

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PRIMITIVO SALAS, GREGORIO SUSAYA AND ALEJANDRINO
LASMARIAS, DEFENDANTS. GREGORIO SUSAYA AND ALEJANDRINO
LASMARIAS, DEF...**

G.R. No. L-35946. August 07, 1975

Ponente: CASTRO, J.

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CASTRO, J.:

This is a mandatory review of the judgment dated February 17, 1970 of the Court of First Instance of Agusan del Norte and Butuan City, in criminal case 2679, finding Gregorio Susaya guilty of murder as principal by direct participation and imposing upon him the death penalty, and finding Alejandrino Lasmarias guilty as accomplice and sentencing him to an indeterminate penalty of ten years of prision mayor as minimum, to seventeen years and four months of reclusion temporal as maximum, with all the accessory penalties provided by law. The same judgment condemns Susaya and Lasmarias to indemnify, jointly and severally, the heirs of the deceased Fortunato Lucino in the amount of P12,000 (without subsidiary imprisonment on the part of Lasmarias in the event of insolvency), and to share the costs proportionately.

The information dated September 20, 1963, filed on September 24, 1963, charges Susaya, Lasmarias, and Primitivo Salas[1] with the murder of Fortunato Lucino committed on August 27, 1961 at Lawis, Nasipit, Agusan.

It appears that at about 9:30 in the evening of August 27, 1961, some assailant or assailants shot Fortunato Lucino in the vicinity of or under his daughter's house in Lawis, Nasipit, Agusan, while he was preparing his fishing paraphernalia. His children, Isidoro Lucino and Felipa Bartido, accompanied by Philippine Constabulary soldiers who subsequently arrived at the scene of the incident, brought him to the municipal building where he died.

That same evening, the municipal health officer conducted a post-mortem examination on Lucino. The said officer reported as the cause of Lucino's death "Internal hemorrhage, 2 to gunshot wound, right upper abdomen."

Two days later, or on August 29, 1961, Isidoro Lucino, in an affidavit submitted to the chief of police of Nasipit, Agusan, named his father's assailants, thus; "GREGORIO family name unknown, PRIMITIVO SALAS alias Tiboy, and the other one known only as Dino." The following day, August 30, 1961, Felipa Bartido, in an unsworn statement, named her father's assassins, thus: "GREGORIO, whose family name I do not know, and Primitivo Salas, alias Tiboy." It is significant that neither Isidoro nor Felipa ever mentioned the names of the assailants of Fortunato Lucino to the PC soldiers when the latter were at the house of Felipa in the evening of August 27, 1961, or when they were on their way to the municipal building that same evening.

Arraigned on February 25, 1965, Susaya and Lasmarias pleaded not guilty. After due trial — at which Isidoro Lucino and Felipa Bartido testified for the prosecution, and eight witnesses,[2] for the defense — the court a quo rendered the judgment of conviction dated February 17, 1970.

Posed squarely as the sole issue is the question of the identities of Lucino's slayers.

I. Susaya and Lasmarias impugn the testimonies of Isidoro Lucino and Felipa Bartido, pointing to inconsistencies, contradictions and improbabilities in their declarations.

Isidoro Lucino testified that about 7 o'clock that hapless evening, he delivered fish to his sister Felipa Bartido at the latter's house in Lawis, Nasipit, Agusan, where Fortunato Lucino lived. He partook supper in the said house with his father, his sister, his brother-in-law Leoncio Bartido, Andres Villareal, Onofre Villareal and Andres Montederamos. After supper, he retired to the veranda, sat near the window, and listened to a radio broadcast of a political meeting.

At about 9:30, he heard, from about 10 meters away, a rifle shot. He looked out of the window. After about a minute, he heard a second shot, followed by the outcry of his father, "Pepang, help, I am already dead." He also saw three persons running away, and, in the moonlight, recognized them as Susaya, Lasmarias and Salas. Susaya held a carbine, Salas carried a pistol, Lasmarias carried a small firearm the make of which he (Isidoro) could not identify.

