

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANTONIO Z. OANIS AND ALBERTO GALANTA, DEFENDANTS AND APPELLANTS.

G.R. No. 47722. July 27, 1943

Ponente: MORAN, J.

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MORAN, J.:

Charged with the crime of murder of one Serapio Tecson, the accused Antonio Z. Oanis and Alberto Galanta, chief of police of Cabanatuan and corporal of the Philippine Constabulary, respectively, were, after due trial, found guilty by the lower court of homicide through reckless imprudence and were sentenced each to an indeterminate penalty of from one year and six months to two years and two months of prison correccional and to indemnify jointly and severally the heirs of the deceased in the amount of P1,000. Defendants appealed separately from this judgment.

In the afternoon of December 24, 1938, Captain Godofredo Monsod, Constabulary Provincial Inspector at Cabanatuan, Nueva Ecija, received from Major Guido a telegram of the following tenor: "Information received escaped convict Anselmo Balagtas with bailarina name Irene in Cabanatuan get him dead or alive." Captain Monsod accordingly called for his first sergeant and asked that he be given four men. Defendant corporal Alberto Galanta, and privates Nicomedes Oralo, Venancio Serna and D. Fernandez, upon order of their sergeant, reported at the office of the Provincial Inspector where they were shown a copy of the above-quoted telegram and a newspaper clipping containing a picture of Balagtas. They were instructed to arrest Balagtas and if overpowered, to follow the instruction contained in the telegram. The same instruction was given to the chief of police Oanis who was likewise called by the Provincial Inspector. When the chief of police was asked whether he knew one Irene, a bailarina, he answered that he knew one of loose morals of the same name. Upon request of the Provincial Inspector, the chief of police tried to locate some of his men to guide the constabulary soldiers in ascertaining Balagtas' whereabouts, and failing to see anyone of them he volunteered to go with the party. The Provincial Inspector divided the party into two groups with defendants Oanis and Galanta, and private Fernandez taking the route to Rizal street leading to the house where Irene was supposedly living. When this group arrived at Irene's house, Oanis approached one Brigida Mallare, who was then stripping banana stalks, and asked her where Irene's room was. Brigida indicated the place and upon further inquiry also said that Irene was sleeping with her paramour, Brigida trembling, immediately returned to her own room which was very near that occupied by Irene and her paramour. Defendants Oanis and Galanta then went to the room of Irene, and on seeing a man sleeping with his back towards the door where they were, simultaneously or successively fired at him with their .32 and .45 caliber revolvers. Awakened by the gunshots, Irene saw her paramour already wounded, and looking at the door where the shots came, she saw the defendants still firing at him. Shocked by the entire scene, Irene fainted; it turned out later that the person shot and killed was not the notorious criminal Anselmo Balagtas but a peaceful and innocent citizen named Serapio Tecson, Irene's paramour. The Provincial Inspector, informed of the killing, repaired to the scene and when he asked as to who killed the deceased, Galanta, referring to himself and to Oanis,

answered: "We two, sir." The corpse was thereafter brought to the provincial hospital and upon autopsy by Dr. Ricardo de Castro, multiple gunshot wounds inflicted by a .32 and a .45 caliber revolvers were found on Tecson's body which caused his death.

These are the facts as found by the trial court and fully supported by the evidence, particularly by the testimony of Irene Requinea. Appellants gave, however, a different version of the tragedy. According to Appellant Galanta, when he and chief of police Oanis arrived at the house, the latter asked Brigida where Irene's room was. Brigida indicated the place, and upon further inquiry as to the whereabouts of Anselmo Balagtas, she said that he too was sleeping in the same room. Oanis went to the room thus indicated and upon opening the curtain covering the door, he said: "If you are Balagtas, stand up." Tecson, the supposed Balagtas, and Irene woke up and as the former was about to sit up in bed, Oanis fired at him. Wounded, Tecson leaned towards the door, and Oanis receded and shouted: "That is Balagtas." Galanta then fired at Tecson.

On the other hand, Oanis testified that, after he had opened the curtain covering the door and after having said, "if you are Balagtas stand up," Galanta at once fired at Tecson, the supposed Balagtas, while the latter was still lying on bed, and continued firing until he had exhausted his bullets; that it was only thereafter that he, Oanis, entered the door and upon seeing the supposed Balagtas, who was then apparently watching and picking up something from the floor, he fired at him.

