

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FELIX AZCONA, BARTOLOME LARA, GREGORIO CEBEDO, SIMEON HERNAN, MARCELO LUMANTAS (ALIAS LILOY MORO), BERNABE SARU...

G. R. No. 40098. February 28, 1934

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 Misamis Occidental, finding the appellants guilty of the offense of murder, and sentencing Felix Azcona, Marcelo Lumantas, Bartolome Lara, and Gregorio Cebedo, as principals, to undergo imprisonment, reclusion perpetua, with the accessories prescribed by law, and the defendants Mariano Sayson, Bernabe Sarueda, and Simeon Hernan, as accomplices, to imprisonment for twelve years and one day, reclusion temporal, with the accessories prescribed by law, and requiring all the defendants jointly and severally to indemnify the heirs of Arsenio Cabilis, the deceased, in the amount of two thousand pesos, and to pay each his proportional part of the costs.

Prior to the events with which we are here concerned Arsenio Cabilis, originally from Cebu, had been merchandising in Misamis and a number of the inhabitants in Misamis and adjacent territory had become indebted to him. To collect debts owing to him from some of these debtors, Cabilis in January, 1933, went out to Bolinsong, a barrio of Tangub, accompanied by Luis Amado, to whom Cabilis expected to turn over the duty of collecting the moneys owing to him in that neighborhood. It appears that in the past bad blood had developed between Cabilis and Felix Azcona, and on a certain occasion Azcona had been shot in the arm by Cabilis, with the result that one of Azcona's arms had been amputated. This incident rankled in the soul of Azcona and he seems to have cherished an intense animosity against Cabilis. Azcona was a landowner and his co-accused in this case consist of individuals employed by him or cultivating his land. These individuals were accordingly drawn by Azcona into a plot for the purpose of destroying Cabilis.

The Constabulary commander in Misamis received information of the danger, and a detachment was sent out to Bolinsong with directions by all means to prevent Azcona and Cabilis from coming together; and shortly prior to the occurrence with which we are here concerned, the sergeant in charge of this detachment of Constabulary learned that excitement was stirring among the inhabitants of Bolinsong. Inquiring as to the cause, he was told that Cabilis was due to arrive that evening on the launch. The sergeant therefore, with two privates, proceeded down to the landing place, where, among others, they found Felix Azcona, who gave them the same information, namely, that Cabilis was soon to arrive. In the course of the conversation that resulted Azcona revealed his deep resentment towards Cabilis, and when the sergeant told him that the Constabulary were there to prevent any trouble between him and Cabilis, Azcona wept

The information that had been received as to the movements of Cabilis was not misleading, and presently the boat came with Cabilis aboard. The sergeant went down to meet the boat and conversed a few moments with Cabilis,

telling him that he should not go out in that neighborhood without a Constabulary escort. To this Cabilis assented, but as the event showed, if any such conversation passed, it made little impression on Cabilis; for, early in the morning of January 14, 1933, Cabilis took his man Amado, and, without informing the Constabulary at the barracks, proceeded on his way to Tiaman, a sitio not far from Bolinsong.

The course pursued led through a portion of Bolinsong where the ground was low and marshy, and to cross this place it was necessary to use a log that had been felled across the marsh, the body of the tree serving as a bridge. Cabilis mounted the log, keeping a few feet in front of Amado, and when Cabilis had gotten about two-thirds of the way across, Marcelo Lumantas fired upon him with a shot gun loaded with buckshot. At least six of the shot entered the breast of the victim, penetrating both lungs, the aorta and superior vena cava, and causing death. Cabilis at once fell off on the right side of the log and his body became partially imbedded face downwards in the mud. When the gun was discharged, Lumantas drew it back from a notch that had been cut in the side of the big stump behind which he was hiding, and at the same time a piece of wood several feet long that had been placed uprightly over the notch fell to the ground. Lumantas then reloaded the gun and pointed it towards Amado, who had followed Cabilis on his way across the log. Amado, seeing this threatening gesture, dived off into the weeds on the other side of the log from that on which Cabilis had fallen, and hid himself near a stump, but not so entirely as to prevent him from taking cognizance of what followed. Meanwhile Azcona, who had been in the house of Bernabe Sarueda not far from the stump from which Lumantas had delivered the fatal shot, came down, followed by Sarueda and Mariano Sayson. As Azcona approached, he warned his henchmen to be sure that Cabilis was dead, as he might be only pretending to be so. Upon this, Gregorio Cebedo, who thereupon appeared, stepped over to the prostrate man and delivered a blow with a bolo on the nape of the neck, while Bartolome Lara cut the body of Cabilis on the lower part of one of the legs with a scythe. The cut delivered on the neck of Cabilis by Cebedo was of a nature to have been itself fatal, but Cabilis, if not already dead when he received this blow, was certainly dying. Azcona then ordered his men to find Amado and do away with him in order to prevent leaving a witness who might later turn up against them. His followers then began looking around, but they perhaps had little interest in doing away with Amado, and as Azcona started to flee, lest, as he said, the Constabulary should find them, they all followed him. Azcona was first in the retreat, followed by Lara and Lumantas. Then came Cebedo and Hernan. Lumantas took with him the gun which he had used, Cebedo carried his bolo, and Lara the scythe. They then scattered, but all were arrested soon except Lumantas, who, in compliance with directions given to him by Azcona, took refuge for a few days in a forest. He was finally picked up on January 19.

