

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARTIN FERRY, ZACARIAS MANALANG, AND JUAN JULIO DE LOS SANTOS, DEFENDANTS AND APPELLANTS.

G.R. No. 45901. October 10, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

The accused Martin Ferry, Zacarias Manalang, and Juan Julio de los Santos appealed from the judgment of the lower court finding them guilty of the crime of murder for the death of a Chinaman named Pedro Uy (alias We Kwan), and sentencing them to the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of said Chinaman in the sum of P1,000 and each to pay a proportional part of the costs. In their brief they allege that the court erred:

"1. In not declaring itself without jurisdiction to try the case.

"2. In giving credit to the testimony of Pedro Bingayen.

"3. In not finding that the deceased Pedro Uy accidentally met his death by drowning in his attempt to go to the house of Martin Ferry on September 8, 1937 by crossing the Sibang river.

"4. In admitting the statement Exhibit M against the accused Martin Ferry and Zacarias Manalang, and the statement Exhibit E against the accused Juan Julio de los Santos, and

"5. In finding the three guilty of the crime of murder and in imposing on them the penalties above-mentioned, instead of acquitting them of said crime."

Pedro Uy (alias We Kwan), for whose death the judgment appealed from makes the three appellants responsible, was, according to the record, a Christian Chinaman who was engaged in business in the municipality of Tuao, Province of Cagayan. Before starting his planned trip to the town of Aparri, of said province, he desired to see the accused Martin Ferry, another merchant engaged in gathering tobacco for the account of the "Alhambra" cigar factory and in the rice milling business which belonged to him exclusively, in the barrio of Palca, of the said municipality of Tuao, for the purpose of collecting from him a small account in the amount of P60 and a few cents and to discuss with him the sale of Ferry's rice in Aparri as they had previously agreed. The two were compadres inasmuch as Uy had acted as sponsor for Ferry's daughter Lydia when the latter was baptized In May, 1937. Uy left his house after breakfast on September 8, 1937. As he did not return on that day nor on the day following, his family became alarmed and subsequently employed several men to search for him for fear that he had been the victim of a mishap or accident on the road. They found him around five o'clock in the afternoon of the tenth, but already dead, his body floating in the Sibang estero or river about one meter from the shore. On his body were found the same clothes he had worn when he left his house and some of the papers he had brought with him as Exhibit H, a stub of receipts some of which were filled and others blank, bearing serial Nos. 750 to 800; Exhibit 1 which is a letter of the wife of the accused Martin Ferry addressed to the wife of Pedro Uy; Exhibits J and J-1

which bear the headings "Dr. M. Ferry" and "Dr. Martin Ferry" respectively, and which, on their face, are some accounts for merchandise of the total value of P64.93, of which P26.60 is the total appearing in Exhibit J, and P38.33 the total appearing in Exhibit J-1.

After the cadaver of Pedro Uy was found, it was examined by the president of the 8th sanitary division Dr. Ricardo Pagulayan, his sanitary inspector Geronimo Arao, justice of the peace Canuto M. Baligod, and municipal president Marciano Baligod. In the record of their proceedings (Exh. G or 1), they state that they did not find in the body any sign of violence, except a contusion of the size of a peso in the superior dorsal part of the right ear and that the same "was in an advanced state of putrefaction." The body, was later embalmed with the permission of the proper authorities. On September 12, 1937, Doctors Pagulayan and Gaerlan performed the autopsy, and in the certificate they issued, they state that they found ecchymosis at the level of the waist in an horizontal direction and a swelling of the size of an egg in the temporo-occipital region above the right ear, and that the nails of the deceased were covered with mud.

As regards the internal examination, the two physicians also declared having found the following: "Heart congested; valves dilated and the ventricular walls are distended with water mixed with blood. Endocardium also markedly congested.

"Lungs show acute passive congestion and distention, crepetiates (sic) on pressure and it floats when placed in a basin of water."

As to the examination of the head, they likewise declared having found "semi coagulated blood" around the contusion and "blood in the form of petechial hemorrhage in the pia mater (sic) in the right side of the membrane (sic)."

