

PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PIO TEMPLONUEVO, DEFENDANT AND APPELLANT.*G.R. No. 12280. January 30, 1960*

Ponente: REYES, J.B.L., J.

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Cipriano Tapia and Pio Templonuevo were convicted of the crime of murder by the Court of First Instance of Catanduanes, for the killing of Leopoldo Gonzalo. Each of them was sentenced to suffer the penalty of reclusion perpetua, with all the accessory penalties, and to indemnity, jointly and severally, the heirs of the deceased victim in the amount of P3,000.00. This is an appeal by Pio Templonuevo alone from the judgment of conviction and from the sentence.

A close review of the evidence of record discloses that in the early morning of December 8, 1953, feast day of the town of Virac, Catanduanes, while Mamerto Balla, a cook hired for the occasion, and Cipriano Tapia, his helper, were preparing breakfast in the house of Jaime Templonuevo and his family, one Leopoldo Gonzalo, who just arrived in town by sea from Tabaco, Albay, knocked at the door and asked for the loan of a bolo with which to cut banana leaves. His request was refused by the cook, Mamerto Balla, explaining that there were only two bolos and both were then being used in the kitchen. Dissatisfied, Gonzalo went down. A maid of the Templonuevos then suggested that Cipriano Tapia should lend one of the bolos; whereupon, the latter followed Gonzalo downstairs. However, before anything could be said by Tapia, Gonzalo angrily remarked, "putang ina mo" (probably because of resentment), and an altercation ensued. What transpired during this period was narrated by Mamerto Balla, who remained in the kitchen. Hearing the commotion downstairs, he said, he peeped through the window of the kitchen and from that position, saw Gonzalo struggling with Cipriano Tapia and Pio Templonuevo; the latter struck Gonzalo on the forehead with a piece of wood, rendering him unconscious. Thereupon, Cipriano Tapia slashed the throat of the helpless victim with a hunting knife. The lifeless body of the man was carried away by the duo and dumped behind a pile of empty drums near the Virac Electric Plant, a few meters from the house of the Templonuevos.

An examination conducted on the spot at about 8:30 the same morning by Dr. Macario Ballesteros, then Chief of the Emergency Hospital of Catanduanes, revealed that death must have occurred at about 6:30 a.m., more or less, and that the deceased had a round, bluish discoloration, of about 1 1/3 inches in diameter, in the middle superior region of the forehead, and an incised, transverse, penetrating wound which completely cut the throat till the posterior wall of the pharyngeal cavity. Dr. Ballesteros also declared in his report that the contusion found on the forehead and the incised wound in the neck were ante mortem lesions, homicidal in character (Exhibit "E"). This report was later confirmed by the doctor's testimony.

The first point urged by the defense is the propriety of appellant's conviction upon the testimony of Mamerto Balla, whose declarations, it is maintained, must be viewed with suspicion. Scrutinizing Balla's statements, we fail to see anything that would make us doubt his veracity. He categorically stated that he saw appellant strike the deceased on the forehead with a piece of wood, thus corroborating Dr. Ballesteros's report about the contusions

found thereon when Gonzalo's cadaver was examined. Balla related the incident without incurring in material inconsistencies. His credibility, as far as the records disclose, cannot be impugned. In fact, appellant could not attribute anything about this witness that would have prompted the latter to wrongfully incriminate him. The lower court, who had every chance to observe his demeanor during the trial, has said: "Mamerto Balla's affidavit and testimony are trustworthy, credible and believable and true portents of truth", and we find no reason to reverse this pronouncement.

The defense assails Balla for his seeming hesitancy in that he executed an affidavit about the incident only on December 12, 1953, four days after the occurrence. This delay, however, was ascribed by him to fear of possible reprisal, and he so stated to Sgt. Amado Baloloy of the Philippine Constabulary. At any rate, it is no sound basis to destroy the otherwise credible declarations of this witness, as to appellant's participation, supported as it is by those of Tapia.

The testimony of a single witness may be sufficient to produce conviction if it appears to be trustworthy and reliable (*People vs. Zabala*, 86 Phil., 251 and cases cited therein). In this case, it is corroborated by the nature and positions of the wounds.

The defense gives much emphasis to Cipriano Tapia's owning that he alone committed the offense in his written statement of December 17, 1953 (Exhibit "4-Tapia"). It is to be noted, however, that Tapia's previous affidavits (Exhibit "1-Tapia" and Exhibit "N") had already implicated Pio Templonuevo in the crime and the charge was reiterated later, in another sworn declaration (Exhibit "5"), and in his testimony in court as well. There is also evidence that what really prompted Tapia to exculpate the appellant was money consideration (p. 26, *t.s.n.*, *Batalla*), and, in all probability, the desire to protect his coaccused who is a relative of his employer.

The appellant's alibi is that he was working on an auto truck and its engine, some 115 meters away from Templonuevo's house, when the slaying took place; and that he only saw Gonzalo's corpse when, summoned by Mrs. Jaime Templonuevo, he chanced to pass by the dead man. But he is contradicted by Mrs. Templonuevo's denial of having summoned the appellant; and the distance is not such as to completely exclude the possibility of appellant's participation in the heinous deed. Further taking Balla's positive testimony into account, the alibi carries no weight.

There remains the question of the appellant's liability. The attack on, and slaying of, Gonzalo was admittedly the sequel to a heated dispute between the deceased and the two accused. No prearranged plan between the latter is directly or indirectly shown, so that proof of conspiracy is lacking. While appellant's participation in the attack is clearly proved, the doctor who performed the autopsy admitted that "el golpe recibido no ha sido tan fuerte"; that there was no cranial fracture, and the blow merely caused the deceased to fall unconscious, thereby exonerating the appellant from direct responsibility for the killing of the deceased. In truth, the death certificate (Exhibit "2-Templonuevo") gives "profuse hemorrhage due to cut wound in the neck" as sole cause of death. But as it is incontrovertible that the appellant Pio Templonuevo, by rendering Gonzalo unconscious, facilitated his subsequent slaying by Tapia, said appellant must be deemed responsible as an accomplice in the killing. He cooperated in it by previous or simultaneous acts albeit non-indispensable ones, as Tapia could have killed Gonzalo with his bolo even if Templonuevo had not intervened (*R.P.C. Article 18, People vs. Cortes*, 55, Phil., 143; *People vs. Tamayao*, 56 Phil., 587; *People vs. Aplegido*, 76 Phil., 571; *Sentencias of the Tribunal Supremo of Spain*, 24 May 1879 and 13 July 1900).

Was it murder or homicide? The lower court declared it to be murder qualified by treachery, but the Solicitor General correctly points out that the absence of conspiracy and the immediately preceding quarrel belie the existence of treachery. Appellant, therefore, should be held a mere accomplice to a crime of homicide. Liability is

further mitigated by provocation on the part of the deceased, who unwarrantedly insulted appellant and his companion and thereby invited retaliation.

Pursuant to Article 52 of the Revised Penal Code, the accomplice of a consummated homicide should be imposed the penalty next lower in degree to reclusion temporal (penalty for the main offense). In this case, it is prision mayor in its minimum degree, because of the extenuating circumstance. Applying the indeterminate Sentence Law, the Court imposes upon appellant Pio Templonuevo not less than four (4) years of prision correccional and not more than eight (8) years of prision mayor, plus the accessory penalties prescribed by law and the civil indemnity fixed by the court below.

So ordered. No costs in this instance.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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