

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS, LEOPOLDO DOMENDEN AND EUFEMIO SEGUNDO, DEFENDANTS AND APPELLANTS.

*G. R. No. L-17822. October 30, 1962*

Ponente: PAREDES, J.

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### PAREDES, J.:

On the night of January 15, 1958, Jovita Antolin, her son Pedro Antolin Jr., Norberto Vargas, Jaime Foronda and Jovencio Ismael went to see a zarsuela being shown at barrio Luna, Burgos, Ilocos Sur, on the occasion of the barrio fiesta. After the zarsuela, at about 1:00 a.m. on January 16, 1958, the five took the road home hiking in barrio Dayanki. Jovita saw the accused Leopoldo Domenden and Eufemio Segundo walking about 2 1/3 meters ahead of them, on the right side of the road. When the group of Jovita had overtaken the accused and was almost side by side with them, the accused hurried their pace, advancing a little to the front.

And after looking at Foronda and Ismael, the two accused suddenly retreated to the right, kneeled and without any warning, loosed a fusillade in rapid succession with their guns a—.45 caliber pistol and a carbine. When Jovita saw Foronda and Ismael fall, she rolled on the ground reaching the shoulder of the western embankment. Before she could recover from her fall, Pedro Jr. called "Mamang, my abdomen was hit". Jovita raised her head and shouted at the accused, saying "Oh Pemyong and Poldo, what a crime you have committed. Why did you shoot us in an unexpected moment?" For answer, the two accused turned their guns on Jovita and Domenden shot her below the right shoulder. And as Ismael was crying and shouting for water, the accused kicked him until he rolled to the culvert in the ditch. To find if Jovita was still living, accused Domenden placed his foot under her body and pushed her face upwards, but Jovita feigned that she was already dead and tried hard to hold her breath, inspite of the fact that Domenden had stepped on her stomach. After one of the accused had remarked that all were dead except the boy, and that he would soon die also, the assailants hurriedly went home. Jovita, benumbed, crawled to her son Pedro Jr. who told her he was hit in the abdomen. Jovita, with much effort, reached the house of Tomas Mina, in front of which the incident occurred. Mina refused, out of fear, to carry Pedro Jr., but sought, upon Jovita's request, the help of barrio lieutenant Mauro Directo and councilor Julian Carta. When help arrived, Jovita and her son were transported in a jeep to the Provincial Hospital at Tamag, Vigan, Ilocos Sur. That was 3:30 in the morning. At 5:00 o'clock in the afternoon, Pedro Jr. expired despite medical treatment.

According to the autopsy report of Dr. Jesus Degala, municipal health officer of Burgos, Ilocos Sur, the deceased Jovencio Ismael sustained four (4) gunshot wounds—one (1) at the left forearm, one (1), at the middle of the left buttock; one (1) at the right buttock, all thru and thru, and one (1) penetrating into the thoracic cavity, the entrance of each was about 3/4 cm. in diameter (See Exh. A for a more detailed description, p. 11, Record). The deceased Jaime Foronda received five (5) gunshot wounds—one (1), at the occipital region; one (1), at the right buttock, both thru and thru, one (1) at the thorax; one (1) on the right buttock and one (1) on the left buttock, the entrance of each, ranges from about 3/4 to 1 1/2 cm., in diameter (See Exh. B for a more detailed description p. 12).

According to Dr. Estela Cariaga, resident physician of the Ilocos Sur, Provincial Hospital, Pedro Antolin, Jr., died due to severe hemorrhage, secondary to gunshot wound, which is more particularly described as follows:

"WOUND, gunshot, thru and thru at lateral lumbar 1/2 cm. in its widest diameter lacerating the small intestines 3 times; exit left iliac region stellate shaped with loops of small intestines coming out." (Exh. C, p. 30 rec.)

and Jovita Antolin sustained one (1) gunshot wound, thru and thru, 'entrance, right shoulder 1/2 cm. wide, penetrating the thoracic cavity, making its exit at the right posterior hemithorax stellate shaped about the level of the interior angle of the right scapular' (Exh. D) which would have caused her death had it not been for timely medical treatment and assistance.

The accused offered an alibi, as defense, and a flat denial of the imputations made by the witnesses for the prosecution against them, regarding their participation.

