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SECOND DIVISION

[G.R. No. L-32754-5. July 21, 1978]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL PILONES** *y* **IBAÑEZ,** *defendant-appellant.*

SYLLABUS

1. **CRIMINAL LAW; CONSPIRACY; PRESENT IN CASE AT BAR.**— Even if Renolia was shot by Pilones' companion, with a firearm different from the .22 caliber rifle used against Ilagan, Pilones would still be criminally liable for Renolia's death because he, obviously, conspired with the person who shot Renolia. Pilones and his companions were together at the scene of the crime. They left the place together.

2. **REMEDIAL LAW; EVIDENCE; ADMISSION BY SILENCE; APPLIED IN CASE AT BAR.**— The decisive fact is that Pilones was not only identified by Ilagan but at the confrontation in the police precinct between accuser and accused, Pilones, as the accused, just kept silent and did not deny Ilagan's accusation and the identification made by Renolia's mother. "He who remains silent when he ought to speak cannot be heard to speak when he should be silent. Silence is assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession. An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation and self-defense, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, will justify an inference that he is not innocent."

3. **CRIMINAL LAW; ATTEMPTED MURDER; COMMITED WHERE THE ACCUSED DID NOT PERFORM ALL THE ACTS OF EXECUTION THAT WOULD BRING ABOUT THE DEATH OF THE VICTIM.**— The trial court erred in holding that the crime as to Ilagan is frustrated murder. The wound in his knee was not sufficient to cause his death. The crime is only attempted murder. The accused did not perform all the acts of execution that would bring about the death of Ilagan.

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DECISION

AQUINO, *J.*:

Manuel Pilones appealed from the decision of the Circuit Criminal Court of Manila in Criminal Cases Nos. CCC-VI-170 (70) and CCC-VI-171 (70), convicting him of murder and frustrated murder, and sentencing him in the murder case to life imprisonment and to indemnify the heirs of Antonio G. Renolia in the sum of ₱18,000.

In the frustrated murder case, he was sentenced to an indeterminate penalty ranging from six years and one day of *prision mayor*, as minimum, to twelve years and one day of *reclusion temporal*, as maximum, for having assaulted Nicanor Ilagan. No indemnity was imposed.

In the evening of April 9, 1970 a wake or vigil for the dead (*lamayan*) was held in a house near Jossie Bakery, located at J.(F,) Posadas Street, Punta, Sta. Ana, Manila. Among the many persons present at that vigil were Nicanor Ilagan, 19, single, jobless, a student, and Antonio G. Renolia (Renolla), nicknamed Tony, 22, married, a jeepney driver, respectively residing at 2572 F. Posadas Street and 2495 Bagong Sikat Street, both located at Punta, Sta. Ana, Manila.

Shortly after midnight or in the early morning of April 10, 1970, the house, where the vigil was being held, was stoned. Ilagan and the others came out of the house and went to the street to find out who had hurled the stones. As Ilagan stood on the lighted street, he was shot in the knee (Exh. E). He fell on the ground. The assailant was at a distance of around six meters from Ilagan and about fifteen meters away from the electric lamp on the street. Ilagan saw his assailant's face. Because of the light of the electric lamp, Ilagan remembered his assailant as the same person whom he had seen a week before in that vicinity, challenging persons to a fight.

When Ilagan fell, Tony, who had also come out of the house, went to his assistance and tried to lift him. While in a stopping

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position, Tony was shot by the same assailant. The bullet entered his "upper left anterior chest" over the second rib and "coursed downward and backward, lacerating his left pulmonary artery and his right lung "(Exh. D).

The assailant and his companions, Danny Banlag, Milo and others, who were armed with arrows and carried stones, ran away.

Tony or Antonio G. Renolia died on the way to the hospital. Ilagan was also brought to the hospital where he was treated for two weeks.

For sometime, the police made no progress in the investigation of the crime. On the third day after the shooting, Ilagan, while in the hospital, was informed by his friends, one of whom was Aida, that his assailant was Manuel Pilones.

Fifty days after the shooting, or on May 30, 1970, Manuel Pilones, 20, jobless, a resident of 148 Tenement Housing Project, Punta, Sta. Ana, Manila was arrested for vagrancy by patrolmen of Precinct No. 9. Ilagan, who was fetched from his residence by Tony's mother, identified Pilones as the person who had shot him after midnight on April 10, 1970. At that confrontation, Pilones was just one arm's length from Ilagan.