Still another person, Vidal Vapor, was arrested as implicated in this murder, and it appeared that the gun which Lumantas had used was the property of this accused, but he claimed that his gun had been used without his consent, and there being no other evidence to implicate him, the court dismissed the proceeding as to him before the other accused entered upon their defense.

All of the accused relied upon an alibi at the trial, pretending that at the time the murder was committed they were peacefully engaged in farming operations some distance away. After being arrested, Lumantas made statements in which he admitted his guilt, and indicated Azcona as the individual who had prompted or coerced him into assuming the role of principal assassin. Of course this confession was not admissible against his co-accused, and Lumantas tried to make it appear at the trial that it had been obtained under conditions that made it inadmissible against himself. With this contention we are unable to agree. But for the rest the case is made out against Azcona, Lara, and Cebedo by the testimony of Luis Amado, who, in our opinion, is a trustworthy witness; and his account of the tragedy is intelligent and convincing.

As to the guilt of Lumantas and of Felix Azcona, the latter as principal by induction, we are of the opinion that no sort of doubt can be reasonably entertained. With respect to Bernabe Sarueda, Simeon Hernan, and Mariano

Sayson, we are of the opinion that criminal complicity in this crime is not shown. The worst that can be said against them is that Hernan was seen, as Cabilis approached, to pass from a neighboring house to the house of Bernabe Sarueda in which Azcona and some of the others were watching. It was suspected by the prosecution that Hernan had been planted a little distance off where he could see the approach of Cabilis and that, after the latter had appeared in the distance, Hernan ran over to where Azcona was waiting to tell him of the approach of the man they were after. Also, after the fatal shot had been delivered, Hernan, with Sarueda and Sayson, followed Azcona to the scene of the killing, but we are unable to see anyThing in their actions at this juncture which fixes upon them complicity in the murder.

The other accused, Gregorio Cebedo and Bartolome Lara, are not in so favorable a position, for these two each contributed by their affirmative acts shortly after Cabilis was shot to show their complicity in the offense. By attacking the prostrate body of Cabilis and almost severing his head with a bolo, Cebedo showed that he was obedient to the commands of Azcona, as did also Bartolome Lara in cutting the leg of the fallen man with a scythe. These acts are indeed strongly indicative of the complicity of these two in the character of principal, and it was as such that they were adjudged guilty by the trial court. We are of the opinion, however, that they should be held liable in the character of accomplices only, as was done by this court, as regards Ramon Tamayo, in the case of *People vs. Tamayo* (44 Phil., 38, 54). We cannot safely say that the wounds inflicted by these two, or either of them, really contributed materially to the death of Cabilis, because he was already in the throes of dissolution when Cebedo struck his neck. But the fact that they were with Azcona when the crime was consummated, and followed him to the spot where Cabilis was lying, where they obeyed the directions of Azcona to the complete consummation of the murder, shows, in our opinion, that they are at least guilty as accomplices.

The offense committed was that of murder, in which Marcelo Lumantas was principal and Felix Azcona principal by induction. Bartolome Lara and Gregorio Cebedo can be convicted as accomplices only. Evident premeditation should be considered as the qualificative element in murder, and there was present the aggravating circumstance of alevosia. The trial judge gave Lumantas, Lara, and Cebedo the benefit of the mitigating circumstance of lack of instruction, and he conceded to Azcona the mitigating circumstance of having acted under *arrebato y obcecacion*, based on the fact that he had lately lost his arm in an encounter with Cabilis. The majority of this court hesitate to concede the benefit of this mitigating circumstance to Azcona and are of the opinion that he should suffer death, but one of our members thinks that the extreme penalty should not be exacted from him.

It results that the judgment imposing reclusion perpetua is affirmed as to Azcona and Lumantas. Bartolome Lara and Gregorio Cebedo are declared guilty in the character of accomplices only, and they are hereby sentenced to undergo imprisonment for an indeterminate period of from six years to twelve years and one day, with the accessories prescribed by law. The indemnity of two thousand pesos, imposed by the trial court, is affirmed, with the modification that the liability of Lara and Cebedo shall be subsidiary to that of the principals. As thus modified, the judgment is affirmed as to the four above mentioned, with one seventh of the costs against each. The judgment against Hernan, Sarueda, and Sayson is reversed, and they are absolved from the complaint, with proportional costs de oficio. So ordered.

Abad Santos, Butte, Goddard, and Diaz, JJ., concur.

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