

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
KUSAIN SAIK AND GUIAMA AKAN, DEFENDANTS AND APPELLANTS.***G.R. No. L-6406. January 30, 1960*

Ponente: ENDENCIA, J.

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Appeal from the decision of the Court of First Instance of Cotabato convicting Kusain Saik and Guiama Akan of the crime of murder with physical injuries, but this concerns only Kusain Saik as the appeal taken by Guiama Akan was, for failure to file his brief, dismissed upon our Resolution of June 20, 1956.

The Salamanca family, Ilocano immigrants to Cotabato, was living in the barrio of Central Mangilala, municipality of Buluan, Cotabato. On September 28, 1950, at about 2:00 o'clock in the morning, the family was awakened by the barking of dogs. Balbino Salamanca, 37, the head of the family, got up in order to find out what it was all about, and went to the doorway of his house. He was taken aback when he saw two persons, one standing at the "batalan" a meter or so away from the doorway, armed with a bladed weapon known as "panabas," and the other was at the foot of the stairs. He recognized the one in the "batalan" by the light of the moon as appellant Kusain Saik whom he had known for about eight years, and the one at the stairs as Guiama Akan. In his surprise, Salamanca asked, "Why?" but appellant said nothing and went down, and, together with his companion, both went under the house. Shortly thereafter, appellant, now carrying a gun, proceeded to a "camarin" about eight meters from the house, while Guiama Akan proceeded to the banana plants nearby. As soon as appellant reached the "camarin" and when Guiama Akan raised his right hand, appellant fired his gun hitting Balbino Salamanca on the left buttock. Salamanca pushed his wife and child who were standing also at the doorway, in an effort to save them from being hit, but before they could scamper away, two more shots were fired, hitting his son Romeo Salamanca, 14, in the abdomen, who died two hours later. The dress of his wife was also pierced with a bullet.

The evidence further shows that appellant had a grudge against him because when Balbino Salamanca reported the loss of his carabao to the chief of police of Buluan, he gave the name of appellant as the suspect, for in the morning of July 12th, 1950, he saw appellant pass by his place, and then saw him Again in the afternoon, looking at the place where the carabao was tied. That evening his carabao was stolen. Sometime thereafter, when Salamanca went to the municipal building of Tacurong, he saw appellant already detained and had a conversation with him regarding the carabao, and there appellant expressed his ill feeling towards Salamanca for having pointed to him as the author of the theft of the carabao. The evidence further shows that four days before the shooting, that is to say on the morning of September 25, 1950, appellant and a companion passed by the house of Salamanca. The latter asked appellant where he was going, who answered that they were going to Tantagan, another barrio. Ten minutes later, they came back pretending to buy salted fish, but Salamanca noticed their suspicious behavior as they were eyeing at him and looking under the house and immediate surroundings.

The crime was investigated by the constabulary soldiers stationed at Tacurong, who found at the premises in question three empty carbine shells and a slug (Exhibits E, E-1, E-2 and F).

