal standards. The appellant's mind might have been upset by the unusual event and he could not be expected to have reacted in a perfect way. This perhaps accounts for the fact that he was at first reluctant to give the version contained in his affidavits, Exhibits F and G, which, as admitted in the brief for the Government, tally substantially with his testimony at the trial.

The location of the bullet wounds and the absence of any other injury, bruise or contusion in the body of Buenaventura are not positive proof that there was no fight between the latter and the appellant. The blow that the appellant was able to give to the deceased hit the latter's stomach, and if there was no trace, it might have been due to lack of sufficient force. The existence of such a fight, on the other hand, convinces us that the appellant knowingly fired the shot that killed Buenaventura, for which he is of course liable, the offense being properly classified as homicide, without any modifying circumstance.

I am, therefore, of the opinion that the appealed judgment should be reversed, and that another should be entered sentencing the appellant to an indeterminate penalty of from 8 years and 1 day, prison mayor, to 14 years, 8 months and 1 day, reclusion temporal, to indemnify the heirs of the deceased Buenaventura Guereva in the sum of two thousand pesos, and to pay the costs of prosecution.

FERIA, J.:

I concur in this dissenting opinion. Judgment affirmed indemnity raised.

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