

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GUILLERMO MIANA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 27110. September 28, 1927

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 15th day of July, 1926, a complaint was filed in the court of the justice of the peace of the municipality of Tayug, Province of Pangasinan, charging the abovenamed defendants with the crime of murder. Said defendants were arrested. After a preliminary investigation the justice of the peace found that there was sufficient cause for believing that the defendants committed the acts charged in the complaint and held them for trial in the Court of First Instance of said province.

On September 8, 1926, the prosecuting attorney of the Province of Pangasinan filed the following information:

"El Fiscal Provincial infrascrito acusa a los acusados arriba nombrados del delito de asesinato, cometido como sigue:

"Que en o hacia el 12 de julio de 1926, en el Municipio de Tayug, Provincia de Pangasinan, Islas Filipinas, los referidos acusados, armados de bolos, escopeta, bastones y otras armas, despues de haberse confederado y confabulado entre si para matar a las personas que estaban trabajando en el terrenp de la propiedad de Telesforo Abenojar, voluntaria, ilegal y criminalmente, con premeditacion conocida, alevosia y abuso de superioridad fisica, y ayudandose mutuamente, infirieron heridas graves y mortales de necesidad a Luciano de Vera y Pascual Frago que causaron la muerte de estos despues de algunas horas, como asimismo acometieron, agredieron e hirieron con bolos y garrotes a Pedro de Vera, Cornelio Tamondong, Gregorio Gaudia, Rufino Cabanizas, Paterno Gaudia e Ismael Gaudia, infiriendoles al efecto heridas graves en diferentes partes del cuerpo, las que se curaron en mas de treinta dias, con asistencia facultativa e imposibilidad fisica para el trabajo habitual de los agredidos.

"Hecho cometido con infraccion de la ley."

Upon said information the defendants were arraigned and tried. Guillermo Miana, upon request, was granted a separate trial. The other defendants were tried together. At the conclusion of the trial and after a careful consideration of the evidence adduced pro and con the Honorable Buenaventura Reyes, judge, found the defendants guilty of the crimes of homicide and physical injuries and sentenced each of them to suffer the maximum penalty for the crime of homicide, or seventeen years, four months and one day of reclusion temporal, with the accessory penalties of the law, to jointly and severally indemnify the heirs of the deceased Luciano de Vera and Pascual Frago in the sum of P1,000, and each to pay one-seventh part of the costs. From that sentence each of the defendants appealed.

Counsel for Guillermo Miana now contends that the lower court committed the following errors:

(a) In holding that Guillermo Miana took part in the affray and that there was conspiracy and concert of minds between him and the other defendants in regard to the commission of the crimes charged in the information.

(b) In using oral and documentary evidence against him, which were not used as evidence in the separate trial of Guillermo Miana.

(c) In holding Guillermo Miana criminally responsible with his coaccused.

Counsel for the other appellants contends that the lower court committed the following errors:

(a) In holding that there was conspiracy, concerted action and common purpose and design among them in regard to the perpetration of the acts charged in the information.

(b) In allowing the prosecution of the appellants for more than one crime (homicide and lesiones graves).

(c) In not dismissing the case as to five of the seven defendants above named.

(d) In not sentencing the two defendants, Anselmo Abenojar and Crispulo de los Santos, who caused the death of Luciano de Vera and Pascual Frago, to suffer the medium degree of reclusion temporal, or fourteen years, eight months and one day.

There is no dispute as to the following facts:

Crispulo Abenojar, a minor, inherited from his grandparents Inocencio Castulo and Regina Benigno several parcels of land located in the barrio of Legaspi, municipality of Tayug, Province of Pangasinan. On April 24, 1925, Maria Benigno, a sister of the deceased Regina Benigno, applied for appointment as guardian of the person and property of said minor (Exhibit V). On July 14, 1925, the Honorable Francisco Zanduetta, judge, issued an order, appointing Maria Benigno as said guardian, against the opposition of the minor's father, Anselmo Abenojar, one of the accused in the present case. Said order was affirmed by the Supreme Court on September 16, 1926[1] on appeal of said Anselmo Abenojar (Exhibit V).

