

101 Phil. 1061

[ G.R. Nos. L-5781-82. August 30, 1957 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF, VS. JOSE VILLAROYA, MANUEL DAET, ENRIQUE AREJOLA, JOSE MORALES, ALFREDO IBASCO, JR., ERNESTO TACORDA AND LORETO SELPO, DEFENDANTS; JOSE VILLAROYA, MANUEL DAET AND ENRIQUE AREJOLA, APPELLANTS.**

**PER CURIAM:**

The facts proved in these cases, as correctly narrated by the Solicitor General, may be summarized as follows:

On June 15, 1951, Domingo Curi met his son-in-law Enrique Arejola in Obo, Tinambac, Camarines Sur, and was requested by the latter to meet him on the following night in the house of Manuel Daet in San Vicente, also in Tinambac. Pursuant thereto, Curi went to the appointed place at 7:00 o'clock of the following evening and there he found Manuel Daet and his wife Cenona Toy, Jose Villaroya and Enrique Arejola, who were then discussing the plan to kill the spouses Felix Refugio and Victoria Toy that same evening. According to their plan, Daet was to shoot Felix Refugio, Villaroya was to stab Victoria Toy, while Arejola was to kill the dog; afterwards they were to carry the body of Felix Refugio to the railroad track to be run over by the train in order to remove any suspicion of foul play and that his death may appear accidental. Inasmuch as Curi overheard their plan, the group invited him to join them in their unholy mission, and when he demurred, Daet threatened him with bodily harm. So Curi had no other alternative but to go with them.

On that same evening Enrique Arejola, then armed with a long *bolo*, Manuel Daet carrying a home-made revolver, and Jose Villaroya who was armed with a .45 caliber revolver and a hunting knife, together with Domingo Curi, left Daet's place and walked towards the house of their intended victim Felix Refugio which was about 120 to 150 meters away. On nearing the place, Curi was told to stand guard from a distance of five meters from Refugio's house, while Daet, Villaroya and Arejola proceeded towards the stairs. At that hour, the main door of Refugio's house was open and the interior lighted with a petromax lamp. Felix Refugio was then upstairs, seated in front of a desk busy

writing and giving his back to the three intruders. As the latter were approaching, the dog which was chained to the stairway barked, whereupon Arejola struck it twice with his bolo on the head and body thus killing it. Almost simultaneously, Daet, from the foot of the stairs, fired a shot with his paltik at Felix Eefugio and then fled from the scene. Felix Refugio was hit on the back of his head and he slumped on the floor. Immediately afterwards, Villaroya and Arejola went up the house and meeting Refugio's wife, Victoria Toy, Villaroya stabbed her twice on the chest with his hunting knife. Meanwhile, Arejola took a can of petroleum from a corner of the house and after spraying the floor and walls with it, applied a lighted match thereto burning the house. As the fire spread inside the house, Villaroya and Arejola hurriedly carried down-stairs the limp body of Felix Refugio who was still alive. Arejola then took a pole from the eamarin in front of the house, and used it to carry the body of Felix Sefugio to the railroad tracks about a kilometer away. Domingo Guri accompanied Villaroya and Arejola, acting as their look-out, and upon reaching the railroad tracks, the latter two left the body of Felix Refugio making his head rest on the rails. Felix Refugio was still groaning at the time, and then Villaroja shot him on the back of the head thereby causing his death. Immeliately afterwards, Domingo Curi escaped from that place. (Exhibit 2.).

The charred remains of Victoria Toy were identified by her son-in-law Filoteo Cruz, from her ring and the 3 keys which she used to carry. On the other hand, the cadaver of Felix Kefugio was discovered by Angel Tobale along-side the railroad tracks covered 'by talakib and grass, and not far away, the bloodstained bamboo pole.

The post-mortem examination conducted by Dr. Pablo T, Platon on the remains of Victoria Toy-Kefugio show the following findings:

1. Carbonization of the whole body.
2. Brain substance carbonized.
3. Bladder; uterus; and small intestines partly carbonized.

