

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. JULIO ABRIL ET AL., DEFENDANTS. PEDRO PAMPOLINA, DEFENDANT AND APPELLANT.

G.R. No. 28702. March 12, 1928

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The information which initiated this cause is as follows:

"That on or about March 14, 1927, in the municipality of Calauan, Province of Laguna, Philippine Islands, and within the jurisdiction of this court, the above-named accused, being provided with revolvers, did willfully, unlawfully, maliciously, and feloniously, having conspired and mutually agreed among themselves, with treachery and evident premeditation and with the deliberate intent to kill, fire several shots with said revolvers at Hermogenes Punsalan, inflicting the following wounds: A wound penetrating the left temporal region and coming out at the parietal region; a penetrating wound on the right side of the back below the lowest point of the right scapula, passing through the region of the seventh rib and coming out on the front right-hand side between the fourth and fifth ribs; another deep wound on the upper part of the left buttock, the bullet having imbedded itself in the lower region of the abdomen; another deep wound from the back of the fore part of the left arm; and another piercing wound in the left jaw; which wounds were necessarily fatal and were the direct and only cause of the death of said Hermogenes Punsalan.

"Contrary to law, and with the aggravating circumstance of abuse of superior strength."

In view of the evidence introduced by the prosecution and the defense, the trial court found the accused guilty of the crime of homicide and sentenced each to fourteen years, eight months and one day reclusion temporal, with the accessories, and jointly and severally to indemnify the deceased's family in the sum of P500, with half the costs of the action against each.

Only the accused Pedro Pampolina appealed from this judgment and his counsel now alleges that the trial court erred: (1) In giving more credit to the incoherent, contradictory, and improbable testimony of the witnesses for the prosecution than to the testimony of the witnesses for the defense; (2) in supposing that the empty shells, Exhibit K, belong to appellant Pedro Pampolina; (3) in supposing that appellant Pedro Pampolina also took part in the commission of the crime; (4) in considering the fact that appellant Pedro Pampolina did not inform the authorities of the crime and did not surrender himself until five days had elapsed after the commission of the crime, as evidence of guilt; and (5) in not giving the herein appellant the benefit of reasonable doubt, and in failing to absolve him wholly from the complaint.

At about 8 o'clock in the evening on March 14 last, Brigido Refran was on his way home to Limao Apasan, having come from the house of one Basilia Prazedes, where the Sacred Passion had been read. It was a clear moonlight night, and on the way he overtook the accused Julio Abril and Pedro Pampolina; Julio asked him where Hermogenes Punzalan was, and Brigido Refran answered that Hermogenes was at Prazedes's house. The witness

continued homeward, and the two accused following behind him. Farther on, the three met one Dimas going in the opposite direction, but on meeting them, he joined their group, and the four of them went on. And it was then that they met Hermogenes Punzalan on his carabao going in the opposite direction towards his house in the barrio of Antipolo. Julio Abril remarked to Hermogenes Punzalan, "we were looking for you," and Hermogenes answered, "Let us return;" whereupon the two accused and Hermogenes returned, the latter on his carabao, Pedro Pampolina on the group with him, and Julio Abril on foot following them. Then, the group separated in two, one consisting of the two accused and Hermogenes going towards Antipolo, and the other of Brigido Refran and Dimas going towards Limao Apasan. They had hardly taken a few steps when Brigido Refran said he heard some reports or shots from a firearm, stopped, looking back and saw the accused Julio and Pedro shooting at Hermogenes, the first shot having been fired by Pedro Pampolina; he adds that he saw them running away after having fired, and that both the accused carried revolvers, for he saw Julio Abril's in the latter's hands after the shots, and Pedro Pampolina's when the latter in trying to vault a wire fence got his clothes entangled, thus uncovering his back and showing that he had a revolver thrust into his hip pocket, probably in his trousers; and that when the accused had departed, he went up to where Hermogenes Punzalan was and then saw him stretched out on the ground already dead, and although he called him by name, Hermogenes did not answer; and finally he went on to report the incident to the guard of the Hacienda de Calauang, Modesto Medina.

On the following day, March 15th, Doctor Manzanero examined Hermogenes Punzalan's body, and found the wounds described in the information, to wit: One penetrating the left temporal region and coming out at the parietal region; another deep wound on the right side of the back; another deep wound on the upper part of the left buttock; another penetrating wound on the back part of the left arm; and another piercing wound on the left jaw. The said physician testifies that from the wound on the left buttock, he extracted a revolver bullet imbedded in the lower region of the abdomen; that the said wounds were necessarily mortal, with the exception of the one on the jaw, and that the one in the left temporal region coming out at the parietal region must have caused the instantaneous death of Hermogenes Punzalan.

The two bullets, one taken from the left buttock, and the other covered with blood and bits of brain matter were examined during the trial by an expert who declared that they belong to a 45 caliber double action revolver, while he said that the four empty shells also examined by him belong to a 45 caliber automatic revolver.

Counsel for the defense contends that the wounds of the deceased were caused by the other accused Julio Abril, who did not appeal, and that the appellant did not take part in the encounter. This contention is untenable. It appears proven that the bullet extracted from the deceased's left buttock and the other one stained with blood and some particles of brain matter both belong to a 45 caliber double action revolver, while the four empty shells belong to a 45 caliber automatic revolver, and these shells the accused Julio Abril recognized as the ones from the automatic pistol he used that night and which he threw among some coconut trees while fleeing from the scene of the crime. The court finally reached the conclusion that, of the bullets discharged at the deceased, two belong to a different kind of revolver from that to which the empty shells correspond. This shows that two kinds of revolvers were used on that night. It is said that Punzalan also had a revolver with which he attacked the accused Julio Abril. If this were true, the revolver should have been found near his body, when he fell, but it was not. Besides, witness Refran states that after hearing the first shots on that night, he began to observe and saw the two accused running away from the scene of the crime, and that then, each of them fired one more shot. And with special reference to the appellant's revolver the same witness Refran testifies that when they climbed over a wire fence, before he found Hermogenes Punzalan, the appellant's shirt caught on a piece of barb wire, and he saw the revolver which the latter carried in the hip pocket of his trousers.

With respect to the credibility of the witness Brigido Refran, the judge made the following apt observation: "I do

not believe that the testimony given by Brigido Refran at the trial can be weakened by the slight discrepancies in his affidavit subscribed before the trial. Said witness has explained them to the satisfaction of the court, saying that while making the affidavit before the trial, he was afraid of the accused, and their relatives, because the former had not yet been arrested, and thus it is that the testimony given by said Refran during the trial is more expressive of the facts and more detailed than that given before the trial."

The Attorney-General maintains that the acts proven constitute the crime of murder, defined and penalized in article 403 of the Penal Code, with the qualifying circumstance of treachery. The finding of the court that the crime committed is homicide is in accordance with the law. Witness Brigido Refran did not see the beginning of the aggression and the mere detail that some injuries of the deceased indicate a direction from the back to the front is insufficient to establish that the aggressors employed ways and means to insure the consummation of the crime without risk to themselves. Following an established doctrine of this court, treachery is not to be presumed, but must be proved as conclusively as the act which it qualifies.

In the instant case, the aggravating circumstance of abuse of superior strength was present, since the two aggressors were armed with revolver; but the lower court having considered the scant education of the defendants as an extenuating circumstance, the penalty provided in article 404 of the Penal Code must be imposed in its medium degree.

As the judgment appealed from is in accordance with the law, it must be, as it is hereby, affirmed with the costs against the appellant. So ordered.

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

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