

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JESUS FLORENDO, LORENZO FORMOSO AND ADRIANO FORMOSO, DEFENDANTS AND APPELLANTS.

G.R. No. 46023. September 30, 1939

Ponente: MORAN, J.

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MORAN, J.:

Between 8 and 9 o'clock in the night of March 24, 1937, at Plaza Burgos in the municipality of Vigan, Ilocos Sur, Vicente Marinas received from behind two pistol shots, as a consequence of which he died almost Instantaneously.

After the corresponding investigations, Jesus Florendo, Lorenzo Formoso and Adriano Formoso were prosecuted for the crime of murder. The trial, during which voluminous evidence was adduced, was held, and the lower court, after a study thereof, rendered judgment finding all of the accused guilty of the crime of murder, with Jesus Florendo as the principal and Lorenzo Formoso and Adriano Formoso as accomplices, and sentenced the former to suffer the penalty of reclusion perpetua and to indemnify the heirs of the deceased in the sum of five hundred pesos (P500), and the latter two to suffer each an indeterminate penalty of from six years and one day of prison mayor, as minimum, to twelve years and one day of reclusion temporal, as maximum, and to indemnify jointly and severally the heirs of the deceased in the sum of five hundred pesos (P500), all with the accessory penalties prescribed by law, and to pay the costs. The three accused appealed.

As to the guilt of Jesus Florendo, the lower court states as follows:

"The crime in question occurred between 8 and 9 o'clock in the night of March 24, 1937, within the poblacion of the municipality of Vigan, Ilocos Sur, at Plaza Burgos situated on the left side of the cathedral, bounded on the north by Padre Burgos Street, on the east by Gobernador Crisologo Street, on the south by Leona Florentino Street and on the west by Emilio Jacinto Street, which was at that time well illuminated with electric lanterns and frequented by many people, because it was Holy Wednesday and lady vendors were constructing tilts, sheds and temporary shelters for their merchandise, candies and delicacies along the sides thereof. At the center of the said plaza rises the monument to Father Burgos on a rectangular cement platform. From the four angles of its square base project four two-step promenades in the form of buttresses. On one of them, that on the northeastern part, the deceased Vicente Marinas and the herein accused Adriano Formoso were seated, facing eastwards, but while the back of the former remained unprotected, the latter had his to the base of the monument. They were thus eating sincamas when Jesus Florendo, coming from the south, fired a pistol at Vicente Marinas from the northwestern angle of said monument and only a little more than a meter away from his victim who had his back toward him, the latter falling on the platform on the third shot and dying instantaneously. From an autopsy of the body, which was performed that very night by Dr. P. J. Alvarado, provincial doctor of Ilocos Sur, two wounds were found, the first produced by a pistol missile which penetrated the left suprascapular region, entered the junction of the third cervical vertebra, followed the spinal duct and lodged in the fourth ventricle; and the second, also produced by a pistol missile which entered the left lumbar region, pierced the eleventh space between the left ribs, the abdominal aorta and the intestine, and

lodged in the walls of the mesentery. Both missiles were extracted from the body of Vicente Marinas by Dr. Alvarado and are now Exhibits C and C-1. The above-stated wounds produced by these two missiles caused the instantaneous death of Vicente Marinas, because they were necessarily mortal, as so testified by Dr. Alvarado and stated by him in his certificate Exhibit B."

The evidence clearly supports these conclusions of the lower court. Three eyewitnesses, namely, Teofilo Catura, Trinidad Guevara and Jose Lazo, saw the accused Jesus Florendo in the act of firing from behind three pistol shots at Vicente Marinas. And even discarding the testimony of the girl Trinidad Guevara who, by means of an able cross-examination, admitted that everything stated by her had been taught her by Salud Panlasigui, the testimonies of Teofilo Catura and Jose Lazo are sufficient.

The testimony of Teofilo Catura, however, is impugned by the statement Exhibit 1 made by him, wherein he alleges that he failed to recognize the person who had fired at Vicente Marinas. But he gave a sufficient explanation of said statement by saying that he made it after he had been intoxicated and offered money. The evidence presented to belie this explanation does not satisfy this court. It is noteworthy that the witness Catura has not ratified the statement before a notary public, which was the intention at first, judging by the form in which said statement is written.