Cause of death: Universal burn with secondary shock. (Exhibit C, p. 21, Record of case G. R. No. L-5781)

On the cadaver of Felix Refugio, the following are the findings of Dr. Platon:

1. Bullet wound penetrating skull at the region of the left occipital region. Wound was probed to a depth of 6 1/2 inches; course parallel to the base of the skull. Slug recovered.
2. Fractured skull—left parietal.
3. Fractured skull—right occipital.
4. Bullet wound; penetrating; just above the right scapula (inner border) with exit at the right side of the neck about 1 1/2 inches above the distal end of the clavicle (right) with the course of the bullet travelling upward and slightly inwards.

Cause of death—wound, bullet, at the left occipital region; with secondary shock; Homicidal. (Exhibit A, p. 19, Esc. of case G. R. No. L-5782).

Because of these and other facts that appeared at the investigation held by the local authorities, Jose Villaroya, Manuel Daet, Enrique Arejola, Jose Morales, Alfredo Ibasco, Jr., Ernesto Tacorda and Loreto Selpo were charged in two separate informations filed in the Court of First Instance of Camarines Sur. In the first case said defendants were accused of the crime of murder of Victoria Toy de Kefugio with arson (see CFI No. 2295— G. R. No. L-5781) and in the second of the murder of Felix Refugio (see CFI No. 2296—G. R. No. L-5782).

The two cases were tried simultaneously and at the conclusion of which the trial judge rendered a single decision finding Jose Villaroya, Manuel Daet and Enrique Arejola, guilty of complex crime of murder with arson and sentenced each of them to the penalty of death and to indemnify the heirs of Victoria Toy in the sum of P6,000. The same defendants were also convicted of the crime of murder of Felix Refugio, and each of them again were sentenced to death and to indemnify the heiry of Felix Kefugio in the sum of P6,000. The other accused : Jose Morales, Loreto Selpo, Ernesto Tacorda and Alfredo Ibasco, Jr., were acquitted in both cases.

From this decision Jose Villaroya, Manuel Daet and Enrique Arejola appealed to us and in this instance their counsel makes several assignments of error, ail of them dealing' on the weight of the evidence and the credibility of the witnesses.

The narration of the facts proved made at the beginning of this decision clearly shows

appellants' guilt of two crimes of murder. As the crimes are so serious and the penalty imposed by the lower Court is the capital punishment. We will proceed to consider said facts in the light of appellants' defenses interposed.

There is no dispute to the fact that the spouses Felix Refugio and Victoria Toy met violent deaths on the night of June 16, 1951. The principal controverted question in this appeal refers to the identity of the assailants, the prosecution maintaining that appellants were the killers, while the latter disclaim any participation in the crimes by putting-up a defense of alibi. The only eyewitness to the horrible event was Domingo Curi who positively identified appellants, one of whom, Enrique Arejola, is his own son-in-law, as the perpetrators thereof. With regard to this point, appellants assail the credibility of said witness because of alleged contradictions and by claiming that he was an old man of 51 years of age and illiterate, his memory being faulty and confused as to make his testimony "absolutely unreliable". For a man living in the country the age of 51 years does not turn a man very old as to affect his memory to make it faulty. In the second place the Solicitor General states:

"The rule is well established that contradictions in one's testimony do not necessarily render the entire testimony incredible, and that we are not to discredit "witness whenever ingenuity can develop the slightest inconsistency (People vs. Buada, 60 Phil. 863; People vs. Cu Unjieng, 61 Phil. 908; Wharton's Criminal Evidence, 11th ed.s 2332). In the instant case, the alleged contradictions pointed out by appellants, such as: that while in his direct testimony Curi declared that the dog was *barking* when it was slain, on cross-examination he stated that the dog was *sleeping*; that while at first he declared that appellant Daet shot Felix Refugio *after* Arejola killed the dog, later he stated that the shooting of Refugio took place simultaneously with the killing of the dog; and that while in his direct testimony he stated that immediately after the shooting, Daet went home thereby implying that he merely walked home, on cross-examination he stated that Daet ran away, are more apparent than real, and if at all, refer to unimportant details which do not destroy the effectiveness of the testimony as a whole. 'Deficiencies of translation and transcription and the lack of thoroughness in the examination of the witness have to be taken into account.'" (People vs. Mangcol, et al., G. R. No. L-2B44, June 30, 1950). Then again, truthful eyewitnesses do not always make perfect witnesses. We must not lose sight of the fact that a

witness has his own way of stating the facts as they are known to him and had come to his perception. Moreover, his degree of education, mental condition, and the solemnity of the court proceedings often account for many defective answers. But judges are trained to make allowances for all these, and consequently pay more attention to the sincerity of the witness and his willingness to tell the whole story. Likewise!, .it has already “been held that the testimony of an ignorant person is still worthy of credence (People vs. Dionlsio Villamin, G- R. No. 45301; U. S. m Burns, 41 Phil. 418), and indeed, simple country folk like Domingo Curi could not have fabricated, much less so clearly described in detail the events that transpired that fateful evening unless he had really witnessed it.

