

THE PEOPLE OR THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FLORO TUMAYAO, SIMEON TUMAYAO, TOMAS CANETE AND SERGIO CANETE, DEFENDANTS AND APPELLANTS.

G.R. No. 35442. March 04, 1932

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-35442/>

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Cebu, finding the appellants, Floro Tumayao, Simeon Tumayao, Tomas Canete, and Sergio Cafiete, guilty of the offense of homicide, committed upon the person of Mariano Tundag, and sentencing each of them to undergo imprisonment for fourteen years, eight months and one day, reclusion temporal, with the accessories prescribed by law, and requiring them jointly and severally to indemnify the heirs of the deceased in the amount of P1,000, as well as to pay the costs of prosecution.

The appellants in this case, as well as the deceased, were residents of the barrio of Canagahan, municipality of Liloan, Cebu. In 1928 one Isidoro Ontong, a resident of the same barrio, informally mortgaged a piece of land to Tomas Canete, one of the appellants in this case, as security for a loan of P20. It was agreed that the land might be redeemed by payment of the loan at the expiration of three years. When the time for redemption had about arrived, Isidoro Ontong went to the house of Tomas Canete for the purpose of redeeming the property. Canete refused to receive the money, asserting that the money loaned belonged to his neighbor, Floro Tumayao. Disconcerted by this attitude on the part of Canete, Isidoro Ontong proceeded to the house of Mariano Tundag for the purpose of obtaining advice from him. Upon being informed of the incident, Tundag sent for Tomas Canete and, upon his arrival, inquired the reason why he had refused to permit Ontong to redeem the land. Canete became angry and threatened Tundag with a beating, at the same time advising him that he should not meddle in the business of other people. The next day, which was December 18, 1930, Mariano Tundag, accompanied by Floro Tumayao, was proceeding across an open field in the direction where Simeon Tumayao, the son of Floro Tumayao, was standing. As the two neared the point where Simeon was at work, the latter ran to a group of banana trees, picked up a spear (lanza), and, as his father and Tundag approached, he raised the spear in a threatening manner as if to hurl it at Tundag, at the same time saying: "Now what is it? You pretend to be smart, and teniente; that money loaned to Isidoro Ontong belongs to us." About the same time Sergio Cafiete and Tomas Caiiete appeared on the scene, and Sergio threw a stone at Tundag, hitting him on the left breast. Immediately thereafter Floro Tumayao, who was standing somewhat behind Tundag, and apparently to his right, struck Tundag on the right arm with a bolo, thereby inflicting a serious wound. Tundag thereupon raised a sickle in his left hand and advanced upon Simeon Tumayao. The latter, however, retreated, while Tomas Cafiete struck Tundag on the left hand with a bolo, inflicting a slight cut and causing Tundag to drop the sickle. It is also claimed that Tomas Caiiete gave Tundag a second blow on the left leg, but if any such blow was delivered, it resulted in no flesh wound. Mariano Tundag fell to the ground, and while he was in this position Simeon Tumayao approached and, with his spear, stabbed Tundag in the abdomen. The defendants then ran away.

The facts above related are deduced mainly from the testimony of Crestituto Tundag, a boy of the age of 10 years, or more, who viewed the scene from a nearby point. This boy's testimony shows that he was an intelligent observer and alert in taking in the scene that was transacted before him. Victoria Tundag, a married woman of the age of 32 years, and a daughter of Tundag, was also an eyewitness to the trouble. But she failed to take any note of the presence of Sergio and Tomas Caiiete and apparently failed to see the part which Simeon Tumayao took in the affair. We have no hesitancy in declaring that the facts, as above stated and found by the trial court, correctly state the material incidents of the trouble.

Tundag died in a few days from infection and loss of blood. The doctor who attended upon him testified that he found three wounds upon the deceased, one upon the right arm, another upon the left hand, and another in, the abdomen, but the death evidently resulted from the more serious wound on the arm.

The evidence fails to show that there was any conspiracy on the part of the four accused to kill the deceased or to do him grave bodily harm. The fact that the four had, as they seem to have imagined, a cause of grievance against the deceased arising from his intervention in the misunderstanding that had arisen between Tomas Canete and Isidoro Ontong over the redemption of a piece of land, and that the four were somewhat incensed against Tundag on that account, does not prove a conspiracy to take his life or inflict upon him bodily injury. Furthermore, the fact that Simeon was not armed with a dangerous weapon when his father and Tundag approached him in the field, and that Sergio Canete used no weapon, indicates sufficiently that the homicide was probably the result of an unexpected encounter. The fatal blow was that given by Floro Tumayao.

Sergio Canete and Tomas Canete, in our opinion, are not guilty of participation in the homicide, but are more properly subject to punishment for assault and battery. Sergio Canete, it is true; threw a stone at Tundag and struck him on the left shoulder, and Tomas Canete intervened for the protection of Simeon Tumayao, inflicting the slight wound on Tundag's hand, already mentioned. There is no proof that either of these two participated in the criminal design of the principal, Floro Tumayao, nor that there had been any concert between them with respect to making the unlawful aggression.

As to the part taken by Simeon Tumayao, the same favorable inference cannot be drawn, for he was the first person to commit himself to the unlawful assault upon Tundag, and after the latter had been struck down he attacked the prostrate man with his bolo, inflicting a wound in the abdomen ; and while the wound thus inflicted was not of a character that would have resulted in death, it shows an intention to cooperate with his father in inflicting injury upon the deceased. His position in this matter resembles closely that of Ramon Tamayo in *People vs. Tamayo* (44 Phil., 38, 54), who was declared to be an accomplice because of acts done by him after a fatal injury had been inflicted upon the deceased by another person. We are of the opinion that in this case also, the appellant Simeon Tumayao is responsible as an accomplice.

From what has been said it results that the judgment appealed from must be affirmed, in so far as it finds the appellant Floro Tumayao guilty of the offense of homicide and sentences him to undergo imprisonment for fourteen years, eight months and one day, reclusion temporal, with the accessories prescribed by law, and requires him to indemnify the heirs of the deceased in the amount of P1,000. The judgment must be reversed as to the other three appellants: And as to Simeon Tumayao, judgment will be entered declaring him guilty of homicide, in the character of accomplice, and requiring him to undergo imprisonment for eight years and one day, prision mayor, with the accessories prescribed in article 61 of the Penal Code, and imposing upon him liability to indemnify the heirs of the deceased in the amount of P500, it being understood that this liability shall be subsidiary to the liability of indemnification imposed upon Floro Tumayao. These appellants are further sentenced to pay one-fourth of the costs of both instances. Tomas Canete and Sergio Canete are adjudged guilty of assault and battery (*malos tratos de obra*) under No. 1 of article 589 of the Penal Code, and are sentenced to confinement

for five days, arresto, and required to pay each one-fourth the costs of both instances. So ordered.

Avanceña, C. J., Johnson, Villamor, Romualdez, and VillaReal, JJ., concur.

Malcolm, Ostrand, and Imperial, JJ., dissenting in part:

The circumstances under which the assault was carried out by the accused, and particularly their concerted action, indicate the existence of a conspiracy between them, and accordingly we are of the opinion that the judgment should be affirmed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.