Notwithstanding that the certificate of autopsy of Doctors Pagulayan and Gaerlan says that the lungs "show acute passive congestion and distention" and that "on section-Nothing particular except the presence of small quantity of serous liquid", it was observed that when the body was fished from the river a quantity of water which, in the opinion of the justice of the peace, would be sufficient to fill a glass to half its capacity flowed from the mouth of the deceased.

Pedro Bingayen, the sole witness for the prosecution, who alleged having seen the supposed act of aggression of which Pedro Uy was the victim of the appellant Juan Julio de los Santos, attempted to show to some extent that the ecchymosis on the back of Uy at the level of the waist was the mark left by a blow inflicted by Juan Julio de los Santos on that part of Uy's body with a branch broken from a tree, when Uy passed near his aggressor through the bridge indicated with the letter "G" in Exhibit 6; and that the contusion found on the upper dorsal part of the right ear or "right temporo-occipital (sic) region", was the mark of the blow which the accused and appellant Zacarias Manalang, in turn, had given the deceased with the same branch.

The testimony of Pedro Bingayen is briefly as follows: Martin Ferry, of whom he was a servant at a monthly salary of P6 plus a cavan of rice, told him on September 6, 1937 that he (Bingayen) and Juan Julio de los Santos kill Pedro Uy whose visit was expected on the 8th of the month and that when he (Ferry) would give them the signal, the two should go straight to the bridge to wait for Uy and kill him; that Ferry threatened them with death should they not obey his order and that he would pay them P500 upon their complying with it; that for fear rather than the desire to gain the sum of P500 which had been promised them, he and Juan Julio de los Santos proceeded to the bridge to carry out their plan to kill Pedro Uy when their master Martin Ferry winked at them at noon on September 8, 1937 which was the occasion on which Pedro Uy arrived at Ferry's house, but with bare hands, without even a knife or a dull bolo; that when they almost reached the bridge, his courage failed him and he deviated from the road and ran to hide himself behind a banana plant which was about 11 meters distant from the

said bridge; that Juan Julio de los Santos proceeded alone to the bridge in order to wait there for Pedro Uy who soon showed up; that with a branch broken from a tree which he casually found near the bridge, Juan Julio de los Santos hit the deceased in the right hip when the latter passed by him; that the deceased thereupon fell face downwards on the wooden floor of the bridge from the horse he was riding; that immediately thereafter Zacarias Manalang and Martin Ferry arrived unarmed like them; and that as soon as Manalang reached the scene he took from Juan Julio de los Santos the branch with which the latter had beaten Pedro Uy and with it he, in turn, gave Uy a blow on the head, instantly killing him.

With the same emphasis with which he testified concerning the facts above-related, Pedro Bingayen declared that he saw blood flow from the wound in the head of Pedro Uy caused by the blow inflicted by Zacarias Manalang; that Pedro Uy wore white trousers and a "white shirt" at the time; and that when Martin Ferry, Zacarias Manalang and Juan Julio de los Santos saw him dead they carried him, one holding his feet and the others his hands in order to throw him into the Sibang river at a straight distance of 200 meters from the bridge where the aggression took place, passing through lands planted with tobacco and corn.

