

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. ROSARIO LAO, ET AL., DEFENDANTS, ROSARIO LAO AND ALBERTO PADIAMAT, DEFENDANTS AND APPELLANTS.*G.R. No. L-10473. January 28, 1961*

Ponente: LABRADOR, J.

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Appeal from a judgment of the Court of First Instance of Rizal, Hon. Hermogenes Caluag, presiding, finding Rosario Lao and Alberto Padiamat guilty of kidnaping with murder and sentencing each of them to suffer the penalty of reclusion perpetua and jointly and severally to pay to the heirs of Rosa Baltazar the amount of P6,000. In the information the other accused are Vicente Lao, Osias Feliciano and Bienvenido Santos alias Ben Culot. Vicente Lao was acquitted. The case against Osias Feliciano was dismissed and he was utilized as a government witness. Bienvenido Santos had not yet been apprehended at the time of the trial.

Vicente Lao and Rosario Lao are common-law husband and wife, residents of 550 Echague, Manila. They are engaged in poultry raising, maintaining a poultry farm at Mango Road, San Francisco del Monte. They had a store at No. 532 Echague, Manila where they sold the products of their poultry farm and poultry feed.

Osias Feliciano was a helper at the store earning a monthly salary of P30.00 in December, 1953, and had been under the employ of the spouses since December, 1953. Vicente Lao had another common-law wife in the person of one Rosa Baltazar. He already had two children by her in the month of December, 1953. She became his mistress as early as 1949, when she was still living with her father in Manila. In November, 1953, she was brought by Vicente Lao to the poultry farm at San Francisco del Monte to reside there and to supervise the work in the poultry farm, with the assistance of a maid by the name of Carmen Gutierrez.

Osias Feliciano testified as follows: About two weeks before December, 1953, Ben Santos came to the store of Mrs. Lao, with one Gorio. Before Ben Santos and his companion left the store, Mrs. Lao gave the former P5.00 for transportation. After they had left, Rosario Lao told Osias: "You know, I want Rosa to be taken away from the poultry farm. Since she had been living with your Manong, we have had bad luck in our business." (t.s.n., Vol. 3, p. 118). Osias answered that it was Up to her. The following day Ben Santos again came to the store between 2 and 3 p.m. and conferred with Mrs. Lao. That same afternoon a customer bought poultry feed from the store and as Osias had received the payment therefor he went to the table of Mrs. Lao to deliver the money to her. As Osias walked behind Ben, who was in front of the table of Mrs. Lao, Ben became alarmed and asked Mrs. Lao who he was, pointing to Osias. Mrs. Lao answered: "Oh, don't worry, he is a good man; we trust him." After that Ben followed Osias and asked him: "Are you really a good boy? Can we really trust you? To which Osias answered: "Yes, you can just ask Mrs. Lao how I am serving them." (t.s.n., Vol. 3, pp. 121-122). Ben further informed Osias that they (Ben and a companion) were taking Rosa from the poultry farm and then asked Osias if he slept there, to which Osias answered that sometimes he did. Then Ben told him that if he should go there to get the woman (Rosa) he must not cry for help, and not to tell the truth should anybody ask him if he knew the persons who

entered the farm. Osias promised to do so. Ben stayed with Mrs. Lao for about three minutes, and before he left, Mrs. Lao handed him a P20.00 bill. In the evening of December 4, 1953, Osias slept in the hatchery of the Lao poultry farm at San Francisco del Monte. At about midnight, while Osias was asleep, he was suddenly awakened by a stone thrown at his breast. He got up and saw Ben Santos and Padiamat. Ben told him to tell Mrs. Lao that they were not able to take Rosa because her doors were locked. After that Ben and Padiamat jumped over the wall and went away. The following morning when Osias went to Manila, he reported the matter to Mrs. Lao. Upon being thus informed Mrs. Lao remarked: "Mahina sila. Bakit hindi sila pumasok." (t.s.n., Vol. 2, p. 92).

