

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BONIFACIO GALLORA, DEFENDANT-APPELLANT.***G.R. No. L-21740. October 30, 1969*

Ponente: MAKALINTAL, J.

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Appellant Bonifacio Gallora was charged with murder in the Court of First Instance of Lanao del Norte, found guilty and sentenced to suffer the penalty of reclusion perpetua and to pay the heirs of the victim, Constantino Elliadora, an indemnity of P6,000, with costs.

The crime was committed in the evening of March 13, 1959, at barrio Soso, municipality of Kapatagan in the aforesaid province. Elliadora and his wife, Felisa, were asleep in their small nipa hut, together with their three young children, when at about midnight Felisa was suddenly awakened by an unusual sound, as if some object had fallen. By the light of a small kerosene lamp placed on top of a trunk near the door of the room, she saw her husband lying wounded on the floor. Two men were standing near him, each with a flashlight and a blood-stained knife in either hand. Felisa's testimony is that she recognized one of them to be Bonifacio Gallora, as the handkerchief he had used to cover his face had slipped down, but that she did not know who the other was since he still had his face hidden. Her call for help scared the two men away, both of them exiting through the window, by which same opening they had evidently gained access inside. Andres Argonitas, a cousin of Felisa, who said he was at the yard of his house a few meters away, about to chop some firewood with which to cook food for his ailing child, responded to the call. When he reached the yard of Felisa's house, he said, he happened to direct the beam of his flashlight at the fleeing men and thereby recognized appellant, but not the companion.

When Felisa and Andres turned their attention to the wounded man he was already lifeless. He had sustained six wounds, four in the region of the chest and two in the left thigh. The municipal health officer who examined the body the next morning pronounced that death must have been instantaneous, principally from the punctured wound one inch below the left nipple.

On the strength of the testimony of the widow and of Andres Argonitas, the trial court returned a verdict of guilty. The main issue in this appeal involves the sufficiency of the evidence identifying appellant as the culprit.

The motive indirectly ascribed for the killing was robbery, although there is nothing in the record to show that anything of value was taken from the victim's house that fatal evening. According to Felisa, some six days before she sold 40 cavans of corn at a corn mill for P200.00, and appellant was then nearby, and conceivably saw her receive the said amount in payment. Again, she testified, on March 9, 1959, or four days prior to the incident, a certain Pendong paid for P60.00 in her house to redeem a mortgage, and appellant was then passing by. It is obvious that the evidence of the supposed motive is too tenuous to be given credence.

Appellant denied the charge against him, and denied likewise that he saw, or was even present, when Felisa was paid the two sums of money referred to in her testimony. Appellant's house was about 600 meters away from that of the deceased, and from eight in the evening of March 13 to past midnight, according to his testimony, he was at

the house of his next door neighbor, Felix Pacunla, a former municipal policeman of Kapatagan. Pacunla had just arrived that afternoon from Iligan City, where he went in the morning to attend to a loan application he had with the local branch of the Philippine National Bank. Appellant came to visit with him and to inquire about his application. Other neighbors also came, but at about 10 o'clock Pacunla excused himself to eat his supper, and afterwards to catch some chickens for roasting as the next morning he had an appointment with the bank inspector, with whom he was to go to his land in Doblestan, Caromatan, Lanao del Norte, in connection with the loan, and the chickens were to be their provision for the day. Appellant offered to help Pacunla. They caught three of the fowls roosting in a tree nearby, then slaughtered and roasted them one by one, and even ate the internal organs. Appellant took his leave after midnight and went back to his house just a few meters away. About five minutes afterwards, as Pacunla was pre-paring to sleep, the barrio sub-lieutenant, Ciriaco Clarion, arrived and called him from outside, telling him to wake up because somebody had been killed. He took his flashlight, went downstairs and proceeded to Clarion's house, which was also nearby. A certain Vicente Yanong was there, together with a companion. It was Vicente who had brought the news of the killing and who, when asked by Pacunla, informed the latter that Quintino (Constantino Elliadora) had been killed but that assailant was unknown. Appellant Gallora himself, who had heard the courier calling to Pacunla, followed the latter to Clarion's house, and while there was requested by Pacunla to write down a report of the incident as dictated by him, to be signed by the barrio sub-lieutenant. The report was prepared and signed accordingly and then taken by rural policeman Antonio Lan-taca, accompanied by Vicente Yanong and several others, to the chief of police in the poblacion of Kapatagan. Neither Pacunla nor appellant went to the house of the victim immediately after they were informed of the killing.

The foregoing, in substance, was the mutually corroborative testimony of Felix Pacunla and of appellant.

