

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. CANDIDO ENRIQUEZ ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 37408. October 10, 1933

Ponente: STREET, J.

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STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Pampanga, finding the appellants, Candido Enriquez, Jose Palacio, Marcelo Franco, Marcelo Bonifacio, Pedro Mocpoc, Vicente Domingo, and Ambrosio Basa, guilty of the offense of murder and sentencing Candido Enriquez, as author by induction, to cadena perpetua, with the accessory penalties prescribed by law, and requiring him to pay the sum of P1,000 to the heirs of the deceased, Ciriaco D. Gines, and one-eighth of the costs of prosecution; and severally sentencing Marcelo Bonifacio, Marcelo Franco, Pedro Mocpoc, Vicente Domingo, and Ambrosio Basa, as direct agents in said murder, to undergo cadena perpetua, with the accessory penalties prescribed by law, and requiring them jointly and severally to indemnify the heirs of the deceased in the amount of P1,000, and to pay each one-eighth of the costs of prosecution.

Prior to October 28, 1931, two rival corporations were engaged in the transportation of passengers in central Luzon, both using passenger trucks, or busses, propelled by gasoline. These two lines were the Pampanga Bus Co., operating, among other places, between Apalit and Masantol, and the Mallorca Transportation, operating from points in Pampanga to Manila.

The Mallorca Transportation is owned by Fernando Enriquez, father of the appellant Candido Enriquez, and the latter was its manager with a garage in Macabebe, Pampanga. For some time prior to the events with which we are now concerned, the Mallorca Transportation had been called upon to answer various complaints before the Public Service Commission for infractions of its rules; and as a consequence of these complaints several fines had been imposed upon Fernando Enriquez. One Ciriaco D. Gines, an inspector of the Pampanga Bus Co. on its Apalit-Masantol line, was supposed to be the person who had supplied the material for these complaints and, as a consequence, he had incurred the ill-will of Candido Enriquez. This feeling of hostility was increased when, on October 26, 1931, Gines was seen jotting down the number of one of the trucks of the Mallorca Transportation, while parked near the station of the Manila Railroad Co. in Apalit. This seems to have been too much for Candido Enriquez, and he decided that Gines must be gotten out of the way. Accordingly, on the morning of October 27, he boarded one of his busses at Macabebe headed for Manila. His purpose, as he explained to an employee in the garage, was to hire ruffians in Manila who would beat up Gines so that he would not interfere in the future with the business of the Mallorca Transportation.

Arriving in Manila, Candido Enriquez found one Jose Palacio, formerly a chauffeur in the employment of Enriquez, but who had lost his job by reason of some accident for which he was supposed to have been responsible as driver. Enriquez told Palacio that he wanted him to procure some ruffians (butangeros) and bring

them up to Macabebe to beat up Gines. Palacio accepted the mandate and in the course of the day got into touch with a notorious gangster, named Marcelo Bonifacio, and four others, Marcelo Franco, Pedro Mocpoc, Vicente Domingo, and Ambrosio Basa. These five agreed to undertake the job. Meanwhile Candido Enriquez had already left Manila for Macabebe and upon his arrival in that place he told two of his employees to be on the lookout for the gangsters who would be coming up that night. True to schedule, Jose Palacio and his five ruffians boarded the last truck of the Mallorca Transportation which left Manila at about 5 o'clock the same afternoon. On this trip the six were charged no fares by the conductor.

Arriving in Macabebe near 8 o'clock, the truck was stopped at an old house formerly used by Fernando Enriquez but now occupied by Maximo Tuason, a mechanic of the Mallorca Transportation. Palacio and his five ruffians there disembarked, and Palacio took them into this house. Before long Candido Enriquez came in and directed that food be supplied and, finding that sufficient food was not there available, he gave Tuason money and directed him to procure more food from a store.

After the men had been fed, Jose Palacio, by direction of Enriquez, showed the house of Gines to Marcelo Bonifacio. Upon the return of the two from this errand, the six were taken into the kitchen and Enriquez there discussed with them the plan for beating up Gines. Bonifacio was for doing the work that night, but Enriquez objected, saying that an attack made at that hour would attract the attention of too many people, observing further that Gines was not accustomed to leave his house at night. It was accordingly decided to wait until early in the morning when Gines would be leaving his home; and it was at the same time agreed that the stipulated compensation would be paid on the morning when the work was done.

All then retired to rest, and at about 3 o'clock on the next morning, October 28, Candido Enriquez awoke his employees Amado San Andres and Francisco Mallari, who were sleeping in a truck of the Mallorca Transportation in the garage, and instructed them to go that day with Maximo Tuason to purchase stone in the barrio of Santa Maria, municipality of Bocaue, in the Province of Bulacan.

