

G. R. No. L-6357

[ G. R. No. L-6357. May 07, 1954 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARGADIO LUMAHANG, GUILLEHMO LUMAHANG., GENARO LUMAHANG, ZOSIMO LUMAHANG, AND CONSTANCIO LUMAHANG, DEFENDANTS, GENARO LUMAHANG, DEFENDANT-APPELLANT.**

**D E C I S I O N**

**LABRADOR, J.:**

From a decision of the Court of First Instance of Misamis Occidental finding Arcadio Lumahang, father, Guillermo Lumahang, Genaro Lumahang, Zosimo Lumahang and Constancio Lumahang, sons and brothers, guilty of the murder of Victoriano. Vicente, and sentencing each of them to suffer the penalty of life imprisonment, to indemnify the heirs of the deceased Victoriano Vicente, jointly and severally, in the amount of P5,000, with the accessory penalty provided by law, Genaro Lumahang has appealed. His counsel claims in his brief that said appellant was not at the scene of the crime and did not participate therein, but that he was then in his house.

The evidence presented by the prosecution shows, and it is not denied by the appellant, that on February 26, 1952, at about eight o'clock in the evening, while Victoriano Vicente and his son Cesar were walking home on the road from the market place of barrio Tuyabang Bajo, Oroquieta, Misamis Occidental, they were suddenly met by Arcadio Lumahang and his sons, who had been crouching on the road in wait for them; Guillermo, upon recognizing Cesar Vicente, who was ahead of his father, attacked Cesar with his bolo, but Cesar was able to escape and run away. Guillerrno gave up the pursuit and immediately returned to where his father was. It was then that Victoriano Vicente arrived at the place. Arcadio accosted him, and upon recognizing that it was

Victoriano, he informed Guillermo about it. Thereupon Guillermo flashed his light on Victoriano and immediately assaulted him with his bolo, his father and other brothers joining him in the attack. Victoriano received various wounds in the arms, in the face, and in the back, but was still able to run away, about fifty meters away from the place where he was first attacked. Cesar went to inform the police about the attack on his father, and the police found the latter dead on the road. A policeman went to the house of Genaro and there found, together with Genaro, Zosimo and Arcadio. Arcadio was found rolled in a mat, trying to hide himself, with a blood-stained bolo in his possession. The policeman also found a blood-stained scythe in the house of Genaro. The father and his sons were taken by the police, and Arcadio, Guillermo, and Gonstancio made written confessions admitting their participation in the assault on the deceased Victoriano Vicente. These affidavits were taken the day following the commission of the crime.

It was also shown that on February 16, 1952, a dance was held in the school building, wherein Guillermo and his brothers participated, Guillermo and his brothers danced even without having ribbons, in violation of a rule that only those with ribbons could be allowed to dance Cesar was the sergeant-at-arms on that occasion, and he called attention to the president of the dance that Guillernio and his brothers were dancing without the corresponding ribbons. Guillermo had asked that he also be pinned with a ribbon, but as he refused to pay the price for the ribbon, he was not given one. Notwithstanding this, he continued dancing. After this incident, Guillermo called his brothers together, telling them to prepare themselves for a fight and learn how to fence.

On February 26, about six o'clock in the evening, Guillermo saw Cesar in the market place and invited the latter to drink *tuba*, but Cesar refused. Afterwards Guillermo was seen with a bolo, but this bolo was taken away by Victoriano, Cesar's father. After this Guillermo disappeared in the market place.

Defendant-appellant Genaro Lumahang did not make any confession, and he asked for a separate trial for the presentation of his evidence.

The evidence submitted by the prosecution with respect to his participation in the attack consists of the testimonies of three witnesses. Basilio Pandac, the first witness, testified that at about eight o'clock in the evening of February 26, 1952, as he was going home and had just passed the school building, and was approaching that part of the road where there were many acacia trees, he saw Arcadio and his sons crouching near the road in wait for someone. Arcadio, Guillermo, and Zosimo were in a line, and behind them were Genaro and Gonstancio. As he passed Arcadio, the latter asked him who he was, and as he answered that he was Basilio Pandac, he was allowed to pass by. But as he walked farther on to the other two behind, Constancio suddenly attacked him with his scythe but was not able to hit him, because he immediately ran away and hid himself among the bushes beside the road. He stopped for a while to find out whether he had been wounded, and felt that he was not, although the weapon with which he was attacked had produced a rent in his khaki shirt. At that time there was light from a Petromax lamp about twenty meters away from where he was attacked, and with that light he was able to recognize Genaro and Constancio on the road near the acacia trees. Genaro was then wearing a red undershirt with short drawers.

