

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FORTUNATO MENDOZA, ET AL., DEFENDANTS, LORENZO
VILLANUEVA AND COPIA MANSACA, DEFENDANTS AND
APPELLANTS.**

G.R. No. 16392. January 30, 1965

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PER CURIAM:

On March 7, 1958, Fortunato Mendoza, Manuel de la Cruz, Lorenzo Villanueva, Copia Mansaka, Villamor Corpuz, Ladjahali Patdi alias Kulot and Domingo Diaz alias Antonio Dominguez alias Bigote, were charged with murder before the Court of First Instance of Rizal. Upon arraignment, they all pleaded not guilty to the charge. Pending trial, the case against Ladjahali Patdi and Domingo Diaz alias Antonio Dominguez alias Bigote, was provisionally dismissed upon motion of the prosecuting fiscal. On March 2, 1959, the case against Fortunato Mendoza, Manuel de la Cruz and Villamor Corpuz was likewise provisionally dismissed upon motion of the prosecuting fiscal, leaving the accused Florencio Villanueva and Copia Mansaka to stand trial.

This is an appeal from the decision of the Court of First Instance of Rizal convicting them, Lorenzo Villanueva and Copia Mansaka, of the crime of murder and sentencing them therefor to suffer the death penalty and to indemnify the heirs of the deceased jointly and severally in the sum of P6,000 and to pay the costs.

In the morning of March 6, 1958, between ten and eleven o'clock, appellants Villanueva and Mansaka surrendered themselves to the Keeper of Brigade No. 3B, Cell No. 5, of the National Penitentiary in Muntinlupa, Rizal, one Arsenio Pallera. They told the latter that they had just killed a fellow inmate and would wish to be brought to the Prison Inspector. At the same time, they turned over to Pallera an improvised bladed knife and an ice pick.

After conducting and leaving the surrenderees to Prison Inspector Melito Geronimo, Pallera left to notify the medical officer of the killing. The said officer, together with a nurse, then took the victim to the hospital where autopsy was performed. The report on the autopsy described "the cause of death as shock due to multiple wounds and that the most fatal of the fifteen wounds were those on the right and left chest as well as in the abdomen."

In the meantime, Inspector Geronimo investigated the appellants. In the said inquiry, both appellants admitted having killed Epifanio Paison. Their respective written statements, marked by the prosecution as Exhibits E and F, are hereunder quoted so far as relevant to this decision. The first, Exhibit E, is Lorenzo Villanueva's:

"Kahapon po nang hapon pagkatapos namin kutnain ng hapunan ay napagkaisahan namin ni COPIA MANSACA na aming patayin si EPIFANIO PAISON. Halos hindi kami nakatulog magdamag at nang dumating ang umaga ay binuksan ng aming Keeper ang pintuan ay lumabas kami ni COPIA MANSACA at naglinis ng fire escape. Pagkatapos kami makapaglinis ng fire escape ay dumating si Mr. Pallera at aming sinabi na buksan ang Drigada 3B at kami ay papasok na at kami ay binuksan naman. Kami noon ay may dala na na matalas at noon kami ay nasa loob na ng bri-gada 3-B ay umupo nalamang kami sa isang tabi. Noon inaakala ko na malapit na ang pagdating ng aming pagkain ay sinabi ko kay COPIA MANSACA na pumunta na siya sa buyon at kaunin na niya si EPIFANIO PAISON. Finagbilinan ko si MANSACA na kahit sino ang

lalapit sa buyon ay huag papasukin at pinunta-han ko na si PAISON. Nadatnan ko Bi Paison na nakaupo doon sa isang tabi ng brigada at sinabi ko sa kanya na "sandali lamang at mayroon akong sasabihin sa iyo" at si Paison ay sumama na rin sa akin sa buyon. Pagdating ko sa loob ay sinabi ko na maliligo ako at siya ay huwag umalis. Pagkatapos ay mayroon akong tinuro na isang bagay kay Paison at noong siya ay tumingin ay sinabayan ko na nang saksak sa dibdib hanggang sa mamatay. Pagkatapos kong masaksak si Paison ay sinabayan din ng saksak ni Copia Mansaka. Nong nakabulagta na sa cemento si EPIFANIO PAISON ay pinutol ko ang kanyang kanang tainga at ifci-naon ko sa labas nang bintana."

Copia Mansaka's statement, on the other hand, marked as Exhibit F by the prosecution, reads as follows:

"Kaninang tangbali humigit kumulang sa alas doce, fetsa 6 ng Marzo 1958, pagkatapos dalliin sa aming brigada ang aming pagkain ay pinagkaisahan namin ni LORENZO VILLANUEVA na lumabas sa aming brigada at lumipat sa Brigada 3-B at patayin namin si EPIFANIO PAISON. Pagkabukas ng pintuan ng brigada 3-B, ay ang ginawa namin ni LORENZO VILLANUEVA ay humawak kaming dalawa sa drum na mayroong laman na pagkain at nagkunwari kaming ranchero hanggang sa kami ay maka-Hpat sa 3-B. Noong kami ay makapasok sa pintuan ng 3-B ay tinulak namin ang drum tuloy-tuloy sa loob at pagkatapos ay hinanap namin si EPIFANIO PAISON. Nakita namin si PAISON na nakaupo at pagkatapos ay dinala namin sa loob ng buyon (toilet) at pinagtulong-tulongau naming saksakin hanggang sa mamatay. Pagkatapos naming pataytn si EPIFANIO PAISON ay sumurender kami kay Mr. ARSENIO PALLERA na aming keeper at ibinigay namin ang matalas na aming ginamit sa pagpatay."

