



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-288 **August 29, 1946**

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ISABELO NOBLE, defendant-appellant.

Luis Atienza Bijis and Jose W. Diokno for appellant.
Assistant Solicitor General Kapunan, jr. and Solicitor Feria for appellee.

TUASON, J.:

This is an appeal from a judgment of conviction for murder. The defendant, who, before arraignment, expressed through his counsel willingness to plead guilty to simple homicide if the provincial fiscal would amend the information accordingly, seeks absolute acquittal on appeal, claiming that he acted in defense of his sister's honor.

A brief statement of the background of the crime in so far as the facts are uncontroverted or established without serious dispute may be in order.

George F. Ott, a private in the United States Army, with two other American soldiers, took Consolacion Noble, a widow, 50 years old; Corazon Apacible, Consolacion's daughter, single, 32 years old; and Paz Fores, a doctor of medicine, single, 25 years of age, to see a cinema showing in an Army camp in a barrio of Taal, Batangas, early in the evening of October 22, 1945. A resident of Manila, Paz Fores was in Taal visiting and staying with Corazon Apacible, her friend, in the home of former Governor Vicente Noble where Corazon and her mother lived. In going to and coming from the show, Consolacion Noble rode alone with George F. Ott in a jeep driven by the latter, while the two younger ladies were accommodated in another jeep with the other two American. When the party got back to town, the three ladies invited the three Americans to come into the house. There, the two companions of George F. Ott seated themselves in a sofa in the drawing room, while Ott fetched from his jeep a phonograph which he placed on a table in the ante-room and while the ladies busied themselves to prepare food and drinks for their guests. As Ott was fixing the phonograph with one of the ladies standing near him Dr. Isabelo Noble, brother of Consolacion Noble, came up the stairs and shot the American several times with a .45 caliber pistol. From the effects of his wounds Ott died shortly after, on the way to an Army hospital.

The identity of the lady who who was with the deceased in the ante-room is the bone of contention. The fate of the defense — that the defendant killed Ott to repel an attack on his sister's honor — hangs on this identity. All other points of dispute going to the motive of the crime are subordinated to this question. If the lady in question was not Consolacion, then the main defense is torn and falls apart.

The appellant says that the lady was his sister, Consolacion Noble. He states that after making four or five steps from the top of the stairs he saw Ott holding Consolacion's hands and trying by force to embrace and kiss her; that he drew his revolver and fired a shot that missed its mark; that, as the American started to pick a chair, perhaps to hurl at him, he fired various other shots; that all he knew afterwards was that Ott had fallen down and he threw away his gun.

Lolita O. de la Raya, a teacher in Baguio who was staying in former Governor Noble's house, like Paz Fores, declares that when reports of gunshots sounded, she was in the dining room, and that Consolacion and not Corazon was with the deceased in the ante-room then.

Consolacion Noble was introduced in rebuttal to refute the defense's evidence that she was with the now deceased when Ott was slain. The provincial fiscal called this woman to the stand without first verifying what she had to testify, having relied upon a sworn statement she had made to the effect that her daughter was the lady found in the ante-room at the time of the shooting. To the provincial fiscal's surprise, Consolacion Noble confirmed her brother's testimony, i. e., that she was with George Ott in the ante-room when the defendant shot and killed George. She said that her statement to the justice of the peace was false; that she, Corazon Apacible and Paz Fores had agreed to say that her daughter and not she (witness) was in the "caida," in order to hide the truth from her uncle, who" was absent in Manila and who, according to her, objected to her fraternizing with American soldiers. She also corroborated her brother's testimony that George Ott held her hand and tried to kiss and embrace her. She further declared she did not make an outcry when Ott wanted to force his attention on her because she wanted to avoid a scandal; she added she "just went away from Ott a little."

Having the burden of proof to establish justification for the crime, the defendant has not made out a persuasive case. The full weight of probabilities rejects his version of the killing. We mention some of the reasons why we cannot accept defendant's testimony.

