

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
VICENTE P. ANCHETA ET AL., DEFENDANTS. VICENTE P. ANCHETA,
ISIDORO DEL ROSARIO, AND BENITO GASPI, APPELLANTS.**

G.R. No. 45344. November 29, 1938

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This case grew out of an affray which took place in a small and isolated community, the municipal district of Balabac, Province of Palawan. Appellants, with twelve others, all members of the constabulary, were charged in the Court of First Instance of Palawan with having murdered Guillermo Salazar who was at the time the justice of the peace of the said municipal district. Upon motion of the prosecution, one of the accused, Isaac de Guzman, was excluded from the information and used as a state witness. After due trial, the court found the appellants Isidoro del Rosario and Benito Gaspi guilty of the crime charged, as principals, and the appellant Vicente P. Ancheta, as accomplice, and sentenced each of the first two to suffer the penalty of reclusion perpetua, and the last the penalty of not less than six years and one day of prision mayor and not more than twelve years and one day of reclusion temporal. The three appellants were further sentenced to indemnify the heirs of the deceased Guillermo Salazar in the sum of P1,000, pro rata, to suffer the other accessory penalties prescribed by law, and to pay the costs. The eleven remaining accused were acquitted.

While the information alleged that the fifteen accused conspired to kill Salazar, the trial court held that there was no proof of such conspiracy. According to the findings of the court, Salazar was shot and killed by Gaspi while the former was being assaulted by Del Rosario; and although there was no expressed finding of conspiracy between these two appellants, they were both found guilty of the alleged crime, as principals. The appellant Ancheta was found guilty, as accomplice, for having failed to restrain his co-appellants from the commission of the alleged criminal act.

This appeal seeks to reverse the judgment of the court below, and to have the appellants acquitted. On the other hand, the Solicitor-General maintains that the appellant Ancheta, like his two co-appellants, is guilty of murder, as principal. The Solicitor-General takes the view that the appellants were engaged in the commission of an unlawful act when Salazar was shot and killed by Gaspi.

It is undisputed that, at the time of the commission of the alleged crime, all the fifteen persons originally included as accused in this case, were members of a constabulary detachment in the municipal district of Balabac, Province of Palawan. The appellant Ancheta, with the rank of third lieutenant, was their commander. The appellant Del Rosario was a sergeant, while the appellant Gaspi, was a private. Ancheta became engaged to a young woman by the name of Bibiana Sanson who belonged to one of the most prominent families in that municipal district. Bibiana had two brothers named Cirilo and Rufo. About six months, prior to the occurrence of the events which gave rise to this case, the engagement of Ancheta to Bibiana was broken. Whether because of this rupture or some other reason, the relations between Ancheta and the Sanson brothers appeared to be quite strained. The Sanson

family was running a store located on the ground floor of their house facing the main street. On that fateful Sunday morning, January 13, 1935, Bibiana, her two brothers, and the deceased Salazar were gathered in the store. After the mass and while passing in front of the store, Ancheta was assaulted and beaten by the Sanson brothers and received multiple bruises and cuts about the face. In the course of the scuffle Ancheta fell down, and while Cirilo grappled with him, Rufo continued to box him. Ancheta carried a pistol on his waist, and while he was thus being attacked by the Sanson brothers, the deceased Salazar took the pistol and kept it. The evidence is irreconcilably in conflict as to what transpired afterwards. It is likewise in conflict as to what motivated the assault perpetrated on Ancheta by the Sanson brothers.

According to the evidence for the prosecution, Bibiana approached Ancheta, as he was walking in front of the store, in order to demand from him an explanation about certain statements alleged to have been made by Ancheta, which were derogatory to the dignity of Bibiana; that Ancheta, out of spite, slapped Bibiana on the face and thereupon Bibiana's brothers, Rufo and Cirilo, came out of the store and engaged Ancheta in a fight giving him a bad beating; that in the course of the fight Salazar pulled out Ancheta's pistol from his waist and kept it, presumably to forestall more serious consequences; that after the combatants had been separated, six soldiers arrived and tried to strike Salazar and the two brothers; that, at this juncture, Ancheta ran to the barracks and had a bugle call to arms sounded; that in response to the call, all the soldiers composing the garrison, except one who remained on guard duty, with loaded guns and fixed bayonets, marched to the town, firing in the air as they went; that they arrested the two brothers and Salazar; that while Salazar was under the custody of the soldiers, appellant Del Rosario gave him a blow on the stomach with his left fist, while with his right hand he struck him with his pistol; that Salazar became groggy, and as he was falling down, appellant Gaspi shot him.

