

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NILO DE JESUS AND WILFREDO YALONG, DEFENDANTS-APPELLANTS.*G.R. No. 58506. November 19, 1982*

Ponente: DE CASTRO, J.

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In an information filed with the Court of First Instance of Quezon City, Nilo de Jesus and Wilfredo Yalong were charged with murder. One Peter Doe alias Pepito, alias Pitong was also charged in the same information, but has so far not been brought to trial. Only Nilo de Jesus and Wilfredo Yalong were tried, and thereafter, convicted and sentenced to reclusion perpetua, and to indemnify the heirs of the deceased in the sum of P15,560.00, with the accessory penalties, and to pay proportionate costs.

Both de Jesus and Yalong appealed, filing separate briefs, but the Solicitor General filed only one consolidated brief for the appellee.

Only one eye-witness, Fernando de los Santos, testified for the prosecution, and together with the examining physician, Dr. Nieto Salvador of the NBI, established the following facts, as quoted from the People's brief:

"In the afternoon of May 21, 1978, Fernando de los Santos was taking a nap in their house at Aspere Avenue, Tatalon Estate, Quezon City. At about 2:00 o'clock that afternoon, he was awakened by the shout of a small boy who informed him that his father, Feliciano de los Santos, was engaged in a quarrel. Forthwith, he proceeded to the scene of the quarrel at nearby Araneta Avenue. Upon arriving thereat he saw Yalong in the act of aiming a gun at his father. Instinctively, Fernando shouted at his father to run, but the latter was fired at by Yalong before he could do so. Then, while Fernando's father was still on his feet, appellant de Jesus suddenly grabbed the gun from Yalong and himself fired at the victim once, causing the latter to fall as he was about to run away (pp. 5-9, 13-16, tsn, Dec. 28, 1978; pp. 5-12, April 30, 1979).

"Thereafter, both appellants ran away; while Fernando immediately went home to look for his brother, Pat. Narciso de los Santos. When the two brothers returned to the crime scene, Fernando could no longer feel the pulse of his father. Forthwith, Narciso left to hunt for the killers; while Fernando reported the incident to the police author-ities, to whom he gave the names of the suspects and a verbal account of the incident (pp. 9-11, 21-23, tsn, Dec. 28, 1978; pp. 18, 23-25, 42-45, tsn, April 30, 1979).

"Meanwhile, a cousin of the two brothers, Baltazar de los Santos, brought the victim to the hospital, but the latter was pronounced dead upon arrival. The cadaver was then autopsied. Dr. Nieto Salvador, NBI medico-legal officer, conducted the post mortem examination and issued a necropsy report (Exhibit "B"). His findings as to the cause of death of the victim was "hemorrhage, acute, severe, secondary to gunshot wound, chest." According to the doctor, the victim suffered two bullet wounds, one on the left side of the chest perforating the atrium of the heart, and the other on the right hand. The bullet (Exhibit "D") which pierced the chest, was found by the doctor imbedded at the back right side of the body (pp. 12-13, 17, tsn, April 30, 1979; pp. 20-29, tsn, May 18, 1979). This was the fatal bullet.

"Although the assailants have been iden-tified, prosecution of the case could not proceed because the suspects

went into hiding to escape arrest. In the case of appellant de Jesus, he stayed for one week in the house of a friend in the Tatalon Estate, then proceeded to the province of Isabela. He was arrested by the P.C. only on October 14, 1978 while in Pangasinan buying smoked fish (pp. 22-26, tsn, Jan. 4, 1980). When de Jesus was brought to Camp Crame in Quezon City, he was confronted by Fernando who readily identified him as one of the killers of his father, and then gave a written statement before Det. Fluto Casayuran (Exhibit "A") wherein he narrated his account of the incident of May 21, 1978 (pp. 24-29, tsn, Aug. 3, 1979). For his part, appellant Yalong proceeded to hide at his uncle's house in Lardizabal St., Sampaloc Manila for about three weeks. From there, he proceeded to Quezon Province, then to Iloilo and Zamboanga before returning to Lardizabal Street, where he was arrested on February 22, 1979. After being apprised of his constitutional right, appellant Yalong voluntarily gave an extrajudicial statement (Exhibit "H") wherein he implicated his co-accused Nilo de Jesus for the death of the victim on May 21, 1978 (pp. 8-11, 15-17, tsn, May 20, 1980)."[1]

