

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE MAGNO ET. AL., DEFENDANTS AND APPELLANTS.

*G. R. No. 3517. August 07, 1907*

Ponente: TORRES, J.

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### TORRES, J.:

On the 12th of July, 1906, a complaint was filed with the Court of First Instance of Batangas, reading as follows:

"The undersigned provincial fiscal of Batangas accuses Jose Magno, Juan Rio, Baldomero Taguian, Pablo Moral, and Lino Dalafu, of the crime of murder, committed as follows:

"That on or about the 25th of March, 1905, in the early morning, and within the limits of the municipality of Taal, Province of Batangas, the said Jose Magno, Juan Rio, Baldomero Taguian, Pablo Moral, and Lino Dalafu being then and there enlisted men of the Constabulary, stationed in the said municipality of Taal, while conducting Bibiano Cabral under arrest from the capital of Batangas to Taal, by order of Lieut. James McLean, who at the time was the commanding officer of the said detachment of Constabulary, after passing the party line between the barrios of Mojon and Sambat, in the said municipality of Taal, with forethought and deliberate intention, treacherously killed their prisoner Bibiano Cabral, shooting him, and subsequently burying his body at the place where the killing occurred. Contrary to the statute in such case made and provided."

Proceedings having been instituted by reason of the foregoing complaint, the judge, in view of the facts in the case, rendered judgment on the 7th of August, 1906, and sentenced Baldomero Taguian to the penalty of imprisonment (cadena temporal) for twenty years and Jose Magno, Juan Rio, Pablo Moral, and Lino Dalafu, each to imprisonment (presidio mayor) for ten years and one day and the accessories, to jointly and severally pay an indemnity of 1,000 Philippine pesos to the heirs of the deceased, and to pay in equal parts the costs of the proceedings. From said judgment counsel for the accused appealed.

When the net result in a case, as in the present instance, is a clear and manifest conflict of evidence between the prosecution and the defense, it is necessary to set forth the facts which both parties claimed to have proved, in order that the court may reach a just conclusion, not only in respect to the existence of the crime charged but also as regards the culpability of its alleged authors.

Was the crime of murder committed as affirmed by the prosecution and attested by the witnesses? Was the death of Bibiano Cabral caused by the Constabulary force that conducted him, during the night of the 24th and morning of the 25th of March, 1905, from the capital of Batangas to the town of Taal, in compliance with their duties, at the time when both the deceased and the other prisoner, Leonardo Sangalang, to whom he was coupled, made their escape?

The following is the result of the evidence taken at the trial at the request of the prosecution:

That on a certain day in the month of March, Bibiano Cabral, having been summoned by the Court of First Instance of Batangas, appeared as witness in a criminal cause, and was then arrested by direction of Lieutenant

