

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AGUSTIN CHAN LIN WAT, DEFENDANT AND APPELLANT.

G.R. No. 25587. March 30, 1927

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PER CURIAM:

This appeal has been brought to reverse a judgment of the Court of First Instance of Rizal, finding the appellant, Chan Lin Wat, guilty of the offense of murder and sentencing him to undergo the penalty of death, to indemnify the heirs of Manuel Escarella in the amount of P1,000 and to pay the costs.

The victim of the offense which is the subject of prosecution in this case was one Manuel Escarella who, shortly before his death, was employed as assistant in the private information office of W. S. Grove. For a short time prior to the commission of this offense Escarella had been engaged in the investigation of the origin of a fire which had destroyed a warehouse in Kalaba, Nueva Ecija, apparently owned by one Tan Yong, who had collected insurance thereon.

On a night near the middle of September, 1925, several Chinese gathered at the table of Tan Yong, in his residence at No. 664 Magdalena Street, Manila. There were present on this occasion, in addition to Tan Yong himself, the following, among others, namely, Chan Lin Wat, Chan Lin Tam, Ong Kim Ba and Lim Sio Chong. While they were eating Tan Yong asked his guests who among them was sufficiently brave to kill a person. Chan Lin Tam answered that he was in a position to kill anybody. Tan Yong replied that Chan Lin Tam was small but could start the ailing, and that he (Tan Yong) would give a reward of 500 to all who would help. No name was apparently then mentioned as that of the intended victim, but Chan Lin Wat knew that Tan Yong had Manuel Escarella in mind for the reason that Tan Yong had repeatedly expressed great concern over the investigation which was being conducted by Escarella into the burning of the warehouse in Kalaba. A few days after the incident above, mentioned Tan Yong planned another dinner. On this occasion Manuel Escarella was to be one of the guests and in order to insure his presence, Tan Yong caused Chan Lin Wat to extend an invitation to Escarella to attend this dinner. At the time of making this arrangement, Tan Yong gave Chan Lin Wat the sum of P5 to pay the expense of bringing Escarella to the place. Chan Lin Wat was thus chosen to act as decoy for the reason that he was on intimate terms with Escarella and had the full confidence of the latter. Accordingly, Chan Lin Wat went, on the afternoon of September 21st, to the house of Manuel Escarella. He was there told that Escarella was out. Chan Lin Wat thereupon directed his way towards the office of an attorney where he and Escarella had agreed to meet the same afternoon. He did not find Escarella at the attorney's office, but on his way back met Escarella at the intersection of Rizal Avenue and Azcarraga Street, Manila, just in front of the panciteria "Canton." The two apparently remained together for the remainder of the afternoon, and they were presently joined by Chan Lin Tam. At about 8 o'clock the three were picked up at the corner of Magdalena and Soler Streets by Lim Sio Chong, in an automobile. From this point the four proceeded in the automobile to the panciteria "Far Eastern" on T. Pinpin Street, where they found Tan Yong awaiting them. The five here took dinner.

It appears that the automobile used on this occasion by Lim Sio Chong had been lately purchased by Tan Yong,

but was registered in the name of Lim Sio Chong, who acted as chauffeur. It appears further that on the day preceding this incident Chan Lin Wat had had an interview with Lim Sio Chong and had then arranged with him for the use of the automobile on the evening of the succeeding day, and for the use of the automobile Chan Lin Wat was promised to supply the necessary gasoline himself. At the same time it was arranged that Lim Sio Chong should come to the corner of Magdalena and Soler Streets on the next evening, where he would find Chan Lin Wat awaiting him. This engagement was precisely carried out, as already shown.

