

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LUIS MAALIHAN, DEFENDANT AND APPELLANT.

G.R. Nos. 30486 and 30487. August 09, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The two cases were jointly heard by the Court of First Instance of Tayabas, the judge having reserved the right to render a separate decision in each of them. The first case, G. R. No. 30486, is for illegal possession of firearms, and in it the following information was filed:

"That on or about March 1, 1928, in the municipality of Candelaria, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, Luis Maalihan, the above-named defendant willfully, unlawfully, and feloniously had in his possession and under his control a thirty-two caliber automatic revolver, No. 41570, without having previously obtained the proper license for its possession.

"Contrary to law."

And the second case, G. R. No. 30487, is for the crime of murder, and the information filed is as follows:

"That on or about March 1, 1928, in the municipality of Candelaria, Province of Tayabas, Philippine Islands, and within the jurisdiction of this court, Luis Maalihan, the above-named defendant, with the deliberate intention of killing one Damian Magtibay, spying upon and lying in wait for the latter, no sooner had he surprised the said Damian Magtibay, than he willfully, unlawfully, and feloniously, with treachery and evident premeditation, armed with a revolver and all of a sudden, fired several shots at Damian Magtibay, wounding the latter as follows:

" 'A wound (in) in the pectoral region above the right nipple, between the second and third ribs of the right side, the size of the point of the little finger of a man, round, and with darkened edges; and another (out) larger than the first, in the pectoral region, towards the left armpit; and another wound, also round, of about the same size as the first' described, in the upper and inner side of the left arm, which were mortal and caused the instant death of said Damian Magtibay.

"Contrary to law."

The court below, after due proceedings, rendered separate judgments in said cases, sentencing the defendant, in the first case, to pay a fine of p100, with subsidiary imprisonment in case of insolvency, and to pay the costs, the automatic revolver being moreover forfeited to the Government, for which reason the clerk of the court was ordered to deliver said revolver to the provincial commander of Tayabas in pursuance of the forfeiture. And in the second case, the court also found the defendant guilty of the crime of murder as charged in the second information, and sentenced him to twenty years cadena temporal, to indemnify the heirs of the deceased, Damian Magtibay, in the sum of P1,000, with the accessories of law, and to pay the costs.

The defendant appealed from both judgments to this court, and counsel assigns the following errors to the trial court in the first case: (a) "The lower court erred in finding from all the evidence that the accused had in his

possession and under his control automatic revolver caliber 32, No. 41570;" and (b) "The lower court erred in finding that the accused is guilty of illegal possession of firearms and in sentencing him to pay a fine of P100." And in the second case, counsel alleges that: (1) "The lower court erred in not giving due weight and credit to the testimonies of the accused and of the disinterested witnesses for the defense;" and (2) "The lower court erred in holding that the crime of murder as charged, was proven beyond a reasonable doubt."

In view of the fact that the evidence adduced in both cases was the same, and considering the intimate relations existing between them, we deem it unnecessary to render two separate judgments.

The fact proved in the proceeding is, to wit: On the day of the crime, March 1, 1928, the principal characters in this tragedy went to Lucena, capital of the Province of Tayabas, for the purpose of assisting at the hearing of a case of insults against the deceased, Damian Magtibay, the informer being the defendant himself. Damian Magtibay was accompanied by a certain Policarpo Dia, while the defendant was accompanied by Santiago de Leon and Gregorio Vilela. The hearing not having been held because the case was remanded to the justice of the peace of Candelaria for the preliminary investigation, said individuals had to return to their town, Candelaria, taking the train (*tren mixto*) at about 10.30 in the morning of the same day, March 1st. Whether or not any words passed between the defendant and the deceased during the trip in the train, the record does not reveal. But it appears that when the train arrived at Candelaria station about 11 a. m. that day, Damian Magtibay and his companion, Policarpo Dia, alighted from the train, going towards the town, followed by defendant Luis Maalihan about 12 brazas behind. When the first two came to a culvert near the station and upon turning towards the north, and at the moment when Magtibay's right side was facing Maalihan, the latter fired two shots at him with the revolver, one of the bullets entering the right pectoral region and coming out on the left side of the same region, traversing the space between the second and third ribs; and the other bullet entering the upper and inner portion of the left arm, and coming out fracturing the fourth rib, as shown by Exhibit B-l. As a result of the shots fired by the defendant, Magtibay fell to the ground and then the defendant approached him in order to take away the revolver which Magtibay carried at his waist, but not before firing at Policarpo Dia, who tried to approach the fallen man to help him, but not having hit Policarpo, the latter fled in fear, taking refuge in a Chinese store nearby.

The defendant, with both revolvers in his hands, proceeded towards the town, but on the way met a policeman who had gone thither, and who told him to give himself up, which he did, turning over both revolvers to the officer and going with him to the municipal hall.

As a result of his wounds Damian Magtibay died a few moments after the incident.

Lieutenant Pineda of the Constabulary, who, in due time, repaired to Candelaria, examined the revolver Exhibit D, which the defendant had used, and observed some powder stains in the mouth of the barrel which indicated that the weapon had been recently discharged; and he stated that said revolver, Exhibit D, bore no license according to the Constabulary records in Tayabas, nor did the defendant's name appear in said records. Said Lieutenant also examined the revolver Exhibit E, which the deceased Magtibay carried, and saw that it had a license in his name, and having examined it, he found no powder stains on it and that it had not been discharged.

