

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FULGENCIO BAQUIRAN, DEFENDANT-APPELLANT.

*G.R. No. L-20153. June 29, 1967*

Ponente: CASTRO, J.

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### CASTRO, J.:

On September 7, 1959, Fulgencio Baquiran was charged with murder before the Court of First Instance of Isabela committed according to the information filed by the Provincial Fiscal, in the following manner:

"That on or about the 29th day of April, 1959, in the municipality of Tumauni, province of Isabela, Philippines, and within the jurisdiction of this Honorable Court, the said accused, together with John Doe, whose real identity is still unknown, con-spiring and confederating together and helping one another, with evident premeditation and treachery, did then and there wilfully, unlawfully and feloniously shoot with a carbine one Alberto Castillo, thereby inflicting upon the latter gunshot wound passing thru and thru the outer surface of the mid-dle third of the right arm and passing thru its in-ner surface to enter the 4th intercostal space of the right anterior axillary line, which directly caused his death due to gunshot wounds to the liver, right and left lung and smashing of the heart sub-stance and muscle to pieces, with extensive hemor-rhage."

The court, after due trial, found the defendant guilty of the crime charged and sentenced him to suffer "the penalty of life imprisonment (cadena perpetua), with the accessory penalty of the law to indemnify the heirs of Alberto Castillo in the sum of P6,000.00 and to pay the costs."

The defendant appealed to this Court.

The crux of this appeal lies in the identity of the as-sailant of Alberto Castillo. Juanita Marilao, the wife of the deceased, and Celedonia Castillo, her daughter, pointed the accusing finger at the appellant Fulgencio Baquiran. The widow testified that on April 29, 1959, between the hours of six and seven in the evening, the appellant appeared from nowhere and shot the victim with a carbine while the latter and his family were eating their supper. The bullet tore through the body of Castillo causing instantaneous death. Upon seeing the bloodied figure of her husband topple to the floor, Juani-ta fled and hid herself in the bushes about two hundred meters away from her house. Her three children, Franco (who is blind and the oldest at 16 years), Celedonia (12 yrs.) and Rostum (6 yrs.), likewise scampered away for safety. At about midnight, she took courage and emerged from her hiding place. Forthwith, with her barrio mates, Mateo Forto and Alfonso Ocampo, Juanita rushed to Tumauni to report her husband's violent death to the authorities.

At the PC detachment headquarters in Tumauni, she met Sgt. Augusto Venturina, the officer-in-charge, to whom she narrated the events of the night. Informed of the killing, Sgt. Venturina immediately called for Dr. Guillermo Laman, the municipal health officer, and, together with Juanita and three Constabulary soldiers, proceeded to the scene of the crime in barrio Sisim Alto. At about the same time, Bernardo Gumatay, the chief of police of Tumauni, was preparing to conduct his own investigation of the shooting at Sisim Alto after having been apprised of the incident by Ocampo and Forto.

Dr. Laman autopsied the body of the deceased and found two gunshot wounds, one of which plowed through the liver, traversed the right and left lung and smashed the heart muscle, causing extensive hemorrhage which resulted in the death of Alberto Castillo. About a meter and a half from where the gunman was supposed to have stood, two empty carbine shells were found.

The dining room where the victim was shot is rectangular in shape, with a floor of bamboo rising half a meter or so from the ground and separated from the kitchen by a gap about a meter wide. It is walled on three sides only, the southern part being completely open. On the night of the murder, the deceased was seated on the western side of the room, facing his wife and daughter, with his two sons somewhere to his left. The assailant approached from the southern side of the yard and was only two meters away from the victim when he fired his gun. According to the testimony of Juanita and Celedonia, it was possible to see the appellant because the place was lighted by two kerosene lamps -- one placed in the middle of the floor where the family was eating and the other on the left side of Juanita. Allegedly, appellant had a companion but his identity has never been ascertained.

