

44 Phil. 192

[G. R. No. 19121. December 14, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
ANDRES GALLEGO AND PEDRO LAVEGA, DEFENDANTS AND APPELLANTS.**

D E C I S I O N

STATEMENT

September 8, 1921, the following information was filed against the defendants:

“That on or about the 20th of May, 1918, in the municipality of Bugasong, Province of Antique, Philippine Islands, the accused above named, conspiring and confederating together, with evident premeditation and treachery, did willfully, unlawfully, and feloniously cause the violent death of one Julian Panzo in the manner as follows, to wit: That while the accused Pedro Lavega was seizing the deceased Julian Panzo strongly by the neck, his coaccused Andres Gallego was pulling the testicles of the latter, leaving him dead and completely strangled and throwing his body afterwards into the Bugasong River, in order to conceal the crime. That this crime was committed by the accused in an uninhabited place, and advantage was taken of the darkness of the night. Contrary to law.”

The case was set for trial on November 3, 1921, and continued until November 16, at which time the evidence for the prosecution was taken. The defendants then for the first time asked for a continuance, claiming that they had been led to believe that the case against them would never be tried for want of proof. After continuances pro and con and different changes of attorneys for the defense, one on the last day of the trial, they were finally convicted and sentenced on April 24, 1922, to life imprisonment, with the accessories of the law, to indemnify jointly and severally the widow and heirs of the deceased in the sum of P1,000, and each to pay one-half of the costs, from which they appeal, assigning seven

different errors, all of which involve questions of fact and the credibility of witnesses as to whether the deceased died from natural causes, or through strangulation by the defendants.

Johns, J.:

Although the deceased lost his life on the night of May 20, 1918, and an informal complaint was made by his widow before the justice of the peace on June 20, 1918, the case was never set for trial in the Court of First Instance until November 3, 1921, and was never finally tried until April 27, 1922.

On May 21, 1918, the remains of Julian Panzo were found in the bed of the Bugasong River in the municipality of Bugasong, Province of Antique, at a point below a bamboo bridge spanning the stream. It was found about 12 m., when an investigation was made by the municipal authorities, after which, and on the same day, the following entry was made on page 72 of the municipal police blotter:

“At 1 p. m., the undersigned Ambrosio Odi went in company with the justice of the peace Mr. Pedro Ledesma, and the health inspector Rafael de la Cruz, to make an investigation of the death of Julian Panzo of the barrio of Jinalinan, and in the investigation it appeared from the testimonies of Andres Gailego, Pedro Lavega, Micaela Galicia, the wife of the deceased, and Catalino Bisogol before the justice of the peace Mr. Pedro Ledesma, that the death of Julian Panzo was caused by drowning in the Bugasong River, and by no other cause than by drowning, and that it was an unfortunate accident.”

At the trial, three years and a half later, the prosecution offered evidence to show that he was strangled to death by the defendants.

Tomas Francisco, one of the witnesses for the prosecution, testified that he was 34 years of age, married, a laborer and a resident of Bugasong; that while on his way to fish in the river, and just before arriving at the bamboo bridge he saw that—

“Pedro Lavega sit on the stomach of Julian Panzo squeezing his neck and cry to Andres Gailego: ‘Go ahead Iyas crush his testicles with your hand;’” that it was moonlight and about 8 p. m.; that he could see them, but they could not see him. “There were shrubs called *lagundi* between us.” That “after Andres had said:

'How can we squeeze him more when he is already rigid and dead,' they stood up and were ascending the bridge and then I ran away because I was afraid that having seen what they did they might kill me also."

On cross-examination, he testified:-

"Q. Did you tell any member of the family of the deceased anything that you had seen on that night of May 20?—A. I did not say anything."

"Q. And from that time until now you did not tell them anything?—A. No, sir. "The Court. Why did you wait until you thought that the case was finished before talking about what you had seen?—A. Because I was very afraid.

"Q. Whom were you afraid of?—A. I was afraid to be mixed in the affair.

"Q. But whom were you afraid of?—A. Of the courts because I am nervous.

* * * * *

"Q. Did you not come here even once to testify as a witness?—A. I used to come to drive away my fear because I was afraid of what they call judge." Fortunata Dating testified that she was 15 years of age, unmarried; that with her father and on the night in question, she was fishing at the mouth of the river Bugasong.