When one proposes to commit a crime of the nature of that imputed to the accused, it seems that the first step to take would be to provide himself with a deadly weapon with which to commit it. However, if credit is to be given to the testimony of Bingayen, the accused did not act in this manner. It is for this reason that the statement of said witness has all the trimmings and the flavor of a fairy tale. This becomes the more evident by the fact that no blood flowed from the contusion of Pedro Uy in the head as the two physicians who performed the autopsy stated, and that Uy did not wear white trousers on the day in question. The justice of the peace who took all the steps for the recovery of the body, together with the municipal president of Tuao, Dr. Pagulayan and sanitary inspector Arao positively stated that the trousers which the deceased wore were black. It appears to us unlikely that upon Uy's death, appellants together would carry him in broad daylight (it was noon of September 8, 1937 according to the record) about 200 meters from the place of the crime for the purpose of throwing his body into the Sibang river, passing through tobacco and corn fields and exposing themselves thereby to the needless risk of being seen by the owners thereof. It is unlikely that appellant Ferry who is an educated man (a doctor of veterinary science from the University of the Philippines) and who is furthermore an enterprising and industrious merchant inasmuch as he is engaged not only in the business of buying and selling tobacco, but also in the milling and selling of rice, would, after entrusting the execution of the proposed plan to kill Pedro Uy to his servants Pedro Bingayen and Juan Julio de los Santos on threat of death and promise to pay them P500 if they would kill him, two things which hardly go together, follow them not far behind, unarmed and accompanied by Zacarias Manalang who likewise did not carry any weapon and had no cause for ill feeling or grudge against Pedro Uy, so as to see how they would carry out his design. It is even more unlikely that Zacarias Manalang, just because he was in the employ of Ferry as his buyer of tobacco, would, more indignant than his master, beat the deceased with the branch of a tree above-mentioned until the latter was dead. It is also improbable that if his master Ferry had succeeded in inducing him to kill Pedro Uy, Pedro Bingayen would not take part in the commission of the crime, especially when, as he declared in his affidavit which he signed before two policemen and the justice of the peace of Tuao, that before proceeding to the bridge, the place designated for the commission of the crime, Ferry made him take some gin to give him courage as he did with appellant Juan Julio de los Santos. And it is likewise improbable that appellant Ferry being able to commit the crime himself if he had ever thought of committing it, would employ for that purpose three accomplices, thus making it more difficult for him to keep the same a secret and less probable the impunity of his act.

Attempt has been made to show that the motive for the crime were the rivalries in business between Ferry and Uy and the latter's insistence in collecting from the former an account of some P60 plus. Uy's widow declared that among the papers which he brought on the morning of the day in question was a receipt or chit of Ferry for P60,

which seemed to be the account Uy was going to collect from him. Said paper was not among those found in the possession of the deceased when the authorities recovered his body, it is insinuated that Ferry was not ignorant of its disappearance. If this be accepted, even only hypothetically, then the non-disappearance of the other papers relating also to the accounts of Ferry like Exhibits H, J and J-1 which were found in the possession of the deceased can not possibly be explained.

What rivalries and competition were there between Ferry and Uy in their business? There is nothing definite in the record concerning the matter. On the contrary, it appears that their relations never cooled down from the date they became intimate and that there was no reason why they should compete because they were not engaged in the same kind of business. If Ferry and his wife needed some merchandise and Uy and his wife had it, the former would get from the latter in preference to others. A sure sign of the good relations existing between the two couples, besides the fact that they were compadres, was that, according to the evidence of the prosecution itself, Ferry's wife stayed in the house of the Uys on September 5, 1937 and was there well attended and entertained. Still another such sign are Exhibits 3 and 4, the last one being a letter of Uy dated August 1, 1937 in which he informed Ferry of the result of his efforts to find out, in compliance with Ferry's requests, the prices of rice in Aparri wherein Ferry desired to sell his rice through Uy.

Dr. Gaerlan testified at the trial that Pedro Uy died a violent death. He could not but admit, however, that the presence of mud or clay on the nails of the deceased were positive signs of death by drowning. It is true that he declared that the absence of water in the stomach, heart and lungs of the deceased made him conclude that Uy did not die of drowning but of the injury received by him in the right temporo-occipital region. However, granting that he died from said cause, this does not mean that the injury was inflicted by Zacarias Manalang or by Juan Julio de los Santos. The testimony of Dr. Gaerlan and of Dr. Pagulayan does not exclude the possibility that Uy fell from his horse and that his head struck a stone. The evidence of record shows that there are many stones of the size of a person's head or bigger in the bed of the Sibang river where Uy's body was found. To this must be added the fact that Dr. Gaerlan admitted that the absence of water in the lungs and stomach is not always an indication that death did not result from drowning, specially when, as in the case of Pedro Uy, a small quantity of water mixed with blood was found in the left ventricle of the heart and very red blood in the other ventricle. The following was his testimony:

"Q. So that there are cases in which water is not found? (The attorney refers to the stomach).—A. If the drowning takes place rapidly, I believe there is no time for the entrance of water.

"Q. But may a person drown rapidly or do you mean that there are rapid and slow drownings?—A. That depends upon the resistance of the individual. There are rapid and slow drownings.

