

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CESAR MANCAO, JR. AND VICENTE MANCAO, ACCUSED-APPELLANTS.

G.R. No. 61215. October 31, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

The brothers Cesar Mancao, Jr. and Vicente Mancao, peace officers, appealed from the decision of the Circuit Criminal Court at Cebu City, convicting them of murder, sentencing Cesar to reclusion perpetua and Vicente to an indeterminate penalty of ten years and one day of prision mayor as minimum, to seventeen years, four months and one day of reclusion temporal as maximum and ordering them to pay solidarily the heirs of Jose Manondo the sum of P12,000.

The Mancao brothers admitted having killed Manondo. They claimed self-defense. The evidence shows that in Barrio Dumlog, Talisay, Cebu, in the early morning of August 15, 1978 (after midnight), Jose Manondo, while at the top of the stairs of the house of his aunt, Maxima Abellana, was shot repeatedly by Vicente and Cesar Mancao, neighbors of Maxima. Thinking that Manondo was dead, they placed a gun beside his hand.

Cesar was a policeman of Cebu City while Vicente was a soldier of the Philippine Constabulary. A police patrol brought the victim to the hospital where he expired. Vicente surrendered to the Constabulary a .45 caliber pistol and an empty magazine which he claimed to have wrested from Manondo (Exh. A and I).

Manondo sustained seven entrance wounds in the axillary region and other parts of the body and seven exit wounds (Exh. F).

Charged with murder, the Mancao brothers, as already noted, pleaded self-defense. Cesar testified that he and his brother Vicente, in the company of Lieutenant Silvino de la Torre of the Talisay police, entered the Abellana residence because they suspected Manondo of having tried to enter the house of Cesar earlier that evening. They said that Manondo was sitting at the top of the stairs. De la Torre focused his flashlight on Manondo. That annoyed Manondo.

When Cesar allegedly heard two clicks and imagining that Manondo had pulled out his gun and was going to fire at them, Cesar immediately shot Manondo, Vicente allegedly grappled, with Manondo for the possession of his supposed firearm and shot also Manondo. In substance, Vicente testified to the same effect.

The trial court disbelieved the version of the Mancaos that they acted in self-defense. They labored under the belief that Manondo had attempted to rob Cesar's house. The trial court found that the .38 caliber pistol found beside the hand of Manondo was planted evidence. Manondo did not commit any unlawful aggression before Cesar shot him.

The trial court correctly held that the crime was murder qualified by abuse of superiority. Dwelling was aggravating. It was offset by voluntary surrender to the authorities. The accused did not take advantage of their public positions.

Cesar cannot claim passion and obfuscation as a mitigating circumstance because he did not act due to an uncontrollable burst of passion provoked by prior and unjust improper acts, or due to a legitimate stimulus which would overcome reason (U.S. vs. Taylor, 6 Phil. 162).

Lack of intent to commit so grave a wrong was incorrectly appreciated in favor of Vicente. There was no notable and evident disproportion between the means employed to shoot Manondo and its consequences. Intending to kill Manondo, Vicente shot him. Death was the result. He intended the resulting wrong. (U.S. vs. Reyes, 36 Phil. 904.)

WHEREFORE, the decision of the trial court is affirmed with the sole modification that Vicente Mancao is sentenced to reclusion perpetua and that the indemnity is increased to P30,000. Costs de oficio.

SO ORDRED.

Concepcion, Jr., Abad Santos, Escolin, and Cuevas, JJ., concur.

Makasiar, J., (Chairman), no part.

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