Fulgencio Baquiran was convicted by the lower court on the basis of the declarations of Juanita Marilao and Celedonia Castillo. His defense of alibi was disbelieved by the court *a quo*. Considering the magnitude of the charge and the consequences of conviction, this Court is bound to assay the evidence presented closely and carefully that it may arrive at a moral certainty as to the guilt or innocence of the accused. It is a legal truism that evidence to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself. Human perception can be warped by the impact of events and testimony colored by the unconscious workings of the mind. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind. It is on this crucible that we now proceed to assess the declarations of Juanita Marilao and Celedonia Castillo.

Juanita Marilao's testimony suffers from a plethora of contradictions and on certain vital points runs counter to the testimonies of both prosecution and defense witnesses and the other evidence on hand. Several of these inconsistencies place under a cloud of grave doubt her identification of the appellant as the murderer of her husband. First, she testified that on the evening of April 29, 1959, the family ate by the light of two "improvised" kerosene lamps. On cross-examination, however, it was brought out by the defense counsel that in the affidavit subscribed and sworn to by Juanita on April 30, 1959 before Mariano T. Barcelo, Justice of the Peace of Tumauni, she asserted that she was able to recognize the accused because they were then using two candles in the dining room. Celedonia's testimony in this regard is similar to her mother's, and in her "Abstract of Testimonies" given before Judge Barcelo and certified by the latter, she likewise stated that they were using two candles that night. Testifying eleven months later, mother and daughter had made a significant alteration in their previous statements -- statements given just a day after the murder! Was the change made to lend more credence to their testimony as to the identity of the assailant? None-theless, even assuming that they were indeed using kerosene lamps, it is still doubtful whether it would have been possible for the witnesses to have identified the appellant as the murderer considering that eyes accustomed to light take some time to adjust to darkness. The span of time that elapsed from the moment the witnesses became aware of the menacing presence of the killer to the time the fatal shots were fired appears from the evidence to have been very short. And after the deceased was shot, the witnesses fled in confusion without a glance at the killer.

Second, when examined by the provincial fiscal as to the number of times the accused fired at her husband, Juanita stressed that he did "only once". She was contradicted by two prosecution witnesses, Dr. Laman and Sgt. Venturina who both arrived at the same conclusion that two shots were fired, the former basing his opinion on the fact that there were two bullet wounds on the body of the deceased and the latter on the recovery of two empty carbine shells at the scene of the crime. Adding further to the haze of her testimony was Juanita's statement on

cross-examination that although she saw the appellant even before her husband did, she did not give him any warning at all. Juanita's reaction to the presence of the assailant armed with a rifle and ready to fire at her husband goes against the grain of common experience. It could not have been because there was no more time to give any warn-ing, for the deceased was even able to say, "Who are you?", be-fore he was gunned down.

The widow's behavior after the incident was even more puzzling and leads us to the conclusion that she did not at all recognize her husband's assassin and that her subsequent identification of the appellant was an afterthought born of a prejudiced mind. She related that when she reported the murder to the PC detachment at Tumauni around one o'clock in the morning of April 30, 1959, she told Sgt. Venturina that it was Fulgencio Baquiran who shot her husband. But Sgt. Venturina denied this and testified that she refused and would not talk about the matter. Mateo Forto who, she admitted, was present when she made the report to Sgt. Venturina, confirmed the sergeant's testimony and added that she said that she was not able to recognize any of the killers. Forto also disclosed that on the way to Tumauni he questioned Juanita as to the identity of her husband's assailants and that the widow replied that she was not able to recognize them be-cause they had the brim of their caps tilted downwards. Bernardo Gumatay, chief of police of Tumauni, testified similarly. When he investigated the widow at the scene of the crime, the latter revealed that she could not recognize the malefactors because it was dark. Upon his return to Tumauni, Gumatay en-tered the result of the evening's investigation in the police blotter under date of April 30, 1959 (exh. 3). Dr. Laman, who overheard the conversation between Gumatay and the widow, corroborates the former's testimony. These witnesses have not been shown by the prosecution to have any inordinate interest in the acquittal of the accused. No one is a relative or bar-rio-mate of the appellant. They are disinterested persons and the record does not indicate any reason for us to disbelieve their testimonies or to suspect their motives.