His sister then rushed to the scene to find out what happened to their father. However, he (Isidoro) remained in the house until the PC soldiers arrived. Subsequently, they all brought his father to the municipal building where the latter, despite medical treatment, expired.

Isidoro also declared that a week before March 19, 1965 (the date he testified), Susaya and Lasmarias offered to pay P1,000 in settlement of the case, but his brothers and sisters refused the offer.

Felipa Bartido testified that at about 9:30 in the evening in question, she watched, from the balcony of the kitchen, her father wend his way to the baroto to go fishing. While she thus watched, she heard two gunshots. She heard her father's outcry for help after the second shot, whereupon she rushed out to help him.

Felipa also declared that Susaya fired the first shot and that the latter had a companion, Salas. She also declared that on two occasions (March 6 and 11, 1965), Susaya and his wife offered P200 in settlement of the case, but she and her brother Isidoro rejected the offer.

No firearms were presented in evidence by the prosecution.

Our painstaking analysis of the testimonies of the two alleged eyewitnesses reveals serious inconsistencies in their declarations, grave self-contradictions in their narratives, and consequential improbabilities in their statements — all on points material to the matter of the identification of the slayers of Fortunato Lucino.

A. Isidoro and Felipa disagree on a number of important points. (1) Isidoro stated that when he arrived at his sister's house at about 7 o'clock in the evening in question, he found her at home; Felipa said that at that time, she met Susaya in front of the chapel, some distance away. (2) Isidoro stated that the veranda of his sister's house had one window; Felipa stated that it had two windows. (3) Isidoro declared that at the time of the incident, seawater had reached the posts at one end of his sister's house; Felipa declared that at that particular time, no seawater had yet reached the said posts. (4) Isidoro testified that his father was standing on a bundle of logs resting on the water when he was shot, and that his father fell on the water; Felipa testified that her father was on dry land going to the baroto when he was gunned down and that he fell on dry land. (5) Isidoro claimed that he saw three persons running away, whom he identified as Susaya, Lasmarias and Salas; Felipa was certain that she saw only two persons running away, whom she identified as Susaya and Salas. (6) Isidoro averred that Susaya and Lasmarias offered to pay P1,000 in settlement of the case; Felipa asserted that Susaya offered only P200.

B. In several instances, Isidoro and Felipa seriously contradicted themselves on material and crucial points. Isidoro said that he looked out of the window upon hearing the first shot, but when asked to explain how he did it,

he said he made a sudden or split-second peep through the window; he stated that he made a sudden or split-second peep through the window once, but when further questioned he stated that he remained peeping through the window; he declared that when he peeped through the window, he saw three persons running away, with their backs towards him, but later declared that "when [he] saw their faces, they ran away immediately." Felipa testified that after hearing the second shot, she rushed to help her father, but when further questioned she testified, "I did not go to my father. What should I do to him when he is already dead;" Felipa claimed that she heard two shots and ran down to her father after the second shot, but on cross-examination she stated, "While I was running my eyes were focused on the firing while my attention was to my father."

C. Isidoro and Felipa made inherently incredible statements.

Isidoro stated that upon hearing the first gunshot, he looked out of or peeped through the window, and that those with him listening to the radio immediately lay flat on the floor. Felipa declared that she witnessed the shooting incident from the balcony of the kitchen, and that her husband and children immediately lay flat on the floor upon hearing the first gunshot.

Normal human instincts and the common promptings of human nature dictate a reaction utterly different from those of Isidoro and Felipa. A person who hears a gun fired at night at a close distance would, in fear and alarm, instinctively lie flat on the floor or seek a safe corner or be immobilized; he would not dare expose himself recklessly to an unknown gunman and an unseen danger. His fear for his life would quell and still whatever curiosity he might have.