On the part of the defense, Ancheta testified that on the morning in question, while on his way to the forest station, he saw Bibiana standing in the store; that she came out to meet him and said that she wanted to ask him something; that, smiling, she pointed to his right shoulder and asked what he had on it; that he looked at his shoulder and, as he did so, Bibiana embraced him tightly; that Bibiana's brothers, Rufo and Cirilo, and Salazar came out of the store and attacked him; that Rufo struck him on the back of the head and his sight became dim; that he was thrown down and Rufo and Cirilo mounted on him and beat him on the face with stones; that he scratched Cirilo with his left fingers; that the sergeant of police came and separated the Sanson brothers from him; that when he stood up he noticed that his pistol was missing from its holster; that he inquired who took it, and Salazar answered: "I have your pistol but I will not give it"; that he left and went to the store of Wy Dian Lo to see his face, which was bleeding, in the mirror; that from that store, he proceeded to the barracks; that he did not reach the barracks because he met appellant Del Rosario between the bridge and Jupeda's store; that he told Del Rosario that he had been assaulted by the Sanson brothers, their sister Bibiana, and Salazar; that he further told Del Rosario that his pistol was with Salazar, and ordered him to make the necessary investigation to effect the arrest; that after talking with Del Rosario, he went to his residence and lay down; that while thus lying down in his house, he heard shots from the direction of the town; that although he felt weak, he made an effort to go down to find out the cause of the shooting suspecting that the shots had been fired by his soldiers, and fearing that they might have done harm; that when he reached the intersection of two roads near the Catholic church, he saw soldiers coming out of the house of the Sanson family, and he stopped and waited for them; that when the soldiers came near him, he asked corporal Sapad, who came ahead of the rest of the soldiers and who accompanied the Sanson brothers, about the shooting; that Sapad answered that they had been fired in the air to effect the arrest of the Sanson brothers who closed themselves in their house and did not want to surrender; that he and the soldiers walked towards the barracks; that when they came in front of the church, he heard two shots coming from behind; that he immediately went back and saw Salazar lying on the ground; that the first shot he heard was a pistol shot and the second must have been fired from a rifle; that upon reaching the place where Salazar lay dead, he asked

who killed him, and the appellant Gaspi answered: "I did, sir. I shot him because he wanted to shoot against the sergeant once more"; that he then ordered Del Rosario to watch the corpse, and left for his house with private De Guzman to have his wounds treated.

Gaspi testified that he was among the soldiers who were sent out to arrest the Sanson brothers and Salazar; that after arresting them they started to take them to the barracks; that the three persons arrested did not come out of the house of the Sanson family at the same time; that the Sanson brothers came out first, and were guarded by Del Rosario, Sapad and three other soldiers; that Salazar was under the custody of corporal Baquiao and himself; that they were not able to take Salazar to the barracks because upon nearing an acacia tree, Del Rosario and private Aguilar approached them and the former required Salazar to surrender Ancheta's pistol; that Salazar told Del Rosario he did not have the pistol, whereupon the latter told the former that he would search his person; that as Del Rosario was about to approach Salazar to search him, the latter stepped back and at the same time drew a pistol out of the left pocket of his trousers and fired at Del Rosario; that the latter could parry Salazar's left hand, and thus avoided the shot; that Salazar again stepped back and was about to fire again at Del Rosario when he shot and killed Salazar to save Del Rosario's life.

The theory of the defense is that the Sanson brothers, their sister Bibiana and Salazar had conspired to assault Ancheta. While there are some circumstances which seem to lend plausibility to this theory, we are unable to accept it. A conspiracy to commit a crime must be established by positive evidence, and such evidence does not obtain here. Neither is there enough evidence to support the theory of the prosecution that the purpose of the soldiers in marching to the town was not merely to arrest the Sanson brothers and Salazar, but mainly to avenge the assault committed against Ancheta by the Sanson brothers. If such were the case, if the soldiers were really determined to take the law into their hands and punish those who assaulted and wounded their superior officer, Ancheta, the first object of their revenge would have been the Sanson brothers, and not Salazar. And yet the former suffered no serious bodily harm at the hands of the soldiers. The evidence fails to show that there was even an attempt on the part of any of the soldiers to shoot anyone of the Sanson brothers. What the evidence for the prosecution tends to show is that upon seeing the Sanson brothers, Ancheta wanted to shoot them, but was prevented by Del Rosario and Baquiao. Granting this to be true, it reveals that Del Rosario and Baquiao who, as sergeant and corporal, respectively, were in charge of the expedition sent out to arrest the Sanson brothers and Salazar, preserved their self-control, and did not run amuck, as some of the witnesses for the prosecution would have us believe. That Gaspi shot Salazar in defense of Del Rosario's life is, we believe, established by a preponderance of evidence. Gaspi, is, therefore, exempt from criminal liability. (Revised Penal Code, article 11, clause 3.) It follows that Ancheta and Del Rosario must also be acquitted.

Upon a careful scrutiny of the evidence in this case, we are inclined to believe that, in convicting the appellants, the trial court was unduly influenced, unconsciously no doubt, by the local atmosphere which seems to have been strongly unfavorable to the appellants. This is indicated by the fact that the appellants and their codefendants in the court below were even prosecuted and convicted for the crime of sedition, Which action the Solicitor-General, upon a more calm and careful review of the evidence, later admitted to have been unwarranted, when he asked for a reversal of the judgment of conviction for the said crime of sedition. (See *People vs. Ancheta*, G. R. Nos. 46250 and 46251, Nov. 29, 1938.) While it may appear to the mind of the average person that there was an altogether excessive show of force on the part of the members of the constabulary involved in this case When they effected the arrest of the Sanson brothers and Salazar, we must bear in mind that we are dealing here with men who were trained to take no chances in an emergency and to uphold their authority by force of arms. And while we may not approve of their conduct in this particular instance, we must not allow such consideration to affect our judgment as to their guilt or innocence of the particular crime now imputed to them.

The judgment appealed from must be reversed, and the appellants acquitted, with costs de oficio. So ordered.

Avanceña, C. J., Villa-Real, Imperial, and Diaz, JJ., concur.

Concepcion, J.; I dissent because I find no reason for altering the conclusions of the appealed judgment.

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