The testimony of Jose Lazo is impugned by an alleged statement attributed to him by the other witness Pantaleon Almo, to wit: "it seems that that is the one named Jesus Florendo" made by Jose Lazo when he saw Jesus Florendo in the municipal building on the day after the murder. However, it is illegal to assail the credibility of a witness by means of a statement attributed to him by another, if he has not been given sufficient opportunity to explain it. Furthermore, said statement does not destroy Jose Lazo's testimony that on the night in question he saw Jesus Florendo kill Vicente Marinas, even granting that he did not know the name of the accused until the following day in the municipal building.

According to the evidence, the motive of Jesus Florendo is vengeance. More than ten years ago, his brother Alfredo Florendo was killed by Vicente Marinas as a consequence of which the latter was sentenced to jail. Jesus Florendo took vengeance in spite of the fact that his father pardoned Vicente Marinas.

As to the accused Adriano Formoso and Lorenzo Formoso, we entertain grave doubts of their guilt. Evidence has been presented regarding the alleged conspiracy between them and Jesus Florendo to kill Vicente Marinas. Such evidence, however, leaves much to be desired, especially if the evidence adduced by the defense is taken into consideration.

Salud Panlasigui stated that at about 8 o'clock in the evening of March 24, 1937, she accompanied her cousin Vicente Marinas to the convent of Vigan to pay the dues for the prospective marriage of Vicente Marinas to a certain woman; that since it was then Holy Wednesday, Father Belisario told them to return on the following Saturday; that upon passing near the belfry of the cathedral, they met the accused Adriano Formoso who called Vicente Marinas, saying that he had something to tell him; that Adriano Formoso and Vicente Marinas together went toward Plaza Burgos; that later she was informed that Vicente Marinas had been murdered. Father Belisario, however, belies said testimony, saying that Salud Panlasigui and Vicente Marinas did not go to the convent to see him in the night of March 24, 1937, but at about 3 o'clock in the afternoon of said day.

Regino Puruganan testified that at about 8 o'clock in the evening of March 24, 1937, while he was at Plaza Burgos, he saw the three accused together and that Adriano Formoso asked him whether he had seen Vicente Marinas, to which the witness answered in the negative. The three accused went toward the northern part of the plaza and shortly afterwards he heard firearm reports. Regino Puruganan, however, is a brother of Bibiano Puruganan, coaccused of Vicente Marinas in the murder case of Alfredo Florendo, and in said case Lorenzo

Formoso, testified as a witness for the prosecution against Bibiano Puruganan.

Pantaleon Almo likewise testified that in the night in question he saw the three accused Lorenzo Formoso, Adriano Formoso and Jesus Florendo talking together; that he later saw Adriano Formoso and Vicente Marinas near the Father Burgos monument, and that shortly afterwards he heard the firearm reports. But there also exist doubts whether or not Jesus Florendo was the third party with Adriano Formoso and Lorenzo Formoso on that occasion, inasmuch as the witness himself admits that he did not then know Jesus Florendo.

Teofilo Catura testified that in the night of March 24, 1937, Adriano Formoso and Vicente Marinas were conversing at the foot of the Father Burgos monument when the accused Jesus Florendo fired at Vicente Marinas. But Adriano, Formoso, according to his affidavit Exhibit I, admits that he was talking to Vicente Marinas when the latter received the pistol shots from Jesus Florendo.

Ernesto Centeno stated that he had seen Lorenzo Formoso and Jesus Florendo together in the night of the crime in the bowling alley situated on Leona Florentino Street near Plaza Burgos; that he saw the two accused talking together and afterwards go out into the street; that he likewise saw Lorenzo Formoso take out something from the pocket of his pants and deliver it later to Jesus Florendo, after which both went to the Father Burgos monument; that soon after he heard the three firearm reports and saw Jesus Florendo and Lorenzo Formoso run away. This witness, however, is belied by his uncle Gabriel Centeno who states that Ernesto Centeno went to the movies at about 7 o'clock in the evening in question and did not leave there until about 9 o'clock that same night. Furthermore, this testimony is indirectly disproved by the testimonies of Dr. Ramon Encarnacion and Attorney A. Pilar, which will be discussed later. And afterwards Luis Rivera testified that at about 8 o'clock in the night of March 24, 1937, he was in said bowling alley but he did not see therein either Lorenzo Formoso or Jesus Florendo or Ernesto Centeno,

Jose Lazo testified that after having seen Jesus Florendo fire three pistol shots at Vicente Marinas, he saw said Jesus Florendo run away, turning over the pistol in question to Lorenzo Formoso. There are doubts, however, whether or not this witness has been mistaken in testifying on this point on account of the confusion arising after the commission of the crime and because he failed to pursue Jesus Florendo.