There is not the slightest evidence, outside of the testimony given in this case, that Consolacion Noble possessed any physical attraction for Ott. The accepted evidence repels the idea that he was infatuated with the elderly widow. We have seen that she was alone with the deceased in a jeep in going to and coming from the movie and yet she said nothing happened in that trip between her and Ott.

No feeling of endearment on the part of Ott towards Consolacion Noble can be deduced from the mere fact that they drove alone in one jeep both ways. It looked to us like a simple act of courtesy, a simple gesture of gallantry not out keeping with rules of polite society. As the host in the trip toto the movie (Ott's two fellow soldiers stated at the preliminary examination of this case that they did not know any of the three women by name), it may have been considered in good taste, as we think it was, for Ott to bestow preferential deference and attention on the eldest lady in the party, who was the mother of one of the girls, by having her in a way were also his guests, have the more enjoyable company of the two younger women in their jeep. Any other grouping or arrangement might not have been so correct or so pleasant to all concerned.

The time, the place and the occasion were highly unpropitious for any imputed to Ott. there was a party actually going on in the house with busy people moving about the likely to pass through or to come to the ante-room. We are

not to suppose that under these circumstances Ott was so rude, so ill-bred and so reckless as to grossly abuse the hospitality of and shock his hosts, especially the girl who was going to be his wife. The record contains proof that the deceased was not a man of unbridled disposition. The evidence shows that he had departed correctly, like a true gentleman, in his association with his Filipino lady friends.

The presence of so many people in the house suggests another ground for skepticism about the alleged attempt on Consolacion Noble's honor. Even if the accused had seen the deceased in the attitude described by him, it is not to be believed that he would have taken the life of the American for such conduct alone, for his sister was not in serious danger of being harmed.

Something deeper than the alleged attempt of Ott to kiss or embrace Consolacion Noble was obviously behind the shooting. The way the killing was accomplished indicated bitter hatred being harbored by the slayer. He shot his victim not less than five times, two of the shots at least having been fired when Ott was already sprawled down, as shown by two bullet marks on the floor.

Jealousy and disappointment drove the defendant to his rash act. No amount of denial can destroy Paz Fores' testimony that she was engaged to George Ott and that the defendant was in love with her. The testimony of Paz Fores on his score leaves no room for doubt. She had nothing to gain by telling falsely that she had consented to marry Ott and that the accused had courted her but had received no encouragement from her. Thus, Isabelo Noble had cause to be resentful of Ott not only because the American was his successful rival suitor but mainly because, we believe, it was he (defendant) who had introduced Ott to Dr. Fores. He must have been embittered not only by a sense of frustration but by what perhaps he regarded as Ott's perfidious conduct.

For the rest the testimony of Corazon Apacible and of Paz Fores that the former was the lady beside Ott when the aggression started is entirely trustworthy. The recitals of the event by these witnesses carry in their simplicity and naturalness the characteristics of veracity, in contrast to the testimony of the defense witnesses which in many respects does not ring true. Only a high regard for their oath and a just indignation aroused by a cold-blooded aggression could have induced Corazon Apacible and Paz Fores to testify against the uncle of one of them, in a prosecution for a crime purportedly committed for the good of Corazon's mother.

Consolacion Noble's statement before the justice of the peace given the day following the commission of the crime is convincing in its details and expressed, in our opinion, what had really occurred. That Consolacion Noble later changed her mind and testified for her brother was not to be wondered at, considering the blood affinity between the two. What is strange, if the defendant's theory were correct, is that being the sister of the accused, being the woman, in order to defend whose honor he risked his life or liberty, and being the only supposed eye-witness to the killing who could corroborate her brother on the most vital point of his defense, Consolacion was not presented as a witness by and for the defendant. This failure does not with the idea that Consolacion had been committed to repel Ott's improper advances.

