

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BRUNO UNAY, DEFENDANT-APPELLANT.

G.R. No. L-5590. June 23, 1955

Ponente: BAUTISTA ANGELO, J.

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Bruno Unay and his brother Godofredo Unay jointly charged with murder before the Court of First Instance of Samar and, after trial, Bruno was found guilty and sentenced to suffer reclusion perpetua, with the accessories of the law, to indemnify the heirs of the deceased in the amount of P2,000, and to pay one-half of the costs. Godofredo was acquitted for lack of sufficient evidence. This appeal only concerns Bruno Unay.

In the morning of February 15, 1951, at about 8:00 o'clock, Vivencio Candan, together with three companions, namely, Eutiquio Gallenera, Conrado Izquierdo and Leoncio Quilicol, went to his land in sitio Babawang, Mondragon, Samar to make caingin. While they were thus working, Caadan saw Bruno Unay in a squatting position point to the group, and besides him, his brother Godofredo holding an unsheathed bolo. As Caadan started to run he heard an explosion as a result of which Quilicol fell to the ground and died instantly. In the ensuing commotion, Caadan and his companions scampered for safety with the exception of Quilicol who fell dead. Eutiquio Gallenera also saw Bruno aiming his gun at the group for which reason he hid behind the trunk of a dead tree and from there he saw Bruno and his brother fleeing. Caadan and his two surviving companions proceeded to the poblacion where they reported the incident to the local authorities. In the afternoon of the same day, the chief of police and some constabulary soldiers repaired to the place to investigate. As an aftermath, the present charge was filed. The autopsy of the deceased showed that he sustained a gun shot wound, the bullet entering the left shoulder at the back below the neck and making its exit at the right side of the throat below the lower jaw, and that the cause of death was shock and hemorrhage.

The shooting appears to have been an offshoot of a dispute between Bruno Unay and Vivencio Caadan over the ownership of the land which was then worked and cleared by the latter on the date of the crime. Caadan testified that ten days before the shooting Bruno Unay went to house and warned him that he would shoot him and his men if they worked the disputed land.

Appellant set up the defense of alibi. He testified that in the night of February 14, 1951 he slept in the house of his sister Teodosia in the poblacion of Mondragon, Samar; that in the following morning, between 7 and 8 o'clock, he went to the house of Mayor Rufo Deguia to ask for advice regarding a case of theft he lodged against Vivencio Caadan with the justice of the peace sometime in December, 1950; that the mayor gave the opinion that the action

he should take is civil as suggested by the justice of the peace; that thereafter he went to the house one Alberto Cisneros where he took his breakfast and indulged in little drinking that Cisneros invited him that same morning to the house of his mother-in-law to take part in the celebration of her death anniversary where he took his lunch and was asked to deliver a brief speech; that thereafter he proceeded to a house of another sister, named Lucia, also in the town of Mondragon and did not leave the house until 2:30 o'clock in the afternoon.

This defense cannot be sustained in the light of the positive identification made of appellant by Vivencio Caadan and Eutiquio Gallenera who actually saw him aim his carbine and cause the explosion which resulted in the death of Leoncio Quilicol. That he acted in this manner is not strange considering the dispute that existed between him and Vivencio Caadan relative to the ownership of the land which was worked on by the latter and his companions. It was shown that ten days before the tragic event appellant went to the house of Caadan to warn him that he would shoot him and his men if they worked the land, and this controversy is admitted by appellant himself in his testimony. It may be that appellant, to make good his threat, aimed at his gun at Caadan but unfortunately the one hit was Quilicol. This circumstance however cannot alter the nature of his liability.

Another reason why this alibi cannot be sustained is its inherent incredibility, for if his purpose in going to the house of Mayor Rufo Deguia in the morning of the incident is merely to consult him regarding the case of theft he lodged against Caadan with the justice of the peace in December, 1950 it is strange that he had to do it precisely in the same morning, or after the lapse of nearly two months. Moreover, the house of Mayor Deguia was only about 3-1/2 kilometers away from the place of the crime which, even if the alleged consultation is true, could not have prevented him from committing the crime as claimed by the prosecution. It further appears that Alberto Cisneros, who was presented to support the alibi, is an ex-convict who served a long prison term for looting, a circumstance which detracts much from the value of his testimony.

An attempt was made to discredit the testimony of the two witnesses for the prosecution, Vivencio Caadan and Eutiquio Gallenera, because of certain alleged discrepancies between their testimony in court and the version they gave of the shooting in their affidavits Exhibits 1 and 2, but these discrepancies are more apparent than real for they do not destroy the fact that it was Bruno Unay who was seen by them having a carbine in his hand immediately after the explosion. Whether he was actually seen in the act of shooting or thereafter would appear to be immaterial.

As regards the claim of one Roman Lagrimas that ten minutes after the shooting Caadan and Gallenera told him that they did not know who shot the deceased, it appears that the same was denied by both Caadan and Gallenera, aside from the fact that, being relative by affinity of appellant, according to his own admission, Lagrimas may have been merely impelled to say so by a desire to save him from liability.

The decision appealed from, being in accordance with law and the evidence, is hereby affirmed, with costs against appellant.

Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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