The natural reaction of one who witnesses a crime and recognizes the offender is to reveal it to the authorities at the earliest opportunity. Juanita Marilao did report the crime to the Constabulary but she did not reveal the identity of the assailant although it was inquired into three times or more. It taxes credulity that Juanita made no effort to expose the appellant then. Her silence casts serious doubt on her subsequent identification of the ap-pellant. Had she really recognized the appellant, as the prosecution contended, she would have immediately and spontaneously revealed his identity upon reporting the crime as would be expected according to the natural course of things. The argument that she was still in a state of shock after the incident and that she was afraid of reprisal from the assailants who were still at large is not supported by the evidence on record. The fact that she was able to seek out Ocampo and Forto to help her go to Tumauni on the night of the murder does not show a confused and disorganized mind. If she were afraid of reprisal, wouldn't it be more in con-sonance with common experience for her to have revealed the identity of the accused that he might safely be put behind bars? As it were, the accused was not ordered arrested until May 3, 1959 after Sgt. Venturina filed a complaint the day before. This is in itself significant for it lends support to the declarations of Celedonia and Fulgencio that the identification of the latter as the alleged assailant took place on May 1, 1959 and not on April 30 as asserted by both Juanita and Venturina. As previously mentioned, Juanita testified that she identified the accused as the mur-derer of her husband during the first hours of the morning of April 30, 1959 when she reported her husband's death to the PC detachment at Tumauni. This was denied and contradicted by Sgt. Venturina who asserted that the identification was made during the confrontation between the widow and the ap-pellant in the morning of April 30 around nine or ten o'clock in the morning. Celedonia, who was investigated together with her mother as Venturina himself admitted, testified that the investigation took place on May 1, 1959 and that the accused was not present at all. This corroborates Baquiran's statements to the same effect. For more than twenty-four hours then no word was received from the widow as to the identity of her husband's killers. This despite the fact that after her husband's burial on April 30, she decided to spend the rest of the day and night in Tumauni. If Sgt. Venturina filed the complaint only on May 2, 1959 it could have been due to the fact that the widow made her identification only the

day before, May 1, 1959. By then, she had had more than ample time for reflection and what was merely a suspicion deepened into a conviction. She admitted on cross-examination that she was not able to identify her husband's killer although she suspected somebody. Thus:

"Q.- You want to make this Honorable Court understand that the Chief of Police, together with his two policemen, Domingo and Taguba, went to that place where your husband was shot and killed without interrogating or making investigation regarding the assailant?

"A.- He asked me, sir.

"Q.- And there you told him that you were not able to identify the person who shot and killed your husband, although you suspected somebody?

"A.- Yes, sir." (t.s.n. 71).

She repeated her suspicions later to Chief of Police Gumatay after the burial of her husband, mentioning the name of Baquiran as the suspect. Needless to say, suspicion is not identification. And the fact that she merely had suspicions is an indication that at the time her husband was shot, she was not able to make a positive identification of the assailant.

The prosecution attempted to develop the theory that the deceased was killed on account of a dispute with the appellant involving a piece of tobacco land. However, several facts in the record testified to by both the accused and the widow weaken the prosecution's theory, viz: that the land allegedly in dispute was bartered by the deceased to his brother, step-father of the accused, for a carabao in 1953; that the appellant is not the owner of the land but merely worked on it for his stepfather; that the dispute, if any, happened three years before or in 1956 over a question of boundaries but had been settled amicably the same year; that prior to the murder, the appellant had kept within his stepfather's land and had not encroached upon the deceased's; and that the widow herself admitted that there was no question between the deceased and the appellant concerning the land before the former's death. We quote:

"Q.- In other words, before the death of your husband there was no question between your husband and the defendant about that land?

"A.- None, sir.

"Q.- You are very sure of that?

"A.- Yes, sir." (t.s.n. 22).

No other motive for the killing has been shown by the prosecution. The widow only mentioned the alleged dispute over the tobacco land and even then contradicted herself on cross-examination by admitting that anterior to the incident no question over the land existed between her husband and the accused. It is true Juanita testified that the accused tried to claim part of her land after the death of her husband but the same is uncorroborated and was denied by the appellant.

