

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HUGO PEREGIL AND SALVADOR MONDIDO, DEFENDANTS AND APPELLANTS.

G.R. No. L-3764. November 29, 1951

Ponente: REYES, J.

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REYES, J.:

At about 6 o'clock in the evening of June 11, 4-949, while Jovito Co, manager of the Visayan Shipping Company, was going home in a jeep after the day's work in his office on Muelle Loney in the city, of Iloilo, he was ambushed and fired upon by Hugo Peregil and his gang at the intersection of said muelle and Aldeguer street, about 20 meters from the company premises. Mortally wounded, Jovito Co died that same evening in the provincial hospital despite all medical effort to save his life.

Hugo Peregil was a member of the Hollo city police, who, contrary to civil service rules, was at the same time working for a commission as a passenger and freight agent, in which work he was aided by Salvador Mondido. Having been allowed to act as such agent for the Visayan Shipping Company, Peregil took offense when he was summarily dismissed by its manager, the deceased Jovito Co, and the shooting appears to be the culmination of a series of retaliatory measures taken by him against the company.

For the killing of Jovito Co, Hugo Peregil, Salvador Mondido and Leonardo Miranda (their companions not having been captured) were prosecuted for murder, and having been found guilty as charged they were sentenced each to a penalty of from 14 years and 8 months of reclusion temporal to reclusion perpetua. with the accessories of the law, jointly and severally to indemnify the heirs of Jovito Co in the sum of P6,000, and to pay proportionate costs.

Hugo Peregil and Salvador Mondido appealed. But with the case against Hugo Peregil already dismissed following his death in prison during the pendency of his appeal, only the appeal of Salvador Mondido now remains to be considered, and as to this appellant the sole question is whether he had any part in the killing of Jovito Co.

Three eyewitnesses to the shooting testified for the prosecution. They were Rogelio Victoriano, Doroteo Zulieta, and Irineo Bautista.

Rogelio Victoriano testified that he was the one driving Jovito Co's jeep when it was ambushed, Co being then seated beside him while Doroteo Zulieta, another employee of the Visayan Shipping Company, occupied the back seat; that they had just left the company premises on Muelle Loney and gone about 20 yards when, as they were about to turn left on Aldeguer street, he saw Hugo Peregil standing in the middle of the road, rifle in hand; that upon seeing them, Peregil cried: "Ah, you are here" and then began firing at them, followed by his companions; that Co jumped from the jeep while he, on his part, tried to flee by veering the vehicle to the right and heading it for the river; that instead of plunging into the water, the jeep hit a pile of logs at the edge of the wharf, whereupon he and Doroteo Zulieta jumped into the river and hid in the crevices of the retaining wall until the danger was

over; that of Peregil's companions he recognized three, one of them being the appellant Salvador Mondido, who, standing about three braaas behind Peregil, also fired at them with his Thompson; and that the other two were Buenaventura Bayona and one Tobin or Miranda (must be the accused Leonardo Miranda), both of whom also fired at them with their guns. He said that he had known Mondido since the Japanese occupation when the two of them were in Capiz, he as a guerrilla soldier and Mondido as the "verdugo" of Col.Grasparil.

Doroteo Zulieta's account of the shooting is more or less the same as that of Rogelio Victoriano, except that he was able to recognize Hugo Peregil only, the others, who also fired, being persons unknown to him. Asked if Salvador Mondido was with the gang that ambushed them, he replied, "No 36; tal vez estar a entre aquellos; es que no he conocido por su cara."

Irineo Bautista was a foreman of the Visayan Shipping Company. He testified that he was outside the office of Jovito Co when the latter left on his jeep and that it was then that Peregil and Mondido emerged from where the post and the drums or garbage cans were at the corner of Muelle Loney and Aldeguer street, about 20 yards from where he was; that as the jeep drew near, Peregil raised his left hand and began firing, followed by Mondido, who was behind him, and others who were apparently deployed on both sides of the street; and that he had known Peregil and Mondido for tteethjrears, for like himself, these two had been engaged in procuring passengers from Antique, with Mondido driving the car for Peregil.