The following day, December 5, at two in the afternoon, Ben and Padiamat went to the store of the Lao's at Echague Street. They sat in front of the table of Mrs. Lao who ordered black beer for them. It was then that Ben promised to take Rosa away on the 7th.

In the evening of December 7, Vicente and Rosario Lao, together with Osias, went in their car to San Francisco del Monte, arriving at their poultry farm at 11 o'clock that evening. Osias went down the car and then ordered a boy working in the farm to help him load five sacks of poultry feed in the automobile of the Laos. That night the boys working in the poultry farm asked the Laos to allow them to quit their work. However, the latter refused to grant them permission to leave, and instead told them to retire in their respective places, and then instructed Osias to spend the night in the farm. Osias prepared a bed in the hatchery. Before going to bed Osias put out the light but Rosa Baltazar asked him to open the light again as she had not yet finished reading. That night while Osias was lying in bed, he heard Rosa calling his name in a loud voice. As he turned towards her, he saw two men walking beside her, the trio heading for the hatchery. The two persons were Ben Santos and Alberto Padiamat. Padiamat was in fatigue uniform with an MP arm band and a sergeant's chevron. Ben Santos was also wearing a fatigue uniform and an MP arm band and a lieutenant's bar in his jockey cap and on his collar. Ben and Padiamat took Rosa to the back of the hatchery. There they climbed over the wall to the other side, taking Rosa along with them.

The following day, December 8, the kidnapping of Rosa Baltazar was reported to the Quezon, City police department, which endorsed the matter to the secret service. But it was not until January 9 that the mortal remains of Rosa Baltazar were found. A hole 2 feet by 4 feet was noticed beside a creek about 6 to 10 meters away. When the hole was dug they found the remains, a red sweater, a printed blouse, two handkerchiefs, one tied around the neck and the other tied about the hands of the victim. The post-mortem findings are as follows:

"A portion consisting of the head, neck and upper part of trunk below the mamma, to which the whole right upper extremity is attached. Soft tissues in moderately mummified state are still present except in the frontal and right parietal regions of the skull.

"Several loose dried bones entirely devoid of soft tissues consisting of—

Ten ribs—one fracture at shaft.

Five vertebra—one with broken body.

One scapula—only a portion.

One humerus—with broken off ends.

One radius—with broken off ends.

One ulna—with broken off ends.

Two pelvic bones—only portion of each.

Two femurs—with broken off ends.

Two tibia—with broken off ends.

"Abundant black straight hairs averaging 38.0 cm. long are present and still attached to scalp.

"Skull and cervical vertebrae intact.

"Anatomical features of parts indicate female sex.

"Probable age of the individual is below 22 years of age. (Exhibit "H").

The clothing found near the remains were identified by the maid of Rosa Baltazar. The teeth were also identified by Rosa's dentist. There is no question that the remains thus found on January 9 were those of the kidnapped woman Rosa Baltazar.

One of the persons investigated by the Quezon City detectives immediately after the kidnapping was Osias Feliciano. During the investigation, he denied knowing the persons who had taken Rosa Baltazar away from the farm the previous night. Subsequently, however, he changed heart. He said that as his conscience bothered him he decided to tell the truth and point out the persons who had actually committed the crime. So accused Alberto Padiamat was taken into custody and subjected to questioning by the National Bureau of Investigation.

In a statement (Exhibit "S") dated January 13, 1954, Padiamat made a confession admitting that it was he and Ben Santos who had taken away Rosa Baltazar from the poultry farm of the Laos at Mango Road, Quezon City, describing in detail the conferences that Ben Santos and he had with Mrs. Lao prior to December 6 and 7, how Rosa Baltazar was taken away from the poultry farm and brought to some distance therefrom and killed by a blow with a mason's sledge hammer found in a nearby quarry, and stating further that after Rosa had been killed, he (Padiamat) was ordered by Ben to dig a grave two feet wide, four feet long, and knee deep, in which the body of Rosa Baltazar was interred. Padiamat's confession, Exhibit "S", contains in detail the conferences that Osias described in his testimony before the Court. It also states the fact that upon receiving money from Mrs. Lao on December 5, after having promised to kidnap Rosa on the 7th, Ben Santos and Alberto Padiamat went to buy for themselves fatigue suits, MP arm bands, a sergeant's chevron and a lieutenant's bar.