The trial court refused to believe the appellants. Their testimonies are certainly incredible not only because they are vitiated by a natural urge to exculpate themselves of the crime, but also because they are materially contradictory. Oanis averred that he fired at Tecson when the latter was apparently watching somebody in an attitude of picking up something from the floor; on the other hand, Galanta testified that Oanis shot Tecson while the latter was about to sit up in bed immediately after he was awakened by a noise. Galanta testified that he fired at Tecson, the supposed Balagtas, when the latter was rushing at him, But Oanis assured that when Galanta shot Tecson, the latter was still lying on bed. It is apparent from these contradictions that when each of the appellants tries to exculpate himself of the crime charged, he is at once belied by the other; but their mutual incriminating averments dovetail with and corroborate substantially, the testimony of Irene Requinea. It should be recalled that, according to Requinea, Tecson was still sleeping in bed when he was shot to death by appellants. And this, to a certain extent, is confirmed by both appellants themselves in their mutual recriminations. According, to Galanta, Oanis shot Tecson when the latter was still in bed about to sit up just after he was awakened by a noise. And Oanis assured that when Galanja shot Tecson, the latter was still lying in bed. Thus corroborated, and considering that the trial court had the opportunity to observe her demeanor on the stand, we believe and so hold that no error was committed in accepting her testimony and in rejecting the exculpatory pretensions of the two appellants. Furthermore, a careful examination of Irene's testimony will show not only that her version of the tragedy is not concocted but that it contains all indicia of veracity. In her cross-examination, even misleading questions had been put which were unsuccessful, the witness having stuck to the truth in every detail of the occurrence. Under these circumstances, we do not feel ourselves justified in disturbing the findings of fact made by the trial court.

The true fact, therefore, of the case is that, while Tecson was sleeping in his room with his back towards the door, Oanis and Galanta, on sight, fired at him simultaneously or successively, believing him to be Anselmo Balagtas but without having made previously any reasonable inquiry as to his identity. And the question is whether or not they may, upon such fact, be held responsible for the death thus caused to Tecson. It is contended that, as appellants acted in innocent mistake of fact in the honest performance of their official duties, both of them believing that Tecson was Balagtas, they incur no criminal liability. Sustaining this theory in part, the lower court hold and so declared them guilty of the crime of homicide through reckless imprudence. We are of the opinion, however, that, under the circumstances of the case, the crime committed by appellants is murder though specially

mitigated by circumstances to be mentioned below.

In support of the theory of non-liability by reason of honest mistake of fact, appellants rely on the case of *U. S. v. Ah Chong*, 15 Phil., 488. The maxim is *ignorantia facti excusat* but this applies only when the mistake is committed without fault or carelessness. In the *Ah Chong* case, defendant therein after having gone to bed was awakened by someone trying to open the door. He called out twice, "who is there," but received no answer. Fearing that the intruder was a robber, he leaped from his bed and called out again, "if you enter the room I will kill you." But at that precise moment, he was struck by a chair which had been placed against the door and believing that he was then being attacked, he seized a kitchen knife and struck and fatally wounded the intruder who turned out to be his room-mate. A common illustration of innocent mistake of fact is the case of a man who was masked as a footpad at night and in a lonely road held up a friend in a spirit of mischief, and with leveled pistol demanded his money or life. He was killed by his friend under the mistaken belief that the attack was real, that the pistol leveled at his head was loaded and that his life and property were in imminent danger at the hands of the aggressor. In these instances, there is an innocent mistake of fact committed without any fault or carelessness because the accused, having no time or opportunity to make a further inquiry, and being pressed by circumstances to act immediately, had no alternative but to take the facts as they then appeared to him, and such facts justified his act of killing. In the instant case, appellants, unlike the accused in the instances cited, found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, appellants had ample time and opportunity to ascertain his identity without hazard to themselves, and could even effect a bloodless arrest if any reasonable effort to that end had been made, as the victim was unarmed, according to *Irene Requinea*. This, indeed is the only legitimate course of action for appellants to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight but to arrest him and to get him dead or alive only if resistance or aggression is offered by him.

