

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BASILIO BACCAY AND BELLO ZIPAGAN, DEFENDANTS. BELLO ZIPAGAN, APPELLANT.

G.R. Nos. 38527, 38528. November 18, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

In criminal case No. 3087 of the Court of First Instance of Isabela Basilio Baccay and Bello Zipagan were accused of the crime of homicide, committed as follows:

"Que en o hacia el 17 de enero de 1932, en el Municipio de Cabagan, Provincia de Isabela, Islas Filipinas, y dentro de la jurisdiccion de este Honorable Juzgado, los aqui acusados, conspirandose y confabulandose entre si, voluntaria, ilegal y criminalmente, dispararon con la escopeta de Antonio Zipagan, contra el niño Luciano Tabingu, a consecuencia del cual dicho Luciano Tabingu recibio varias heridas mortales de necesidad, que ocasionaron su muerte el segundo dia despues del suceso de autos"; and in criminal case No. 3089 of the same court they were charged with the illegal possession of a shotgun belonging to Antonio Zipagan. They pleaded not guilty in both cases. They were granted separate trials, but by agreement the evidence for the prosecution was produced only once.

After hearing and considering the evidence, Judge Sixto de la Costa found Bello Zipagan guilty as principal and Basilio Baccay guilty as accomplice of the crime of homicide in criminal case No. 3087 (G. R. No. 38527), and sentenced Bello Zipagan to suffer twelve years and one day of reclusion temporal and Basilio Baccay to suffer six years and one day of prision mayor, to indemnify jointly and severally the heirs of the deceased in the sum of P1,000, and to pay the costs. The trial judge found them guilty also of the illegal possession of firearms in criminal case No. 3089 (G. R. No. 38528), and sentenced each of them to suffer one month of imprisonment, and to pay one-half of the costs.

The accused Bello Zipagan appealed to this court, and his attorney now makes the following assignments of error:

"1. El Juzgado inferior erro al dar credito al testimonio inverosimil, interesado y no corroborado prestado por el acusado Basilio Baccay, verdadero matador del niño Luciano Tabingu, contra su coacusado, el hoy apelante Bello Zipagan, el cual Basilio Baccay es capaz de jurar en falso, habiendo hecho una declaracion jurada completamente diferente ante el Juez de Paz de Cabagan, Isabela, alegando coartada.

"2. El Juzgado inferior erro al no dar credito a las pruebas claras y convincentes de la defensa del apelante Bello Zipagan, corroboradas por declaraciones de los testigos de cargo Eulogio Tabingu y Ciriaco Tabingu, padre y hermano respectivamente del occiso.

"3. El Juzgado inferior erro al no absolver al apelante."

The trial judge made the following findings of fact:

"Un analisis detenido de las pruebas contradictorias de uno y otro acusado relacionadas con las aportadas por

la acusacion, resulta claramente los siguientes hechos: que Bello Zipagan disponiendo como solia hacerlo de la escopeta de su padre que se hallaba guardada en la casa de Aniceto Miguel en el Barrio de Baluarte, del Municipio de Cabagan, convino con Basilio Baccay en ir a cazar en el sitio de Viga del mismo Barrio, por la tarde del 17 de enero de 1932, pues los dos habian sido informados de que en dicho sitio de Viga rondaba un jabali por los sembrados de palay; en efecto, los dos partieron, llevando consigo Bello Zipagan la escopeta de su padre, que es el Exhibit D, y al llegar al sitio divisaron a cierta distancia a dos niños que no eran otros que el finado Luciano Tabingu y su hermano Ciriaco Tabingu, sentados sobre el cesped y mascando caà' "a dulce; al verlos les atemorizaron, profiriendoles palabras soeces, motivo por el cual los dos niños se echaron a correr, y Bello Zipagan con la escopeta disparo contra ellos e hiriendo a Luciano Tabingu. Bello Zipagan y Basilio Baccay, viendo a Luciano Tabingu tumbarse, se echaron a correr, y juntos se escondieron y esperaron que anoheciera; aprovechando la obscuridad de la noche, vadearon el rio y procurando no ser vistos por nadie, se encaminaron a la poblacion y se dirigieron a la casa de Antonio Zipagan, el dueño de la escopeta, y a este refirieron lo que habia ocurrido. Antonio Zipagan, una vez enterado del suceso, mando limpiar su escopeta, poniendola aceite y la guardo. Hizo que Basilio Baccay se quedara en casa. Horas despues subio a ella el Jefe de Policia, quien informo a Antonio Zipagan de que la escopeta de este habia causado desgracia en el sitio de Viga, a lo que Antonio Zipagan dijo que su escopeta no habia salido de casa, el Jefe de Policia se limito a tomar el numero de la misma, no sin haber notado que la escopeta estaba limpia y engrasada con mucho aceite."

Appellant's assignments of error raise only questions of fact, depending upon the credibility of the witnesses, and as we have often said, that is a matter peculiarly within the province of the trial judge. No reason has been adduced that would justify us in rejecting his findings.

The attorney for the appellant Bello Zipagan contends that the conviction of the appellant depends entirely upon the uncorroborated testimony of his coaccused Basilio Baccay, and that since this testimony comes from a polluted source it is not sufficient to sustain a conviction. This contention is erroneous in two particulars. In the first place, the conviction of Bello Zipagan does not rest solely upon the uncorroborated testimony of Basilio Baccay; and in the second place, although it is true that such testimony should be carefully scrutinized, it is not accurate to say that the testimony of an accomplice never merits sufficient credit to be the basis of a conviction.

The rule stated in the case of the United States vs. Remigio (37 Phil., 599), is as follows:

"The evidence of accomplices is admissible and competent. Yet such testimony comes from a 'polluted source.' Consequently, it is scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon the unsupported evidence of an accomplice. If corroborated absolutely or even to such an extent as is indicative of trustworthiness, the testimony of the accomplice is sufficient to warrant a conviction. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained."

It is true that after the trial Eulogio Tabingu and Ciriaco Tabingu, the father and the brother of the deceased, testified contrary to what they had previously stated under oath, and attributed the shooting of the deceased to Basilio Baccay, but it was obvious that these witnesses had been tampered with. The evidence shows that Antonio Zipagan, the father of the appellant, tried to force Aniceto Miguel to admit that the shotgun in question was taken from his house on January 17, 1932. The contention of the appellant that the shotgun of Antonio Zipagan was stolen by Basilio Baccay from the house of Aniceto Miguel, and that he refused to give up the gun when Bello Zipagan met him seems to us entirely unworthy of credit.

The lower court found that the appellant was entitled to the benefit of the mitigating circumstance of not having intended to commit so grave a wrong as that committed. The Solicitor-General is of the opinion that no mitigating or aggravating circumstance concurred in the commission of the crime. It appears that the gun used by the

appellant Bello Zipagan was of No. 12 gauge; that he was hunting for birds, and consequently was using small shot; that the deceased boy was running at a distance of 40 meters when the appellant fired at him. All that preceded the shooting was that the defendants found the two boys sitting on the ground chewing sugar cane. The defendants asked the boys to give them some sugar cane, and when the boys failed to do so, Bello Zipagan spoke roughly to them and they ran away, and then he took up his gun and fired at them when they were at a distance of some 40 meters. Under those circumstances, we are constrained to think that it was not the intention of the appellant to kill the deceased boy. He is accordingly entitled to the aforementioned mitigating circumstance.

The decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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