It is worthy to note that in the same statement, Exhibit "S", Padiamat declares that the day following the abduction and killing of Rosa Baltazar, and after he had rested the whole day, he and Ben Santos went to the store of Mrs. Lao; that on that occasion Mrs. Lao told Ben that she had already learned from Osias the news of what happened in the poultry farm; that Mrs. Lao and Ben talked together and Mrs. Lao ordered beer for them; that later Padiamat was asked by Ben to go out and so Padiamat went out and stayed in a restaurant; that after he got tired waiting he went back to the store and asked Ben to go home; that they went away and on the way home Ben told Padiamat that Mrs. Lao had given him the sum of P400; that of this sum Ben gave Padiamat P200 upon reaching Ben's house; that about one week thereafter Ben brought Padiamat again to the store of Mrs. Lao in Echague and there Ben was given P200, of which amount he gave P100 to Padiamat.

On January 16, 1954, Padiamat again made another statement confirming the various statements contained in Exhibit "S". This statement was introduced at the trial as Exhibit "T".

At the trial Alberto Padiamat did not admit having signed Exhibit "S" voluntarily, but explained that he signed it after having been given a blow on the nose by Osias. He, however, denied the statements therein to the effect that he and Ben had received money from Mrs. Lao, and declared that it was Ben Santos who ordered him to wear a fatigue suit and who directed where Rosa was to be taken. He also denied that it was he who hit Rosa with a sledge hammer, declaring that it was Ben who boxed Rosa Baltazar, as a result of which she died. But he admits that it was he who dug the grave, upon orders of Ben Santos.

The above evidence is, in short, the basis of the conclusion of the trial court that the appellants are guilty of the offense charged. As appellants are represented by different attorneys, and have presented separate briefs, each of these will be considered separately.

We will now consider Padiamat's counsel's brief. It will be noted that appellant Alberto Padiamat, while admitting

having accompanied Ben Santos in the kidnapping of Rosa Baltazar, claims not to have done anything except to keep Ben Santos company and to dig a grave after Rosa was killed by fistic blows given by Ben Santos. Counsel de oficio argues that that portion of his confession, Exhibit "S", relating to his participation in the killing of Rosa Baltazar, by delivering blows on the back part of her head with a mason's sledge hammer, cannot possibly be true because had the sledge hammer introduced in court really been used to kill Rosa, the blow delivered at the back of the head would have produced a fracture in the skull and there would have been blood stains on the sledge hammer. However, it is argued, the medical examination showed that the skull was not fractured, and neither were blood stains found on the sledge hammer. The argument would be valid if there were evidence to show that the blow given was a strong one. However, there is no statement in Exhibit "S" that would indicate how strong the blow was. Since the blow came from behind, it is possible that only a slight blow was delivered, sufficient to down and kill her without producing a fracture in her skull. As to the absence of blood stains in the sledge hammer, it is not shown that the hammer had never been used for any other purpose after Rosa Baltazar was killed. In all probability it must somehow have been used during the period between December 7 and January 8, and the use had erased the blood stains, if there had been any. Counsel further argues that in the confession Padiamat and Ben returned the sledge hammer and shovel to the stone quarry near the place where the body was interred, when as a matter of fact the same were found in the house of Ben Santos. In answer to this argument, it may be stated that Ben Santos may have later on taken the hammer and shovel to his house in order to avoid detection, for fear that if the hammer and shovel were found in the quarry near the grave, identification of the owners of said instruments might eventually lead to the perpetrators of the crime. So we believe said instruments may have been removed from the stone quarry in which they were dumped, on the very same evening when the crime was committed or soon thereafter.