The decision was rendered by Judge Jaime Lantin, after the case was heard wholly by Judge Sergio Apostol who was later appointed City Fiscal. For a fair and just judgment to be arrived at, the defense version should likewise be set forth herein, and as stated in the decision appealed from, is, for appellant de Jesus, as follows:

"Accused Nilo de Jesus denied the imputation. His defense is to the effect that on the afternoon in question he went to the house of Feliciano de los Santos looking for one Joe (Pitong) Napuca who had invited him (Nilo) to join Joe in his work; that he did not find Napuca in the house; that he was invited by Feliciano de los Santos to join other persons having drinks; that thereafter he saw Feliciano de los Santos sleeping on a table drunk; that when he bade goodbye as he wanted to go home, he was asked by one Lito to stay and drink with them until Feliciano de los Santos would wake up; that when he insisted that he should leave, Lito got mad and tried to box him; that when Feliciano de los Santos woke up, he punched him, but he was able to evade the blow; that they were pacified, after which he went home; that after taking his lunch, he went to a nearby store to buy cigarettes; that after a while Napuca arrived and asked him what happened between him and Feliciano de los Santos; that Wilfredo Yalong arrived; that after a few minutes, Feliciano de los Santos drunk, also arrived, holding a dagger and began to attack him (Nilo de Jesus); that Napuca held Feliciano de los Santos; that the latter extricating himself from the hold, proceeded to attack him, but since he was protected by a palo china wood, Feliciano de los Santos instead stabbed Yalong with the dagger; that he heard two shots from the gun held by Wilfredo Yalong; that Feliciano de los Santos ran away only to fall down on his tracks; that since Wilfredo Yalong and Napuca already left, he was told by people who had gathered at the scene that he should also leave for he might be suspected of having shot the victim; that he stayed in a friend's house at Tatalon, and after a week he left for Isabela and stayed there for four months; that in Pangasinan, he was arrested by PC soldiers and brought to Camp Crame; and that Fernando de los Santos was not there to witness the shooting incident."[2]

For appellant Yalong, We also quote from the appealed decision the following:

"On the other hand, accused Wilfredo Yalong interposed self-defense. His defense is that in the afternoon in question, after coming from a baptismal party, he dropped by the store of Remy to buy cigarettes and pop-cola; that Feliciano de los Santos (Mang Siano) arrived armed with a bayonet, shouting, "putang ina mo Nilo (referring to accused Nilo de Jesus), bakit mo ako pinalo ng bote;" that Nilo de Jesus answered, "putang ina mo Siano, bakit mo naman ako sinuntok;" that Feliciano de los Santos lunged at Nilo de Jesus with the bayonet; that one Pitong intervened and tried to pacify Feliciano de los Santos, saying "pare that is enough. Nilo has done nothing wrong to you;" that Feliciano de los Santos again tried to attack, but Pitong blocked his way and hold him; that extricating himself from Pitong, Feliciano de los Santos ran towards him (accused), and tried to stab him; that he pulled out his gun from his waist and fired two shots at Feliciano de los Santos; that Feliciano de los Santos ran and fell to the ground; that he went home, then to the house of his uncle at Lardizabal St., Sampaloc, Manila, and after staying there for three weeks he went to Quezon Province, to Iloilo and to Zamboanga; that he hid because the son of the deceased, Pat. Narciso de los Santos of the Quezon City Police, was looking for him; that thereafter, he was arrested at Lardizabal St., Sampaloc, by Pat. Gurat; that he was

brought to a bodega and then taken to the office of the CID at Sikatuna, Quezon City; that he was investigated and gave his written statement; that his statement given to the authorities was not true, as he only impleaded accused Nilo de Jesus out of spite because the latter was pinning him down; that two days after the incident, his friend Rodolfo Pinales, now deceased, got back the gun from him." [3]

What would instantly strike attention is the variance in the testimony of the lone state eye-witness, on one hand, and the two appellants on the other, as to who fired the fatal shot. According to the state witness Fernando de los Santos, it was appellant de Jesus who fired the fatal shot, when he grabbed the gun from appellant Yalong after the latter had shot the deceased but hitting him only on the right hand. Both appellants are one in stating that only Yalong fired the two shots that hit the deceased on two different parts of the body.