When Ilagan fingered Pilones as the malefactor, who had shot him and Tony Renolia (Question No. 19 of Exh. F), *Pilones did not say anything* (18 tsn July 13, 1970). Emiliana Giray Renolia, the mother of Tony, a resident of 2225 F. Posadas Street, Punta, Sta. Ana, was also at the precinct. She likewise identified Pilones as the assailant of her deceased son and three other persons (Crime Report, Exh. G). Pilones refused to give any statement or comment at that investigation. The investigator's testimony on this point upon interrogation by the fiscal is as follows (2 tsn July 30, 1970):

"Q. In Exhibit F (Ilagan's statement), the witness Nicanor Ilagan pointed to Manuel Pilones in answer to Question No. 19, where was accused Pilones when pointed to by witness Nicanor Ilagan? — A. He was present in the investigation room, sir.

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"Q. How far was he from Nicanor Ilagan when pointed to by him? — A. He was near the table, sir.

"Q. Do you know whether the accused heard Nicanor Ilagan when pointed to as the one responsible for the shooting of the victim? — A. Yes, sir.

"Q. What did he say? — A. *Nothing*, sir.

"Q. Did you investigate accused Pilones? — A. Yes, sir.

"Q. Did you confront him with this case? — A. Yes, sir.

"Q. What did he say? — A. *He said nothing.*

"Q. Did you take his statement? — A. No, sir.

"Q. Why? — A. He is (was) not willing to give his statement.

"Q. Why was he not willing to give his statement? A. I do not know, sir.

"Q. Did you explain the reason why? — A. Yes, sir, but he refused to give his statement."

At the trial, Pilones relied on an alibi, He testified that when the shooting occurred, he was in the house of his aunt, Marilou Campbell, at Olongapo City. He was in that place from December 31, 1969 to May 28, 1970. His aunt and his brother-in-law, who was allegedly his companion in going to Olongapo City, did not take the witness stand to corroborate his alibi.

Anacoreta Castro, a widow and a neighbor of Pilones at Punta, Sta. Ana, corroborated his alibi. However, her testimony is weakened by a serious contradiction. She testified that Pilones, who was like a child to her because his family and her family "are practically one," left for Olongapo City *before* Christmas, while, on the other hand, Pilones testified that he went to that place *after* Christmas or on December 31, 1969 (6 and 14 tsn July 30, 1970).

The personal circumstances of Pilones may be useful in assessing his character. He has a common-law wife. He has tattoo marks on his body placed by Ben Lumot. He claims that he was framed up by Patrolman Bayani Lasian, who resided

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at the sixth floor of the tenement house, where he (Pilones) also resided. Patrolman Lasian allegedly suspected Pilones of being implicated in the killing of Patrolman Gameng. Lasian allegedly had a grudge against Pilones because during a basketball tournament among residents of the tenement house Pilones "tripped" and Lasian boxed him (7 tsn July 30, 1970; See Exh. 1). The residence of Pilones is about 12 meters away from Posadas Street.

The crucial factual issue is whether Pilones was sufficiently identified by the prosecution's sole eyewitness, Ilagan, as the assailant of Ilagan and the deceased Tony Renolia.

The doctor, who treated Ilagan, testified that when he operated on Ilagan's wounded knee, he extracted therefrom metallic fragments. On the other hand, the doctor, who conducted an autopsy on the cadaver of Renolia, testified that he extracted a .22 caliber slug from the victim's body. Since there is a difference between a slug and a metallic fragment, Pilones' counsel contends that Ilagan and Renolia were shot by different persons or with different weapons.

That circumstance is not sufficient to cast a reasonable doubt on appellant's guilt. It merely conveys the impression that, inasmuch as according to Ilagan, he and Renolia were shot in succession, Pilones used different weapons. He had time to change weapons. He had companions who could have assisted him in the execution of his felonious acts.

The fact is that Ilagan positively identified Pilones as the person who shot him (Ilagan). Even if Renolia was shot by Pilones' companion, with a firearm different from the .22 caliber rifle used against Ilagan, Pilones would still be criminally liable for Renolia's death because he, obviously, conspired with the person who shot Renolia. Pilones and his companions were together at the scene of the crime. They left the place together. They had community of design.

The decisive fact is that Pilones was not only identified by Ilagan but at the confrontation in the police precinct between accuser and accused, Pilones, as the accused, just kept silent

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and did not deny Ilagan's accusation and the identification made by Renolia's mother. "He who remains silent when he ought to speak cannot be heard to speak when he should be silent" (31 C.J.S. 494). Rule 130 of the Rules of Court provides:

"SEC. 23. *Admission by silence.* — Any act or declaration made in the presence and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him."