Arcadio Laperal of the Manila Secret Service also testified to show that the bullets Exhibits C and C-1 found in the body of Vicente Marinas and the ones marked Exhibits D and D-1 found in the body of Remedios Donato, at whom the accused Lorenzo Formoso fired several pistol shots on February 13, 1937, were discharged from one and the same automatic pistol, caliber .25, judging by certain microscopic grooves and protuberances appearing thereon. However, since this expert could not show either the existence or uniformity of said grooves or protuberances on account of the fact that, according to him, he had no time to take enlarged photographs thereof, his testimony may be given but little value. The probative value of an expert testimony lies not in a simple exposition of the expert's theory or opinion but in the assistance he may afford the courts by demonstrating the facts which serve as a basis for his opinion and the reasons on which the logic of his conclusions is founded (*U. S. vs. Kosel*, 24 Phil., 594).

Against this evidence for the prosecution, the defense has presented evidence of much weight. It appears that Adriano Formoso and Lorenzo Formoso were very close friends of Vicente Marinas. The latter was one of the bodyguards of the accused Lorenzo Formoso during the last Vigan Carnival, as corroborated by Exhibit 9. Vicente Mariñas, shortly after his return to Vigan from the Bilibid Prison about the month of December, 1936, was accompanied by Adriano Formoso to ask for forgiveness of the father of Alfredo Florendo who, as already stated, had been killed by Vicente Marinas more than ten years ago.

Antonio Peralta, chief of police of Bantay, Ilocos Sur, testified that four days prior to the crime a Chinese supper

was given at the house of Lorenzo Formoso in Vigan, and Vicente Marinas was among the guests.

Salvador Gray, member of the provincial board of Ilocos Sur, testified that at about 11 o'clock in the morning of March 24, 1937, Lorenzo Formoso, accompanied by Vicente Marinas, went to see him in the provincial capitol building in Vigan to request him to give Vicente Marinas a job as laborer or foreman in the public works of the province.

Prospero Soliven, a soldier, testified that on the night of the crime he was taking a walk with Adriano Formoso and Vicente Marinas along the streets near Plaza Burgos; that while they were thus engaged, they met policeman Simplicio Albayalde who later separated from them; that Vicente Marinas later invited them to the Burgos monument but the witness declined the invitation because he had to buy cigarettes at a store located on the ground floor of the Plaza Hotel; that while he was in said store, he heard" firearm reports.

Policeman Simplicio Albayalde corroborated the testimony of soldier Prospero Soliven.

Doctor Ramon Encarnacion and Attorney A. Pilar stated that at about 8 o'clock in the night of March 24, 1937, while they were conversing at a window of the New York Hotel, situated east of Plaza Burgos, they saw Lorenzo Formoso, whom they already knew beforehand, talking to others on the sidewalk below said window, and that at that same moment they heard firearm reports.

Policeman Regino Anagairan testified that at about 8 o'clock in the night of March 24, 1937, he was on duty on Governor Crisologo Street and saw Lorenzo Formoso come hurriedly to him to tell him that Vicente Marinas had been killed.

All this evidence shows the good relations of friendship and affection existing between the accused Formosos and Vicente Marinas and the improbability of the participation of the former in the murder of the latter. And the said accused not only had reasons not to commit the crime but also had reasons not to enter into a conspiracy with Jesus Florendo. Olimpio Florendo, brother of Jesus Florendo, brought an action for adultery against his wife Alberta Formoso. The accused Jesus Florendo was the principal witness for the prosecution. Alberta is a sister of the accused Adriano Formoso and Lorenzo Formoso. The case was pending at the time of the commission of the crime charged herein. These circumstances show prima facie that at least there was enmity between the accused Formosos and the accused Jesus Florendo, which makes improbable the alleged conspiracy between them.

For the foregoing considerations, the judgment is affirmed as to Jesus Florendo, with the sole modification that he indemnify the heirs of the deceased Vicente Marinas in the sum of one thousand pesos (P1,000) and pay the costs of both instances. The judgment is reversed as to the accused Adriano Formoso and Lorenzo Formoso, with the costs de oficio.

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

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