Policarpo Dia testified that when the incident took place he was walking about a meter ahead of the deceased, and on hearing the first shot, he turned his face and saw Magtibay fall and that the defendant was the one who fired the shot. Two other witnesses, Gregorio Maleon and Bartolome Quilapio, who were then stationed at the door of a warehouse near the railway line, also testified that they saw the defendant discharge his revolver at the deceased while the latter was facing north towards the town of Candelaria.

The defendant testified in his own behalf, saying that on that morning he alighted from the train at Candelaria and went behind Magtibay and his companion Policarpo Dia, to return to the town; that on arriving at the place near

the culvert mentioned, Policarpo, directed by Damian, turned upon him and drew his revolver pointing it at him; that he therefore rushed at Policarpo to disarm him, whereupon a struggle ensued; that Damian then pulled out his own revolver and pointed it at him, but before he could fire, the revolver held by Policarpo went off twice, hitting Damian, who immediately fell to the ground; that after wresting Policarpo's revolver from him, he quickly took up the other which the deceased had dropped to the ground, in order to avoid its falling into the hands of Policarpo and, with both revolvers in his possession, he ran towards the municipality.

Pedro Dimaano, one of the witnesses for the defense, corroborates the defendant by stating that when Policarpo Dia pointed his revolver at the defendant, the latter threw himself at the former in order to wrench the revolver from him and both struggled for the possession thereof, and that during the struggle, said revolver was discharged twice, and it was then that the deceased fell to the ground face downwards. But Pedro Dimaano was contradicted by witness Gregorio Maranan of the prosecution, who affirmed that at about 10 o'clock in the morning of that day Dimaano was with him at the cockpit playing with the roosters, and that they only left the place when they heard the shooting, going to where the deceased lay.

Witnesses Gregorio Vilela and Santiago de Leon who were the defendant's companions during the trip, testified that the defendant carried no revolver on that day.

The trial judge refused to believe the testimony of these witnesses as well as that of the defendant, considering the latter "a story fabricated in order to escape liability, for it is very strange that during the supposed struggle between Policarpo and the defendant, the revolver which they were trying to get possession of should go off, and go off twice, and that one of those shots should have killed Damian Magtibay; all this shows much chance and is indeed so extraordinary that it is very difficult to believe, besides being contradicted by the witnesses for the prosecution who saw the incident and who positively asserted that they saw the defendant shoot the deceased."

Doctor Rodriguez, chief of the ninth health district of Tayabas, who examined and made the autopsy, and extracted the bullet Exhibit C from the body, testified that the bullet penetrated the body of the deceased, perforated both lungs, causing a pulmonary hemorrhage which resulted in the instant death of said deceased.

In view of the evidence of record, we are of opinion and so hold, that the defendant's guilt in both cases was proved beyond a reasonable doubt.

Counsel contends that the revolver Exhibit D, used by the defendant, had been wrenched from Policarpo Dia; but the trial judge refused to believe this statement of the defendant, and we see no reversible error in this. It is well to remember that the crime prosecuted is the culmination of an old enmity between the deceased and the accused. Towards the end of September, 1926, Maalihan and Magtibay had a personal encounter in front of the office of the baggage-master of the station of Candelaria, because the deceased happened to spit in the defendant's face, which gave rise to an exchange of words, resulting in blows. That scuffle was the origin of two criminal complaints: one for personal injuries, filed by Magtibay against Maalihan, and the other for insults, filed by Maalihan against Magtibay. The case against Maalihan ended with the latter's acquittal, and the other one for insults was pending trial when the incident occurred. Maalihan's acquittal increased Magtibay's animosity, and if we are to believe the defendant's testimony, every time he passed by Magtibay's drug store the latter frowned at him and made an attempt as if to draw his revolver. Later on, that is, in February, 1928, Policarpo Dia spoke to the defendant begging him to ask for the dismissal of the case against the deceased, since he himself had been acquitted in the case of personal injuries. The defendant refused to do so and this angered Policarpo Dia, who told him something would take place between them. As the defendant knew that the deceased carried a revolver, we find it difficult to believe that he should have dared to approach Magtibay on the day of the crime, unless he was prepared for any contingency. We agree with the trial court that the revolver Exhibit D, used by the defendant,

was carried by the latter at the time of the incident, in spite of the testimony to the contrary given by witnesses De Leon and Vilela to the effect that while they were in a restaurant (carinderia) in Lucena eating something, the defendant took off his coat, and they did not see any revolver.

With respect to the treachery which the trial court considered to qualify the crime as murder, we believe that the mere fact that the first bullet entered the right pectoral region of the deceased is not in itself alone sufficient to constitute the circumstance of treachery, qualifying the crime as murder. The facts mentioned above between the deceased and the accused, confirm our belief that both parties were prepared for any contingency that day. It is true that none of the witnesses in this case testified to any interchange of words between the accused and the deceased, but considering the circumstances of the case in question, we are inclined to believe that Magtibay and his companion, Policarpo Dia, were not wholly unaware of the fact that the defendant followed them a short distance behind, and we believe likewise that they were prepared to repel any attack, although the defendant was quicker in discharging his revolver at Magtibay, his personal enemy.

In view of the foregoing, the judgments appealed from must be, as they are hereby, affirmed with the sole modification as to the second case, that the crime committed is homicide, defined and penalized by article 404 of the Penal Code, without any modifying circumstance, and therefore, the penalty of fourteen years, eight months and one day reclusion temporal must be imposed upon the defendant, with the accessories of law, and with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Johns, Romualdez, and Villa-Real, JJ., concur.

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