

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARIO PAMINTUAN, DEFENDANT AND APPELLANT.*G. R. No. 25267. December 24, 1926*

Ponente: AVANCEÑA, J.

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The judgment appealed from sentences the appellant, for the crime of murder committed on the person of Antonino Jacinto, to cadena perpetua, with the accessories of the law, to indemnify the heirs of the deceased, other than his widow Juana Rosenda, and two daughters, Dorotea and Oliva Jacinto, in the sum of P1,000 and the costs.

About April 19, 1925, Antonino Jacinto, his wife and two daughters lived in Mario Pamintuan's house in the municipality of Angeles, Pampanga. The facts in this case as stated by the Attorney-General are:

"That at about 11 o'clock on the night of April 19, 1925, the deceased Antonino Jacinto, the accused Mario Pamintuan and one Melecio Santos went upstairs to the house of one Juan Cortes, situated in the municipality of Angeles, Province of Pampanga. When, after a few moments, the three decided to leave the house, the accused Mario Pamintuan was the first to go downstairs while Melecio Santos remained on the bamboo porch of said house waiting for Antonino Jacinto who had stopped for a drink of water. After the accused had come down and while Antonino Jacinto, who, had then gone ahead of Melecio Santos, was rinsing his mouth and standing with one of his feet on the first step of the stairway about to descend, a revolver shot was heard which wounded the said Antonino Jacinto, who thereupon cried out that the accused Mario Pamintuan had shot him with his revolver, and, calling to Melecio Santos, asked the latter not to leave him and to call his family because he felt he was about to die on account of having been wounded by the said accused. Judging from the flashes produced by the said shot which were seen through the interstices of the porch floor, it must have been fired from beneath the same. Upon hearing the shot Juan Cortes and Melecio Santos started to run towards the inside of the house shouting for help and the police. The accused Mario Pamintuan did not respond to the cries for help given by Juan Cortes and Melecio Santos."

* * * * *

Antonino Jacinto received two wounds produced by a bullet from a revolver which entered the posterior region of the left abdominal wall, almost level with the lower edge of the last lumbar vertebra, and passed out through the upper antero lateral right wall of the abdominal region, the location of the wounds indicating that the shot must have been fired from below in an upward direction while Antonino Jacinto was standing with his back towards the assailant. At daybreak Antonino Jacinto was taken to the municipal building and from there to the San Fernando Hospital, where he died at 7.45 the following morning as a result of his wounds.

Early the following morning Lieut. Fortus of the Constabulary made an examination of the house and found on the porch floor, which was about 5 meters from the ground and made of split bamboo, an empty cartridge the appearance of which indicated that it had been recently fired. Upon examining the condition of the porch floor he found that the interstices in the bamboo were as wide as 2% inches in some instances.

Immediately after the incident the justice of the peace and some police officers went to the house, Antonino Jacinto still lying on the porch where he was shot, and the said Antonino Jacinto then told the justice of the peace that he had been wounded by a revolver shot fired by Mario Pamintuan, who possessed an automatic revolver and who harbored illicit intentions towards one of his daughters. Antonino Jacinto repeated this statement in the municipal building in the presence of the justice of the peace and then of Lieutenant Fortus, affirming that Mario Pamintuan, after shooting him, started to run away but he was able to recognize him. Antonino Jacinto made this statement in the belief that he was about to die, not only for the sake of making it, but because he must have had this belief in, view of the seriousness of his wounds as was shown by the fact that he died a few hours later.

While Antonino Jacinto was in the municipal building Mario Pamintuan was seen downstairs and was arrested at daybreak that same morning.

The deceased's family showed the greatest indifference and lack of interest in the incident.

When Agapito Cruz, who had gone to visit Antonino Jacinto in the municipal building, was leaving to return to his house, he was followed by Patricio Pamintuan, Mario's brother, who asked him on the road to get Mario Pamintuan's revolver which was buried underneath the latter's house. Agapito did so and got the 45 automatic Colt revolver, still smelling of powder, loaded with five cartridges, and at Patricio's suggestion took it to his house in order to sell it later. The revolver was afterwards found by the authorities in Agapito Cruz's possession.

The attorney for Mario Pamintuan tried to establish that the latter had left the house where Melecio Santos and Antonino had gone, twenty minutes before the latter, going to his own house where, being almost asleep, he was informed of the shooting. The wife and one of the daughters of the deceased corroborated this testimony. The attitude of the deceased's wife and daughter in testifying as witnesses for the defense in this case is explained by their favorable attitude towards the appellant and their indifference and lack of interest in the deceased from the first moment of the incident. This favorable attitude of these witnesses towards the appellant went so far that they testified that in the interview had with the deceased before the latter's death and after the incident, he insinuated to them that they testify that it was Mario Pamintuan who fired the shot at him, when such exceptional witnesses as the justice of the peace and the nurse, Petra C. Orenacia, who were present at this interview, denied that the deceased had made such insinuation.

The fact that the appellant went downstairs from the house almost at the same time as the deceased, going on ahead, and at the moment when he reached the bottom while the deceased was still on the porch at the edge of the stairway about to descend, the shot was fired from below, the appellant having disappeared, and the fact that the deceased upon receiving the shot saw the appellant run, together with the other fact of having recovered the revolver, with which the shot must have been fired, buried beneath the appellant's house, leave no doubt as to his guilt. It is not improbable that the deceased was able to recognize him, considering that the porch was lighted by an electric bulb which gave light all around below. The fact that the appellant left the house at the same time as the deceased and Melecio is proven by the testimony of the owner of the house, Juan Cortes, who is a disinterested witness.