The claim that the three women agreed to state that Corazon Apacible instead of Consolacion Noble was with George Ott, solely for the purpose of preventing Vicente Noble becoming aware that his niece had violated his prohibition against mixing with American servicemen, is untenable. In the eyes of Vicente Noble and of strangers about whose adverse opinion Vicente Noble pretended to be wary, Consolacion Noble's promiscuous association with American soldiers, if that be improper, could not have brought greater dishonor and discredit to the family than would have Corazon Apacible's. The latter was young and single; the other a widow fifty years of age. The truth is that the supposed prohibition is reputed by the way these women went out with and entertained their American friends. It is a matter admitted by witnesses on both sides that Corazon Apacible and Consolacion Noble openly,

freely and frequently went to picnics with American soldiers. The way the deceased and his two companions were entertained in the very house of Vicente Noble when they came back from the show gives the lie to the alleged prohibition of the old man.

We are entirely in accord with the trial court's finding that the crime was committed in the manner and form related by Corazon Apacible and Paz Fores. The following is substantially the testimony of Corazon Apacible:

When Isabelo Noble opened fire, she was standing about two meters away from George Ott. George Ott had been standing with his back towards the stairways tinkering with the phonograph. Before Isabelo noble appeared, she heard someone coming up the stairs. She started to meet the newcomer and saw that he had a gun in his hand. She thought that a hold-up was intended. The accused walked straight to where the deceased was standing near the table and said, "George, this is your end," and fired. She thought George was hit by the first shot because he lifted up his right leg. Before the accused said, "George, this is your end," the American had his back towards the stairs, but after Isabelo Noble uttered that statement, the American turned around to see who was talking. Just as George faced the accused, her uncle shot him. After the first shot, she begged the assailant to stop but "right away I heard several shots fired." She was not looking at the deceased when the shots after the first were fired because she was facing her uncle pleading with him to have pity on the American. After the shooting stopped, she ran to the kitchen because she was afraid that the defendant might turn against her, and she called for help.

Paz Fores testified that she was inside the bedroom when she heard the first shot. Then she rushed to the door, which was open, and saw Dr. Noble's back, after which she heard two or three more shots. As Dr. Noble was firing, he said repeatedly in Tagalog, "I told you this will happen," apparently addressing Corazon Apacible. After hearing those words, she closed the door. She says she did not see George Ott's position during the shooting because the accused was between her and the deceased who obstructed her view of the American.

The description of the wounds and injuries sustained by the deceased, as shown in Exhibit A made by the Medical Officer who performed an autopsy on the cadaver, is as follows:

In the left anterior axillary fold is a puncture wound 1 cm. in diameter which appears to have been a wound of entry. The missile traversed the pectoral and deltoid muscles, passed inferior to the acromio-clavicular articulation and emerged 8 cm. posterior and lateral to this articulation. There are 9 additional wounds of the abdominal walls and right hip in the following locations: Three puncture wounds about 8 cm. slightly above and to the left of the umbilicus which appear to be wounds of entry; four puncture wounds in lumbar regions — one on the left side and three on the right side all of which are apparently exit wounds; two wounds approximately 6 cm. below the right iliac crest. (Just deep to the skin in the region of these two wounds is a .45 caliber bullet which is removed.) The second phalanx of the middle finger of the left hand has been practically cut in two apparently by a bullet. None of the wounds show powder burns. No clothes are with the body. There are no other injuries.

Judged by this testimony, the crime committed was murder characterized by treachery. According to this testimony, the attack was sudden and unexpected to the point of incapacitating George Ott to repel or escape from it. The offender adopted a method which tended directly and especially to insure the accomplishment of his purpose without risk to himself arising from any defense which the offended party might make. (U.S. vs. Davis, 11 Phil., 96, citing U.S. vs. Cabiling, 7 Phil., 469; U.S. vs. Babasa, 2 Phil., 102; U.S. vs. Baluyot, 40 Phil., 385.) True, the victim and the accused were face to face when the attack commenced, the first shot, according to all indications, having hit the victim in the abdomen. But it is also true that he had just wheeled around to see who had spoken to him when the defendant opened fire.

