

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FELICISIMO CANOY AND FELICIANO ESTENDER, DEFENDANTS AND APPELLANTS.

G.R. No. L-4224. December 28, 1951

Ponente: TUASON, J.

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TUASON, J.:

This was a prosecution in the Court of First Instance of Negros Occidental for two murders and one frustrated murder charged in one information. The accused, now appellants, were, found guilty of the three crimes and having been given the-benefit of the mitigating circumstance of surrender, were each sentenced from 12 years and one day to 17 years four months and one day of reclusion temporal for each of the crimes of murder, and from four years two months and one day of prision correccional to 10 years and one day of prision mayor for the crime of frustrated murder.

The facts in so far as they are not controverted are these: On the morning of June 7, 1948, the judgment in a civil case for unlawful detainer rendered by the Justice of the Peace of San Carlos, Negros Occidental, against Loreta Rivera was executed through the Chief of Police, accompanied or assisted by the herein accused who were special policemen in the employ of the plaintiff, Emilio Broce. On the land involved in the judgment and execution stood Loreta Rivera's house, a makeshift affair whose floor was about one meter from the ground, and a fruit-bearing mango tree not far from that house. In the execution the Chief of Police "gave" the possession of the land to the execution creditor but did not then have the house removed or destroyed.

Between two and three o'clock in the afternoon Felicisimo Canoy and Feliciano Estender, armed with a Thompson submachine gun and a carbine, respectively, came back and saw on the mango tree picking fruit, Eusebio Dinglasa, 17, and Teodorico de Paz, 15, both relatives of Loreta Rivera. In the house at the time was Perfecto Apurado, one of the deceased, alone Rivera and her husband and children being out.

For reasons and under the circumstances about which the proofs are in disagreement, Eusebio Dinglasa and Perfecto Apurado were shot and killed and Teodorico de Paz wounded by the two accused, or by Canoy alone.

When the Chief of Police, appraised of the shooting, came with the District Health Officer, Dr. Arturo A. Cruz, to make an inquest, Apurado's cadaver was stretched on the ground at the foot of the stairs of Loreta Rivera's house, and Eusebio Dinglasa's body under the mango tree.

In Perfecto Apurado's body the physician found—

"(1) A gunshot wound on the left arm with an entrance on the interior side of left arm passing thru the biceps muscle, with a compound fracture of the left humerus and with an exit on the outer side of left arm.

"(2) Gunshot wound with an entrance on the right posterior axillary region at level of the nipple passing obliquely downward to the left and with an exit on the left side of the abdomen just below last rib.

"(3) Gunshot wound left thigh just above the left knee with an entrance on the external thigh and an outlet on the posterior side.

"(4) Bruises, right thigh.

"(5) Superficial wounds on the left lumbar region,"

Examination of Eusebio Dinglasa's body revealed these wounds:

"* * * gunshot wound with an inlet on the left axillary line just at level of the intersection of a line drawn 4 inches below the left nipple to the mid-axillary line going obliquely upward to the right side passing out thru the right axillary region just at level 2 inches above the right nipple and entering the right bicep muscle and the bullet lead on the outer side of the right biceps; the bullet when extracted was found to be a .45 caliber lead.

"(2) A clean superficial wound running horizontally just above the right nipple, to the left nipple."

And Teodorico's de Paz's injuries were described to be—

"(1) Gunshot wound at the right outer leg just 3 inches below the right knee and about 1/2 centimeter in diameter passing obliquely downward thru the flesh, with an exit at the interior side of the leg just 5 inches below right knee and about 1 cm. in diameter.

"(2) Gunshot wound left lower leg having an entrance on the interior side of left leg just 3 inches below left knee and about 1/2 inch in diameter passing out to the external side of left leg just 5 inches below left knee and the wound 1 inch in length and 1 inch in width with partial fracture of tibial bone."