"Q. What did you find there on that night?—A. While we were fishing, I heard voices that were conversing on the other side of the river, I knew the voices and they were Pedro Lavega and Andres Gallego and afterwards I saw the three of them ascending the bamboo bridge in the river.

"Q. Who were those three persons ?—A. Andres Gallego, Julian Panzo, and Pedro Lavega. "Q. How were ascending, who went first and who was behind?-A. Pedro Lavega came first, then the deceased and then Andres Gallego.

"Q. Did you notice anything in their way of walking?—A. Pedro Lavega and Andres Gallego were holding the deceased. The latter was clinging to the shoulders of the two accused.

“Q. Did you see the deceased walking?—A. He walked because he was made to walk by the persons alive.

“Q. Why do you say he was dead?—A. Yes, sir, because when he fell into the river and when Andres came down and kicked him he did not give any signs of life and so I threw away my fishing apparatus and ran away.

“The COURT. Why did you say that the deceased was held to the shoulders of the accused?—A. They were Andres Gallego and Pedro Lavega who were holding him erect.” That his head was hanging down and his feet were dragging.

“Q. Did you notice whether the accused before crossing the bridge stopped to look around or crossed it only?—A. When they got to the middle they stopped and threw the deceased into the river.”

Her father, Julian Dating, testified that he was 47 years of age, a widower and laborer, and that he knew the defendants.

“Q. What happened there and what did you see?—A. I was catching lobsters when these accused ascended the bamboo bridge.

“Q. What did they do on the bridge?—A. They carried between them a man whom they threw into the river when they got to the middle of the bridge.

“Q. After throwing the man into the river what did they do?—A. Andres came down and kicked that fallen body and dragged it into the mud.

“Q. While they were ascending the bridge did you notice anything on the man that they threw?—A. They were holding him by the armpits.” Also, that his head was hanging and his feet were dragging. On cross-examination, he testified: “The Court. Did you recognize who was he that was thrown into the river and who carried him?—A. Yes, sir.

“Q. Who were they?—A. Pedro Lavega, Julian Panzo, and Andres Gallego.

“Q. Who carried him?—A. Pedro Lavega and Andres Gallego.

“Q. How long is it that you know these three men?—A. I know them because they

were my neighbors in that place.

“FONTANILLA. Do you know if the deceased before crossing the river had a fight with the herein accused?—A. They were struggling on the bank of the river.

“Q. How do you know?—A. Because Andres and Pedro were talking aloud.

“Q. While they were struggling as you said how far away were you from them?—A. About from here to that tree in front of this building (estimated at between 15 and 20 meters).

“FONTANILLA. You only recognized the herein accused by their voices is it not?—A. Only by their voices.

“Q. And did your daughter see the struggle between the accused and the deceased?—A. The noise of their voices could be heard.

“THE COURT. And when did you recognize Julian as the person thrown in the water?—A. In the morning when the body was found it was discovered to be Julian.”

Calixto Tobias testified that he was 19 years of age, single and laborer, and that on the 21st of May, he saw the remains in a coconut grove on the bank of the river, and that there was a swollen spot on the neck. That the body “was examined by the sanitary inspector,” and that the stomach was normal. That when he got to the river there were many people there, including the defendants, who helped to undress the deceased.

Catalina Moises, 25 years of age, married, testified that she saw the body; “that his neck was swollen and presented some contusions and was blue.”

“Q. Did you see any other part of the body beside the neck?—A. No, sir, except the nose and the mouth from which blood emanated.

“Q. And you only looked at the nose and mouth?—A. I did not notice anything else except that.

“Q. Did you notice the size of the deceased’s stomach ?—A. Yes, sir.

“Q. How was it?—A. In normal size”

“Q. But notwithstanding that, you did not tell your aunt about it?—A. Yes, sir, I told my aunt about it saying: ‘Look at the neck, it is bruised/ and she answered: ‘Yes, it is a fact.’

“Q. And did your aunt call your attention about any other part of his body?—A. No, sir.” The widow of the deceased, Micaela Galicia, testified that the deceased and the defendants on May 20 were working on the public school of the town, and when they came back without her husband she asked them where he was, and they told her that he stayed in town. That on the following morning the defendant Gallego told her:

“Last night we were coming back together, but when crossing a bamboo bridge over the Bugasong River, Julian fell down from the bridge, and we left him there.

“Search for him here, because he is here.”