Although an officer in making a lawful arrest is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm (*People vs. Delima*, 46 Phil., 738), yet he is never justified in using unnecessary force or in treating him with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise (6 C. J. S., par. 13, p. 612). The doctrine is restated in the new Rules of Court thus: "No unnecessary or unreasonable force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention." (Rule 109, sec. 2, par. 2). And a peace officer cannot claim exemption from criminal liability if he uses unnecessary force or violence in making an arrest. (5C. J., p. 753; *U. S. vs. Mendoza*, 2 Phil., 109). It may be true that Anselmo Balagtas was a notorious criminal, a lifetermer, a fugitive from justice and a menace to the peace of the community, but these facts alone constitute no justification for killing him when, in effecting his arrest, he offers no resistance, or in fact no resistance can be offered, as when he is asleep. This, in effect, is the principle laid down, although upon different facts, in *U. S. vs. Donoso* (3 Phil., 234, 242).

It is, however, suggested that a notorious criminal "must be taken by storm" without regard to his right to life which he has by such notoriety already forfeited. We may approve of this standard of official conduct where the criminal offers resistance or does something which places his captors in danger of imminent attack. Otherwise we cannot see how, as in the present case, the mere fact of notoriety can make the life of a criminal a mere trifle in the hands of the officers of the law. Notoriety rightly supplies a basis for redoubled official alertness and vigilance; it never can justify precipitate action at the cost of human life. Where, as here, the precipitate action of the appellants has cost an innocent life and there exist no circumstances whatsoever to warrant action of such character in the mind of a reasonably prudent man, condemnation—not condonation—should be the rule; otherwise we would offer, a premium to crime in the shelter of official actuation.

The crime committed by appellants, is not merely criminal negligence, the killing being intentional and not accidental. In criminal negligence, the injury caused to another should be unintentional, it being simply the incident of another act performed without malice. (People vs. Sara, 55 Phil, 939). In the words of Viada, "para que se califique un hecho de imprudencia es preciso que no haya mediado en el malicia ni intencion alguna de dañar; existiendo esa intencion, debera calificarse el hecho del delito que ha producido, por mas que no haya sido la intencion del agente el causar un mal de tanta gravedad como el que se produjo." (Tomo 7, ViadaCodigo Penal Comentado, 5.a ed. pag. 7). And, as once held by this Court, a deliberate intent to do an unlawful act is essentially, inconsistent with the idea of reckless imprudence (People vs. Nanquil, 43 Phil., 232; People vs. Bindor, 56 Phil., 16), and where such unlawful act is wilfully done, a mistake in the identity of the intended victim cannot be considered as reckless imprudence (People vs. Gona, 54 Phil., 605) to support a plea of mitigated liability.

As the deceased was killed while asleep, the crime committed is murder with the qualifying circumstance of alevosia. There is, however, a mitigating circumstance of weight consisting in the incomplete justifying circumstance defined in article 11, No. 5, of the Revised Penal Code. According to such legal provision, a person incurs no criminal liability when he acts in the fulfilment of a duty or in the lawful exercise of a right or office. There are two requisites in order that the circumstance may be taken as a justifying one: (a) that the offender acted in the performance of a duty or in the lawful exercise of a right; and (b) that the injury or offense committed be the necessary consequence of the due performance of such duty or the lawful exercise of such right or office. In the instant case, only the first requisite is present—appellants have acted in the performance of a duty. The second requisite is wanting for the crime by them committed is not the necessary consequence of a due performance of their duty. Their duty was to arrest Balagtas, or to get him dead or alive if resistance is offered by him and they are overpowered. But through impatience or over-anxiety or in their desire to take no chances, they have exceeded in the fulfilment of such duty by killing the person whom they believed to be Balagtas without any resistance from him and without making any previous inquiry as to his identity. According to article 69 of the Revised Penal Code, the penalty lower by one or two degrees than that prescribed by law shall, in such case, be imposed.

For all the foregoing, the judgment is modified and appellants are hereby declared guilty of murder with the mitigating circumstance above mentioned, and accordingly sentenced to an indeterminate penalty of from five (5) years of prision correccional to fifteen (15) years of reclusion temporal, with the accessories of the law, and to pay the Heirs of the deceased Serapio Tecson jointly and severally an indemnity of P2,000, with costs.

Yulo, C. J., Bocobo, Generoso and Lopez Vito, A., concur.

