

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. NAZARIO PALAOBSANON AND MELECIO CASTRO, DEFENDANTS AND APPELLANTS.

G.R. No. 5304. March 15, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

In this case it appears that on the morning of the 23d of August, 1908, the deceased, Isidro Blanco, was a prisoner in the jail of San Carlos, Occidental Negros, charged with the crime of assassination. At about 7 o'clock of that morning he asked permission of Benito Alonso the policeman acting as guard in the prison, to go to a water-closet which was situated behind the jail building in a little court inclosed by a fence. The guard appointed the two defendants in this case, who were also guards in the jail, to accompany the deceased, to prevent his escape. The three went out of the back door of the municipal building and started toward the water-closet. On approaching the corner of the municipal building the defendant Melecio Castro ordered the deceased to go to a grove of banana trees instead of going to the water-closet, because the latter was dirty and filthy. Blanco started to obey and one of the policemen gave him a push which caused him to fall to the ground. On arising, the defendant Palaobsanon discharged a revolver at him. Thereupon the deceased began running and leaped over the fence enclosing the courtyard and started to run alongside of the jail. During this time the said defendant was firing at him with his revolver. The deceased ran around to the front of the jail and entered the front door of the municipal building, pursued by the defendants. On arriving just inside of the door of the municipal building the defendant Palaobsanon fired a fifth shot, from the effects of which the deceased died within five minutes.

The defendants were convicted of the crime of homicide and each one was sentenced to reclusion temporal for a period of fourteen years eight months and one day, to pay one-half the costs, and to indemnify the heirs of the deceased in the sum of P1,000. From this judgment of conviction and the sentence imposed thereunder the defendants appealed to this court.

The guilt of the defendant Palaobsanon is clearly demonstrated:

- By the testimony of Crisanto Periano, another prisoner in the jail, who went out at the same time with the deceased and the defendants in order to empty a urinal. He testified that on approaching the corner of the municipal building Castro ordered the deceased not to go to the water-closet, because it was very dirty, but to go instead to a grove of banana trees which stood near by; that as the deceased started to obey, the defendant Palaobsanon discharged his revolver at him; that thereupon the witness ran around into the jail.
- By the testimony of Mateo Campo and Simeon Malbago, also prisoners in the jail, who testified to the same effect as Periano, substantially, and who further said that they saw the deceased when he received the shot inside of the jail which caused his death; that he was kneeling down and was shot by the defendant Palaobsanon; that the deceased was not hurt by the first four shots, which were all fired in the rear of the jail.
- By the testimony of Leona Gimeno, who testified that she was an inmate of the house of Agustin Ilagan, which

stood very near the jail and that she saw a portion of the occurrence involving the death of the deceased. She testified that she heard the first and second shots, but did not go out of the house; that she went out when the third shot was fired; that from the veranda where she was she saw the man who was shot by the policeman as he was going into the front door of the municipal building; that he was running backwards toward the front door of the jail, with his hands held up before him and that the policeman Palaobsanon was following him with a revolver; that the fifth shot occurred inside of the municipal building; that she did not see the defendant Castro shoot at the deceased; that she knew the fifth shot was fired by Palaobsanon because he was the man who was holding the revolver; that so far as she knew the other defendant had no revolver.

- By the testimony of Narciso Baoyan, who was an inmate of the said house of Ilagan. He testified that he was on the verandah and saw the deceased running, followed by two policemen; that the first he saw was the deceased walking toward the banana trees accompanied by two policemen; that he heard the last shot fired inside of the municipal building; that when the deceased was running around the municipal building he was not wounded; that he saw no blood upon the clothes of deceased or anywhere else and that after the policeman had fired four shots at him he was still able to jump through or over the fence surrounding the garden.

