

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ALFONSO MANANGAN, ALIAS ONSONG, ACCUSED AND APPELLANT.***G.R. No. L-32733. September 11, 1974*

Ponente: AQUINO, J.

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This is a murder case. The prosecution's evidence shows that at about one o'clock in the morning of November 13, 1968, while Alejo Cayago and his wife Rosalina Garlitos were sleeping in their house located at Barrio Vedania, Mangatarem, Pangasinan, they were awakened by a noise coming from the corral where their carabao was tethered.

Suspecting that someone was going to steal their carabao, Cayago stood up and went to the batalan (porch) which was a little over five feet above the ground. He felt the urge to urinate. While answering that call of nature, he was successively shot five times. He died instantly. He was a former barrio captain. He served in that position for twelve years.

Cayago's house was two meters wide and four meters long. The batalan, which was an open porch without any walls (except on the eastern side), had a flooring made of bamboo slats which were three-fourths of an inch apart. It was adjacent to the bedroom.

Rosalina heard her husband urinating and also heard the shots which seemed to have emanated from a point west of the silong or the ground below the batalan (44 tsn). She took a three-battery flashlight, which she usually kept in the house, and went to the batalan to investigate. It was a moonlit night (75 tsn). A gory sight greeted her. Her husband, lying in a pool of his own blood, was prostrate on the batalan, face up. "His head was towards the north and his face was towards the south" (53 tsn).

She beamed her flashlight at a person who was running in the direction of the fence. She saw the face of Alfonso Manangan (Onsong). He was wearing a fur-like black hat, with a rounded brim. Its front part was folded upward. He was armed with a carbine. He was four meters away from her. When the light was focussed on him, Manangan turned around and faced Rosalina. He shot her three times. Two shots grazed her left leg and left knee (Exh. B).

Rosalina immediately took refuge inside the house and shouted for help while Manangan and his four companions (who were near the corral) ran away. She had known Manangan for a long time. He is her compadre, being a baptismal sponsor of Carlos, her second child. She used to see him and meet him many times. He had resided in Barrio Vedania for about ten years. His house was about sixty meters away from Cayago's house. He was formerly a barrio councilman.

Sometime after Rosalina shouted for help, Felipe Cristobal, the barrio captain, arrived and found Cayago already dead. Rosalina revealed to Cristobal that Manangan had shot her husband. Cristobal lost no time in reporting the killing to the police on that same morning of November 13. He informed the chief of police that Rosalina was able to identify Manangan as the gunwielder who shot her and her husband. The chief of police, together with

Doctor Raymundo Velasquez, the municipal health officer, and another policeman proceeded to Barrio Vedania to investigate the killing. They arrived at Cayago's house at eight o'clock in the morning.

Doctor Velasquez found five entrance bullet wounds located below the left nipple and knee and five exit wounds (Exh. A). As the trajectory of the bullets was upward, he concluded that the assailant was below the victim. He surmised that the barrel of the gun was about two meters away from the victim. He calculated that the thirty-seven-year old victim died at about one o'clock in the morning of November 13. Death was instantaneous and was attributable to severe shock, secondary to the gunshot wounds (Exh. A).

Doctor Velasquez also examined the thirty-one-year old Rosalina G. Cayago. She sustained abrasions in the right leg and knee which would heal within three to five days (Exh. B) and were caused probably by the grazing of a bullet (9 tsn).

The chief of police prepared a sketch (Exh. C). He found eight empty shells, five under the house and three near the batalan (Exh. C to C-7). Considering the location of the shells, the chief of police surmised that the assailant was at the point marked Exhibit B-8 in the sketch. The distance between that point and the point where blood was found (Exh. B-6) was around three to four meters. That circumstance confirms Mrs. Cayago's testimony.

On that same morning of November 13th, the chief of police, together with Cristobal and some rural policemen, looked for Manangan at his house in Barrio Vedania. They were informed that he was not there.

The motive for the killing was that Manangan suspected Cayago of having reported to the barrio captain that Manangan had stolen, a fishing net. Manangan resented that action of Cayago. He said that Cayago had a predilection for making reports. On All Saints' Day or about twelve days before the killing Cayago and Manangan had a rencontre in Barrio Nancalasan on the occasion of a funeral. Manangan tried to assault Cayago. The persons present at the scene of the encounter, among whom was Lydia de Guzman, a neighbor of Cayago and Manangan, pacified them. Manangan, on being pulled away from Cayago, reviled him by saying: "Pare, torpe ca, traidor ca" (114 tsn; Exh. 3).

Cayago had been apprehensive that Manangan would harm him. He told his wife that Manangan was furious because of his report that he (Manangan) had stolen the fishing net.