The Court finds more convincing the testimony of the appellants that only Yalong fired the two shots that hit the deceased, one fatally on the breast. Yalong admitted this to be the fact. De Jesus' testimony serves to corroborate Yalong's admission which, from its damaging effect on the declarant Yalong, makes it very reliable and therefore convincing.

The foregoing observation places the whole testimony of state witness de los Santos in grave doubt. The motive for his committing the falsehood is manifest. It was de Jesus who had a quarrel with his deceased father and struck the latter with a bottle on the head moments before the shooting. De Jesus had to be made a co-author in fact, the main culprit, of the killing. Hence, the testimony of de los Santos clearly fabricated that de Jesus grabbed the gun from Yalong after the latter had fired the first shot, and then he (de Jesus) fired the second shot that was fatal.

The fabricated nature of the testimony of state witness de los Santos becomes more evident in the light of the testimony of Dr. Salvador, that the muzzle of the gun could have been only five inches to the body of the deceased. A better marksman than the trial court found de Jesus to be - without any evidence, to be sure - was, therefore, not needed at all, again contrary to the trial court's speculation on this regard.

The facts already adverted to make it very doubtful whether the lone eye-witness for the prosecution saw what he professed to have seen of the shooting incident. Appellant de Jesus positively stated he was not at the scene. We are inclined to agree with him. If de los Santos saw the incident the way he so testified in court, this witness, son of the deceased, should have rushed to the latter's rescue, and should have him-self brought the stricken man to the hospital. With the serious condition of his father, he should not have left him, not for a single moment, from the time he saw his father fall until he was being brought to the hospital. Strangely, however, it was a cousin who brought the gravely wounded man to the hospital. Of course, this fact could not be altered so as to make it appear that it was the son Fernando, who brought the deceased to the hospital. The records of the hospital would reveal the lie. This fact again clearly demonstrates that the state witness F. de los Santos, son of the deceased, was not at the scene.

What is also strange is that no police blotter was presented in court to show that the state witness saw who the culprits were. His pretense that he saw them, and knew who they were, was precisely disputed seriously by the fact that it took him after five months to give his statement. His claim that soon after the incident he told the police who the culprits were could not, therefore, be believed if this fact does not appear in the police blotter as it should have been entered therein.

If what has been shown thus far is not sufficient to dis-credit F. de los Santos as a supposed eye-witness, We find not without merit Yalong's claim, through counsel, that the testimony of the aforementioned witness is "riddled with inherent in-credibilities and unexplainable contradictions", listing the following circumstances to prove the claim:

"1. In court, he testified that the child whose shout awakened him said that his father was being ganged upon.

(T.s.n., p. 6, Hearing of December 6, 1978.) This is contradicted by the statement he gave to the police, in which he said the child shouted that his father was quarreling with someone. (Exhibit 1-G.)

"2. Fernando de los Santos claims he saw how his father was killed. Yet, despite the fact that his own brother Narciso was a member of the Quezon City police force, it was only on October 19, 1978, or five (5) months later that he gave a statement to the police. (Exhibit 1.) The only explanation for this undue delay is that Fernando de los Santos decided to lie that he saw the shooting of his father, because there was no other witness.

"3. He repeatedly swore falsely that he gave a written statement to the police the very afternoon of May 21, 1978. (T.s.n., p. 59, Hearing of April 30, 1979; t.s.n., p. 9, Hearing of August 3, 1979.) He even identified the statement dated October 19, 1978 (Exhibit 1) as the very statement he gave. (T.s.n., pp. 5 and 10, Hearing of August 3, 1979). When finally confronted with his written statement, he admitted that he gave a written statement only after five (5) months later. (T.s.n., pp. 9-10, Hearing of August 3, 1979.)