He then had a conversation with Marcelo Bonifacio, the head of the gang, in which the latter suggested that his men should be provided with iron bars with which to beat up Gines. Enriquez agreed and took the men to the garage, where he delivered to them two small iron bars. Passenger trucks in the garage were then moved out into the street to make way for truck No. TH-4475, which was to be used by Tuason and his companions in transporting stone from Santa Maria; but before going on that errand this truck had something more important to do, which was to transport Jose Palacio and his five ruffians to the house of Gines and to take them away on the road to Bocaue, when their work of beating up Gines should be accomplished.

Accordingly, as daylight approached, Tuason and his companions, as well as Jose Palacio and his five, boarded the truck No. TH-4475 and started on their way. Arriving at the house of Gines, Palacio and his men alighted, and Tuason was instructed to proceed a certain distance so as not to attract attention, and await Palacio's coming, with the others. Tuason therefore drove on and stopped the truck a short distance away.

Before, the truck left the garage that morning Candido Enriquez delivered to Maximo Tuason the sum of P8.50, with which to buy stone in Bocaue, and at the same time he delivered to him P20 more with directions to give it to Bonifacio and his fellow ruffians when they should have finished the job of beating up Gines. After the truck had stopped near the house of Gines, Bonifacio approached Tuason and asked him for the money which Enriquez had placed in the former's hands. In response to this request, Tuason gave Bonifacio the P20 above-mentioned, although he had been told to deliver it only after the work of beating up Gines had been completed. The reason Tuason did this was that he feared he might be assaulted in case of refusal.

Meanwhile Jose Palacio, who personally knew Gines and was serving as guide, had posted himself in front of the

house where Gines was living. Presently lights appeared, and as Gines came out, Palacio indicated that he was the man they were after. Upon being struck, Gines gave an exclamation and in a moment fell to the ground unconscious. The most serious wound received by Gines was a cut, four centimeters in length and about seven and one-half centimeters in depth, on the inner side of the upper part of the calf of the right leg. Other wounds were three severe contusions, one on an arm and two on the body, and two lighter bruises on the left side of the back. All of these contusions were evidently caused by the iron bars which had been provided by Enriquez. The malefactors immediately fled. Jose Palacio ran to the office of Candido Enriquez and reported that the victim was down; the other assailants ran towards the waiting truck and the driver carried them rapidly towards Bocaue. Arriving at Bocaue, the five from Manila got off the truck No. TH-4475 and boarded another bound for Manila. While still aboard the first truck, Marcelo Franco threw the iron bar which he had used in assaulting Gines to the ground near a gasoline station in Bocaue; and Francisco Mallari threw the other iron bar to the ground in the barrio of Santa Ana. Both of these bars were presently recovered upon information received from Jose Palacio and were produced in evidence in court.

Gines was left unconscious upon the ground as his assailants fled. As he recovered consciousness, he called for help, and his cries attracted the attention of his father and others who came to his aid. The seriousness of his wounds, especially the cut on the leg, was apparently not at first realized, and it was 6 o'clock before he was gotten to the Pampanga provincial hospital. At 3.30 p. m. on the afternoon of the same day, he died from shock and loss of blood.

As Jose Palacio and his five companions were gathered in by the authorities, they severally made confessions implicating themselves in varying degrees in the incident. Jose Palacio and Marcelo Franco admitted that the purpose of the assault was to put Gines to sleep, and it will be remembered that the former was the person who had been commissioned by Enriquez to employ the others. Four of the accused, namely, Franco, Basa, Mocpoc, and Domingo, admitted in these statements that they had each been paid the sum of P4 for their part in the enterprise.

Directing our attention now a little more closely to the circumstances of the attack, we note that Gines, in a declaration made before his death, stated that he was assaulted by three individuals, and it is satisfactorily proved that these three must have been Marcelo Bonifacio, Marcelo Franco, and Pedro Mocpoc. Of these three Franco and Mocpoc used the small iron bars which Enriquez had supplied. There is no satisfactory proof as to the identity of the individual who used the knife. Lieutenant Lauro Dizon, of the Constabulary, stated on the witness stand that Jose Palacio told him that he (Palacio) saw Candido Enriquez give Bonifacio a knife at the same time that he supplied Marcelo Franco and Pedro Mocpoc with the iron bars to which reference has been made. This statement was of course competent against Jose Palacio but not against the others. The trial judge makes no mention of the incident in his opinion. Vicente Domingo, Ambrosio Basa and any other individual who may have participated in the crime were apparently posted at places convenient for keeping a lookout and giving alarm.