DISSENTING

PARAS, J.,

Anselmo Balagtas, a life term and notorious criminal, managed to escape and Reflee from Manila to the provinces. Receiving information to the effect that he was staying with one Irene in Cabanatuan, Nueva Ecija, the office of the Constabulary in Manila ordered the Provincial Inspector in Cabanatuan by telegram dispatched on December 24, 1938, to get Balagtas "dead or alive". Among those assigned to the task of carrying out the said order, were Antonio Z. Oanis, chief of police of Cabanatuan, and Alberto Galanta, a Constabulary corporal, to whom the telegram received by the Provincial Inspector and a newspaper picture of Balagtas were shown. Oanis, Galanta and a Constabulary private, after being told by the Provincial Inspector to gather information about Balagtas, "to arrest him and, if overpowered, to follow the instructions contained in the telegram," proceeded to the place where the house of Irene was located. Upon arriving thereat, Oanis approached Brigida Mallari, who

was then gathering banana stalks in the yard, and inquired for the room of Irene. After Mallari had pointed out the room, she was asked by Oanis to tell where Irene's paramour, Balagtas, was, whereupon Mallari answered that he was sleeping with Irene. Upon reaching the room indicated, Oanis and Galanta, after the former had shouted "Stand up, if you are Balagtas," started shooting the man who was found by them lying down beside a woman. The man was thereby killed, but Balagtas was still alive, for it turned out that the person shot by Oanis and Galanta was one Serapio Tecson.

Consequently, Oanis and Galanta were charged with having committed murder. The Court of First Instance of Nueva Ecija, however, convicted them only of homicide through reckless imprudence and sentenced them each to suffer the indeterminate penalty of from 1 year and 6 months to 2 years and 2 months of prison correctional, to jointly and severally indemnify the heirs of Serapio Tecson in the amount of P1,000, and to pay the costs. Oanis and Galanta have appealed.

In accomplishing the acts with which the appellants were charged, they undoubtedly followed the order issued by the Constabulary authorities in Manila requiring the Provincial Inspector in Cabanatuan to get Balagtas dead or alive, in the honest belief that Serapio Tecson was Anselmo Balagtas. As the latter became a fugitive criminal, with revolvers in his possession and a record that made him extremely dangerous and a public terror, the Constabulary authorities were justified in ordering his arrest, whether dead or alive. In view of said order and the danger faced by the appellants in carrying it out, they cannot be said to have acted feloniously in shooting the person honestly believed by them to be the wanted man. Conscious of the fact that Balagtas would rather kill than be captured, the appellants did not want to take chances and should not be penalized for such prudence. On the contrary, they should be commended for their bravery and courage bordering on recklessness because, without knowing or ascertaining whether the wanted man was in fact asleep in his room, they proceeded thereto without hesitation and thereby exposed their lives to danger.

The Solicitor-General, however, contends that the appellants were authorized to use their revolvers only after being overpowered by Balagtas. In the first place, the alleged instruction by the Provincial Inspector to that effect, was in violation of the express order given by the Constabulary authorities in Manila and which was shown to the appellants. In the second place, it would indeed be suicidal for the appellants or, for that matter, any agent of the authority to have waited until they have been overpowered before trying to put out such a character as Balagtas. In the third place, it is immaterial whether or not the instruction given by the Provincial Inspector was legitimate and proper, because the facts exist that the appellants acted in conformity with the express order of superior Constabulary authorities, the legality or propriety of which is not herein questioned.

The theory of the prosecution has acquired some plausibility, though quite psychological or sentimental, in view only of the fact that it was not Balagtas who was actually killed, but an "innocent man" * * * while he was deeply asleep." Anybody's heart will be profoundly grieved by the tragedy, but in time will be consoled by the realization that the life of Serapio Tecson, was not vainly sacrificed for the incident will always serve as a loud warning to any one desiring to follow in the footsteps of Anselmo Balagtas that in due time the duly constituted authorities will, upon proper order, enforce the summary forfeiture of his life.

In my opinion, therefore, the appellants are not criminally liable if the person killed by them was in fact Anselmo Balagtas for the reason that they did so in the fulfillment of their duty and in obedience to an order issued by a superior for some lawful purpose (Revised Penal Code, art. 11, pars. 5 and 6). They also cannot be held criminally liable even if the person killed by them was not Anselmo Balagtas, but Serapio Tecson, because they did so under an honest mistake of fact not due to negligence or bad faith, (U. S. vs. Ah Chong, 15 Phil., 488).

It is true that, under article 4 of the Revised Penal Code, criminal liability is incurred by any person committing a

felony although the wrongful act done be different from that which he intended; but said article is clearly inapplicable since the killing of the person who was believed to be Balagtas was, as already stated, not wrongful or felonious.