Three witnesses gave evidence for the prosecution. Teodorico de Paz testified that when Canoy and Estender arrived, Canoy told them to come down from the tree but that before they could obey, Canoy fired upon them and Dinglasa fell to the ground mortally wounded from a height of about 12 feet. Paz⁵ the latter declared, although wounded in both legs did not drop and stayed on the tree until Canoy went off. When Canoy opened fire Estender had gone elsewhere and was not seen by the witness. Gabriel Apurado substantially testified. After cleaning his yard at about 12 o'clock and taken his noon meal, he took his siesta in Conrada Coloyacoy's house. He was awakened from his nap by the reports of guns and, looking out the window, saw Imoc (Felicisimo Canoy) with a Thompson in his hands near the mango tree. From the mango tree Canoy went to Loreta Rivera's house and climbed the batlan from which he fired into the house. After firing, Canoy jumped down and stood in front of the stairway where Canoy took some object from his trouser's left pocket. Afterwards Estender and Canoy shouted "retreat" one after the other and scampered off. Estender had a carbine and had fired in the direction of Loreta Rivera's house. When Canoy joined him.

The appellants in their brief, summarized and elucidation their version of the occurrence as follows:

"As special policemen it was the defendants' duty to maintain peace and order in the places assigned to them.

* * * * *

"Altho not a party in the ejectment case (Civil Case No. 733), Perfecto Apurado, who claimed an interest on the land in question as one of the heirs of the Apurado family, was present when the Chief of Police turned over to Emilio Broce the possession of the land in question. Perfecto Apurado appeared very excited and angry and in an aggressive attitude told the Chief of Police that he was not preventing him from delivering the possession of the property to Emilio Broce 'because you are a person in authority' but aggressively and gesticulatingly he promised to get back the possession when the Chief of Police will be away * * *."

"In the afternoon of that day, at about 2:00 p.m., the accused Feliciano Estender and Felicisimo Canoy complying with a regular duty returned to Tiboco to watch the place and * * * noticed the presence of two

persons gathering mango fruits from up the mango tree. Feliciano Estender shouted at them 'get down, why do you steal mangoes?1 But they did not get down, so Estender repeated his order, to which they answered: 'we are not going down, manong pitoy (Perfecto Apurado) ordered us' Estender told them: 'if you do not come down, I will should you1, and shot twice in the air to scare them. As he was under the mango tree, some branches were broken and the two fellows were scared, so they went down. The boys, of course, were not hit. "When they were already down, Feliciano Estender was satisfied, and he thought that the whole incident was over, so he left Canoy to watch near the mango tree, and he went to a nearby field which was being plowed. In the meanwhile, and Just as Estender went away, Teodorico de Paz sensing something or probably knowing that his companions were apt to do something, he went in the direction of some banana trees and bushes and remained there in hiding, Eusebio Dinglasa however, remained near the mango tree, as if waiting for something. Felicisimo Canoy then began to lecture Dinglasa and was advising him not to steal mangoes again, and suddenly he heard the voice of Perfecto Apurado who came from Loreta Rivera's house (10 meters from him) and rushed toward him saying; 'I ordered them, police.! Felicisimo Canoy finding himself in that predicament, and when Apurado was about six meters from him, made a sign with his hand and gun and told him 'Tio Pitong, I am armed, do not approach me,1 Apurado stopped at a distance of six meters from Canoy and retreated about one meter; then he swerved his body as if to hide something and started getting an object from his left pocket; evidently it was not so easy to pull it out from the left pocket of his pant, so, he used his right hand to hold the pocket while his left hand was pulling the thing out. Felicisimo Canoy watched him very closely and when he recognized that Apurado was getting a hand-grenade from his left pocket and was bringing it to his mouth to remove or to pull the pin, he fired at him with his Thompson, hitting him on the right posterior axillary region. At that time, Felicisimo Canoy was on a higher level than Perfecto Apurado, so the bullets had a downward direction."