As appellant Padiamat admits having accompanied Ben Santos in the kidnapping of Rosa Baltazar, we do not believe that he merely performed the part of a spectator without actually helping Ben Santos in the commission of the crime. If, as Padiamat himself admits, he received orders from Ben Santos, it does not seem at all possible that Padiamat did not take part in the killing of Rosa Baltazar. But even admitting that his participation consisted merely in helping Ben Santos kidnap and bury the remains of the victim, that would not relieve him from any responsibility.

At any rate, we are not convinced about the truth of his modified story and we are more inclined to think that his confession, Exhibit "S", contains the true facts and circumstances surrounding the killing, no claim having been made and no satisfactory evidence having been submitted by him to prove that his confession was secured through force, intimidation or threat.

Counsel for appellant Rosario Lao argue that what makes the testimony of Osias Feliciano unreliable is the fact that he never once disclosed the plot to Vicente Lao, his master. The evidence, however, does not indicate that Osias worked directly under Vicente Lao so as to make Osias owe loyalty to him and not to his wife. Osias worked directly under Mrs. Lao, took orders from her and, perhaps, received his salary from her, thus making him more close and loyal to her than to her husband.

The presence of Osias in the poultry farm from which Rosa was taken away and his presence during the conferences between Rosario Lao and Ben Santos and later between Rosario Lao and Ben Santos and Padiamat would, it is also claimed, indicate the improbability of Osias' testimony. We think otherwise. Osias must have been brought to the poultry farm on the night of December 7 on orders of Mrs. Lao, in order to check whether or not the conspiracy was actually being carried out. This is very natural indeed. The presence of Osias at the conferences is explained by the fact that Osias was a helper in the store, running errands, acting as sales clerk, etc. Naturally, he was in the store on those occasions when Mrs. Lao, Santos and Padiamat planned the killing of Rosa

Baltazar.

Neither do we find any improbability in the incidents surrounding the taking away of Rosa Baltazar, as Osias described them. Osias knew when the two men came, that they were going to take Rosa away. As he had been taken into confidence by Mrs. Lao, it was but natural for him to pretend not to recognize the two men clad in army uniform.

We make the following observations on the argument of counsel that Osias' story is unworthy of belief. A person who refuses to believe can always find fault with any minor incident which is inconsistent with his own belief. So it is with counsel for the appellant Rosario Lao. They refused to believe in the testimony of Osias and, therefore, finds reason or ground for suspecting every statement he made. But this Court is duty-bound to review the evidence free from bias or prejudice. It is in this light that we have read the testimony of Osias as well as the testimonies of the witnesses for the defense. And our conviction after an impartial reading of the testimonies and other evidence, is that Osias told the truth. His story is not only rational, logical and direct but also corroborated in most of its essential details by the facts stated in the confession of the other appellant, Padiamat. We also take into account that the judge below who heard the witnesses testify believed the testimony of Osias. With this additional circumstance, we find no reason for refusing to believe his testimony.

Resuming what has been stated above, we find that the evidence submitted at the trial proves beyond reasonable doubt that the appellants Alberto Padiamat and Rosario Lao, participated in the commission of the crime, the former as principal by direct participation and the latter as principal by induction. The crime committed is not kidnapping with murder as stated in the title of the information, but murder, for the reason that the conspirators had planned to commit the latter crime, not that of kidnapping her first, and killing her later. (*People vs. Camo*, 91 Phil., 240). The crime is attended by the following qualifying and aggravating circumstances: On the part of Alberto Padiamat by the qualifying circumstance of evident premeditation, and the aggravating circumstances of nocturnity, abuse of superior strength and consideration of a price or reward; in the case of Rosario Lao, by the qualifying circumstance of evident premeditation. The appellant Padiamat should be sentenced to the supreme penalty of death but considering that he played merely a secondary role in the commission of the crime, there is lack of sufficient vote to impose said penalty; his sentence is, therefore, reduced to that of reclusion perpetua. Rosario Lao is sentenced also to reclusion perpetua. Both of them are to indemnify the heirs of the deceased, jointly and severally, in the sum of P6,000. with costs.

Bengzon, Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes and Dizon, JJ., concur.

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