"4. Fernando de los Santos claimed that he waited until after the arrest of both defendants-appellants before giving his written statement. (T.s.n., pp. 25-26, Hearing of August 3, 1979.) While his written statement was taken on October 19, 1978, defendant-appellant Yalong was not arrested until February 22, 1980, or more than a year later. (T.s.n., p. 36, Hearing of October 17, 1979.) This unmasks another falsehood in his testimony.

"5. Earlier, he testified that when he left the scene of the shooting, there were no people there. (T.s.n., p. 27, Hearing of December 28, 1978.) Later, he contradicted himself by saying there were many people there. (T.s.n., p. 44, Hearing of August 3, 1979.)

"6. In his written statement, he was fifteen (15) meters away from where his father was shot. (Exhibits A-4 and 1-F.) In court, he contradicted himself by saying he was ten (10) meters away. (T.s.n., p. 16, Hearing of December 28, 1978; t.s.n., p. 10, Hearing of April 30, 1979.)

"7. First, he testified that when his father pitched forward, he did not approach his father to see if his father was dead. He went home first. It was only upon his return that he felt the pulse of his father to check if his father was still alive. (T.s.n., pp. 22-23, Hearing of December 28, 1978.) Later, he contradicted himself by saying he approached his father and felt the pulse of his father before he went home. (T.s.n., p. 45, Hearing of August 3, 1979.)

"8. He claims that it took a full fifteen (15) minutes from the time his father was shot in the chest before his father slumped down. (T.s.n., p. 21, Hearing of December 28, 1979.) During all that time, he did not even lift a finger to rush his father to a nearby hospital like the UERM Memorial Medical Center. This is the first step which any son who is present would have done under the circumstances. Yet, if we are to believe Fernando de los Santos, he went home first. Upon his return that was the only time he checked if his father was still alive.

"9. Defendant-appellant de Jesus categorically testified that Fernando de los Santos was not present when the shooting happened. (T.s.n., pp. 26-27, Hearing of January 4, 1980.)"[4]

Carefully evaluating the foregoing circumstances, as affecting the credibility of the testimony given by the only supposed eye-witness for the prosecution, We come to the conclusion that said witness did not see how the actual shooting took place, much less the incidents immediately preceding. He was not at the scene when, as testified by Yalong, with the corroboration of an unbiased witness, Mrs. Anita Bernales, and appellant de Jesus himself, the deceased directed his attack with a dagger to appellant Yalong who, thereupon, drew a gun from his waist and fired twice at the deceased. The testimony of de los Santos that it was appellant de Jesus that fired the second fatal shot after grabbing the gun from Yalong was evidently fabricated in an attempt to purvey a more credible story, as the prosecution would like to have the court believe in. Thus, as it was with de Jesus that the deceased had a previous quarrel, the former is the one with motive to harm the latter. It is also de Jesus not

Yalong, the family of the deceased wanted punished for the killing. As the evidence shows, Yalong had not even seen the deceased on that fatal day except on the very time of the shooting, and at the Place where the two met only by coincidence.

What is plain from the credible evidence on record is that de Jesus had no participation in the shooting. Yalong admitted to be the only one who fired his gun at the deceased twice. From Yalong's testimony, credibly corroborated by an impartial witness, he acted to defend himself because the deceased tried to stab him. No evidence was presented by the prosecution to rebut this testimonial evidence. The direct testimony of its only supposed eye-witness which is of doubtful veracity as explained above, cannot serve to discredit the version of the defense. At this point, the trial court did not give credit to the claim that the deceased was armed with a dagger or bayonet. We find sufficient credible evidence as to the attack with a dagger against Yalong, such as the testimony of the two appellants and a disinterested witness mentioned above. If the weapon was not presented, it is because it had gone into the possession of the police who, for obvious reasons, would not present it during the trial, through the prosecuting officer.

With the deceased shown to be the aggressor as against Yalong, the reasonableness of the means used by Yalong to repel the aggression may however, not be assessed in his favor. The deceased was in a state of drunkenness, so he was not as dangerous as he would if he had been sober. His aim proved faulty and easily evaded as shown by the fact that Yalong was not hit by the stab attempts—blows directed against him. At best, We can grant incomplete self-defense in his favor, the necessity of the means he used to repel the aggression not appearing to Us clearly reasonable.