When the five finished eating at the "Far Eastern," they proceeded in Chong's car to the Luneta where they loitered for a while, after which they proceeded to a house of illfame in Pasay. Here they stayed until midnight, or after. Upon leaving this place they directed their course to a cabaret in Santa Ana. Upon arrival at this place they did not go in, but, following a suggestion then made by Chan Lin Wat or Tan Yong, decided to take a drive to Pasig, 6 or 8 miles away, over a road leading through the country. They accordingly proceeded towards Pasig; but when they reached the site of an unused quarry some distance beyond the entrance to the Fort McKinley reservation, the automobile was stopped and turned towards Manila. However, after running a short distance from where the turn was made, the car was again stopped. Lim Sio Chong, who was driving, pretends that he had no intervention in the stopping of the car at this place and he says that he at first supposed that the gasoline might be out. He therefore examined the tank and found that there was still an ample supply of gasoline. He then opened the hood and examined the engine, but found nothing wrong. Returning to his place in the car, he found that the electrical switch had been turned off, a trick of which he supposes Chan Lin Wat, who was sitting at his right, to have been the author. Lim Sio Chong also says that, upon discovering the cause of the trouble, he was proceeding to start the car by the use of the starter, but Tan Yong told him to desist, as the battery was weak, and advised him to start the car by means of the crank. Lim Sio Chong refused to obey this suggestion, thereupon Tan Yong ordered Chan Lin Wat to take the tool and crank the car. At the same time Chan Lin Wat asked Escarella, who had been sitting on the rear seat between Tan Yong and Chan Lin Wat, to get out so that Chan Lin Wat could get the tool from under that seat. Escarella thereupon got out and placed himself on the left of the car near the front mudguard. Meanwhile Chan Lin Wat, with the cranking tool in hand, came up behind Escarella and struck him in the back of the head with the cranking tool. Upon receiving this blow Escarella turned and, seeing Chan Lin Wat, asked him why he struck him. At the same time Escarella received a kick on the breast from Chan Lin Wat and fell to the ground with his face upward, his body grazing the left rear mudguard of the automobile. Thereupon Chan Lin Wat, Tan Yong and Chan Lin Wat surrounded the fallen man and inflicted various physical injuries upon him. Lim Sio Chong further claims that, while the three above-mentioned were engaged in abusing the fallen man, he himself started the car, intending to run away, but Chan Lin Wat took hold of his left arm and threatened to kill him if he did not wait. The three assailants of Escarella then resumed their seats in the car and the automobile was started, the body of the now supposedly dead man being left in the margin of the road. Thus far we have been following the narrative of Lim Sio Chong with reference to what occurred after the car was turned.

The appellant Chan Lin Wat has given two versions of the affair, which are in part vitally inconsistent with each other and both differing from the version of Lim Sio Chong. In a lengthy written confession given soon after he was arrested (Exhibit D), the appellant admitted that a plot had been formed to kill Manuel Escarella and that he himself invited Escarella to join the party on the fatal evening. He stated, however, in this declaration that Tan Yong was the one who struck Escarella in the head with the cranking iron while the latter was stooping down and looking at the engine. In the same declaration, the appellant added: "Inasmuch as I was near Escarella and I was the only one whom he saw, he asked me why I struck him, since he had done me nothing bad. I told Escarella that I did not hit him, and after having said so, Tan Yong told me to keep quiet and he would give me money."

After the appellant had been arrested, he was taken by the Manila police, in company with Lim Sio Chong, to the

scene of the murder. In the course of the journey the appellant was heard to speak in the Tagalog language to Lim Sio Chong, informing him that the appellant now intended (in view of the confession which Lim Sio Chong had made implicating the appellant) to testify that Lim Sio Chong was the one who killed Escarella. Pursuant to this threat we find the appellant saying, when testifying as a witness in his own behalf at the trial, that Lim Sio Chong was the man who struck Escarella in the head with the cranking iron. In this statement the appellant is corroborated by Chan Lin Tarn who appeared at the trial as a voluntary witness for the defense, although the police had not previously succeeded in arresting him as one of the accused persons in this case. Both the appellant and the last named witness also united in testifying at the trial that Lim Sio Chong killed Escarella with out assistance from other members of the party. They also said that, after the homicide had been accomplished and the party was ready to start to Manila, Lim Sio Chong backed the car for a short distance and then started forward, causing the car to pass over Escarella's body.

Upon examining the record we find it established beyond the possibility of rational doubt that this crime had been deliberately planned and that the four persons concerned Were all engaged therein as principals either by direct Participation or by aiding the actual slayer or slayers. the testimony of Lim Sio Chong is open to criticism as of an accomplice, but on all vital points, his statements are corroborated by the written confession of the appellant, as well as by the dying declaration of Escarella, to which reference will now be made.