The case of *U. S. vs. Mendieta* (34 Phil., 242), cited by the Solicitor-General, is not in point, inasmuch as the defendant therein, who intended to injure Huarion Lauigan with whom he had a quarrel, but killed another by mistake, would not be exempted from criminal liability if he actually injured or killed Hilario Lauigan, there being a malicious design on his part. The other case invoked by the prosecution is *U.S. vs. Donoso* (3 Phil., 234). This is also not in point, as it appears that defendants therein killed one Pedro Almasan after he had already surrendered and allowed himself to be bound and that the said defendants did not have lawful instructions from superior authorities to capture Almasan dead or alive.

The appealed judgment should therefore be reversed and the appellants, Antonio Z. Oanis and Alberto Galanta, acquitted, with costs de oficio.

DISSENTING

HONTIVEROS, J.,

According to the opinion of the majority, it is proper to follow the rule that a notorious criminal "must be taken by storm without regard to his life which he has, by his conduct, already forfeited," whenever said criminal offers resistance or does something which places his captors in danger of imminent attack. Precisely, the situation which confronted the accused-appellants Antonio Z. Oanis and Alberto Galanta in the afternoon of December 24, 1938, was very similar to this. It must be remembered that both officers received instructions to get Balagtas "dead or alive", and according to the attitude of not only the said appellants but also of Capt. Monsod, constabulary provincial inspector of Nueva Ecija, it may be assumed that said instructions gave more emphasis to the first part; namely, to take him dead. It appears in the record that after the shooting, and having been informed of the case, Capt. Monsod stated that Oanis and Galanta might be decorated for what they had done. That was when all parties concerned honestly believed that the dead person was Balagtas himself, a dangerous criminal who had escaped from his guards and was supposedly armed with a .45 caliber pistol. Brigida Mallari, the person whom the appellants met upon arriving at the house of Irene Requinea, supposed mistress of Balagtas, informed them that said Balagtas was Upstairs. Appellants found there asleep a man closely resembling the wanted criminal. Oanis said: "If you are Balagtas stand up." But the supposed criminal showed his intention to attack the appellants, a conduct easily explained by the fact that he should have felt offended by the intrusion of persons in the room where he was peacefully lying down with his mistress. In such predicament, it was nothing but human on the part of the appellants to employ force and to make use of their weapons in order to repel the imminent attack by a person who, according to the belief, was Balagtas. It was unfortunate however that an innocent man was actually killed. But taking into consideration the facts of the case, it is, according to my humble opinion, proper to apply herein the doctrine laid down in the case of *U. S. vs. Ah Chong* (15 Phil., 488). In the instant case we have, as in the case *supra*, an innocent mistake of fact committed without any fault or carelessness on the part of the accused, who, having no time to make a further inquiry, had no alternative but to take the facts as they appeared to them and act immediately.

The decision of the majority, in recognition of the special circumstances of this case which favored the accused-appellants, arrives at the conclusion that an incomplete justifying circumstance may be invoked, and therefore, according to Article 69 of the Revised Penal Code, the imposable penalty should be one which is lower by one or two degrees than that prescribed by law. This incomplete justifying circumstance is that defined in

Article 11, No. 5, of the Revised Penal Code, in favor of "a person who acts in the fulfillment of a duty or in the lawful exercise of a right or office." I believe that the application of this circumstance is not proper. Article 69 of the Revised Penal Code provides as follows:

"ART. 69. Penalty to be imposed when the crime committed is not wholly excusable.—A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in articles 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking."

This provision has been copied almost verbatim from Article 84 of the old Penal Code of the Philippines, and which was also taken from Article 87 of the Spanish Penal Code of 1870.

Judge Guillermo Guevara, one of the members of the Committee created by Administrative Order No. 94 of the Department of Justice for the drafting of the Revised Penal Code, in commenting on Article 69, said that the justifying circumstances and circumstances exempting from liability which are the subject matter of this article are the following: self-defense, defense of relatives, defense of strangers, state of necessity and injury caused by mere accident. Accordingly, justifying circumstance No. 5 of Article 11 dealing with the fulfillment of a duty or the lawful exercise of a right,¹ calling or office, cannot be placed within its scope.