With respect to de Jesus, as already intimated above, he fired no shot at the deceased. His co-accused owned sole authorship of the shooting. His liability, therefore, would have to be based on a finding of conspiracy between him and appellant Yalong.

In finding conspiracy against both appellants, the trial court said:

"The authors of the crime are the accused Nilo de Jesus and Wilfredo Yalong. Accused Yalong and de Jesus conspired to-gether in killing the deceased. They were motivated by the same criminal purpose and design. They were present at the scene, confronting the deceased. After accused Yalong fired the first shot, which wounded the deceased on the right hand, accused Nilo de Jesus continued the aggression; he got the gun from accused Yalong and fired the fatal shot at the victim. Accused Yalong was a poor marksman. When he gave the gun to accused de Jesus, he knew that the latter could do the task better. On the other hand, accused de Jesus, confident of his ability, went to execute the decisive finishing stroke. After their job was accomplished, with the victim prostrate on the ground, the two accused together escaped from the scene and went into hiding. In conspiracy, the act of one conspirator is the act of the other, each being responsible for the other's act in furtherance of their common objective." [5]

With Our assessment of the testimony of the only supposed eye-witness of the prosecution, as already indicated above, the trial court's finding of the existence of conspiracy would be left without its main basis - the participation of de Jesus in the shooting. It is also undisputed that the presence of both appellants at the store where the shooting took place was not pre-arranged but purely coincidental.[6] Neither was there any evidence to show that they knew the deceased would go to the store and there shoot him. If there was previous agreement to kill or harm the deceased, appellants would not have chosen the store where the people come and go to perpetrate the heinous offense.

The fact that both appellants left together would not necessarily prove conspiracy since they live in the same vicinity.[7] Only Yalong was armed. If de Jesus was in conspiracy with him, de Jesus should have also armed himself with some weapon. Yalong had absolutely no motive to join de Jesus in a common desire to harm, much

less kill the deceased.

The trial court also cited the fact that they went later into hiding to prove conspiracy and guilt as well. The explanation given by appellants for having gone into hiding is to Us sufficiently satisfactory. The deceased had a son who is a member of the police force of Quezon City. He was heard by the mother of appellant Yalong to have said that if he (Policeman Narciso de los Santos) would see said appellant, he would shoot him.[8] It was his mother who then advised him to go to stay with his in-laws.[9] For similar reason de Jesus also went to Isabela. He learned from his wife that Policeman de los Santos had gone to their house looking for him saying that if he could not see him, Pat. de los Santos will kill even his children. It was his wife who advised him to leave Tatalon in the meantime.

The liability of de Jesus on ground of conspiracy has therefore not been established beyond doubt, as it should be as the guilt itself. His innocence was also shown by his uncontradicted testimony that even after Yalong had left the scene, he stayed intending to lend a helping hand to the fallen man whom he called "Tiyo Siano" to be brought to the hospital. But people around advised him to go away as he may be suspected as a co-author of the shooting. He went away to the house of a friend in Tatalon. On ground of reasonable doubt, We find the guilt of de Jesus, therefore, not to have been duly established to make him liable for the crime charged.

We do not agree with the finding of the trial court that the shooting of the deceased was attended with the qualifying circumstance of treachery. To constitute treachery, the method, form or means adopted in killing the victim must be consciously and deliberately chosen to insure its execution without any risk to the offender arising from the defense which the victim might make.[10] There is nothing in the records to indicate that Yalong reflected on the means or method to insure the killing of the deceased or remove or diminish any risk to him-self that might arise from the defense that the deceased might make. Yalong's decision to shoot the deceased appeared to be sudden, brought about by the latter's unlawful aggression to stab the former by a dagger. The killing of the deceased was on the spur of the moment; no time was left for the accused to deliberate on his mode of attack or to prepare for the manner by which he could kill the deceased with the full assurance that it would be impossible or hard for the latter to defend himself or retaliate. Had Yalong wanted to attack the deceased treacherously, he could have shot the deceased at a farther and safer distance and not at a close range (at least 5 inches from the muzzle of the gun to the surface of the skin), as testified by Dr. Nieto Salvador,[11] to insure himself against the risk from any possible defense the deceased might make.