Pending said appeal, and on September 18, 1925, Anselmo Abenojar applied for appointment as judicial administrator of the intestate estate of the deceased Inocencio Castulo and Regina Benigno, which estate had become the property of Crispulo Abenojar by inheritance, as above stated. Maria Benigno filed her opposition on the ground that she had been appointed guardian of the person and property of said minor (Exhibits 42 and 43). Pursuant to said application the Honorable C. M. Villareal, judge, on December 22, 1925, issued an order appointing said Anselmo Abenojar as administrator of the estate of Inocencio Castulo and Regina Benigno (Exhibits 41 and 44).

Maria Benigno, in her capacity as guardian of the person and property of Crispulo Abenojar, took possession of the lands inherited by said minor from his grandparents and placed them in the possession of Paterno Gaudia, as tenant. Possession of said lands was claimed by Anselmo Abenojar by virtue of his appointment as judicial administrator, and in order to enforce his alleged right of possession, on June 18, 1926, he filed a complaint in the Court of First Instance of Pangasinan, praying for a writ of preliminary injunction against Maria Benigno, Paterno Gaudia and others, requiring them to refrain from entering said lands or from interfering with the possession thereof. In paragraph VI of his complaint Anselmo Abenojar said:

"Que de no expedirse la orden de interdicto prohibitorio preliminar, seguramente ocurriran disturbios y encuentros personales quizas de consecuencias fatales, etc." (Exhibit 38.)

On July 7, 1926, the Honorable Buenaventura Reyes, judge, issued an order, denying the prayer of the plaintiff Anselmo Abenojar, on the ground that the defendants had an apparent right to the possession of the lands and

should not be deprived thereof until the respective rights of the parties were finally adjudicated. (Exhibit 39.)

On July 12, 1926, five days after the issuance of said order a bloody encounter took place on said lands between Anselmo Abenojar and his companions on one side, and Paterno Gaudia, his sons and companions on the other, resulting in the death of Luciano de Vera and Pascual Frago and in the wounding of six others, all of them companions of Paterno Gaudia.

The following facts have been proven beyond a reasonable doubt:

On July 11, 1926, Anselmo Abenojar and Guillermo Miana were seen together in a house in the municipality of San Manuel, Province of Pangasinan. About the middle of June, 1926, Guillermo Miana was also seen in a barrio of San Manuel, looking for Crispulo de los Santos, also one of the accused. On the morning of July 12, 1926, a short time before the fatal encounter, Anselmo Abenojar and Guillermo Miana with other companions were again seen in the same house in San Manuel. From there, armed with bolos and clubs, they proceeded to Tayug in a carromata. Between 9 and 10 o'clock they arrived at the place where the lands of Crispulo Abenojar are located and there found Paterno Gaudia, the tenant, and his companions constructing embankments. When Anselmo Abenojar and his party were about 50 meters from Paterno Gaudia, the accused Guillermo Miana fired a shot, which was evidently the signal for the attack, whereupon the "accused, with drawn bolos and clubs, rushed upon Paterno Gaudia and his companions, who tried to defend themselves from the unexpected attack the best they could. Two of them, Luciano de Vera and Pascual Frago, were killed and six others were wounded.

All of the defendants, with the exception of Guillermo Miana and Ignacio Castulo, subscribed affidavits, admitting their participation in the affray, but claiming that they simply acted in self-defense. (Exhibits 32, 33, 35, S and T.)

The evidence for the defendants attempts to show that Anselmo Abenojar and his companions went to the lands to work there; that upon arriving there they were attacked by Paterno Gaudia and his party, numbering about twenty; that they defended themselves with clubs; that during the fight they heard a shot, and by reason thereof the fight stopped. The evidence for Guillermo Miana attempts to show that he was not a member of the party of Anselmo Abenojar; that he did not take part in the affray, and that he was casually near the place where the fight occurred, hunting birds.

