

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAXENCIO MORADO, DEFENDANT AND APPELLANT.***G.R. No. L-16714. January 31, 1962*

Ponente: PAREDES, J.

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Maxencio Morado was found by the Court of First Instance of Masbate, guilty of murder, qualified by evident premeditation and attended with the aggravating circumstances of treachery and nocturnity and sentenced to suffer reclusion perpetua, to indemnify the heirs of the deceased Faustino Laurio in the sum of P6,000.00 and to pay the costs.

The records reveal that the Parents-Teachers Association of the school in barrio Batuila, Baleno, Masbate, sponsored a benefit dance on July 20, 1957, held at the school building. The illumination in the building reached also the lawn thereof. The dance started at about 9:00 p.m. and an hour later, barrio lieutenant Geminiano Palomar requested for an intermission to allow Ricardo Albao, to speak. Albao had been watching the dance from a window of the school house with Zorobabel Manlapaz and Prepedigno Adrias. When Adrias saw Faustino Laurio (deceased) and Dionisio Bella sitting on the lawn outside the building, he left his place at the window to join them. After sometime, Adrias noticed the sudden arrival of accused Maxencio Morado who came running with a bolo in his hand. Adrias shouted "Tino (referring to Faustino Laurio) tao", at the same time that Morado hacked or slashed Laurio on the neck. Alfredo Esquila, standing at the corner of the school house and leaning with his elbows on the window sill, heard the shout and immediately, turned his head to the right, just on time to see Morado hacking Laurio who was in a squatting position. Scared, Esquila jumped from the school house, passing through the window and told the persons gathered there, that Laurio had been stabbed by Morado. After being wounded, Laurio moved backward, followed by Morado, but fell dead at a distance of about 30 meters from the school house (Exh. 7). Adrias sought his brother Ventura in the crowd and both went to notify the victim's brother of the incident. It appears that while Albao was delivering his speech, Palomar heard a scream inside the school house about an "accident". Taking a lamp he went outside the school building to find what the shouting was all about. While there he saw Laurio already dead and ordered the rural policemen to report the accident to the Chief of Police, Simeon Salazar, who went to the place with his men. Of the 30 persons found in the premises, only Adrias could state what actually happened, giving his sworn statement before the Justice of the Peace during an investigation held on July 21, 1957 (Exh. C). With his help, the Chief of Police drew a sketch at the scene of the killing, Adrias indicating the positions of the aggressor and the victim (Exh. D). In said Exhibit C, Adrias stated that in the night of July 20, 1957, he and Laurio were squatting on the lawn, chatting, when appellant, a friend since infancy, suddenly approached and slashed Laurio on the neck, with a bolo.

Medical health officer Manuel Arevalo conducted a postfe mortem examination of Laurio's cadaver and found (1) a wound about 4 inches long and 1 1/2% inches deep below the middle of the left mandible going transversely down to a point one inch above the base of the right side of the neck, severing the skin, the ligament of the larynx (adam's apple) and the blood vessels and nerves of that region and (2) a wound in line with the first wound, which

nearly cut the upper right clavicle, the superficial tissues and muscles of that area; which were inflicted with a sharp instrument. The cause of death was hemorrhage due to the wound on the neck (Exh. A).

The weapon used in the aggression was recovered from the possession of one Potenciano de Morado. Accused Morado was arrested by the police the day after the killing in Cagara, Baleno, at the house of one Romulo Morado, his relative, half kilometer away from Batuila, the scene of the crime. Accused offered no protest against his incarceration.

The defense is alibi Accused, 31, a first year high school student, testified that during the night of July 20, 1957, he was in the house of Romulo Morado, having arrived there at 6:00 o'clock in the evening, coming from his coconut plantation, at which house he used to sleep whenever he went to his farm, because his "camalig" had no walls and was not provided with mats. He took supper at 8:00 o'clock p.m., went to bed, woke up at 7:00 on the following morning and was starting to leave for the town at 9:00 o'clock the same morning, when policemen arrested him. When investigated by the police, he pointed out that Laurio (deceased) had several enemies, among whom were Iluminado Padre, Juan Mingol and Cornelio Bajar. Accused was corroborated by Romulo Morado in his alibi. Vicente Tualla, provincial warden, declared that a certain Faustino Laurio had been confined in the provincial jail and served a sentenced of 4 months, for slight physical injuries (Exh. 1). The record of the CFI of Masbate shows that on February 16, 1957, Faustino Laurio was charged in Criminal Case No. 2594, with frustrated murder in which the complainant was Maxencio Morado (Exh. F).

Predicated upon the above evidence, the trial court sentenced the accused as heretofore recited. In his brief, appellant alleges that the trial court erred (1) in giving credence to the testimony of Alfredo Esquila and (2) in taking into account Exhibit F, record of Criminal Case No. 2594, when the same was not admitted by the trial judge.