One significant circumstance which should not escape our notice is that no competent evidence has been introduced by the defense to show why Domingo Curi the principal witness for the prosecution should testify falsely against the appellants, one of whom is his own son-in-law. The testimony of Domingo Curi has been corroborated by the evidence subsequently unearthed, such as the wounds on the dog and the bullet wound on Felix Refugio found above the right scapula with exit at the right side of the neck (‘also the bullet wound penetrating- skull at the left occipital region). According to Dr. Platon, who conducted the autopsy, the bullet travelled upward at the angle of 30 degrees. According to Curi. Felix Refugio was sitting<sup>1</sup> before a table with his back towards the door when Daet who was on the ground shot him. Furthermore, the testimony of Curi is corroborated by Honesto Gacer, who declared that at about 7: BO in the evening of June 16, 1951, while on his way home from the store of Filoteo Cruz in San Vicente, Tinambae, he met appellants Villaroya and Daet in company with Domingo Curi going towards the house of the late Felix Refugio (pp. 85-86, t.s.n., Vol. Ill). Appellants now question the credibility of the said Honesto Gacer claiming that if it was true that he met the appellants and Curi on the night in question, it is strange that he did not greet them nor was he seen by them on that occasion. We believe the claim is without any merit.”

As to the reason why Domingo Curi was moved to testify in this case and even implicate Enrique Arejola, his son-in-law, the trial Judge has the following to say:

“Domingo Curi must either have been, motivated by a desire to tell the truth, or by a consuming hatred to induce him to state a falsehood. The possible motive given by the defense why Domingo Cwri testified for the prosecution was because Enrique Arejola had not followed the wishes of his father-in-law to stay in his land, but instead, had left the house of Domingo Curi with his wife and went to live in Bani; and that later Domingo Curi took his daughter Cresencia from the house of Enrique Arejola and brought her back to his house. According to Enrique Arejola, when he, tried to get his wife back, he was not even able to talk with his father-in-law, because he was chased with a *bolo*.”

Even assuming that this was true, the trial Judge did not believe that this reason is sufficient to impel Domingo Curi to testify falsely against all of the appellants and to subject them, including his son-in-law, to the highest penalty that can be imposed under the law. We, certainly, agree with His Honor.

It is already settled and enunciated in a long line of decisions of this Court, that the trial Judge that saw the witnesses testify and had opportunity to observe their demeanor and manner of testifying, is in a most preeminent position to gauge their credibility and, consequently, that his findings of fact must not be disturbed, unless the record shall show that some facts or circumstances of weight or influence have been overlooked, or the significance of which has been misinterpreted by the lower Court, or some conclusion established from the facts is inconsistent with those findings, or there is some inherent weakness in the evidence upon which the trial judge based his conclusion. (*Baltazar vs. Alberto*, 33 Phil 336; *People vs. Severino Labartene*, G. R. No. 6360-R., promulgated October 2, 1951. See also *People vs. Rorbano*, 78 Phil. 702, citing *People vs De Asis*, 61 Phil. 384; *People vs. Garcia*, 63 Phil. 296; *People vs. Masin*, 64 Phil. 757; *People vs. Macalindong*, 76 Phil. 719; *Hermenegildo Lao vs. Director of Lands*, 76 Phil. 719, citing *Baltazar vs. Alberto*, 33 Phil. 358; *Licad and Vitug vs. Bacani*, 51 Phil. 53; *U.S. vs. Ambrosio*, 17 Phil. 295; *U.S vs. Molad*, 27 Phil. 488; *Melliza vs. Towle*, 33 Phil. 345; *U.S. vs. Remigio*, 37 Phil. 599; *People vs. Cabrera*, 43 Phil. 64; *Corasay vs. Arquiza*, 53 Phil. 72; *Garcia vs. Garcia*, 63 Phil. 419).