Testifying in his own defense, the appellant Salvador Mondido declared that on the day of the shooting he was driving taxi No. 8 of the Crown Taxi; that at about 4 p.m.. on that day he was called by Jose San Agustin to the Bachelor's Grill; that upon entering the grill, San Agustin's companion, Atty. Zamora, asked him to fetch Atty. Mario Guari a from his house and bring him to the grill; that upon coming back with Atty. Guari a, the latter asked permission from Atty. Zamora to have the taxi take him to Santa Barbara Country Club; that after taking Guari a to the club, he came back to the grill where Zamora and San Agustin were waiting for him; that arriving there at about 5 p.m. he was asked to wait; and that while he was waiting inside the grill, he heard shots and pretty soon someone came in and said that there was shooting at the wharf; that a little after 6 p.m., he took San Agustin and Zamora to the house of Jose Balleza, who was giving a party that night, and there he was made to wait; that after using his taxi until 9:30 that night San Agustin paid him 15, which was the amount registered by the taximeter, and this amount was turned over by him to the Crown Taxi together with the other earnings of the day; that in addition to the fare, he was tipped by both Zamora and San Agustin, receiving P3 from each; that he had no part in the shooting; and that the witnesses Rogelio Victoriano and Doroteo Zulieta had a grudge against him because on one occasion while he was in San Jose, Antique, with his taxi cab, some passengers whom Victoriano was booking for the S.S. "Alex" left the bus where they were riding and transferred to appellant's taxi, which brought them to Iloilo, and Victoriano became so enraged that he boxed appellant on the nose.

Mondido's declaration is not convincing, contradicted as it is in part by his own witness, Jose San Agustin, According to Mondido the car he was driving that day was a taxicab bearing plate No, 6 of the Crown Taxi, for the use of which San Agustin paid him P15, exclusive of the tip. On the other hand, San Agustin declared that the car was not a taxicab; that it was for private use; that he supposed it belonged to Mondido; and that, all he gave the latter was, a tip of P2. In addition, we have the testimony of Federico Galano, a chauffeur of the Crown Taxi, who assured the court that it was he and not Mondido who drove the Crown taxicab bearing plate No. 8 on that day, from 5 a.m. to 11 p.m.

But even supposing that it was a taxicab that Mondido drove and that he was made to wait for one hour or more while his fare was having his drinking spree at the Bachelor's Grill, it is not likely that he would do his waiting inside the grill and leave his vehicle on the street unguarded for such a length of time. The most natural thing for any driver to do in the circumstances would be to wait inside the vehicle or in its immediate vicinity. And this

detail is important because, as pointed out by the Solicitor General, the place of the ambush was only about 600 yards away, so that it was not physically impossible for Mondido to have gone there and come back without his absence being noticed by his fare.

The lower court, we think, did well in not giving credence to Mondido's alibi. The account of his pretended presence at the Bachelor's Grill when the shooting occurred is so improbable that it can not be allowed to prevail over the testimony of the eyewitnesses Bogelio Victoriano and Irineo Bautista, both of whom saw him at the scene of the crime and positively identified him as one of the assailants. The only reason he could give why these two testified against him was that on one occasion he had an argument with them over certain passengers. But from his own version of the incident it would appear that he was the one who should have a cause for grievance for having received a good drubbing from Victoriano without being able to retaliate.

The defense makes much of the fact that in his dying declaration Jovito Co named Hugo Peregil only when he was asked who shot him. But it does not appear that he was asked if Peregil had any companions, and it is also quite possible that the deceased had named Peregil alone because he was the only one he knew, a theory which is made probable by the testimony of Rogelio Victoriano, who said that when he asked Joyito Co in the hospital if he knew those who had fired he answered that he only knew one ("solamente conceit a lino"), that one being Peregil. Far from implying that Peregil was the lone assailant, Co's reply carries the suggestion that there were others.

In the last analysis the case hinges on the credibility of the witnesses, and on that question we cannot substitute our own judgment for that of the trial judge, who, having had the advantage of personally hearing the witnesses testify and observing their demeanor on the stand, has found Salvador Mondido guilty "beyond reasonable doubt."

The crime committed is murder, qualified according to the trial court by abuse of superior strength, "because the assailants were six and armed with pistols and rifles while the victim was alone and, though armed with a pistol, was not able to use the same in his defense, having been subjugated by the superior force employed against him by the accused Hugo Peregil, Salvador Mondido and Leonardo Miranda and their three uncaptured companions."

There being neither aggravating nor mitigating circumstances, the penalty imposable is life imprisonment.

Wherefore, with the prison term imposed upon Salvador Mondido changed to reclusion perpetua, the sentence below is, as to this appellant, affirmed, with proportionate costs against him.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Jugo and Bautista Angelo, JJ., concur.

Mr. Justice Montemayor did not take part.

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