"Q. In rapid drownings is it generally the case that no water is found in the stomach?—A. No, sir. There are cases in which water is found in the stomach.

"Q. And how may a rapid drowning take place?—A. Sometimes the nervous state of mind of the individual helps to make this possible, specially when the individual is of a nervous temperament, and carry heavy weights on his body which sink straight to the bottom.

"Q. Do I understand, Doctor, that drowning may take place in two ways: first, by the closing of the glottis, and second, by the entrance of water into the lungs through the air passages?—A. Yes, sir.

Q. Is it not true that in all cases of drowning by spasmodic (the word 'closing' was suppressed by the stenographer) of the glottis the individual does not absorb or take in water?—A. This may happen in all cases.

"Q. In the particular case of Pedro Uy, although water was found in the lungs but none in the stomach, as you have said, is it not true that his death might have been caused by drowning by spasmodic closing of the glottis?—A. It might have been." (Pp. 114, 115, t. s. n.)

"Q. Have you not examined the pericardium?—A. Only the congestion of the pericardium.

"Q. About the endocardium?—A. There was also congestion there resulting from the deceased's fight for his life due to the lack of oxygen.

"Q. Is that another sign that the drowning took place ante mortem?—A. Yes, sir." (P. 124, t. s. n.)

"Q. Did you open the heart in its place or did you remove it from the body?—A. I removed it.

"Q. Was it then that you examined it?—A. Yes, sir.

"Q. When you cut it open, did you find blood as you said?—A. A small quantity of it.

"Q. To what was that due? You don't mean that the blood had been expelled through the circulatory system?—A. The blood found there was due to accumulation or to crowding in the circulation.

"Q. What was the color of the blood?—A. It was a bit pale or aqueous due to a little mixture of water.

"Q. Was the blood dark in the other part?—A. Yes, sir, it was much darker.

"Q. Is it not true, Doctor, that when the blood in the heart is dark it means that death took place by asphyxiation through drowning or strangulation or through the use of chloroform or carbon dioxide?—A. Yes, sir." (Pp. 124, 125, t. s. n.)

There is no doubt that the testimony of Dr. Gaerlan agrees with the studies made by Dr. Angeles in legal medicine and the opinion set forth in Wharton and Stille's Medical Jurisprudence, which are as follows:

"Abrasions of the hands, mud or sand under the finger nails, and foreign bodies grasped in the hands are at times found. In the struggles made by a drowning person to save himself, he clutches wildly at every object in the water. Hence, if the water is not very deep, or the drowning person is near the bank, the fingers will most probably bear the marks of the sand or gravel, and weeds or sticks may remain firmly grasped in the hands. Unless the substances thus found are peculiar to the water, it may be impossible to exclude their having come from a struggle on the bank." (3 Wharton and Stille, 350, 351.)

"Some of the most reliable means of diagnosing death from drowning are the physical and chemical methods, based on the well-known physiologic fact, that blood from the lungs passes to the left heart, then through the whole system to the right heart and then back to the lungs. Thus, water entering the lungs will quickly reach the left heart and dilute to the blood therein; while the blood of the right heart remains relatively undiluted. As may be inferred from this, the absence of heart beat will make it impossible for the water contained in the lungs to get into the left heart, as will be the case if the individual is thrown into the water after death." (Angeles on Legal Medicine, 386.)

"So, also, death may have been due to some natural cause, such as apoplexy, and the person have fallen into the water immediately after the apoplectic stroke. Here, for instance, we should find, perhaps, a hemorrhage on the surface of the brain, which might be attributed to violence. So, too, the person, in diving, may have struck a rock or some obstacle which has inflicted wounds of a very suspicious character." (3 Wharton and Stille, 352.)

"Then, asphyxiation may take place in two ways: first, from the spasmodic closure of the glottis due to the irritating effect of the water, and second, from the entrance of the water into the lungs through the respiratory passage taking the place of the air. In the first case, the victim falling into the water usually sinks at once and remains below the surface. With the onset of unconsciousness, there is a relaxation of the spasm of the glottis which permits the entrance of small amounts of water into the lungs, while the last inspiratory efforts take place before death. Under such circumstances death may also be due to 'inhibition' which consequently results in a more sudden death, thus explaining the absence of water in the lungs and stomach in some cases." (Angeles on Legal Medicine, 381, 382.)