McLean of the Constabulary, and after two days, on the afternoon of the 24th of the said month, was sent with three other prisoners named Leonardo Sangalang, Francisco Rosales, and Jose Villavicencio, to the municipality of said town, escorted by the five accused Constabulary soldiers, all of whom started at about (6 p. m. in the following order: Leonardo Sangalang and Bibiano Cabral were fastened together, each of them being tied by one arm, and marched ahead, followed at a distance of seven steps by the accused Lino Dalafu and Jose Magno; that in the rear of the latter walked untied the two other prisoners, Rosales and Villavicencio, followed at an equal distance by the three others, Juan Rio, Pablo Moral, and Baldomero Taguan, who acted as corporal, Lieut. Lucas G. Babiera having instructed the squad to carefully watch the prisoners while on the way, Sangalang and Cabral specially; that late on that night they reached the guardhouse of the barrio of Sambat, municipality of Taal; that they there found the roundsmen Crisanto Magpantay, Simplicio Atienza, Ramon Atienza, and Alejandro Garcia, and while there taking a rest, Corporal Taguan delivered to one of the roundsmen two fowls to carry and to be cooked, and in the meanwhile three of the policemen and the four prisoners slept in the same guardhouse, and the other two policemen went to a shop opposite; that as soon as the supper was ready, the Constabulary men and the prisoners woke up and commenced to partake of it at once, but on noticing the absence of one of the prisoners, Leonardo Sangalang, they gave up their supper and immediately started in search of the runaway, with the assistance of the three roundsmen, and upon not finding him in the said barrio, the accused and the three remaining prisoners continued their march to Taal, and the roundsmen in turn took the opposite direction as far as Batangas; that the five accused, when passing by the next barrio named Mojon, commenced to illtreat their prisoner Cabral, pushing him and telling him that he was to die, and this is affirmed by the married couple Gabriela Torres and Jose Villanueva, who lived in a house near the bridge, at the extremity of the said barrio of Mojon which also belongs to Taal, and who, being awake on the morning of the said 25th of March, they heard the voice of an individual who cried: "Residents of the barrio, come and help me because the soldiers want to kill me, I having committed no crime;" that shortly thereafter they also heard some one say: "Brother Jose, brother Jose, come and assist me because the soldiers are going to kill me without any fault on my part;" the witnesses did not know to whom the person crying out for help was addressing himself, because they could not see him at that time, but shortly after they saw pass by on the road in front of their house an individual who was being dragged by another, and as he fell down another man pushed him and said to him: "Get up, you son of you are going to die," and though immediately getting up, he again fell down and sat on the road saying, "Oh! my head is already bleeding;" that upon reaching the bridge by crawling, these witnesses also heard him say: "Oh! mother, Ninang, Tinang, this is my last! " and several successive shots followed for which reason the deponents left the window and looked through the crevices, and through fear they then lay with their faces downwards; the said married couple further stated that, from the interior of their house, they had plainly heard the words uttered by the individual who was being maltreated, and that the two individuals who dragged and pushed the one who cried out were dressed in black.

Another woman residing in the same place, Ramona Rodriguez, testifies to having heard, from the interior of her house, the cries of a person who said, "Residents of this barrio, come and assist me as they are going to kill me without reason therefor," and at this moment a shot was heard, but as her children at once commenced to cry she did not learn what afterwards took place.

It has been alleged by the defense that the accused, in compliance with their duty, and in order to avoid the escape of the two prisoners, Sangalang and Cabral, fired at them on noticing that they had started to run over the road which divides the barrios of Sambat and Mojon, and that in consequence of the shots, Bibiano Cabral was killed; that they do not know what became of Leonardo Sangalang, who disappeared.

Lino Dalafu was the only one of the accused who testified at the trial, and he stated that he and Jose Magno were on the road and walked behind the prisoners Sangalang and Cabral, who were tied together with a rope, and

behind them walked the other two prisoners followed by the other three accused; that when passing by the town of Bauan, they halted to eat at a carenderia (native restaurant), and when the meal was finished they continued their march toward the town of Taal without stopping until they reached the spot where the affair occurred, near Taal, when; they noticed that the prisoners Cabral and Sangalang suddenly started to run. As the latter paid no attention to the order to halt, nor the shots fired in the air, and finding that it was impossible to catch them because they were already at some distance, one of them running zigzag, Corporal Taguian then approached them, accompanied by another member of the Constabulary, and ordered them all to fire on the fugitives; that after twelve or thirteen volleys, Cabral was killed, and Sangalang managed to make his escape. By order of the corporal, deponent proceeded to the town on horseback, in order to report the occurrence to Lieutenant McLean, and this accused denies the fact that fowls were carried by them, or that the same were handed to anyone, or that they had slept anywhere on that early morning.

The fact of the escape as stated by counsel for the accused and by Lino Dalafu, one of the latter, is confirmed by the testimony of the other two prisoners, Francisco Rosales and Jose Villavicencio, who after affirming that they had stopped to eat at a carenderia in the town of Bauan, further stated that on arriving at the line between Sambat and Mojon they suddenly heard shots, and at once laid down on their faces, begging not to be fired at because they would not attempt to run, and that while in this position Rosales saw that one of the prisoners was running. Villavicencio, however, testified that he had seen the two, Cabral and Sangalang, running away; he also denies the fact that a stop was made anywhere else beyond the said carenderia, or that any fowls were carried by them.