- The defense assails the testimony of state witness Alfredo Esquila. It is argued that Esquila never executed any affidavit in connection with the case; that he was not listed as a witness either in the complaint or information and that Prepedigno Adrias who was, according to the P.C. the lone eye-witness and listed in the information, was not presented, thereby giving rise to the application of the rule on suppression of evidence. The rules do not make it a condition precedent for a witness to give his affidavit first before taking the stand. The procedure is adopted to safeguard the parties from recalcitrant witnesses. The claim that Esquila's name is not found in the list of witnesses does not prevent the prosecution from placing him on the stand. He was not disqualified by law, he was included in the words "and others" found in the list of witnesses mentioned in the complaint. "They may, however, call at the trial witnesses other than those named in the complaint or information" (Sec. 1, Rule 112). The object of listing is to avoid the presentation of surprise witnesses and to enable the defense to examine their record, morality and character. In this particular case, the defense had all the opportunity to do so, since the presentation of witness Esquila was deferred later when first placed in the stand, and the defense had all the chances to test his credibility during his lengthy cross-examination. Esquila explaining his silence until he took the stand, said that he went direct home after witnessing the attack, as he did not want to be involved, which is indeed a natural reaction, of a rustic third grader like him. Moreover, Adrias had already told the same matters that he knew, when the former executed his affidavit. Upon learning, however, that Adrias was no longer willing to take the stand, due to a subsequent quarrel between his brother Ventura Adrias and Celedonio Laurio, brother of the deceased, Esquila readily saw the necessity of his telling what he saw. It is contended that Esquila was not in the schoolhouse that evening. As he was not inside the dance-hall, which was crowded, no one would have naturally noticed him. But from his vantage place, he was able to see Palomar, Albao (the speaker), Zorobabel, and Gregorio and Adrias. In fact, Palomar, testifying for the defense, named the same persons mentioned by Esquila, among the persons present at the dance. Esquila could not have stated that the children of Palomar and a

certain Candoy were there and Zorobabel was one of the musicians, if he was not present while the dance was going on—a statement which was not contradicted at all. Esquila's declaration that he exclaimed saying, that Maxencio Morado had stabbed Faustino Laurio, was corroborated by Palomar who had heard someone inside the school-house scream about an "accident".

Because of the failure or refusal of Prepedigno Adrias to take the stand, notwithstanding the fact that his name was listed as a state witness, the defense now imputes a willful suppression of evidence. Appellant, however, was free to present Adrias as his witness, to prove his claim that Adrias' testimony would have been adverse to the prosecution, but he failed to avail of the opportunity. Since the evidence was also at the disposal of the defense, and it would have the same weight against one party as against the other, the presumption of suppression of evidence is inapplicable to the case at bar (III Moran's Rules of Court, 1957 Ed. p. 490). Moreover, the presentation of Exhibit C (Adrias' sworn statement), as part of the state's evidence, shows that had it not been for the reluctance of Adrias to declare, his testimony would have been availed of by the prosecution. Adrias' affidavit is objectionable because the defense could not cross-examine the affiant. The trial court, nevertheless, was not banned from taking judicial notice of parts of its record, like Exhibit C, to satisfy its conscience. At any rate, even without Exhibit C, abundant evidence appears on record to show the culpability of the appellant.

- With respect to the second assignment of error, the defense complains that the trial court had taken into account Exhibit F, as State evidence, to show motive, notwithstanding the failure of the record to point that it was admitted. Manifestly, the defense has overlooked the records. The Minutes of the hearing of August 7, 1958, show that Exhibit F was among those admitted and said exhibit, which is the whole expediente of Criminal Case No. 2594. of the CFI of Masbate, entitled "People vs. Faustino Laurio, et al.," for Frustrated Murder, is before us. But even granting, for purposes of argument, that Exhibit F was not admitted, still the record reveals that the motive is vindictiveness and retaliation on the part of the appellant. For it was disclosed that the deceased had created enemies in his community because of his aggressiveness, among whom was the appellant. Having no chance in a hand to hand fight with the deceased, appellant attacked the latter in the manner and under the circumstances herein described.

The defense of alibi, invoked by appellant, is so unreliable that it can not be given credence. Supported, as it is, by the testimony of a near relative, appellant's story can not prevail over the positive, direct and straightforward declaration of a truthful witness, who swore having seen the act of and the circumstances surrounding the aggression. The trial court aptly observed that witness Esquila's declaration was not biased and fabricated and gave full faith and credence upon his explanation and story; and as far as the record is concerned, We can do no less.

Pending determination of the case, in this Court, a motion for new trial was filed by appellant based on newly discovered evidence, accompanied by an affidavit of one Maximo Salino, who stated that state witness Esquila on July 20, 1957, at 6:00 o'clock in the evening, was fishing with him (Affiant) and Donato Espares, at Obo River, Baleno and slept in his house after a drinking spree, until the following morning. It would appear, however, that the so-called newly discovered evidence, which is nothing but a forgotten evidence, if at all, would not alter the result of the case as presently found by Us. The denial of the motion for new trial is, therefore, in order.

In view hereof, the appellant is guilty beyond reasonable doubt of the crime of murder, qualified by treachery which absorbs nocturnity, and there being no modifying circumstance to consider, the judgment appealed from is affirmed, with costs against the appellant.

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

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