In the absence of treachery as a qualifying circumstance, the crime committed is only homicide and not murder as charged. We have stated earlier that Yalong is entitled to the benefit of the special mitigating circumstance of incomplete self-defense[12] inasmuch as there was unlawful aggression on the part of the deceased without any provocation coming from Yalong, but it was not proven that the means employed by the latter was reasonably necessary. Considering this foregoing circumstance, and in applying the provision of Article 69 of the Revised Penal Code, the penalty one degree lower than that of reclusion temporal prescribed for the crime of homicide must be imposed, which is prision mayor. On those grounds, there should be imposed upon Yalong the penalty of prision mayor in its minimum period.[13]

WHEREFORE, the judgment of conviction as to appellant Nilo de Jesus is reversed and the latter is hereby acquitted. His immediate release is ordered unless otherwise, detained for another offense.

With respect to appellant Wilfredo Yalong, the judgment is modified. He is hereby, found guilty of homicide and sentenced to suffer the penalty of four years of prision correctional to eight years of prision mayor, to indemnify the heirs of deceased Feliciano de los Santos in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, and to pay the costs. Appellant Yalong should be credited with the full time of his preventive

imprisonment upon a showing that he agreed to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, he shall be credited with four-fifths (4/5) of the time of such preventive imprisonment.[14]

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.

Aquino, J., no part.

[1] pp. 3-6, Brief for Appellee; pp. 139-142, Rollo.

[2] pp. 3-4, Decision; pp. 5-6, Rollo.

[3] pp. 4-5, Decision; pp. 6-7, Rollo.

[4] pp. 7-9, Brief for Appellee; pp. 48-50, Rollo.

[5] p. 3, Decision; p. 5 Rollo.

[6] See *People vs. Dealon*, 99 SCRA 422, 463.

[7] See *People vs. Trinidad*, 20 SCRA 549.

[8] p. 23, tsn., June 20, 1980.

[9] *Id.*

[10] Article 14, paragraph 16, Revised Penal Code; *People vs. Ruiz*, 110 SCRA 155; *People vs. Talay*, 101 SCRA 332; *People vs. Satorre*, 74 SCRA 101; *People vs. Tizon*, 66 SCRA 372; *People vs. Samonte, Jr.*, 64 SCRA 319; *People vs. Macuso*, 64 SCRA 659; *People vs. Boduso*, 60 SCRA 60; *People vs. Sudoy*, 60 SCRA 174; *People vs. Velez*, 58 SCRA 21; *People vs. Pelayo*, 24 SCRA 1027; *People vs. Tumaob*, 83 Phil. 738.

[11] pp. 14 and 16, t.s.n., July 3, 1979.

[12] *People vs. Oandasan*, 25 SCRA 277; *People vs. Alviar*, 56 Phil. 98; *People vs. Sotelo, et al.*, 55 Phil. 396; *People vs. De la Pena*, 54 Phil. 818; *People vs. Bergaño, et al.*, 52 Phil. 313; *People vs. Lucero*, 49 Phil. 160; *People vs. Almendralejo*, 48 Phil. 268; *People vs. Mercado*, 43 Phil. 950; *U.S. vs. Rivera*, 41 Phil. 472; *U.S. vs. Pasca*, 28 Phil. 222; *U.S. vs. Agaludud*, 8 Phil. 750; *U.S. vs. Dimitillo*, 7 Phil. 475; *U.S. vs. De Ocampo*, 6 Phil. 449; *U.S. vs. Sy Vinco*, 5 Phil. 47; *U.S. vs. De Castro*, 2 Phil. 67; *U.S. vs. Ancheta*, 1 Phil. 30.

[13] *People vs. Sotelo*, 55 Phil. 396; *U.S. vs. De Castro*, 2 Phil. 67; *U.S. vs. Ancheta*, 1 Phil. 30.

[14] Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127.

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