The other defense raised by appellants is one of *alibi*. This Court has already held in numerous decisions that the defense of *alibi* is the weakest defense” that an accused can avail of, and cannot prosper where the accused has been positively and properly identified by the offended party. An *alibi* should be proved by probable evidence which reasonably

satisfied the Court of the truth of said defense. U. S. vs. Oxiles, 29 Phil. 587. Oral proof of *alibi* must be clearly and satisfactorily established because it is easily manufactured and usually so unreliable that it can rarely be given credit (People vs. Badilla, 48 Phil. 710).

As pointed out by the Solicitor general, "an alibi to be effective must be proved by positive, clear and satisfactory evidence which reasonably satisfy the court of its truth (People vs. Dizon, 76 Phil., 265, 42 Off. Gaz., 2766), and it has been held that an alibi is weak when it is only supported by witnesses found to be related by ties of relationship or friendship to the appellants as in the instant case (People vs. Japitana et al., 77 Phil., 175). and that even if the proof of alibi is supported by the testimony of witnesses, yet such proof cannot prevail when the identity of the appellants as the person who committed the offense has been established by eye witnesses and\* L-1713)."

As to appellants' motive for killing the spouses Felix Refugio and Victoria Toy, it is not difficult to find that bad blood had existed between appellants and their victim Felix Refugio.

Daet, and Villaroya on one hand and Felix Eefugio on the other, had filed mutual accusations and appellant Villaroya even made attempts upon the life of Felix Refugio even as early as 1948. The defense of Arejola also supplies the motive for Arejola's willingness to join appellants in a common cause to inflict harm upon the person whom they believed to have caused them damaged.

In criminal case No. 2295 (L-5781), appellants were prosecuted and found guilty of the complex crime of murder of Victoria Toy de Refugio with arson. To this the Solicitor General does not agree, for he holds that the crime committed in that case is murder qualified by evident premeditation. According to the post-mortem examination conducted by Dr. Pablo T. Platon on the remains of Victoria Toy de Refugio, the cause of death is said to be "universal burn with secondary shock" (Exhibit C, p. 21, rec. of case No. L-5781). Nothing is said that the stab wounds inflicted upon her by appellant Jose Villaroya was the cause of her death.

Article 248 of the Revised Penal Code prescribes the following:

Art. 248. *Murder*.—Any person who, not falling within tire provisions of article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With *treachery*, taking advantage of superior strength, "with the aid of armed men, or employing means to weaken the defense; or of means or persons to insure or afford impunity;
2. \* \* \*
3. By means of \* \* \*, *fire* (incendio says the Spanish text of the Code) \* \* \*, or with the use of any other means involving great waste and ruin;
4. \* \* \*
5. With *evident premeditation*;
6. With *cruelty*, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Arson as a means of killing a person is a qualifying circumstance of murder and in the case at bar can not be taken into account to form the complex crime of murder with arson (see Article 62, Nos. 1 and 2, RPC).

In connection with the death of Victoria Toy the following aggravating- circumstances attended the commission of the offense, to wit, that the crime was perpetrated with treachery, evident premeditation, cruelty, by means of arson and in the dwelling" of the offended party. The circumstances of night time and use of superior strength, the three defendants being armed, are usually included in the circumstance of treachery. One of the first four . circumstances can be used as qualifying and the rest as aggravating circumstances and there being no mitigating circumstances to offset the same, the penalty to be imposed upon each of appellants is death. (Article 64, No. 3, UPC.)

As regards Criminal Case No. 2296 (G. E. No. L-5782) appellants are found guilty of murder attended by the aggravating circumstances of treachery, evident premeditation and dwelling of the victim. The circumstance of evident premeditation may serve as qualifying circumstance while the other two as ordinary aggravating circumstance, and there being no mitigating circumstance to offset the same the three appellants are also sentenced to the capital punishment. (Article 64, No. 3, RPC.)

In view of the foregoing, the decision appealed from are hereby affirmed except in so far as the nature of the crime in G. R. No. L-5781 which is murder, with costs against



appellants. In the execution of this sentence, the provisions of Articles 81, 82 and 84 of the Revised Penal Code shall be strictly applied. It is so ordered.

*Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Endencia and Felix, JJ., concur.*

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\* People vs. Faltado, 84 Phil. 89.

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