

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TRINIDAD SADAVA, DEFENDANT AND APPELLANT.***G.R. No. L-5199. October 29, 1953*

Ponente: PARAS, C.J.

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This is an appeal from a judgment of the Court of First Instance of Quezon, finding the defendant-appellant, Trinidad Sadava, guilty of murder and sentencing him, in view of the mitigating circumstances of fear of serious injury and resentment analogous to passion and obfuscation, to an indeterminate penalty of not less than 6 years and 1 day and not more than 10 years and 1 day of prison mayor, to pay to the family of the offended party one third of the full indemnity of P6,000.00, plus the costs. Francisco Mendoza and Jose Sadava, appellant's co-accused, were still at large at the time of the trial.

According to the evidence for the prosecution, at about 11:00 o'clock in the morning of June 13, 1946, Valeriano Caraig, residing in barrio Callejon, municipality of Tiaong, province of Quezon (formerly Tayabas), went out with Apolinar Hernandez to call Lorenzo Zamora, a medicine man, in order to treat Valeriano's sick wife. They were informed at the house of Lorenzo that the latter was out. Valeriano and Apolinar did not also find Lorenzo at the place where he was reported to have gone, and this led them to return home. However, Valeriano thought of passing by his ricefield and burning the hay therein. After joining Apolinar who then waited at the road, Valeriano was told by Apolinar that the latter would eat his lunch before looking again for the medicine man. On their way they met the appellant carrying an automatic carbine, his brother Jose Sadava and brother-in-law Francisco Mendoza carrying long firearms. The appellant, followed by Jose Sadava and Francisco Mendoza ten meters away from behind, approached and talked to Apolinar, hitting him on the right lumbar region. As Valeriano fell, other shots followed, with Apolinar at this instant throwing himself flat on the ground, face downward. Soon the armed assailants fled in haste and although Apolinar with some people from the barrio attempted to pursue them, the assailants were able to escape. Macario Sandoval and Valentin Basilan, farmers, happened to be working in a nearby field, heard the shots, and saw the appellant and his two companions in their flight. These two farmers proceeded to the spot of the shooting where they found Valeriano Caraig lying wounded on the ground. After being told by Valeriano that his assailants were the appellant and his two companions, Macario and Valentin brought Valeriano to the latter's house where he died a few hours later. According to the examining physician, Vicente C. Reyes, Valeriano received a gunshot wound on the right lumbar region and his death resulted from internal hemorrhage.

According to the evidence for the defense, while a shooting affray actually took place in barrio Callejon on the date in question, wherein Valeriano was fatally wounded, the participants were Valeriano and an unidentified companion on one side, and Jose Sadava, Francisco Mendoza and an unidentified companion on the other; and the appellant was not present. Indeed, on the date in question, the appellant was in the police headquarters of San Juan, Batangas, five or six kilometers from the place of the incident, where he stayed for security reasons in the nights of June 11 and 12 and in the morning of June 13, 1946. Crispin Genove was presented as a witness in

support of the theory that the appellant was not a participant to the fatal encounter. The appellant testified as to his stay and presence in the police headquarters of San Juan, and was corroborated by Sgt. Mercado and Exhibit "Z", a page of the police blotter prepared by Sgt. Mercado.

After a thorough examination of the record, we are convinced that no reason exists for reversing either the findings of the trial court or its judgment of conviction. Apolinar Hernandez, companion of the deceased in the morning of June 13, and a prosecution witness, had personal knowledge of the shooting; and his version is corroborated by Macario Sandoval and Valentin Basilan, also prosecution witnesses, in the sense that the latter heard the shots and saw the appellant and his two companions flee. It is contended for the defense, however, that Apolinar had a motive for testifying against the appellant, because he failed to become the overseer of Bartolome Galit who instead employed the appellant. If true, Apolinar would have testified against the appellant in a more damaging way—that the latter fired the fatal shot,—instead of merely attributing that act to Francisco Mendoza. Moreover, Apolinar's testimony finds support in the declarations of Macario Sandoval and Valentin Basilan.