* * * * *

“Q. And what happened when Julian was found? What did you do?—A. He was carried ashore and a sanitary inspector came to the spot.

“Q. What did that sanitary inspector do?—A. He examined the body.” That after the body was removed to their home “one testicle was inflamed and the neck showed a dark contusion, and blood was coming out from its nose.”

“Q. What was the color of the testicle, that is to say, the one which was congested?—A, I did not see but I touched it.

“Q. And what was the size of the contusion in the neck?—A. The throat was very inflamed.

“Q. Of what color was it?—A. Dark purple.”

She further testified that she did not search for her husband that evening because she thought that he was staying in town overnight. That “he sometimes used to sleep

somewhere else and sometimes at the house.” That a long time ago her husband had some previous trouble with the defendants, but of late they had been good friends,

“Q. Did you tell the sanitary inspector anything of what you had seen on the body of your husband when he came to examine the corpse of your husband?—A. I did not say anything because they went back to the town,

“Q. Where were the bruises, on the left or on the right side?—A. On the left side.

“Q. And nothing on the right side?—A. I did not notice it because my eyesight is not good.

“Q* * * Now tell me when the justice of the peace got there do you know what they did to the body of the deceased?—A. They examined it on the river bank.

“Q. Who examined it?—A. The sanitary inspector.

* * * * *

“Q. When the corpse was examined by the sanitary inspector at the river bank you were not present, isn't that so?—A. I was not.”

This is the substance of the evidence for the prosecution.

The defendants testified that on May 20, the three of them worked together on the school house; that after the day's work was done, and at the request of the deceased, they went to a store and drank a glass of wine; that in returning to their respective homes, it was necessary to cross the bamboo bridge which was old and shaky; that it was about 7 p. m.; that in crossing the bridge, the defendant Lavega was in the lead about 6 feet. The deceased was following him at a short distance, and Gallego was behind him; that the deceased stumbled and fell and in doing so lost his bolo which was under his armpit. That he slid down one of the supports of the bridge to look for his bolo in the bed of the river; that the water was about 8 inches above his knee. That Gallego offered his hand to help deceased up on the bridge, and he said: “No, I am going to cross this part of the river.” The defendants then crossed the bridge, and waited for the deceased, and seeing a man, whom they took to be him, they went home. In doing so, they stopped at his house and had a conversation with

his widow. On the following morning they again asked her about him, who told them he had not come home. The defendants with others then engaged in a search for him and later one of them with his companion found his body in the river, and removed it to a coconut grove on the bank, and notified the sanitary inspector. Both of the defendants flatly deny and contradict any incriminating testimony, or that there were any marks or bruises found on the body of the deceased. In this particular, their evidence is materially corroborated by Rafael de la Cruz, the municipal health inspector, who testified that he made a personal examination of the body, also by the evidence of Ambrosio Odi, the chief of the municipal police, and that of Pedro Ledesma, the justice of the peace. There is also evidence on behalf of the defendants tending to show that while they were going from the town to the bridge, they were quiet and orderly, and that no one heard their voices.

Simeon Maguidgad, 56 years of age, married and a farmer, testified that he was his second cousin; that the deceased for sometime had suffered from epilepsy for which he had personally treated him twice with salt and leaves of betel.

It appears from the almanac that on May 20, 1918, the moon was three-quarters full. The width of the river is not testified to by any witness. Neither is there any evidence of the space between the river and the bridge, or as to the length of the bridge.

The testimony is undisputed that the bridge was weak and old and shaky, and tends to show that its strength was not sufficient to support the weight of three men at any point, especially if two of them were engaged in throwing the third off the bridge. It is also undisputed that at the point where the body was thrown from the bridge, "the water in the river was 8 inches above the knee of the deceased." Yet two of the eye-witnesses claimed and testified that after it was thrown over, one of the defendants climbed off the bridge and kicked the body of the deceased as it was lying in the river, and that because the deceased did not then show any signs of life, he must have been dead when he was kicked.

The inquest was held about one p. m. on the next day, after the body was found, and in the presence of a large group of persons who were residents of the barrio. It was done in broad day light, and nothing was concealed, and the official record specifically recites that the deceased came to his death from drowning, and it shows upon its face that the widow was present at the examination and was called and testified as a witness. The star witness for the prosecution was also present and knew the purpose for which the examination was held. Yet at the trial three and one-half years later, he goes upon the witness stand and testifies that he never told the widow of what he saw, and that she never knew what he saw or to

what he would testify until the day of the trial.

