

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. NICOLAS FRANCISCO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 36243. October 27, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

In this case the seven defendants were charged upon an information filed in the Court of First Instance of Rizal, with the crime of robbery with homicide and less serious physical injuries.

It appears that on the 17th of May, 1931, between the hours of 11 and 12 at night, a band of musicians called the Trozo Band, were assaulted while playing in a fiesta procession, by various persons; and in the affray one of the musicians, Dionisio Dabu, was stabbed and three other musicians were slightly injured. Two of the musical instruments of the band were damaged to the extent of P155. Dabu subsequently died as a result of his injury.

The court below found no satisfactory evidence of robbery but found all of the seven defendants guilty of a conspiracy to commit an assault upon the Trozo Band, and sentenced the defendants Esguerra, Resare, Roldan, Amistoso, De Dios and Garcia to (1) fourteen years, eight months, and one day of reclusion temporal for the death of Dionisio Dabu; (2) two months and one day of arresto mayor in each case for the injuries inflicted upon Lucio Ignacio, Severo Simon and Eulogio Arellano respectively. The court sentenced Nicolas Francisco more heavily because he is a barrio lieutenant, as follows: (1) Seventeen years, four months, and one day of reclusion temporal, for the crime of homicide, in connection with the death of Dionisio Dabu; (2) four months and one day of arresto mayor, for the injuries inflicted upon Ignacio, Simon and Arellano respectively. The sentence also assessed the accessory penalties and required the accused to indemnify the heirs of Dionisio Dabu in the sum of P1,000 and to pay the owner of the Trozo Band the sum of P155, with subsidiary imprisonment in case of insolvency.

The Constabulary officers obtained confessions from the defendants Resare (Exhibit G) ; Garcia (Exhibit H); Esguerra (Exhibit I) ; and Roldan (Exhibit J). All of these defendants testified that immediately after their arrest they were subjected to abuse and threats and other forms of the so-called "third degree" treatment by the Constabulary. At the trial they all repudiated these confessions under oath. The fiscal introduced these confessions as evidence at the trial, and the Attorney-General relies upon , em in presenting the case in this court. As to Roldan, however, the Attorney-General recommends, in the face of

Roldan's confession, which the lieutenant of the Constabulary testified was freely and voluntarily made, that he should be acquitted. We are the more willing to accept that recommendation because Roldan testified that his confession was obtained by particularly atrocious means including requiring him to drink stale urine.

The Attorney-General also recommends that the accused Resare should be sentenced only for malicious mischief and fined not more than three times the amount of P110 which is the value of the instrument which he damaged when he endeavored to strike musician Santos. This requires us to ignore Resare's confession (Exhibit G) which the lieutenant of the Constabulary testifies was freely and voluntarily made.

The Attorney-General states in his brief, page 18: "As to the motive of the aggression, Exhibits G, H, I, and J state that Nicolas Francisco harbored ill feelings against the members of the Trozo Band and that, for this reason, he induced his codefendants to attack said band." He also states: "Conspiracy has moreover been admitted in Exhibits G, H, I and J." These exhibits are clearly incompetent and improper evidence as against Nicolas Francisco. Apart from said exhibits, there is no evidence that Francisco harbored any ill feeling against any member of the Trozo Band.

Apart from said exhibits, the evidence does not convince us beyond reasonable doubt that the barrio lieutenant, Nicolas Francisco, had any part in said conspiracy. Nicolas Francisco testified that he was in a store drinking lemonade when the affray began. He left his drink and immediately ran out of the store, blowing his whistle as he ran. The storekeeper and another disinterested witness corroborated his testimony as to this fact. On the other hand, the star witness for the government, Lucio Ignacio, testified that Francisco blew his whistle before the affray began; and it is the theory of the prosecution that it was agreed by the assailants that the blowing of the barrio lieutenants whistle should be the signal for the beginning of the attack. Considering that it is undisputed that the band was playing and on the march when the attack began, it is easily possible that in the commotion and confusion, Ignacio might have been mistaken in his belief that he heard the whistle immediately before instead of immediately after the beginning of the affray. Another government witness, a member of the band, testified that when he heard the whistle, one of his companions had already fallen. In view of the undisputed evidence that the barrio lieutenant Francisco did not lay hands upon any member of the band except when he ran out and picked up the fallen musician Dabu, we are strongly inclined to give the officer the benefit of the presumption of innocence and the added presumption that his official duty was regularly performed. (Section 334 [14] Code of Civil Procedure.)

The judgment of the court below is affirmed as to the defendants Dominador Esguerra, Jayme Amistoso, Gaspar de Dios and Olimpio Garcia, with this modification: that for the injury inflicted on Severo Simon and Eulogio Arellano, the penalty according to article 266 of the Revised Penal Code shall be reduced to *arresto menor* in its medium degree or twenty days of *arresto menor*; the judgment is reversed as to Nicolas Francisco and Estanislao Roldan, and modified as to Estanislao Resare in the sense that he is found guilty of malicious mischief and is sentenced to a fine of P300 and to indemnify the owner of the Trozo Band in the sum of P110, being the value of the instrument of Felipe Santos, with subsidiary imprisonment in case of insolvency in the payment of said fine and indemnity. Let the proportionate part of the costs in this instance be assessed against the appellants Dominador Esguerra, Olimpio Garcia, Jayme Amistoso, Gaspar de Dios and Estanislao Resare, and the proportionate part of the costs *de oficio* to Nicolas Francisco and Estanislao Roldan. So ordered.

Villamor, Ostrand, Abad Santos, and Vickers, JJ., concur.

IMPERIAL, J., with whom concurs MALCOLM, J., concurring and dissenting in part:

I concur in the decision rendered by the majority of this court except as to defendant Nicolas Francisco is concerned. In my opinion the evidence for the prosecution discloses sufficient facts which tend to show his direct participation as leader in the assault to the members of the Trozo Music Band and, this being the case, he cannot escape criminal liability resulting from the concerted and simultaneous attack made by his codefendants.

The sentence of the lower court imposed upon defendant Nicolas Francisco should, therefore, be affirmed.

Judgment modified.

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