We must add to all this the fact that about one-half glass of water was ejected from the mouth of the deceased when his body was placed on the bank after having been retrieved from the river.

The lower court admitted the extrajudicial declarations (Exhibits E and M) of the appellant Juan Julio de los Santos in order to strengthen, by way of corroboration, those of the witness for the prosecution, Pedro Bingayen. In the declarations aforementioned this appellant affirmed, in substance, all that to which Bingayen testified. It appears, however, that he repudiated them at the trial, denying having ever taken any part in the commission of the crime for which it is sought to make him responsible together with his coaccused and stating that, while under the custody of corporal Orquia and private Villanueva of the Army or Constabulary and some policemen, he was compelled by threats to make said declarations. Without considering whether or not events took place as testified to by Juan Julio de los Santos at the trial, we believe that the declarations aforesaid are unworthy of credence for being improbable and absurd, taking into account the reasons and conclusions above set forth in the discussion of the testimony of Pedro Bingayen and the further circumstance, truly remarkable, that said declarations of this appellant and those of Bingayen in Exhibit F of which Exhibit F-1 is the translation seem to have come out of the same mold because they are written in, and are of, the same tenor. Which excludes the idea that they were made spontaneously and naturally gives color to the belief that they were prepared without the free consent of both. For the reasons just enumerated, the declarations of Juan Julio de los Santos are not competent to prove his guilt and much less that of his coaccused Manalang and Ferry. If the voluntary admissions of an accused made extra judicially are ever admissible as evidence against him, they are not so against his coaccused who have had no opportunity to hear him testify and cross-examine him (U. S. vs. Galanco and Gamis, 11 Phil., 575; U. S. vs. Cassion and Aduhan, 28 Phil., 285; People vs. Tabuche, 46 Phil., 28; People vs. Manalo and Atienza, 46 Phil., 572); nor are those of a conspirator, made after the conspiracy has come to an end, successfully or unsuccessfully, against his coconspirators (U. S. vs. Empeinado, 9 Phil., 613).

Discarding the testimony of Pedro Bingayen and the supposed extra judicial confession of the appellant Juan Julio de los Santos, nothing remains in the record which may justify a judgment unfavorable to the accused. Nor was there any motive for them to think of committing the crime because the alleged rivalries in business between Ferry and Pedro Uy did not exist. Moreover, considering the financial circumstances of the former who was a tobacco and rice dealer and was furthermore an owner of a rice mill, it is not even possible to suppose that to avoid paying a small account of P60 to Pedro Uy, he would have to take away the latter's life. And it is absurd to think that to save P60, he would bind himself to pay to his servants if they killed Uy the not inconsiderable sum of 7500.

It follows from what has heretofore been stated that the lower court really committed the second and fifth errors attributed to it by the appellants.

As to the first error it suffices to state to dismiss the same that the lower court had jurisdiction to take cognizance of the case until decision thereof after its remand by the justice of the peace who conducted the preliminary proceedings. When a complaint charging a person with a crime is filed with a justice of the peace who, after examining the witnesses produced by the complainant, issues an order for the arrest of the accused, it is to be

implied that he thus acts because he is convinced that there is reasonable cause to believe that the crime charged was committed and that the accused was the one who committed it (section 334, Nos. 14, 15, of Act No. 190). From the record it appears that immediately after their arrest, the accused filed their written plea (Exhibit 2) of not guilty and made formal renunciation therein of their right to a preliminary investigation. When the case was already before the Court of First Instance of Cagayan, the presiding judge ordered that the information be read to the three appellants who, in open court, indicated that they had been advised thereof and that they pleaded not guilty. This shows that the lower court acquired and had jurisdiction to act in the manner it did.

In view of all the foregoing, the judgment appealed from is reversed and appellants acquitted with costs de oficio. It is hereby ordered that a copy of this decision be furnished the Solicitor-General in order that, after the preliminary investigation required by law, he may take the proper action against Pedro Bingayen for perjury and against all those who may have induced him to commit the same. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Concepcion, JJ., concur.

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