The circumstance of the empty cartridge having been found on the porch floor, while it seems strange because the shot was fired from below, is easily explained. The shot was fired from an automatic Colt revolver at a distance of a meter, by putting the barrel through one of the interstices of the porch floor. Considering the height of the porch and the angle which, under the circumstances, would be formed by the floor and the barrel of the revolver, the empty cartridge, in escaping, must have entered through one of the interstices of the split bamboo floor and then dropped on it.

Undoubtedly, in committing the crime the appellant employed means, methods and forms which assured its

consummation without any risk to himself from any defense the deceased might make, a circumstance which qualifies the crime as murder.

The Attorney-General in this instance contends that the aggravating circumstance of nocturnity must be taken into consideration in the commission of the crime and, consequently, the penalty provided by law must be imposed in its maximum degree. We believe, however, that this circumstance is included in that of treachery, which, qualifies the crime as murder.

The judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

Ostrand, J., with whom concur Johns and Villa-Real, JJ., dissenting:

In my opinion there is no reliable evidence justifying the conviction of the defendant. The dying declaration of the deceased, the only evidence directly connecting the defendant with the commission of the crime was no doubt made in good faith, but the sketches Exhibits E and 4, and the photographs Exhibits 1 and 2 taken in connection with the oral evidence, shows conclusively to my mind that the deceased could not have obtained a sufficiently clear view of his assailant to enable him to identify the latter and that the dying declaration is based on mere suspicion. The deceased was shot from behind while standing on the batalan of a house occupied by Juan Cortes, one of the witnesses for the prosecution. The floor of the batalan was a little over 5 feet from the ground and was made of split bamboo, which, judging from the photographs, was laid quite closely, though there is evidence that there were places where the openings or interstices reached a width of 21 inches. There was no lamp on the batalan itself, but there was an electric bulb or lamp in the adjoining kitchen, which threw some light on the batalan through an open door of ordinary width; that the light could not have been very strong is indicated by the fact that the flash from the firing of the pistol was clearly visible.

The shot was fired through the floor from the space beneath the batalan at a point between the kitchen light and the place where the deceased was standing. There could therefore have been no light falling on the face of the person firing the shot, and taking into consideration the distance from the eyes of the deceased to the point where the bullet penetrated the floor, it seems obvious that it was practically a physical impossibility for the deceased to have definitely identified his assailant. One has only to make the experiment of looking obliquely from a standing position through an ordinary bamboo floor into a dark or only partially lighted space beneath to realize the extreme improbability of the theory of the prosecution.

The deceased knew that the defendant possessed an automatic army pistol and this, in connection with the fact that the defendant was unwilling to go out with him on the evening in question and probably showed some resentment at being urged to do so, undoubtedly led the deceased in his half-drunken condition to believe that the defendant was the perpetrator of the crime. But the town of Angeles is situated close to the Stotsenburg Military Reservation and there is evidence to the effect that other residents of the town possessed automatic pistols purchased from the soldiers and held without licenses. The evidence also indicates that the deceased had various enemies by reason of the facts that he was of a quarrelsome disposition and as a gambler often refused to pay his losses or debts. In these circumstances, he might well have been mistaken in his suspicion of the accused, and it is quite probable that the crime was committed by some other person.

The testimony of the witness Agapito Cruz is wholly incredible. It is not denied that the defendant on a certain occasion slapped the face of Agapito in the presence of a number of other persons, an insult not very readily forgotten, and there can be no doubt that Agapito harbored enmity against the defendant. He testifies that on the morning after the commission of the crime and as he came out from the municipal building after a call on the deceased, he met the defendant's brother, Patricio Pamintuan, who told him that there was a revolver concealed in

the house of the defendant and requested him, Agapito, to go to the house and get the revolver and thereafter take care of it. This story does not seem reasonable; if Patricio desired to conceal the fact that his brother possessed the gun, he would not have informed a friend of the deceased who also was his brother's enemy of that fact, but would have taken care of the gun himself. There are other features about Agapito's testimony which render it incredible, but which I shall not take the time and space to discuss.

The witness Cortes in whose house the crime was committed is supposed to be a disinterested witness, but he is not a truthful one. Though it clearly appears from the evidence that his house was a house of prostitution, he vigorously denies that fact and says that he does not know why the deceased, the defendant, and Melecio Santos came to the house about half past eleven, stayed there a few moments, and again returned to the house sometime after midnight; that he knew the defendant slightly, but did not know the other two, and that he conversed with them, but did not try to ascertain why they came to the house. That does not seem reasonable. The testimony of Melecio Santos that the deceased was looking for a prostitute by the name of Mameng with whom he desired to have intercourse and whom he finally found in Cortes' house on his return there after midnight seems much more probable.

The testimony of the widow and of the elder daughter of the deceased rings true and if they told the truth, the defendant could not have committed the crime. It is argued that the fact that they showed but little emotion over the death of the husband and father casts doubts upon their veracity, but when it is considered that the deceased was a convict in Bilibid from 1907 until 1923 during which time his wife and children had to shift for themselves; that on his release from Bilibid he devoted himself to gambling as well as to sexual immorality, and that he received the fatal wound while visiting a house of prostitution, the apparent indifference of his family is easily understood. It appears, however, from the testimony of the justice of the peace that the widow did her best to alleviate the pain of her husband while he was suffering from the wound.

The testimony of Melecio Santos as to his and his companions' movements during the evening and night in question is probably in the main true; he was severely cross-examined and testified consistently to a wealth of details without becoming involved in contradictions, something which would hardly have been possible if his testimony had been without foundation in fact.

As I have already stated, there is no reliable evidence showing the defendant's guilt. On the contrary, the weight of the evidence proves him innocent of the crime with which he is charged and he should have been acquitted.

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