- By the testimony of Agapito Golera, a physician, who made a post-mortem examination of the body of the deceased. He testified that at the request of the justice of the peace he examined the corpse of Isidro Blanco in the municipal jail aforesaid about an hour and a half after he was shot. He testified that he found the deceased lying face down; that the body showed a gunshot wound near the right shoulder blade and another on the front of the body where the bullet came out; that the wound was located in the upper chest; that death was necessarily caused by this wound, because one of the important arteries was cut; that, considering the seriousness of the wound, the deceased, if he had received the same in the rear of the municipal building near the banana grove, would not have been able to pass around to the front of the municipal building and enter the front door thereof, as he in fact did; that the wound was of such a character that the deceased could not have gone after receiving it more than about 10 steps when he would have fallen down; that the distance from the banana trees around to the front door of the municipal building is about 35 meters; that when he entered the municipal building for the purpose of examining the corpse, he saw spots of blood on the floor, beginning about 10 steps from where the deceased lay dead; that at the place where he lay there was much blood.

The defense offered by the accused was that the deceased used the privilege to go to the water-closet as a means of effecting his escape and that on arriving in the courtyard in the rear of the jail he, instead of going to the water-closet, ran and jumped over the fence and started for the mountains; that they ordered him to halt; that he refused to do so but keep on running; that the defendant Palaobsanon thereupon began to shoot at him; that all five shots were fired in the rear of the municipal building; that the wound which caused the death of the deceased was made in the rear of the municipal building while the defendants were attempting to prevent his escape; that there were blood spots found near the banana trees and the course of the deceased around the municipal building to the front thereof was marked by drops of blood; that they did not shoot him inside of the municipal building but that all of the shots were fired in the rear thereof and for the purpose of preventing his escape.

This claim and the evidence offered to support it are in direct contradiction to the theory of the prosecution and the evidence offered to support it. The court below saw the witnesses upon the stand and observed their manner of testifying. After a careful analysis of the evidence he arrived at the conclusion that the defendants were guilty beyond a reasonable doubt. We have carefully examined the evidence in this case and weighed it thoroughly. We are convinced that the conclusion of the court below is fully sustained by the proofs as to the defendant Palaobsanon. We are of the opinion, however, that as to the defendant Melecio Castro, the proofs are not sufficient to warrant his conviction. It is conceded that he did not fire the shot which killed the deceased. It

appears from the testimony of most of the witnesses that this defendant did not fire a shot at any time, and from some of them that he did not have a revolver.

The court below imposed the penalty in the minimum of the medium degree. From the proofs it clearly appears that the aggravating circumstance specified in subdivision 11 of article 10 of the Penal Code, namely that the culprit took advantage of his public position to commit the crime, is present. The penalty therefore should have been imposed in its maximum degree.

The judgment of the court below as to Melecio Castro is hereby reversed and the defendant is acquitted and his discharge from custody ordered; as to the defendant Palaobsanon, the judgment of the court below is modified and the said defendant is hereby condemned to seventeen years four months and one day of reclusion temporal, to the accessories provided in article 59 of the Penal Code, and to indemnify the heirs of the deceased Blanco in the sum of P1,000, and to pay the costs of this action. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.

DISSENTING

CARSON, J.,

I dissent.

I am not unaware of the fact that prisoners have sometimes been wilfully and maliciously shot to death by their guards on the false pretext that they were attempting to escape. But there is absolutely nothing in the record which justifies the belief that this may have been a case of that kind, save only the naked denial that the deceased made any attempt to escape which appears in the statements of some of his fellow-prisoners. Their testimony is not convincing, and in the absence of the slightest proof of a motive of any kind for the commission of the crime as described by them, I am not prepared to believe their story as against the very reasonable account of the incident as related by the defendant.

In the absence of any indication of the existence of malice, ill will, or motive of any kind, I do not readily believe that in cold blood, without provocation, in broad daylight, and in the absence of any excitement or disturbance, the defendant deliberately shot down one of the prisoners under his charge, in an open prison yard, without thought of consequences, of the presence of witnesses, or of the investigation and punishment which would certainly follow the commission of such an act.

Had there been any motive for the commission of the crime as described by the witnesses for the prosecution, it seems to me that it would undoubtedly have been disclosed at the trial, and I find it much easier to believe that the witnesses for the prosecution conspired together to make out the worst case possible against their guard who had killed one of their number, than that the defendant committed the motiveless crime which, they attribute to him. Such conspiracies on the part of prisoners keenly resentful of the authorities set over them are too frequent in the common experience of those who have to deal with them to justify the acceptance of such testimony without rigid and painstaking scrutiny.

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