"Silence is assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession. An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation and self-defense, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, will justify an inference that he is not innocent." (Underhill's *Criminal Evidence*, 4th Ed. p. 401).

Appellant Pilones contends that the trial court erred in not granting his motion for new trial based on newly discovered evidence, which is the affidavit of Arturo Pangan, a detainee in the city jail of Manila. Pangan declared in his affidavit that in the "riot," clash or encounter (*salakay o sagupaan*) on April 9, 1970 between the residents of Barrio Puso and the residents of Labasan Bukid, he and Romy Pilones, a brother of Manuel Pilones, were together and he saw that Antonio Renolia and Nicanor Ilagan were shot by Aquilino Pingol with a .22 caliber rifle that Pingol was in the company of Danny and Nilo Garcia, *alias* Nilong Bulag, and that at that time Manuel Pilones was in Olongapo City.

It is evident from Pangan's affidavit that he was referring to another incident. Pangan was referring to a riot or rumble between two groups of persons. Ilagan did not testify to any rumble or tumultuous affray between the residents of two places. He testified simply to a shooting at F. Posadas Street, Punta, Sta. Ana when he came cut of the house where a vigil for the dead was being held.

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Moreover, if according to Pangan, Romy Pilones, the brother of appellant Manuel Pilones, was with Pangan on that occasion, the alleged newly discovered evidence could have been presented by the appellant during his trial. His brother, Romy, could not have been ignorant of what Arturo Pangan knew and Romy could have informed Manuel Pilones earlier that the assailant of Ilagan and Renolia was Pingol.

The trial court did not err in denying the motion for new trial.

We are convinced that Pilones was sufficiently identified by Ilagan as the person who shot him and Renolia. Pilones has not shown any reason as to why Ilagan would accuse him of murder and frustrated murder. There is no showing that Ilagan had connived with Patrolman Lasia, whom Pilones believes is the one responsible for his arrest, to frame up the accused.

No motive was established as to why Pilones shot Ilagan and Renolia. The shooting can be characterized as purely a mischievous act of deviltry committed by a jobless and lawless person who did not know of any better way of using his time.

The trial court erred in holding that the crime as to Ilagan is frustrated murder. The wound in his knee was not sufficient to cause his death. The crime is only attempted murder. The accused did not perform all the acts of execution that would bring about the death of Ilagan.

WHEREFORE, the lower court's judgment is affirmed with the modification that in Criminal Case No. 171(70), Pilones is convicted of attempted murder and is sentenced to an indeterminate penalty of three (3) years of *prision correccional* medium, as minimum. to six (6) years and one (1) day of *prision mayor* minimum, as maximum, and to pay an indemnity to Nicanor Ilagan in the sum of two thousand pesos.

The term "life imprisonment" used by the trial court should be changed to *reclusion perpetua*. It is the latter term that carries with it the imposition of the accessory penalties. (*People vs. Mobe*, 81 Phil. 58; Art. 73, Revised Penal Code). Costs against the appellant.

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SO ORDERED.

Fernando, Barredo, Concepcion Jr., and *Santos, JJ.,* concur.

Antonio, J., took no part.

FIRST DIVISION

[G.R. No. L-35910. July 21, 1978]

PURITA BERSABAL, *petitioner, vs.* **HONORABLE JUDGE SERAFIN SALVADOR, as Judge of the Court of First Instance of Caloocan City, Branch XIV, TAN THAT and ONG PIN TEE,** *respondents.*

SYLLABUS

REMEDIAL LAW; COURT OF FIRST INSTANCE; APPELLATE JURISDICTION; TO DECIDE ON THE MERITS THE CASES APPEALED TO IT NOTWITHSTANDING THE FAILURE OF APPELLANT TO FILE MEMORANDUM; CASE AT BAR.— The foregoing provision is clear and leaves no room for doubt. It cannot be interpreted otherwise than that the submission of memoranda is optional on the part of the parties. Being optional on the part of the parties, the latter may so choose to waive submission of the memoranda. And as a logical concomitant of the choice given to the parties, the Court cannot dismiss the appeal of the party waiving the submission of said memorandum. If the appellant so chooses not to submit the memorandum, the Court of First Instance is left with no alternative but to decide the case on the basis of the evidence and records transmitted from the city or municipal courts. In other words, the Court is not empowered by law to dismiss the appeal on the mere failure of an appellant to submit his memorandum, but rather it is the Court's mandatory duty to