On November 15 or two days after the killing Mrs. Cayago executed an affidavit in the office of the chief of police. She pointed to Manangan as the killer (Exh. 1). On that date the chief of police filed a complaint for murder against Manangan. Lydia de Guzman, a thirty-three-year old resident of Barrio Vedania, executed an affidavit dated November 18, 1968. She indicated therein that Cayago and Manangan were enemies.*

In March, 1969, while Manangan was in Guimba, Nueva Ecija, attending the town fiesta, he was detained in the municipal jail. The chief of police of Guimba wrote a letter to the chief of police Mangatarem, inquiring whether there was a criminal case against Manangan. The Mangatarem chief of police went to Guimba. He learned that Manangan had been transferred to the Constabulary stockade at Cabanatuan City. He was arrested there by the chief of police of Mangatarem.

On April 22, 1969 the fiscal filed against Manangan an information for murder. After the trial, the lower court convicted him of murder, sentenced him to reclusion perpetua and ordered him to indemnify the heirs of Alejo Cayago in the sum of twelve thousand pesos (Criminal Case No. 23265). Manangan appealed.

He contends that the trial court erred (1) in basing the judgment of conviction on the uncorroborated testimony of the victim's wife, (2) in giving credence to an alleged threatening note found in the middle of the Ladiawan River and (3) in holding that there was premeditation.

Appellant Manangan's defense of alibi was that on November 13, 1968, when Cayago was killed, he (Manangan) was in San Clemente, Tarlac, where he had been residing since 1966, after he sold his house in Barrio Vedania to Edoy Carino. In San Clemente, he was a tenant of Maximino Dumlao in Barrio Casipoc. He said that his son, Vic, was studying in San Clemente.

His story was that on the night of November 12, 1968 he was gathering the palay which he harvested from Dumlao's land. He and his companions piled the palay harvests near Dumlao's house in the poblacion of San Clemente. He was seen in that place at past midnight of the following day by Acting Chief of Police Rizalino Galicia and Patrolman Simplicio Laragan who were on night patrol.

The trial court, in disbelieving appellant's alibi, took into account the declarations of the chief of police of Mangatarem and the barrio captain that Manangan was a resident of Barrio Vedania. In the morning of November 13, 1968, when the killing was reported to them, they repaired to Manangan's house in Barrio Vedania. They encountered therein a child of Manangan (presumably Vic Manangan) who informed them that his father was not in the house. The trial court regarded the testimonies of those two public officials affirming the truth of a certain fact, as more credible than the denial of Manangan and his witnesses that he was a resident of Barrio Vedania.

It should be noted that the distance of seven to eight kilometers between San Clemente and Barrio Vedania can be traversed by walking in one and a half hours. So, it was possible for Manangan to be in Barrio Vedania at the time the crime was committed and to flee thereafter to San Clemente.

There are discrepancies in the testimonies of the defense witnesses as to the date when Alfonso Manangan transferred from Barrio Vedania to San Clemente, Tarlac. The discrepancies impair his alibi.

Alfonso Manangan, testifying on March 11, 1970, declared that he had been Dumlao's tenant in San Clemente for almost four years (71 tsn) or since 1966 when he allegedly moved to San Clemente (77 tsn). Dumlao testified that Manangan had been his tenant since May, 1968 (140 tsn). Canuto Castaneda testified that he came to know in 1967 (that appellant Manangan was residing in San Clemente (162-3 tsn). Vicente Manangan, appellant's brother, declared that Alfonso Manangan had been residing in San Clemente since 1967 (185 tsn). Acting Chief of Police Galicia of San Clemente, a barriomate of Alfonso Manangan, testified that the latter commenced to reside in Maximino Dumlao's house in San Clemente in May, 1968. Galicia knew that, before that date, Manangan was residing at Barrio Vedania (53 tsn).

On the other hand, Vic Manangan, appellant's eleven-year-old son, testified that, when he was in the fourth grade, during the school year 1967-68, he was studying in Barrio Vedania because he was then living in that barrio with his parents (92, 139 tsn).

We agree with the trial court that appellant's alibi is not adequate to exculpate him.

Appellant contends that no probative value should be given to the unsigned list of persons to be assassinated, which was allegedly found in the middle of the Ladiawan River and which was not presented in evidence. That contention is tenable.

But even if that list is ignored, the eyewitness-testimony of Mrs. Cayago that she saw Manangan in the yard of her house immediately after five gunshots were fired at her husband and that he (Manangan) even fired at her, when she trained her flashlight on his face, is sufficient to establish appellant's guilt. The motive for the killing had been indubitably proven.