The other leg on which stands the prosecution's case is provided by the testimony of Celedonia Castillo. With regard to the identity of her father's assailants, her testimony squares with her mother's statements pinning the blame on Fulgencio Baquiran. However, we find it difficult to give it credence. Like her mother, she took an unnaturally long time to disclose the murderer's identity despite the opportunities she had to make such revelation. She admitted that she revealed the identity of the assailant for the first time only on May 1, 1959 when she was investigated by Venturina at the PC detachment in Tumauni. If she really knew her father's killer or killers, she would have told either Sgt. Venturina or Chief of Police Gumatay when the two made inquiries on the

night of the murder. Furthermore, she confessed on cross-examination that she was present and within hearing distance when her mother was investigated by Sgt. Venturina at Tumauni on May 1, 1959 and that what she heard her mother declare, she repeated later before Judge Barcelo who made an abstract of her testimony. Like a dutiful daughter, she followed her mother's lead when the latter singled out the appellant as the malefactor.

We now turn to the alibi of Fulgencio Baquiran. At the time of the incident, he was one of the barrio lieutenants of Arcon, Tumauni, Isabela. Around four o'clock in the afternoon of April 29, 1959, Eusebia Gonzales, the owner of a sari-sari store in Arcon, reported the theft of a bottle of wine from her store to Baquiran. However, he was not at home then as he had gone plowing in Minanga, another barrio of Tumauni. At five o'clock in the afternoon, he went home and was informed by his wife of the theft and Gonzales' desire to see him. After resting for a while and cooking for his wife who had just given birth, he went to see Gonzales, arriving in her store around six o'clock in the evening. After thirty minutes, he left to send for the suspected thief, Eliseo Macoco. He went to the house of Abelardo Manuel, a barrio policeman, to ask the latter to see Magno Belisar, another policeman within whose territory Macoco lives, that he may fetch the suspect. He arrived at Manuel's house around seven o'clock in the evening and waited for about an hour for Belisar's report. At eight o'clock, his emissary reported that the suspect could not come because of a headache. At around eight-thirty, Baquiran came back to the store of Gonzales and told her that the investigation had to be conducted another time as the alleged thief was not in a proper condition for any inquiry.

The time and the sequence of events constituting the alibi of Baquiran are corroborated by four witnesses none of whom is his relative or is possessed with an observable reason, cause or motive to falsify his or her testimony. Although Abelardo Manuel's reckoning of the time is thirty minutes earlier than that made by the appellant, nonetheless the crucial period from six o'clock to seven o'clock in the evening has been well covered by his testimony and that of Gonzales.

The appellant's alibi is uncontradicted by the prosecution. Its veracity has not been seriously challenged and, except for the minor inconsistency as to the name of the stolen bottle of wine, no other contradiction fatal to the alibi of appellant has been exposed. Neither did the prosecution show that from six-thirty, when Baquiran left the store of Gonzales, to seven o'clock, when he arrived at the house of Abelardo Manuel, the accused had the time and opportunity to go to Sisim Alto, shoot the deceased and return to Arcon to establish his alibi. On the other hand, the defense proved that barrio Sisim Alto is more than six kilometers from bar-río Arcon and that to go from one place to the other one has to pass through two other barrios, Sisim Abajo and Minanga, as well as cross a river. Although alibi is the weakest defense that an accused can avail of, it acquires commensurate strength where, as in this case, no positive and proper identification has been satisfactorily made by witnesses of the offender's identity. The prosecution has the onus probandi in establishing the guilt of the accused, and the weakness of the defense does not relieve it of this responsibility. As this Court recently stated:

"The rule that alibi must be satisfactorily proven was never intended to change the burden of proof in criminal cases; otherwise, we will see the absurdity of an accused being put in a more difficult position where the prosecution's evidence is vague and weak than where it is strong." (People vs. Fraga, et al., G.R. No. L-12005, August 31, 1960).

ACCORDINGLY, the judgment a quo is reversed, and the appellant is hereby acquitted, with costs de oficio.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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