Strange to say, this creature, who had been left for dead, revived sufficiently to make his way to the guard post near the entrance to the Fort McKinley reservation, a short distance from the scene of the crime. Upon his there making his condition known to the sentry, a conveyance was called and he was carried to St. Luke's Hospital, in the City of Manila. The next morning his wife, Carmen Cuenca, came to see him and he told her that Chan Lin Wat was the leader of those who had assaulted him. He stated further that another member of the gang was a man whose name was written on the back of an almanac in Escarella's house. Later Escarella was questioned, just before his death, by agents of the secret service in the presence of the attending physicians. Escarella then stated that Chan Lin Wat was the one who struck him on the back of the head with a blunt instrument and that, upon being struck, he asked his assailant why he did it. Instead of replying, Chan Lin Wat kicked him on the breast. As a result of these blows, the declarant stated that he fell to the ground unconscious. He here again stated that the name of another of his assailants was written on the back of an almanac in his house, which name afterwards appeared to be that of Tan Yong.

At the time this examination was conducted, Escarella showed such signs of weakness that the doctors requested that the conversation be brought to an end. About half an hour later, Escarella died, notwithstanding injections made by the physicians in an effort to prolong his life. Upon examination of the body several bruises were found on the head, in addition to the cut resulting from the blow in the back of the head from the cranking tool. A number of ribs were also broken and various lesions were found in the thoracic and abdominal cavities, which, as the doctors supposed, were the cause of death.

Both the appellant and Lim Sio Chong fled to the South immediately after the deed and were both arrested a few days later in the Province of Albay. The appellant has a bad record for violence and other forms of misbehavior, having been heretofore convicted of the offenses of less serious physical injuries, perjury and robbery from the person.

In the brief of the appellant much stress is placed upon the lack of moral weight in the testimony of Lim Sio Chong and an attempt is made to demonstrate that Lim Sio Chong and not the appellant did the killing. The reply to this is that while it may be granted that the appellant could not have been convicted on the uncorroborated testimony of Lim Sio Chong, yet, as already pointed out, the testimony of this witness is fully corroborated by the

appellant's written confession so far as concerns the principal points of the existence of the plot and the fact that the death of Escarella was brought about by the party of conspirators of which the appellant was a member at the time and place mentioned in the complaint. Whether the fatal blow, or blows, were struck by one or the other of the plotters is a matter of no importance.

It is not improbable that the role first assigned to the appellant was to act as decoy and that the role of executioner was first allotted to Lim Sio Chong. We take it that the order of Tan Yong for Lim Sio Chong to use the cranking tool was probably a preconcerted signal for the killing of Escarella, and it may be that Lim Sio Chong's courage was not equal to the ordeal. As a consequence, instead of using the tool, he may have replied, as he claims, that if the others wanted the crank used, someone else must use it. Thereupon Chan Lin Wat intervened and struck the treacherous and fatal blow, or blows, assisted by others. The fracture of ribs at opposite places on both sides of Escarella's body lends probability to the claim that the car was designedly caused to run over the body of unconscious man; and the idea of the perpetrators of the murder in leaving the body so conditioned was that it would be assumed by the police that Escarella had been killed by an automobile. The complete realization of this scheme was frustrated by the fact that the victim was not completely dead and lived to give a sufficient account of the assault to lead to the apprehension of two of the perpetrators. As already stated, Tan Yong has never been captured; and the name of Lim Sio Chong was struck from the information in order that he might be admitted as a witness for the prosecution.

It is supposed in the first assignment of error that the court was without jurisdiction to allow the name of Lim Sio Chong to be thus discarded in order that he might be admitted as a prosecuting witness, for the reason that an order of severance had been obtained by the two accused and Lim Sio Chong was not being tried at the time the court allowed him to be discharged. The contention is untenable. Notwithstanding the fact that a separate trial had been ordered for the two, they were both being prosecuted for the same crime upon a joint information. It cannot be admitted that the right of the court to order the discharge of one accused in order to allow him to appear as a witness for the prosecution can be frustrated by the act of one of the accused in asking for a severance.

