

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ADRIANO PESQUIZA, DEFENDANT AND APPELLANT.***G.R. No. L-5036. February 27, 1953*

Ponente: TUASON, J.

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Pedro Rivera, a special policeman at the Canlubang Sugar Estate, Calamba, Laguna, while patrolling the premises of his employer on February 23, 1949, was shot and killed. Autopsy having been performed, Dr. Eusebio P. Pañganiban, president of the sanitary division with residence at Calamba, found on the body of the deceased three gunshot wounds which he described as follows:

"(a) Posterior right lumbar, three wounds, gun shot, 1 cm. diameter.

"(b) Anterior left lumbar; 2 wounds, lumbar left. 1-½ cm. diameter, respectively. Epigastric wound 1-½ cm. diameter."

The complaint filed by the chief of police with the justice of the peace of Calamba charged Bonifacio Plaza, Gelacio Palma, Dionisio Terrible, Eladio Lacatan, Adriano Pesquiza and Pedro Magnaye with the killing, but Plaza, Terrible and Lacatan were at large, while Gelacio Palma was omitted from the information lodged with the Court of First Instance on the grounds of insufficiency of the evidence to convict, leaving Pesquiza and Magnaye the only defendants to be brought to trial. Further elimination occurred with the acquittal of Magnaye after the trial. This appeal is by Pesquiza who has found guilty as charged and sentenced to suffer the penalty of 17 years, four months and one day of reclusion temporal with the accessories of the law, to indemnify the heirs of the deceased in the amount of P6,000, and to pay one-half of the costs.

Direct evidence for the prosecution consists of testimony of Gaudencio Rivera, deceased's son, and Pesquiza's confessions.

Gaudencio Rivera declared that from a distance of about 20 meters from where his father dropped dead, he heard gunshots and saw Adriano Pesquiza, Pedro Magnaye and Dionisio Terrible run off. He said that there were three other persons who also ran away, but did not recognize them. Pesquiza and Magnaye, according to the witness, were carrying a firearm each but he could not tell what kind of weapons they were.

We do not believe that this witness was present at the scene of the crime or, if he was, that he recognized his father's assailants. It is to be noted that the crime was committed about seven p.m. The admitted fact that Rivera did not tell the authorities the name of any of the assailants until arrests had been made about six months later, and that not even to his sister with whom he and his father lived and who, after his father was killed, was his only house companion, did he disclose the identity of any of the accused, is hardly compatible with the veracity of his statements at the trial. The prosecution's own evidence shows that all that time police operatives were making investigations to discover the criminals and questioned this young man among other persons.

The appellant's confession, however, which was made to Philippine Constabulary Lieutenant Pablo T. Mendoza in

the form of questions and answers, was taken down by Sergeant Nicasio de los Reyes of the same organization, and sworn to before Assistant Provincial Fiscal David Carreon in the latter's office, establishes appellant's guilt beyond reasonable doubt.

In this confession Pesquiza stated in substance that he and Magnaye had shot Rivera with carbines which they had borrowed from Bonifacio Plaza and Gelacio Palma respectively. Asked why he killed Rivera, he answered that the deceased had threatened to shoot him, and did in fact shoot at him with a Garand four days before. He stated further that the last-mentioned incident arose from Rivera's suspicion that he had been stealing coconuts of the company and from the fact that he owed Rivera P10.00.

Lieutenant Mendoza, Sergeant De los Reyes and Fiscal Carreon all swore that appellant's confession had been made without any threat, violence, or offer of reward of any kind. Aside from Pesquiza's unsupported testimony, which is none too convincing, the record discloses no proof or indication that his confession was otherwise than free and voluntary, as the three prosecution witnesses declared.

Corroborating, albeit indirectly, the above confession was Chief of Police Dizon's testimony, which has not been denied, to the effect that when he arrested the appellant the latter made to him a similar admission, which, he said, was the reason why he turned Pesquiza over to the Constabulary.

It is significant that Bonifacio Plaza and Gelacio Palma owned licensed carbines, which were confiscated by the constabulary following Pesquiza's and Magnaye's confessions, and that no witness was put on the stand to confirm Pesquiza's evidence that he was in the poblacion of Calamba and arrived at his sister's home where he lived only after Rivera was slain.

As to the motives for the killing, Trinidad Rivera supplied corroborative proof. Trinidad Rivera, 30-year old daughter of the deceased, swore that on the morning of the fatal date, she tried to collect from Pesquiza a debt — P11.87 — for merchandise bought at her store on credit; that Pesquiza on that occasion instead of paying got angry; that she complained to her father, whereupon the deceased with her looked for Pesquiza at his home where there was "an exchange of words" between the two men and Pesquiza told Rivera that some day he "will face". She further said that her father was disliked by the workers at the Canlubang Sugar Estate because he was strict with those who had been stealing coconuts and working animals of the company.

The crime of murder was committed without the concurrence of any mitigating or aggravating circumstance, and the corresponding penalty should be reclusion perpetua. The appealed sentence is hereby so modified, with costs against the defendant-appellant.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and Labrador, JJ., concur.
Bautista Angelo, J., no part.

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