"When a Thompson sub-machine gun is fired, unlike ordinary pistols, a batch of bullets are discharged; hence, when Canoy fired, a bullet hit Apurado's right posterior axillary region passing obliquely downward to the left side of the body; another bullet hit his left arm, which undoubtedly was exposed when he pulled out the hand-grenade from the left pocket; and a third bullet hit the left thigh of Apurado,"

"Upon being hit, Perfeeto Apurado reeled in the direction of the stairs of Loreta's house, which was only three (3) meters away; undoubtedly the man thought of returning to the house, and tried to scale its low stairs (it had only 3 steps and the third step was resting on the door), but as he was about to reach the door, he staggered and fell dead in front of the stairs, and the hand-grenade too fell and rolled down,"

"Felicisimo Canoy saw how the hand-grenade fell to the ground, and fearing an explosion, he threw himself to the ground for safety, face downward. He was then near the mango tree."

"Eusebio Dinglasa was also there, waiting for his chance, and when he show that Canoy was lying down on the ground, he thought that that was his only chance and rushed at him with a knife; unfortunately for him, before he was able to strike, Canoy noticed him and in a split second he fired his Thompson and Dinglasa staggered and reeled toward the mango tree and died a few minutes later. He was fatally hit below the nipple."

"Teodorico de Paz who was hiding behind the banana trees and bushes was reached by some of the astray bullets discharged by the Thompson and was wounded on his two legs, one of which suffered a fracture of the bone; * * *."

"Mariano Sabagala and Loreta Rivera were the first to arrive at the scene of the tragedy; when they arrived, the two accused Felicisimo Canoy and Feliciano Estender were no longer there. Sabagala and Loreta Rivera saw Perfecto Apurado already dead near the stairs of Loreta's house; they saw also a hand-grenade near the head of Apurado. After seeing Apurado's dead body, they proceeded to the mango tree and there they saw Eusebio Dinglasa's dead body, under the mango tree. Eboy as they knew him was lying 'de costado' and near his body they am a knife, Exhibit K. Soon thereafter, they heard the moan of a person, not far from them, and they immediately went in the direction of the moan; they found Teodorico de Paz, Loreta's step son, behind the

bushes and banana trees, and could not walk due to the grave wounds he had received on both legs. So they carried him and brought him to the Casa Comite. Teodorico then told Loreta that Perfecto Apurado had ordered them to gather mango fruits."

"At that time many people had arrived, * * *. Dinglasa's brother named NENE, was seen near the cadaver of Eusebio Dinglasa touching his brother's dead body. When the Chief of Police and the Doctor arrived, the crowd retired and gave way to the public officials. The body of Dinglasa was already lying "face upward" and the knife was returned to the scabbard. The witness Mariano Sabagala testified that probably 'Nene' the brother of Dinglasa performed the change."

The testimonial and circumstantial evidence for the prosecution is overwhelming, as we see it, leaving aside the defendants' confessions-. It should not take long to dispose of the case were it not for the great vehemence with which counsel pleads for his clients' acquittal.

Dinglasa's wound which was described as having an upward direction and from which a .45 lead was extracted, makes it certain that the deceased was at a point higher than the assailant when the former was hit. The trajectory of the missile that caused this wound fits in with Paz's testimony that Dinglasa was on the tree, about 12 feet above the ground. But Canoy, to counteract this inference, said that Dinglasa was on his feet on the ground and he (Canoy) was flat on his stomach when he fired. This testimony is belied by these facts

Dinglasa's knife was in its scabbard which was fastened to his waist at the back and was under the dead body, as witnesses swore. Mariano Tabagada's assertion that Nene, Dinglasa's brother, touched that knife, insinuating that Nene very likely put it back in its sheath, was, in the opinion of the trial court, a falsehood. Said the court, with whom we fully agree

"En las circunstancias en que se hallaba el cadaver tendido boca-arriba y con la vaina hacia la espalda, era improbable que el paiiente de marras del occiso haya tenido el humor de buscar donde estaba la vaina y al encontrarlo haya vuelto a poner en ella el cuchillo. Por otro lado, consta de las pruebas que este testigo, Mariano Tabagad, que era cabo de Emilio Broce y que tenia frecuente contacto casi a diario con este, si fuera cierto que habia presenciado la tragedia, no lo hubiera guardado en silencio hasta dos semanas, despues de las cuales fue cuando se lo comunic6 a su amo. Bajo estas circunstancias, y habiendo observado la conducta y manera de declarar de este testigo Mariano Tabagad durante el tiernpo de su testimonio, el Jtaagado no le da absoluto credito."