The presence of three mitigating circumstances is urged: first, intoxication; second, voluntary surrender; and third, an offer to plead guilty for a minor offense.

Speaking of his alleged drunkenness, the defendant testifies that on the night in question he was distressed because he was not able to meet the girl he loved, one Gorgonia Manigbas, in the barrio Hipit; that from Hipit he went to his clinic and "after injecting a patient he took a bottle of wine and drank little by little until he got drunk." He says that it was a small bottle and consumed one-half of its content; that from Dr. Ilagan's bar, he started to go home; that on his way home he "was attracted by the light in his sister's house" and "thought that may be the old man (Don Vicente Noble) already arrived and as it was already quite late, *he* went up," to give his uncle an injection for heart ailment from which the old man was suffering. After he was arrested and as he was being conducted to the Municipal Building, "*he* was quite drunk and his mind was quite heavy and he asked Noche (the policeman) to stop for a while because *he* felt like vomiting, and in fact *he* vomited maybe two or three times."

Consortio Noche, the policeman, testifies that when Isabelo Noble and he "were about to reach the Municipal Building," the accused told him "that he will sit down and then he vomited"; and that "he smelled wine."

This mitigating circumstance must be proved to the satisfaction of the court to be available as a means to lighten the penalty. The trial court has found the evidence insufficient to "conclusively show that the accused was drunk on the night of the incident."

We are in accord with this finding. We believe with His Honor that in the light of the appellant's own testimony, the amount of liquor the accused had taken, if he had taken any, was not of sufficient quantity to affect his mental faculties to the extent of entitling him to a mitigation of his offense. His Honor correctly reasons that "if the accused was thoughtful enough not to neglect giving Don Vicente Noble his injection, the inference would be that his intoxication was not to such a degree as to affect his mental capacity to fully understand the consequences of his act."

The mitigating circumstance of voluntary surrender has not been established. Granting, for the sake of argument, that the defendant sent for policemen through Vicente Punzalan after he committed the crime, the truth of the matter is that when he spoke to Punzalan he was already under arrest by the Military Police. When municipal policemen came, he was still under arrest and was not in a position to escape even if he had wanted to. Appellant was found by Richard Chael of the Military Police in a room of the house where upon indication of Chael he was taken under custody by the local police officers.

The benefit of the mitigating circumstances of voluntary confession of guilt is unavailable to the appellant. An offer to enter a plea of guilty to a lesser offense cannot be considered as a mitigating circumstance under the provisions of article 13 of the Revised Penal code.

We find, in conclusion, that the judgment of conviction appealed from, sentencing the defendant to *reclusion perpetua* with the accessories of law, to indemnify the heirs of the deceased in the amount of P2,000, and to pay the costs, is in accordance with law and the evidence, and that it should be, and the same is hereby, affirmed, with costs against the appellant.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Bengzon, and Padilla, JJ., concur.

Separate Opinions

BRIONES, M., concurrente y disidente:

Esta causa tiene las senales de ser uno de tantos efectos resultantes decierto genero de psicosis producida por la guerra — psicosis que acaso hayaque atribuir a una forzosa inhibicion de los estímulos vitales en los largos y tediosos dias del cautiverio. Lo que hace llamativo el caso y particularmente deplorable es la calidad de las victimas de la tragedia: por un lado, el occiso, soldado americano joven, lleno de vigor, quien acaso solo estaria esperando unos cuantos dias para reintegrarse a su hogar y a su patria despues de la victoriosa campaña en que tomara parte; por otro lado, el matador, un medico filipino, tambien joven, de 32 años de edad, a quien antes del desgraciado incidente sonreia un lisonjero porvenir.

En medio de la masa de pruebas contradictorias que a veces causan perplejidad en el animo, creemos haber hallado bastante luz respecto de algunas circunstancias que, a nuestro juicio, tienden a mitigar la responsabilidad del appellante, a saber: (1) la circunstancia de que, sin duda, en la noche de autos el apelante estaba embriagado despues de haber bebido, por lo menos, media botella de *whisky*; (2) la otra circunstancia de que el acusado se rindio inmediatamente a los agentes de la autoridad.