Appellant in his defense tried to show that it was not he who fired the shots that killed the boy Romeo Salamanca and injured Albino Salamanca, but one surnamed Doliete. His version is as follows: He had known Albino Salamanca and his family before the war, and during the Japanese occupation Salamanca's family evacuated to the house of his father-in-law, Datu Abdul, and that his relations with the Salamancas were pleasant. That in the morning of September 27, 1950, a Wednesday, he went to the town of Buluan and saw Guama Akan in the street. There Guama Akan insisted in collecting the P50.00 he owed him; that inasmuch as he did not have money at the time, he asked Guama Akan to accompany him to the house at the barrio of Mangilala, which is about 10 kilometers away, because Doliete, who in turn owed him P200, had promised to pay him that day. Guama Akan agreed to go. That when they arrived at his house at about past 12:00 o'clock noon, appellant learned from his wife that Doliete had not as yet come, so they waited for more than an hour, but as Guama Akan was already impatient but resolute in collecting the P50.00, appellant went to his father-in-law but could not obtain cash. He then proposed to Guama Akan that they better go to Doliete's place at the barrio of Mangilala Proper, municipality of Tacurong, to collect. They left at about 3:30 in the afternoon and on their way they met Doliete, who was armed with a carbine, together with another moro. This was already after sunset, or about 6:30 in the evening. He told Doliete their purpose. Doliete, in turn, proposed that they go with him to Central Mangilala to collect from Albino Salamanca who also owed him, and it was understood that whatever Doliete could collect from Salamanca would be paid to appellant who in turn would pay to Guama Akan. They then proceeded to Central Mangilala, and upon arriving at Salamanca's house late that evening, Doliete told appellant to go up and call Salamanca, while Doliete stayed at the corner of the "camarin," carbine in hand, and Guama Akan stayed at the foot of the stairs. Appellant went up the house and said "good evening," whereupon Salamanca came out, told him to sit down, which he did, and offered him a cigarette. At this moment Doliete told appellant to keep away, so he started to go down, and saw Doliete aim and fire the shots; he then ran away, followed by Doliete who warned him not to reveal to anybody what happened. He proceeded to the house of his father-in-law, Datu Abdul, and passed the night there. On the following day, he told Datu Abdul about the incident, so the Datu took him to Datu Buto Mangodadatu, who in turn called Atu Bisano for counsel. That very same night he reported the incident to the mayor of Buluan and as a result Doliete was arrested, but was released after bribing his way out. That during the investigation conducted by the constabulary soldiers, he was told not to mention the name of Doliete and that he should admit that he was the one who fired the shots. He told the soldiers that he could not admit what they were saying, so he did not sign the statement prepared by them. In view of his refusal, he was maltreated. Appellant branded as false the testimony of Salamanca relative to the loss of the latter's carabao, because, according to him, he was never arrested by the chief of police as a result of Salamanca's alleged complaint, nor had he any conversation with Salamanca relative thereto. He further stated that his presence in Salamanca's house was merely to accompany Doliete and that he did not know that Doliete was going to kill Salamanca.

To bolster his defense, appellant presented the testimony of the chief of police, Alon Abdul, who testified that there was no report or complaint to him by Salamanca of the alleged loss of carabao; that he knows that Salamanca and Doliete are enemies due to a misunderstanding between the two over the destruction of Salamanca's crops by Doliete's carabao, but this matter was not, however, reported to him officially.

In rebuttal, the prosecution presented the testimony of Alberto Doliete whom appellant imputes as the actual killer. This witness stated that he was the treasurer of the Parent-Teachers Association in Central Mangilala, and as such, he attended its meeting held at the school building which began at 6:30 in the evening of September 27, 1950, and lasted up to about 1:00 o'clock in the morning of September 28th, in which he has taken active part in the discussions that ensued; that after the meeting, he went home with some of his companions, one of whom bought drink from his store and they all had a drinking party up to about 2:00 o'clock, after which he went to sleep. Doliete further stated that, it is not true that he and Salamanca are in bad terms as intimated by the chief of

police Alon Abdul, but that the fact of the matter is that Alon Abdul harbors ill feeling towards him which originated from the piece of land he had bought from the father-in-law of appellant. This land was being controverted by another moro, for which he sought the intervention of Alon Abdul as chief of police; that his request was however disregarded; that he reported Abdul's indifference to the provincial governor who, after hearing the facts of his complaint, referred the matter to the Fiscal's office for action, and this has been published in the Mindanao Cross, a local newspaper, Chief Abdul upon learning of the matter, met him on his return from Cotabato and threatened him as follows: "If the case is finally presented in court and you face me there, I warn you, you will see what happens." Doliete likewise testified that if appellant is trying to implicate him in this case, it was through the machinations of Alon Abdul. Lastly, Doliete stated that he is a very good friend of the Salamanca family not only because they are all Ilocanos like himself, but that they belong to the same religious sect.

The prosecution likewise presented as rebuttal witness Brigido Bellazar, president of the Parent-Teachers Association of Central Mangilala. He corroborated Doliete with respect to the latter's attendance at the meeting and as to the drinking party they had after the meeting, at Doliete's house. He likewise confirmed Exhibit H as the minutes taken down at said meeting wherein, according to him, it showed that Doliete took active part in the deliberations of the businesses transacted during the meeting.

The issue raised in this appeal is purely of credibility of witnesses. Appellant does not deny his presence at the time and place of the crime; in fact, he corroborates what Salamanca has testified that he (appellant) was in the "batalan" and another moro was at the foot of the stairs of Salamanca's house before the shooting took place. His main defense is that it was Doliete, and not he, who fired the fatal shots.

