

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. HIPOLITO AGBUYA KT AL., DEFENDANTS AND APPELLANTS.

G.R. No. 36366-68. September 23, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Pangasinan, finding the appellants, Hipolito Agbuya and Agustixi Agbuya, guilty of two separate crimes of homicide, and finding the appellant, Agustin Agbuya, further guilty of the offense of illegal discharge of firearms; and sentencing, each of the two appellants, for the two crimes of homicide, to undergo imprisonment for fourteen years, eight months and one day, reclusion temporal, and requiring them to indemnify the heirs of the deceased in the amount of five hundred pesos, and to pay the costs, and imposing on Agustin Agbuya, for the offense of illegal discharge of firearms, the penalty of imprisonment for one year, eight months and twenty-one days, prison correccional, and requiring him to pay the costs.

For several years prior to the date upon which the offenses which are the subject of this prosecution were committed, marked enmity had existed between two families, the Palisocs and Agbuyas, in the municipality of Urbizondo, in the Province of Pangasinan. On the morning of August 10, 1930, a neighbor named Padua had occasion to go to the house where lived Hipolito Agbuya, with whom also lived a son of Hipolito named Agustin. Padua found Hipolito cleaning his shotgun, Agustin being with him. When Padua had finished his errand and was about to leave, Hipolito asked if Padua had seen Martin Palisoc. To this question Padua replied that he had. Later in the day Hipolito and his son Agustin went to the barrio of Maliuer, where they engaged in selling cloths in the market. The same morning Martin Palisoc also went to Maliuer, accompanied by Emilio Palisoc. After attending some duties at Maliuer in the course of which they saw Hipolito and his son Agustin sitting near their merchandise in the market, Martin and Emilio returned to Galarin, the barrio where they lived. Between two and three o'clock in the afternoon Hipolito and Agustin passed in front of their house, proceeding along a malecon which gave a short cut to the north. Hipolito was then carrying his shotgun, which he had had with him during the forenoon and Agustin carried a bolo.

About this time Martin Palisoc, in company with Emilio Palisoc and Raymundo Poquis, made arrangements to go out together passing along the same malecon towards the north. This took them along the course that Hipolito and Agustin had passed a short while before. The latter two, however, after proceeding a short distance on the way, stepped aside from the path and waited near some banana and bamboo trees. As Martin Palisoc with his two companions approached the place where Hipolito and Agustin were waiting, the latter arose and mounted the malecon to the left of the approaching three. Having reached the path on the malecon Agustin unsheathed his bolo but immediately dropped it on the ground and asked his father for the shotgun. The latter thereupon handed Agustin the gun and Agustin confronted Martin who was then about fifteen or twenty paces away, at the same time saying, "Now, Don Martin, the end of your life has come." At the same time he fired the gun at Martin and

the latter fell to the ground. Upon this Raymundo Poquis and Emilio Palisoc turned and fled in the direction from which they had come. Upon arriving in front of a tienda which was owned by Feliciano Palisoc, Raymundo called out that they had been attacked and that Martin (Feliciano's father) had been wounded and had fallen. Raymundo continued his course and a little farther on met Pioquinto Palisoc to whom he also told what had happened to Martin. Upon being told of the trouble Feliciano Palisoc at once proceeded in the direction of the scene, but when he was about sixty meters away from the spot where Martin had fallen, Agustin Agbuya discharged his gun at Feliciano and the latter also fell. Feliciano seems to have died almost at once, but Martin lived for a few minutes and expired later.

Meanwhile Pioquinto Palisoc, upon learning of the trouble, at once went to the scene and approached in time to see Agustin discharge his gun at Feliciano. Pioquinto was frightened and hid himself a short distance away from the malecon at a spot from which he could see the Agbuyas as they retired to their home. Pioquinto then came out to look for Martin and Feliciano. The latter was found already dead on one side of the malecon, and Pioquinto passed on in search of Martin whom he found in a dying state some distance farther along. Upon reaching Martin, Pioquinto grasped his body to lift him up, but at the same moment Agustin Agbuya raised and discharged his shotgun at Pioquinto from a distance of some two hundred meters. The latter, in order to avoid the shot, threw himself to the ground and was not hit, after which he got up and ran to the tienda of Feliciano Palisoc. From this point he saw the two Agbuyas approach Martin, and Hipolito caught the dying man by the right arm, while Pautino Agbuya, who had joined the two, took him by the left, whereupon Agustin again discharged his gun at Martin. The three Agbuyas then went to the body of Feliciano and Agustin again discharged his gun at him. This done, the three Agbuyas moved in a direction where a number of persons were now approaching, among whom was Pioquinto Palisoc. As they approached, the Agbuyas moved their hands excitedly and called aloud, "Come on, you Palisocs. We are going to exterminate you."

