

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS,
FAUSTO LACAYA, DEFENDANT AND APPELLANT.***G.R. No. L-2438. April 17, 1950*

Ponente: MONTEMAYOR, J.

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From a decision of the Court of First Instance of Zamboanga, finding him guilty of murder with the aggravating circumstance of nocturnity compensated by the mitigating circumstance of lack of Instruction, and sentencing him to reclusion perpetua, to indemnify the heirs of the deceased Pedro Aves in the sum of P2,000.00, and to pay the costs, Fausto Lacaya is appealing to this Court asking for the reversal of the said decision and for his acquittal.

In and prior to the month of November, 1946, the deceased Pedro Aves was living with his wife Sofia Ocupe in the sitio of Conacon, barrio of Polanco, Dipolog, Zamboanga. In the morning of the 12th day of the said month of November, Pedro Aves left his home and was never seen alive thereafter. On November 12th, in the afternoon, his dead body in an advanced state of decomposition was found floating on the Dipolog river in the same barrio of Polanco.

The face was battered and mutilated beyond recognition. The right arm and the left hand were missing and the body showed a number of wounds and injuries, on the head, neck, chest and legs, including a complete fracture of two ribs. The left mandible was missing. The body was duly identified by his wife Sofia and by his brother Manuel, thru the clothing, by means of the feet, and the trunk, and because of a gold tooth on the upper mandible. After some investigation by the Military Police, and because of the testimony or information given by Pascual Osorio who said that he had seen Pedro Aves in the company of defendant Lacaya and Brigido Loging passing in front of his house the night of November 4th between nine and ten, Brigido and defendant Fausto were questioned but both disclaimed knowledge of the killing or drowning of the deceased and so were released.

According to Sgt. Teodoro Garcia of the Military Police, however, while questioning Brigido, and judging from the answers given by him, he suspected that he (Brigido) was concealing something. In fact the next day, that is, on November 15th, Brigido returned to the Military Police and told them that provided they gave him the necessary protection, he would reveal the truth. Upon assurance that he would be duly protected he made a written statement (Exh. 1) pointing to Lacaya as the one who killed Pedro Aves. Acting upon this information, Lacaya was arrested. On the occasion of his arrest in or near the house of Tomas Loging, father of Brigido, where he was then staying, Lacaya upon arrival of the jeep of the Military Police, left the house in haste, hid behind the latter and later ran away intending to jump into the river nearby but Tomas went after him and brought him back telling him that his action might be interpreted by the police as a sign of guilt, at the same time advising him to submit to the police voluntarily. Despite this advice, when Sgt. Garcia in the presence of Sgt. Magracia actually arrested him, he (Lacaya) still made efforts to avoid arrest and free himself from the hold of Tomas Loging. Taken to Police Headquarters, he made a written statement (Exhibit M) dated November 16, 1946, still disclaiming knowledge of, much less participation in the death of Pedro Aves. On December 13, 1946, however, he made another statement (Exhibit N) stating that Sofia Ocupe had offered him and his second cousins Brigido and

Gregorio Logging the amount of P200 if they poisoned or killed her husband Pedro Aves because she could no longer endure the maltreatment to which she was continuously subjected; that he declined the offer, but it was accepted by Brigido and Gregorio; that in the evening of November 4th, while in company with the two brothers and Pedro Aves and while crossing the Dipolog river, he actually saw the two brothers, particularly Brigido, attack the deceased with a bolo and an iron bar which they were carrying and then dump his body into the river; that the next day he witnessed the delivery by Sofia of P200 to Brigido; and that Sofia gave him P34 in order to seal his (Lacaya's) lips while Brigido gave him P16 as his share of the P200.

Convinced that Lacaya was the one responsible for the death of Aves, the Police filed the corresponding complaint for murder against him. While detained in jail, Lacaya escaped on December 31, 1946, but was recaptured on January 3, 1947. Thereafter, he made another attempt to escape but was caught in time by the guard. After trial, and on the basis of the evidence submitted the lower court found him guilty of the crime charged.

