

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIX CUISON, DEFENDANT AND APPELLANT.*G.R. No. 6840. November 01, 1911*

Ponente: TORRES, J.

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This is an appeal by the defendant from the sentence imposed upon him by the Hon. Judge Adolph Wislizenus.

On or about November 4, 1903, Richard Poggi, a Constabulary lieutenant, arrived in the barrio of Guibuangan, pueblo of Barili, on the coast of the Island of Cebu, and took up his quarters in the barracks of the constabulary detachment, the corporal of which was Felix Cuison. Poggi then ordered the latter, who was under his command, to go to the house of Anastasia Mariñas, an orphan girl about 14 years of age, and bring her to the barracks with her aunt, Valeriana Escarpe; but these women, on being informed by Cuison, who acted as interpreter, of Lieutenant Poggi's desire that Valeriana Escarpe should leave her niece, Mariñas, in the said barracks, in exchange for a certain sum of money which he offered her, immediately rejected his proposal and left the barracks. They went back home, where they related to Facundo Balangao, Valeriana's husband, what had happened, and then left the house to go to the mountains to get some corn.

That night Felix Cuison, by order of Lieutenant Poggi, who had doubtless learned of the departure of the said woman and her niece for the mountains, went to their house, accompanied by several armed Constabulary soldiers, and arrested the said girl's uncle, Valeriana Escarpe's husband, the aforementioned Facundo Balangao, and took him to the barracks. Before their arrival at their destination, when they were passing the house of Crispina Mariñas, adjacent to the house of the prisoner, he charged her to take care of the house, because, he said, Corporal Cuison was taking him along in order that he might act as a guide in the search for the girl Anastasia. As soon as Balangao arrived at the barracks, Lieutenant Poggi, through Corporal Felix Cuison, who acted as interpreter, delivered the prisoner to the private Valentin Fortuna, who was awakened by Poggi for the purpose, with orders to take the said Balangao to the cemetery and there kill him with the weapon with which the said Fortuna was provided; the latter, complying with the orders of his superior, took the unfortunate Balangao to the cemetery and there shot him twice from behind, inflicting upon him two wounds in the neck and back, after which he reported the facts to Lieutenant Poggi, who said to him: "All right."

Some hours afterwards, the defendant Cuison with several constabulary privates, among them Valentin Fortuna, went by order of Lieutenant Poggi to the place where the body of the deceased lay, and commanded the soldiers to spread out in skirmish line and discharge their firearms into the air; then the defendant, with the private Fortuna, went to the house of Epimaco Sosa to ask him for a dagger to place beside the body of a man whom they had shot, thereby to give the appearance that the deceased had been carrying a dagger. These facts were related by Corporal Cuison in his testimony and were corroborated by Valentin Fortuna.

Thereupon, the provincial fiscal, on September 30, 1910, six years and eleven months after the commission of the crime, filed an information in the Court of First Instance of Cebu, charging Felix Cuison and Valentin Fortuna

with the crime of murder. This case was prosecuted against Felix Cuison alone, and the court, on December 28, 1910, sentenced the defendant, as principal, to the penalty of seventeen years four months and one day of cadena temporal to indemnify the heirs of the deceased in the sum of P1,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment counsel for the defendant appealed.

There is attached to the record in this case the judgment pronounced against Valentin Fortuna, with respect to whom it was held in the beginning thereof, page 2, that no substantial grounds appeared to warrant his prosecution for the crime of homicide, and he was therefore sentenced to the penalty of two years of prision correccional and to pay the costs.

The present case deals with a horrible murder committed by an agent of the authority in obedience to an order given by his superior, who was actuated by unchaste and unlawful designs.

From the facts related, duly proved at the trial, it appears that Facundo Balangao, a former resident of the pueblo of Barili, was killed on the night of November 4, 1903, by two shots fired at him from a revolver by the constabulary private, Valentin Fortuna, at a moment when the deceased had his back turned toward the latter, in the vicinity of the cemetery of the said pueblo where he had been conducted in compliance with a command given by Lieutenant Poggi. The post-mortem examination of the body of the deceased by a curandero, conducted by order of the municipal president, disclosed that it bore two wounds, one in the nape of the neck and the other in the back. Inasmuch as these two wounds were inflicted with a firearm while the victim was defenseless, with his back turned toward his slayer, and without warning; and as the custodian of the deceased, in firing the shots at the latter from behind without giving him any notice whatsoever, employed ways and means which directly insured the commission of the act without risk to the person of the aggressor, such as might have arisen from any defense that the assaulted party might otherwise have made, the crime committed is properly classified as murder, pursuant to the provisions of article 403 of the Penal Code, since it was perpetrated with alevosia.

Although the complaint was directed against Felix Cuison, a corporal, and Valentin Fortuna, a private of the constabulary, from the very beginning of the case there has been strong circumstantial evidence that this heinous crime was committed at the command and by the direct order of a lieutenant of the said organization, Richard Poggi, who, although he remained in this country, or at least in this city, until November 24, 1910 (pp. 102 to 105 of the record), was not brought into court to be examined at the trial.