Manangan assails the credibility of Mrs. Cayago or Rosario Garlitos. He argues that her testimony that she saw Manangan "coming from under the house, after the gunshot explosion allegedly under the house" is not true

because he (Manangan) "was never under the house". The transcript of stenographic notes shows that Rosario did not testify that Manangan emerged from the "silong" or ground under the porch. She declared that she saw Manangan at a distance of about four meters from the porch (20, 46 tsn). She did not categorically state that Manangan came from under the porch.

Rosario was intensively grilled during the cross-examination. She never wavered in her identification of Manangan. She even described his hat. She had known Manangan for a long time. The defense had not offered any explanation as to why she would falsely impute the crime of murder to Manangan who was her neighbor and compadre. Her credible testimony was not destroyed by Manangan's alibi.

The killing was qualified by treachery (alevosia). It was treacherous to shoot Cayago at night, while he was urinating on the porch and when he did not expect at all that his enemy, Manangan, was only four meters away aiming a carbine at him. It was an ambush. Manangan resorted to a mode of execution that insured the consummation of the killing without any risk to himself arising from any defense which the victim could have made. Cayago was unarmed and absolutely defenseless (See Art 14[16], Revised Penal Code).

Evident premeditation was alleged in the information. The Solicitor General, who acknowledges that treachery was proven, noted that evident premeditation was also present but he recommends affirmance of the penalty of reclusion perpetua imposed by the trial court. If premeditation were aggravating, the penalty would be death inasmuch as no mitigating circumstance was present.

Appellant Manangan impugns the trial court's finding that there was premeditation. The lower court said that Cayago had a premonition that Manangan would kill him. It noted that Cayago apprised his wife of his fear of Manangan. Cayago had to sleep in different houses after he learned that Manangan might liquidate him.

We have studied carefully the circumstances preceding the killing and the implications of a finding that it was attended with evident premeditation. The rule is that premeditation must be established with equal certainty and clearness as the criminal act itself (U.S. vs. Navarro, 7 Phil. 713). "La premeditacion ha de ser conocida, lo que significa que resulte de signos reiterados y externos, no de meras sospechas." "No basta que sea meramente sospechada" (1 Cuello Calon,Codigo Penal, 12th Ed. 561; Id, Tomo II 462).

The prosecution should establish (a) the time when the offender determined to commit the crime, (b) an act manifestly indicating that the culprit had clung to his determination, and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will (vencer las determinaciones de la voluntad) had he desired to hearken to its warnings (U.S. vs. Gil, 13 Phil. 530, 547).

It must affirmatively appear from the overt acts of the accused that he had definitely resolved to commit the offense, that he had from then on coolly and dispassionately reflected both on the means of carrying his resolution into execution and on the consequences of his criminal design, and that an appreciable length of time had elapsed as to expect an aroused conscience to otherwise relent and desist from the accomplishment of the proposed crime (People vs. Fuentesuela, 73 Phil. 553).

The criminal intent evident from outward acts must be notorious and manifest, and the purpose and determination must be plain and have been adopted after mature consideration on the part of the person who conceived and resolved upon the perpetration of the crime, as a result of deliberation, meditation and reflection sometime before its commission (U.S. vs. Banagale, 24 Phil. 69; People vs. Zapatero, L-31960, August 15, 1974; People vs. Manzano, L-33643, July 31, 1974).

It is true that about twelve days before the killing Manangan tried to injure Cayago. He desisted after he was

restrained by third persons who intervened during the altercation. The prosecution's evidence does not show the steps that Manangan took thereafter in order that he could kill Cayago on that fateful hour in the early morning of November 13, 1968 when the latter was answering a call of nature on the porch of his house.

Possibly, the killing was actually premeditated. What we merely say is that the prosecution's evidence is not conclusive on the presence of that aggravating circumstance. Appellant's first assignment of error on that score is well-taken.

Since no generic aggravating and mitigating circumstances attended the commission of the murder, the penalty for that crime should be imposed in its medium period, which is reclusion perpetua (Arts. 64[1] and 248, Revised Penal Code).

WHEREFORE, the trial court's judgment is affirmed with costs against the appellant.

SO ORDERED.

Zaldivar, (Chairman), Fernando, Barredo, and Fernandez, JJ., concur.
Antonio, J., took no part.

* On June 21, 1969 another complaint was filed against Manangan in the municipal court of Mangatarem. He was charged with frustrated murder. The offended party was Teofilo de Guzman. The crime was allegedly committed on January 9, 1969 at Sitio Ladiagan which is about half a kilometer from Barrio Vedania (Exh. D).

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