It is more believable that upon hearing the first gunshot Isidoro and Felipa, like their companions in the house at that time, also immediately lay flat on the floor or were rendered immobile; thus; Isidoro declared that, after hearing the gunshots, he "kept silent" and "did not move," afraid that he might be next, that he remained in the house, and that he went down the house only when the PC soldiers arrived.

Both Isidoro and Felipa testified that immediately prior to the shooting incident, they were listening to a radio broadcast of a political meeting. Isidoro said that he heard, from about 10 meters away, the outcry of his father. Likewise, Felipa stated that she heard the same outcry from about "8 fathoms"[3] away. In their separate statements submitted to the chief of police of Nasipit, Agusan, both Isidoro and Felipa declared that the shooting incident happened "downstairs" of the house. If these statements reflect the truth – that their father was shot under the house – then it is correct that, notwithstanding the radio broadcast, they did distinctly hear the outcry of their father. But with gunshots so close, it is quite likely that they likewise, in fear and alarm, immediately lay flat on the floor or were immobilized. Absent any opportune time to look out of or peep through the window or watch from the balcony of the kitchen, neither Isidoro nor Felipa could have definitely ascertained the identities of their father's assailants.

In sum and substance, the totality of these inconsistencies, self-contradictions and improbabilities on essential points in the declarations of the alleged eyewitnesses, enfeebles, rather than strengthens, the probative value of the said declarations, especially with particular reference to the identification of Fortunato Lucino's assassins. These flaws raise grave doubts as to the accuracy of their testimonies, which cannot consequently in conscience be accepted.[4]

We make the cogent and pertinent observation that the rule that conclusions of the trial court on the matter of the evaluation of the truth of declarations of witnesses carry great weight and command favorable consideration,[5] finds no application in the case at bar. For, it was Judge Jesus S. Ruiz who heard the testimony of the two alleged eyewitnesses, but it was Judge Manuel Lopez Enage who presided the later portion of the trial and subsequently penned the judgment of conviction.

II. Susaya and Lasmarias have interposed the defense of alibi.

Susaya testified that from dusk of August 27, 1961 until early the following morning, he helped Geronimo Daligdig (with whom he and his family were staying) tie onions in bundles in the latter's house in Calugma-an, Nasipit. This declaration the witnesses Geronimo Daligdig and Jose Aballar corroborated. Aballar testified that between 7 and 8 o'clock in the evening in question, when he passed by Daligdig's house on his way to the sea, he saw Susaya and the said Daligdig, together with another person, bundling onions, and that he saw them still engaged in the same work when he passed that way again upon his return from the sea.

For his part, Lasmarias stated that from 8 o'clock in the evening of August 27, 1961 until the following morning, he slept in his house in Pantalan, Nasipit. This statement the witnesses Peregrino Lasmarias and Engracio Depongco substantiated.

Suffice it to state that alibi, although generally regarded as the weakest of all defenses in a criminal prosecution, assumes considerable importance and gains commensurate strength in the face of unreliable and unsatisfactory evidence of the identification of an accused as the author of the crime charged. Furthermore, the onus probandi rests on the prosecution throughout the trial, notwithstanding the weakness of the defense.[6]

III. Where the identification of an accused as the author of the crime charged proceeds from unreliable and unsatisfactory evidence, evidence of motive becomes necessary.[7] The record reveals no fact or circumstance which suggests, remotely or otherwise, any possible motive on the part of Susaya or Lasmarias to assault the deceased. In fact, Isidoro avowed that his father had no previous altercation or quarrel whatsoever with any of the appellants. Even on the assumption then that three men did assault Fortunato Lucino, the possibility cannot be discounted that these three were Primitivo Salas, who is still at large, and two men other than the appellants Susaya and Lasmarias.