After a careful review of the record of this case we find the following facts to have been duly established:

It seems that the married life of Pedro Aves and his wife Sofia Ocupe was not a happy one. He continually maltreated her. The wife suspected that he had a mistress in the sitio of Tolibung. Whenever he came home from said mistress, and specially when she showed disapproval of his conduct and his infidelity, he would become enraged, ill-treat her and even kick her. Such was her mental and physical suffering that once she complained to the Mayor of Dipolog, saying that she wanted to separate from her husband. She complained also to her barrio lieutenant, named Hilarion Diaz and at one time, went to the extreme of asking for some poison with which to dispose of her husband. The barrio lieutenant advised her against any illegal act but said that what she should do was to catch her husband with his mistress in the act of infidelity and perhaps, the authorities could then do something about it.

Late in the evening of November 4, 1946, Brigido Logging returning from sitio Tolibung to his home in sitio Conacon, met or rather overtook Pedro Aves and Fausto Lacaya and joined the party for they were all going in the same direction. Lacaya was then carrying a long iron bar over his shoulder and had a bolo strapped to his waist. Upon passing the house of Pascual Osorio, Pedro Aves inquired from the latter if he had some tuba to drink but Pascual said he had none. This is the same Pascual who informed the Military Police that he had seen the trio passing his house and which information led the Military Police to question Lacaya and Brigido. The three men continued their trip toward their homes and upon reaching the bank of the Dipolog river, Brigido untied the raft which they were going to use to cross the stream and the three boarded on it. Upon reaching the other side, Brigido being in a hurry because his home was the farthest and due to the lateness of the hour, asked leave of his two companions to go ahead which he did. After walking a few meters he heard a thud or dull noise as of a blow, and on looking back and because it was a moonlight night he saw Lacaya striking Aves with the long iron bar which he carried, which blows felled the victim to the raft. Scared and not wishing to be a witness or party to the crime, he ran until he reached home and immediately went to bed. About 20 minutes later, the defendant came to Brigido's house and warned and enjoined him not to tell anyone, otherwise he (Lacaya) would kill him and his entire family.

The following morning Lacaya returned to Brigido's house and repeated the threat and at the same time suggested that it would be better if he lived in the house of Brigido who was his second cousin so as to be in a better position to watch him. He even suggested that they go away for a while. Brigido answered him that he could not go away because he was busy. Thereafter, Lacaya left in the direction of the river. Brigido, presumably wanting to avoid Lacaya, left the house for the sitio of Gumay, in order to dig up camotes (sweet potatoes) for the consumption of his family. On the way however, at the sitio of Ginlis he was overtaken by the appellant who joined him and even

accompanied him to Gumay where they stayed until November 13 when news of the discovery of the dead body of Pedro Aves reached them. They returned home only to be taken in and questioned by the Military Police.

During their stay in sitio Gumay, Lacaya, in a communicative mood, and possibly feeling the need of unburdening himself for relief, told Brigido that while he was living in the house of Pedro Aves as a tenant of theirs, he used to witness the continual abuse and ill-treatment suffered by his aunt Sofia at the hands of Pedro; that on those occasions he would almost invariably abuse her relatives, particularly the Lacaya family telling his wife that he was not afraid of and would fight anyone of them; that finally Sofia induced and persuaded him to poison or kill her husband, offering him P200, which offer he accepted; that before he attacked Pedro on the river that night of November 4 he rubbed his ears in order to warm himself up and feel brave, and that he felt as if the devil was inside him; and that he cut off the arms and legs of Pedro and smashed his face and his chest so that instead of floating his body would sink.