Continuing his own narration, appellant said that at 6:30 in the morning of the next day, March 14, the municipal health officer of Kapatagan, Dr. Rodolfo Padua, arrived in a jeep at appellant's place, accompanied by the chief of police and one patrolman. They called him and asked him to take them to the scene of the crime. He rode with them in the jeep and together they went inside the house where the dead man was lying. The chief of police interrogated the widow, asking her particularly if she recognized the killer, but she answered she did not because the killer's face was covered with a handkerchief. The same question was put to Andres Argonitas, who likewise could not make any identification because he was, he said, in his house at the time the crime was committed.

The foregoing testimony of appellant is corroborated by Dr. Padua and by the chief of police himself, both of whom testified that during the former's examination of the body of the deceased as well as during the latter's spot investigation appellant was present. Nobody pointed an accusing finger at him; the widow simply said she did not recognize the person who killed her husband because his face was covered at the time.

As may be noted, the whole case against appellant depends on the identification made by the widow, Felisa Elliadora, and her cousin Andres Argonitas. Under the circumstances, it is a slender thread indeed by which to hang a finding of guilt. First, there is no reasonable explanation why both of them did not denounce appellant and identify him as the killer when they were investigated by the chief of police in the morning after the incident. Felisa's excuse that her voice was hoarse from crying is certainly too lame to be credible. As for Andres, he said at the trial that he was afraid he himself might be killed if he should point to appellant. But the fact is that both he and Felisa, did so one week later, that is, on March 21, 1959, when they signed their respective written statements; and Andres did not explain why he was no longer afraid then. Secondly, the motive attributed to appellant rests on a very shaky foundation. He denied having been present on the two occasions when Felisa was paid the sums of P200 and P60, respectively. And if the motive was robbery, the precipitate killing of the victim would seem entirely necessary. A preliminary threat and demand for the money would have been the logical step for the

malefactors to take. In this connection, it is quite strange that with her husband sleeping beside her Felisa did not wake up until after the six wounds had been inflicted, without catching any part of the actual physical aggression. Thirdly, it is no less strange that Andres would be chopping wood in the middle of the night, and using a scythe instead of a bolo or an axe for the purposes. A minor contradiction between his testimony and that of Felisa thus acquires significance: while according to Andres he had not yet started to chop wood when he heard Felisa's call for help, the latter said that she knew he was in the yard because she heard the sound of chopping immediately after she awoke.

An intriguing fact in this case was not thoroughly explored at the trial. At one point in his testimony appellant said that after the investigation in the morning of March 14, conducted by the chief of police at the scene of the crime, "they (evidently referring to the chief of police and the patrolman with him) brought with them two persons." Pressed for an explanation, appellant continued:

"When the chief of police went downstairs from the house of the widow he saw a man walking from the farm with a handkerchief hanging from the pocket and the chief of police took the handkerchief and said that there was blood and he said that that was the mask used by the killer."

The man's name, according to appellant, was "Lesajero,"+ and his companion was Wenceslao Seban. Appellant did not know if they were subsequently charged with the crime. Felix Pacunla testified, however, that when he arrived home Sunday, March 15, 1959, after having gone to his land with the bank inspector the previous day, March 14, "there was one Luis Ajero who was detained in the municipal jail of Kapatagan as the suspected killer of Constantino Elliadora, but on the following day, Monday, he was released."

The trial Judge himself took note of this fact in his decision, as follows:

"After the investigation conducted by the Chief of Police on March 14, 1959 two persons were brought to the municipal building as suspects. When the Chief of Police came down, he saw a man with a handkerchief dangling out of his pocket. The man was a certain Angel Ajero (sic) who upon being confronted by the widow, Felisa Elliadora Guardiaquivil, the same said that it was the very handkerchief that was used as mask. No charge was filed against any of the two suspects."

Apparently His Honor attached no importance to the foregoing circumstance. However, no reason for such cavalier attitude has been given. Certainly if the handkerchief used as a mask was identified, it constituted a damning piece of evidence and should not have been dismissed without a satisfactory accounting of its possession.

The trial court refused to believe appellant's alibi on the ground that Felix Pacunla's corroborative testimony was incredible, since he admitted on cross-examination that the person for whom he prepared the roasted chickens never came the following morning. But Pacunla did not say that that person was coming; what he did say was that they had an agreement to meet in the municipal building of Kapatagan, from where they would proceed to the land to be inspected, which was situated in yet another place, namely, Dobleston, Caramotan, of the same province.

The corroborated alibi of appellant; the fact that he did not hesitate to go with the municipal authorities to the scene of the crime; the failure of the two material witnesses for the prosecution to identify him when identification would have been most timely and in accord with natural human reaction; the absence of evidence concerning motivation; and the finding of the tell-tale handkerchief in the possession of another person - all these circumstances cannot but cast a grave doubt as to the guilt of appellant.

Wherefore, the judgment appealed from is reversed and the defendant Bonifacio Gallora is acquitted of the charge and ordered forthwith released from detention, with costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

+ As written in the transcript of stenographic notes.

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