Cualquiera que fuese el motivo, ora porque estuviese celoso del occiso por la corte que este hacia a la Dra. Paz Fores, de quien, segun las pruebas de la prosecucion, estaba perdidamente enamorado el acusado, ora porque este hubiese sufrido realmente en desengaño aquella noche por haber faltado a un cita con el su novia confess la Dra. Gorgonia Manigbas, segun las pruebas de descargo, no cabe duda de que el apelante habia bebido en aquella ocasion mas de la cuenta y estaba positivamente borracho. No solo tenemos este dato por el testimonio del apelante, sino que lo confirma el policia Consorcio Noche, cuya veracidad no esta impugnada en autos. Segun Consorcio Noche, cuando el condujo al acusado a la casa municipal, despues que este se le rindiera voluntariamente, antes de llegar ambos a su destino el acusado le pidio permiso para santarse y en esta posicion estuvo vomitando, y el vomito olia ostensiblemente a vino. Esta prueba no ha sido redarguida seriamente; y bajo las circunstancias del caso la version es perfectamente creible. El inesperado acceso de violencia — especie de *amok* — de que fue presa el acusado en la noche de autos solamente se puede explicar considerando que su estado no era normal, que estaba bajo la influencia de algo que habia perturbado seriamente el equilibrio de sus facultades, y como tenemos ese dato positivo de la media botella de whisky que se habia ingerido aquella noche, nos inclinamos a creer que cuando hizo los disparos fatales estaba seriamente borracho — lo bastante para que se atenue su responsabilidad, por no ser borrachera habitual ni deliberada. Se nos hace cuesta arriba creer que el acusado, en pleno, cabal e inalterado goce de sus facultades, hubiese sido capaz de jugarse asi como asi su libertad, su carrera, y aun su vida, en un desafortunado incidente pistolero como el de autos.

Nos resistimos a creer que un deseo loco de venganza, resultante de los celos de un sentimiento de frustracion, como se dice en la ponencia, por unos amores no correspondidos, fuese la causa de la actitud homicida del apelante. Resulta de autos mu dudosa que el acusado estuviese locamente enamorado de la Dra. Fores, o que sintiese fuertes celos contra el occiso. De ser estocerto, la agresion hubiese ocurrido mas temprano y en otras circunstancias: no en la noche de autos en que la ida del acusado a la casa de su tío el ex-Gobernador Noble fue mas bien casual, al ver que todavia habia luz, creyendo por esto que su tío acababa de llegar de Manila. Además, digan, lo que digan, la conducta del occiso y de la Dra. Fores en la noche de autos no era ciertamente la de dos novios. Si lo fuesen no se comprende por que no estaban juntos en un mismo *jeep* al ir y volver de la fiesta, yendo, en cambio, el occiso con otra mujer, y la Dra. Fores con otro hombre. Los enamorados hasta roban tiempo al tiempo para estar siempre juntos, y esto ha sido particularmente cierto bajo el imperio de la psicología erotica exacerbada inmediatamente despues de la liberacion.

Que el acusado se rindio voluntariamente a los agentes de la autoridad inmediatamente despues del suceso es cosa que se ha establecido en autos fuera de toda duda razonable. Lo declaran dos testigos desinterados: Vicente Punzalan y el policia Consorio Noche. Segun Punzalan, el acusado le rogo que llamara a un policia para rendirse y, en efecto, llamo a Noche, y este con algunos compañeros se constituyeron en la casa del ex-Gobernador Noble y de alli recogieron al acusado para llevarlo al municipio. El mismo policia militar americano que investigo el caso — Richard Chael — confirma en cierto sentido la representacion voluntaria de acusado.

Mi conclusion, pues, es que se deben se deben apreciar en favor del apelantelas circunstancias atenuantes de embriaguez y presentacion voluntaria.

The Lawphil Project - Arellano Law Foundation

 **BACK**

 **TOP**