In his defense Lacaya told the court that in the evening of November 4, 1946, he was invited by Brigido and his brother Gregorio to go to Tolibung and drink tuba and eat somsoman in the house of Maxima Osorio which invitation he accepted; that at the time, Brigido was carrying a bolo while Gregorio was carrying an iron bar which he used as a cane; that they passed by the house of Sofia and on their way to Tolibung near the river, they met the deceased Pedro who told them that he had just come from the house of Maxima and he invited them to go to the house of Pascual Osorio, which they did; that later, on their way home, as they were about to cross the river on the raft, he saw Brigido inflict several bloxtfs on Pedro with his bolo and upon seeing this, he (Lacaya) jumped into the river and finally reached the other side; that Brigido asked him to wait for him, which he did; that it was Brigido and Gregorio who really killed Pedro; that Brigido finally crossed the river on the raft, leaving his brother Gregorio behind and then the two went to the house of Brigido.

Sofia Ocupe partly corroborated Lacaya, saying that about 10 o'clock that evening she was gathering firewood near her house and that she saw Lacaya, Brigido and Gregorio pass in front of her house, the three telling her that they were going to the house of Maxima to eat somsoman; that Brigido was carrying a bolo while Gregorio carried an iron bar.

Continuing with his testimony, Lacaya further said that he had been severely maltreated and tortured by the Military Police and that for that reason he signed his statement presented as exhibit N by the prosecution.

The decision in this case depends in great measure upon the credibility of witnesses. After observing the demeanor of said witnesses during the trial as well as the nature and reasonableness of their testimonies, the trial court discredited the witnesses for the defense and rejected their story. In this we believe that the trial court acted correctly. As the trial court said, it is improbable that Sofia would select the late hour of 10 o'clock in the evening to gather firewood, just to be able to see Lacaya and the Logging brothers to pass in front of her house. The lower court equally rejected as unreasonable the story given by Sofia to the effect that the reason for the killing of the deceased by the Logging brothers was that their father Tomas had a grudge against Pedro who, because he was not given a share in the corn harvest, took the case to court. The lower court reasoned out that even assuming that this misunderstanding or difference existed, it was not enough to induce the two brothers to kill the deceased.

The Solicitor General well observes that the fact that Tomas in order to settle his difference with the deceased Pedro, took the case to court, shows that he was a law-abiding citizen who did not want to take the law into his hands. In this connection it may be added that examining the decision (Exhibit 3) of the court in that civil case between Tomas on one side and Pedro Aves and a certain Chinaman (Chino Puana) on the other, judgment was rendered in favor of Tomas, ordering said Chinaman to deliver 40 cavans of corn to Tomas, If there had been any grudge at all because of the corn, it could not have been entertained by Tomas who won the case, certainly not

against Pedro Aves who was not sentenced to do anything, which means that he was not to blame for the withholding of the grain from Tomas.

Equally disregarded by the trial court as improbable is the story given by the defense witness Macario Masayon who claimed that he was a prisoner in jail when Lacaya was confined therein; that one day Brigido visited Lacaya and asked him to own up the killing of Pedro and assume responsibility therefor because Brigido and his family would help and take care of him, to which Lacaya countered, saying, why should he plead guilty when they had previously agreed that Brigido would not reveal anything and when as a matter of fact, it was Brigido who boloed Pedro to death against the very advice of Lacaya. In the first place, said witness Masayon was then in jail because he had been convicted of the crime of robbery after pleading guilty to the charge; and as the trial court well observed, while Masayon claimed that he distinctly overheard the supposed conversation between Lacaya and Brigido, he did not overhear the conversation between other prisoners and their visitors on the same occasion. Neither could he recall any other incident that took place in jail at that time.

Considering the whole case, we agree with the trial court that the story of the prosecution is more reasonable and more worthy of credence. In addition, his unexplained attempt to escape from the house of Tomas in order to avoid arrest by the Military Police who had gone there for said purpose, shows that his conscience was not entirely clear. To this might be added that appellant's act of escaping from jail once while under detention and making a second attempt to escape does not exactly favor his claim of Innocence.

In conclusion, the court finds the guilt of the appellant to have been established beyond reasonable doubt. Finding no reversible error in the decision appealed from, the same is hereby affirmed with, costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, Reyes, and Torres, JJ., concur.

MORAN, C. J.:

Mr. Justice Paras, and Mr. Justice Padilla voted for affirmance.

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