After a careful analysis of the record, we find that the version of the defense is not worthy of credence. First of all, it cannot be true that Doliete was the one who fired the shots which killed Romeo Salamanca and injured Balbino Salamanca, for Balbino Salamanca positively testified that "it was appellant whom he saw carrying a gun before the shots were fired. Salamanca could not have made a mistake in identifying appellant because he has known him for eight years and has recognized him by the light of the moon at the "batalan" of his house, which was only a short distance from the door where he was and which prompted him to ask "why?" Balbino Salamanca never made any mention of Doliete as appellant's companion and Doliete himself denied having gone to Salamanca's place at that time, 2:00 o'clock in the morning, for it was physically impossible for him to be at Salamanca's place then, it appearing that at about that time they were having a drinking party at his house which is several kilometers away from the scene of the crime and the distance had to be negotiated on foot.

It was intimated by the defense that Doliete harbored an ill feeling towards Balbino Salamanca by reason of Doliete's carabao having gone astray in the plantation of Salamanca. This cannot be true either, because if any ill feeling had been there at all, it could not have come from Doliete who owned the carabao but from Salamanca who owned the destroyed crop. Besides, Doliete himself denied having had any tiff with Salamanca as, according to him, they are not only friends and fellow Ilocanos but that both of them belong to the same religious sect. On the other hand, Doliete attributes the bias in the testimony of chief of police Alon Abdul relative to such ill feeling, to the incident between the two which culminated in the Governor's indorsing the matter to the provincial fiscal and in Abdul's threats of what would happen to Doliete should the case finally land in court.

Appellant further contends that he just happened to accompany Doliete to collect a debt from Salamanca so that Doliete could pay appellant what the latter was collecting, and also in order that appellant could pay off the P50 which, he owed Guiana Akan. This chain collection of debts which began in the morning of September 27th and ran far into the night until the shooting occurred, is out of the ordinary and hard to believe. To begin with, were it true that appellant owed Guiana Akan P50, the most natural step was for the latter to see appellant in his own

house at Central Mangilala and not, as testified to by appellant, for Guiama Akan to press collection at a chance meeting they had at the town of Buluan in the morning of September 27th, which is 10 kilometers away from appellant's house. Now, even assuming for a moment that appellant owed Guiama Akan, he could have simply promised to pay him as soon as he had the money, and he had no reason for inviting Guiama Akan to go with him to Central Mangilala, several kilometers away, and there to wait for Doliete who allegedly promised to pay him that same day. We do not believe either that Doliete ever owed appellant, not only because there is no showing in the record how and why Doliete happened to be appellant's debtor as pretended, but that Doliete himself denied owing appellant and positively stated that he had already paid in full since 1947 for the land he had bought from appellant's father-in-law, Datu Abdul,

Appellant insinuates that Doliete had already made up his mind to kill Salamanca when he and Guiama Akan met him on their way to Doliete's place to collect, because Doliete was already carrying a carbine and was accompanied by another moro. It is unthinkable for Doliete to propose to appellant and Guiama Akan to accompany him to Salamanca's place to collect what Salamanca allegedly owed Doliete, because if this were true, Doliete would not have the rudeness to collect a debt from a friend in the dead of the night; and if Doliete were bent on doing mischief to Salamanca, he would not have the stupidity of inviting witnesses to his nefarious scheme.

Doliete satisfactorily explained that it was through the machinations of the chief of police Alon Abdul against whom he had filed a complaint with the Governor that he was implicated in this case, and that through the chief of police he was detained in the constabulary barracks at Tacurong for one day. His release from custody by the constabulary authorities and the fact that he was not included in the information filed by the fiscal, convince us that Doliete is innocent of the imputations against him.

The decision appealed from sentences appellant to "cadena perpetua" for "murder with physical injuries" and to indemnify the heirs of the deceased Romeo Salamanca, jointly and severally with Guiama Akan, in the sum of P3,000. The Solicitor-General points out that the crime committed in this case is murder for the killing of Romeo Salamanca and slight physical injuries for the injuries suffered by Albino Salamanca, which do not spring from one single act, and that the aggravating circumstance of dwelling be taken against appellant, and recommends the penalty of death for the murder, *arresto menor* for slight physical injuries, and that the indemnity be raised to P6,000. We agree with this recommendation. However, in view of lack of sufficient votes, the death penalty should be, as it is hereby, reduced to *reclusion perpetua* (not *cadena perpetua*) and 30 days *arresto menor* should be imposed for the slight physical injuries. With the modifications above indicated, the decision appealed from is affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, and Gutierrez David, JJ., concur.

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