For another thing, it would have been foolhardy for Dinglasa to conceive and carry into execution the Idea of attacking with a short knife policeman who was watching him closely with a sub-machine gun poised to shoot, and who had a companion also armed with a powerful weapon*

The reason given why Canoy, as he declared, was in a prone position on the earth, was that Apurado had tried to throw a hand grenade and that Canoy lay low to get out of the way of its charge. The great weight of probabilities tends to show that the hand grenade belonged to Canoy himself and was planted by him. The court noted that Canoy had been a guerrilla and was a special policeman which strenghtens the probabilities mentioned.

The reverse of the trajectory of the bullet that caused Dinglasa's wound, the bullet which pierced through Apurado's body ran downward reckoned in relation to man's standing position. Canoy's explanation that he fired from a point higher than Apurado does not jibe with his own evidence, that he and Apurado were on their feet in the yard few feet apart. From the sketch of the place introduced in evidence and from all other indications, it does not appear that the earth was unlevel.

That Apurado made an attempt to attack Canoy with a hand grenade was utterly improbable. With a younger man a few feet away holding a deadly weapon, and with nothing to shield him from Canoy's fire, Apurado must have

known it would be suicidal to go through the slow motion of extracting a hand grenade from his hip pocket and pulling out its pin with his teeth in plain sight of his adversary. The most convenient place from which to toss such weapon was inside the house whence Apurado is alleged to have come out and where he could have set the contrivance to explode with comparative safety to himself.

Drops of blood were found on the steps and at the portal of Loreta Rivera's house. This is mute testimony that Apurado received his wounds inside the shack. If there were no blood stains inside the house, the absence could easily be accounted for by the fact that the cot on which Apurado was lying, or sleeping, was only one foot from the stairs, and that bullet wounds do not bleed profusely and not always immediately. This is especially true of old and sickly people, and Apurado was 59 years of age and was not in good health. Extended on a cot with his feet close to the door, and abruptly shaken by the bullets that struck him, it is fairly safe to assume that Apurado by instinct jumped up upon being awakened and walked down the stairs or tumbled into the yard. In the split-second between the instant he was hit and the instant he reached the doorway, the trickle of blood, if any, that oozed from his injuries could have been absorbed by his clothes.

The presence of blood on the house steps from the doorway down is as inconsistent with Canoy's story as it is decisive of the Government's case. It is said that after being wounded Apurado ran up the stairs but fell upon reaching the top rung. We are unconvinced. Old, sickly and fatally injured, Apurado would have escaped, if he still could run, to a place demanding less physical efforts to reach.

No less damaging to the defendants' case is the circumstance that two of the empty shells introduced in evidence had been picked up by the Chief of Police behind the batalan, which was on the side almost opposite to where the house steps (at the foot of which Apurado dropped dead) were located. Aside from these shells, the galvanized iron side wall of the house bore four new bullet holes, two from a Thompson and two from a carbine, judged by their sizes. They were easily distinguishable as to newness from the rest of the holes in that their edges were shiny and clean while those of the others were rusty, according to the Chief of Police. These holes are incontrovertible demonstration of the untruth of the defendant's evidence that Apurado was shot down in the act of assaulting Canoy in the yard.

It is well to keep in mind that Paz's, Gabriel Apurado's and Rivera's testimony is the basic evidence for the prosecution. The circumstances hereinbefore referred to are only corroborative. With these corroborations, there is little or no room for doubt as to those witnesses' veracity. Without them, we still would not hesitate to accept their testimony as founded on fact. Their accounts of the shooting as written into the record have the ring of truth straightforward and simple, free of any signs of fabrication, exaggeration or affectation.. Of the defendants' narratives, it can be said they appear extremely unnatural. The appellants made a laborious effort to explain why Dinglasa's wound extended upward and Apurado's downward, and how blood happened to drop on the house steps and the doorway, but they did not and could not account for the empty shells below the batalan and the new bullet holes in the house wall.