The falsity of the evidence for the defendants is readily apparent from its inherent improbability, especially when said evidence is examined in the light of the undisputed facts and the evidence for the prosecution. As a matter of fact, days and weeks prior to the affray, Anselmo Abenojar had already determined in his mind to take possession of the land by force, should he fail to get it by lawful means. The ominous words quoted above, which he incorporated in his application for a writ of preliminary injunction, could not mean otherwise.

To carry out his determination he secured the help of his coaccused. As a matter of fact, Anselmo Abenojar, Guillermo Miana and the other accused were seen a few days before, and on the eve of the fight in the house of one of their coaccused. They were again seen together a few hours before the fight, armed with bolos and clubs, going in the direction of the scene of the fight. The existence of the conspiracy between the defendants is self-evident.

It is contended on behalf of Guillermo Miana that the lower court made use against him of evidence not introduced during his separate trial. The evidence referred to by counsel is the affidavits subscribed by the other defendants relating to their participation in the affray, stating among other things that Guillermo Miana was one of their companions. We have read carefully the transcript of the oral evidence adduced during the trial of Miana, and are fully convinced that his conviction rests entirely and exclusively on the weight of the evidence adduced

against him during his trial. His active participation in the commission of the acts charged in the complaint is clearly shown in the evidence adduced against him in his separate trial.

The appellants also contend that the lower court committed an error in allowing their prosecution¹ and trial for more than one crime on one information only. This question should have been raised in the trial court. (Secs. 11 and 21, G. O. No. 58.) Proceedings had on such information will not be modified on appeal, for multifariousness. While it is true in this jurisdiction that a complaint or information must charge but one offense, yet if no objection is made to a complaint which charges one or more offenses, said objection is waived and cannot be raised for the first time on appeal. (U. S. vs. Sarabia, 4 Phil., 566; U. S. vs. Paraiso, 5. Phil., 149; Paraiso vs. U. S., 207 U. S., 368; U. S. vs. Aldos, 6 Phil., 381.) Many more cases might be cited to the same effect.

When the defendant in a criminal cause goes to trial under a complaint or information which contains a description of more than one offense, he thereby waives the objection and may be found guilty of, and should be sentenced for, as many offenses as are charged in the complaint and proven during the trial. (U. S. vs. Montiel, 9 Phil., 162; U. S. vs. Balaba, 37 Phil., 260.)

The accused having made no objection in the present case to the information on the ground that it charged more than one offense, the prosecution properly submitted evidence as to the commission of each and all of the offenses charged; and the court having found that the defendants were guilty of each of said crimes he should impose the prescribed penalty for each and all of the crimes of which the accused were found guilty. (U. S. vs. Lahoylahoy and Madanlog, 38 Phil., 330, 339; U. S. vs. Baul, 89 Phil., 846, 849; People vs. Cabrera, 43 Phil., 82, 103; People vs. Teves, 44 Phil., 275, 276; People vs. Manuel, 44 Phil., 333, 342; People vs. Cha and Milagrosa, 45 Phil., 137, 141; People vs. Olfindo, 47 Phil., 1, 6.) And many others.

In the present case it is clearly proved beyond a reasonable doubt that the defendants and appellants did, cooperating and acting together commit the crimes charged in the complaint, with the aggravating circumstance of superior strength, and should, therefore, suffer the penalties of the law. The decision of the lower court should, therefore, be modified.

It is, therefore, hereby ordered and decreed that each of the said appellants be sentenced for the murder of Luciano' de Vera to be imprisoned for a period of seventeen years, four months and one day of reclusion temporal, with the, accessory penalties of the law, to jointly and severally indemnify the heirs of the deceased Luciano de Vera in the sum of P1,000, and each to pay one-seventh part of the costs. It is further ordered and decreed that each of the appellants be sentenced for the murder of Pascual Frago to be imprisoned for a period of seventeen years, four months and one day of reclusion temporal, with the accessory penalties of the law, to jointly and severally indemnify the heirs of the deceased Pascual Frago in the sum of P1,000 and each to pay one-seventh part of the costs, with the condition that the period of imprisonment hereby imposed upon the appellants for the murder of Pascual Frago shall commence to be served immediately upon the termination of the sentence hereby imposed upon them for the murder of Luciano de Vera. So ordered.

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

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