The defendants are charged with the highest crime known to the law, and to sustain their conviction, the evidence must prove their guilt beyond a reasonable doubt.

We have given this case careful and conscientious consideration, and with all due respect to the trial court, the evidence before us is not sufficient to convict the defendants of the crime charged.

Cases of this importance, in particular, should be tried without delay, and the evidence for the prosecution should show all of the collateral and material facts as to the commission of the crime.

It appears from the testimony of Julian Dating and his daughter that they were on the other side of the river; that it was about 8 p. m.; and that they recognized the defendants by their voices. That they saw them go upon the bridge and throw the body of the deceased into the river; that one of them then climbed down and kicked the body of the deceased as it was lying in the river. In the absence of surrounding and collateral facts, this testimony is not credible or convincing. The same thing can be said as to the evidence of the star witness Francisco. His long and continued silence is very suspicious, and his reasons for it are not worthy of belief.

If upon that point the evidence of the eye-witnesses Francisco, Dating and his daughter is true, Julian Panzo was killed on the bank, and when the defendants took his body to and on the bridge, it was a lifeless corpse. That is to say, the defendants killed him on the opposite bank of the river from Dating, and his body was lifeless before it was taken on the bridge. Dating and his daughter both testified that after the body was thrown from the bridge, one of the defendants kicked it to see whether it was alive. In the very nature of things, after the body was thrown over the bridge, it would have sunk to the bottom of the river. To have kicked the body, as they testified, it would have been necessary for one of the defendants to climb down off the bridge, and kick the body as it was lying in 30 inches of water. That is unreasonable and incredible, and yet Dating and his daughter both testified to it as a positive fact.

Assuming that they saw anything, it is far more reasonable to believe that they saw the deceased fall on the bamboo bridge, as the defendants testified, and saw him climb down one of the posts of the bridge to look for his bolo which dropped in the river when he fell on the bridge.

Again, the evidence is conclusive that the record in the municipal blotter was made May 21, 1918, at the time the investigation was held. The body was then on the bank of the river in the presence of the widow and the defendants, friends and relatives of the deceased, and a large number of other persons who were attracted by the scene, all of whom saw the body, and there is no claim or pretense that during the investigation that anyone saw or testified to any bruises on the body or to any marks of violence. If the deceased died from strangulation, in the very nature of things, there would be conspicuous evidence on the neck and throat, and finger prints would have been clearly visible, and such evidence would not have been on one side of the throat, as the widow now testifies, but on both sides.

When notified, it was the duty of the officers to make a thorough investigation as to the cause of the death of the deceased and to examine his body for any marks or bruises for evidence of any crime. In other words, to ascertain the actual cause of the death. The official records show that they had the body before them and in their presence for that very purpose, and that in making the investigation, they called four different witnesses, including the widow of the deceased. That numerous persons were present and that everything was done in plain view of the public.

An attempt was made by the prosecution to show that the officers made a careless investigation. There is a legal presumption that official duty was performed, and to overcome that presumption, the proof must be clear and convincing in particular where it is sought to be done by parol evidence three years and a half after the official entry was made. Again, the evidence is conclusive that the defendants and the deceased were life, long, personal friends, and that they expected to work together on the school house the following day. No motive whatever is shown for the commission of the crime. Although the evidence for the prosecution apparently tends to show the guilt of the defendants, yet, in its final analysis, it is incredible and unworthy of belief. The three of them were personal friends returning home from a day's labor over a public bridge on a public thoroughfare on a moonlight night. The bridge was old, weak, and shaky. There is no evidence in the record of the surrounding, collateral, physical facts existing at the time. A delay of three years and a half in the trial, an attempt to impeach an official record made at the time of his death by parol testimony largely through a person who claimed to be an eye-witness, who maintained an unbroken silence for three long years.

The law has wisely provided that in criminal cases, the evidence must prove the guilt of the defendant beyond a reasonable doubt.

As we analyze the record before us, there is not only a reasonable doubt, but there is a very serious question as to the guilt of the accused. In fact, the proof of their innocence is much stronger than that of their guilt.

The judgment of the lower court is reversed, and each of the defendants is acquitted and discharged, with costs *de officio*. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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