We are fully satisfied that the crimes at bar were committed substantially in the forms related by the witnesses for the Government. This conclusion is further strengthened by defendants' signed confessions to the Chief of Police. Although these confessions disagree with the Government's version of the killing in details, that of Estender coincides with the above version in the important particular that Dinglasa and Paz were on the tree and Apurado was in the house when they were killed or wounded. Canoy, too, admitted in his confession that the "smaller child" was hit while on the tree and fell therefrom to the ground. These confessions are impugned on the theory that they were not sworn to before any officer authorized to administer oath» This deficiency does not render the statements inadmissible or of no probative value. Even oral declarations if voluntarily made are competent evidence and admissible.

On the appellant's responsibility, much depends on the existence of conspiracy. The trial court saw concert of action between the defendants in the perpetration of the three crimes. From the defendants' actions, from the bitter relations between Apurado and Broce, and specially from the incident that occurred during the execution of the justice of the peace's judgment, there is warrant for the belief that the accused did conspire together to do away with Apurado, and returned to the land in dispute for that purpose.

It will be recalled that when the Chief of Police delivered the possession of that land to Broce in the presence and with the assistance of the accused, Apurado was excited and told the officer that he would ignore the court's decision and reoccupy the house and lot when he left. Aside from this litigation, there was a pending one between the Apurado and the Broce families over the same or other property. Apurado's open defiance could well have infuriated the accused or their employer. When, close on the heels of that defiance, the two accused came back and Estender went directly to where Apurado was supposed to be and fired into the house without the slightest immediate provocation, this appellant betrayed by his act a preconceived intention to slay Apurado. And from the fact that Canoy scurried to join his companion and also shot into the house, apparently from the same spot, the conclusion seems clear that he shared the plan to kill Apurado. The flight of the two defendants at the same time and in the same direction and their unison in shouting "retreat," completes the chain of evidence of a community of interest and objectives,

For Apurada's murder, then, the two defendants are equally criminally liable, regardless of whose shots inflicted the mortal wound or wounds.

But evidence of conspiracy with respect to the shooting of Dinglasa and Paz is found wanting. Indications are that the defendants came upon these boys casually, not expecting to find them on the tree. At least Estender did not seem to mind them much, much less do them harm. He did not stop to bother with them further than—perhaps—to ask what they were doing on the tree. Except for that possible brief pause, he walked straight to the house yard and was not around when Canoy fired at Dinglasa and Paz. Canoy alone therefore is answerable for the Slaying of Dinglasa and the wounding of Paz.

The court, in our opinion, erred in applying the mitigating circumstance of surrender. Canoy did not surrender himself within the meaning of Article 13, paragraph 7, of the Revised Penal Code. The Chief of Police placed Canoy under arrest in his employer's home to which that officer was summoned and brought in Broce's jeep upon Juvencio Broce's initiative or request. It does not appear that it was Canoy's idea to send for the police for the purpose of giving himself up.

Estender can not, within the contemplation of law, be said to have surrendered, either, by accompanying the Chief of Police to the scene of the crimes. He was not yet charged with, or suspected of having taken any part in, said crimes. The authorities were not looking for him, and would not have looked for him if he had not been present at the investigation by the Chief of Police. The most that can be claimed for this defendant is that he did not escape or go into hiding to evade a foreseeable arrest. This is not an extenuating circumstance.

In conclusion this is our decision: Canoy alone is guilty of murder and frustrated murder for the killing of Dinglasa and wounding of Paz, and both defendants are guilty of murder as co-principals for the death of Apurado. There being no mitigating or aggravating circumstances, and subject to the provision of Article 70 of the Revised Penal Code, Canoy is sentenced to reclusion perpetua for Dinglasa's murder and from 10 years of prison mayor to 10 of years and eight months of reclusion temporal for the frustrated murder of Paz; and Canoy and Estender will suffer reclusion perpetua for the murder of Apurado. Canoy will pay Dinglasa's heirs an indemnity of P6,000, and the two defendants will pay jointly and severally Apurado's heirs the same amount. Both defendants and appellants will also pay the costs. So ordered.

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

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