The appellant alleged that he stayed in the municipal building of San Juan for security reasons in the nights of June 11 and 12 and in the morning of June 13, 1946, after he was threatened by one "Pilato" and Francisco with kidnapping if the appellant would take his employer's share in the palay harvest. Assuming that there was such a threat, he had as yet no plausible reason for seeking cover in the municipal building, since he admittedly had not actually taken his employer's share and consequently not given any cause for Pilato and Francisco to kidnap him. Besides, the appellant could have, with perhaps the same safety, stayed in the house of his employer Bartolome Galit, or in the house of Isabelo Galit, appellant's godfather and brother of Bartolome, where he allegedly brought his wife in the evening of June 11; and it is significant that the house of Isabelo is only about five hundred meters away from the municipal building of San Juan. Upon the other hand, the appellant's defense of alibi cannot prevail over the positive testimony of Apolinar Hernandez, Macario Sandoval and Vicente Basilan, whose testimony the trial court heard. Even assuming the correctness of the entries appearing in the police blotter, showing appellant's presence in the headquarters, they do not conclusively prove that he did not leave the building at all times, especially between 10 and 12 o'clock in the morning of June 15, 1946. In other words, there is no positive indication that it was impossible for the appellant to have been at the scene of the crime at the time of its commission, considering that barrio Callejon may admittedly be reached from San Juan in one hour by walking.

It is pointed out for the appellant that there are inconsistencies in the sworn statements of Macario Sandoval and Valentin Basilan and their testimony in court, on the point as to who told them that the appellant and his two companions Jose Sadava and Francisco Mendoza were the armed assailants. It is thus alleged that while in the sworn statements Apolinar Hernandez is said to have given the information, the testimony of Macario and Valeriano is to the effect that Valeriano was the informant. As stated by the Solicitor General, the two statements are not necessarily inconsistent, as both may probably be true, the omission or variance having been made without the fault of the affiants who in this case are barrio people.

Counsel for the appellant also argues that the testimony of Apolinar Hernandez is inconsistent on the detail whether the appellant had fired any shot. Assuming for the sake of argument that the appellant did not fire any shot, the fact that he and his two companions appeared together on the scene of the crime, all armed, and fled together after the shooting, clearly shows conspiracy among the three, and makes the appellant liable as a principal. The criticism against the observation of the trial court that the appellant attacked Valeriano Caraig because of resentment resulting from threats of certain bad elements in barrio Callejon, is of little or no moment, because the observation was intended merely to establish the probable motive for the crime; and motive is unnecessary where, as in the present case, the death of the victim and the identity of the appellant have been fully established.

The appellant and his two co-accused who are still at large have invoked the benefits of Amnesty Proclamation No. 76 issued on June 21, 1948 by the President of the Philippines. This was denied by the trial court on the ground that the appellant had not registered himself in accordance with the provision of said proclamation and Circulars Nos. 27 and 27-A and had not surrendered any firearms and ammunitions, although the evidence shows that he had a firearm; and the Solicitor General further contends that there is no showing that the crime committed is one of those specified in the Proclamation or incident to or in furtherance thereof. We find no reason to differ from the action of the trial court.

The trial court considered in favor of the appellant two mitigating circumstances arising from the fear of being kidnapped and a felling of resentment which drove him and his two companions to commit the aggression in question, with the result that the appellant must be considered as having acted in fear of serious injury and with passion and obfuscation. As the deceased Valeriano Caraig is not shown to have had any participation in the alleged threats, these mitigating circumstances may not properly be taken into account. The proper penalty, therefore, in the absence of any mitigating or aggravating circumstances, is reclusion perpetua. Appellant's liability for indemnity being in solidum with his co-accused, he is liable for the full indemnity of P6,000 imposed by the trial court.

Wherefore, it being understood that the appellant is sentenced to reclusion perpetua and to indemnify the heirs of the deceased Valeriano Caraig in the sum of P6,000, the appealed judgment is in all other respects affirmed. So ordered with costs against the appellant.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.

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