Another witness, Policarpio Morales, testified that as he was also going home that evening at about eight o'clock, he saw Arcadio and his sons approaching the place where a Petromax lamp had been left. He saw Arcadio hit the lamp with a stick. The lamp had been left by the one who had been carrying it because of the commotion that had been seen on the road ahead. He saw Cesar Vicente approaching the place where Arcadio and his sons were, and he also saw how Cesar was pursued by Guillermo, and how Cesar's father Victoriano was simultaneously attacked by Guillermo and his brothers and their father. He declared that the father and all his four sons helped in the attack, and that he recognized Genaro as one of them, because he had recognized him while he was still crouching on the road before the attack took place.

The third witness is Cesar Vicente, who declared that from a distance of thirteen meters he saw Genaro actually slashing at his father just after he had been pursued by Guillermo. He said that with the flashlight

of Guillermo, he was able to see Genaro crouching on the road on his right side in front of him just before he was attacked, and that while his father was being assaulted, the light from the flashlight of Guillermo enabled him to recognize Genaro as one of the assailants.

The evidence submitted by Genaro to counteract the testimonies of the three eyewitnesses who testified to his presence at the scene of the crime, consists of his own testimony and that of his wife. His wife testified that on February 24, 25, and 26 Genaro, her husband, was gathering nuts from the land of one Rosenda Abuton; that late in the afternoon of February 26, Genaro went with her to the market place; that they went home together at sunset, their house being two hundred meters away from the market place; that when her husband arrived at their house, he attended to making ropes for the c&rabao, while she cooked food for their supper; that they heard shouts coming from the market place between six and seven o'clock in the evening; that at that time Arcadio, Guillermo, and Zosimo went to their house, confirming the fact that there had been trouble in the market place; that after supper she went to the house of the wife of Guillermo, who was sick, and that she slept there that night.

It is to be noted that the supposed presence of her husband in their house was before seven o'clock, while the evidence shows that the assault took place at eight o'clock in the evening. Considering that the house of Genaro is only two hundred meters away from the market place, and his wife went: away after supper at about seven o'clock, it is evident that her testimony does not exclude the probability of her husband's presence at the place of the assault, Genaro, for his part, declared that about seven o'clock in the evening he heard shouts coming from the market, after which his father and Guillermo and Zosimo arrived; that Guillermo told him that he had trouble with Victoriano Vicente, and that they had hacked at each other; that it was eight o'clock when Guillermo recounted the story to him; that after a while the authorities arrived and asked him to come down. He denied that he had attended the dance on February 16, 1952. He also denied the testimony of Basilio Pandac regarding his having been seen on the road on the evening of the incident, although he admits that he has no grudge

against Basilio Pandac. He claimed that the testimony of Policarpio Morales that he was seen on the road that evening is false, alleging that he had a misunderstanding with him, because he had thrown a bolo at the pig of Morales when the pig had destroyed his camote plants.

It is important to note that his father and his brothers who had made confessions stated therein that Genaro took part in the assault on Victoriano Vicente. While confessions of a co-conspirator are not ordinarily admissible as evidence against another co-conspirator, the fact that they implicate the latter and were made soon after the commission of the crime, is circumstantial evidence to show the probability of their co-conspirator having actually participated therein. Especially is this so in the case at bar, where the co-conspirator implicated is a son or a brother. Besides, if Genaro had not actually participated in the assault, he should have called upon his brothers to testify in his favor, which he did not.

There is no evidence worthy of the name that we may consider as corroborating Genaro's denial of his participation, that of his wife having been shown to be of no value at all. We have carefully read the testimonies of the witnesses who declared to have recognized him as among the five who were crouching on the road awaiting their victim, and we have not been able to see anything therein which may cast some doubt on their credibility. The claim of appellant that he did not participate in the commission of the crime must, therefore, be dismissed.

Finding no error in the sentence imposed upon the accused, including the defendant-appellant, the same is hereby affirmed, with costs.

*Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur*