Notwithstanding the fact that the information on which this cause is based was also directed against Valentin Fortuna, the court, by order of October 25, 1910, in proceeding against Felix Cuison, found that there were no grounds for ordering the arrest of the said Fortuna, yet pages 90 to 92 of the record show that he was considered a defendant, his arrest having been ordered (p. 12), and the judgment is attached to folios 106 to 108 of the record. This judgment does not appear to have been rendered in any other cause, for none was prosecuted against him separately (p. 35). Therein he was found to be a principal in the crime of homicide perpetrated upon the said Facundo Balangao, and was merely sentenced to two years of prision correccional and to pay the costs of the trial, from which judgment it does not appear that he appealed and therefore he must now be serving the sentence imposed upon him.

With respect to the liability of the defendant Felix Cuison, it must first be determined what participation he had in the commission of the said crime.

Lieutenant Poggi employed the corporal, Felix Cuison, to get the girl, Anastasia Marinas, and her aunt, Valeriana Escarpe, into the Constabulary barracks, where Poggi was, and the said corporal acted as interpreter to make the woman and the girl understand the lieutenant's desire that Anastasia Marinas remain with him as his querida or paramour. It was also Cuison who, accompanied by several privates, at the lieutenant's order, arrested Facundo

Balangao, the unfortunate husband of Escarpe, aunt of the young girl Marinas, and took him to the barracks to be then turned over to Valentin Fortuna who, obeying orders from the same lieutenant, proceeded to kill the prisoner in or near the cemetery of the said pueblo, by shooting him. These acts performed by Felix Cuison, in obedience to orders from his lieutenant, do not constitute real participation or complicity in the crime under prosecution.

It was not Cuison, but Lieutenant Poggi who gave orders to Private Fortuna, and delivered to him the person of the deceased in order that he might murder him. The mere fact of Cuison's having acted as interpreter in order to make Fortuna understand the intention and criminal command of the lieutenant who decided upon and wantonly directed the death of a peaceable citizen, does not constitute participation by the defendant in the commission of the crime.

The record does not show that the defendant Cuison performed any act in any way tending to the perpetration of the crime, nor any of those defined in the three paragraphs of article 13, nor that specified in article 14, of the Penal Code, as it was not shown that Cuison took a direct part in the crime or compelled any other person to commit it, or that he cooperated in its consummation by some act without which it would not have been committed, or that he lent such cooperation by means of acts prior or simultaneous to its perpetration; and it can not be held that the act of interpreting, in obedience to orders of his superior, the latter's criminal determination, so that it might be understood by the actual perpetrator of the crime, constituted cooperation in the commission thereof. Therefore it is not just to consider the defendant either a principal or an accomplice in the said crime.

But we do find criminal liability in the acts performed by Corporal Cuison, even though he obeyed orders from his lieutenant, Poggi; such liability consists in his having intervened subsequently to the commission of the crime, by furnishing the means to make it appear that the deceased was armed and that it was necessary to kill him on account of his resistance to the constabulary men, who, to lend color to such pretended resistance, discharged their firearms into the air, under the direction of Cuison, at the place where the corpse was lying; and also consists in his having tried to find a dagger to place beside the deceased. Such acts must be characterized as concealment, and since they are not only wrong but also unlawful, the defendant is not exempt from liability, even though he acted in obedience to a command from his superior, because such command was illegal and in conflict with law and justice. Therefore it can not be alleged that obedience was due, or that it exempts the defendant from criminal liability.

The defendant Cuison knew that the man whose body was lying near the cemetery had been violently killed by the constabulary private Fortuna, through an illegal order given by Lieutenant Poggi, and that it was not true that the deceased was an armed outlaw whose resistance to the constabulary caused a fight which necessitated the discharge of firearms at that place. Therefore, the defendant, by performing acts tending to make it appear that something else had occurred, and to prevent the discovery of a heinous crime, is guilty of concealment, for he took part in the commission of said crime as an accessory after the fact. (Art. 15, Penal Code.)

In committing the crime, the defendant must be allowed the benefit of the special mitigating circumstance provided in article 11 on account of his being a native, his scant education, and his status as a subordinate of Lieutenant Poggi, from whom he may have received orders to perform the unlawful acts. There is no aggravating circumstance to offset this mitigating circumstance, so the penalty for an accessory after the fact in the crime of murder, two degrees lower than that prescribed for the consummated crime, pursuant to article 68 of the Penal Code, must be imposed upon the defendant in its minimum degree, which is presidio correccional in its maximum degree to presidio mayor in its medium degree.

For the foregoing reasons, which dispose of the errors assigned, we reverse the judgment and sentence Felix Cuison, as an accessory after the fact, to the penalty of four years two months and one day of presidio

correccional, and in case of insolvency of the real principal or accomplice to indemnify the heirs and widow of the deceased in the sum of P1,000 and in case of his own insolvency, to the corresponding subsidiary imprisonment, which shall not exceed one year, and to the payment of the costs in both instances. So ordered.

Mapa, Johnson, Moreland, and Trent, JJ., concur.

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