In the fifth assignment of error exception is taken the admission of the dying declarations of Escarella, it being supposed that the proof has not shown with sufficient certainty that he believed death was impending when said declarations were made. There may possibly be something in this contention with respect to the first declaration made by Escarella to his wife, but the same cannot be said of ' declaration (the same in substance) made about half hour before Escarella's death. When this declaration was made, the sufferer was so weak that the doctors begged the interrogator to cease questioning the sufferer. The fact that he died only a few minutes thereafter, in connection with the nature of the wounds that had been inflicted upon him, leaves no room to doubt that he must then have known that death was near and had given up hope of survival. In order that a dying declaration may be admissible, it is not necessary to prove that the declarant should state that he has given up the hope of life. It is enough if, from the circumstances, it can be inferred with certainty that such must have been his state of mind.

Other assignments go to supposed errors of the court in various features of the findings of fact or admission of documentary evidence. Our study of the record leads to the conclusion that the supposed errors were not committed, or were nonprejudicial, and that the appellant is undoubtedly guilty of the offense of murder, regardless of whether the mortal blow was given by the appellant or some other member of the conspiracy. The proposition is well settled that, in carrying a conspiracy into effect, every act of one of the conspirators in furtherance of the common purpose is in contemplation of law the act of all (U. S. vs. Ipil, 27 Phil., 530; U. S. vs. Remigio, 37 Phil., 599; People vs. Cabrera, 43 Phil., 82; People vs. Carbonel, 48 Phil., 868).

There was present in this crime the qualifying circumstance of evident premeditation and the aggravating circumstance of treachery (alevosia). Nocturnity may properly, though perhaps not necessarily, in this case be

considered as absorbed in alevosia; and we so consider it. It is not clearly shown that the offense was committed in an uninhabited place, nor is it shown that advantage was taken of superior strength in any other manner than was inherent in the treacherous nature of the attack. In view of the Presence of the qualifying factor of evident premeditation and the aggravating circumstance of alevosia the court did not err in imposing the penalty appropriate to murder in its maximum degree.

In conclusion we deem it proper to record the fact that this case has been considered in full court by all the members thereof, except Chief Justice Avanceña, who is now absent on leave and not at this time regularly attending the sessions of the court.

The judgment appealed from is affirmed, and the sentence of death will be carried into effect in the manner prescribed by law upon a day to be fixed by the judge of the court of origin. So ordered, with costs against the appellant.

Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

UPON MOTION FOR RECONSIDERATION

September 28, 1927

PER CURIAM:

The attorneys for the appellant have interposed a motion for reconsideration, asking that the decision of this court, promulgated on March 30, 1927, affirming the judgment of the court below, be set aside and that the appealed judgment be reversed. In this motion our decision is criticized as illegal on the ground that the Chief Justice did not participate. For the rest it is insisted that the judgment is not in conformity with the evidence.

Upon the point of the non-participation of the Chief Justice in the decision, it will be noted that at the time the case was considered and voted, the Chief Justice was absent on formal leave and therefore was not then regularly attending the sessions of the court. The law relied upon by the appellant requires that decisions imposing the death sentence shall be signed by all the members of the court except such as are legally disqualified (*inhibido legalmente*) from taking part in the consideration of the case (Act No. 3104, sec. 1). In *Fuentes vs. Director of Prisons* (46 Phil., 22), it was held that this provision requires the participation of those members of the court only who are on duty at the time the case is heard. When, as happened in this case, a Justice is absent, upon leave, approved by formal resolution of the court, it must be considered that such member is legally disqualified (*inhibido legalmente*) in the sense intended by the law. The contrary conclusion would interpose a serious obstacle to the work of the court in capital cases, and could not have been intended by the Legislature. All that is required is unanimity on the part of all of the Justices constituting the effective working body at the time the case is considered and determined. While the law does not permit the non-participation of a Justice who is on duty in such a decision as this, it does not require the participation of those members of the court who are legally excused from work, as when a member is on leave of absence.

It follows that, in so far as the motion for reconsideration is directed to the point of the legal validity of the decision, the motion is not well founded. But the resolution of the present motion itself requires the participation of the Justices to the same extent as was necessary in the original determination of the case; and the Chief Justice, being now on duty, after having informed himself fully on the whole record, announces his adherence to the decision heretofore promulgated by the court. The entire personnel of the court is therefore unanimous in the imposition of the extreme penalty allowed by law, and the motion to rehear must be denied. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ.

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