The accused Eufemio Segundo tried to prove that at about 7 o'clock p.m. of January 15, 1958, he took supper with his wife and children in their house, at the poblacion of Burgos, only 70 meters from the municipal building. At about 11 p.m. one Alfredo Basconcillo asked if he could borrow a flash light. When Segundo was about to deliver the flash light, he saw persons carrying someone (Teofilo Vitalis) to the municipal building. As he was informed that Teofilo Vitalis was stabbed, he decided to go with Basconcillo to the municipal building. There he saw Atty. Bernardino Segundo and the Chief of Police of Burgos (Orlando Quidaiigen) investigating Vitalis. Policeman Jose Rosario and accused Leopoldo Domenden were, at the time, also in the municipal building. A few minutes later, the Chief of Police, Rosario, Segundo and Domenden heard a burst of gunfire. Not long thereafter, policeman Emilio Manogan arrived and reported that a man was lying on the road in barrio Dayangki. The Chief of Police and some policemen proceeded to investigate the incident, accused Domenden stayed in the municipal building and Segundo went home. Explaining the motive why Jovita and Norberto Vargas testified against him, accused Segundo averred that when he was a policeman, he used to raid the gambling den being maintained then by Jovita and Norberto.

The accused Domenden, endeavored to show that on said date January 15, 1958, he was on duty, as policeman in the municipal building from 12:00 p.m. to 6:00 the following morning; that although his tour of duty should start at 12:00 p.m., he was already at work at 11:00 p.m. because Teofilo Vitalis, wounded, was brought to the municipal building; that the Chief of Police caused a nurse and a lawyer to be called; that the lawyer (Atty. Segundo) was taking the statement of Vitalis, when they heard a burst of gunfire, followed by the arrival of policeman Manogan who reported that a person was killed on the road in barrio Dayangki and that policeman Manogan and Rosario went to the place of incident, but accused Domenden stayed, to guard the municipal building.

Predicated upon the above evidence, the trial court returned a verdict of guilty and sentenced the accused as follows:

"For each of the multiple murder, the accused Leopoldo Domenden and Eufemio Segundo are each sentenced to suffer reclusion perpetua or life imprisonment, with the accessory penalties prescribed by law, to indemnify jointly and severally the heirs of the deceased Jaime Foronda, Jovencio Ismael and Pedro Antolin, Jr. each in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the principal penalty, and to pay one-half (1/2) of the costs.

"For the frustrated murder committed against Jovita V. Antolin, the Court further sentences the accused Leopoldo Domenden and Eufemio Segundo each to suffer an indeterminate penalty ranging from 4 years, 2 months, and 1 day of prision correccional to 12 years and 1 day of reclusion temporal, with the accessory penalties provided by law, and to pay one-half of the costs."

Upon denial of their motion for reconsideration and new trial, the accused appealed to this Court and alleged that the trial court committed error (1) In giving full credence and weight to the evidence of the prosecution; (2) In not acquitting the appellants; (3) In finding both the appellants guilty of frustrated murder with respect to Jovita Antolin; and (4) In denying new trial.

No less than two eye-witnesses identified the accused Eufemio Segundo and Leopoldo Domenden and narrated how, with treachery, they fired and killed Jaime Foronda, Jovencio Ismael and Pedro Antolin, Jr. and injured Jovita. Being one of the victims herself, Jovita must have tried hard to recognize their assailants. In fact, she was shot because she called the nick names of the accused and to eliminate witnesses, the accused turned their guns on her. There can be no doubt regarding the ability or opportunity of Jovita and/or of Norberto Vargas to identify the accused. They were acquainted with the appellants prior to the incident, and were only about 2 to 7 meters away from appellants when the latter started the fusillade. When the shooting occurred, the vendors and those who attended the zarsuela who were also on their way home and were immediately ahead and behind the group of Jovita, carried with them hasags and kerosene lamps, which illuminated the scene of the crime. The moon was then beginning to rise. Immediately before they were ambushed and while Jovita was side by side with appellants, she clearly saw and recognized the appellants. From his hiding or vantage place, where he sought cover after the first shot. Norberto Vargas also saw the appellants shoot Jovita and kick the body of Ismael.

It is contended that when Jovita was investigated by the Chief of Police, after the incident, at the veranda of the house of Tomas Mina, she said that because it was dark, she did not recognize their assailants. Granting this to be true, for the sake of argument, she explained, however, that as her son Pedro was found in a very serious condition and she herself was wounded, she had to see first that her son was brought to the hospital for medical treatment; which was the most natural thing for her to do. But the following day of the incident, she gave her statement to Sgt. Narciso Cabrera in the presence of the Justice of the Peace of Burgos. And on the same day also (January 17, 1958), Norberto Vargas gave his statement before the same Sgt. Cabrera, in the presence of Pfc. Aurelio Dagdag. In both statements, the two witnesses pointed to the appellants Segundo and Domenden as the assassins.