What has been related occurred at about three o'clock in the afternoon. During the remainder of the afternoon the Agbuyas remained on guard watching the bodies of the two dead men, and only left when the police arrived after dark. In the course of the afternoon Petra Licuanan saw Hipolito approach the body of Martin Palisoc and attempt to fasten a bolo to his belt. Being unable to do this, Hipolito went to where the body of Feliciano Palisoc was lying and placed the bolo nearby. When the body of Martin Palisoc was examined a small pistol was found in one of his pockets, but it had not been discharged and, indeed, had evidently not been taken out of the pocket, supposing that it was there when the tragedy occurred.

About daylight the next morning members of the Constabulary arrested Hipolito Agbuya and Agustin Agbuya in Lingayen, as they were alighting from an automobile at the home of the attorney whom they wished to secure to defend them. As the Constabulary took the shotgun from the hands of Agustin Agbuya, Hipolito Agbuya said, "I know why you have come, and it is because we are guilty." Upon being asked by one of the officers what they were guilty of, the accused answered that they had killed Martin and Feliciano Palisoc by shooting them.

Upon the foregoing facts it is manifest that both the appellants are guilty as principals in the two homicides which are the subject of prosecution in the first two of the cases now before us, and the trial court committed no error in so finding. The attorney for the appellants insists that Hipolito at least should be acquitted as not having participated in those acts in the character of principal. But his acts and attitude before, during and after the commission of the crimes show that the two accused were acting with a common design in taking the lives of Martin and Feliciano Palisoc. The preparatory act of cleaning the shotgun was done by Hipolito and his inquiry of Domingo Padua as to whether the latter had seen Martin Palisoc that morning is suggestive. At the time the two accused went out into the middle of the malecon to confront Martin Palisoc and his two companions, Hipolito, who had up to that time been carrying the gun, handed it to Agustin, when he must have known that the intention

of Agustin was to use it in killing Martin Palisoc. Then, the occurrence later in the afternoon when the three Agbuyas went up to the dying Martin, and Hipolito seized one of his arms, while Agustin emptied the shotgun again into Martin's body, and the similar incident repeated over the body of Feliciano, all show conclusively a design on the part of Hipolito to contribute effectually to the destruction of the two Palisocs.

The Attorney-General suggests that the crime committed upon the person of Martin Palisoc was that of murder, inasmuch as the attack was made upon Martin Palisoc while the latter was passing along the highway and not suspecting attack from the two appellants. We are of the opinion that alevosia was not present, or its presence does not plainly and manifestly appear, since the two accused made the attack from the front on a public highway, and although they had been waiting on the roadside possibly with a view to the making of this attack, yet the crime was not committed by shooting from ambush. Also, while the conditions under which the killing of Martin Palisoc was, effected suggest that there may have been premeditation on the part of the accused, yet nevertheless evident premeditation is not clearly shown.

With respect to the qualification of illegal discharge of firearms on the part of Agustin Agbuya when he discharged his shotgun from a distance at Pioquinto Palisoc, we are of the opinion that the trial court did not err in qualifying the offense. The distance from where Agustin Agbuya stood to where Pioquinto was bending over the body of Martin Palisoc was so great, that it is difficult to impute an intention on the part of Agustin to kill Pioquinto. Nor does it appear that Agustin really aimed his gun directly at Pioquinto. It is not improbable that the gun was discharged chiefly with a view to frightening Pioquinto away.

It being understood, therefore, that the penalties imposed in the three cases shall be extinguished in succession, with the accessory penalties prescribed by law in each case, the judgment appealed from will be affirmed. So ordered, with costs in the first two cases against the two appellants, and in case No. 11781 against the appellant Agustin Agbuya.

Malcolm, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

Judgment modified.

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