Aside from expressly acknowledging the commission of the crime, the herein defendants gave witness to their motives for stabbing the deceased, as follows:

"Kaya ko siya pinatay ay noong magkaroon ng gulo sa aming brigada dahil noong fetsa 16 ng Febrero 19-r>8 ay stnabi ko na kay Paison na umalis na siya at ang sagot sa akin, ay huag ko raw intindihiin ang kanyang saiili at pakialaman ko ang sarili ko dahil sa kami ay magkalaban. Pagkatapos kung makapugsabi ay init-sahan ako nang bote sa tabla nang tarima at tinamaan ako sa aking paa. Kaya niagmula noon ay kami ay dinala sa plaza at binilad pagkatajms ay dinala sa Brigada 1-A at doon ay pinanga-ralan ko siya at sinabi ko sa kanya na pinalatawad ko siya ngunit ang sabi sa akin ay huag ko siya na intindihtn at intindihiin ko ang sarili ko, kaya inula noon ay pinagbanlaun ko na Biya na pataytn," (Exhibit K.)

"Ang dahilang po ay dahil sa hinngisan ni Paison ng matalas ang paa ni Lorenzo Villanueva at naaugatan kaya napagkaisahan namih ni Villauucva na patayin si Paison kahapon ngunit wala kaming pagkakataon at kanina lamang kami nagkaroon ng ma-buksan ang pintuan ng brigada 3-B at 3-A noong magdala ng pagkain." (Exhibit F.)

During the trial, the prosecution also presented an eyewitness to the crime. Kicardo Corpuz, who was the Assistant Mayor of the brigade where the victim was confined, testified that in the morning of the incident, he was with Paison until someone came along and invited Paison to go with him. Soon thereafter, he saw Paison being dragged towards the toilet where other men were waiting. Upon reaching the toilet, he saw the appellants stab the victim. Finally, Corpuz testified that "Paison was able to run away shouting that he was being stabbed; that the accused ran after him nnd upon catching him took turns in stabbing him until he fell dead."

After trial, the lower court found "that the two accused killed Paison and that it is not true that they killed in self-defense." Accordingly, it imposed the penalty under appeal.

Both Villanueva and Mausakn, at the trial as well as in this appeal, admit having stabbed to death Epifanio Paison. In justification, however, they plead self defense. They claimed that in the morning of the incident, the victim, unprovoked and with evident intent to kill, attacked Villanueva with a knife and that the latter was only able to wrest the weapon from Paison and used it on him instead. And, when Mansaka intervened to pacify and break up the two, the victim likewise turned on Mansaka with an ice pick. As with Villanueva, Mansaka says he merely

wrested the ice pick from Paison and used it on the victim. And consistently with their plea of self defense, appellants repudiated at the trial the statements they gave to Inspector Geronimo. They told the trial court that they affixed their signature and thumbmark, respectively, on Exhibits E and F without knowing their contents as the said exhibits were not read to them.

After carefully and thoroughly going through the records, We are convinced beyond doubt that the guilt of the appellants for the crime of murder has been fully established at the trial. We find no alternative, therefore, but to affirm the judgment under appeal.

In the first place, We cannot now ignore the contents of Exhibits E and F where the appellants expressly acknowledged the commission of the crime charged. The evidence is overwhelming that the said documents were executed voluntarily by them. Other than the self serving insistence that the same were not read to them, appellants have not charged any irregularity in the execution of Exhibits E and F. They do not deny that they voluntarily submitted themselves to Inspector Geronimo and gave statements to him relative to the killing. They do not deny that after their statements were taken, Inspector Geronimo took them to the Assistant Director of Prisons who administered the oath on them; nor that their confessions were duly witnessed by two prison authorities, Inspector Fernandez and Holipeia. At no stage in the proceedings below have the herein defendants accused any prison personnel of torturing or mistreating them to secure their extrajudicial confessions. They have not adverted to any possible reason why Inspector Geronimo should falsify or alter their narration. But most convincing of all, the said exhibits contain details in the commission of the crime which none but the participants to the offense could have provided.

Secondly, We reject appellant's claim to self defense upon the fundamental consideration that the said justifying circumstance may be accepted only when it is established at the trial that the accused did not initiate the unlawful aggression. In other words, where the victim has not been shown to have commenced the criminal attack, self defense cannot arise as a justification for the injury or death that the defendants stand indicted for. It is a presupposition of that defense that a material attack has been taken by the victim (*People vs. Santos*, 17 Phil. 887; *People vs. Banzuelo*, 31 Phil. 365; *People vs. Apolinario*, 58 Phil. 586).