IV. It is rather strange that the prosecution chose to present only Isidoro and Felipa, the son and the daughter, respectively, of Fortunato Lucino, to testify on the shooting incident. The prosecution omitted to call any of the companions of Isidoro in the house to corroborate the latter's declaration that he looked out of or peeped through the window and thus saw the shooting incident. The prosecution also omitted to present Felipa's husband, to confirm that Felipa witnessed the said incident from the balcony of the kitchen. The prosecution likewise omitted to present any of the PC soldiers who arrived at the scene shortly after the shooting incident, for the purpose of testifying as to the exact spot where the wounded Fortunato Lucino lay, and, more importantly, to explain why Isidoro and Felipa did not name their father's slayers to the PC soldiers when the latter arrived at the scene of the shooting incident on the night in question. Oddly, none of these omissions are at all explained away in the record.

V. The unreasonably long delay in the filing of the information in the case at bar is absolutely unexplained. The shooting incident occurred on August 27, 1961; the accused Susaya and Lasmarias were arrested on August 31, 1961; and yet the information was filed only on September 24, 1963, that is, more than two years later. The unexplained delay of two years engenders grave misgivings as to the sincerity of the motives as well as the veracity of the claims of the eyewitnesses for the prosecution.[8]

VI. Finally, worthy of note is that two witnesses, Luminado Pedrosa and Bienvenido Coronel, named other persons who, under the circumstances they testified to, could be responsible for the death of Fortunato Lucino. Pedrosa testified that at about 9 o'clock in the evening in question, while fishing at sea near the wharf of Nasipit, Agusan, he saw three persons on a boat on their way to the place where Fortunato Lucino lived, and that a short while later he heard a shot. Coronel declared that at about 9:30 that evening, while on his way to his baroto near the place when the said incident occurred he heard a shot and that shortly thereafter he met these persons one of whom carried a firearm. This meeting, Coronel also claimed, he subsequently related to a policeman of Nasipit,

Agusan, who, however, took no interest therein. A third witness. Vicente Acosta, declared that before the shooting incident, the same person seen carrying a firearm in the vicinity of the place where the said incident happened, expressed his intention to provoke a fight with Fortunato Lucino for reasons related to labor union disputes.

Upon the foregoing disquisition, we perforce absolve Susaya and Lasmarias, on the ground of reasonable doubt.

ACCORDINGLY, conformably with the recommendation of the Solicitor General, the judgment a quo is reversed, and the appellants Gregorio Susaya and Alejandrino Lasmarias are hereby acquitted. Costs de officio.

Makalintal, C.J., Fernando, Barredo, Makasiar, Esguerra, Aquino, Martin and Concepcion, Jr., JJ., concur.

Muñoz Palma, J., did not take part.

Teehankee and Antonio, JJ., are on leave.

[1] As far as the record goes, Salas has not been apprehended and remains at large.

[2] Geronimo Daligdig, Engracio Depongco, Jose Aballar, Resurrecion Taneda, Peregrino Lasmarias, Luminado Pedrosa, Bienvenido Coronel and Vicente Acosta.

[3] About 14.63 meters.

[4] See *People vs. Rafallo*, 86 Phil. 22; *People vs. Lacsamana*, L-29061 October 29, 1970, 35 SCRA 512.

[5] *People vs. Ancheta*, L-29581 and L-29582, October 30, 1974, 60 SCRA 333; *People vs. Caoile*, L-31104, November 15, 1974, 61 SCRA 73.

[6] *People vs. Cunanan*, L-17599, April 24, 1967, 19 SCRA 769; *People vs. Baquiran*, L-20153, June 29, 1967, 20 SCRA 451; *People vs. Bulawin*, L-30069, September 30, 1969, 29 SCRA 710; *People vs. Cruz*, L-24424, March 30, 1970, 32 SCRA 181; *People vs. Beltran*, L-31860, November 29, 1974, 61 SCRA 246.

[7] *People vs. Caggauan*, 94 Phil. 118; *People vs. Alviar*, L-32276, September 12, 1974, 59 SCRA 136; *People vs. Cunanan*, *ibid.*; *People vs. Beltran*, *ibid.*

[8] See *U.S. vs. Reyes*, 18 Phil. 495; *U.S. vs. Cardona*, 36 Phil. 438; *People vs. Belandres*, 85 Phil. 874.

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