That Sangalang made his escape, so much so that his present whereabouts are not known, is an unquestionable fact; but did he escape by himself, as affirmed by four roundsmen of the guardhouse of the barrio, or did he escape at the same time as Cabral, to whom he was tied by the arm, as affirmed by the other two prisoners and the policemen who led them? The marked conflict, between the proofs of the prosecution and those of the defense perplexes the mind and leaves it in the greatest uncertainty.

The three residents who heard the cries of the person maltreated prior to hearing the gunshots (two of whom subsequently saw the said individual pass by, dragged by two other men dressed in black, also before they heard the shots), say nothing regarding the presence of the other two prisoners and the three constabularios who walked behind the former, nor anything about having seen the latter while looking through the window of their house, when as a matter of fact the five last named, prisoners and constabularios, were at a very short distance from the two who conducted the person maltreated.

It has been proven that the road from Batangas to Taal runs from east to west, and this fact is confirmed by the testimony of Dr. Vicente Lontoc, who accompanied Lieutenant McLean to the site where the body of Cabral lay, a few hours after his death. The body was found on the dividing line between the barrios of Sambat and Mojon, at the extremity of a canal and at the bottom of a ravine crossed by a bridge. The two aforesaid witnesses, however, whose house is at a distance of 10 yards from the bridge, testify to having heard the cries coming from the west of their house at the extremity of the barrio of Mojon, close to Sambat, and that when the person abused and those conducting him passed their house, they were going east; that is, toward Batangas, as if coming from Taal, in an opposite direction to that taken by the prisoners and their escort, since they were traveling from Batangas to Taal, or from east to west, which is the direction to be taken when going from Batangas to Taal.

The above statements can not be made to agree with the testimony given by the four roundsmen, since it is affirmed by the latter that as the fugitive Sangalang was not found, the Constabulary men continued their march to Taal, while they took the opposite direction to Batangas. Nor does the testimony of Dr. Lontoc, who discovered and inspected the body at the bottom of a ravine, agree with this testimony nor with other statements contained in the record, as far as concerns the statement that the road from Batangas to Taal runs from east to west.

The fact that the person maltreated and two men with black shirts were seen on the morning when the affair occurred, and that the other five men who were at but a short distance from the first named were not seen, is inexplicable, as is also the fact that the said three individuals, the only ones referred to by the principal witnesses of the prosecution, were observed to be going from Mojon to Sambat, in other words, as from Taal to Batangas, when the record does not contain any indication that a move back to Batangas had been made by the prisoners and their escort.

For the foregoing reasons and the other merits of the case, it is impossible to be convinced that the accused are guilty of the crime of murder, because in rendering judgment, actual proof of the commission of the crime and of the guilt of its author is required. In spite of the doubt as to the innocence of the accused, one is inclined to believe that Cabral attempted to escape, and that the accused killed the fugitive who was in their custody, in compliance with their duty, in view of the fact that Cabral, disregarding the warning of his custodians, persisted in his attempt to escape, and that there was no other remedy but to fire at him, as they did, in order to prevent him from getting away.

When, owing to the insufficiency of the evidence, the crime and the guilt of the accused fail to be established, presumption of innocence must prevail, and although there may still be some doubt, yet where the culpability of the accused is not fully shown they are entitled to be acquitted. (Sec. 57, General Orders, No. 58.)

Article 8 of the Penal Code prescribes that among others who are not delinquent and are therefore exempt from criminal liability, is "he who acts in the fulfillment of a duty or in the legitimate exercise of a right, trade, or office."

According to rule 51 of the provisional law for the application of the provisions of the code, an acquittal should be based, among other reasons stated therein, on the fact that the defendant is exempt from liability.

Therefore, in view of the foregoing, it is our opinion that the judgment of the court below should be reversed, and the defendants Jose Magno, Juan Bio, Baldomero Taguian, Pablo Moral, and Lino Dalafu should be acquitted and discharged, with the costs in both instances de oficio. So ordered.

Arellano, C.J. Johnson, Willard, and Tracey, JJ. concur.

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