The eminent treatiser of criminal law Mr. Groizard, in his commentary of Article 87 of the Spanish Penal Code of 1870 which is the source of Article 69 of our Code, says:

"Ni tratándose de la imbecilidad, ni de la locura, ni de la menor edad, ni del que obra violentado por una fuerza irresistible o impulsado por miedo insuperable de un mal igual o mayor, o en cumplimiento de un deber, o en el ejercicio legítimo de un derecho, oficio o cargo, o en virtud de obediencia debida, ni del que incurre en alguna omisión hallándose impedido por causa legítima o insuperable, puede tener aplicación al artículo que comentamos. Y la razón es obvia. En ninguna de estas exenciones hay pluralidad de requisitos. La irresponsabilidad depende de una sola condición. Hay o no perturbación de la razón el autor del hecho es o no menor de nueve años; existe o no violencia material o moral irresistible, etc., etc.; tal es lo que respectivamente hay que examinar y resolver para declarar la culpabilidad o inculpabilidad. Es, por lo tanto, imposible que acontezca lo que el texto que va al frente de estas líneas requiere, para que se imponga al autor del hecho la penalidad excepcional que establece; esto es, que fallen algunos requisitos de los que la ley exige para eximir de responsabilidad, y que concurran el mayor número de ellos, toda vez que, en los casos referidos, la ley no exige múltiples condiciones."

It must be taken into account the fact according to Article 69 a penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required by the law to justify the same or exempt from criminal liability. The word "conditions" should not be confused with the word "requisites". In dealing with justifying circumstance No. 5, Judge Guevara states: "There are two requisites in order that this circumstance may be taken into account: (a) That the offender acted in the performance of his duty or in the lawful exercise of a right; and (b) That the injury or offense committed be the necessary consequence of the performance of a duty or the lawful exercise of a right or office." It is evident that these two requisites concur in the present case if we consider the intimate connection between the order given to the appellant by Capt. Monsod, the showing to them of the telegram from Manila to get Balagtas who was with a bailarina named Irene, the conduct of said appellants in questioning Brigida Mallari and giving a warning to the supposed criminal when both found him with Irene, and the statement made by Capt. Monsod after the shooting.

If appellant Oanis is entitled to a reversal of the decision of the court below, there are more reasons in favor of the

acquittal of appellant Galanta. According to the evidence no bullet from the gun fired by this accused ever hit Serapio Tecson. Galanta was armed in the afternoon of December 24, 1938, with a .45 caliber revolver (Exhibit L) He so testified and was corroborated by the unchallenged testimony of his superior officer Sgt Valeriano Serafica. According to this witness since Galanta was made a corporal of the Constabulary he was given, as part of his equipment, revolver Exhibit L with a serial No. 37121. This gun had been constantly used by Galanta, and, according to Sgt. Pedro Marasigan, who accompanied said accused when he took it from his trunk in the barracks on the night of December 24, 1938, upon order of Captain Monsod, it was the same revolver which was given to the witness with five .45 caliber bullets and one empty shell. Fourteen unused bullets were also taken from Galanta by Sergeant Serafica, thus completing his regular equipment of twenty bullets which he had on the morning of December 24, 1938, when Sergeant Serafica made the usual inspection of the firearms in the possession of the non-commissioned officers and privates of the constabulary post at Cabanatuan. Galanta stated that he had fired only one shot and missed. This testimony is corroborated by that of a ballistic expert who testified that bullets exhibits F and O,— the first being extracted from the head of the deceased, causing wound No. 3 of autopsy report Exhibit C and the second found at the place of the shooting,—had not been fired from revolver Exhibit L nor from any other revolver of the constabulary station in Cabanatuan. It was impossible for the accused Galanta to have substituted his revolver because when Exhibit L was taken from him nobody in the barracks doubted that the deceased was none other than Balagtas. Moreover, Exhibit L was not out of order and therefore there was no reason why Galanta should carry along another gun, according to the natural course of things.

On the other hand, aside from wound No. 3 as above stated, no other wound may be said to have been caused by a .45 caliber revolver bullet. Doctor Castro's record gives the conclusion that wound No. 2 must have been caused by a .45 caliber bullet, but inasmuch as the diameter of the wound's entrance was only 8 mm., the caliber should be .32 and not .45, because according to the medico-legal expert who testified in this case, a bullet of a .45 caliber will produce a wound entrance with either 11 mm. or 12 mm. diameter. All other wounds found by the surgeon who performed the autopsy appeared to have been caused by bullets of a lesser caliber. In consequence, it can be stated that no bullet fired by Galanta did ever hit or kill Serapio Tecson and therefore there is no reason why he should be declared criminally responsible for said death.

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