In the case under review, not only have the appellants failed to demonstrate the victim's criminal aggression; on the contrary, the evidence is conclusive that they were the ones guilty of aggression.

Neither appellants were supposed to be in the brigade where the victim was incarcerated. They were both inmates of Brigade No. 3A and they have not pointed to any authorization that could have justified their presence at Brigade No. 3B. By their own confession, it was by trickery that they gained entry into the latter brigade. They held on to a prison meal cart, pushed it towards Brigade 3B, and pretended to be "rancheros", that is, prisoners in charge of bringing food to the cells. These are indubitable indications of their premeditated determination to carry out the assassination of Paison. These are, unquestionably, acts of aggression.

Furthermore, appellants' claim that they were together when they went inside Brigade No. 3B furnishes another proof that the victim could not have been the aggressor. It is unnatural to suppose that he had deliberately abandoned all caution and submitted himself to the reckless folly of attacking two men all by himself.

Aside from the foregoing, another settled rule prevents us from sustaining appellants' theory. The justifying circumstance of self defense, once the act against which it is invoked is admitted or proved, should be established by positive evidence. It is an affirmative allegation which must be demonstrated with convincing credibility (*People vs. Bauden*, 77 Phil. 105; *People vs. Apolinario*, 58 Phil. 586; *People vs. Gimena*, 59 Phil. 509). The case for the defendants falls far short of the standard.

The account given by the defendants of the alleged attack upon their persons is simply incredible. According to them, while they were in Brigade No. 3B, on their way to clean a fire escape, Epifanio Paison, suddenly and unprovoked, attacked Villanueva with a knife. A fight ensued and Villanueva was slightly wounded in both arms. After a brief scuffle, Villanueva was able to wrest the weapon away from Paison and with it, he stabbed the latter in the chest.

On the other hand, Copia Mansaka testified that after Villanueva had stabbed Paison, he stepped in to break up the fight and separate the combatants. He was able to part Villanueva who thereupon turned away to look for cloth with which to bandage his, Villanueva's wounded arms. However, Paison refused to be pacified and instead drew an ice pick from his pocket and tried to stab him. Mansaka claimed that like Villanueva, he was able to take the ice pick away, and with it, stab the deceased.

By appellant's recitation of the incident, therefore, they took on Paison one at a time. This is difficult to believe. It is not natural for two friends or companions, attacked by a common enemy, should meet the assault one at a time. The more credible response to such an emergency was for them to have repelled together the deadly threat. The more reasonable and instinctive reaction then was for them to have joined their efforts and resources to protect themselves.

Besides, We find it similarly incredible that Villanueva, after being separated by his co-accused from Paison, should simply walk away and search for bandaging material for the superficial wounds in his arms. We cannot accept that as the rational reaction of one whose life was so dangerously challenged by an unprovoked adversary. It would seem that having recovered from a serious attempt on his life, and, having taken the upper hand from his attacker, Villanueva would have adopted a less timid attitude.

Finally, the number of wounds on the body of the deceased, and their location as registered in the autopsy report, expose the inherent weakness of the claim to self defense. There were in all fifteen wounds, one in the neck, two in the abdomen, seven in the chest and the others in the various parts of the arms. In addition, the right ear of the victim was cut off. In contrast, Villanueva had but a couple of superficial, suspicious cuts in his arms while Mansaka was completely unscratched. If all these suggest anything, it is that the victim had been shot upon by determined assailants and definitely not that he has lost a fight he himself started.

Considering all the foregoing, then, it is clear that the crime committed was murder qualified by evident premeditation. Insofar as Lorenzo Villanueva's participation in the killing is concerned, the following aggravating circumstances were established beyond doubt at the trial: (1) reiteration or habituality, since he was previously convicted for two crimes and for which he was in confinement, namely: robbery and evasion of sentence (Art. 14, par. 10, Revised Penal Code); (2) ignominy or cruelty as he confessed to cutting off the ear of the deceased (Art. 11, par. 21, Revised Penal Code); (3) craft, in pretending to be "rancheros" to gain entry into Brigade 3B (Art. 14, par. 14, Revised Penal Code); and (4) that the crime was committed in contempt of or "with insult to public authorities (Art. 14, par. 2, Revised Penal Code). With respect to Copia Mansaka, the following¹ aggravating circumstances have been conclusively proven at the trial: (1) Recidivism, having been previously convicted of murder and evasion of service of sentence (Art. 14, par. 9, Revised Penal Code); (2) Craft, as above; and (3) that the crime was committed in contempt of or with insult to public authorities, same as above.

The only mitigating circumstance appreciable in their favor is voluntary surrender. Consequently, as there are more aggravating than mitigating circumstances, and in accordance with paragraphs three and four of Article 64 of the Revised Penal Code, the maximum penalty provided by the code should be imposed.

Wherefore, the decision of the lower court imposing the death penalty and requiring the accused to indemnify the heirs of the deceased in the amount of P6,000 is hereby affirmed. Costs de oficio.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L, Barrera, Paredes, Dizon, Regain, Makalintal, Bengzon, J.P. and Zaldivar, JJ. concur.

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