It is likewise contended that Vargas had also admitted to barrio lieutenant Cayetano Berras, Mayor Jose Lugayan and Atty. Segundo that he, too, was unable to identify the assailants because it was dark at the scene of the crime then. The testimony of these defense witnesses, should be taken with a grain of salt. The alleged admission was completely denied by Vargas who asserted that in 3 successive days in October, 1958, (while the case was already pending in court), appellant Domenden, accompanied by his counsel, Atty. Segundo, Atty. Debadeb and a policeman, tried to convince him (Vargas) to sign a prepared affidavit repudiating the first statement identifying the appellants and that Atty. Segundo even dropped some money into Vargas' pocket which he threw back, because he did not want to sign the said affidavit. Moreover, if it were true that Vargas had made such admission, it is strange that Mayor Lugayan or Atty. Segundo did not reduce it in writing, considering its vital importance to the defense.

The records disclose, that neither Jovita nor Vargas had any motive to testify falsely in so serious a crime as that committed. Appellant Domenden admits that he had no misunderstanding with Jovita prior to the incident. They were close friends and even joked each other. Appellant Domenden could offer no reason for Vargas' testimony. Appellant Segundo declared that he had no misunderstanding with Vargas, although with respect to Jovita, he supposed she might have been angry with him, because when he was still a policeman, he allegedly used to raid her gambling joint. But this did not pass beyond a mere supposition. And even at that, we do not believe it would be a sufficient cause for the state witness to impute falsely, the commission of a wholesale murder by the appellants, if the latter were not really seen by said witness.

It is almost trite to be repeating herein, that appellants' alibi is weak and unconvincing, notwithstanding the

herculean efforts of counsel to convince the court that the testimony of the Chief of Police Quidañgan, policeman Rosario, barrio lieutenant Basconcillo and defense counsel Atty. Segundo, is veracious. For, with the exception of their lawyer, all of said witnesses were members or former members of the local police force who because of their close relationship with appellants, can not be expected to testify truthfully. Mina Segundo who testified that her husband (appellant Segundo) was in the municipal building on the night in question is necessarily biased. According to appellant Domenden, his tour of duty was supposed to start at 12:00 o'clock midnight. Yet, he reported for duty at 11:00 p.m., unusually early. It was not explained why policeman Domenden, a resident of barrio Dayanki, the situs of the killing, was not brought by the Chief of Police who was accompanied instead by Pat. Rosario whose tour of duty had already ended. Nor was it explained why appellant Segundo who was all curiosity personified when he allegedly went to the municipal building to see the wounded Vitalis, did not continue the same attitude, upon hearing the killing in question, to see who the victims were. He just went home and did not join the party of the said Chief of Police. The distance from the scene of the crime to the municipal building was merely 2 1/2 kilometers; the house of appellant Segundo was only 70 meters from the municipal building. It was not impossible for them to have committed the offenses charged and returned unnoticed to their respective places. In the face of the positive, direct and straightforward testimonies of the eyewitnesses, identifying the appellants as the assassins, the alibi, unreliable and weak as it is, "vanishes into the thin air."

What could be the motive behind the killing? A few hours before the incident, the deceased Jaime Foronda and appellant Domenden had an altercation (Exh. 3 p. 4). Appellant Domenden harbored resentment against Jovita, because he suspected her of having maintained illicit relations with said Foronda. Pedro Antolin, husband of Jovita, who was then working with the army, in the United States, is a close relative of appellant Domenden. When Domenden's uncle Anastacio, was killed by one Rosalino Quinto on January 15, 1959, the deceased Foronda shielded Quinto and threatened to shoot Domenden's relatives who wanted to get even with the Quintos.

It is claimed that the trial court had erred in not allowing a new trial on the basis of the retraction made by Jovita Antolin and Norberto Vargas or on the affidavit of Anacleto Zamora (Exhibits A, C, C-1 and C-2). In their retractions, Antolin and Vargas wish the Court to believe, that they were not able to identify the assailants and in the affidavit of Zamora, the latter pointed out Ernesto, Pedro, Rodrigo, surnamed Dasalla and Delfin Gapusan, as the assailants. It is easy to see that these affidavits do not constitute newly discovered evidence; and even if they are, they would not alter the result of the case, in view of the evidence adduced in the trial. The motion for new trial was therefore, appropriately denied by the trial court.

There being conspiracy, both appellants are responsible for the gunshot wounds inflicted by appellant Domenden upon Jovita Antolin, which wounds would have produced the crime of murder as a consequence of the acts of execution performed by him, which did not, however, produce it, by reason of causes independent of his will. Appellants are, therefore, correctly found guilty of frustrated murder committed on Jovita Antolin.

In view hereof, the guilt of appellants Leopoldo Domenden and Eufemio Segundo of the crimes charged, has been proven beyond reasonable doubt. The decision appealed from, being in accordance with law and the evidence, is hereby affirmed, with costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Dizon, Regala and Makalintal, JJ., concur.

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