Upon the circumstance that the wound made with the knife on the leg of the person assaulted was the primary cause of death and that the author of this injury has not been identified, the attorneys for the accused chiefly plant their defense, and in this connection it is insisted that the conspiracy to attack Gines contemplated only beating him up and did not include the infliction of injury by means of a cutting instrument. Such an act, so it is said, was not within the scope of the agreement; and it is insisted that only the individual who inflicted the cut could be held responsible for the death, if that person were known. It results, in this view, that none of the appellants can be held liable further than for the bruises inflicted by means of the iron bars. These injuries, so it is claimed, would in the natural course of events have been curable in a few days.

We are of the opinion that this contention is not tenable. The accused had undoubtedly conspired to do grave

personal injury to the deceased, and now that the injuries actually inflicted have resulted in death, they cannot escape from the legal effect of their acts on the ground that one of the wounds was inflicted in a different way from that which had been intended. A blow inflicted by one of the small iron bars used in this assault might well have resulted in the taking of life, and the circumstance that a knife was also used in striking the deceased does not relieve the appellants from the consequence of their joint acts. As has been said, by the Supreme Court of the United States, "If a number of persons agree to commit, and enter upon the commission of a crime which will probably endanger human life such as robbery, all of them are responsible for the death of a person that ensues as a consequence." (Boyd vs. U. S., 142; U. S., 450; 35 Law. ed., 1077). In United States vs. Patten, the court said: "Conspirators who join in a criminal attack on a defenseless man with dangerous weapons, knock him down, and when he tries to escape, pursue him with increased numbers, and continue the assault, are liable for manslaughter when the victim is killed by a knife wound inflicted by one of them during the beating, although in the beginning they did not contemplate the use of a knife." (42 Appeals, D. C., 239.)

But the defense has undertaken to prove, as a matter of fact, that the fatal cut was not inflicted by any of the hirelings brought from Manila, but by Amado San Andres, an employee of Candido Enriquez. This individual was on the truck No. TH-4475, which carried Jose Palacio and his gangsters from the garage in Macabebe to the scene of the killing; and a witness was put on the stand by the defense who testified that he saw Amado San Andres fleeing from the scene of the tragedy with a knife in hand just before he climbed into the truck which was waiting. In addition to this, there was testimony showing a suspicious bloodstain on the foot of San Andres later in the morning. As against this proof, account must be taken of the fact that San Andres was taken before Gines a short while before the death of the latter supervened, and Gines explicitly stated that San Andres was not one of the men who assaulted him. This circumstance no doubt accounts for the fact that the name of San Andres was omitted from the information. Upon the whole the defense has not proved that San Andres was the person who used the knife.

But even supposing that the cut was inflicted by San Andres, it would not follow that the appellants should for that reason be exculpated from the homicide. San Andres was an employee of Enriquez. He was present when Enriquez announced in the garage that he was going to Manila to obtain gangsters to dispose of Gines. He was present when the Manila contingent arrived at the garage in Macabebe at about 8 p. m. on the night of October 27, and he was on the truck that carried the accused (except Enriquez) the next morning on their fatal mission. There is no proof that any of the accused objected to his participation in the assault upon Gines or that they did anything to prevent such participation. Cooperation can be inferred not only from proof of actual previous conspiracy, but from the nature of the acts done when the unlawful act is committed. Assuming, then, that San Andres was the person who inflicted the fatal cut, the conclusion would be that he was cooperating with the appellants with their consent, and the appellants are responsible for the consequences.

The crime committed in this case was murder, in which alevosia should be taken as the qualifying circumstance. This circumstance is conspicuous in the fact that the assault was characterized by surprise and was effected by lying in wait for the deceased in the darkness of the night. The plan adopted was evidently designed to insure the execution of the offense without risk to the appellants from any defense which the deceased might make. Nocturnity and abuse of superior strength may properly be considered as absorbed in the alevosia. There was present as to all of the accused, except Jose Palacio, the aggravating circumstance that the offense was committed for a price in money. There was also present, as to all the appellants, the circumstance of known premeditation in that the offense had been under contemplation overnight, and the appellants had ample time to reflect repeatedly on the manner in which it could best be accomplished.

The trial court gave all of the accused the benefit of the mitigating circumstance that the offenders had no

intention to commit so grave a wrong. The estimation of this circumstance was proper, and its allowance was not inconsistent with the finding that the crime was murder (U. S. vs. Candelaria, 2 Phil., 104; U. S. vs. Luciano, 2 Phil., 96; People vs. Cagoco, G. R. No. 38511, page 524, ante).

The judgment appealed from will be affirmed, it being understood that reclusion perpetua is substituted for cadena perpetua, in accordance with the Revised Penal Code. So ordered, with costs against the appellants.

Avanceña, C. J., Hull, Vickers, and Butte, JJ., concur.

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